

**NEW
MEXICO
REGISTER**

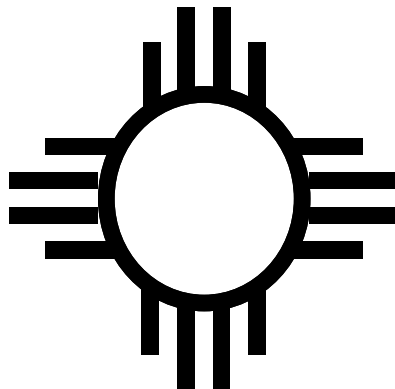


Volume XVI
Issue Number 13
July 15, 2005

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

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2005

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New Mexico Register

Volume XVI, Number 13

July 15, 2005

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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A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered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.nmcpr.state.nm.us/nmregister>

Notices of Rulemaking and Proposed Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

Public Meeting Notice

A meeting of the Acequia and Community Ditch Fund Committee will be held to determine distribution of the 2005 Acequia and Community Ditch Fund. The meeting will be held on Tuesday, August 9, 2005, at 9:00 a.m. in Santa Fe, New Mexico, Room 303, State Capitol Building.

Copies of the agenda may be obtained by contacting the New Mexico Department of Agriculture, at (505) 646-5152, or by writing New Mexico Department of Agriculture, Agricultural Programs and Resources, MSC-APR, P O Box 30005, Las Cruces, New Mexico 88003-8005.

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact the New Mexico Department of Agriculture at least three (3) days prior to the meeting, at (505) 646-5152. Disabled persons who need documents such as agendas or minutes in accessible form should contact the New Mexico Department of Agriculture.

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

New Mexico Board of Examiners for
Architects

PO Box 509
Santa Fe, NM
505-827-6375

Public Hearing 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 5, 2005. The meeting will be held in the Conference Room of the Board office, Lamy Building, 491 Old Santa Fe Trail, beginning at 9:00 a.m. A public rules hearing will also be held to amend the architectural rules. Content will be the Broadly Experienced Architect option. Proposed rules are available by contacting the Board office at (505) 827-6375.

If you are an individual with a disability who is in need of a reader, ampli-

fier, 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 827-6375 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO 20.1.1 AND 20.1.2 NMAC AND TO CONSIDER ADOPTION OF A NEW PART.

The New Mexico Environmental Improvement Board (Board) will hold a public hearing on September 6th, 2005 at 9:30 a.m. at the State Capitol Building, Room 321, Santa Fe, New Mexico. The purpose of the hearing is to consider amendments to Parts 1 and 2 of 20.1 NMAC, and to consider adoption of a new Part. The New Mexico Environmental Improvement Board is the proponent of the proposed changes to 20.1 NMAC.

The amendments to 20.1 NMAC are required to update the rulemaking procedures and adjudicatory procedures governing the Environmental Improvement Board, and to adopt new general rules governing the Environmental Improvement Board's operation and procedures, and address administrative concerns with administration of the current rules.

Please note formatting and minor technical changes in the rules may occur. In addition, the Board may make other amendments as necessary in response to public comments submitted to the Board and evidence presented at the hearing.

The proposed rule changes may be reviewed during regular business hours at the office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room N-2153 Santa Fe, NM, 87505. Copies of the rule changes may be obtained by contacting Barbara Claire at (505) 827-2425 or by email at barbara.claire@state.nm.us. Please refer to Docket No. EIB 05-10 (R). The proposed rule changes can also be found on the New Mexico Environment Department

website at <http://www.nmenv.state.nm.us/eib>. Written comments regarding the amended and replaced rules may be addressed to Ms. Claire at the above address, and should reference docket number EIB 05-10 (R).

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, NMSA 1978, Section 74-1-9, the State Rules Act, NMSA 1978, Sections 14-4-1 et seq., and other applicable procedures.

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

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

- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and
- attach the text of any recommended modifications to the proposed changes.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on August 22, 2005 and should reference the name of the rules, the date of the hearing, and docket number EIB 05-10 (R). Notices of intent to present technical testimony should be submitted to:

Barbara Claire
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N-2153

Santa Fe, NM 87502

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Judy Bentley by August 26th, 2005. Ms. Bentley can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-9872. TDD or TDY users may access this number via the New Mexico Relay Network 1-800-659-8331.

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

NEW MEXICO GENERAL SERVICES DEPARTMENT
STATE PURCHASING DIVISION

New Mexico General Services Department-State Purchasing Division
NOTICE OF PROPOSED RULEMAKING

The General Services Department—State Purchasing Division (“Department”) hereby gives notice that the Department will conduct a public hearing at State Purchasing Division’s Bid Room, First Floor, 1100 St. Francis Drive, Santa Fe, New Mexico 87501 from 1:30 p.m. - 3:30 p.m. on August 16, 2005 to obtain input on the following rules:

Rule Number	Rule Name	Proposed Action
1.4.1.30 NMAC	GENERAL DISCUSSION	Amendment

The Department proposes to amend the current 1.4.1.30 (**NMAC General Discussion**)

Interested individuals may testify at the public hearing or submit written comments regarding the proposed rulemaking to Michael C. Vinyard, Director, State Purchasing Division, Bid Room First Floor, 1100 St. Francis Drive, Joseph Montoya Building, Suite 2015, Santa Fe, New Mexico 87505. Written comments must be received no later than 5:00 pm on August 16, 2005.

Copies of the proposed rules may be accessed on the Department’s website (<http://state.nm.us/spd>) or obtained from Michael C. Vinyard, Director, 1100 St. Francis Drive, Joseph Montoya Building, Suite 2015, Santa Fe, New Mexico 87505. (505) 827-0472) Fax (505) 827-2484).

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. Michael Jaramillo at (505) 827-0472 as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO GENERAL SERVICES DEPARTMENT
STATE PURCHASING DIVISION

New Mexico General Services Department-State Purchasing Division
NOTICE OF PROPOSED RULEMAKING

The General Services Department—State Purchasing Division (“Department”) hereby gives notice that the Department will conduct a public hearing at State Purchasing Division’s Bid Room, First Floor, 1100 St. Francis Drive, Santa Fe, New Mexico 87501 from 1:30 p.m. - 3:30 p.m. on August 16, 2005 to obtain input on the following rules:

Rule Number	Rule Name	Proposed Action
1.4.8 NMAC	USE OF COMPETITIVE SEALED PROPOSALS FOR CONSTRUCTION AND FACILITY MAINTENANCE	New rule

The Department proposes to implement the current 1.4.8 NMAC (**Use of Competitive Sealed Proposals For Construction And Facility Maintenance**).

Interested individuals may testify at the public hearing or submit written comments regarding the proposed rulemaking to Michael C. Vinyard, Director, State Purchasing Division, Bid Room First Floor, 1100 St. Francis Drive, Joseph Montoya Building, Suite 2015, Santa Fe, New Mexico 87505. Written comments must be received no later than 5:00 pm on August 16, 2005.

Copies of the proposed rules may be accessed on the Department’s website (<http://state.nm.us/spd>) or obtained from Michael C. Vinyard, Director, 1100 St. Francis Drive, Joseph Montoya Building, Suite 2015, Santa Fe, New Mexico 87505. (505) 827-0472) Fax (505) 827-2484).

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. Michael Jaramillo at (505) 827-0472 as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department (HSD) will hold a public hearing to consider making changes to 8.150 NMAC Low Income Home Energy Assistance Program. The hearing will be held at 10:00 AM on Monday, August 15, 2005. The hearing will be held at Pollon Plaza in the HSD law library, 2009 S. Pacheco St., Santa Fe, NM. Parking accessible to persons with physical impairments will be available.

The Human Services Department (HSD) proposes to administer the LIHEAP program for federal fiscal year (FFY) 2006 with mandatory income changes. The income limits and income point ranges will be amended to reflect the current FFY 05 federal poverty guidelines.

HSD proposes to change the point system. Household size points will be eliminated. Vulnerable population points will be doubled. Income points will move to a four-point range of the percentage of poverty guidelines: 0 - 75%, 76 - 100%, 101 - 125% and 126 - 150%. There will be no change to the energy cost points.

HSD proposes to allow the HSD Secretary the discretion to increase or decrease the point value of any area.

HSD proposes, at the direction of the Secretary, to allow HSD to serve tribal members who live on their tribal lands when those tribes administer their own LIHEAP. HSD would only serve tribal members who had not or will not receive a tribal LIHEAP benefit.

HSD also proposes to replace in the LIHEAP rule, where appropriate, the former bureau name with the current bureau name, Food & Nutrition Services Bureau and/or its abbreviation FANS. Other proposed changes will clarify policy.

Individuals wishing to request a copy of the current and proposed rule changes should contact the Income Support Division, P O Box 2348, Santa Fe, New Mexico 87504-2348, or by calling 1 800 648-7167. The current regulations can also be viewed on the internet at <http://policymanual.hsd.state.nm.us/dscgi/ds.py/View/Collection-90>.

The Department proposes to implement these regulations effective October 1, 2005.

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 the public hearing, please contact the Division toll free at 1-888-997-2583 and ask for extension 7-3156. In Santa Fe, call 827-3156. If you are hearing impaired, you may call the Department's TDD system at 1-800-659-8331. The Department requests at least ten (10) days 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

These comments must be received no later than 5:00 p.m., on the date of the hearing. You may send comments electronically to: Loretta.Williams@state.nm.us Written, recorded and electronic comments will be given the same consideration as oral comments made at the public hearing.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

**New Mexico Public Education Department
NOTICE OF PROPOSED RULEMAKING**

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Building, Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on August 18, 2005, from 10 a.m. - noon to obtain input on the following rules:

Rule Number	Rule Name	Proposed Action
6.19.1 NMAC	PUBLIC SCHOOL ACCOUNTABILITY: GENERAL PROVISIONS	Amend rule
6.19.2 NMAC	PUBLIC SCHOOL ACCOUNTABILITY: PUBLIC SCHOOL ACCOUNTABILITY SYSTEM FOR SCHOOLS RATED PROBATIONARY	Amend rule
6.30.6 NMAC (Proposed NMAC No.)	EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS: SUSPENSION OF AUTHORITY OF A LOCAL SCHOOL BOARD, SUPERINTENDENT OR PRINCIPAL (Proposed part name)	Adopt new rule

Interested individuals may testify at the public hearing or submit written comments regarding the proposed amendments to 6.19.1 NMAC and 6.19.2 NMAC and proposed new rule 6.30.6 NMAC to Mary Deets-Jimenez, Administrative Assistant, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (mdjimenez@ped.state.nm.us) (505) 827-6641(telefax (505) 827-6681). Written comments must be received no later than 5:00 pm on August 18, 2005. This notice supercedes earlier notices regarding this proposed rulemaking.

Copies of the proposed rules listed above may be accessed on the Department's website (<http://ped.state.nm.us/>) or obtained from Mary Deets-Jimenez, Administrative Assistant, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (mdjimenez@ped.state.nm.us) (505) 827-6641).

6.12.2 NMAC	HEALTH - IMMUNIZATION OF SCHOOL CHILDREN	Repeal rule
6.12.2 NMAC	Health Services (Proposed Part Name)	Repromulgate rule (will incorporate rulemaking relating to immunization of school children, as revised)
6.12.3 NMAC	Health - Acquired Immune Deficiency Syndrome (AIDS)	Repeal rule (revised content will be incorporated in 6.12.2 NMAC)

The Department proposes to repeal the current 6.12.2 NMAC (Health - Immunization of School Children) and repromulgate the rule as 6.12.2 NMAC (Health Services). The repromulgated rule will incorporate the provisions of the current 6.12.2 NMAC, the current 6.12.3 NMAC (Health - Acquired Immune Deficiency Syndrome) as updated; and add new language addressing self-carry for the treatment of asthma and anaphylaxis associated medical conditions. The Department proposes to repeal 6.12.3 NMAC as its updated provisions will be incorporated into 6.12.2 NMAC. This notice supercedes earlier notices regarding this proposed rulemaking.

Interested individuals may testify at the public hearing or submit written comments regarding the proposed rulemaking to Dr. Kristine M. Meurer, Director, School and Family Support Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (kmeurer@ped.state.nm.us) (505) 224-5287 (telefax (505) 827-1826). Written comments must be received no later than 5:00 pm on August 18, 2005.

Proposed rule 6.12.2 NMAC may be accessed on the Department’s website (<http://ped.state.nm.us/>) or obtained from Doris Sandoval, School and Family Support Bureau, Public Education Department, 120 S. Federal Place, Room 206; Santa Fe, NM 87501 (dsandoval@ped.state.nm.us) (505) 827-1804(telefax (505) 827-1806).

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 Mary Deets-Jimenez, Administrative Assistant, Office of General Counsel at (505) 827-6641 as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO PUBLIC EDUCATION
DEPARTMENT**

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department (“Department”) hereby gives notice that it will conduct public hearings as follows regarding the proposed rulemaking actions described below:

— Thursday, August 18, 2005, from 1:30 p.m. to 3 p.m. in the Boardroom, Building A of the Hawaii Complex, 1211 Hawaii Avenue, Alamogordo, New Mexico 88310.

—Monday, August 22, 2005, from 1:30 p.m. to 3 p.m. in Mabry Hall at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501.

The proposed rulemaking actions are:

Rule Number	Rule Name	Proposed Action
6.31.2 NMAC	Special Education - Children with Disabilities/Gifted Children	Temporary rule which: •clarifies that all provisions of the newly reauthorized federal Individuals with Disabilities Education Act (IDEA) 2 004 govern wherever they conflict with corresponding provisions of 6.31.2 NMAC, with certain enumerated exceptions for state rules which offer a higher level of protection and/or benefit to students than the IDEA 2004; •clarifies that a statement of transition services must still be included in the Individualized Education Program (IEP) for students with disabilities beginning at the end of eighth grade or at age 14, pursuant to NMSA 1978, § 22-13-1.1 (Next-Step Plans and Graduation Requirements) and 6.30 .2.10 NMAC (Standards for Excellence).
6.31.2. NMAC and 6.11.2 NMAC	Special Education - Children with Disabilities/Gifted Children Rights and Responsibilities of the Public Schools and Public School Students	Temporary rule which: •provides that 20 U.S.C. Sec. 1415(k) as amended by IDEA 2004 shall supersede the provisions of 6.31.2.11(F)(2) -(3) and 6.11.2.11 NMAC in their entirety; •repeals and replaces 6.11.2.11 NMAC with a temporary rule providing that 20 U.S.C. 1415(k) as amended by IDEA 2004 shall govern the procedures for disciplinary changes of placements for students with disabilities.

The proposed changes will align the state rules on special education and student rights and responsibilities with changes made by Congress in the 2004 reauthorization of the IDEA and identify those state rules that remain in effect because they provide a heightened level of benefit and/or protection for students with disabilities. The temporary rules are intended to remain in place until the United States Department of Education issues final federal regulations to implement the IDEA changes and the PED aligns the state rules with the final federal requirements.

Copies of the proposed rules may be obtained on the Special Education Bureau page of the Department's website at www.ped.state.nm.us/seo/, by e-mail to sped.contact@state.nm.us or from Leah Erickson at the Special Education Bureau, Public Education Department, 120 South Federal Place, Room 206, Santa Fe, New Mexico 87501, phone 505-827-1457, fax 505-827-1469.

