

**NEW  
MEXICO  
REGISTER**



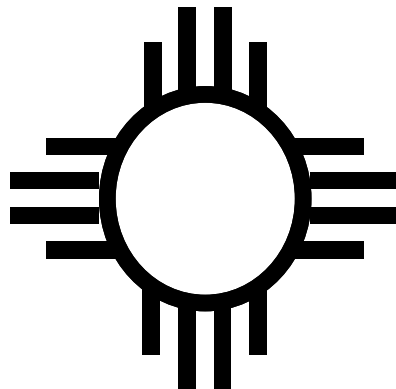
**Volume XIX  
Issue Number 13  
July 16, 2008**



# **New Mexico Register**

**Volume XIX, Issue Number 13**

**July 16, 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 13

July 16, 2008

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#### Effective Date and Validity of Rule Filings

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

***A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered***

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The *New Mexico Register* is available free at <http://www.nmcp.state.nm.us/nmregister>

The *New Mexico Register*  
Published by  
The Commission of Public Records  
Administrative Law Division  
1205 Camino Carlos Rey  
Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail [staterules@state.nm.us](mailto:staterules@state.nm.us).

## Notices of Rulemaking and Proposed Rules

### NEW MEXICO DEPARTMENT OF AGRICULTURE

#### Notice of Hearing

The Pecos Valley Cotton Boll Weevil Control District will hold a public hearing under the Cotton Boll Weevil Control Act, 76-6A-1 to 76-6A-16, NMSA 1978, to reduce the assessment rate to \$2 per bale.

The hearing will be held at the NMSU Ag Center located at 67 E. Four Dinkus Road, Artesia, New Mexico, beginning at 2:00 p.m. on August 13, 2008. Written statements in support or opposition, signed by the submitting person, will be accepted if received prior to 5:00 p.m. on August 13, 2008. Written statements, inquiries, or requests for copies of the rule should be directed to Mr. Dwight Menefee, P.O. Box 595, Artesia, New Mexico 88211-0595.

### NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

#### LOCAL GOVERNMENT DIVISION

The Department of Finance and Administration, Local Government Division ("DFA") hereby gives notice that DFA will conduct a public hearing in Room 309, State Capitol Building, 415 Old Santa Fe Trail, Santa Fe, New Mexico, 87503, on August 26, 2008 at 10:00 a.m. concerning amendments to 2.110.2.10 NMAC, 2.110.2.17 NMAC, 2.110.2.18 NMAC and 2.110.2.19 NMAC of the Small Cities Community Development Block Grants Rule (hereinafter referred to as the "CDBG Rule").

Interested individuals may testify at the public hearing or submit written comments no later than 5:00 p.m. on August 25, 2008, to the Office of the Secretary, DFA, Bataan Memorial Building, Room 180, Santa Fe, New Mexico, 87501. All written and oral testimony will be considered prior to adoption of the amendments. Copies of the text of the proposed CDBG Rule are available from Ms. Ariana Vigil, Local Government Division, Bataan Memorial Building, Santa Fe, New Mexico, 87501 or at 505-827-4975 or from the DFA internet website <http://nmdfa.state.nm.us>

IF YOU ARE AN INDIVIDUAL WITH A DISABILITY WHO IS IN NEED OF A READER, AMPLIFIER, QUALIFIED SIGN LANGUAGE INTERPRETER OR

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

#### 2.110.2.10 ELIGIBLE APPLICANTS

**A.** All counties, incorporated municipalities, and New Mexico mortgage finance authority (MFA) are eligible to apply except: the city of Albuquerque, the city of Farmington, the city of Las Cruces, the city of Santa Fe and the city of Rio Rancho who cannot apply since they receive funding directly from the department of housing and urban development (Title I, Section 106) as entitlement cities.

**B.** Other entities such as water associations, sanitation districts, land grants, public nonprofit groups, etc., cannot apply directly for assistance, other than planning grants.

**C.** However, these entities may be involved in the execution of an approved CDBG project if the eligible applicant chooses to operate the program through such an entity under a contractual agreement.

**D.** Indian pueblos and tribes receive funding directly from the department of housing and urban development (Title I, Section 107). Native American tribes are encouraged to submit applications to the Albuquerque HUD Office of Native American Programs, 201 3<sup>rd</sup> St., N.W., Suite 1830, Albuquerque, New Mexico 87102-3368, (505) 346-6923. [2.110.2.10 NMAC - Rp 2 NMAC 110.2.10, 08-30-01; A, 08-13-04 A, 09-28-07; A, xx-xx-08]

#### 2.110.2.17 APPLICATION REQUIREMENTS

**A.** Number of applications - All eligible applicants may submit one application for CDBG funding assistance in the infrastructure, housing, public facility capital outlay, or colonias categories.

**(1)** Planning applicants may submit at anytime an additional application for funding and shall not exceed fifty thousand dollars (\$50,000).

**(2)** Applicants in the economic development, emergency may be submitted at any time and shall not exceed five hundred thousand dollars (\$500,000), subject to funding availability.

**(3)** Counties may submit multiple applications for planning grants for water associations.

**(4)** Planning, economic development and emergency applications may be

submitted, at anytime, even if the applicant has not completed other CDBG projects.

~~[(5) Counties may submit multiple applications for planning grants for water associations.]~~

**B.** Single purpose application -An application for CDBG funding must be limited to a project specific activity or set of activities which address a particular need in a designated target area of a unit of local government. The target area may not be the entire municipality or county.

**C.** Joint applications - Joint applications will be allowed when two or more eligible applicants within reasonable proximity of each other wish to address a common problem.

**(1)** One community will be designated to serve as the lead applicant and will be subject to administrative requirements and to the application limit requirements.

**(2)** However, other parties to the joint application may submit another application.

**(3)** Joint applications must satisfy certain federal criteria and must receive division approval prior to submitting an application for funding assistance.

**(4)** It should be noted that satisfying the required criteria, which is available from the division upon request, may take a significant period of time.

**D.** Application requirements for the following minimum requirements apply to all applications for CDBG funding:

**(1)** applications must involve a project that will be fully functional on a stand-alone basis once awarded CDBG and other committed funds have been expended and;

**(2)** projects shall be completed within twenty-four months of an award of funding;

**(3)** applications may not exceed \$500,000;

**(4)** if the applicant, after conducting the required public hearing, determines that the previous year's CDBG unfunded application is still a priority, the applicant must submit the original along with a current year's resolution, updated project budget and schedule and any other information required by division staff.

**E.** Threshold requirements - To encourage timely completion of projects and to maximize participation the following threshold requirements shall be met prior to the application deadline.

**(1)** All projects for the eligible activities in the categories listed in Subsections C, D, E, and I of 2.110.2.11 NMAC must be completed at the time of application. (certificate of occupancy or

certification of operation must be in place).

(2) All audit and monitoring findings, for CDBG projects, must be resolved.

(3) The current fiscal operating budget for any local public body applying for CDBG funds must be approved.

(4) The local government division financial management bureau will verify that financial quarterly/ monthly reports are current before CDBG applications deadline.

(5) The following set aside categories are exempt from threshold requirement: planning, economic development, and emergency.

**F. Matching requirements**

- In order to assist the council in making funding resources go further and to ensure there is a local investment in applications submitted to the council for funding consideration, the following will be required.

(1) Rural applicants must provide, at a minimum, a 5% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(2) Non-rural applicants must provide, at a minimum, a 10% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(3) Consistent with ~~Section 26 of these regulations~~ 2.110.2 NMAC, all applications in the economic development category must provide at least ~~[two private dollars]~~ one private dollar for each dollar of CDBG funds requested.

(4) Local funds expended by eligible applicants for engineering, architectural design or environmental reviews prior to project approval can be applied towards the required match.

(5) Applicants may request a waiver of the matching requirement from the council if documentation can be provided which demonstrates the absence of local resources to meet the required match. Criteria used to recommend approval/disapproval will be as follows:

(a) the required match must exceed 5% of the applicant's general fund budget;

(b) the required match must equal or exceed the non-earmarked balance of funds in the applicant's budget.

**G. Other funding commitments**

- If other funding is necessary to make a proposed project feasible, funding commitments or commitments subject to CDBG approval, must be in place and letters of commitments from the funding agency must be submitted with the application.

**H. Water conservation and drought commitments**

- In order to make the state's water supplies go further and to ensure proper levels of preparations are taken locally for periodic droughts, the fol-

lowing is encouraged:

(1) Applicants develop, adopt and submit to the state engineer a comprehensive water conservation ordinance.

(2) Applicants develop, adopt and submit to the state engineer a drought management plan.

(3) The ordinance and plan shall be accompanied by a program for its implementation.

(a) in developing a water conservation ordinance pursuant to this section: applicants shall adopt ordinances and codes to encourage water conservation measures; they shall identify and implement best management practices in their operations to improve conservation of the resources; and

(b) applicants shall consider and incorporate into its plan if appropriate, at least the following:

(i) water-efficient fixtures and appliances, including toilets, urinals, showerheads and faucets;

(ii) low-water-use landscaping and efficient irrigation;

(iii) water-efficient commercial and industrial water-use processes;

(iv) water reuse systems for both potable and non-potable water;

(v) distribution system leak repair;

(vi) dissemination of information regarding water-use efficiency measures, including public education programs and demonstrations of water-saving techniques;

(vii) water rate structures establishing rates or revenues that support the long term operation, maintenance, repair, and replacement of the system or facility and are designed to encourage water-use efficiency and reuse in a fiscally responsible manner and

(viii) incentives to implement water-use efficiency techniques, including rebates to customers or others, to encourage the installation of water-use efficiency and reuse measures.

(c) the council shall encourage the applicant to submit a copy of its water conservation plan with applications for construction of any facility.

**I. Asset management**

- In order to support the long term operation, maintenance, repair and replacement of system facilities, infrastructure, public facilities, or other eligible activities the following will be required.

(1) In order to ensure water and wastewater infrastructure is managed within a strategic framework driven by program and service deliver needs, communities that implement a rate analysis based upon an asset management program will be credited in the application process for their achieve-

ment. The model for the asset management program is the EPA publication "Asset Management: A Handbook for Small Water Systems (EPA 816-R-03-0160 September 2003).

(2) For community infrastructure and public facilities, or other eligible activities an asset management plan will be required to be submitted at the time of application (EPA 816-R-03-0160 September 2003).

[2.110.2.17 NMAC - Rp 2 NMAC 110.2.17, 08-30-01; A, 08-13-04; A, 08-15-05; A, 12-14-06; A, 09-28-07; A, xx-xx-08]

**2.110.2.18 APPLICATION PROCEDURES AND CONTENT:**

The application packet provided by local government division will be used for infrastructure, housing, public facility, capital outlay, colonias, emergency categories, economic development and planning.

**A.** An applicant must submit an original and ~~[three]~~ two copies of each application to the Department of Finance and Administration, Local Government Division, Bataan Memorial Building, Suite 201, Santa Fe, New Mexico 87501, and one copy to the appropriate council of governments.

**B.** Applications must be received at the local government division by 5 p.m. of the designated application deadline. Applications received after that time will be returned to the applicant unprocessed.

[2.110.2.18 NMAC - Rp 2 NMAC 110.2.18, 08-30-01; A, 08-13-04; A, 12-14-06; A, 09-28-07; A, xx-xx-08]

**2.110.2.19 APPLICATION REVIEW AND EVALUATION PROCESS**

**A.** Upon receipt of applications, division staff will review them for eligibility, completeness, feasibility, and compliance and to ensure that all other funding necessary to make the project functional is in place. Applications that are found to be incomplete, ineligible, not feasible or do not have other funding necessary to make the project functional, will be returned to the applicant and will not be considered for funding.

**B.** Applications will be forwarded to appropriate state agencies for technical review and comment. Review agencies may include, but are not limited to, the environment department, department of transportation,, department of health, state engineer's office, state agency on aging, economic development department, state fire marshal and governor's commission on disability

**C.** Applicants will be allowed to make presentations to the council and division staff at an official council



hearing. Testimony related to the application will be presented by an official or designee of the applying entity who may be assisted by technical staff.

**D.** Division staff will receive comments from state agencies regarding specific projects.

**E.** The council and division have developed the following rating criteria for evaluation of CDBG applications submitted for funding ~~[consideration]~~ in the following categories: infrastructure, housing, public facility, capital outlay and colonias [applications] application categories. For infrastructure, housing, public facility, capital outlay and colonia application categories, the following nine (9) criteria are used to score the application. In addition, for colonias applications, the applicant needs to fulfill the four conditions in Subsection G of 2.110.2.19 NMAC.

**(1) Description and need** - (5 points) extent to which the project is needed. The more severe the need as documented in the application, the higher the score. ~~[Colonias applicants must provide documentation to substantiate that a majority of the following conditions exist in the project area:~~

~~(a) lack of potable water;  
(b) lack of an adequate sewage system;  
(c) lack of safe, sanitary housing;  
(d) source documentation must also be provided.]~~ It is only necessary to answer the questions on the application that pertain to the appropriate application category and do not answer questions on the application that pertain to other categories.

**(2) Benefit to low and moderate and appropriateness** - (20 points) extent to which the CDBG application:

**(a)** documents the number and percentage of low and moderate income beneficiaries, also include race and gender; or

**(b)** addresses the prevention or removal of slum or blighting conditions; or  
**(c)** addresses conditions which pose a serious and immediate threat to the health and welfare of the community (for emergency applications only).

**(3) Leveraging** - (15 points) extent to which federal, state, and local resources, in addition to the required match, are being used by the applicant for the proposed project. The greater the leveraging, in addition to the required match, the higher the score.

**(4) Citizen participation** - (10 points) extent to which the applicant:

**(a)** has provided opportunities for public participation in the identification of community development needs;

**(b)** pledges opportunities for active citizen participation during the proj-

ect, where applicable; and;

**(c)** pledges opportunities for active citizen participation in the implementation of the project, where applicable.

**(5) Planning** - (10 points) extent to which the applicant:

**(a)** (3) points: Applicant has adopted a local (ICIP), which has qualified for publication in the most recent local (ICIP) published prior to the CDBG application deadline.

**(b)** (3) points: The proposed project has qualified for publication in the most recent ICIP prior to the CDBG application deadline and applicant has selected CDBG as one of its possible funding sources.

**(c)** 1 point: Degree to which applicant's proposed project shows consistency with applicant's comprehensive plan.

**(d)** 1 point: Adopting a drought contingency plan, setting in place various drought management stages and accompanying restrictions on water use.

**(e)** 1 point: Adopting a water conservation ordinance, setting in place various methods for conserving potable water.

**(f)** 1 point: Implementing a water conservation ordinance, accompanied by evidence of exercising at least two various methods for conserving potable water.

**(6) Feasibility/readiness** - (20 points) extent to which the project is technically and economically feasible and ready to be implemented. Examples of actions that can be taken prior to submission of the application to receive maximum points are:

~~(a) [acquire necessary property]~~ necessary real property or easements acquired; (5)

~~(b) [secure professional services]~~ professional services contract executed; (5)

~~(c) [complete plans, specifications, or preliminary engineering report, etc.]~~ completed plans, specifications, bid documents, or preliminary engineering reports; (5)

**(d)** complete the environmental review process (5).

**(7) Cost benefit** - (10 points) number of direct beneficiaries of the project compared to the amount of funds requested. The higher the number of beneficiaries compared to the amount of funds requested, the higher the score.

**(8) User fees and revenues** - (10 points) What best demonstrates the rates or revenues that support the long term operation, maintenance, repair, and replacement of the system or facility?

**(a)** Rates developed by asset management as presented by the New Mexico Tech, environmental finance center (EFC). (10 points)

**(b)** rates developed by a rate analysis, excluding asset management or allowance for replacement of reserve funds.

(5 points)

**(c)** rates developed by other. (1 point)

**(9) Non-funded applicants** - (10 points) - Applicants that were not funded in the prior year.

**F. Planning criteria category**

**(1) Consistency (25 points):** Document the degree to which the proposed planning project is consistent with the applicants current version of its comprehensive plan, its infrastructure capital improvement plan, and its planning region's consolidated plan, or its planning documents or studies.

**(2) Appropriateness (25 points):** Describe the impact the proposed project will have on at least one of the three national objectives of the CDBG program, *i.e.*,

(a) documents the number and percentage of low and moderate income beneficiaries, also include race and gender;  
or

(b) addresses the prevention or removal of slum or blighting conditions; or

(c) addresses conditions which pose a serious and immediate threat to the health and welfare of the community (for emergency applications only).

**(3) Public involvement (25 points):** Describe how the planning process will involve citizens in the preliminary identification of community needs, in the development and active participation in the planning process, and in the implementation of the plan, including a minimum of one public hearing with proper notice in accordance with law.

**(4) Implementation strategy (25 points):** Describe the local commitment of resources to the planning process; commitment to adopt the plan, either by resolution, rule, policy or ordinance; and commitment to use the results of the planning process in the decision making process.

**G. Colonias criteria category** - When submitting a colonias category application, the applicant shall provide documentation to substantiate that a majority of the following conditions exist in the project area:

(1) lack of potable water;  
(2) lack of an adequate sewage system;

(3) lack of safe, sanitary housing;  
(4) source documentation must also be provided.

~~[G.]~~ **H.** Economic development rating criteria is included in Section 2.110.2.26.

~~[H.]~~ **I.** Site visits will be conducted as needed during the ~~[application review process]~~ life time of the project to verify [the] or review information presented [in an application].

~~[I.]~~ **J.** Division staff will pres-

ent its recommendations in high, medium and low groupings to the council at least seven days prior to the allocation meeting.