Interested individuals may testify at the public hearings or submit written comments by mail, fax or e-mail to the Special Education Bureau at any of the addresses above. Written comments must be received no later than 3 p.m. on August 22, 2005. However, the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require information in an alternative format or need any form of auxiliary aid to attend or participate in this hearing are asked to contact Leah Erickson of the Special Education Bureau at the address above as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
ALCOHOL AND GAMING
DIVISION**

Legal Notice

Notice is hereby given that the New Mexico Regulation and Licensing Department, Alcohol and Gaming Division will convene a Rule Hearing to amend the following rule:

Amend: Part 33

There will be three (3) Rule Hearings, the first will be held at the Las Cruces Public Schools on August 23, 2005 at 9:00 a.m., 505 South Main Street, Suite 249, Board Room, Las Cruces, NM; the second hearing

will be held on August 26, 2005 at 9:00 a.m. at Vincent E. Griego Council Chambers, Albuquerque/Bernalillo Government Center, Basement, One Civic Plaza, 5th & Marquette N.W., Albuquerque, New Mexico; the third meeting will be held on August 30, 2005 at 9:00 a.m., at the Regulation and Licensing Department, 2550 Cerrillos Rd., Rio Grande Conference Room, 2nd Floor, Santa Fe, New Mexico.

The Alcohol and Gaming Division will consider adoption of this rule and regulation after August 30, 2005. Copies of the proposed rules are available on request from Deborah Lopez, at the Regulation and Licensing Department, Alcohol and Gaming Division Office, 2550 Cerrillos Rd., 2nd Floor or you can request a copy via e-mail addressed to Debra.lopez@state.nm.us or write to Alcohol and Gaming Division, P. O. Box 25101, Santa Fe, New Mexico, 87504-5101, telephone (505) 476-4548. You may view a copy of the proposed rule at the following website: www.rld.state.nm.us Alcohol and Gaming.

Anyone wishing to present their views on the proposed rule may appear in person at the Hearing, or may send written comments to the Alcohol and Gaming Division office. Written comments must be received by August 8, 2005 to allow time for distribution to the Alcohol and Gaming Division Director.

Disabled members of the public who wish to attend the meeting or hearing and are in need of reasonable accommodations should contact Deborah Lopez, at (505)476-4548 no later than August 8, 2005.

**End of Notices and
Proposed Rules Section**

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Adopted Rules

NEW MEXICO LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 30 ANIMALS AND ANIMAL INDUSTRY GENERAL PROVISIONS
PART 5 HORSE RESCUE OR RETIREMENT FACILITIES

21.30.5.1 ISSUING AGENCY: New Mexico Livestock Board; 300 San Mateo NE, Suite 1000; Albuquerque, New Mexico 87108; Telephone (505) 841-6161. [21.30.5.1 NMAC - N, 7-15-05]

21.30.5.2 SCOPE: All premises that promote themselves as a horse rescue or retirement facility, including a private preserve or private reserve, and that advertises or solicits for horses and provides lifelong care or finds new owners for horses that are unwanted or have been neglected or abused or captured wild horses that cannot be returned to their range. [21.30.5.2 NMAC - N, 7-15-05]

21.30.5.3 STATUTORY AUTHORITY: Section 77-2-7, A. 6, 7, 8, 9 and 12, NMSA 1978. [21.30.5.3 NMAC - N, 7-15-05]

21.30.5.4 DURATION: Permanent. [21.30.5.4 NMAC - N, 7-15-05]

21.30.5.5 EFFECTIVE DATE: July 15, 2005, unless a later date is cited at the end of a section. [21.30.5.5 NMAC - N, 7-15-05]

21.30.5.6 OBJECTIVE: To establish rules governing the registration, operation, licensing and collection of fees of facilities operating as horse rescue or retirement facilities. [21.30.5.6 NMAC - N, 7-15-05]

21.30.5.7 DEFINITIONS:

A. "Agent" means the executive director, deputy director, veterinarian, livestock inspectors or employee of the board.

B. "American association of equine practitioners" or AAEP, is an internationally recognized authority on equine care composed of equine veterinarians.

C. "Board" means the New Mexico livestock board.

D. "Facility" means a horse rescue or retirement facility, including a private preserve or private reserve, that

advertises or solicits for horses and provides lifelong care or finds new owners for horses that are unwanted or have been neglected or abused or captured wild horses that cannot be returned to their range.

E. "Person" means an individual, partnership, association or operation.

F. "Wild horses" means feral horses. Feral horses are horses existing in an untamed state having returned to a wild state from domestication. [21.30.5.7 NMAC - N, 7-15-05]

21.30.5.8 HORSE RESCUE OR RETIREMENT FACILITY REGISTRATION:

A. The board shall register facilities that meet the requirements of 21.30.5. NMAC. The board will follow the guidelines as established by the American association of equine practitioners (AAEP), an internationally recognized authority on equine care. Prior to registration, agents of the board will inspect said premise for adherence to the AAEP prescribed standards of care guidelines for equine rescue and retirement facilities.

(1) Any person desiring to operate a horse rescue or retirement facility in New Mexico shall file an application for a license with the board on such form(s) as the board shall prescribe, which application shall be signed by the applicant. The form(s) will contain at the very minimum the information as listed in the AAEP veterinary checklist for equine rescue and retirement facilities and any other information the board shall prescribe. The form(s) will be available at the board's office or may be downloaded from the board's website (www.newmexicolivestockboard.com).

(2) Every license issued by the board to a horse rescue or retirement facility shall expire one year from the date of issuance. Renewal of such license shall be made on renewal forms as prescribed by the board.

(3) The board shall provide a license to facilities and facility owner shall display the license in a prominent place visible to the public.

(4) The board may extend licenses for a portion of a calendar year, in order to synchronize the periods of all licenses, so that the one year period of issue coincides with the calendar year.

B. The board shall annually consult with representatives from the equine industry, equine rescue organizations and veterinarians on facility standards. [21.30.5.8 NMAC - N, 7-15-05]

21.30.5.9 HORSE RESCUE OR

RETIREMENT FACILITY LICENSE FEES:

A. The initial inspection and registration fee is two hundred fifty dollars (\$250.00) per facility.

B. The annual inspection and registration fee is one hundred dollars (\$100.00) per facility.

C. The re-inspection fee is one hundred dollars (\$100.00) per facility. [21.30.5.9 NMAC - N, 7-15-05]

21.30.5.10 HORSE RESCUE OR RETIREMENT FACILITIES, INSPECTIONS, RE-INSPECTION:

A. Prior to annual registration conducted in January of each year, each facility will be inspected by agents of the board.

B. The board or its agents may enter the premises of a facility to conduct unannounced inspections.

C. If, following an inspection, the board's agent determines that the facility does not meet the requirements as established by the American association of equine practitioners, the board's agent shall give the registrant written notice of the deficiencies on site and schedule a re-inspection, allowing 14 calendar days for the registrant to correct the deficiencies

D. The registrant shall remedy the deficiencies and submit written evidence to the board demonstrating compliance with board rules for the facility.

E. If on re-inspection the board determines that the facility is still deficient in those areas for which it has been given written notice, the horses may be impounded in accordance with the provisions of Section 77-18-2 NMSA 1978 and the board shall hold a hearing as provided in the Uniform Licensing Act to determine if the registration should be suspended or revoked. [21.30.5.10 NMAC - N, 7-15-05]

HISTORY OF 21.30.5 NMAC: [RESERVED]

NEW MEXICO LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 30 ANIMALS AND ANIMAL INDUSTRY GENERAL PROVISIONS
PART 6 BOVINE TRICHOMONIASIS

21.30.6.1 ISSUING AGENCY: New Mexico Livestock Board; 300 San

Mateo NE, Suite 1000; Albuquerque, New Mexico 87108: Telephone (505) 841-6161. [21.30.6.1 NMAC - N, 7-15-05]

21.30.6.2 SCOPE: All owners, transporters, or handlers of livestock in the State of New Mexico and those that apply to bring livestock into the state for any reason. Additional requirements for livestock owners governing Livestock business activities can be found in 21 NMAC 32, 33, & 35. [21.30.6.2 NMAC - N, 7-15-05]

21.30.6.3 S T A T U T O R Y AUTHORITY: Section 77-2-7 Article 3 of Chapter 77, NMSA 1978. [21.30.6.3 NMAC - N, 7-15-05]

21.30.6.4 D U R A T I O N : Permanent. [21.30.6.4 NMAC - N, 7-15-05]

21.30.6.5 EFFECTIVE DATE: July 15, 2005, unless a later date is cited at the end of a section. [21.30.6.5 NMAC - N, 7-15-05]

21.30.6.6 OBJECTIVE: To prevent introduction and to control the bovine venereal disease trichomoniasis, specifically trichomonas fetus (T. fetus) infection. [21.30.6.6 NMAC - N, 7-15-05]

21.30.6.7 DEFINITIONS:

A. "Board" means the New Mexico livestock board.

B. "Agent" means the executive director, deputy director, veterinarian, livestock inspectors or employee of the board.

C. "Acceptable specimen" means a specimen determined satisfactory for diagnostic testing by the testing laboratory, including complete documentation.

D. "Accredited veterinarian" means an individual who is currently licensed to practice veterinary medicine and is accredited by the United States department of agriculture, animal plant inspection service, veterinary services, in the state where the veterinarian practices.

E. "Approved laboratory" means any laboratory designated and approved by the state veterinarian for examining T. fetus samples.

F. "Approved veterinarian" means an accredited veterinarian who has attended trichomoniasis training that is approved by the New Mexico state veterinarian. Such training must include preputial sampling, sample handling and shipping, appropriate record keeping and official bull trichomoniasis identification.

G. "Bovine" means any sexually intact male and female animal of the genus bos.

H. "Certificate of veterinary inspection (CVI)" means the form issued by the state of origin that records the consignor, consignee, identity, origin, destination and health status of animals, issued by an accredited veterinarian of that state. It is commonly known as a health certificate.

I. "New Mexico commuter permit" means a permit issued by the New Mexico state veterinarian's office to New Mexico livestock producers who utilize pasture lands and other livestock operations in one or multiple states that are contiguous with New Mexico.

J. "Commingle" means animals of opposite sex and belonging to different owners in the same enclosure or pasture with a reasonable opportunity for sexual contact.

K. "Complete herd test" means an official T. fetus test from each non-virgin bull in the herd.

L. "Direct slaughter" means transporting an animal to a slaughter plant without unloading prior to arrival at the slaughter plant.

M. "Herd" means the group of animals consisting of all bovines over 12 months of age (male and female) which have commingled during the last 12 months.

N. "Import Permit" means a document issued by the state veterinarian's office authorizing specific livestock movements into New Mexico. Permits expire 30 days after issuance and are not transferable.

O. "Official T. fetus laboratory testing" means the laboratory procedures that shall be approved by the state veterinarian for culture and identification of T. fetus.

P. "Official T. fetus bull test" means the sampling of the preputial content of a bull by a licensed, accredited and trich test certified veterinarian or a veterinarian from the New Mexico livestock board. Such test must be conducted after a one week separation from all female bovine. The bull and sample must be positively and individually identified and documented for laboratory submission.

Q. "Quarantine" means movement restriction issued by a regulatory veterinarian that shall be placed on all cattle in a positive T. fetus herd. Such restriction shall specify the identity of the animals and the premises where the animals shall be confined.

R. "Quarantine feedlot" means a dry lot feeding facility approved by the state veterinarian where positive T. fetus bulls and or bovine females from a T. fetus positive herd may be fed prior to slaughter and there is no sexual contact with the opposite sex bovine.

S. "Quarantine release"

means that a herd has completed all regulatory requirements to eliminate T. fetus infection in that herd and is no longer classified a positive herd.

T. "Positive T. fetus bull" means a bull that has had a positive T. fetus test.

U. "Positive T. fetus herd" means the group of all bovines which have had any opportunity for sexual contact in the previous breeding season and in which any animal (male or female) has had a positive diagnosis for T. fetus.

V. "Negative T. fetus bull" means a bull which qualifies by one of the following:

(1) originate from a herd not known to be infected and has had a negative official T. fetus bull test within the last year;

(2) originate from a positive herd but has a series of three negative official T. fetus bull tests at intervals of at least one week; or

(3) qualified with a negative import and negative in-state official T. fetus bull test.

W. "Regulatory veterinarian" means the state veterinarian or his designee. This may be a state or USDA employed veterinarian or any accredited veterinarian holding a current state license.

X. "State veterinarian" means the veterinarian designated by the New Mexico livestock board.

Y. "Suspect T. fetus bull" means a bull from a positive T. fetus herd that has not yet had three consecutive negative official T. fetus bull tests.

Z. "Trichomonas fetus (or T. fetus)" means a contagious venereal protozoan parasite disease of the trichomonas fetus species that causes infertility, pyometra, abortions and reproductive inefficiency in female bovine.

AA. "Unacceptable sample" means a sample that is deemed not diagnostic by the official testing laboratory.

BB. "USDA form 1-27" means an official restriction of livestock movement. The form is issued by a regulatory veterinarian and specifies the owner, owner's address, owner's telephone, premises affected, number, breed, age, sex, positive unique individual identification and destination of animals included.

CC. "Virgin bull" means a sexually intact male bovine less than 12 months of age or a sexually intact male bovine between 12 and 24 months that is accompanied by signed affidavit from the owner/manager as having had no potential breeding contact with females. [21.30.6.7 NMAC - N, 7-15-05]

21.30.6.8 IMPORT REQUIREMENTS:

A. Breeding Bull.

(1) All bulls entering New Mexico must be accompanied by a certificate of veterinary inspection (CVI). All non-virgin bulls, except as noted in 7 below, shall have an import permit and a negative T. fetus test within thirty days prior to entry.

(2) If the pre entry test is conducted at other than a laboratory approved by the American association of veterinary diagnostic laboratories, or the New Mexico state veterinarian, an in state post entry test shall be required within 10 days of entry into New Mexico.

(3) No bull which has ever previously tested positive for T. fetus shall enter New Mexico unless the bull is consigned directly to slaughter and is individually identified for movement on a USDA form 1-27.

(4) No bull from a known positive T. fetus herd shall enter New Mexico unless the bull has three consecutive negative tests at least a week apart within 30 days prior to entry. The post entry test is also required. Bulls must be isolated from all females until the in-state test results are known. Identification procedures are listed below.

(5) Each CVI issued for bulls covered under this rule shall bear one of the following statements:

(a) "trichomonas fetus has not been diagnosed in the herd of origin"; or

(b) "the bull(s) represented on this CVI have three consecutive negative trichomonas fetus test which were at least seven days apart within 30 days prior to entry and there has been no female contact since the last qualifying test."

(6) The veterinarian issuing the CVI shall forward a copy of all official negative T. fetus tests for the bull(s) represented on the CVI to the New Mexico state veterinarian's office.

(7) Exceptions to the importation requirements are:

(a) transient rodeo or exhibition (show) bulls, which shall have no sexual contact with a female bovine and are held in a secure facility to prevent such contact (does not include pasture) while in New Mexico;

(b) bulls consigned direct to slaughter; or

(c) bulls consigned to a feedlot for feeding purposes where they will be isolated from all females; bulls moved from a feedlot must have three consecutive official negative T. fetus tests at least one week apart unless consigned directly to slaughter; any known positive T. fetus bull quarantined in a feedlot shall go directly to slaughter from such feedlot.

B. Reproductive Bovine Female.

(1) No female bovine originating from a known positive T. fetus herd will be

allowed to enter New Mexico. Exceptions include the following:

(a) on the premises of origin there were three consecutive negative T. fetus tests of the entire bull population and only allowed females are those which:

(i) have a calf at side and no exposure to other than known negative bulls since parturition; or

(ii) are at least 120 days pregnant; or

(iii) are known virgin heifers; or

(iv) are heifers exposed only to known negative bulls and not yet 120 days pregnant;

(v) are documented to have had at least 120 days of sexual isolation;

(vi) no other female will be allowed entry into New Mexico for breeding purposes from such herds;

(b) consigned directly to slaughter or to a quarantined feedlot.

(2) Bovine breeding females must have the following statement placed on the CVI and signed by the owner/manager of the herd of origin:

(a) "the cows listed on this CVI did not originate from a known positive Trichomonas fetus herd"; or

(b) "the cows listed on this CVI are at least 120 days pregnant"; or

(c) "the cows listed on this CVI originated from a positive trichomonas fetus herd and are consigned for slaughter"; or

(d) "the heifers listed on this CVI were exposed for their first breeding only to a known negative T. fetus bull or artificially inseminated and are not yet 120 days pregnant"; or

(e) "the females listed on this CVI have had at least 120 days of sexual isolation immediately preceding the date of their movement into New Mexico."

C. Commuter Permitted Cattle.

(1) Bulls must be tested annually after a separation of at least one week from all female bovine. All bulls must be negative to an official T. fetus test to be eligible to have a commuter permit issued for the following year. All purchased bulls added to herd shall comply with test provisions.

(2) In any herd, should a bull be a positive T. fetus bull, he shall be identified and sold to slaughter only.

(a) All remaining bulls must test negative on three consecutive tests at least one week apart.

(b) Only females which have a calf at side and no exposure to other than known negative T. fetus bulls since parturition, are at least 120 days pregnant, are known virgin heifers or are heifers exposed only to known negative bull and not yet 120

days pregnant shall be allowed to accompany the commuting herd. Other open cows shall be sold to slaughter, moved under quarantine to be fed for slaughter or artificial insemination or held in sexual isolation for a 120 day period.

D. Import Permit.

(1) All non-virgin bulls must obtain an import permit, which will be recorded on the CVI.

(2) All cows originating from a premise where T. fetus has been diagnosed within the last year must obtain an import permit, which will be recorded on the CVI.

E. Public Livestock Sales (Auctions).

(1) All non-virgin out-of-state bulls must be accompanied with an import permit.

(2) All non-virgin bulls (in state or import) shall be accompanied by an official laboratory negative T. fetus test, conducted within thirty days prior to sale. Any bull without test may be placed under quarantine and tested at the livestock sale premise or at the New Mexico purchaser's premise within 10 days of sale. Bulls shall be isolated from all females until the in-state test results are known. Identification procedures are listed below.

(3) All bulls not qualifying as above will be announced in the sale ring as "slaughter only" and so designated on the buyer's documents. Such bulls shall be identified with a back tag designating them as having no trich test prior to being offered for sale.

(4) Bovine breeding females shall be accompanied by one of the following statements signed by the owner/manager of the herd of origin on the CVI or other suitable document. In the absence of one of these statements, any female bovine over the age of 12 months shall be consigned and sold to slaughter (or quarantined feed for slaughter) only.

(a) "The cows listed on this document did not originate from a known positive trichomonas fetus herd."

(b) "The heifers on this document have been exposed to only known negative bulls and are not yet 120 days pregnant."

(c) "The cows listed on this document are at least 120 days pregnant." or

(d) "The cows listed on this document originate from a positive trichomonas fetus herd and are consigned for slaughter."

[21.30.6.8 NMAC - N, 7-15-05]

21.30.6.9 INTRASTATE BREEDING BULLS:

A. All non-virgin bulls must have a negative T. fetus test within 30 days of change of ownership or change of possession under lease.

B. Bulls shall not be

exposed to females at the new premise until the results of the test are known.

C. Any bull with a positive test shall be immediately quarantined.

D. The quarantine shall be in effect until the bull is sent to slaughter.

E. The positive T. fetus bull's herd of origin will be placed under quarantine.

F. The quarantine will be released in accordance to the regulatory section of this rule.

[21.30.6.9 NMAC - N, 7-15-05]

21.30.6.10 VOLUNTARY NEW MEXICO T. FETUS FREE HERD CERTIFICATION REQUIREMENTS - MAY BE AN INDIVIDUAL HERD, RANCH, GRAZING ASSOCIATION OR FEDERAL LAND PERMITEE:

A. Breeding Bulls.

(1) All non-virgin breeding bulls shall be tested annually for T. fetus for the three years following the adoption of this rule.

(2) During the three year inception period, all non-virgin breeding bulls with changes of ownership, leased, rented or otherwise shall be tested for T. fetus within 30 days prior to such change unless consigned direct to slaughter. The test will be completed and test results known prior to the time a bull(s) is physically transferred to the receiving premises or herd.

(3) Negative T. fetus bulls will be identified with the official New Mexico negative T. fetus tag described in the identification section of this part.

(4) All slaughter bulls removed from the herd will be tested for T. fetus. The test may be performed at a slaughter facility if prior arrangement with a veterinarian and an appropriate agreement with the slaughter facility management is made.

(5) Bovine females added to a certified herd shall not originate from known T. fetus infected herd. Female herd additions must originate from a New Mexico certified T. fetus free herd or qualify in one of the following categories:

(a) calf at side and no exposure to other than known negative T. fetus bulls;

(b) checked by an accredited veterinarian, at least 120 days pregnant and so recorded;

(c) virgin; or

(d) heifers exposed as virgins only to known negative T. fetus infected bulls and not yet 120 days pregnant.

(6) Records must be maintained for all tests including all non-virgin bulls entering the herd and made available for inspection by a designed accredited veterinarian or state animal health official.

(7) Following successful completion of the three-year testing requirement, the participating entity shall receive a T.

fetus free certification from the New Mexico state veterinarian's office. Annual re-certification will require documented evidence that all male herd additions were virgin or that non-virgin breeding bulls added to the herd had three official negative T. fetus test within 30 days prior to commingling with female bovine and that all slaughter bulls removed from the herd have been negative for T. fetus prior to or at slaughter.

(8) A herd in which a bull has a confirmed T. fetus infection will be classified as a positive T. fetus herd and shall be removed from the "free" status. The herd will be quarantined until positive T. fetus bulls are sent to slaughter and all other bulls in the herd test negative to three consecutive official T. fetus tests at least seven days apart. The initial negative T. fetus test is included in the three negative tests.

B. A non-tested non-virgin bull that commingles with a herd which holds or is actively working toward the New Mexico certified trich free status, by fence breach or any commingled situation shall obligate the owner of the non-tested bull to test the bull from one to three times at the option of the state veterinarian in consultation with the owner and veterinarian of the negative herd.

C. A bull from a herd which holds a current or has pending a free certification and which commingles with a non-tested herd, shall undergo one to three official T. fetus test(s) prior to return to his herd of origin. Shall such test be positive, all bulls from both herds may be subject to test. The state veterinarian in consultation with the herd owner and herd veterinarian will determine the appropriate number of tests and number of bulls to be tested.

[21.30.6.10 NMAC - N, 7-15-05]

21.30.6.11 REGULATORY ACTION:

A. Public Grazing and Grazing Associations.

(1) All bulls commingling in grazing association and/or public lands, regardless if private or multiple user permits, shall have the official T. fetus bull test conducted annually. Virgin bulls added to a herd are exempt from testing requirements during their first breeding season.

(a) If a bull is found positive, the entire bull population, regardless of owners, will be required to have three consecutive negative tests prior to turn out time.

(b) Any stray non-virgin bull from an untested group that enters the grazing area of tested animals may be held under quarantine until the bull has one or more official T. fetus test(s) conducted. The test(s) shall be the responsibility of the bull's owner. The conditions of the quarantine and number of tests will be determined

by the state veterinarian.

B. Positive T. Fetus Bull & Herd.

(1) Any confirmed T. fetus bovine and its herd (as defined by state animal health officials) shall immediately be placed under quarantine and will continue under quarantine until the following rules are completed.

(a) Positive T. fetus bulls shall be identified with an official positive T. fetus test tag by an approved veterinarian within 5 days of diagnosis.

(b) Positive T. fetus bulls shall be quarantined and sent directly to slaughter or to public livestock market for slaughter only. A quarantined feed period may be allowed under special conditions. Positive bulls shall move on an official USDA 1-27 permit.

(c) All other bulls in a positive T. fetus herd shall test negative to three consecutive official T. fetus tests at least seven days apart. The initial negative T. fetus test is included in the three negative tests.

C. Reproductive Bovine Females from A Positive T. Fetus Herd.

(1) Females over 12 months of age (not known to be virgin heifers) from a positive T. fetus herd may be sold direct to slaughter or quarantined on the premises of origin. Individual females will be released from quarantine when there are three consecutive negative T. fetus tests of the entire bull population and the cow(s) has a calf at side with no exposure to other than known negative T. fetus bulls since parturition, has documented 120 days of sexual isolation or is determined by an accredited veterinarian to be at least 120 days pregnant. Heifers known to be virgin at the time of turnout or heifers exposed only to known negative T. fetus bulls and not yet 120 days pregnant are allowed.

(2) Open females shall be sold to slaughter or held in isolation from all bulls for 120 days. Any female sold to slaughter through a livestock market shall be identified with an official New Mexico positive T. fetus tag during the quarantine period.

(3) Breeding by artificial insemination is allowed during the quarantine period and cows confirmed by an accredited veterinarian to be at least 120 days pregnant as well as cows documented to have 120 days sexual isolation will be released from quarantine.

[21.30.6.11 NMAC - N, 7-15-05]

21.30.6.12 IDENTIFICATION:

A. Bulls which have passed the official negative T. fetus test shall be identified with an official New Mexico negative T. fetus tag. Virgin bulls should also be tagged with the official negative T. fetus tag. The official tag shall be embossed with "New Mexico negative T.

fetus" and a number. Tags will be supplied by the New Mexico livestock board and be assigned to approved veterinarians, who shall apply such tags at the time samples are collected. The approved veterinarian shall record any second form of positive identification available or apply a standard USDA metal tag as a secondary identification. Bulls so identified pending test results shall be isolated from all females until the test result is reported. The official negative T. fetus tag color shall be changed annually.

B. Positive T. fetus bulls shall be identified with an official red positive T. fetus tag supplies by the New Mexico Livestock Board. The approved veterinarian shall apply or record the existing standard USDA metal ear tag as a second form of positive identification when the positive T. fetus tag is applied.

C. Any quarantined cows moved from the original premise of quarantine shall be identified with an official red positive T. fetus ear tag.
[21.30.6.12 NMAC - N, 7-15-05]

21.30.6.13 SPECIMEN COLLECTION FACILITIES:

A. The bull owner must provide adequate corrals and restraint to protect the animal and veterinarian from undue injury risk.

B. The approved veterinarian shall determine the adequacy of such facilities and may require the bulls be delivered to a mutually agreed facility if the owner's facility is deemed inadequate.
[21.30.6.13 NMAC - N, 7-15-05]

21.30.6.14 APPROVED LABORATORY RESPONSIBILITIES:

A. An approved laboratory is required to immediately report any positive specimen to the state veterinarian's office. Such report will include the animal identification, brand, owner name, address, telephone number and the submitting veterinarian's name, address and telephone number.

B. Transport media shall be ringers lactate U.S.P. or a commercial trichomonas pouch (inpouchTF), if the samples are hand carried to the laboratory within 24 hours of sampling. If any shipment by mail or other carrier is involved in the transport, ringers lactate is not allowed and the inpouch TM TF must be used. The specimen(s) shall be received at the laboratory in good condition within 48 hours of sampling.

C. The laboratory shall report unacceptable samples to the state veterinarian. If any sample is deemed unacceptable the submitting veterinarian shall submit a retest specimen. The state veterinarian may require the offending veterinarian to attend an approved trichomoniasis

training session and submit acceptable specimens to continue as an approved trichomoniasis veterinarian.
[21.30.6.14 NMAC - N, 7-15-05]

21.30.6.15 RULE EXCEPTION: The New Mexico state veterinarian may grant a written exception to this rule only on an individual basis.
[21.30.6.15 NMAC - N, 7-15-05]

21.30.6.16 COMPLIANCE: Any person who violates the provisions of these rules may be subject to the criminal and civil penalties pursuant to NMSA 1978, sections 77-2-9, 77-2-22.
[21.30.6.16 NMAC - N, 7-15-05]

HISTORY OF 21.30.6 NMAC:
[RESERVED]

NEW MEXICO MASSAGE THERAPY BOARD

16.7.4 NMAC, "Requirements For Licensure" is hereby repealed effective July 28, 2005, and is replaced by 16.7.4 "Requirements For Licensure", effective July 28, 2005.

NEW MEXICO MASSAGE THERAPY BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 7 MASSAGE THERAPISTS PART 4 REQUIREMENTS FOR LICENSURE

16.7.4.1 ISSUING AGENCY: Regulation and Licensing Department, Massage Therapy Board
[16.7.4.1 NMAC - Rp, 16.7.4.1 NMAC, 07-28-2005]

16.7.4.2 SCOPE: This part applies to applicants for licensure.
[16.7.4.2 NMAC - Rp, 16.7.4.2 NMAC, 07-28-2005]

16.7.4.3 S T A T U T O R Y AUTHORITY: This part is adopted pursuant to the Massage Therapy Practice Act, Sections 61-12C-8.B, 61-12C-8.C, 61-12C-9 and 61-12C-16.
[16.7.4.3 NMAC - Rp, 16.7.4.3 NMAC, 07-28-2005]

16.7.4.4 D U R A T I O N : Permanent.
[16.7.4.4 NMAC - Rp, 16.7.4.4 NMAC, 07-28-2005]

16.7.4.5 EFFECTIVE DATE:

July 28, 2005, unless a later date is cited at the end of a section.

[16.7.4.5 NMAC - Rp, 16.7.4.5 NMAC, 07-28-2005]

16.7.4.6 OBJECTIVE: This part is to establish the minimum requirements for applicants applying for licensure by examination, temporary licensure and licensure by credentials, and to establish the licensure procedures.
[16.7.4.6 NMAC - Rp, 16.7.4.6 NMAC, 07-28-2005]

16.7.4.7 DEFINITIONS:

A. "Official transcripts" means those transcripts provided to the board office by the massage therapy school where the applicant received training.

B. "Clinical practicum" means that a student is providing hands-on massage therapy to members of the public under the supervision of a registered massage therapy instructor. That instructor must be physically present on the premises for advice and assistance. The student must be enrolled at a registered massage therapy school or being trained by a registered massage therapy instructor. Clinical practicum does not include classroom practice.

C. "Examining agency" means the national certification board for therapeutic massage and bodywork (NCBTMB).

D. "Jurisprudence" means the statutes and rules of the state pertaining to the practice of massage therapy.

E. "Massage therapy" means the assessment and treatment of soft tissues and their dysfunctions for therapeutic purposes primarily for comfort and relief of pain. It is a health care service that includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, stretching the tissue and exercising the range of motion, and may include the use of oils, salt glows, hot or cold packs or hydrotherapy. Synonymous terms for massage therapy include massage, therapeutic massage, body massage, myomassage, bodywork, body rub or any derivation of those terms. Massage therapy is the deformation of soft tissues from more than one anatomical point by manual or mechanical means to accomplish homeostasis and/or pain relief in the tissues being deformed, as defined in the Massage Therapy Practice Act, NMSA 1978, Section 61-12C-3.E.

F. "Massage therapist" means a person licensed to practice massage therapy pursuant to the New Mexico Massage Therapy Practice Act, Sections 61-12C-1 through 61-12C-28 NMSA 1978.

G. "National certification examination or NCE" means the national certification examination for therapeutic massage and bodywork (NCETMB).

H. "Official examination results" means official pass/fail reports that the applicant has made arrangements to be sent directly to the board by the national examination agency.

I. "Permanent license" means a license issued once the applicant has met all the requirements for licensure as set forth in this regulation, but which must be kept updated by meeting the board's renewal and continuing education requirements, and which is subject to disciplinary action by the board for violations of the board's statute or regulations, up to an including revocation.