**[J] K.** Because emergency, economic development, and rural planning projects are received throughout the year, formal staff rating may not be necessary if all other federal and state requirements are met and other applications are not competing for funding assistance.

[2.110.2.19 NMAC - Rp 2 NMAC 110.2.19, 08-30-01; A, 08-13-04; A, 12-14-06; A, 09-28-07; A, xx-xx-08]

## NEW MEXICO GAME COMMISSION

### STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On Wednesday, July 23, 2008, beginning at 9:00 a.m., at New Mexico Highlands University, Leveo Sanchez Lecture Hall (G-35), Thomas C. Donnelly Library-Ground Floor, 802 National Avenue (Corner 8th & National), Las Vegas, NM 87701, the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: Revocations Review for 4 Individuals: Review of the Hearing Record; Revocations; Catch-a-Dream Non-Profit Organization; Reservation of 2 Elk Licenses for Non-Profit Wish-Granting Organizations; Update on Opportunities Available Pursuant to the Governor's Special Events Authorizations; Update on Progress of Big Game Rule Development Process; General Public Comments; Legislative Initiatives Discussion and Approval for 2009 Session; Budget Status, Revenue Review, and Initial FY10 Budget Preparation Discussion; Approach to Enhancing Public Awareness of Department Conservation and Management Planning Actions; Conservation Populations; Gila River Assessment; Closed Executive Session to discuss litigation, personnel, acquisition or disposal of real property or water rights, and pursuant to Section 10-15-1(H)(1), NMSA, 1978, to discuss matters related to the determination of sending "Notice of Commission Contemplated Action" for outfitter and/or guide registration to any identified individual(s) that may have violated regulating procedures and conduct as per 19.30.8, and 19.31.2, NMAC; Notice of Commission Contemplated Action; and Land Conservation Opportunities through State Wildlife Grant Partnerships.

The following rules will be opened for public comment and consideration for adoption by the Commission:

\* Importation of Live Non-Domestic Animals, Birds, and Fish, (19.35.7, NMAC);

\* Adoption of the 2008-2009 Resident Upland Game Rule (19.31.5, NMAC), and Migratory Game Bird Rule (19.31.6, NMAC); and

\* Proposed GAIN Rule (19.34.3, NMAC) Change Regarding Dogs and Other Domestic Animals on Commission-owned Properties.

A copy of the agenda or any of the affected rules can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504 or on the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's website at [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us) for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Shirley Baker at (505) 476-8029. Please contact Ms. Baker at least 3 working days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please contact Shirley Baker if a summary or other type of accessible form is needed.

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

### Notice of Public Hearing

This Human Services Register requests public comments on the annual LIHEAP State Plan. Each year, the LIHEAP State Plan is submitted to the Federal administering agency, the Department of Health and Human Services (DHHS). The LIHEAP State Plan will be amended to reflect the administration of the LIHEAP program in Federal Fiscal Year (FFY) 2009 and to make required adjustments to the LIHEAP Federal poverty guidelines (FPG) as required by federal statute.

The Department proposes to administer the LIHEAP program in FFY 2009 using the most recently issued FPG. No other changes are proposed for FFY 2009. The current LIHEAP State Plan can be viewed on the HSD website at <http://www.hsd.state.nm.us/isd/ISDPlans.html>.

The Department proposes to implement these regulations effective October 1, 2008.

A public hearing to receive testimony on these proposed regulations will be held August 19, 2008 at 10:00 AM. The hearing will be held in the Law Library at Pollon Plaza, 2009 S. Pacheco St., Santa Fe, NM 87505. Parking accessible to persons with physical impairments will be available.

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 service, please contact the NM Human Services Department toll free at 1 800 432-6217 or through the Relay New Mexico system, toll free at 1 800 659-8331. The Department requests at least ten-day advance notice to provide requested alternative formats and special accommodations.

Interested persons may address written or recorded comments to:

Pamela S. Hyde, J.D., Secretary  
Human Services Department

P.O. Box 2348

Santa Fe, New Mexico 87504-2348

Interested parties may also address comments by electronic mail to: [loretta.williams@state.nm.us](mailto:loretta.williams@state.nm.us) These comments must be received no later than 5:00 P.M., on August 19, 2008. Written and recorded comments will be given the same consideration as oral comments made at the public hearing.

Publication of these proposed regulations approved on July 1, 2008 by:

PAMELA S. HYDE, J.D., SECRETARY

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

### NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on **Monday**, August 18, 2008 from 9:00 A.M. until 11:00 A.M. The purpose of the public hearing will be to obtain input on the following rule:

Rule Number	Rule Name	Proposed Action
6.22.3 NMAC	CHARTER SCHOOL STIMULUS FUND	NEW RULE

Interested individuals may testify at the public hearing or submit written comments to Charter Schools Division, Public Education Department, 5600 Eagle Rock Ave. N.E., Albuquerque, N.M., 87113, Tel.: (505) 222-4762; Fax: (505) 222-4769 (don.duran@state.nm.us) Written comments must be received no later than 5 p.m. on August 18, 2008. However, the submission of written comments as soon as possible is encouraged. Written comments shall suggest specific reasons for any suggested amendments or comments and include any proposed amendatory language.

Copies of the proposed rules may be accessed on the Department’s website (<http://ped.state.nm.us/>) or obtained from Michael C de Baca, Administrative Assistant, Charter Schools Division, Public Education Department, 5600 Eagle Rock Ave. N.E., Albuquerque, N.M., 87113, and Tel.: (505) 222-4762 [michael.cdebaca@state.nm.us](mailto:michael.cdebaca@state.nm.us). The proposed rule will be made available at least thirty days prior to the hearings.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Mr. C de Baca, as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO PUBLIC REGULATION COMMISSION  
TRANSPORTATION DIVISION**

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE ADOPTION )  
OF PROPOSED AMENDMENTS TO )  
THE COMMISSION’S AMBULANCE )  
SERVICES RULES, ) Case 08-00016-TRP  
)  
**TRANSPORTATION DIVISION STAFF OF )  
THE PUBLIC REGULATION COMMISSION, )  
Petitioner. )  
)****

**NOTICE OF PROPOSED RULEMAKING**

**NOTICE** is hereby given that the New Mexico Public Regulation Commission (the “Commission”) is commencing a rulemaking proceeding for the purpose of addressing proposed amendments to NMPRC Rule 18.3.14.9 NMAC governing mutual aid ambulance services (“Mutual Aid Rule”) and a conforming amendment to Rule 18.3.14.7, Definitions. The proposed rule amendments would be promulgated under authority granted to the Commission by the New Mexico Constitution, Article XI, Section 2 (1996), and by the Legislature pursuant to NMSA 1978 Sections 8-8-4, 8-8-15, and 65-2A-4. The proposed amendments are Attachment A to this Notice.

On January 17, 2008, the Commission’s Transportation Division Staff (“Staff”) filed a Motion to Initiate Rulemaking. Staff requested the Commission to commence a rulemaking proceeding to amend the Commission’s Mutual Aid Rule, 18.3.14.9 NMAC. In its Motion, Staff stated that its proposed amendments were reviewed and approved by the Commission’s Ambulance Advisory Committee. At its regular open meetings of June 5 and June 19, 2008, the Commission considered the amendments to the Mutual Aid Rule that Staff had proposed and made certain changes to Staff’s proposed amendments.

The changes to the Mutual Aid Rule, 18.3.14.9, that the Commission now proposes are as follows:

1. The introductory sentence of 18.3.14.9 NMAC now reads: “Ambulance services shall develop mutual aid plans with all appropriate entities that may be implemented anytime an ambulance service cannot respond to a call or if a disaster or emergency occurs.” It would be changed to read: “Ambulance services shall develop mutual aid plans with appropriate entities that may be implemented any time an ambulance service cannot

respond to a call for service.” Thus the proposed changes to the introductory sentence would (a) strike the requirement of developing mutual aid plans with “all” appropriate entities (while leaving in the basic requirement that ambulance services develop mutual aid plans); and (b) delete the statement that mutual aid plans must cover situations in which an ambulance service cannot respond to a call in the event of a “disaster or emergency,” substituting a more general provision that such plans must cover situations in which an ambulance service cannot respond to a call for service.

2. Paragraph 18.3.14.9.A NMAC now reads: “Mutual aid may be provided . . . in an emergency or disaster situation when requested by state or local authorities.” It would be changed to: “Mutual aid may be provided . . . in a mass casualty or disaster situation when requested by state or local authorities.” This proposed amendment would narrow the type of situation addressed in this particular paragraph in which mutual aid may be provided at the request of state or local authorities from “emergency” or disaster situations to “mass casualty” or disaster situations.

3. Paragraph 18.3.14.9.D NMAC now reads: “Mutual aid may be provided . . . when requested by an official of a political subdivision of the state.” It would be changed to: “Mutual aid may be provided . . . when requested by an executive official or a political subdivision of the state.” This change would limit the types of local officials who may call for mutual aid under this paragraph to high level officials.

4. A new Paragraph 18.3.14.9.E NMAC would be added stating, “Mutual aid may be provided: . . . in a non-emergency, when the responsible local provider’s resources are exhausted, pursuant to arrangements made by the responsible local provider for, and its coordination of, such necessary mutual aid.” This change would expand mutual aid provided for in the rule to include non-emergency situations when the responsible provider is unable to meet the need, but assures that such non-emergency mutual aid will be provided only under the control of the responsible local provider.

In order to achieve consistency with the proposed amendment adding new Paragraph 18.3.14.9.E NMAC (relating to the provision of mutual aid in non-emergency situations when the responsible local provider’s resources are exhausted), the Commission also proposes to amend the definition of “mutual aid” in 18.3.14.7.K NMAC. Currently, the term “mutual aid” is defined as, “a written agreement between

one municipality, county or emergency medical service and other municipalities, counties or emergency medical services for the purpose of ensuring that adequate emergency medical services exist throughout the state." The Commission proposes amending the definition to read: "a written agreement between one municipality, county or emergency medical service and other municipalities, counties or emergency medical services for the purpose of ensuring that adequate emergency medical services, and non-emergency medical transportation services when local resources are exhausted, exist throughout the state." This amendment involves expanding the stated purposes of mutual aid to include the provision of mutual aid in non-emergency situations when the local provider's resources are exhausted, in conformance with the amendment adding proposed Paragraph 18.3.14.9.E.

Any person wishing to comment on the proposed amendments may do so by submitting written comments to the Commission no later than August 1, 2008. Any person wishing to respond to comments may do so by submitting written response comments no later than August 15, 2008. Comments suggesting changes to the rule amendments as proposed shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the draft rule should be provided in legislative format.

All pleadings, including comments, shall bear the caption and case number set forth at the top of this notice. Additional copies of the proposed amendments to Rule 18.3.3 NMAC can be obtained from, and comments on the proposed rule, shall be sent to:

Docketing Office  
 NMPRC-Transportation Division  
 PERA Bldg. Room 406  
 1120 Paseo de Peralta 87501  
 PO Box 1269  
 Santa Fe, New Mexico 87504-1269  
 Telephone: (505) 827-4526

A public hearing will begin at 2:00 p.m. on Tuesday, August 19, 2008 in the Fourth Floor Hearing Room, PERA Bldg, 1120 Paseo del Peralta, Santa Fe, New Mexico to receive oral comment and to clarify or supplement the written comments. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding.

Pursuant to NMSA 1978, Section

8-8-15.B, this notice, including Attachment A shall be mailed at least 30 days prior to the hearing to all persons who have made a written request for advance notice. Also pursuant to Section 8-8-15.B, this notice shall be published (without Attachment A) in at least two newspapers of general circulation in the state and in the *New Mexico Register* at least 30 days prior to the hearing date. This Notice also should be posted on the Commission's website.

Copies of any Final Order in this case, along with any amended rule adopted by the Commission in this case, will be sent to all affected certificated ambulance service providers, the PRC's Ambulance Advisory Committee and other interested persons.

**ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 19th day of June, 2008.**

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**JASON A. MARKS, CHAIRMAN**

**SANDY JONES, VICE CHAIRMAN**

**DAVID W. KING, COMMISSIONER**

**BEN R. LUJAN, COMMISSIONER**

**CAROL K. SLOAN, COMMISSIONER**

**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 at the Racehorse Hall of Fame at Ruidoso Downs Racetrack and Casino, 1461 Highway 70 West, Ruidoso Downs, New Mexico. The public session will begin at 9:30 o'clock a.m. on Wednesday, July 16, 2008. The Commission will consider adoption of the proposed amended rule for incorporation into the Rules Governing Horse Racing in New Mexico No. 16.47.1.8(C) (regarding age requirement), No. 16.47.1.11(7) (regarding authorized agent's age requirement), No. 16.47.1.13(C) (regarding jockey agent age requirement) and 15.2.6.9 (regarding medications and prohibited substances).

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 persons may submit their views on the proposed rules to the commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

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

Julian Luna  
 Agency Director

Dated: July 1, 2008

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

The New Mexico Private Investigations Advisory Board will hold a Rule Hearing on August 20, 2008 and will convene at 10:00 a.m. 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, 2<sup>nd</sup> floor Rio Grande room Santa Fe, NM.

If you would like a copy of the proposed rules you may access the website at [www.rld.state.nm.us](http://www.rld.state.nm.us) after May 5, 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 July 25, 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) 476-4909 at least two weeks prior to the meeting or as soon as possible.

**End of Notices and  
 Proposed Rules Section**

## Adopted Rules

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

20.2.7 NMAC, Air Quality (Statewide) - Excess Emissions During Malfunction, Startup, Shutdown, or Scheduled Maintenance (filed 10/16/2002) repealed 08/01/08.

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 2 AIR QUALITY (STATEWIDE)**  
**PART 7 EXCESS EMISSIONS**

**20.2.7.1 ISSUING AGENCY.** Environmental Improvement Board.  
[20.2.7.1 NMAC - Rp, 20.2.7.1 NMAC, 08/01/08]

**20.2.7.2 SCOPE.** All geographic areas within the jurisdiction of the environmental improvement board.  
[20.2.7.2 NMAC - Rp, 20.2.7.2 NMAC, 08/01/08]

**20.2.7.3 STATUTORY AUTHORITY.** Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C).  
[20.2.7.3 NMAC - Rp, 20.2.7.3 NMAC, 08/01/08]

**20.2.7.4 DURATION.** Permanent.  
[20.2.7.4 NMAC - Rp, 20.2.7.4 NMAC, 08/01/08]

**20.2.7.5 EFFECTIVE DATE.** 08/01/08, unless a later date is cited at the end of a section.  
[20.2.7.5 NMAC - Rp, 20.2.7.5 NMAC, 08/01/08]

**20.2.7.6 OBJECTIVE.**

**A.** Establish requirements for a source whose operation results in an excess emission.

**B.** Establish criteria for a source whose operation results in an excess emission to claim an affirmative defense in an administrative or judicial enforcement action from a civil penalty.

[20.2.7.6 NMAC - Rp, 20.2.7.6 NMAC, 08/01/08]

**20.2.7.7 DEFINITIONS.** In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this part, the following definitions apply.

**A. "Air pollution control equipment"** means any apparatus, including acid plants, afterburners, baghouses, cyclones, electrostatic precipitators, flares, incinerators, and particulate or gaseous scrubbers, utilized to control the emission of a regulated air contaminant, including a fugitive emission.

**B. "Air quality regulation or permit condition"** means any regulation adopted by the board, including a federal new source performance standard adopted by reference, or any condition of an air quality permit issued by the department. National emission standards for hazardous air pollutants and maximum achievable control technology standards are not included in this definition.

**C. "Bypass"** means the diversion of a regulated air contaminant around air pollution control equipment or process equipment.

**D. "Excess emission"** means the emission of an air contaminant, including a fugitive emission, in excess of the quantity, rate, opacity or concentration specified by an air quality regulation or permit condition.

**E. "Malfunction"** means any sudden and unavoidable failure of air pollution control equipment or process equipment beyond the control of the owner or operator, including malfunction during startup or shutdown. A failure that is caused entirely or in part by poor maintenance, careless operation, or any other preventable equipment breakdown shall not be considered a malfunction.

**F. "Part"** means an air quality regulation under Title 20, Chapter 2 of the New Mexico Administrative Code.

**G. "Regular business day"** means any day on which state government offices are open for normal business. Saturdays, Sundays, and official federal and state holidays are not regular business days.

**H. "Shutdown"** means the cessation of operation of any air pollution control equipment or process equipment.

**I. "Startup"** means the setting into operation of any air pollution control equipment or process equipment.  
[20.2.7.7 NMAC - Rp, 20.2.7.7 NMAC, 08/01/08]

**20.2.7.8 AMENDMENT OR SUPERSESION OF PRIOR REGULA-**

**TIONS.** This part supersedes New Mexico Administrative Code ("NMAC") 20.2.7 — Excess Emissions During Malfunction, Startup, Shutdown, or Scheduled Maintenance last filed October 30, 1995.

[20.2.7.8 NMAC - Rp, 20.2.7.8 NMAC, 08/01/08]

**20.2.7.9 DOCUMENTS.** No documents are cited in this part.  
[20.2.7.9 NMAC - N, 08/01/08]

**20.2.7.10 SEVERABILITY.** If any provision of this part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this part, or the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected thereby.  
[20.2.7.10 NMAC - N, 08/01/08]

**20.2.7.11 CONSTRUCTION.** This part shall be liberally construed to carry out its purpose.  
[20.2.7.11 NMAC - N, 08/01/08]

**20.2.7.12 SAVINGS CLAUSE.** Repeal or supersession of a prior version of this part shall not affect any administrative or judicial action initiated under that prior version.  
[20.2.7.12 NMAC - N, 08/01/08]

**20.2.7.13 COMPLIANCE WITH OTHER REGULATIONS.** Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local statute or regulation.  
[20.2.7.13 NMAC - N, 08/01/08]

**20.2.7.14 REQUIREMENTS REGARDING ROUTINE OR PREDICTABLE EMISSIONS DURING STARTUP, SHUTDOWN, AND MAINTENANCE.**

**A.** The owner or operator of a source subject to a permit or to the notification requirement under section 15 of this part, shall establish and implement a plan to minimize emissions during routine or predictable startup, shutdown, and scheduled maintenance through work practice standards and good air pollution control practices. This requirement shall not apply to any affected facility defined in and subject to an emissions standard and an equivalent plan under 40 CFR Part 60 (NSPS), 40 CFR Part 63 (MACT), or an equivalent plan under 20.2.72 NMAC - Construction Permits, 20.2.70 NMAC - Operating Permits, 20.2.74 NMAC - Permits - Prevention of Significant Deterioration

(PSD), or 20.2.79 NMAC - Permits - Nonattainment Areas.

**B.** The owner or operator shall maintain the plan at the location authorized by the permit, at the facility, or at the nearest occupied facility, and provide the plan to the department upon written request.

**C.** This requirement shall become effective 180 days after the effective date of this part.

[20.2.7.14 NMAC - Rp, 20.2.7.14 NMAC, 08/01/08]

**20.2.7.15 TEMPORARY PROVISIONS FOR ROUTINE OR PREDICTABLE EMISSIONS DURING STARTUP, SHUTDOWN, AND SCHEDULED MAINTENANCE.**

**A.** If the inclusion of emissions during routine or predictable startup, shutdown, or scheduled maintenance in addition to the potential emission rate or potential to emit of a source could exceed an applicable emissions limitation, or would cause the source to exceed an applicability threshold in 20.2.72 NMAC - Construction Permits, 20.2.70 NMAC - Operating Permits, 20.2.74 NMAC - Permits - Prevention of Significant Deterioration (PSD), or 20.2.79 NMAC - Permits - Nonattainment Areas, the owner or operator shall notify the department in writing no later than 180 days after the effective date of this part. The notice shall include a preliminary estimate of emissions by pollutant to the extent practicable and identify the nature of permitting action likely to be required.

**B.** The owner or operator shall submit the necessary permit application no later than 120 days after receiving a request from the department.

**C.** If a timely notice is submitted under Subsection A of 20.2.7.15 NMAC for any excess emission during routine or predictable startup, shutdown, or scheduled maintenance, the owner or operator shall comply only with Paragraph (2) of Subsection A of 20.2.7.110 NMAC - Final Report, until the permit is issued or denied.

**D.** At the request of the department, the owner or operator of a source that does not submit a notification under Subsection A of 20.2.7.15 NMAC shall submit the basis for its determination and supporting analysis.

[20.2.7.15 NMAC - N, 08/01/08]

**20.2.7.16 to 20.2.7.107**

**[RESERVED]**

**20.2.7.108 APPLICABILITY.**

**A.** Any source:

(1) whose operation results in an emission of an air contaminant, including a fugitive emission, in excess of the quantity,

rate, opacity or concentration specified by an air quality regulation or permit condition; or

(2) subject to the requirements of 20.2.73 NMAC - Notices of Intent and Emissions Inventory Requirements, 20.2.72 NMAC - Construction Permits, 20.2.70 NMAC - Operating Permits, 20.2.74 - Permits - Prevention of Significant Deterioration (PSD), or 20.2.79 - Permits - Nonattainment Areas.

**B.** Deviations under 20.2.70 NMAC - Operating Permits that do not result in excess emissions are not subject to the provisions of 20.2.7 NMAC.

**C.** This part does not create a separate cause of action for failure to obtain a permit under 20.2.72 NMAC - Construction Permits, 20.2.70 NMAC - Operating Permits, 20.2.74 - Permits - Prevention of Significant Deterioration (PSD), or 20.2.79 - Permits - Nonattainment Areas.

[20.2.7.108 NMAC - N, 08/01/08]

**20.2.7.109 OPERATION RESULTING IN AN EXCESS EMISSIONS.**

The emission of an air contaminant in excess of the quantity, rate, opacity, or concentration specified in an air quality regulation or permit condition that results in an excess emission is a violation of the air quality regulation or permit condition and may be subject to an enforcement action. The owner or operator of a source having an excess emission shall, to the extent practicable, operate the source, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions. [20.2.7.109 NMAC - Rp, 20.2.7.109 NMAC, 08/01/08]

**20.2.7.110 NOTIFICATION.**

**A.** The owner or operator of a source having an excess emission shall report the following information to the department on forms provided by the department. The department may authorize the submittal of such reports in electronic format.

(1) Initial report: the owner or operator shall file an initial report, no later than the end of the next regular business day after the time of discovery of an excess emission that includes all available information for each item in Subsection B of 20.2.7.110 NMAC.

(2) Final report: the owner or operator shall file a final report that contains specific and detailed information for each item in Subsection B of 20.2.7.110 NMAC, no later than ten (10) days after the end of the excess emission.

**B.** The report shall include the following information.

(1) The name of the source.

(2) The name of the owner and operator of the source.

(3) The name and title of the person preparing the report.

(4) Identifying information such as permit and database numbers.

(5) The specific date(s) and time(s) the excess emission occurred.

(6) Identification of the equipment involved and the emission point(s) (including bypass) from which the excess emission occurred.

(7) The air quality regulation or permit condition that was exceeded.

(8) Identification of the air contaminant(s) and the magnitude of the excess emission expressed in the units of the air quality regulation or permit condition.

(9) The method for determining the magnitude and duration of the excess emission.

(10) The cause and nature of the excess emission.

(11) The steps taken to limit the duration and magnitude of the excess emission.

(12) The corrective action(s) taken to eliminate the cause of the excess emission. If one or more corrective actions are required, the report shall include a schedule for implementation of those actions, with associated progress reports. If no corrective actions are required, the report shall include a detailed explanation for that conclusion.

(13) The corrective action(s) taken to prevent a recurrence of the excess emission.

(14) Whether the owner or operator attributes the excess emission to malfunction, startup or shutdown.

(15) Whether the owner or operator will claim an affirmative defense under Sections 111, 112, or 113 of 20.2.7 NMAC. If claiming an affirmative defense, an analysis with and the supporting evidence for each criterion shall be submitted no later than thirty (30) days after submittal of the final report required by this subsection (Subsection B of 20.2.7.110 NMAC). Upon the department's receipt of a written request by the owner or operator no later than thirty (30) days after submittal of the final report, the department may grant an extension to complete the analysis not to exceed thirty (30) additional days.

(16) The contents of the final report shall contain a signed certification of truth, accuracy, and completeness. This certification shall be signed by the person who is reporting the excess emission.

**C.** The department may request that the owner or operator of a source provide additional information. This information shall be reported within a time period specified by the department.

**D.** If the period of an

excess emission extends beyond the deadline specified in Paragraph (2) of Subsection A of 20.2.7.110 NMAC, the owner or operator shall notify the department in writing within seventy-two (72) hours of the date and time when the excess emission ceased. This notification shall include all items required in Subsection B of 20.2.7.110 NMAC.  
[20.2.7.110 NMAC - Rp, 20.2.7.110 NMAC, 08/01/08]

**20.2.7.111 AFFIRMATIVE DEFENSE FOR AN EXCESS EMISSION DURING MALFUNCTION.**

**A.** The owner or operator of a source subject to this part may claim an affirmative defense for an excess emission during malfunction for a civil penalty in an administrative or judicial enforcement action, except for an action to enforce a federal new source performance standard. There shall be no affirmative defense for an excess emission during malfunction for the owner or operator's liability or the department's claim for injunctive relief for the excess emission. The owner or operator claiming an affirmative defense for an excess emission during malfunction shall bear the burden of proof to demonstrate the following criteria.

(1) The excess emission was caused by a malfunction.

(2) The excess emission:

(a) did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(b) could not have been avoided by better operation and maintenance practices.

(3) To the maximum extent practicable the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions.

(4) Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable.

(5) The amount and duration of the excess emission (including any bypass) were minimized to the maximum extent practicable during periods of such emissions.

(6) All possible steps were taken to minimize the impact of the excess emission on ambient air quality.

(7) All emission monitoring systems were kept in operation if at all possible.

(8) The excess emission was not part of a recurring pattern indicative of

inadequate design, operation, or maintenance.

(9) The owner or operator complied with the notification requirements in Section 110 of 20.2.7 NMAC.

(10) The owner or operator's actions in response to the excess emission were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

**B.** The department may request that the owner or operator of a source provide additional information beyond what is required in this section (20.2.7.111 NMAC). This additional information shall be reported within the time period specified by the department.

[20.2.7.111 NMAC - N, 08/01/08]

**20.2.7.112 AFFIRMATIVE DEFENSE FOR AN EXCESS EMISSION DURING STARTUP OR SHUTDOWN.**

**A.** The owner or operator of a source subject to this part may claim an affirmative defense for an excess emission during startup or shutdown for a civil penalty in an administrative or judicial enforcement action, except for an action to enforce a federal new source performance standard. There shall be no affirmative defense for an excess emission during startup or shutdown for the owner or operator's liability or the department's claim for injunctive relief for the excess emission. The owner or operator claiming an affirmative defense for an excess emission during startup or shutdown shall bear the burden of proof to demonstrate the following criteria.

(1) The excess emission occurred during a startup or shutdown.

(2) The duration of the excess emission that occurred during startup and shutdown was short and could not have been prevented through careful planning and design.

(3) The excess emission was not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

(4) If the excess emission was caused by a bypass (an intentional diversion of control equipment), then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

(5) At all times, the source was operated in a manner consistent with good practices for minimizing emissions.

(6) The frequency and duration of operation in startup or shutdown mode was minimized to the maximum extent practicable.

(7) All possible steps were taken to minimize the impact of the excess emission on ambient air quality.

(8) All emissions monitoring systems

were kept in operation if at all possible.

(9) The owner or operator complied with the notification requirements in Section 110 of 20.2.7 NMAC.

(10) The owner or operator's actions during the period of the excess emission were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

**B.** The department may request that the owner or operator of a source provide additional information beyond what is required in this section (20.2.7.112 NMAC). This additional information shall be reported within the time period specified by the department.

**C.** An excess emission due to malfunction during a period of startup or shutdown which is authorized by permit shall be treated as a malfunction under 20.2.7.111 NMAC.

[20.2.7.112 NMAC - Rp, 20.2.7.112 NMAC, 08/01/08]

**20.2.7.113 AFFIRMATIVE DEFENSE FOR AN EMERGENCY.**

**A.** An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the permittee, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, or careless or improper operation.

**B.** An emergency constitutes an affirmative defense to an action brought for noncompliance with the technology-based emission limitation if the owner or operator of the source demonstrates through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) an emergency occurred and that the owner or operator can identify the cause(s) of the emergency;

(2) the source was at the time being properly operated;

(3) during the period of the emergency the owner or operator took all reasonable steps to minimize levels of emissions that exceeded the technology-based emission limitation; and

(4) the owner or operator fulfilled the notification requirements under Subsection A of 20.2.7.110 NMAC, including a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

**C.** In any enforcement

proceeding, the owner or operator seeking to establish the occurrence of an emergency has the burden of proof.

**D.** The department may request that the owner or operator of a source provide additional information beyond what is required in this section (20.2.7.113 NMAC). This additional information shall be reported within the time period specified by the department. [20.2.7.113 NMAC - N, 08/01/08]

#### **20.2.7.114 ROOT CAUSE AND CORRECTIVE ACTION ANALYSIS.**

**A.** The owner or operator of a source having an excess emission, upon written request of the department, shall prepare an analysis that uses appropriate analytical tools and contains the following information.

(1) an analysis describing the root cause and all contributing causes of the excess emission;

(2) an analysis of the corrective actions implemented or available to reduce the likelihood of a recurrence of the excess emission resulting from the causes identified under Paragraph (1) of Subsection A of 20.2.7.114 NMAC, including, as applicable:

(a) identification of implemented or available corrective action alternatives, such as changes in design, operation and maintenance;

(b) the estimated cost associated with each corrective action alternative;

(c) the probable effectiveness of each corrective action alternative;

(d) if no corrective action alternatives are available, a clear explanation providing an adequate justification for that conclusion; and

(e) if one or more corrective actions are identified, a schedule for implementation and progress reports.

**B.** The department shall make the request no later than ninety (90) days after receipt of the final report under Subsection A of 20.2.7.110 NMAC.

**C.** The department may request the analysis specified in Subsection A of 20.2.7.114 NMAC after considering relevant factors. Examples of such relevant factors may include but are not limited to the significance of the excess emission, the nature or pattern of excess emissions, or the history of the source, as well as other factors determined to be relevant by the department.

**D.** The completed analysis shall be submitted to the department no later than sixty (60) days after the request for submittal pursuant to Subsection A of 20.2.7.114 NMAC. The department may grant an extension to submit the analysis for good cause shown.

**E.** The owner or operator

of a source complying with this section may assert a claim for confidential information protection pursuant to 20.2.1.115 NMAC. [20.2.7.114 NMAC - N, 08/01/08]

#### **20.2.7.115 REVIEW OF THE DEPARTMENT'S DETERMINATIONS UNDER SECTIONS 111, 112, AND 113.**

The department may issue a determination regarding an owner or operator's assertion of the affirmative defense under Section 111, 112, or 113 of 20.2.7 NMAC on the basis of any relevant information, including but not limited to information submitted pursuant to this part or obtained through an inspection. Any such determination is not a final action and is not reviewable, shall not be a prerequisite to the commencement of an administrative or judicial enforcement action, does not constitute a waiver of liability pursuant to Section 116 of 20.2.7 NMAC, and shall not preclude an enforcement action by the federal government or a citizen pursuant to the federal Clean Air Act. A source may not assert an affirmative defense under Section 111, 112, or 113 of 20.2.7 NMAC in an administrative or judicial enforcement action unless it asserted such defense pursuant to Subsection B of 20.2.7.110 NMAC.

[20.2.7.115 NMAC - Rp, N, 08/01/08]

#### **20.2.7.116 FUTURE ENFORCEMENT ACTION.**

The department may commence an administrative or judicial enforcement action against the owner or operator of a source for an excess emission for which it has made a determination pursuant to Section 115 of 20.2.7 NMAC if the department determines that the excess emission is related to a pattern of excess emission events, poor maintenance, careless or marginal operation, or other appropriate reason.

[20.2.7.116 NMAC - Rp, 20.2.7.116 NMAC, 08/01/08]

#### **HISTORY OF 20.2.7 NMAC:**

**Pre- NMAC History:** The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

HSSD 70-1, Ambient Air Quality Standards And Air Quality Control Regulations, 01/27/70.

ACQR 801, Air Quality Control Regulation 801 - Excess Emissions During Malfunction, Startup, Shutdown, or Scheduled Maintenance, 04/29/81.

**History of Repealed Material:** 20.2.7 NMAC, Excess Emissions during Malfunction, Startup, Shutdown, or Scheduled Maintenance (filed 10/16/02) repealed 08/01/08/

**Other History:**

ACQR 801, Air Quality Control Regulation 801 - Excess Emissions During Malfunction, Startup, Shutdown, or Scheduled Maintenance, filed 04/29/81 was renumbered into first version of the New Mexico Administrative Code as 20 NMAC 2.7, Air Quality (Statewide) - Excess Emissions During Malfunction, Startup, Shutdown, or Scheduled Maintenance, filed 10/30/95.

20 NMAC 2.7, Air Quality (Statewide) - Excess Emissions During Malfunction, Startup, Shutdown, or Scheduled Maintenance, filed 10/30/95 was renumbered, reformatted and replaced by 20.2.7 NMAC, Excess Emissions During Malfunction, Startup, Shutdown, or Scheduled Maintenance, effective 10/31/02. Excess Emissions during Malfunction, Startup, Shutdown, or Scheduled Maintenance (filed 10/16/02) was replaced by 20.2.7 NMAC, Excess Emissions, effective 08/01/08.

### **NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD**

This is an amendment to 20.2.70 NMAC, Sections 302, 304, and 403 effective 8/01/08.

#### **20.2.70.302 PERMIT CONTENT:**

**A.** Permit conditions.

(1) The department shall specify conditions upon a permit, including emission limitations and sufficient operational requirements and limitations, to assure compliance with all applicable requirements at the time of permit issuance or as specified in the approved schedule of compliance. The permit shall:

(a) for major sources, include all applicable requirements for all relevant emissions units in the major source;

(b) for any non-major source subject to 20.2.70.200 NMAC - 20.2.70.299 NMAC, include all applicable requirements which apply to emissions units that cause the source to be subject to this part;

(c) specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based;

(d) include a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit;

(e) include a provision to ensure that the permittee pays fees to the department consistent with the fee schedule in 20.2.71 NMAC (Operating Permit Emission Fees); and

(f) for purposes of the permit shield, identify any requirement specifically



identified in the permit application or significant permit modification that the department has determined is not applicable to the source, and state the basis for any such determination.

(2) Each permit issued shall, additionally, include provisions stating the following.

(a) The permittee shall comply with all terms and conditions of the permit. Any permit noncompliance is grounds for enforcement action. In addition, noncompliance with federally enforceable permit conditions constitutes a violation of the federal act.

(b) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(c) The permit may be modified, reopened and revised, revoked and reissued, or terminated for cause in accordance with 20.2.70.405 NMAC.

(d) The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay any permit condition.

(e) The permit does not convey any property rights of any sort, or any exclusive privilege.