J. "Temporary license" means a license issued one-time only for a maximum period of three (3) months to practice massage therapy while the application for permanent license is in process, and which may only be issued to applicants who have never sat for the national examination (NCE).

[16.7.4.7 NMAC - Rp, 16.7.4.7 NMAC, 07-28-2005]

16.7.4.8 LICENSE OR REGISTRATION REQUIRED:

A. Massage therapists: A person must be licensed by the board in order to legally provide or offer to provide massage therapy services for compensation, as defined in 16.7.4.7 NMAC; or to use the title or represent him/herself to be a massage therapist; or to use any other title, abbreviations, letters, figures, signs or devices that indicate the person is a massage therapist.

B. Massage therapy instructors: A person shall be registered by the board, as set forth in 16.7.5 NMAC, in order to legally provide or offer to provide massage therapy training as a massage therapy instructor.

C. Massage therapy schools: Massage therapy schools must be registered by the board, as set forth in 16.7.6 NMAC, before they can legally operate and offer education, instruction or training in massage therapy.

[16.7.4.8 NMAC - N, 07-28-2005]

16.7.4.9 LICENSURE EXEMPTIONS: The following are exempted from licensure by the board pursuant to Section 61-12C-5.1 of the Massage Therapy Practice Act.

A. Other professionals licensed in or regulated by another New Mexico licensing board or agency rendering services within the scope of their authorizing law or regulation, provided they do not represent themselves as massage therapists.

B. Massage therapy students who are rendering massage therapy services within the course of study of a registered massage therapy school or under the

supervision of a registered massage therapy instructor.

C. Massage therapy instructors visiting New Mexico who have met the requirements set forth in 16.7.6.11 NMAC.

D. Sobadores; Hispanic traditional healers; Native American healers; reflexologists whose practice is limited to hands, feet and ears; or other healers who do not manipulate the soft tissues for therapeutic purposes. However, if any of these persons applies for and is granted a license pursuant to the Massage Therapy Practice Act, that person shall comply with all licensure requirements and be subject to the provisions of the boards' statute and regulations.

[16.7.4.9 NMAC - N, 07-28-2005]

16.7.4.10 GENERAL PROVISIONS FOR LICENSURE:

A. Age: The applicant must be eighteen (18) years of age or older on the date the application is submitted.

B. Pre-requisite education to massage therapy training: The applicant must have completed high school or its equivalent.

C. Photograph: The applicant must provide a 2"x 2" head and shoulders frontal view photograph taken of the applicant within the six-months prior to making application for licensure.

D. Application fee: The applicant must pay the required application-processing fee as set forth in Subsection D of 16.7.3.8 NMAC of the board's regulations.

E. Board-approved application form: The applicant must provide a completed, notarized, and legible board-approved application for licensure form that must either be typed or printed in black ink, along with any other application documents required in the board's application process.

(1) Incomplete application for licensure forms will be returned to the applicant for completion.

(2) Faxed application for licensure forms will not be accepted.

F. First Aid and CPR: The applicant must have completed four course hours of cardiopulmonary resuscitation (CPR) and four course hours of first aid and must provide proof, with the application, of current certification in basic life support accepted by the American heart association or the American red cross.

[16.7.4.10 NMAC - Rp, 16.7.4.8 NMAC, 07-28-2005]

16.7.4.11 MASSAGE SCHOOL REQUIREMENT: The applicant for licensure as a massage therapist must have graduated from a massage therapy school

approved to operate as a private post-secondary educational institution or its equivalent.

A. Out-of-state or multiple schools: The applicant who has graduated from an out-of-state massage therapy school or who has attended more than one massage therapy school must make arrangements for the school to provide the following items.

(1) The board's form "A" completed and submitted directly to the board by the massage therapy school(s) that the applicant attended as provided in 16.7.4.13 NMAC.

(2) An official transcript submitted directly to the board by the school(s) that meets the requirements in Subsection B of 16.7.4.11 NMAC.

(3) Proof that the school is approved to operate as a private post-secondary educational institution or its equivalent. The respective state's department of higher education usually grants this approval. The name of the agency or entity may vary from state to state.

B. Official transcripts of massage therapy training: The applicant shall make arrangements for official transcript(s) to be sent directly to the board by the educational institution documenting that the applicant has completed a minimum of six hundred fifty (650) hours of massage therapy training as provided in 16.7.4.12 NMAC.

(1) If more than one massage therapy school was attended, at least one official transcript must document a minimum of 300 class hours of training in massage therapy as defined in 16.7.4.7 NMAC above.

(2) Continuing education (CE) or continuing education units (CEU) may be accepted toward the educational requirements for licensure.

(3) If official transcripts are not available due to unusual circumstances (example: school closure, destroyed records), the applicant will be responsible to provide satisfactory evidence to the board that he/she has met the required massage therapy training. The board shall consider such documentation on a case-by-case basis.

[16.7.4.11 NMAC - Rp, 16.7.4.9 NMAC, 07-28-2005]

16.7.4.12 MINIMUM HOURS OF MASSAGE THERAPY TRAINING:

The applicant must have completed at least a six hundred fifty (650) hour in massage therapy training. The massage therapy training must meet the following minimum curriculum requirements:

A. 125 hours minimum of anatomy and physiology, to include:

(1) physiology;

(2) anatomy;
 (3) kinesiology; and
 (4) forty (40) hours *minimum* of pathology.

B. 150 hours minimum of training in massage therapy as defined in 16.7.4.7 NMAC.

(1) The massage therapy training shall include contraindications of massage therapy.

(2) A minimum of 100 hours of massage therapy training must be completed before the student is allowed to begin a clinical practicum as defined in 16.7.4.7 NMAC.

C. 50 hours minimum of general instruction to include.

(1) business;
 (2) hydrotherapy;
 (3) six (6) hours *minimum* of professional ethics;
 (4) four hours of first aid; and
 (5) four hours of cardiopulmonary resuscitation.

D. Electives may include:
 (1) additional massage therapy;
 (2) related hands-on modalities;
 (3) additional anatomy and physiology;

(4) clinical practicum (not to exceed 150 hours);
 (5) counseling;
 (6) herbology;
 (7) homeopathy;
 (8) nutrition;
 (9) breathing and stretching techniques;
 (10) theory; and

(11) other courses with prior board approval. See 16.7.4.14 NMAC for instructions.

E. The total number of hours in the massage therapy program is a minimum of six hundred fifty (650) hours.

F. If an applicant is missing a core curriculum course or is missing a small portion of the core curriculum to complete the 650-hour requirement, the applicant may obtain the training course(s) from a New Mexico registered independent instructor, or from a New Mexico registered school, or from another massage therapy school that meets the requirements in 16.7.4.13 NMAC.

[16.7.4.12 NMAC - N, 07-28-2005]

16.7.4.13 FORM "A" FROM MASSAGE SCHOOL REQUIREMENT:

A. The following circumstances require that the applicant's massage school(s) submit a completed "form A for massage school" to the board office along with an official transcript and proof that the massage therapy school(s) is/was approved to operate as a private post-secondary educational institution or its equivalent at the time the applicant attended the school(s):

(1) if the applicant attended a massage school that is located out-of-state; or

(2) if the applicant has attended more than one massage therapy school whether in-state or out-of-state.

B. The "form A for massage school" contains four sections corresponding to Subsections A, B, C, and D of 16.7.4.12 NMAC, and each section must be completed correctly to prevent delays in the applicant's licensure process.

(1) An hourly breakdown *must* be provided for *each* course/category/subject listed that the school provided in the curriculum that the applicant completed. If a subject is taught within another subject, the school should provide a written explanation on school letterhead and attached to the form "A".

(2) If there are no hours specified next to a course/category/subject, it will be an indication to the board that the course/category/subject was NOT part of the school's curriculum.
 [16.7.4.13 NMAC - N, 07-28-2005]

16.7.4.14 ELECTIVE COURSES IN THE "OTHER" CATEGORY:

If an applicant has attended a massage therapy training program that is not a registered massage therapy school and/or provides proof of completion of elective courses that falls under the "other" category in Paragraph (11) of Subsection D of 16.7.4.12 NMAC, the course(s) will be reviewed on a case-by-case basis and may be accepted by the board. The applicant must provide the following.

A. A separate written request for consideration of the course(s).

B. An official transcript that clearly names the course(s) to be considered.

C. A copy of the school catalog that clearly describes the course(s) to be considered. In accordance with Paragraph (2) of Subsection B of 16.7.4.11 NMAC, continuing education will NOT be accepted.

D. An administrative review fee as set forth in Paragraph 7 of Subsection A of 16.7.3.8 NMAC.

[16.7.4.14 NMAC - N, 07-28-2005]

16.7.4.15 DOCUMENTS IN A FOREIGN LANGUAGE:

Any document submitted in a foreign language must be accompanied by an accurate translation in English.

A. Each translated document must bear the affidavit of the translator sworn to before a notary public certifying that he or she is competent in both the language of the document and the English language and that the translation is a true

and complete translation of the foreign language original.

B. The affidavit must also contain the translator's contact information, including name, address and phone number.

C. Translation of any document relevant to a person's application will be at the expense of the applicant.

[16.7.4.15 NMAC - Rp, 16.7.4.9 NMAC, 07-28-2005]

16.7.4.16 SPECIFIC PROVISIONS FOR A TEMPORARY LICENSE:

A. Qualifications for temporary license:

(1) The applicant for temporary license must meet all the requirements set forth in Sections 16.7.4.10 through 16.7.4.15 NMAC.

(2) The applicant for temporary license must not have previously sat for the national certification examination for therapeutic massage and bodywork (herein referred to as the NCETMB or the national exam).

(3) The applicant may obtain a temporary license while waiting to sit for the national examination.

(4) Upon submitting the application for licensure, the applicant for a temporary license must submit a temporary license fee, as set forth in Subsection D of 16.7.3.8 NMAC.

(5) The board may deny issuance of a temporary license for the same reasons a permanent license may be denied.

B. Issuance of the temporary license:

(1) The applicant for temporary license may not begin work until the temporary license has been issued by the board, has been received by the licensee, and has been publicly posted in principal place of practice.

(2) The temporary licensee may NOT advertise in the yellow pages or other similar advertising book.

(3) The temporary licensee must keep the board informed at all times of any change in address and contact phone number(s).

(4) If the temporary license has not yet expired and the board receives official notice that the temporary licensee has successfully passed the examination, a permanent license will be issued provided the applicant has met all other licensure requirements, including payment of the licensure fee. The temporary license will automatically become null and void.

C. Surrender of temporary license required:

(1) If a temporary license holder fails the national examination, the temporary license immediately becomes null and void and must be surrendered directly to the

board office within fifteen (15) days of the examination date; and the privileges to practice authorized by the temporary license are no longer valid.

(2) Expired or null and void temporary licenses shall be surrendered to the board.

(3) If an applicant, who holds a temporary license that must be surrendered, has misplaced or lost the temporary license and cannot return it to the board as required, the applicant must provide the board with an affidavit attesting that the license has been lost or misplaced and that the applicant is no longer practicing massage therapy.

[16.7.4.16 NMAC - Rp, 16.7.4.11 NMAC, 07-28-2005]

16.7.4.17 SPECIFIC PROVISION FOR PERMANENT LICENSURE: The applicant must meet all the requirements set forth in Sections 16.7.4.10 through 16.7.4.15 NMAC, in addition to the following requirements:

A. Jurisprudence examination: The applicant for permanent licensure must successfully pass the board's jurisprudence examination as set forth in 16.7.10.8 NMAC.

B. National certification examination: The applicant must successfully pass the national certification examination for therapeutic massage and bodywork (NCETMB), as provided in 16.7.10.9 NMAC, and must make arrangements for the national examining agency to send official examination results, as defined in 16.7.4.7 NMAC, directly to the board.

C. Licensure fee: Upon written notification, sent by the board by certified mail return receipt requested, that the applicant has met all other requirements for licensure, the applicant must submit the initial license fee as stated in the notification based on the fee structure set forth in Subsection A of 16.7.3.8 NMAC.

(1) The initial licensure fee must be paid in full before the permanent license will be issued.

(2) If the applicant fails to pay the initial license fee within thirty (30) days of receipt of the notification of approval, the application will be deemed withdrawn and subject to the provisions in 16.7.4.19 NMAC.

[16.7.4.17 NMAC - N, 07-28-2005]

16.7.4.18 REQUIREMENTS FOR LICENSURE BY CREDENTIALS:

A. In addition to the requirements in Sections 16.7.4.10 through 16.7.4.15 and 16.7.4.17 NMAC, the applicant for licensure by credentials must provide verification of a current, valid massage therapy license in another state/territory of the United States, the District of Columbia or foreign nation.

(1) Verification of licensure or registration as a massage therapist must be sent directly to the board by the other licensing jurisdiction.

(2) The license to practice massage therapy must be in good standing. Any prior disciplinary actions by any other licensing jurisdictions related to health, safety and welfare or other civil or criminal issues that may be reasons for disciplinary action by the board will be evaluated on a case-by-case basis and may be basis for issuance of a conditional or provisional license or other disciplinary action by the board up to and including denial of licensure.

B. The applicant must have met educational and examination requirements in the other jurisdiction equal to or exceeding New Mexico's educational and examination requirements.

[16.7.4.18 NMAC - Rp, 16.7.4.10 NMAC, 07-28-2005]

16.7.4.19 APPLICATION EXPIRATION, WITHDRAWAL, AND DESTRUCTION:

A. Expiration or withdrawal of application: The application for licensure expires as follows and all previously paid fees will be forfeited if:

(1) the applicant fails to complete all requirements for temporary and/or permanent licensure within one (1) year from the date the applicant's application file is started by board office staff; or

(2) the applicant withdraws the application, either by notifying the board in writing or by not paying the initial license fee within the time allowed in Subsection C of 16.7.4.17 NMAC.

B. If the applicant still wishes to seek licensure after the application has expired or been withdrawn and it is still within one (1) year after the application expired was withdrawn, the applicant shall complete the following procedure.

(1) Submit a "reapplication form for withdrawn or expired application".

(2) Submit whatever the application fee is at the time of reapplication.

(3) Complete any other requirements or submit any other documentation pending when the application was expired or withdrawn.

C. Application destruction: The board will maintain the expired or withdrawn application file for a period of one year after the expiration or withdrawal date.

(1) After that date, the file will be purged from the board's records and destroyed.

(2) The applicant whose application has been purged from the board's records must complete the entire application process again if, in the future, he/she is

interested in licensure.

D. Temporary license unavailable: The option for a temporary license will no longer be available to a person whose application has expired, been withdrawn, or been destroyed from the board's records.

[16.7.4.19 NMAC - N, 07-28-2005]

16.7.4.20 INITIAL LICENSE PERIOD: The applicant who has met all the requirements for licensure shall be issued an initial license for a period of up to two years, depending on when in the renewal cycle the initial license is issued, in order to schedule the license to renew on October 31.

A. The first renewal cycle may be for as short a period as one year and the initial license fee may be prorated accordingly based on the fee structure set forth in Subsection A of 16.7.3.8 NMAC.

B. After the license is renewed the first time, the license will be scheduled into a biennial cycle and will be renewed every two years.

[16.7.4.20 NMAC - Rp, 16.7.4.12 NMAC, 07-28-2005]

16.7.4.21 DISPLAY OF LICENSE: The licensee must display the current license to practice massage therapy in a conspicuous place in his/her principal practice location or place of business.

[16.7.4.21 NMAC - N, 07-28-2005]

16.7.4.22 ADDRESS AND EMPLOYMENT PRACTICE CHANGES:

It is the licensee's responsibility to provide written notification to the board of any changes in addresses, phone numbers, and practice location(s) within thirty (30) days in order that renewal notices and other correspondence from the board will be received by the licensee in a timely manner, and in order for the board to be able to maintain accurate licensing records. A form is available for this purpose from the board office or from the board's website at www.rld.state.nm.us/b&c/massage, or a letter to the board advising of the changes will also be adequate.