(f) Within the period specified by the department, the permittee shall furnish any information that the department may request in writing to determine whether cause exists for reopening and revising, revoking and reissuing, or termination of the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the department copies of records required by the permit to be maintained.

(3) The terms and conditions for all alternative operating scenarios identified in the application and approved by the department:

(a) shall require that the permittee maintain a log at the permitted facility which documents, contemporaneously with any change from one operating scenario to another, the scenario under which the facility is operating; and

(b) shall, for each such alternative scenario, meet all applicable requirements and the requirements of this part.

(4) The department may impose conditions regulating emissions during startup and shutdown.

(5) All permit terms and conditions which are required under the federal act or under any of its applicable requirements, including any provisions designed to limit a source's potential to emit, are

enforceable by the administrator and citizens under the federal act. The permit shall specifically designate as not being federally enforceable under the federal act any terms or conditions included in the permit that are not required under the federal act or under any of its applicable requirements.

(6) The issuance of a permit, or the filing or approval of a compliance plan, does not relieve any person from civil or criminal liability for failure to comply with the provisions of the Air Quality Control Act, the federal act, federal regulations thereunder, any applicable regulations of the board, and any other applicable law or regulation.

(7) The department may include part or all of the contents of the application as terms and conditions of the permit or permit modification. The department shall not apply permit terms and conditions upon emissions of regulated pollutants for which there are no applicable requirements, unless the source is major for that pollutant.

(8) Fugitive emissions from a source shall be included in the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(9) The acid rain portion of operating permits for acid rain sources shall additionally:

(a) state that, where an applicable requirement of the federal act is more stringent than an applicable requirement of regulations promulgated under Title IV of the federal act, both provisions shall be incorporated into the permit and shall be enforceable by the administrator; and

(b) contain a permit condition prohibiting emissions exceeding any allowances that the acid rain source lawfully holds under Title IV of the federal act or the regulations promulgated thereunder; no permit modification under this part shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit modification under any other applicable requirement; no limit shall be placed on the number of allowances held by the acid rain source; the permittee may not use allowances as a defense to noncompliance with any other applicable requirement; any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the federal act.

**B. Permit duration.** The department shall issue operating permits for a fixed term of five (5) years.

**C. Monitoring.**

(1) Each permit shall contain all

emissions monitoring requirements, and analysis procedures or test methods, required to assure and verify compliance with the terms and conditions of the permit and applicable requirements, including any procedures and methods promulgated by the administrator.

(2) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), the permit shall require periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to Subsection E of 20.2.70.302 NMAC. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.

(3) The permit shall also contain specific requirements concerning the use, maintenance, and, when appropriate, installation of monitoring equipment or methods.

**D. Recordkeeping.**

(1) The permit shall require recordkeeping sufficient to assure and verify compliance with the terms and conditions of the permit, including recordkeeping of:

(a) the date, place as defined in the permit, and time of sampling or measurements;

(b) the date(s) analyses were performed;

(c) the company or entity that performed the analyses;

(d) the analytical techniques or methods used;

(e) the results of such analyses; and

(f) the operating conditions existing at the time of sampling or measurement.

(2) Records of all monitoring data and support information shall be retained for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Supporting information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

**E. Reporting.** The permit shall require reporting sufficient to assure and verify compliance with the terms and conditions of the permit and all applicable requirements, including all of the following.

(1) Submittal of reports of any required monitoring at least every six (6) months. The reports shall be due to the department within forty-five (45) days of the end of the permittee's reporting period. All instances of deviations from permit requirements, including emergencies, must

be clearly identified in such reports. All required reports must be certified by a responsible official consistent with Subsection E of 20.2.70.300 NMAC.

(2) Prompt reporting of all deviations [~~including emergencies~~] from permit requirements, including those attributable to upset conditions as defined in the permit, the ~~[date, time, duration and]~~ probable cause of such deviations, ~~[the quantity and pollutant type of excess emissions resulting from the deviation,]~~ and any corrective actions or preventive measures taken. ~~[Such reports shall include telephone, verbal or facsimile communication within twenty four (24) hours of the start of the next business day and written notification within ten (10) days]~~ The report shall be contained in the report submitted in accordance with the timeframe given in Paragraph (1) of this section.

(3) Submittal of compliance certification reports at least every twelve (12) months (or more frequently if so specified by an applicable requirement) certifying the source's compliance status with terms and conditions contained in the permit, including emission limitations, standards, or work practices. The reports shall be due to the department within thirty (30) days of the end of the permittee's reporting period. Such compliance certifications shall be submitted to the administrator as well as to the department and shall include:

(a) the identification of each term or condition of the permit that is the basis of the certification;

(b) the compliance status of the source;

(c) whether compliance was continuous or intermittent;

(d) the method(s) used for determining the compliance status of the source, currently and during the reporting period identified in the permit; and

(e) such other facts as the department may require to determine the compliance status of the source.

(4) Such additional provisions as may be specified by the administrator to determine the compliance status of the source.

**F.** Portable and temporary sources. The department may issue permits for portable and temporary sources which allow such sources to relocate without undergoing a permit modification. Such permits shall not apply to acid rain sources and shall include conditions to assure that:

(1) the source is installed at all locations in a manner conforming with the permit;

(2) the source shall comply with all applicable requirements and all other provisions of this part at all authorized locations;

(3) the owner or operator shall

notify the department in writing at least fifteen (15) calendar days in advance of each change in location;

(4) notification shall include a legal description of where the source is to be relocated and how long it will be located there; and

(5) emissions from the source shall not, at any location, result in or contribute to an exceedance of a national ambient air quality standard or increment or visibility requirement under Part C of Title I of the federal act; the department may require dispersion modeling to assure compliance at any location.

**G.** Compliance. To assure and verify compliance with the terms and conditions of the permit and with this part, permits shall also include all the following.

(1) Require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow authorized representatives of the department to perform the following:

(a) enter upon the permittee's premises where a source is located or emission related activity is conducted, or where records must be kept under the conditions of the permit;

(b) have access to and copy any records that must be kept under the conditions of the permit;

(c) inspect any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(d) sample or monitor any substances or parameters for the purpose of assuring compliance with the permit or applicable requirements or as otherwise authorized by the federal act.

(2) Require that sources required under Paragraph ~~[(42)]~~ (11) of Subsection D of 20.2.70.300 NMAC to have a schedule of compliance submit progress reports to the department at least semiannually, or more frequently if specified in the applicable requirement or by the department. Such progress reports shall be consistent with the schedule of compliance and requirements of Paragraph ~~[(42)]~~ (11) of Subsection D of 20.2.70.300 NMAC and shall contain:

(a) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(b) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(3) Include such other provisions as the department may require.

**H.** Operational flexibility.

(1) Section 502(b)(10) changes.

(a) The permittee may make

Section 502(b)(10) changes, as defined in 20.2.70.7 NMAC, without applying for a permit modification, if those changes are not title I modifications and the changes do not cause the facility to exceed the emissions allowable under the permit (whether expressed as a rate of emissions or in terms of total emissions).

(b) For each such change, the permittee shall provide written notification to the department and the administrator at least seven (7) days in advance of the proposed changes. Such notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(c) The permittee and department shall attach each such notice to their copy of the relevant permit.

(d) If the written notification and the change qualify under this provision, the permittee is not required to comply with the permit terms and conditions it has identified that restrict the change. If the change does not qualify under this provision, the original terms of the permit remain fully enforceable.

(2) Emissions trading within a facility.

(a) The department shall, if an applicant requests it, issue permits that contain terms and conditions allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit in addition to any applicable requirements. Such terms and conditions shall include all terms and conditions required under 20.2.70.302 NMAC to determine compliance. If applicable requirements apply to the requested emissions trading, permit conditions shall be issued only to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval.

(b) The applicant shall include in the application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The department shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall require compliance with all applicable requirements.

(c) For each such change, the permittee shall provide written notification to the department and the administrator at least seven (7) days in advance of the proposed changes. Such notification shall state when the change will occur and shall describe the changes in emissions that will result and

how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(d) The permittee and department shall attach each such notice to their copy of the relevant permit.

**I. Off-permit changes.**

(1) Permittees are allowed to make, without a permit modification, changes that are not addressed or prohibited by the operating permit, if:

(a) each such change meets all applicable requirements and shall not violate any existing permit term or condition;

(b) such changes are not subject to any requirements under Title IV of the federal act and are not Title I modifications;

(c) such changes are not subject to permit modification procedures under 20.2.70.404 NMAC; and

(d) the permittee provides contemporaneous written notice to the department and US EPA of each such change, except for changes that qualify as insignificant activities. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted and any applicable requirement that would apply as a result of the change.

(2) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

**J. Permit shield.**

(1) Except as provided in this part, the department shall expressly include in a Part 70 (20.2.70 NMAC) permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(a) such applicable requirements are included and are specifically identified in the permit; or

(b) the department, in acting on the permit application or significant permit modification, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) A Part 70 (20.2.70 NMAC) permit that does not expressly state that a permit shield exists for a specific provision shall be presumed not to provide such a shield for that provision.

(3) Nothing in this section or in any Part 70 (20.2.70 NMAC) permit shall alter or affect the following:

(a) the provisions of Section 303 of the federal act — Emergency Powers, including the authority of the administrator

under that section, or the provisions of the New Mexico Air Quality Control Act, Section 74-2-10 NMSA 1978;

(b) the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(c) the applicable requirements of the acid rain program, consistent with Section 408(a) of the federal act; or

(d) the ability of US EPA to obtain information from a source pursuant to Section 114 of the federal act, or the department to obtain information subject to the New Mexico Air Quality Control Act, Section 74-2-13 NMSA 1978.

(4) The permit shield shall remain in effect if the permit terms and conditions are extended past the expiration date of the permit pursuant to Subsection D of 20.2.70.400 NMAC.

(5) The permit shield shall extend to terms and conditions that allow emission increases and decreases as part of emissions trading within a facility pursuant to Paragraph (2) of Subsection H of 20.2.70.302 NMAC, and to all terms and conditions under each operating scenario included pursuant to Paragraph (3) of Subsection A of 20.2.70.302 NMAC.

(6) The permit shield shall not extend to administrative amendments under Subsection A of 20.2.70.404 NMAC, to minor permit modifications under Subsection B of 20.2.70.404 NMAC, to Section 502(b)(10) changes under Paragraph (1) of Subsection H of 20.2.70.302 NMAC, or to permit terms or conditions for which notice has been given to reopen or revoke all or part under 20.2.70.405 NMAC.

[11/30/95; A, 11/14/98; 20.2.70.302 NMAC - Rn, 20 NMAC 2.70.III.302, 06/14/02; A, 9/6/06; A, 08/01/08]

**20.2.70.304 EMERGENCY PROVISION:**

**A.** An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the permittee, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, or careless or improper operation.

**B.** An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the permittee has demonstrated through proper-

ly signed, contemporaneous operating logs, or other relevant evidence that:

(1) an emergency occurred and that the permittee can identify the cause(s) of the emergency;

(2) the permitted facility was at the time being properly operated;

(3) during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit; and

(4) ~~[The permittee fulfilled notification requirements under Paragraph (2) of Subsection E of 20.2.70.302 NMAC.]~~ the permittee submitted notice of the emergency to the department within 2 working days of the time when emission limitations were exceeded due to the emergency; this notice fulfills the requirement of Paragraph (2) of Subsection E of 20.2.70.302 NMAC; this notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

**C.** In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

**D.** This provision is in addition to any emergency or upset provision contained in any applicable requirement.

[11/30/95; 20.2.70.304 NMAC - Rn, 20 NMAC 2.70.III.304, 06/14/02; A, 9/6/06; A, 08/01/08]

**20.2.70.403 PETITIONS FOR REVIEW OF FINAL ACTION:**

**A.** Hearing before the board:

(1) Any person who participated in a permitting action before the department and who is adversely affected by such permitting action may file a petition for hearing before the board. For the purposes of this section, permitting action shall include the failure of the department to take final action on an application for a permit (including renewal) or permit modification within the time specified in this part.

(2) The petition shall be made in writing to the board within thirty (30) days from the date notice is given of the department's action and shall specify the portions of the permitting action to which the petitioner objects, certify that a copy of the petition has been mailed or hand-delivered as required by this paragraph, and attach a copy of the permitting action for which review is sought. Unless a timely request for hearing is made, the decision of the department shall be final. The petition shall be copied simultaneously to the department upon receipt of the appeal notice. If the petitioner is not the applicant or permittee, the petitioner shall mail or hand-deliver a

copy of the petition to the applicant or permittee. The department shall certify the administrative record to the board.

(3) If a timely request for hearing is made, the board shall hold a hearing within ~~[ninety (90)]~~ sixty (60) days of receipt of the petition in accordance with New Mexico Air Quality Control Act section 74-2-7 NMSA 1978.

**B. Judicial review:**

(1) Any person who is adversely affected by an administrative action taken by the board pursuant to subsection A of 20.2.70.403 NMAC may appeal to the Court of Appeals in accordance with New Mexico Air Quality Control Act section 74-2-9 NMSA 1978. Petitions for judicial review must be filed no later than thirty (30) days after the administrative action.

(2) The judicial review provided for by 20.2.70.403 NMAC shall be the exclusive means for obtaining judicial review of the terms and conditions of the permit.

[11/30/95; 20.2.70.403 NMAC - Rn, 20 NMAC 2.70.403 06/14/02; A, 08/01/08]

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

**This is an amendment to 8.139.120 NMAC, Section 9, effective 07/16/2008.**

**8.139.120.9 SEMI ANNUAL REPORTING:** Semiannual reporting is a reporting requirement for households that receive food stamp benefits, unless an exclusion applies.

**A. Excluded from semi-annual reporting:** The following households are excluded from semiannual reporting:

(1) a household in which all members are migrant or seasonal farm workers;

(2) a household in which all members are homeless;

(3) a household in which all members are elderly or disabled ~~[with]~~ that receive social security or SSI and has no earned income;

(4) a household in which all members are ABAWDs with no earned ~~[income]~~ or unearned income and reside in a non-exempt administrative area;

(5) a household in which all adult members~~[:]~~ have no history of earned income in the six months prior to application or recertification;

~~[(a) receive unearned income from a source other than TANF, GA or UCB; and~~

~~(b) have no history of earned income in the six months prior to application or recertification;]~~

(6) a household determined by the

county director ~~[or designee]~~ to have insufficient stability and warrants an alternative reporting requirement; an unstable household may include but is not limited to:

(a) a household that reports an imminent change in residence to another state;

~~[(b) a household that reports income insufficient to meet ongoing debt obligations.~~

~~(c)]~~ (b) a household that is assigned to an alternative reporting requirement because of instability, shall be certified for no longer than three months.

**B. Certification period:**

A household assigned to semiannual reporting:

(1) shall be assigned a 12-month certification period; and

(2) shall remain subject to semiannual reporting for the assigned certification period.

**C. Transition to semi-annual reporting:** A household assigned to quarterly reporting shall be transitioned to semiannual reporting in the following manner.

(1) A household whose first quarterly report is due in January, February or March 2004 shall not be required to file a quarterly report form, but shall be required to file a semiannual report form in April, May, and June 2004, respectively.

(2) A household whose second quarterly report is due in January, February, or March 2004 shall be required to file a semiannual report form in January, February, or March 2004, respectively.

(3) A household that has its third quarterly report due in January, February, or March 2004 shall not be required to submit a quarterly reporting or semiannual reporting form. The household shall be required to file an application for recertification at the end of the certification period.

**D. Applicant household:**

A household that is approved for food stamp benefits on or after January 1, 2004 and is assigned to semiannual reporting shall be assigned a 12-month certification period that begins in the month of application and shall have a semiannual report due in the sixth month of the household's certification period.

**E. Participating household:** A participating household not assigned to semiannual reporting that is subsequently assigned to semiannual reporting because of a reported change shall be transitioned at the end of the certification period in effect when the change occurred.

**F. Reporting requirements for semiannual reporting households:** A household subject to semiannual reporting shall be required to file a semiannual report no later than the tenth day of the sixth month of the 12-month certification

period. The following information, along with verification, must be provided with the report:

(1) any change in household composition, whether a member has moved in or out of the home, and the date the change took place;

(2) the gross monthly income received from employment by each household member;

(3) the gross monthly unearned income received by each household member;

(4) changes in countable resources if the total of all countable resources for the food stamp household exceeds the applicable resource limit, such as but not limited to:

(a) the account number and balance for a new checking or savings account belonging to any household member; or

(b) the amount of any new stocks or bonds or other financial instruments belonging to any household member.

(5) dependent care expenses;

(6) expenses for shelter, utilities, and telephone, only if a change has occurred since the last certification, or a change will occur in the month following the month the report is due, including but not limited to:

(a) a change in residence;

(b) a change in shelter expense;

(c) a change in billing for utilities, but not including variances in utility bills from month to month for the same service; or

(d) an increase in shelter expenses that will take place in the month following the report month; or

(e) a termination of any shelter, utility, or telephone expense; or

(f) a new shelter or utility expense.

(7) a change in medical expenses;

(8) a change in child support obligations;

(9) student status for anyone living in the home over the age of 17 years, including but not limited to:

(a) a change in status from non-college to college student;

(b) a change in status from college student to non-college status;

(c) a change in post-secondary curriculum to or from at least half-time; and

(d) participation in or termination of work study.

(10) a change in immigrant (alien) status for a household member.

**G. Budgeting methodology for semiannual reporting at initial application and recertification:**

(1) Prospective budgeting shall be used for an applicant household at initial application and at recertification as set forth at 8.139.500.9 NMAC.

(2) **Initial application:** At

approval, eligibility and amount of payment for the applicant household shall be determined prospectively for the each of the first six months of the certification.

**(3) Recertification:** At approval, eligibility and amount of payment shall be determined prospectively for each of the six months following the last month of the previous certification period.

**H. Budgeting methodology for processing a semiannual report:**

**(1) Processing the semiannual report:** Eligibility and food stamp benefit amount shall be determined prospectively for the six months following the month the semiannual report is due.

**(2) Determining a household's eligibility and food stamp benefit amount:**

**(a) Weekly:** For income received weekly, the household must submit and the department shall accept as verification ~~[of income, pay data for any consecutive four week pay periods that fall within the month]~~ the income received from any consecutive past 30 day period that includes 30 days prior to the month the report is due and the month the report is due.

**(b) Bi-weekly:** For income received bi-weekly, the household must submit and the department shall accept as verification ~~[of income, pay data for any two consecutive pay periods within the month]~~ the income received from any consecutive past 30 day period that includes 30 days prior to the month the report is due and the month the report is due.

**(c) Semi-monthly:** For income received semi-monthly, the household must submit and the department shall accept as verification ~~[of income, pay data for any two consecutive pay periods within the month]~~ the income received from any consecutive past 30 day period that includes 30 days prior to the month the report is due and the month the report is due.

**(d) Monthly:** For income received monthly, the recipient household must submit and the department shall accept as verification ~~[of income, pay data for one pay date within the month]~~ the income received from any consecutive past 30 day period that includes 30 days prior to the month the report is due and the month the report is due.

**(e) Income received more frequently than weekly:** For households with income received more often than weekly:

**(i)** exact income rather than averaged and converted income shall be used to determine eligibility and food stamp benefit amount; and

**(ii)** the household must submit, and the department shall accept as verification ~~[of income, pay data in any consecutive 30 day period within the~~

~~month] income received from any consecutive past 30 day period that includes 30 days~~ prior to the month the semiannual report is due and the month the report is due.

**(f)** If a determination is made that the use of the pay data for the budgeting methods described in (a) through (e), above, does not give the most accurate estimate of monthly earnings due to unique circumstances; the caseworker shall use whatever method gives the most accurate estimate of earnings.

**(3) Income received less frequently than monthly:** The amount of monthly gross income that is received less frequently than monthly shall be determined by dividing the total income by the number of months the income is intended to cover, including but is not limited to income sources from sharecropping, farming, self-employment, contract income and income for a tenured teacher who may not have a contract.

**(4) Self-employment:**

**(a)** Requirements for determination of net self-employment income are set forth at Subsection E of 8.139.520.10 NMAC, and the verification standards for business and self-employment income are set forth at Subsection B of 8.100.130.14 NMAC.

**(b)** A household assigned to semiannual reporting that has its self-employment income annualized shall be required to report changes in self-employment income on the semiannual report if the household has filed a tax return after its last approval or recertification of food stamps.

**(c)** A household assigned to semiannual reporting whose self-employment income is not annualized must report self-employment income on the semiannual report. The income reported on the semiannual report will be calculated in the following manner.

**(i)** When a self-employment enterprise has been in existence for less than one year, the income from self-employment shall be averaged over the period of time the business has been in operation. The resulting monthly amount shall be projected for the six-month period covered by the semiannual report.

**(ii) Seasonal income:** Self-employment income that is intended to meet a household's needs for only part of the year shall be averaged over the time the income is intended to cover.

**(d)** A household that fails to provide verification of an allowable deduction shall not be allowed the deduction. The caseworker shall process the report if all other mandatory verification has been provided.

**(5) Use of conversion factors:**

**(a)** Conversion factors shall be

used to adjust the monthly income amounts whenever a full month's income is received on a weekly or biweekly basis:

**(i)** the income shall be converted to a monthly amount by multiplying weekly averaged amounts by 4.3; and  
**(ii)** biweekly amounts by 2.15.

**(b)** Use of the conversion factor shall negate the necessity to adjust the monthly income amounts for those months in which an extra weekly or biweekly paycheck is received.

**(c)** Instead, the amount of the extra paycheck is averaged over the certification period.

**(6) Rounding of income when using conversion factors:** Averaged income shall be rounded prior to the application of the conversion factor. If the cents are \$.49 or less, the cents are dropped. If the cents are \$.50 or more, the amount shall be rounded up to the next higher dollar.

**I. Time limits for processing a semiannual report received by the county office:**

**(1)** The semiannual report form and all verification provided shall be reviewed for completeness within ten days of receipt.

**(a)** A form that is complete and all verifications are provided, shall be processed within ten days of receipt.

**(b)** A form that is complete, and all verifications are provided except for verification of an allowable deduction, shall not be processed. The household:

**(i)** shall be notified that verification is lacking; and

**(ii)** shall be given ten days to provide verification of an allowable deduction.

**(c)** A deduction that is verified within the month the semiannual report is due shall be processed as part of the semiannual report.

**(d)** A deduction that is verified in the month after the semiannual report is due shall be processed as a change reported by the household.

**(e)** A deduction that does not have the required verification shall not be allowed until verification of the expense is provided.

**(2) Incomplete semiannual report is received:**

**(a)** A semiannual report form that is not signed shall be returned to the household for a signature.

**(b)** A semiannual report that is incomplete because required verification is not provided shall not be returned to the household. The household shall be notified that the form is incomplete and what information must be provided to complete the semiannual report.

(3) A household must return the completed semiannual report form by the end of the month in which the report is due in order to process the report for the following month.

**J.** A household that fails to submit a semiannual report by the end of the month in which the report is due shall lose its right to uninterrupted benefits and shall be issued an adequate notice of closure.

**K. Information requirements for the semiannual report:** The semiannual report form shall specify:

(1) the deadline date to submit the form to ensure uninterrupted benefits if the household is determined eligible;

(2) the consequences of submitting a late or incomplete form;

(3) that verification of an allowable expense must be submitted with the semiannual report, or the household may not be allowed a deduction;

(4) where to call for help in completing the form;

(5) the consequences of providing incorrect information;

(6) the notice of rights.

**L. Disaster victims:** A household participating in the food stamp program and subject to semiannual reporting shall be required to comply with semiannual reporting requirements during the disaster period. The household remains responsible for submitting the required information set forth in 8.139.120.9 NMAC, to the field office that handles its ongoing case.

**M. Reporting requirement for semiannual reporting households:** A household assigned to semiannual reporting shall only be required to report when the household's income exceeds 130% of the federal poverty guidelines for the size of the household. A household is required to report the change no later than ten calendar days from the end of the calendar month in which the change occurred.

**N. Action on changes reported between reporting periods for households assigned to semiannual reporting:**

(1) The department shall not act on reported changes between reporting periods that would result in a decrease in benefits with the following exceptions:

(a) a household reports income in excess of 130% of federal poverty guidelines for the size of the household;

(b) a household reports or HSD receives documented evidence that the household has moved or intends to move out of the state on a specific date;

(c) a household requests closure;

(d) HSD receives documented evidence that the head of household has

died.

(2) A newborn shall be added to the household effective the month following the month the change is reported, if the addition is reported to the agency by the household or by the hospital for medicaid purposes.

(3) The loss of earned income shall be considered for eligibility in the [second] month after the loss and ongoing until the next scheduled semiannual report or end of certification, whichever is first, provided that:

(a) the loss of income was reported and verified by the household;

(b) the loss of income was not due to voluntary quit [;]

~~(c) the individual who lost the job is likely to remain unemployed in the second month after the loss of income; and~~

~~(d) the individual who lost the income cannot reasonably anticipate a replacement source of income by the end of the second month after the loss, including but not limited to, UCB, other earned income, social security (OASDI) or supplemental security income (SSI).~~

~~(e) If the loss of income has been replaced with another source of income, or can reasonably be expected by the end of the second month after the loss, the replacement income shall be considered for eligibility and benefit amount in the second month after the loss and for the remainder of the certification period].~~

(4) The loss of unearned income shall be considered for eligibility in the [second] month after the loss and ongoing until the next scheduled semiannual report or end of certification whichever is first, provided that [;

~~(a) the loss of income was reported to the agency, and verified by the household [; and~~

~~(b) the individual who lost the unearned income cannot reasonably anticipate having the income reinstated or receiving another type of unearned income or earned income by the end of the second month after the loss.~~

~~(c) If the loss of income has been replaced with another source of income, or can reasonably be expected by the end of the second month after the loss, the replacement income shall be considered for eligibility and benefit amount in the second month after the loss and for the remainder of the certification period].~~

**O. Transitional food stamps:** A household assigned to semiannual reporting that is approved for transitional food stamps shall have the semiannual reporting requirements terminated during the transitional food stamp benefit period.

**P. Action on cash assistance applications:**

(1) A food stamp household

assigned to semiannual reporting that is later approved for TANF cash assistance shall be required to file the scheduled semiannual report ~~and/or~~ or to recertify eligibility at the intervals set at initial food stamp application. The timing of the TANF certification and semiannual reporting requirements shall be set to match the requirements of the food stamp program.

(2) A household assigned to semiannual reporting that is approved for TANF, GA, or EWP a day or more after food stamp approval shall have food stamp benefits adjusted in the month following the month of cash assistance approval.

[02/01/95, 10/01/95, 06/15/96, 09/14/96, 11/01/96, 07/01/98, 06/01/99; 8.139.120.9 NMAC - Rn, 8 NMAC 3 FSP.123, 05/15/2001; 8.139.120.9 - N, 02/14/2002; A, 01/01/2004; A, 07/16/2008]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.11 NMAC, Section 9, effective July 16, 2008.

### 8.305.11.9 REIMBURSEMENT FOR MANAGED CARE:

**A. Payment for services:** HSD shall make actuarially sound payments under capitated risk contracts to the designated MCO/SE. Rates, whether set by HSD, or negotiated between HSD and the MCO/SE are considered confidential. Rates shall be appropriate for the medicaid populations to be covered and the services to be furnished under the contract. The MCO/SE shall be responsible for the provision of services for members during the month of capitation. Medicaid members shall not be liable for debts incurred by an MCO/SE under the MCO's or SE's managed care contract for providing health care to medicaid members. This shall include, but not be limited to:

(1) the MCO's/SE's debts in the event of the MCO's/SE's insolvency;

(2) services provided to the member, that are not included in the medicaid benefit package and for which HSD does not pay the MCO/SE, e.g., value added services;

(3) when the MCO/SE does not pay the health care provider that furnishes the services under contractual, referral, or other arrangement;

(4) payments for covered services furnished under contract, referral, or other arrangement to the extent that those payments are in excess of the amount that the member would owe if the MCO/SE provided the service directly; and

(5) if an MCO/SE member loses

eligibility for any reason and is reinstated as eligible by HSD before the end of the month, the MCO/SE shall accept a retro capitation payment for that month of eligibility and assume financial responsibility for all medically necessary covered benefit services supplied to the member.

**B. Capitation disbursement requirements:** HSD shall pay a capitated amount to the MCO/SE for the provision of the managed care benefit package at specified rates. The monthly rate is based on actuarially sound capitation rate cells. The MCO/SE shall accept the capitation rate paid each month by HSD as payment in full for all services to be provided pursuant to the agreement, including all administrative costs associated therewith. HSD/MAD will calculate or verify the MCO/SE's income at the end of the state fiscal year to determine if the extent was expended on the services required under the contract utilizing reported information and the department of insurance reports. Administrative costs, to be no higher than the allowable percent, including all MCO/SE-delegated entities (if applicable), and other financial information will be monitored. The MCO/SE does not have the option of deleting benefits from the medicaid defined benefit package. Should the MCO/SE not meet the required administrative or direct services costs within the terms of the contract, sanctions or financial penalties may be imposed.

**C. Payment time frames:** Clean claims as defined in Subsection L of 8.305.1.7 NMAC, *Clean Claim*, shall be paid by the MCO/SE to contracted and non-contracted providers according to the following timeframe: 90 percent within 30 days of the date of receipt and 99 percent within 90 days of the date of receipt, as required by federal guidelines in the Code of Federal Regulations, Section 42 CFR 447.45. The date of receipt is the date the MCO/SE first receives the claim either manually or electronically. The MCO/SE is required to date stamp all claims on the date of receipt. The date of payment is the date of the check or other form of payment. An exception to this rule may be made if the MCO/SE and its providers, by mutual agreement, establish an alternative payment schedule. However, any such alternative payment schedule shall first be incorporated into the contract between HSD and the MCO/SE. The MCO/SE shall be financially responsible for paying all claims for all covered emergency and post-stabilization services that are furnished by non-contracted providers, at no more than the fee-for-service rate, including medically or clinically necessary testing to determine if a physical or behavioral health emergency exists.

(1) An MCO/SE shall pay con-

tracted and noncontracted providers interest on the MCO's/SE's liability at the rate of 1 ½ percent per month on the amount of a clean claim (based upon the current medicaid fee schedule) submitted by the participating provider and not paid within 30 days of the date of receipt of an electronic claim and 45 days of receipt of a manual claim.

Interest shall accrue from the 31<sup>st</sup> day for electronic claims and from the 46<sup>th</sup> day for manual claims. The MCO/SE shall be required to report the number of claims and the amount of interest paid, on a timeframe determined by HSD/MAD.

(2) No contract between the MCO/SE and a participating provider shall include a clause that has the effect of relieving either party of liability for its actions or inactions.

(3) If the MCO/SE is unable to determine liability for, or refuses to pay, a claim of a participating provider within the times specified above, the MCO/SE shall make a good-faith effort to notify the participating provider by fax, electronic or other written communication within 30 days of receipt of the claim, stating specific reasons why it is not liable for the claim or request specific information necessary to determine liability for the claim.

**D. Rate setting:** Capitation rates paid by HSD to the MCO/SE for the provision of the managed care medicaid benefit package shall be calculated through actuarial analysis, be actuarially sound and meet the standards set by 42 CFR 438.6(c).

**E. Payment on risk basis:** The MCO/SE is at risk of incurring losses if its costs of providing the managed care medicaid benefit package exceed its capitation payment. HSD shall not provide retroactive payment adjustments to the MCO/SE to reflect the actual cost of services furnished by the MCO/SE.

**F. Change in capitation rates:** HSD shall review the capitation rates 12 months from the effective date of the contract and annually thereafter. HSD may adjust the capitation rates based on factors such as the following: changes in the scope of work; CMS requiring a modification of the state's waiver; if new or amended federal or state laws or regulations are implemented; inflation; or if significant changes in the demographic characteristics of the member population occur.

**G. Solvency requirements and risk protections:** An MCO/SE that contracts with HSD to provide medicaid physical or behavioral health services shall comply with, and be subject to, all applicable state and federal laws and regulations, including solvency and risk standards. In addition to requirements imposed by state and federal law, the MCO/SE shall

be required to meet specific medicaid financial requirements and to provide to HSD the information and records necessary to determine the MCO's/SE's financial condition. Requests for information and records shall be delivered to HSD, at no cost to HSD, in a reasonable time after the date of request or as specified in the contract.

(1) **Reinsurance:** An MCO participating in medicaid managed care shall purchase reinsurance at a minimum of \$1,000,000.00 in reinsurance protection against financial loss due to outlier (catastrophic) cases. The MCO shall document for HSD that reinsurance is in effect through the term of the contract and that the amount of reinsurance is sufficient to cover probable outlier cases or overall member utilization at an amount greater than expected. Pursuant to 42 CFR 438.6(e)(5), contract provisions for reinsurance, stop-loss limits, or other risk sharing methodologies shall be computed on an actuarially sound basis.

(2) **Third party liability (TPL):** The MCO/SE shall be responsible for identifying a member's third party coverage and coordinating of benefits with third parties as required by federal law. The MCO/SE shall inform HSD when a member has other health care insurance coverage. The MCO shall have the sole right of subrogation, for 12 months, from when the MCO incurred the cost on behalf of the members, to initiate recovery or to attempt to recover any third-party resources available to medicaid members and shall make records pertaining to third party collections (TPL) for members available to HSD/MAD for audit and review. If the MCO has not initiated recovery or attempted to recover any third-party resources available to medicaid members within 12 months, HSD will pursue the member's third party resources. The MCO/SE shall provide to HSD for audit and review all records pertaining to TPL collections for members.

(3) **Fidelity bond requirement:** The MCO/SE shall maintain a fidelity bond in the maximum amount specified under the Insurance Code.

(4) **Net worth requirement:** The MCO/SE shall comply with the net worth requirements of the Insurance Code.

(5) **Solvency cash reserve requirement:** The MCO/SE shall have sufficient reserve funds available to ensure that the provision of services to medicaid members is not at risk in the event of MCO/SE insolvency.

(6) **Per enrollee cash reserve:** The MCO/SE shall maintain three percent of the monthly capitation payments per member with an independent trustee during each month of the agreement. If the agreement replaces a previous agreement with

HSD/MAD to provide medicaid managed care, then continued maintenance of the per member cash reserve established and maintained by the MCO/SE pursuant to such previous agreement shall be deemed to satisfy this requirement. HSD shall adjust this cash reserve requirement annually, or as needed, based on the number of the MCO's/SE's members, or the failure of the MCO/SE to maintain ~~[a cash reserve equal to three percent]~~ the required cash reserve, and shall notify the MCO/SE of the cash reserve requirement. Each MCO/SE shall maintain its own cash reserve account. This account may be accessed solely for payment for services to the MCO's/SE's members in the event that the MCO/SE becomes insolvent. Money in the reserve account remains the property of the MCO/SE, and any interest earned (even if retained in the account) shall be the property of the MCO/SE.

H. **Inspection and audit for solvency requirements:** The MCO/SE shall meet all requirements for state licensure with respect to inspection and auditing of financial records. The MCO/SE shall provide to HSD or its designee all financial records required by HSD. HSD, or its designees may inspect and audit the MCO's/SE's financial records at least annually or at HSD discretion.