[16.7.4.22 NMAC - N, 07-28-2005]

HISTORY OF 16.7.4 NMAC:

Pre-NMAC History:

The material in this Part is derived from that previously filed with the State Records Center and Archives under: Rule 92-2, Requirements For Licensure, 1-17-92

Rule 92-2, Requirements For Licensure, 9-9-92;

Regulation 2, Requirements For Licensure, 1-5-94;

Rule 92-3, Licensure Without Examination, 1-17-92;

Rule 92-3, Licensure By Credentials, 9-9-

92;
 Regulation 3, Licensure By Credentials, 1-5-94;
 Rule 92-4, Application Procedure, 1-17-92;
 Rule 92-4, Application Procedure, 9-9-92;
 Regulation 4, Application Procedure, 1-5-94;
 Rule 92-5, Provisional License, 1-17-92;
 Rule 92-5, Provisional License, 9-9-92;
 Regulation 5, Temporary License, 1-5-94

History of Repealed Material:

16 NMAC 7.4, Requirements For Licensure - Repealed 12-24-99
 16.7.4 NMAC, Requirements For Licensure - Repealed 7-28-2005.

NEW MEXICO MASSAGE THERAPY BOARD

This is an amendment to Sections 1, 5, 6, 7, 8, 9, and 10; and adds a new Section, 11, to 16.7.5 NMAC, effective July 28, 2005.

16.7.5.1 ISSUING AGENCY: Regulation and Licensing Department, Massage Therapy Board [~~P.O. Box 25101, Santa Fe, New Mexico 87504, (505) 476-7090.~~]

16.7.5.5 EFFECTIVE DATE: December 24, 1999, unless a ~~[different]~~ later date is cited at the end of section ~~[or paragraph]~~.

16.7.5.6 OBJECTIVE: This part is to establish the minimum application requirements for massage therapy schools, ~~[mentorship training programs,]~~ and to establish the standards for registered massage therapy schools.

16.7.5.7 DEFINITIONS:
A. "Clinical practicum" means that a student is providing hands-on massage therapy to members of the public under the supervision of a registered massage therapy instructor. That instructor must be physically present on the premises for advice and assistance. The student must be enrolled at a registered massage therapy school or being trained by a registered massage therapy instructor. Clinical practicum does not include classroom practice.

B. "Related hands-on modalities" means manual therapies not directly defined as massage therapy.

C. "Massage therapy" means the assessment and treatment of soft tissues and their dysfunctions for therapeutic purposes primarily for comfort and relief of pain. It is a health care service that includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, stretching the tissue and exercising

the range of motion, and may include the use of oils, salt glows, hot or cold packs or hydrotherapy. Synonymous terms for massage therapy include massage, therapeutic massage, body massage, myomassage, bodywork, body rub or any derivation of those terms. Massage therapy is the deformation of soft tissues from more than one anatomical point by manual or mechanical means to accomplish homeostasis and/or pain relief in the tissues being deformed, as defined in the Massage Therapy Practice Act, NMSA 1978, Section 61-12C-3.E.

16.7.5.8 REQUIREMENTS FOR REGISTRATION: At the time of application the applicant will provide the following information to the board.

A. ~~[A complete application for registration, which must be legible, either printed in black ink or typed;] A completed, notarized, and legible application for licensure form, which must either be typed or printed in black ink.~~

(1) Incomplete application forms will be returned to the applicant for completion.

(2) Faxed applications and/or supporting documentation will not be accepted.

B. A curriculum ~~[which]~~ that must provide a massage therapy training program of a minimum of 650 hours. The curriculum will include:

(1) 125 hours minimum of anatomy & physiology ~~[(100 hours minimum)]~~, to include:

- (a) physiology
- (b) anatomy
- (c) kinesiology
- (d) 40 hours minimum of pathology

(2) 150 hours minimum of massage therapy ~~[(150 hours minimum)]~~ as defined in 16.7.5.7 NMAC.

(a) ~~[As defined in Section 61-12C-3.E of the Massage Therapy Practice Act to]~~ Shall include contraindications of massage therapy.

(b) A minimum of 100 hours of massage therapy education must be completed before a student may begin clinical practicum, as defined in ~~[Subsection C of 16.7.1.7 NMAC]~~ Subsection A of 16.7.5.7 NMAC.

(3) 50 hours minimum of general instruction ~~[(50 hours minimum)]~~, to include:

- (a) business
- (b) hydrotherapy
- (c) first aid - 4 hours
- (d) cardiopulmonary resuscitation - 4 hours
- (e) six (6) hours minimum of professional ethics
- (f) proof of current certification in basic life support accepted by the American

heart association or the American red cross.

(4) Electives ~~[(350 hours minimum,)]~~ may include:

- (a) additional massage therapy
- (b) related hands-on modalities
- (c) additional anatomy and physiology

(d) clinical practicum (not to exceed 150 hours)

- (e) counseling
- (f) herbology
- (g) homeopathy
- (h) nutrition
- (i) breathing and stretching techniques

(j) theory

(k) other, with prior board approval

C. Policies and procedures for board review, including but not limited to:

- (1) enrollment and financial;
- (2) cancellation/withdrawal and refund;
- (3) grading method;
- (4) attendance and make up;
- (5) students conduct and discipline;

- (6) dress code;
- (7) hygiene protocol; ~~[and]~~
- (8) draping procedures;
- (9) evaluation forms;
- (10) ~~[syllabus or]~~ curriculum;
- (11) advertising catalog;
- (12) list of text books for all courses; and

(13) qualifications of instructors not registered with the board as massage therapy instructors.

D. Massage therapy school registration fee in accordance with Subsection C of 16.7.3.8 NMAC.

16.7.5.9 INSPECTIONS OF SCHOOLS: The massage therapy school will be inspected by a board appointed inspector upon registration and thereafter as needed. Findings of the inspector will be reported to the board as part of the approval process.

A. Provisional registration: A provisional registration will be given to a new school until the school is operating and available for inspection.

B. Term of provisional registration: The provisional registration will be valid no longer than one year from the date of issuance.

C. Inspection criteria: The inspector will observe and report on the following:

- (1) cleanliness of premises and compliance with board policy;
- (2) state school registrations and instructor registrations and a file of their qualifications;
- (3) local business license posted;

(4) posted complaint policy with board address and phone number [~~posted~~] available;

- (5) student clinic log;
- (6) student attendance log;
- (7) student files; and
- (8) equipment and teaching aids.

16.7.5.10 STANDARDS FOR REGISTERED MASSAGE THERAPY SCHOOLS:

A. Every instructor teaching massage therapy as defined in Section 61-12C-3.E, of the Massage Therapy Practice Act, and Subsection [~~E of 16.7.1.7~~] C of 16.7.5.7 NMAC, must be registered as massage therapy instructors in accordance with 16.7.6 NMAC [~~and~~].

B. Qualifications of all instructors must be documented and maintained on the premises of the registered massage therapy school.

C. Massage therapy school registrations will be renewed yearly in accordance with 16.7.12.10 NMAC.

D. Registered massage therapy schools will comply with 16.7.2 NMAC, Professional Conduct.

E. Registered massage therapy schools may charge the public fees for room usage during the time the student is performing massage therapy during the clinical practicum training as defined in [~~Subsection C of 16.7.1.7~~] 16.7.5.7 NMAC.

16.7.5.11 CHANGES AFFECTING REGISTRATION: Massage therapy school registrations issued by the board are not transferable. Any change in the business designation of a massage therapy school may have the legal effect of attempting to transfer the registration and/or of operating without a legal registration.

A. Any of the following changes will require a new registration, and hence, a new application for registration with the board.

(1) Any change to the name of the school from that under which it was originally registered.

(a) The name of the massage therapy school must not tend to mislead the public, and shall not significantly resemble the business name of another registered massage therapy school.

(b) The name of the massage therapy school shall not be announced, used, or in any way be conveyed to the public until the new registration has been issued by the board.

(2) Any change of 50% or more of ownership of the stock in the corporation or of the shares in a partnership.

(3) Any change in the sole proprietorship.

B. A registered massage therapy school shall notify the board in

writing within thirty (30) days of any changes in instructional staff, curriculum, or other changes that may affect the programs offered, provided that the school shall not modify its curriculum to fall below the minimum requirements outlined in this Part 16.7.5 NMAC.

NEW MEXICO BOARD OF NURSING

16.12.5 NMAC, Medication Aides in Intermediate Care Facilities for the Mentally and Developmentally Disabled Medicaid Waiver Programs (filed 06-12-2001) repealed 08-16-05 and replaced by 16.12.5 NMAC, Medication Aides, effective 08-16-05.

16.12.7 NMAC, Trial Program for Medication Aides to Serve Persons in Licensed Nursing Facilities (filed 12-02-2003) repealed 08-16-05.

16.12.8 NMAC, Trial Program for Medication Aides to Serve Students in Public Schools (filed 12-02-2003) repealed 08-16-05.

NEW MEXICO BOARD OF NURSING

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 12 NURSING AND HEALTH CARE RELATED PROVIDERS PART 5 MEDICATION AIDES

16.12.5.1 ISSUING AGENCY: New Mexico Board of Nursing. [16.12.5.1 NMAC - Rp, 16.12.5.1 NMAC, 8-16-05]

16.12.5.2 SCOPE: The rule applies to medication aides and medication aide training programs which serve consumers in various health care and community settings except acute care facilities. [16.12.5.2 NMAC - Rp, 16.12.5.2 NMAC, 8-16-05]

16.12.5.3 STATUTORY AUTHORITY: Section 61-3-10-2 NMSA, permits the operation of a program for certification of medication aides and training programs. Section 61-3-10-2 NMSA directs the board of nursing to provide for the operation of a statewide program for certification of medication aides and training programs. Section 61-2-6 NMSA (1995) Pamphlet and the Uniform Licensing Act Section 61-1-1 NMSA, et. Seq. sets forth conditions for hearing and discipline. [16.12.5.3 NMAC - Rp, 16.12.5.3 NMAC,

08-16-05]

16.12.5.4 DURATION: Permanent. [16.12.5.4 NMAC - Rp, 16.12.5.4 NMAC, 8-16-05]

16.12.5.5 EFFECTIVE DATE: August 16, 2005, unless a later date is cited at the end of a section. [16.12.5.5 NMAC - Rp, 16.12.5.5 NMAC, 8-16-05]

16.12.5.6 OBJECTIVE: Pursuant to the Nursing Practice Act this part establishes the requirements for fees, examination, recertification, standards and functions, supervision/direction, and disciplinary action for medication aides who serve in multiple health care settings except acute care facilities. It also establishes requirements for approval of medication aide programs, minimum standards for medication aide programs, and the medication aide advisory committee for medication aides. [16.12.5.6 NMAC - Rp, 16.12.5.6 NMAC, 8-16-05]

16.12.5.7 DEFINITIONS:
A. "Administrator" means the operating officer of an agency. This includes, but is not limited to a licensed nursing facility or a school superintendent.

B. "Agency" means a board approved facility that utilized medication aides who serves consumers in various health care and community settings.

C. "Board" means the NM board of nursing.

D. "Certified medication aide (CMA)" means a person who receives specialized training preparing for a role of medication administration under the supervision/direction of a registered nurse, is permitted to administer medications as outlined in these rules.

E. "Consumer" means any person domiciled, residing or receiving care or treatment from a certified medication aide in an agency. This includes but is not limited to residents, clients or students.

F. "Contact hour" means a sixty (60) minute clock hour

G. "Continuing education (CE)" means a planned learning experience beyond a basic nursing or technician educational program. These experiences are designed to promote the development of knowledge, skills and attitudes for the enhancement of care to the consumer.

H. "Curriculum" means a detailed course outline, description, or syllabus, which includes objectives, content, teaching-learning activities and evaluation strategies.

I. "Clinical preceptor" means a licensed nurse at each participating nursing facility that is physically present and providing one (1) clinical preceptor to two (2) students with direct supervision.

J. "Delegation" means transferring to a competent individual the authority to perform a delegated nursing task in a selected situation. The licensed nurse retains accountability for the delegation.

K. "Medication aide advisory committee (MAAC)" means a board appointed advisory committee.

L. "Medications" means substances intended for use in diagnosis, care, mitigation, treatment or prevention of a disease.

M. "Medication aide program" means the formal program of study, certification, continuing education, standards of functions, disciplinary action, and minimum standards. A board approved nurse is required for the supervision and observation of the medication aide.

N. "Medication aide participant program" means any agency that utilizes certified medication aides and does not have a board-approved medication aide training program that prepare individuals for initial certification. A board approved nurse educator is required for supervision and observation of the medication aide.

O. "Multiple certification" means certified medication aides who have a current certificate in good standing and take the additional required training to work with different population specific care groups.

P. "NPA" means the Nursing Practice Act.

Q. "Nurse educator" means a registered nurse who is the program administrator for a specific agency that develops, coordinates and/or teaches the medication aide program or participant program. Retains ultimate responsibility for determining competency of medication aides.

R. "OTC medications" means medications can be purchased over-the-counter without a prescription. OTC medications must be stored in original manufacturer's packaging and affixed with the original manufacturer's labeling. Provider's orders with adequate instructions must be obtained prior to the administration of OTC medications by the certified medication aide.

S. "Population specific care" means the standards of care regarding medication administration requirements for specific consumer care groups. These groups include, but are not limited to intermediate care facilities for the mentally or developmentally disabled, long term care or schools.

T. "Properly labeled container" means a medication container which includes the name, address and telephone number of the pharmacy, the name of the prescriber, the full name of the resident, the date the order was filled, the brand and generic name of the drug, the dosage of the drug, strength of the drug, lot number, expiration date, adequate instructions for use and cautionary label as necessary.

U. "Prn" means instruction to give a medication as needed and requires judgment.

V. "Routine medication" means a medication for which the frequency of administration, amount, strength, and method of administration are specifically fixed as determined by the health care provider. Routine does not include medications for which the time of administration, the amount, the strength of dosage, the method of administration or the reason for administration is left to judgment or discretion.

W. "Standards of function" means a range of tasks/activities performed by certified medication aides for consumers who are stable and predictable, supervised by a licensed nurse who may need to limit the range of tasks based on the consumer's need or add via delegation.

X. "Supervision/direction" means initial verification of a person's knowledge and skills in the performance of a specific function and/or activity followed by periodic observation, direction and evaluation of that person's knowledge and skills as related to the specific function and/or activity.