I. **Special payment requirements:** This section lists special payment requirements by provider type.

(1) **Reimbursement for FQHCs:** Under federal law, FQHCs shall be reimbursed at 100 percent of reasonable cost under a medicaid fee-for-service or managed care program. The FQHC may waive its right to 100 percent of reasonable cost and elect to receive a rate negotiated with the MCO/SE. HSD shall provide a discounted wrap-around payment to FQHCs that have waived a right to 100 percent reimbursement of reasonable cost from the MCO/SE.

(2) **Reimbursement for providers furnishing care to Native Americans:** If an Indian health service (IHS) or tribal 638 provider delivers services to an MCO/SE member who is Native American, the MCO/SE shall reimburse the provider at the rate established by the office of management and budget (OMB) for specified services for the IHS facilities except as otherwise specified in writing by HSD.

(3) **Reimbursement for family planning services:** The MCOs shall reimburse out-of-network family planning providers for services provided to MCO members at a rate at least equal to the medicaid fee-for-service rate for the provider type.

(4) **Reimbursement for women in the third trimester of pregnancy:** If a woman in the third trimester of pregnancy

at the time of her enrollment in managed care has an established relationship with an obstetrical provider and desires to continue that relationship and the provider is not contracted with the MCO, the MCO shall reimburse the out-of-network provider for care directly related to the pregnancy, including delivery and a six-week post-partum visit.

(5) **Reimbursement for members who disenroll while hospitalized:** If a medicaid member is hospitalized at the time of disenrollment, the organization MCO/SE or FFS exempt, which was originally responsible for the hospital inpatient placement, shall remain financially responsible for payment of all covered inpatient facility and professional services from the date of admission to the date of discharge, or upon transfer to a lower level of care. Upon discharge, the member will then become the financial responsibility of the organization receiving capitation payments.

(6) **Sanctions for noncompliance:** The department may impose financial penalties or sanctions against an MCO/SE that fails to meet the financial requirements specified in this section or additional requirements specified in the terms of the medicaid managed care contract or federal medicaid law.

J. **Recoupment payments:** HSD shall recoup payments for MCO members who are incorrectly enrolled with more than one MCO, including members categorized as newborns or X5; payments made for MCO/SE members who die prior to the enrollment month for which payment was made; or payments to the MCO/SE for members whom HSD later determines were not eligible for medicaid during the enrollment month for which payment was made. Any duplicate payment identified by either the MCO/SE or HSD shall be recouped upon identification. In the event of an error, which causes payment(s) to the MCO/SE to be issued by HSD, HSD shall recoup the full amount of the payment. Interest shall accrue at the statutory rate on any amounts not paid and determined to be due after the 30<sup>th</sup> day following the notice. Any process that automates the recoupment procedures shall be discussed in advance by HSD and the MCO/SE and documented in writing, prior to implementation of the new automated recoupment process. The MCO/SE has the right to dispute any recoupment action in accordance with contractual provisions.

K. HSD shall pay interest at 9 percent per annum on any capitation payment due to the MCO/SE that is more than 30 days late. No interest or penalty shall accrue for any other late payments or reimbursements.

L. HSD may initiate alternate payment methodology for specified program services or responsibilities.

[8.305.11.9 NMAC - Rp 8 NMAC 4.MAD.606.10, 7-1-01; A, 7-1-04; A, 7-1-05; A, 9-1-06; A, 7-1-07; A, 7-1-08; A, 7-16-08]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.310.8 NMAC, Sections 1, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, effective July 16, 2008. The Part name is also amended.

### PART 8 ~~[MENTAL]~~ BEHAVIORAL HEALTH PROFESSIONAL SERVICES

**8.310.8.1 ISSUING AGENCY:** New Mexico Human Services Department (HSD).

[2/1/95; 8.310.8.1 NMAC - Rn, 8 NMAC 4.MAD.000.1, 11/1/04; A, 7/16/08]

**8.310.8.3 STATUTORY AUTHORITY:** The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act ~~[as amended and by the state human services department pursuant to state statute.]~~ as amended or by state statute. See NMSA 1978, section 27-2-12 et. seq. (Repl. Pamp. 1991).

[2/1/95; 8.310.8.3 NMAC - Rn, 8 NMAC 4.MAD.000.3, 11/1/04; A, 7/16/08]

**8.310.8.6 OBJECTIVE:** The objective of these ~~[regulations]~~ rules is to provide ~~[policies]~~ instruction for the service portion of the New Mexico ~~[medicaid program. These policies describe eligible providers, covered services, noncovered services, utilization review, and provider reimbursement]~~ medical assistance programs.

[2/1/95; 8.310.8.6 NMAC - Rn, 8 NMAC 4.MAD.000.6, 11/1/04; A, 7/16/08]

**8.310.8.8 MISSION STATEMENT:** The mission of the New Mexico medical assistance division (MAD) of HSD is to maximize the health status of ~~[medicaid eligible individuals]~~ eligible recipients by furnishing payment for quality health services at levels comparable to private health plans.

[2/1/95; 8.310.8.8 NMAC - Rn, 8 NMAC 4.MAD.002, 11/1/04; A, 7/16/08]

**8.310.8.9 ~~[MENTAL]~~ BEHAVIORAL HEALTH PROFESSIONAL SERVICES:** ~~[The New Mexico medicaid~~



~~program (medicaid) MAD pays for medically necessary behavioral health (mental health and substance abuse) services furnished to eligible recipients. To help New Mexico eligible recipients receive necessary services, [the New Mexico medical assistance division (MAD)] MAD pays for covered professional [mental] behavioral health services [42 CRF Sections 440.40, 440.60(a) and 441.57]. [This part describes eligible providers, covered services, service limitations and general reimbursement methodology.]~~  
[2/1/95; 3/1/99; 8.310.8.9 NMAC - Rn, 8 NMAC 4.MAD.717, 11/1/04; A, 7/16/08]

### 8.310.8.10 ELIGIBLE PROVIDERS:

A. Upon approval of a New Mexico medical assistance division provider participation agreement by MAD or its designee, licensed practitioners or facilities that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD processing contractors. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instructions, utilization review instructions, and other pertinent materials. When enrolled, providers receive instruction on how to access these documents. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to request hard copies of any program rules manuals, billing and utilization review instructions, and other pertinent material and to obtain answers to questions on or not covered by these materials. To be eligible for reimbursement, a provider is bound by the provisions of the MAD provider participation agreement and all applicable statutes, regulations and executive orders.

B. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must also enroll as a provider with the coordinated services contractor and follow that contractor's instructions for billing and for authorization of services.

~~[A.] C. [Upon approval of New Mexico medical assistance program provider participation agreements by MAD;] The following independent providers are eligible to be reimbursed for providing [mental] behavioral health professional services:~~

(1) individuals licensed as physicians by the board of medical examiners or board of osteopathy and who are board-eligible or board-certified in psychiatry, or the groups they form;

(2) psychologists (Ph.D., Psy.D. or Ed.D.) licensed as clinical psychologists by the New Mexico board of psychologist examiners, or the groups they form;

(3) licensed independent social workers (LISW) licensed by the New Mexico board of social work examiners, or the groups they form;

(4) licensed professional clinical mental health counselors (LPCC) licensed by the New Mexico counseling and therapy practice board, or the groups they form;

(5) licensed marriage and family therapists (LMFT) who are licensed by the New Mexico counseling and therapy practice board, or the groups they form; and

(6) individuals licensed as clinical nurse specialists or certified nurse practitioners by the board of nursing who are certified in psychiatric nursing by a national nursing organization, or the groups they form, who can furnish services to adults or children as their certification permits.

~~[B.] D. [Upon approval of New Mexico medical assistance program provider participation agreements by MAD;] The following agencies are eligible to be reimbursed for providing [mental] behavioral health professional services:~~

(1) community mental health centers ~~[licensed by the department of health and/or the children, youth and families department];~~

(2) federally qualified health centers (FQHCs);

(3) Indian health service (IHS) hospitals and clinics;

(4) PL 93-638 tribally operated hospitals and clinics;

(5) children, youth and families department; and

(6) ~~[schools providing services identified in individualized education plans or individualized family services plans] hospital and outpatient facilities.~~

~~[C.] Upon approval of New Mexico medical assistance program provider participation agreement by MAD, agencies listed above in Subsection B of 8.310.8.10 NMAC may be reimbursed for supervised outpatient therapy services as defined below in Subsection B of 8.310.8.10 NMAC may be reimbursed for supervised outpatient therapy services, as defined below in Subsection B of 8.310.8.13 NMAC, provided by:]~~

~~[C.] E. When providing services supervised and billed by agencies listed above in Subsection D of 8.310.8.10 NMAC, the following practitioners' outpatient services may be reimbursed when the~~

~~services are within their legal scope of practice and meet the definitions of covered services in 8.310.8.13 NMAC:~~

(1) licensed masters level social workers (LMSW);

(2) licensed professional mental health counselors (LPC);

(3) licensed mental health counselors (LMHC);

(4) licensed psychologist associates;

(5) licensed professional art therapists (LPAT); ~~and]~~

(6) registered mental health counselors RMHC; and

(7) ~~registered independent mental health counselors (RIMHC)] licensed alcohol and drug abuse counselors (LADAC).~~

~~[D.] E. Services must be provided within the scope of the practice and licensure for each provider and must be in compliance with the statutes, rules and regulations of the applicable practice act.~~

~~[E.] Once enrolled, providers receive a packet of information including medicaid program policies, billing instructions, utilization review instructions, and other pertinent material from MAD. Providers are responsible for ensuring that they have received these materials and for updating them as new materials are received from MAD.]~~

[2/1/95; 3/1/99; 8.310.8.10 NMAC - Rn, 8 NMAC 4.MAD.717.1 & A, 11/1/04; A, 11/1/05; A, 7/16/08]

**8.310.8.11 PROVIDER RESPONSIBILITIES:** ~~[Providers who furnish services to medicaid recipients must comply with all specified medicaid participation requirements. See 8.302.1 NMAC, General Provider Policies. Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance. See 8.302.1 NMAC for recipients whose medicaid coverage is restricted and 8.302.12 NMAC for dual eligible medicaid recipients. Providers must maintain records which are sufficient to fully disclose the extent and nature of the services provided to recipients.]~~

A. A provider who furnishes services to medicaid or other health care program eligible recipients must comply with all federal and state laws, regulations and executive orders relevant to the provision of services as specified in the MAD provider participation agreement. A provider must also conform to MAD program rules and instructions as specified in the provider rules manual and its appendices, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual

guidelines and CMS correct coding initiatives, including not improperly unbundling or upcoding services. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must follow that contractor's instructions for billing and for authorization of services.

**B.** A provider must verify that individuals are eligible for a specific health care program administered by the HSD and its authorized agents, and must verify the eligible recipient's enrollment status at the time services are furnished. A provider must determine if an eligible recipient has other health insurance. A provider must maintain records that are sufficient to fully disclose the extent and nature of the services provided to an eligible recipient. See 8.302.1 NMAC, *General Provider Policies*.

[2/1/95; 3/1/99; 8.310.8.11 NMAC - Rn, 8 NMAC 4.MAD.717.2, 11/1/04; A, 11/1/05; A, 7/16/08]

### **8.310.8.12 COVER AGE CRITERIA:**

**A.** [Medicaid] MAD covers medically necessary [mental] behavioral health professional services including evaluations, therapy, and tests [and reports] required by the condition of the recipient. All services must be furnished within the limits of [medicaid] MAD benefits, within the scope and practice of the eligible provider's respective profession as defined by state law, and in accordance with applicable federal, state, and local laws and regulations.

**B. Medical necessity:** All services must be provided in compliance with the current [medicaid] MAD definition of medical necessity.

[2/1/95; 3/1/99; 8.310.8.12 NMAC - Rn, 8 NMAC 4.MAD.717.3, 11/1/04; A, 11/1/05; A, 7/16/08]

### **8.310.8.13 COVER ED SERVICES:**

**A. Inpatient treatment and evaluations:** Except as noted below in 8.310.8.14 NMAC, [medicaid covers mental] MAD covers behavioral health professional services during an inpatient psychiatric admission including admission evaluations, testing, therapy and treatment for the acute phase of an illness when these services are furnished by licensed board-eligible or board-certified psychiatrists, licensed clinical psychologists (Ph.D., Psy.D., or Ed.D.), or individuals licensed as clinical nurse specialists or certified nurse practitioners by the board of nursing who are certified in psychiatric mental health nursing by a national nursing organization; and are consistent with the comprehensive [treatment] service plan in effect at the inpatient facility. Acute care psychiatric hospitals

and specialty units of general acute care hospitals are considered inpatient facilities for purposes of [medicaid] MAD coverage.

**B. Outpatient therapy services:** [Medicaid covers outpatient evaluations, testing and therapy. Services may require prior authorization from MAD or its designee and will be reviewed based on criteria approved by HSD. Any currently allowable treatment modality (individual, group, family) in any combination is covered. Frequency of services is to be determined by medical necessity. Services furnished by eligible providers must be specified in the client's treatment plan. The plan must be completed by the third (3rd) therapy session. In the treatment of minor age clients, the treatment plan must document involvement of clients, families, and if applicable, others involved in the child's care. Adult clients, or guardians whenever appropriate, should participate in the development of their treatment plans. The treatment plan and all supporting documentation must be available for review in the client record. Services must be consistent with the treatment plan in effect at the time the services are provided.] MAD covers outpatient assessments, evaluations, testing and therapy. Services may require prior authorization from MAD or its designee and will be reviewed based on criteria approved by HSD. Any currently allowable treatment modality (individual, group, family, multifamily) in any combination is covered. Frequency of services is to be determined by medical necessity. Services furnished by eligible providers must be specified in the eligible recipient's treatment or service plan. Should the eligible recipient be receiving multiple services, the treatment plan for the outpatient therapy services shall be included in the treatment or service plan developed to address all the eligible recipient's needs. In the treatment of under-age eligible recipients, the treatment or service plan must conform with the New Mexico Children's Code's, documenting as necessary the involvement of the eligible recipient's family, and if applicable, others involved in the under-age eligible recipient's care. Adult eligible recipients, or their personal representative, whenever appropriate, should participate in the development of their plans. The treatment or service plan and all supporting documentation must be available for review in the eligible recipient's record. Services must be consistent with the treatment plan in effect at the time the services are provided.

**C. Therapy in partial hospital settings, [JCAHO or COA-accredited RTCs] joint council on accreditation of healthcare organizations (JCAHO), or council on accreditation (COA)-accredited residential treatment and group home services (RTC), non-**

**accredited residential treatment and group home services and treatment foster care:** Routine [mental] behavioral health care is covered for eligible recipients under the age of [twenty-one (21)] 21 in partial hospitalization programs, JCAHO- or COA-accredited RTCs, non-accredited residential treatment and group home services, and treatment foster care. Additional services not covered by the fixed rates may be provided only after obtaining prior authorization from the utilization review agent. The additional services must be consistent with the treatment plan. Services not covered by fixed rates that would be eligible for prior authorization may include:

(1) medication management of psychotropic medications for eligible recipients in accredited residential treatment services and treatment foster care placement;

(2) psychological testing; which is not duplicative and is clinically necessary to meet the "extraordinary and specific," complex diagnostic needs of the [client] eligible recipient, (see Paragraph (3) of Subsection C of 8.310.8.13 NMAC below); such psychological testing will not replace the routine psychological testing provided within the scope of the program;

(3) individual, group and family therapy; which is additional to the core program therapies and is performed by clinicians whose specialized training is necessary to treat documented "extraordinary and specific" [client] eligible recipient needs; additional group therapy will be reimbursed only for eligible recipients placed in treatment foster care; conditions and circumstances which meet the definition of "extraordinary and specific need":

(a) complex diagnoses or symptom presentations such as, but not limited to, continuing psychotic features, persistent aggression which does not remit with standard behavioral interventions, or secondary encopresis;

(b) diagnostic questions which are persistent, recurring, or complicated.

(c) clinical situations or conditions which threaten further decompensation without intensive treatment.

**D. Injections:** [Medicaid] MAD covers injections subject to the injection and pharmacy [policies] rules. See 8.310.2 NMAC, *Medical Service Providers* and 8.324.4 NMAC, *Pharmacy Services*.

**E. Medication review visits:** [Medicaid] MAD covers brief office visits performed by an M.D., D.O, qualified psychologist, qualified nurse as defined above in [Paragraph (7) of] Subsection A of 8.310.8.10 NMAC for the sole purpose of monitoring or changing prescriptions in the treatment of covered disorders.

**F. Treatment for substance abuse:** [Medicaid covers up to

~~twelve (12) hours of psychiatric therapy services for the treatment of alcohol abuse for recipients over twenty (20) years of age.] MAD covers medically necessary outpatient services for the treatment of alcohol and substance abuse for eligible recipients.~~

G. **Services provided to recipients under ~~twenty-one~~ 21 years of age:** Additional services are covered for eligible recipients under ~~twenty-one (21)~~ 21 years of age. See 8.320.2 NMAC, *EPSDT Services* [MAD-740].

H. **Disorders covered for eligible recipients under ~~twenty-one~~ 21 years of age:** ~~[Medicaid]~~ MAD covers services for ~~[the following disorders]~~ personality disorders for eligible recipients under ~~twenty-one (21)~~ 21 years of age only [;

~~(1) personality disorders;~~

~~(2) substance abuse or dependence].~~

2/1/95; 3/1/99; 8.310.8.13 NMAC - Rn, 8 NMAC 4.MAD.717.4 & A, 11/1/04; A, 11/1/05; A, 7/16/08]

**8.310.8.14 NON COVERED SERVICES:** ~~[Mental]~~ Behavioral health professional services are subject to the limitations and coverage restrictions which exist for other ~~[medicaid]~~ MAD services. See 8.301.3 NMAC, *General Noncovered Services* [MAD-602]. ~~[Medicaid]~~ MAD does not cover the following ~~[mental]~~ behavioral health specific services:

A. hypnotherapy;

B. biofeedback;

C. ~~[conditions]~~ services which do not meet the standard of medical necessity as defined in ~~[medicaid regulations]~~ MAD rules;

D. ~~[conditions defined only by V codes in the current version of the international classification of diseases (however diagnoses which arise from conditions defined by V codes and which meet the medicaid definition of medical necessity are covered);]~~ conditions defined only by V-codes in the current version of the international classification of diseases that are not treatable conditions and do not meet the MAD definition of medical necessity are not covered;

E. treatment for personality disorders for adults age 21 and older;

F. treatment provided for adults 21 and older in alcohol or drug ~~[rehabilitation units]~~ residential centers;

G. milieu therapy;

H. educational or vocational services related to traditional academic subjects or vocational training;

I. experimental or investigational procedures, technologies or non-drug therapies and related services;

J. activity therapy, group activities and other services which are primarily recreational or diversional in nature;

K. electroconvulsive therapy;

L. services provided by non-licensed counselors, therapists ~~[and/or]~~ or social workers, except where exempted by law; and

M. treatment of mental retardation alone.

[2/1/95; 3/1/99; 8.310.8.14 NMAC - Rn, 8 NMAC 4.MAD.717.5, 11/1/04; A, 11/1/05; A, 7/16/08]

#### **8.310.8.15 P R I O R AUTHORIZATION AND UTILIZATION REVIEW:**

All ~~[medicaid]~~ MAD services may be subject to utilization review for medical necessity and program compliance. Reviews may be performed before services are furnished, after services are furnished ~~[and]~~, before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior Authorization and Utilization Review*. ~~[Once enrolled, providers receive instructions and documentation forms necessary for prior authorization and claims processing.]~~ The provider must contact HSD or its authorized agents to request utilization review instructions. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided, to comply with the requirements, and to obtain answers to questions not covered by these materials. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must follow that contractor's instructions for authorization of services.

A. **Prior authorization:** Certain procedures or services may require prior authorization from MAD or its designee. ~~[Any service may be reviewed prospectively, concurrently or retrospectively.]~~ Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process, including after payment has been made. See Subsection A of 8.311.2.16 NMAC, *Covered Emergency Services* [MAD-721.71].

B. **Eligibility determination:** Prior authorization of services does not guarantee that individuals are eligible for medicaid or other health care programs. Providers must verify that individuals are eligible ~~[for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance]~~ for a specific program at the time services are furnished and must determine if the eligible recipient has other health insurance.

C. **Reconsideration:**

Providers who disagree with prior authorization request denials or other review decisions can request a re-review and a reconsideration. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953].

[2/1/95; 3/1/99; 8.310.8.15 NMAC - Rn, 8 NMAC 4.MAD.717.6, 11/1/04; A, 11/1/05; A, 7/16/08]

#### **8.310.8.16 REIMBURSEMENT:**

A. ~~[Mental]~~ Behavioral health professional service providers must submit claims for reimbursement on the HCFA-1500 claim form or its successor. See 8.302.2 NMAC, *Billing for Medicaid Services*. Once enrolled, providers receive instructions on documentation, billing, and claims processing. Reimbursement to providers for covered services is made at the lesser of the following:

(1) the provider's billed charge;

or

(2) the MAD fee schedule for the specific service or procedure.

B. The provider's billed charge must be their usual and customary charge for services.

C. "Usual and customary charge" refers to the amount which the individual provider charges the general public in the majority of cases for a specific procedure or service.

D. For ~~[mental]~~ behavioral health professional service providers who are members of a practice plan affiliated with a state operated teaching hospital, reimbursement will equal the lesser of the provider's billed charge or the average rate paid for the service by commercial insurers as established by MAD. Providers eligible to be paid under this part will be paid on an interim claims-specific basis through the MAD claims processing system. The final payment for services provided will be made through a supplemental payment made in a specified time period that reflects any difference between the interim payment amounts and the average rate paid by commercial insurers for the services.

E. ~~[Mental]~~ Behavioral health ~~[practitioners]~~ providers requiring supervision (see Subsection [E] E of 8.310.8.10 NMAC) cannot bill ~~[medicaid]~~ MAD directly. Services furnished by these licensed ~~[master's level]~~ providers are billed by the eligible agencies identified in Subsection [B] D of 8.310.8.10 NMAC, above, whether they are employed or whether they furnish services under contract.

F. ~~[Mental]~~ Behavioral health professional services must be provided directly to the eligible recipient by the licensed ~~[mental]~~ behavioral health professionals listed in Subsection A of 8.310.8.10

NMAC, above. Services performed by supervised master's level providers, nurses, bachelor's level and other health professionals cannot be billed by the licensed supervisors even though the services may have been furnished under their direction.

G. Separate professional component billing is allowed for ~~[mental]~~ behavioral health services performed within a hospital setting by psychiatrists and licensed psychologists (Ph.D., Psy.D., or Ed. D.).

H. For facility-based providers, costs billed separately as a professional component must be excluded from the facility cost report prior to cost settlement or rebasing.

[2/1/95; 3/1/99; 8.310.8.16 NMAC - Rn, 8 NMAC 4.MAD.717.7, 11/1/04; A, 11/1/05; A, 7/16/08]

### 8.310.8.17 REIMBURSEMENT FOR HOSPITAL-BASED SERVICES:

Reimbursement for office visits, diagnostic procedures, or surgical services furnished in hospital settings that are ordinarily furnished in a provider's office is paid at sixty percent ~~[(60%)]~~ of the fee schedule-allowed amount for each professional service. ~~[Medicaid]~~ MAD follows medicare principles in determining which procedures are subject to this payment reduction.

[8.310.8.17 NMAC - N, 11/1/05; A, 7/16/08]

## NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.6 NMAC, Section 29, Effective July 22, 2008.

### 16.10.6.29 P A R E N T A L RESPONSIBILITY ACT COMPLIANCE.

This section is adopted pursuant to the Parental Responsibility Act Sections 40-5A-1 through 40-5A-13 NMSA 1978. If an applicant for licensure or a licensee is identified by the state of New Mexico human services department (HSD) as not in compliance with a judgment and order for support relating to child support proceedings, the board shall have grounds to deny an application for a license, deny the renewal of a license or to suspend or revoke a license and shall initiate a notice of contemplated action (NCA) in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-33 NMSA 1978, subject to the following procedures.

A. Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the board shall match the obligors' names against the board's list of licensees and applicants.

B. By the end of the month in which the certified list is received, the board shall report to HSD the names of board applicants and licensees who are on the certified list and the action the board has taken in connection with such applicants and licensees.

C. Upon determination that an applicant or licensee appears on the certified list, the board shall issue a formal letter giving the licensee until the next certified list is received from HSD to provide the board with a statement of compliance from HSD. If the applicant or licensee fails to provide this statement in the specified time, the board shall, upon its own motion, issue a notice of contemplated action (NCA) in accordance with the Uniform Licensing Act.

D. If an applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee shall contact the HSD child support enforcement division.

E. In any hearing under this section, relevant evidence is limited to the following: A statement of non-compliance from HSD is conclusive evidence that requires the board to take the appropriate action under the Parental Responsibility Act, unless the applicant or licensee provides the board with a statement of compliance from HSD, which shall preclude the board from taking action under this section.

F. When a disciplinary action is taken under this section solely because the applicant or licensee is not in compliance with a judgment and order for support, the board order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance from HSD. The board may also include any other conditions necessary to comply with board requirements for reapplications or reinstatement of lapsed licenses.

[16.10.6.29 NMAC - N, 7/22/08]

## NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.13 NMAC, Sections 7 and 8, Effective July 22, 2008.

### 16.10.13.7 DEFINITIONS:

A. "Supervising physician" means a physician licensed to practice in New Mexico who is responsible for the patient's care and will provide oversight and guidance of the medical assistant.

B. "Medical assistant" means any individual who is not licensed as a healthcare practitioner in New Mexico and is working under the direction and

supervision of a licensed physician. Licensed practitioners, including registered nurses and physician assistants, are not considered to be medical assistants pursuant to this rule.

C. ~~["Medical therapeutic or cosmetic device" means a federal food and drug administration approved prescription device that uses waveform energy, including, but not limited to lasers or intense pulsed light, to alter human tissue.]~~ "Medical therapeutic or cosmetic medical procedure, device, or treatment" means a treatment or procedure that uses any of the following, if the procedure or treatment alters or damages or is capable of altering or damaging living tissue, to improve the patient's appearance or to achieve an enhanced aesthetic result:

(1) injection or insertion of a biologic or synthetic substance for soft tissue augmentation;

(2) application of a chemical substance;

(3) application of microwave energy; or

(4) application of a federal food and drug administration approved prescription device that uses waveform energy of any kind, including, but not limited to lasers or intense pulsed light.

D. "Certified" means the medical assistant has been awarded a certificate of completion of training by a physician trained to use the equipment, by a certified representative of the medical equipment company, or ~~[other]~~ by another entity qualified to offer the required training.

[16.10.13.7 NMAC - Rp 16 NMAC 10.13.7, 4/18/02; A, 12/30/05; A, 7/22/08]

### 16.10.13.8 USE OF MEDICAL THERAPEUTIC AND COSMETIC DEVICES.

Medical therapeutic or cosmetic devices penetrate and alter human tissue and can result in complications such as visual impairment, blindness, inflammation, burns, scarring, ~~[hypopigmentation and hyperpigmentation]~~ hypo-pigmentation and hyper-pigmentation. The use of medical therapeutic and cosmetic devices is the practice of medicine as defined in Section 61-6-1 NMSA 1978.

#### A. Limitations.

(1) Medical assistants are limited to using medical therapeutic and cosmetic devices that are non-incisive and non-ablative.

(2) Medical therapeutic and cosmetic devices may only be used by a medical assistant who is certified pursuant to Subsection D of 16.10.13.7 NMAC and when the supervising physician is immediately available on the premises.

B. Responsibility of the supervising physician. A physician who is trained in the safety and use of medical ther-

apeutic or cosmetic devices may supervise medical assistants who perform hair removal and other therapeutic or cosmetic procedures using devices that use waveform energy consistent with the following requirements.

(1) The supervising physician must provide the following services before treatment by a medical assistant is initiated: patient history, physical examination, diagnosis, treatment protocol, and preparation of medical record.

(2) The supervising physician shall review any adverse outcomes or changes in the treatment protocol.

(3) The supervising physician shall assure the patient is informed and aware that the individual performing the procedure is a medical assistant and is under the physician's supervision.

(4) The supervising physician shall provide the patient instructions for emergency and follow-up care.

(5) The supervising physician shall prepare a written protocol for the medical assistant to follow when using the medical therapeutic or cosmetic ~~device~~ device. The protocol may include pre and post care treatment related to the procedure as long as the treatment is topical and non-injectable. The physician is responsible for ensuring that the medical assistant uses the medical therapeutic or cosmetic device only in accordance with the written protocol and does not exercise independent medical judgment when using the device.

(6) The supervising physician shall assure compliance with the training and reporting requirements of this rule.

(7) The supervising physician is ultimately responsible for the safety of the patient, regardless of who performs the treatment using the medical therapeutic or cosmetic device or procedure.

**C. Training requirements.** Medical assistants who use medical therapeutic or cosmetic devices must have training and be certified on each device they will use. The training on each device must include the following:

(1) physics and safety of the medical therapeutic or cosmetic device;

(2) basic principle of the planned procedure;

(3) clinical application of the medical therapeutic or cosmetic device, including wavelengths to be used;

(4) indications and contraindications for the use of the medical therapeutic or cosmetic device;

(5) pre-operative and post-operative care;

(6) recognition and acute management of complications that may result from the procedure; and

(7) infectious disease control pro-

cedures required for each procedure.

**D. Reporting requirements.** The supervising physician shall complete a "certificate of training" form and submit it to the board prior to the use of a medical therapeutic or cosmetic device by the medical assistant. The form will be device-specific and document training for each medical therapeutic or cosmetic device used by the medical assistant.

**E. Public communication.** Any public communication offering the performance or administration of a cosmetic medical procedure or treatment shall identify the physician or surgeon responsible for the provision of, or the direct supervision of the procedure or treatment.

[16.10.13.8 NMAC - Rp 16 NMAC 10.13.8, 4/18/02; A, 12/30/05; A, 7/22/08]

## NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.16 NMAC, Sections 1, 7, 8 and 9, Effective July 22, 2008.

**16.10.16.1 ISSUING AGENCY:** New Mexico ~~Board of Medical Examiners~~ Medical Board, hereafter called the board.

[16.10.16.1 NMAC - Rp 16 NMAC 10.16.1, 7/15/01; A, 7/22/08]

**16.10.16.7 DEFINITIONS:**

**A. "Prescribe"** means to issue an order 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, bearing the name and address of the prescriber, license classification, the name and address of the patient, the name of the drug prescribed, direction for use and the date of issue.

**B. "Administer"** means to apply a prepackaged drug directly to the body of a patient by any means.

**C. "Dispense"** means to deliver a drug directly to a patient and includes the compounding, labeling and repackaging of a drug from a bulk or original container.

**D. "Distribute"** means to administer or supply to a patient under the direct care of the distributing physician assistant one or more doses of drugs prepackaged by a licensed pharmacist and excludes the compounding or repackaging from a bulk or original container.

**E. "Formulary"** means ~~the list of drugs~~ any dangerous drugs; including Schedule II-V controlled substances, physician assistants may use in the care of patients ~~as determined by the Board~~ where there is an established physi-

cian-patient relationship.

**F. "Limitations"** means ~~medications distributed by a physician assistant shall be restricted to patients under the direct care of the physician assistant and shall be limited only to those medications included in the formulary approved by the Board of Medical Examiners and pertaining to the scope of practice of the supervising physician.~~

**E. "Established physician-patient relationship"** means a relationship between a physician and a patient that is for the purpose of maintaining the patient's well-being. At a minimum, this relationship is established by an interactive encounter between patient and physician involving an appropriate history and physical or mental status examination sufficient to make a diagnosis and to provide, prescribe or recommend treatment, with the informed consent from the patient and availability of the physician or coverage for the patient for appropriate follow-up care. A medical record must be generated by the encounter.

**G. "Licensed physician"** means a medical doctor licensed under the Medical Practice Act to practice medicine in New Mexico.

**H. "Physician assistant"** means a health professional who is licensed by the board to practice as a physician assistant and who provides services to patients under the supervision and direction of a licensed physician.

[16.10.16.7 NMAC - Rp 16 NMAC 10.16.7, 7/15/01; A, 7/22/08]

## 16.10.16.8 ADMINISTERING AND PRESCRIBING DANGEROUS DRUGS

**A.** Physician assistants may administer ~~dangerous drugs~~ formulary drugs; including Schedule II-V controlled substances, where there is an established physician-patient relationship, under the direction of the supervising physician ~~subject to the following~~. Physician assistants must comply with all other state and federal laws regulating the administration and prescribing of controlled substances.

~~(1) Physician assistants may only administer those drugs designated in a board approved formulary. The supervising physician, based upon the physician's specialty and scope of practice, may request from the board additions to or deletions from the formulary.~~

~~(2) Physician assistants may administer dangerous drugs other than controlled substances in Schedule I of the Controlled Substances Act (30-31-1 et seq. NMSA 1978).~~

~~(3) Physician assistants must comply with all other state and federal laws~~

~~regulating the administration and prescribing of controlled substances.~~

~~(4) The board, by motion, may delegate the decision to add to or subtract from a physician assistant's formulary under this section to the president or to the secretary treasurer of the board.]~~

**B.** Physician assistants may prescribe ~~[dangerous drugs]~~ formulary drugs; including Schedule II-V controlled substances, where there is an established physician-patient relationship, under the direction of the supervising physician, ~~[subject to the following:]~~ and may telephone prescriptions to pharmacies for any drug they are authorized to prescribe.

~~[(1) Physician assistants may only prescribe those drugs designated in a board-approved formulary. Additions to or deletions from the formulary may be requested by the supervising physician based upon the physician's specialty and scope of practice.~~

~~(2) Physician assistants may prescribe dangerous drugs other than controlled substances in Schedule I of the Controlled Substances Act (30-31-1 et seq. NMSA 1978).~~

~~(3) Physician assistants may telephone prescriptions to pharmacies for any drug they are authorized to prescribe.~~

~~(4) The board, by motion, may delegate the decision to add to or subtract from a physician assistant's formulary under this section to the president or to the secretary treasurer of the board.]~~

**C.** Physician assistants may prescribe on a prescription pad that shall contain the following:

(1) the name, business address and telephone number of the supervising physician;

(2) the name, title and New Mexico license number of the physician assistant;

(3) if the signature line is without MD, PA, or PA-C printed after it, the PA or PA-C must add the designation "PA" or "PA-C" at the end of the signature line when signing a prescription; if the PA or PA-C must of necessity use a prescription pre-printed with "MD" at the end of the line, the designation "MD" must be clearly crossed out and "PA" or "PA-C" must be added;

(4) when the physician assistant leaves the supervision ~~[and/or]~~ or employ of the supervising physician, or there is a change in the supervising or alternate physicians, the supervising physician shall immediately notify the board.