Y. "ULA" means the Uniform Licensing Act.
[16.12.5.7 NMAC - Rp, 16.12.5.7 NMAC, 8-16-05]

16.12.5.8 FEES: Payment of fees will be accepted in the form specified by the board. Fees are not refundable.

A.	Initial certification by examination.....	\$ 45.00
B.	Re-examination.....	\$ 30.00
C.	Renewal of medication aide certificate.....	\$ 45.00
D.	Reactivation of a lapsed certificate.....	\$ 50.00
E.	Each additional population specific certificate.....	\$ 15.00
F.	Reactivation of a lapsed certificate following board action.....	\$ 60.00
G.	Initial training program review and approval.....	\$ 250.00
H.	Biennial training program evaluation.....	\$ 200.00
I.	Initial participant program review and approval.....	\$ 200.00
J.	Biennial participant program evaluation.....	\$ 175.00

[16.12.5.8 NMAC - Rp, 16.12.5.8 NMAC, 8-16-05]

16.12.5.9 CERTIFICATION BY EXAMINATION REQUIREMENTS FOR MEDICATION AIDES:

- A. Prerequisites:**
- (1) Be a minimum of eighteen (18) years of age.
 - (2) Be a high school graduate or complete the general education development course.
 - (3) Provide documentation of a minimum of 6 months health care experience working at the board approved agency within the last year.
 - (4) Successfully complete a board-approved program for the preparation of medication aides.
 - (5) Complete the required application form within the specified deadline and according to all policies.
 - (6) Provide proof of current CPR certification.
 - (7) Remit the required fee.
- B. Application and fee for the medication aide examination must be submitted to the board office at least thirty (30) days prior to the date of the examination.**
- (1) Any application containing fraudulent or misrepresented information could be the basis for denial of certification.
 - (2) Incomplete applications for certification become null and void one (1) year after date of last noted activity.
 - (3) Verification of successful completion of the medication aide program including date of completion must be received in the board office directly from the agency which provided the program, at least thirty (30) days prior to the exam date.
 - (4) An admission letter which includes the time, date and place of the examination will be issued to all eligible candidates.
 - (5) The reexamination fee will be charged for all failed examinations and non-excused applicants.
 - (6) If an applicant is scheduled to write the medication aide examination and is unable to attend, the applicant must notify the board no later than seven (7) days after the examination date. Lack of notification will result in a reexamination fee.

(7) Results of the examination shall be reported by mail only to the individual applicant no later than four (4) weeks following the examination date. Successful candidates shall be issued a certificate.

(8) Successful completion of the examination can be verified through the board's website.

C. Medication aide certification examination.

(1) The board shall develop and maintain the board-approved examination for medication aides.

(2) Board-approved examination centers shall comply with the security procedures developed by the board for distribution and administration of the examination.

(3) The MAAC shall set the examination dates.

(4) Applicants for certification as a medication aide shall be required to pass the medication aide examination with a minimum of 80% of the items answered correctly.

(5) Failed examinations must be repeated in their entirety on all subsequent attempts.

(6) Unsuccessful candidates may not repeat the examination for two (2) months.

(7) The examination may be taken a maximum of three times. After the third failure, the applicant must provide verification of repeating and completing the training portion of a board-approved medication aide program to be eligible to sit for the exam.

(8) Applicants observed giving and/or receiving unauthorized assistance during the writing of the examination shall be physically removed from the examination center and the individual(s) shall be referred to the board by a sworn complaint(s) filed by the examiner.

D. Requirements for medication aide recertification.

(1) Applicants for recertification as a medication aide must meet the continuing education and work requirements as stated in these rules.

(2) In order to meet the CE requirement for recertification as a medication aide, the applicant must provide evidence of having accrued sixteen (16) clock hours of CE within the two (2) years renewal period immediately preceding recertification.

(a) The agency shall grant opportunities for CE.

(b) Acceptable courses shall be those with topics related to medications and medication administration.

(c) CMAs with multiple certificates must accrue an additional two (2) hours of CE for each additional population specific consumer group certificate that they hold in order to recertify within the two

(2) year renewal period.

(d) CE requirement records are subject to audit by the board. Certificate holders may be subject to disciplinary action by the board if non compliant within sixty (60) days of the first notification of the audit.

(e) Failure to meet the CE requirements for recertification shall result in denial of recertification. Individuals who do not meet the continuing education requirement may not function as a medication aide until such time as the CE requirement has been met.

(3) In order to meet the work requirement for recertification as a medication aide, the applicant must administer medications a minimum of 100 hours during the two year period immediately preceding certification renewal.

(a) Work requirement records are subject to audit by the board. Certificate holders may be subject to disciplinary action by the board if non compliant within sixty (60) days of the first notification of the audit.

(b) Failure to meet the employment requirement shall result in denial of recertification.

(c) Individuals who have not met the employment requirement may not function as a medication aide, until a twenty-four (24) hour refresher course has been completed and a recertification application and fee have been submitted, processed, and accepted by the board. Completion of a refresher course shall meet both the employment and CE requirement for the renewal period.

(4) Refresher course.

(a) Completion of a minimum of twelve (12) hours of classroom studies and twelve (12) hours of supervised clinical practice in a board-approved medication aide program under the direction of the nurse educator to include authorized and prohibited functions of a medication aide.

(b) A passing score of 80% on the agency's final examination.

(c) Refresher course requirements are found in 16.12.5.20 NMAC.

(d) The nurse educator shall provide verification on agency letterhead to the board of nursing about the medication aide's completion of the refresher course before a new certificate is issued.

(e) Failure to meet any of the requirements for the refresher course shall require the individual to complete a board-approved training program curriculum in its entirety.

(5) Renewal applications may be mailed to the medication aide at least six (6) weeks prior to the end of the renewal month. Renewal applications are available on the board's website.

(a) Failure to receive the notifica-

tion for renewal shall not relieve the medication aide of the responsibility of renewing the certificate by the expiration date.

(b) If the certificate is not renewed by the end of the renewal month, the medication aide does not hold a valid certificate and shall not function as a medication aide in NM until the lapsed certificate has been reactivated.

(c) Renewal application and fee must be submitted, processed, and accepted by the board.

(6) Medication aides shall be required to complete the renewal process by the end of their renewal month every two years.

(7) Certificates are issued by mail only.

(8) Medication aides with expired certificates of over two (2) years duration shall complete the refresher course in order to be recertified.

(9) Remit the required fee.

E. Requirement for multiple certifications (see 16.12.5.21 NMAC).

(1) A CMA may request additional certification upon completion of twenty (20) hours of population specific care training. Population specific care requirements are found in Subsections F, G and H of 16.12.5.19 NMAC.

(2) Each additional certificate will require the completion of twenty (20) hours population specific care training.

(3) A certificate indicating the new certifications shall be issued upon written verification from the nurse educator according to 16.12.5.21 NMAC and will expire on the date of the initial certification as a medication aide.

(4) Renewal of multiple certifications shall thereafter fall on the same date.

(5) Remit the required fee.

F. Individuals who have practiced as medication aides in other states or who have been certified in another state may apply for certification in the state of New Mexico if they:

(1) submit written verification of completion of medication aide training program in another state directly to the board by the training program;

(2) submit written verification of 100 hours as a medication aide during the 24 month period immediately preceding request to become certified in New Mexico directly to the board by their employer;

(3) complete the medication aide training program's medication administration procedures/ skills list;

(4) pass the training program's final examination with a score of 80% or better;

(5) provide written verification by the board approved agency, on agency letterhead, of successful completion of 20 hours of supervised clinical practice, skills

list, and the final examination results;

(6) successfully complete the board's medication aide certification examination with a score of 80% or better;

(a) medication aides who have practiced in another state or are certified in another state may practice as medication aides with a temporary certificate once they have completed the requirements listed in Paragraphs 1 through 6 of Subsection F of 16.12.5.9 NMAC;

(b) upon completion of requirements identified in Paragraphs (1) through (6) of Subsection F of 16.12.5.9 NMAC the medication aide must apply to take the next immediately available board approved medication aide certification examination; an initial certification by examination application with fee must be submitted, processed and accepted by the board according to examination required deadline;

(c) upon successful completion of the examination with a score of 80% or higher a certificate will be mailed to the medication aide;

(d) failure to successfully pass the medication aide certification examination shall require the medication aide to complete a board approved training program curriculum in its entirety.

[16.12.5.9 NMAC - Rp, 16.12.5.9 NMAC, 8-16-05]

16.12.5.10 STANDARDS OF FUNCTIONS FOR THE MEDICATION AIDE:

A. The purpose of this section is to establish standards for the supervision/direction of medication aides; to identify basic authorized functions for the medication aide and; to identify prohibited functions for the medication aide.

B. Authorized functions of the medication aide - medication aides who have been certified by the NM board of nursing may under the supervision/direction of a registered nurse administer routine medications. **EXCEPTION:** Medication aides can not administer intramuscular, intravenous, subcutaneous and nasogastric medications.

(1) The medications must have been ordered by a person authorized in the state to prescribe medications.

(2) The medication must be prepared by the person who will administer it.

(a) **EXCEPTION:** School medication aides may administer auto injector epinephrine to school staff and students during school hours in an emergency life threatening situation.

(b) School medication aides must receive training in the administration of auto injector epinephrine by the nurse educator. The nurse educator must document the training.

(3) Medication administration

errors must immediately be reported to the registered nurse by the medication aide.

(4) Adverse reactions must immediately be reported to the registered nurse by the medication aide.

(5) Administer PRN medications only after contacting and receiving authorization from licensed nurse to administer the PRN medication. Authorization is required for each individual instance of PRN administration of a medication.

C. Prohibited functions of the medication aide:

(1) shall not administer medication by intramuscular, intravenous, subcutaneous or nasogastric routes;

(2) shall not take medication orders;

(3) shall not alter medication dosage as ordered by the prescriber;

(4) shall not perform any function or service for consumers for which a nursing license is required under the nurse practice act;

(5) shall not administer medication without the supervision/direction of a registered nurse;

(6) shall not administer medications in any agency other than a board approved agency.

D. Supervision/direction.

(1) A nurse educator shall periodically provide supervision/direction to the certified medication aide administering medication (s) as follows:

(a) instruction regarding medication, dose, time, route, method of administration, documentation, and consumer observation;

(b) a registered nurse shall be available 24 hours a day (on call) to supervise medication aides as determined by the agency work hours;

(c) develop and institute a yearly performance evaluation of each CMA; the performance evaluation shall be based upon the standards listed in these rules; the performance evaluation shall also include a review of the number of medication errors committed by the CMA.

(2) A nurse educator shall monitor an agency's medication aides as directed by the board to include the following:

(a) review all medication administration errors and incident reports filed since the nurse educator's last review;

(b) meet with each medication aide to review and discuss problems, difficulties, or irregularities in administering medications and to provide appropriate instruction;

(c) prepare and submit to the board of nursing a written, signed report of findings, observations, problems, irregularities, safety violations and recommendations in medication administration.

(3) The registered nurse may del-

egate to the licensed practical nurse the supervision/direction of the medication aide.

[16.12.5.10 NMAC - Rp, 16.12.5.10 NMAC, 8-16-05]

16.12.5.11 DISCIPLINARY ACTION:

A. The board shall conduct hearings upon charges relating to discipline of a CMA or the denial, suspension or revocation of a medication aide certificate in accordance with the ULA [61-3-10, NMSA, 1978] for the purpose of protecting the public.

B. Grounds for action.

(1) Incapable of functioning as a medication aide which is defined to include, but not limited to, the following:

(a) inability to function with reasonable skill and safety as a medication aide for any reason including, but not limited to, the use of drugs, alcohol or controlled substances which could impair judgment;

(b) performance of unsafe or unacceptable care of consumers in the administration of medications or failure to conform to the essential standards and prevailing standards of medication aides, in which actual injury need not be established;

(c) omitting deliberately and failing to record information regarding medications and medication administration which could be relevant to the consumer's care;

(d) demonstrating a lack of competence through repeated medication errors;

(2) Incapable of functioning as a responsible member of the health care team which is defined to include, but not limited to, the following:

(a) falsifying or altering consumer records or personnel records for the purpose of reflecting incorrect or incomplete information;

(b) misappropriation of money, drugs or property;

(c) obtaining or attempting to obtain any fee for consumer services for one's self or for another through fraud, misrepresentation or deceit;

(d) obtaining, possessing, administering or furnishing prescription drugs to any person, including, but not limited to one's self, except as directed by a person authorized by law to prescribe;

(e) failure to follow established procedures and documentation regarding controlled substances;

(f) obtaining or attempting to obtain a certificate to function as a medication aide for one's self or for another through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the certification by examination or recertification process;

(g) failure to report a medication aide, who is suspected of violating the NPA,

administrative rules and/or 16.12.5 NMAC;

(h) exceeding the scope of functions of a medication aide;

(i) intentionally abusing, neglecting or exploiting a consumer;

(j) intentionally engaging in sexual contact toward or with a consumer in a manner that is commonly recognized as outside of the medication aide's scope of tasks;

(k) administering medications without the supervision/direction of a registered nurse;

(l) conviction of a felony.

C. Disciplinary proceedings - disciplinary proceedings are conducted in accordance with the administrative rules of the New Mexico board of nursing and pursuant to the uniform licensing act. [16.12.5.11 NMAC - Rp, 16.12.5.11 NMAC, 8-16-05]

16.12.5.12 APPROVAL OF MEDICATION AIDE PROGRAMS:

A. The purpose of the rules, related to medication aide programs, is to set reasonable requirements that protect the health and well-being of the consumers that receive services from medication aides in board approved programs. NPA [Section 61-3-10.2]. The objectives include promoting safe and effective care of consumers receiving medications from CMAs; establishing minimum standards for the evaluation and approval of medication aide programs; facilitating continued approval and improvement of the medication aide programs; granting recognition and approval that a medication aide program is meeting the required minimum standards; and establishing eligibility of graduates of the training portion of a medication aide program to apply for certification by examination.

B. Medication aide participant programs shall meet all criteria for approval except those that are specific to the education/training components of the medication aide training programs that prepare individuals for initial certification as medication aides. Participant programs are subject to denial or withdrawal of program approval, program visits, and shall notify the board of nursing regarding changes in internal administrative or organization plan of the agency, and change in the nurse educator responsible for the supervision of medication aide program.

C. All new medication aide training and medication aide participant program approved nurse educators shall participate in an orientation that will be presented by board staff.

D. Medication aide participant programs who wish to utilize certified medication aides may contract with a board-approved medication aide training program to provide the classroom portion of the edu-

cation program.

(1) Upon completion of classroom study, the nurse educator of the training program will verify to the nurse educator of the participant program that the individual has successfully completed and passed this course of study.

(2) The participant program shall have a board-approved registered nurse educator to supervise and observe the clinical practice experience in the participating agency.

(3) The participant program nurse educator will verify that the individual has successfully completed and passed this part of the program.

(4) The board-approved nurse educator at the participant program shall submit the required documentation to the board of nursing verifying completion of the training and an application to take the certification examination will be submitted by the candidate.

(5) The participant program is responsible for the continued direction and supervision of the medication aide program as provided in these rules.

[16.12.5.12 NMAC - Rp, 16.12.5.12 NMAC, 8-16-05]

16.12.5.13 TYPES OF APPROVAL:

A. Initial program approval - any agency wishing to obtain approval of a medication aide program shall submit, in writing, an application for approval to the board's MAAC. Incomplete applications will not be reviewed. The MAAC shall evaluate the application and make a recommendation to the board regarding the approval of the medication aide program. The board of nursing shall approve medication aide programs at regularly scheduled board meetings.

(1) The initial application for approval shall be consistent with the minimum standards for medication aide programs and shall contain the following:

(a) objectives of the medication aide program;

(b) organizational chart;

(c) name of the administrator and the director of nursing;

(d) name and resume of the nurse educator(s) and other faculty;

(e) program curriculum;

(f) number of hours to be spent on each topic;

(g) evaluation tools that demonstrate written and clinical proficiency to include a quality assurance program;

(h) policies and procedures that outline the scope of function of medication aide in the board approved agency;

(i) job description of medication aide and;

(j) required fee.

(2) Representatives of the medication aide program may be scheduled to meet with the MAAC to present the proposed program.

(a) Upon the MAAC's approval of the application, a recommendation for approval shall be made to the board.

(b) Applications not approved will be returned and may be resubmitted for approval when complete and deficiencies have been corrected.

(3) After receipt of the MAAC's report and recommendation(s), the board may:

(a) grant approval of a program;

(b) defer a decision regarding approval;

(c) deny approval;

(d) direct staff to make a pre-approval evaluation visit.