[16.10.16.8 NMAC - Rp 16 NMAC 10.16.8, 7/15/01; A, 7/22/08]

**16.10.16.9 DISTRIBUTION OF MEDICATIONS**

**A.** It must be clear to the physician and to the physician assistant that the intent of the legislature and of the board

is that a physician assistant is not to function as a pharmacist in the general sense of that licensee's duties. Dispensing, as defined by statute and this document, is not a physician assistant's job and is prohibited. Distribution of a limited supply of medication to facilitate the medical needs of a patient may be done by a physician assistant under the direction of the supervising physician. Physician assistants may distribute dangerous drugs ~~[other than controlled substances in schedule I of the Controlled Substances Act]~~ where there is an established physician-patient relationship; including Schedule II-V controlled substances.

**B.** Distribution of a medication shall be restricted to medications repackaged by a licensed pharmacist or a pharmaceutical manufacturer or re-packer. Physician assistants may request, receive and sign for professional sample medications and may distribute sample medications to patients. A log must be kept of distributed medications in accordance with board of pharmacy regulations. Samples requested/received would be appropriate to the scope of the supervising physician's practice and would be consistent with ~~[the BOME approved drug formulary]~~ board of pharmacy regulations.

**C.** Any medication distributed to a patient will be properly labeled with the following: patient name, date of issue, drug name and strength, instructions for use, drug expiration date, number distributed, name of prescriber, address and phone number of prescriber, and pharmacist or manufacturer/repackager identification.

**D.** Labeling may be via hand-written or pre-printed fill-in labels. The above information shall also be properly documented in the patient's medical record, including the amount of medication provided.

[16.10.16.9 NMAC - Rp 16 NMAC 10.16.9, 7/15/01; A, 7/22/08]

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

**TITLE 6 PRIMARY AND SECONDARY EDUCATION  
CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS  
PART 10 FINAL COURSE AND OTHER STUDENT GRADE CHANGES**

**6.30.10.1 ISSUING AGENCY:** Public Education Department  
[6.30.10.1 NMAC - N, 7-16-08]

**6.30.10.2 SCOPE:** This rule

shall apply to school districts and charter schools.

[6.30.10.2 NMAC - N, 7-16-08]

**6.30.10.3 STATUTORY AUTHORITY:**

Sections 22-2-1, 22-2-2, and 22-13-1.1.

[6.30.10.3 NMAC - N, 7-16-08]

**6.30.10.4 DURATION:**

Permanent.

[6.30.10.4 NMAC - N, 7-16-08]

**6.30.10.5 EFFECTIVE DATE:**

July 16, 2008, unless a later date is cited at the end of a section.

[6.30.10.5 NMAC - N, 7-16-08]

**6.30.10.6 OBJECTIVE:**

The purpose of this rule is to establish minimal requirements for those school districts and charter schools that seek to permit changes to a student's final course grades, and to require that school districts and charter schools adopt written policies for any change to a student's grade. While a change in a final course grade should be the exception and not the rule once a classroom teacher has issued a final course grade, the enactment of written policies coupled with consistent application of those policies should result in the changing of grades only when warranted and should lead to increased public confidence in the process.

[6.30.10.6 NMAC - N, 7-16-08]

**6.30.10.7 DEFINITIONS:**

**A.** "Department" means the New Mexico public education department and is identified by the acronym, PED.

**B.** "FERPA" means rights, pursuant to 20 U.S. Code 1232g and 34 CFR Part 99, afforded to parents and students over 18 years of age with respect to the student's education records, that include the right to inspect and review the student's education records within 45 days, the right to request amendment to the student's education records for various reasons, the right to consent or refuse to consent to disclosures of personally identifiable information in the student's records except for those records FERPA authorizes disclosure without consent, and the right to file a complaint with the U. S. department of education concerning non-compliance with FERPA.

[6.30.10.7 NMAC - N, 7-16-08]

**6.30.10.8 REQUIREMENTS:**

**A.** Nothing in this rule is intended to prevent a school district or charter school from permitting a teacher who has issued a course grade from changing or directing the changing of that grade due to clear mistake or clerical error. Such grade changes involving corrections of clerical errors should be authorized, documented

and conducted in the manner determined by the district or charter school in a duly adopted written policy.

B. Except as provided in Subsection A of Section 6.30.10.8 NMAC, no school district or charter school shall permit the changing of a student's final course grade until a course grade change policy is adopted or amended by the local school board or governing authority of a charter school as set forth below. A local school board or governing authority of a charter school that permits or seeks to permit the changing of a student's final course grade shall adopt a policy that includes the following minimum components:

(1) the policy permits a course grade change upon receipt of a signed written request from a student's parent(s) or legal guardian or student of legal age that states the reasons for the requested grade change;

(2) the policy requires a written response to the grade change request by a set deadline that states, among other things, whether the request is denied or allowed and the grade entered if allowed;

(3) a grade change is based on articulated reasons that are stated in the response such as extenuating circumstances, additional graded work submitted by the student, additional or make-up testing, or any other meaningful criteria that can be verified;

(4) a grade change is equally available to all students who are similarly situated;

(5) the policy requires strict adherence to FERPA;

(6) the policy requires a good faith attempt to obtain the written input of the student's classroom teacher who issued the grade in dispute, who shall state reasons to support or oppose the requested grade change and shall not be pressured into or retaliated against for making a certain recommendation;

(7) the policy requires the final written response to be made and signed in each case by a clearly designated person or group of persons who approve(s) a final course grade change and shall bear responsibility for ensuring that the local school board or governing authority's policy was followed;

(8) the policy requires, unless a student is still enrolled in the school district or charter at the time of the grade change request, the request to be within a reasonable period of time after the student has exited the school unless extenuating circumstances permit consideration of a longer time;

(9) determines if course grade change documents are to be maintained in a student's permanent record or maintained in

a separate file that is destroyed after the student graduates, transfers from, or otherwise leaves the school; and

(10) in no way limits or eliminates the rights afforded to parents under federal regulations 34 CFR Sections 300.618 through 300.621 under the Individuals with Disabilities Education Act, and 34 CFR Sections 99.20 through 99.22 under FERPA, both as they relate to amendment of a student's educational records.

C. A school district or charter school can impose stricter measures than provided for in this section or elect not to permit any final course grade changes. Stricter measures may include the convening of a grade change committee or addressing verbal input from parents. Additionally, a school district or charter school that permits final course grade changes can adopt or amend their employee discipline policies to address violations of or non-compliance with those policies. Any bargaining unit agreements for adopting policies that affect conditions of employment or licensed employee discipline should be followed.

D. A local school board or governing authority of a charter school that seeks to permit the changing of a student's grade on a test or class assignment shall adopt a policy that establishes criteria to be applied and the procedures to be followed. No such policy shall permit changing any test results on statewide tests used to determine adequate yearly progress or graduation from high school. However, where there is a need to change such a grade due to a clearly clerical mistake as where a student has been misidentified, the district or charter school shall promptly notify the assessment and accountability division of the department for guidance.  
[6.30.10.8 NMAC - N, 7-16-08]

#### **6.30.10.9 UNPROFESSIONAL CONDUCT:**

A. It shall be considered unprofessional conduct pursuant to Paragraph (23) of Subsection C of 6.60.9.9 NMAC for anyone holding or seeking to renew their licensure issued by the department to:

(1) permit the changing of a student's final course grade contrary to the course grade change policy adopted by a local school board or governing authority of a charter school;

(2) knowingly withhold material information when asked on whether a student's grade should or should not be changed; or

(3) provide written recommendation for, or make a final written response allowing, a final course grade change knowing that a grade change under the circumstances is not warranted or that there has

been a material non-compliance with the district's or charter school's grade change policy.

B. Any adverse licensure proceeding commenced by the department under this rule shall be conducted pursuant to the Uniform Licensure Act [Sections 61-1-1 through 61-1-31 NMSA 1978] together with any applicable rule of the department.  
[6.30.10.9 NMAC - N, 7-16-08]

**HISTORY OF 6.30.10 NMAC:  
[Reserved]**

## **NEW MEXICO COMMISSION OF PUBLIC RECORDS**

### **Notice of Repeal**

1.18.770 NMAC, ERRDS, Corrections Department, filed May 16, 2001, is hereby repealed and replaced with the new 1.18.770 NMAC, ERRDS, Corrections Department, effective July 21, 2008.

## **NEW MEXICO COMMISSION OF PUBLIC RECORDS**

Leo R. Lucero, Agency Analysis Bureau Chief  
NM Commission of Public Records  
1205 Camino Carlos Rey  
Santa Fe, New Mexico 87507

Mr. Lucero:

You recently requested to publish a synopsis in lieu of publishing the full content of the following rules:

- \* 1.18.446 NMAC E R R D S ,  
New Mexico Medical Board, and
- \* 1.18.770 NMAC E R R D S ,  
Corrections Department.

A review of the rules shows that their impact is limited to the individual agency to which it pertain, and it is "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis for it is approved.

Sincerely,

Sandra Jaramillo  
State Records Administrator

SJ/lrl

**NEW MEXICO  
COMMISSION OF PUBLIC  
RECORDS**

**SYNOPSIS**

**1.18.770 NMAC ERRDS, Corrections  
Department**

**1. Subject matter:** 1.18.770 NMAC, Executive Records Retention and Disposition Schedule for the Corrections Department. This rule is new and replaces 1.18.770 NMAC ERRDS, Corrections Department an outdated version that was filed on 5/16/2001. This records retention and disposition schedule is a timetable for the management of specific records series for the Corrections Department. It describes each record series by record name, record function, record content, record filing system, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the office as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Corrections Department.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the Corrections Department. Persons and entities normally subject to the rules and regulations of the Corrections Department may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the Corrections Department.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the Corrections Department. Any person or entity outside the covered geographical area that conducts business with or through the Corrections Department may also be affected by this rule.

**5. Commercially published materials incorporated:** The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87507. Telephone number: (505) 476-7900.

**7. Effective date of this rule:** July 21, 2008.

**Certification**

As counsel for the State Commission of Public Records, I certify that this synopsis provides adequate notice of the content of 1.18.770 NMAC ERRDS, Corrections Department.

\_\_\_\_\_  
Stephen Vigil Date  
Assistant Attorney General

**NEW MEXICO  
COMMISSION OF PUBLIC  
RECORDS**

**SYNOPSIS**

**1.18.446 NMAC ERRDS, New Mexico  
Medical Board**

**1. Subject matter:** 1.18.446 NMAC, Executive Records Retention and Disposition Schedule for the New Mexico Medical Board. This records retention and disposition schedule is a timetable for the management of specific records series for the New Mexico Medical Board. It describes each record series by record name, record function, record content, record filing system, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the office as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the New Mexico Medical Board.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the New Mexico Medical Board. Persons and entities normally subject to the rules and regulations of the New Mexico Medical Board may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the New Mexico Medical Board.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the New Mexico Medical Board. Any person or entity outside the covered geographical area that conducts business with or through the New Mexico Medical Board may also be affected by this rule.

**5. Commercially published materials incorporated:** The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87507. Telephone number: (505) 476-7900.

**7. Effective date of this rule:** July 21, 2008.

**Certification**

As counsel for the State Commission of Public Records, I certify that this synopsis provides adequate notice of the content of 1.18.446 NMAC ERRDS, New Mexico Medical Board.

\_\_\_\_\_  
Stephen Vigil Date  
Assistant Attorney General

**NEW MEXICO  
DEPARTMENT OF PUBLIC  
SAFETY  
STATE POLICE DIVISION**

This is an amendment to 10.5.400 NMAC, Sections 5 and 8, effective July 16, 2008. This rule was also renumbered and reformatted to comply with current NMAC requirements.

**10.5.400.5 EFFECTIVE DATE:** June 1, 1987, unless a later date is cited at the end of a section [~~or paragraph~~]. ~~Repromulgated in NMAC format effective December 31, 1998~~.  
[6/1/87, 12/31/98; 10.5.400.5 NMAC - Rn & A, 10 NMAC 5.400.5, 7/16/2008]

**10.5.400.8 VEHICLES AND  
EQUIPMENT:**

**A.** All personnel will properly care for and use any state vehicles issued for their use and will also be



acquainted with, and will follow established procedures dealing with the proper operation and care of automobiles.

**B.** The vehicle and all equipment will be kept orderly, accessible and clean.

**C.** All department vehicles will be used strictly for official business, except as specified in Paragraph (2) of Subsection C of 10.5.400.8 NMAC below.

(1) Permission must be obtained from the district/bureau commander in each instance in which unauthorized, non-departmental or non-police personnel are riding in police cars.

(a) This applies to both marked and unmarked units.

(b) Authorized personnel include those who are in contact with department personnel and must ride in the vehicles due to the nature of the department business.

(2) Employees while on official business who are away from their assigned duty station for a 24 hour minimum period may use the department vehicle for personal purposes on a reasonable basis during off-duty hours. Consumption of alcohol to any degree in conjunction with use of departmental vehicle is prohibited.

(3) Vehicles will not be transported across international borders without permission from the district/section commander unless the officer is a captain in which case he must secure permission from his immediate supervisor. Those at rank above captain may use own discretion.

**D.** When vehicles are being used, the employee will maintain a legal speed. When required to exceed the speed limit, the officer will assure that the emergency lights and siren are on unless the existing circumstances would make this procedure inadvisable.

~~**E.** An officer is not permitted to use the department vehicle to commute from his/her home to his/her permanently assigned station when the distance between home and station is more than 25 miles, unless the officer is required to travel out of town away from his/her station or the officer is on call for a specific purpose.~~

**F. | E.** When any major or minor repairs are necessary, every effort will be made to have the repairs completed at the headquarters garage (for headquarters, district 1 and district 7 personnel) or district garage (for district personnel) or nearest state police garage. When it is necessary to complete repairs through a private garage as determined by an employee's immediate supervisor, an itemized invoice properly signed by the employee will be mailed to the financial management bureau at headquarters by the vendor at the end of the month.

(1) Supervisors may authorize repairs under \$150.00 and only fleet management may authorize repairs costing over \$150.00.

(2) All supervisors must be familiar with warranty provisions of the vehicle being repaired.

**G. | E.** Equipment that is not state property may be affixed to departmental vehicles but only upon written authority of the chief. The equipment will be attached to the vehicle in such a manner so as not to leave damage to the vehicle upon removal of the equipment.

**H. | G.** All departmental vehicles shall be equipped with the following items at all times:

(1) flashlight, axe, shovel, first aid kit, flares, jack, fuses and fire extinguisher;

(2) the fire extinguisher must be refilled within a reasonable time after each use and first aid kit kept complete at all times;

(3) the above items are optional with vehicles assigned to C.I.D. except for fire extinguisher.

**H. | H.** Specific equipment in addition to those listed above are assigned to certain employees. The following lists some of that equipment and identifies the disposition of the equipment when certain instances arise.

(1) The operation of the radio must adhere to departmental procedures as well as federal communication commission (FCC) rules and regulations with those vehicles which are equipped with mobile radio equipment.

(2) The employee who is responsible for the vehicle equipped with a mobile radio, must assure that the trunk of the vehicle is kept clean and that other equipment is not on top of the radio set.

(3) The radio communications bureau of GSD is responsible for the proper maintenance and periodic inspections of all mobile and fixed radio equipment.

(4) All officers operating citizens band radios in state police vehicles must properly care for and maintain these radios and use according to FCC rules and regulations. Approval for installation must be secured from the chief if Subsection G of 10.5.400.8 NMAC applies.

**I. | L.** Tactical, diving and explosive ordnance teams are issued equipment relative to the functions of those teams. The commander of each team is responsible for assuring proper maintenance and storage of equipment issued.

**K. | J.** The baton is a defensive weapon that will be used at the discretion of the officer and method of use according to instruction received.

**L. | K.** All broken or damaged

equipment will be delivered or shipped to the general services bureau at headquarters.

~~**M. | L.** When any employee loses any state equipment through either misplacement or theft that employee may be required to reimburse the department as determined in the following and must immediately report the loss to the office of the chief.~~

(1) The office of professional standards and internal affairs may conduct an investigation into all instances of reported lost or stolen property. If the employee is scheduled for release from employment, the investigation will be conducted by the last day of the employee's employment.

(2) If the loss is determined to have been a result of negligence on the part of the employee, the employee will reimburse the department at the replacement cost.

(a) If the employee is still employed with the department the employee must make reimbursement within 60 days after the employee has been notified of the determination of negligence.

(b) If the employee is scheduled for retirement or has resigned or has been terminated, the employee must make immediate reimbursement.

(3) If the property is subsequently recovered at any time, and the employee was required to make reimbursement, the employee's payment may be returned. The amount of reimbursement to the employee will be determined by the extent of damage, if any, and the operable condition of the equipment.

[12/31/98; 10.5.400.8 NMAC - Rn &A, 10 NMAC 5.400.8, 7/16/2008]

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## End of Adopted Rules Section

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## Other Material Related to Administrative Law

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### NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

New Mexico Board of Examiners for  
Architects

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

#### Regular Meeting

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, August 1, 2008. The meeting will be held in the Conference Room of the Board office, #5 Calle Medico, Ste. C in Santa Fe beginning at 9:00 a.m. Disciplinary matters may also be discussed.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 982-2869 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

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**End of Other Related  
Material Section**

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## SUBMITTAL DEADLINES AND PUBLICATION DATES

**2008**

<b>Volume XIX</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 29
Issue Number 5	March 3	March 14
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 30
Issue Number 11	June 2	June 16
Issue Number 12	June 17	June 30
Issue Number 13	July 1	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 14
Issue Number 16	August 15	August 29
Issue Number 17	September 2	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	October 31	November 14
Issue Number 22	November 17	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 31

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