B. Full approval, for a period not to exceed two (2) years, shall be granted to medication aide programs if, in the opinion of the board, the program demonstrates compliance with 16.12.5.17 NMAC, minimum standards for medication aide programs.

(1) To ensure continued compliance with 16.12.5.17 NMAC, minimum standards for medication aide programs, medication aide programs shall be evaluated through a written report monthly or as determined by the board.

(a) During the period of full approval, the MAAC will determine annual medication aide program site visits to evaluate compliance with these rules.

(b) A representative of the medication aide program may request or be requested to meet with the MAAC to clarify and respond to questions regarding the evaluation.

(c) After the MAAC's review of the evaluation, a report shall be made to the board regarding continuation of the medication aide program's approval.

(d) The board is the final authority regarding continued approval or probation.

(2) Prior to the expiration of full approval, an approval visit shall be made by at least two (2) representatives appointed by the board. The report of the visit shall be submitted to the MAAC for review and recommendation to the board regarding approval.

C. Probationary approval.

(1) A medication aide program may be given probationary approval when there is evidence of:

(a) substantial non-compliance with the minimum standards for medication aide programs;

(b) continuous disruptions in retaining qualified nurse educators;

(c) noncompliance with the medication aide program's stated philosophy,

objectives, policies, and curriculum resulting in unsatisfactory student achievement;

(d) failure of 80% of first time writers of the examination to correctly answer at least 80% of the items on the examination over a one year period;

(e) failure to provide clinical experience and/or supervision necessary to meet the objectives of the medication aide program;

(f) substantial non-compliance with any portion of these rules.

(2) The medication aide program shall be advised, in writing, of the reason(s) for probationary approval.

(3) The board shall designate a reasonable time period, not to exceed one year, in which the medication aide program must correct deficiencies and meet the minimum standards for approval.

(4) The official of the medication aide program may request, in writing, a hearing before the board.

(a) The hearing may be requested at any time prior to the end of the probationary period.

(b) Hearings shall be scheduled in conjunction with a regularly scheduled meeting of the board.

(c) The information and data presented at the hearing shall be evaluated by the board. Resulting from the evaluation, the board may determine changes in the stipulations required during the period of probation.

(d) Prior to the end of the period of probationary approval, an approval visit shall be made.

(e) Progress reports shall be submitted to the MAAC as directed by the board.

(f) After review of any progress report, the board may request representatives of the medication aide program to meet with the MAAC for consultation and assistance in correcting the deficiencies.

(5) All decisions of the board and/or recommendations of the MAAC shall be communicated, in writing, to the medication aide program officials.

(6) Probationary approval is not renewable. Failure to correct deficiencies will result in withdrawal of approval.

[16.12.5.13 NMAC - Rp, 16.12.5.13 NMAC, 8-16-05]

16.12.5.14 DENIAL OR WITHDRAWAL OF PROGRAM APPROVAL

A. The board may deny approval of a medication aide program when a program fails to provide evidence of compliance with the minimum standards for medication aide programs or any other portion of these rules.

B. The board may withdraw approval of a medication aide program if the program fails to correct deficiencies

resulting in non-compliance with the minimum standards for medication aide programs or any other portion of these rules.

C. When the board denies or withdraws approval, a written notice detailing the reasons shall be provided to the officials of the medication aide program.

D. The medication aide program shall be removed from the list of board approval medication aide programs. [16.12.5.14 NMAC - Rp, 16.12.5.14 NMAC, 8-16-05]

16.12.5.15 PROGRAM VISITS:

A. Types:

(1) Approval visit: visit made to a medication aide program by representatives of the board for the purpose of determining board approval.

(2) Evaluation visit: visit made to medication aide program by board representatives at the request of the board for the purpose of evaluating a program's progress and approval status.

(3) Consultation visit: visit made to the medication aide program by the board representatives at the request of the program officials.

(4) Course visit: visit which may be done at anytime to a participating medication aide program.

B. The board reserves the right to make unannounced visits.

C. A report of the visit made by representative(s) of the board shall be provided to the medication aide program, MAAC, and the board for final disposition regarding approval status.

D. The survey team for visits shall be comprised of at least one professional board staff member and one member of the MAAC.

E. The agency shall remit the required fee prior to the visit. [16.12.5.15 NMAC - Rp, 16.12.5.15 NMAC, 8-16-05]

16.12.5.16 CHANGES REQUIRING NOTIFICATION TO THE ADVISORY COMMITTEE OR THE BOARD FOR APPROVAL:

A. Once a medication aide program has been granted approval by the board, reapproval shall not be required each time a course is offered so long as the course is not changed.

B. Program changes requiring notification to the advisory committee and/or board for approval.

(1) Major curriculum changes and/or reorganization of the curriculum.

(2) Major changes in the program's objectives or goals.

(3) Changes in the required didactic and/or clinical hours.

(4) Changes in the internal,

administrative or organizational plan of the agency which affects the medication aide program.

(5) Changes in the licensure status of the agency.

(6) Changes in the medication aide program nurse educator.

C. Procedure for requesting board approval for program changes.

(1) The MAAC shall be notified, in writing, of changes in the program requiring board approval. The MAAC shall present the changes and recommendations to the board of nursing at a regularly scheduled meeting.

(2) The notification shall include:
(a) a proposed change(s);
(b) rationale for the proposed change(s);

(c) anticipated effect to the current program;

(d) timetable for implementation of the proposed change(s);

(e) presentation of the differences between the current system and proposed change(s);

(f) method of evaluation which will be used to determine the effect of the changes and;

(g) the required fee. [16.12.5.16 NMAC - Rp, 16.12.5.16 NMAC, 8-16-05]

16.12.5.17 MINIMUM STANDARDS FOR MEDICATION AIDE PROGRAMS:

A. Objectives - there shall be written objectives for the medication aide program which serve as the basis for the planning, implementation, and evaluation of the program.

(1) The objectives shall be developed by the medication aide program nurse educator and shall describe the competencies of the medication aide and shall include:

(a) principles of safety in the administration of medication;

(b) six (6) rights in preparing and administering drugs;

(c) methods commonly used to safeguard drugs;

(d) process of infection control;

(e) terms related to administration of medications;

(f) abbreviations commonly used when prescribing and administering drugs;

(g) uses, dosages, and necessary precautions in administering drugs;

(h) ability to correctly calculate dosages;

(i) appropriately reporting changes in a consumer's condition;

(j) importance of remaining with consumer while he/she ingest medication;

(k) accurate documentation of medication administration;

(l) legal parameters of the medication aide role;

(m) authorized and prohibited functions;

(n) responsibility for own actions;

(o) maintenance of confidential information;

(p) appropriate skills in medication administration and;

(q) understanding of the consumer population.

(2) The objectives shall be written clearly, and shall identify expected competencies of the beginning medication aide.

(3) The objectives shall be reviewed annually and revised as necessary by the nurse educator.

B. Curriculum.

(1) The curriculum shall be developed, implemented, evaluated by the medication aide program nurse educator within the framework of the objectives.

(2) The curriculum shall extend over a period of time sufficient to provide essential, sequenced learning experiences which enable a student to develop competence consistent with principles of learning and sound educational practice.

(a) There shall be a minimum of sixty (60) hours of classroom study of which forty (40) hours is the medication administration curriculum and twenty (20) hours of population specific care curriculum.

(b) There shall be a minimum of twenty (20) hours of supervised clinical experience. The nurse educator retains accountability and determines the need for additional clinical experience hours.

(c) Supervised clinical experience shall provide opportunities for the application of theory and for the achievement of stated objectives in a population specific care setting and shall include clinical learning experiences to develop the skills required by the individual to function safely as a medication aide. A nurse educator or clinical preceptor must be physically present and accessible to the student in the population specific care area.

(3) The curriculum shall provide, at a minimum, instruction in the subject areas listed in 16.12.5.19 NMAC.

(4) The nurse educator shall develop a written systematic plan for curriculum and program evaluation.

C. Administration and organization.

(1) There shall be a current organizational chart showing the position of the medication aide program within the overall structure of the agency, clearly indicating the lines of authority and responsibility and channels of communication.

(2) The administration of the agency shall provide support for the medication aide program to obtain the resources

needed for the program to achieve its purpose.

(3) There shall be a nurse educator to administer the program that shall be responsible for:

(a) the development, implementation and evaluation of the medication aide program;

(b) creation and maintenance of an environment conducive to teaching and learning;

(c) liaison with other personnel;

(d) arrangement for direct supervision of the student's clinical experience by a licensed nurse;

(e) provision for a system of permanent records, and records and reports essential to the operation of the medication aide program;

(f) communication with the board of nursing.

D. Faculty.

(1) Each program shall have a nurse educator that is a registered nurse and holds a current license to practice nursing in NM or a current compact state license.

(2) The nurse educator shall have at least two (2) years of recent, within the last five (5) years, nursing practice experience.

(3) The nurse educator shall select the clinical experience for students.

(4) The nurse educator or clinical preceptor must be physically present in the agency while students are engaged in clinical experience.

(5) The ratio of faculty to students, during supervised clinical experience shall not be more than one (1) faculty to two (2) students.

(6) The nurse educator shall be responsible for instruction and evaluation of student performance, termination, grading and progression.

(7) Other health care providers, in addition to the nurse educator, may be appropriate faculty for classroom instruction such as physicians, nurse practitioners and pharmacists.

E. Records.

(1) The nurse educator's record shall include:

(a) verification of current licensure as a registered nurse in New Mexico or compact state;

(b) continuing education record;

(c) resume;

(d) teaching experience;

(e) verification of board of nursing orientation for nurse educators;

(f) board of nursing appointment letter to position of nurse educator.

(2) The student's record shall include:

(a) admission date;

(b) testing and evaluation records;

(c) classroom and clinical attendance;

(d) final course grade;

(e) copy of application for certification examination;

(f) continuing education attendance records;

(g) current CPR certification.

(3) The clinical preceptor's record shall include:

(a) verification of current licensure as a registered or licensed practical nurse in NM or compact state;

(b) clinical teaching experience;

(c) verification of orientation for clinical preceptors conducted by nurse educator.

[16.12.5.17 NMAC - Rp, 16.12.5.17 NMAC, 8-16-05]

16.12.5.18 MEDICATION AIDE PROGRAM ADVISORY COMMITTEE

A. Composition and appointment of committee members - The board shall appoint a minimum of a five (5) member voluntary advisory committee which shall be composed of at least three (3) registered nurses and other representatives. The committee shall include one member not employed by a participating agency.

(1) Agencies shall be requested to submit nominations for committee appointments.

(2) There shall be no more than one representative from any one agency serving on the advisory committee at any one time.

(3) Members of the committee shall serve for staggered terms of two (2) years, and may be reappointed to the advisory committee.

B. Responsibility of advisory committee

(1) The advisory committee shall review applications for initial approval, program evaluations, and changes in medication aide programs, and shall submit reports and recommendations to the board.

(2) The advisory committee shall provide consultation to medication aide programs as requested and/or directed by the board.

(3) Members of the advisory committee shall serve as survey visitors to medication aide programs for approval, consultation and evaluation visits.

[16.12.5.18 NMAC - Rp, 16.12.5.18 NMAC, 8-16-05]

16.12.5.19 MEDICATION ADMINISTRATION CURRICULUM SUBJECT AREAS

A. Overview of the medication aide role and responsibilities

(1) Philosophy and objectives of the medication aide training programs to

include:

- (a) federal, state and local regulations;
- (b) nurse's role and medication aide role including the meaning of delegation;
- (c) standards of function for medication aides;
- (d) certification expectations and requirements.
- (2) Orientation to the medication aide position including:
 - (a) review of job specifications;
 - (b) expectation and responsibilities;
 - (c) role of the health care team and the CMA:
 - (i) roles and contributions of other health team members;
 - (ii) observation and reporting;
 - (iii) health team meetings.
- B.** Legal roles and responsibilities of medication administration including:
 - (1) consumer's rights;
 - (2) negligence and malpractice;
 - (3) ethical issues relating to consumers including but not limited to:
 - (a) confidentiality;
 - (b) OSHA;
 - (4) documentation;
 - (5) identification of medication errors and required reporting or errors to the nurse.
- C.** Fundamentals of medication administration.
 - (1) Terminology.
 - (2) Definitions/abbreviations.
 - (3) Six (6) rights of medication administration including:
 - (a) observations while administering medications;
 - (b) follow-up after administering medications;
 - (c) consumer refusal of medication;
 - (d) OTC and prn medications;
 - (e) controlled substances.
 - (4) Drug classifications/identification.
 - (5) Desired drug effects.
 - (6) Drug side effects and contraindications.
 - (7) Drug interactions shall include but not limited to:
 - (a) food and herb;
 - (b) synergistic;
 - (c) antagonistic;
 - (d) additive.
 - (8) Allergic reactions/adverse reactions.
 - (9) Utilization of available resources of medication information shall include but not limited to:
 - (a) supervising nurse;

- (b) written materials;
- (c) internet;
- (d) pharmacist;
- (e) poison control.
- (10) Drug nomenclature including:
 - (a) trade;
 - (b) generic;
 - (c) over-the-counter;
- (11) Methods of distribution and storage shall include but not limited to:
 - (a) unit dose;
 - (b) medication carts;
 - (c) bubble packs;
 - (d) prescription bottles;
 - (e) others.
- D.** Basic introduction to anatomy and physiology including:
 - (1) structure;
 - (2) function;
 - (3) common health care problems/concerns;
 - (4) disease processes.
- E.** First aid and emergency procedures including review of:
 - (1) cardiac and respiratory emergencies;
 - (2) choking victims;
 - (3) first aid.
- F. M e d i c a t i o n**
Administration Procedures/Skills Check List.
- (1) Review the six (6) rights for each skill.
- (2) Hand washing for each skill.
- (3) Administering:
 - (a) oral tablets/capsules;
 - (b) liquids;
 - (c) powdered medications;
 - (d) ophthalmic ointments;
 - (e) ear medications;
 - (f) instilling liquid eye medications;
 - (g) nasal medications/dropper and atomizer;
 - (h) vaginal and rectal creams and suppositories;
 - (i) topical agents;
 - (j) metered dose inhalers;
 - (k) gastrostomy and jejunostomy medications;
 - (l) nebulizer medications.
- (4) Crushing tablets.
- (5) Applying:
 - (a) lotion;
 - (b) liniment;
 - (c) ointment/cream;
 - (d) transdermal patches.
- (6) Taking and recording vital signs as needed.
- (7) Documentation.
- (8) Medication administration situations requiring notification of the nurse:
 - (a) consumer medical/mental health condition change;
 - (b) discontinued medication;
 - (c) medications appear to be con-

taminated;

- (d) OTC or p.r.n. medication is requested;
- (e) disposing of medication.
- G.** Orientation to population specific care including but not limited to:
 - (1) specific health care concerns for the population being served;
 - (2) life developmental stages ;
 - (3) types of consumers specific to the agency.
- H.** Population specific drug classifications and its relationship to body systems.
 - (1) Content shall include but is not limited to:
 - (a) basic review of anatomy and physiology;
 - (b) common medical disorders as related to the specific population;
 - (c) common medications given to the specific population including:
 - (i) drugs including generic and trade names;
 - (ii) dosage range;
 - (iii) action;
 - (iv) major side effects;
 - (v) contraindications.
 - (2) Body systems.
 - (3) Nutrition/hydration/herbal supplements.
 - I.** CMAs who work in long term care facilities, completed a training program prior to January 1, 2005, and were not trained in medication administration via gastrostomy tubes, jejunostomy tubes and nebulizers must complete an additional two hours of instruction regarding these specific medication administration skills.
 - (1) Required documentation on agency letterhead shall include verification of training completed in the above areas.
 - (2) Training must be completed with required documentation to the board of nursing by December 31, 2005.
 - (3) CMAs without documentation to the board of nursing by December 31, 2005 shall have their certificate removed and will not be allowed to remain as certified medication aides. After January 1, 2006, CMAs who have not completed the additional training will be required to complete the refresher course and provide verification to the board of nursing (see Subparagraphs (a) through (e) of Paragraph 4 of Subsection C of 16.12.5.9 NMAC)
 - J.** Caring for consumers with special needs - If a consumer population requires the care of a certified nursing assistant, individuals enrolling in the course provide documentation of completion of a state approved nursing assistant course. [16.12.5.19 NMAC - Rp, 16.12.5.20 NMAC, 8-16-05]

16.12.5.20 REFRESHER COURSE REQUIREMENTS

A. Authorized functions of the certified medication aide (see Subsection B of 16.12.5.10 NMAC).

B. Prohibited functions of the certified medication aide (see Subsection C of 16.12.5.10 NMAC).

C. Medication administration procedures (see Subsection F of 16.12.5.19 NMAC) including location of agency resource materials and documentation. Any additional training and procedures to safely administer medications as determined by the agency nurse educator.

D. Medication review as determined by agency nurse educator. [16.12.5.20 NMAC - Rp, 16.12.5.21 NMAC, 8-16-05]

16.12.5.21 MULTIPLE CERTIFICATION REQUIREMENTS

A. CMAs who have a current active certificate and are requesting to work with different population specific care groups shall:

(1) Obtain the required additional twenty (20) hours of population specific medication administration training as outlined in Subsections F, G and H of 16.12.5.19 NMAC.

(2) Training shall be from a board approved nurse educator.

(3) The nurse educator will provide training in medication administration skills as written in Subsection F of 16.12.5.19 NMAC.

(4) The nurse educator will ensure that the certified medication aide is trained in agency policy as related to medication administration.

(5) Medication classification review as determined by the agency nurse educator.

(6) Upon completion of training the nurse educator will notify the board on agency letterhead stating the individual had completed the additional training and meets the criteria for the additional certificate.

(7) Certificate will be mailed to the certified medication aide.

B. Renewal of certificates will fall on the expiration date of the initial certification date.

C. Remit the required fee. [16.12.5.21 NMAC - N, 8-16-05]

HISTORY OF 16.12.5 NMAC:**Pre-NMAC History:**

The material in this part was derived from that previously filed with the state records center & archives under: BON MANUAL 91-1, New Mexico Board of Nursing Rules and Regulations for Medications Aides in Intermediate Care Facilities for the Mentally Retarded (filed 10-3-91).

History of the Repealed Material:

16.12.5 NMAC, Medication Aides in Intermediate Care Facilities for the Mentally and Developmentally Disabled Medicaid Waiver Programs (filed 6-12-01), repealed 8-16-05.

Other History:

16 NMAC 12.5, Developmentally Disabled Medicaid Waiver Medication Aides, effective 2-15-96.

16 NMAC 12.5, Developmentally Disabled Medicaid Waiver Medication Aides (filed 1-26-96) and that applicable portion of BON MANUAL 91-1, New Mexico Board of Nursing Rules and Regulations for Medications Aides in Intermediate Care Facilities for the Mentally Retarded (filed 10-3-91) were merged into part number 16 NMAC 12.5 and renamed as Medication Aides in Intermediate Care Facilities for the Mentally and Developmentally Disabled Medicaid Waiver Programs, effective 1-1-98.

16 NMAC 12.5, Medication Aides in Intermediate Care Facilities for the Mentally and Developmentally Disabled Medicaid Waiver Programs (filed 12-10-97) was renumbered, reformatted, and amended as 16.12.5 NMAC, Medication Aides in Intermediate Care Facilities for the Mentally and Developmentally Disabled Medicaid Waiver Programs, effective 7-30-01.

16.12.5 NMAC, Medication Aides in Intermediate Care Facilities for the Mentally and Developmentally Disabled Medicaid Waiver Programs (filed 6-12-01) was replaced by 16.12.5 NMAC, Medication Aides, effective 8-16-05.

NEW MEXICO PERSONNEL BOARD

This is an amendment to 1.7.1 NMAC, Sections 7, 8, 12, 13, and 15, effective 7-15-05.

1.7.1.7 DEFINITIONS:

A. "Agency" means any state department, bureau, division, branch or administrative group which is under the same employer.

~~**B.** "Agency Utilization" means agency specific applications of a position that may determine where the position is classified in a technical occupation group (TOG) or a manager category (MC). Factors such as organizational structure, as well as agency specific requirements, duties, and impact/liability issues affect the actual function, impact, and accountability of the TOG or MC at the agency level.~~

C. "Anniversary date" means the date of appointment or reemployment and is changed as of the date of promotion, demotion, reduction, or change to a different [technical occupation group, tech-

ical occupation group role, or manager category] classification in the same pay band or pay opportunity. The director shall resolve disputes over how an anniversary date is derived.

~~**D.** "Applicant" means any person, who has applied for a position in the classified service.~~

~~**E.** "Authorized agent" means a certified representative to whom the director has delegated specific approval and oversight authority for their specific agency and shares responsibility and accountability with the state personnel office for the overall integrity of the personnel system.]~~

F. "Board" means the personnel board.

G. "Break in employment" means any period of separation of at least one workday of not being [on the agency's payroll] in the classified service.

H. "Candidate" means any person who is on the employment list for a position.

I. "Classified service" means all positions in the executive branch of state government which are not exempt by law.

J. "Classification" means a job that is occupationally and quantifiably distinct.

K. "Compa-ratio" means pay expressed as a percentage of the midpoint of a pay band or pay opportunity.

L. "Demotion" means an involuntary downward change for disciplinary reasons with a reduction in pay within an employee's pay band or pay opportunity or from a classified position in one pay band to a classified position in a lower pay band with a reduction in pay, or from a classified position in one manager category to a classified position in a lower manager category with a reduction in pay, or from a manager category to a technical occupation group and/or removal of supervisory responsibilities and pay for disciplinary reasons.

M. "Director" means the state personnel director.

N. "Dismissal" means the involuntary separation from employment for disciplinary reasons.

O. "Diversity in the workplace" means an acknowledgment of all people equally, regardless of their differences. Agencies' management of diversity will ensure that efforts are made to adapt to and accept the importance of all individuals who fall within a group identified for protection under equal employment laws and regulations.

P. "Employee" means a person in a position in the classified service. [note: For purposes of brevity and consistency, this definition differs from NMSA 1978, Section 10-9-3-(I) but in no way con-

fers a greater right on certain persons than contemplated by *Section 10-9-3(I)*.

[P]Q. "Employer" means any authority having power to fill positions in an agency.

[Q]P. "Employment list" means the list of names, certified by the director, from which a candidate may be selected for appointment.

[R]Q. "Established requirements" means a position's individual job related qualification standards established by the agency and the office in accordance with the specific requirements and/or needs of the position and are subject to review by the director.

[S]R. "Examination" means quantitative competitive assessment of qualifications, knowledge, skills, fitness and abilities of an applicant including tests.

[F]S. "Exempt service" means all positions in the executive branch of state government exempt from the classified service by law.

[U]T. "Field of work" means the nature of work performed and the skills and competencies required for success. It is used to describe occupation groups for manager categories and for determination of pay opportunities.

[V]U. "Filed" means received by the office [~~or authorized agent~~].

[W]V. "First line supervisor" means an employee in a technical occupation group who devotes a substantial amount of work time to supervisory duties, customarily and regularly directs the work of two or more other employees and has the authority in the interest of the employer to hire, promote, evaluate the performance of, or discipline other employees or to recommend such actions effectively but does not include an individual who performs merely routine, incidental or clerical duties, or who occasionally assumes supervisory or directory roles or whose duties are substantially similar to those of subordinates, and does not include lead employees, employees who participate in peer review or occasional employee evaluation programs.

[X]W. "Involuntary separation" means involuntary removal of an employee from the classified service without prejudice as provided for in *1.7.10.13 NMAC*.

[Y]X. "Job size" means the levels of responsibility in relation to roles within the same technical occupation group, differences in know-how and accountability in the manager categories and agency utilization of the technical occupation group role or manager category. The job size continuum corresponds to the distinctions in relative worth made by the hay guide chart factor system. It also represents a continuum of career growth within a given occupation.

Y. "Line authority" means the assignment of activities and/or approval authority in a manner that does not relinquish the director's administrative oversight or authority.

Z. "Manager" means an employee in a [~~manager category~~] position that manages internal staff and/or external staff, and who plans, organizes, integrates, coordinates, and controls the activities of others. A manager also is held accountable for the performance of people, services, systems, programs and resources and can change their direction, objectives and assignments to meet performance and business needs.

AA. "Manager category" means the five manager categories which encompass the full range of management jobs in the classified service.

BB. "Midpoint" means the salary midway between the minimum and maximum pay rates of a pay band or pay opportunity that represents the competitive market rate for jobs of the same relative worth in the relevant labor market(s). Midpoint represents a compa-ratio value of 1.00 or 100% percent.

CC. "Minimum qualifications" means statutory requirements as required by law, which shall be used to reject applicants.

DD. "Office" means the state personnel office.

EE. "Pay band" means the range of pay rates, from minimum to maximum for a technical occupation group role.

FF. "Pay opportunity" means the range of pay rates established for a field of work within a manager category.

GG. "Probationer" means an employee in the classified service who has not completed the one-year probationary period.

HH. "Promotion" means the change of an employee from a classified position in one pay band to a classified position in a higher pay band or from a classified position in one manager category to a classified position in a higher manager category or from a technical occupation group to a manager category.

II. "Reduction" means a voluntary change without prejudice, within an employee's pay band or pay opportunity, or from a classified position in one pay band to a classified position in a lower pay band or from a classified position in one manager category to a classified position in a lower manager category or from a manager category to a technical occupation group, or voluntary removal of supervisory responsibilities and pay.

JJ. "Relation by blood or marriage within the third degree" includes spouse, domestic partner, parent, mother-in-law, father-in-law, step-parent, children,

domestic partner children, son-in-law, daughter-in-law, step-child, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, grandparent, grandchild, uncle, aunt, nephew, niece, great-grand-child, and great-grandparent.

KK. "Resignation" means the voluntary separation of an employee from the classified service.

LL. "Rules" means the rules and regulations of the personnel board.

MM. "Status" means all of the rights and privileges of an appointment.

NN. "Suspension" means an involuntary leave of absence without pay for disciplinary reasons for a period not to exceed 30 calendar days or a temporary reduction in pay for a period not to exceed 160 consecutive work hours.

OO. "Technical occupation group" means (*based on the standard occupation classification system devised at the direction of congress by the federal bureau of labor statistics to describe and sort, by occupation, all work performed in the United States*) [~~that each technical occupation group represents~~] the continuum of non-managerial jobs within an occupation, from the most basic to the most advanced. It does not mean any given agency will have the full range of the technical occupation group for any given job.

PP. "Technical occupation group role" means a representation of the continuum of job levels within a technical occupation group that an agency utilizes to carry out a part of its mission and contains relative complexity (know-how, problem solving, and accountability) factors which are measured by the hay system to determine job size and relative worth.

QQ. "Transfer" means the movement of an employee from one position to another in the same pay band or pay opportunity without a break in employment.

RR. "Without prejudice" means a declaration that no rights or privileges of the employee concerned are to be considered as thereby waived or lost except in so far as may be expressly conceded or decided.

SS. "Writing or written" means in the written form and/or an alternative format, where deemed appropriate, and when requested.

[1.7.1.7 NMAC - Rp, 1 NMAC 7.1.7, 07/07/01; A, 11/14/02; A, 10/30/03; A, 7-15-05]

1.7.1.8 A P P R O V A L AUTHORITY:

A. Pursuant to the provision of *NMSA 1978, Section 10-9-12(A)* the director shall supervise all administrative and technical personnel activities of the state.

(1) The director, pursuant to

direction from the board, will establish ~~the annual~~ a quality assurance review program, and will ensure that a copy of the program is provided to each agency. The board will review the quality assurance review program on an annual basis.

(2) The director shall ensure that all agencies are reviewed ~~[at least biennially]~~, as outlined in the quality assurance review program, which will enable the director the ability to supervise all administrative and technical personnel activities of the state and ensure compliance with the rules. The director shall submit the findings to the board.

B. If it is established that an agency has violated the rules or their agency's policies which require Office approval, and they are given adequate opportunity to correct violations and fail to do so, the director may suspend the agency's right to approve such actions as provided in the rules and all such actions will require director approval until the director rescinds the suspension.

C. ~~[The Director may delegate specific authority(ies) to Authorized Agents as provided for in these Rules.]~~ The director reserves the right to assign line authority under these rules so long as such line authority maintains the director's administrative oversight and authority. Such decisions are subject to the board's review. Such ~~[Authorized Agents shall derive their]~~ authority shall be derived from the director through written instruction which shall specify the responsibility(ies) and accountability(ies) which are being delegated.

D. The director, with the approval of the board, shall establish criteria governing the requirements which must be met to achieve and maintain ~~[authorized agent]~~ line authority status.

E. The director may modify or withdraw ~~[authorized agent]~~ line authority status. Such decisions are subject to the board's review.

[1.7.1.8 NMAC - Rp, 1 NMAC 7.1.8, 07/07/01; A, 11/14/02; A, 7-15-05]

1.7.1.12 EMPLOYMENT RECORDS:

A. The director and agencies shall maintain a record of each employee's employment history in accordance with operational necessity and applicable state and federal law requirements. Employees shall have access to their own file. Employment-related confidential records shall be available for inspection by agencies during the process of interviewing for employment when the employee has provided a signed release. No materials shall be placed in an employee's employment history without providing the employee with a copy. Employees may submit writ-

ten rebuttal to any material placed in their employment history. Agencies shall transfer the complete record of an employee's employment history upon inter-agency transfer.

B. Employment records, except confidential records, are subject to inspection by the general public. Confidential records may be inspected with the written permission of the employee or pursuant to a lawful court order.

C. For the purpose of inspection of public records under *Subsection B of 1.7.1.12 NMAC*, the following material shall be regarded as confidential: records and documentation pertaining to physical or mental examinations and medical treatment of persons, including those confined to any institution; records and documentation maintained for purposes of the *Americans with Disabilities Act [42 U.S.C. Section 101 et seq.]*; letters of reference concerning employment, licensing, or permits; records and documentation containing matters of opinion; documents concerning infractions and disciplinary actions; performance appraisals; opinions as to whether a person should be re-employed; college transcripts; military discharge, if other than honorable; information on the race, color, religion, sex, national origin, political affiliation, age, and disability of employees; and laboratory reports or test results generated according to the provisions of *1.7.8 NMAC*.

[1.7.1.12 NMAC - Rp, 1 NMAC 7.1.12, 07/07/01; A, 11/14/02; A, 7-15-05]

1.7.1.13 SETTLEMENT AGREEMENTS: Any settlement agreement reached by an agency and an employee to resolve a matter between them, that incorporates provisions covered by these rules, must conform to the provisions of these rules and have the prior approval of the director ~~[or Authorized Agent]~~. The director may approve a settlement agreement, which does not conform to the provisions of these rules if, in the judgment of the director, the settlement is in the best interests of the state of New Mexico with the joint approval of the cabinet secretary of the department of finance and administration signifying budget availability.

[1.7.1.13 NMAC - Rp, 1 NMAC 7.1.13, 07/07/01, A, 7-15-05]

1.7.1.15 TRAINING AND DEVELOPMENT: ~~[A.]~~ The director shall establish, pursuant to direction from the board, and maintain training and development guidelines and will ensure that a copy of the guidelines is provided to each agency. The board will review the training and development guidelines on an annual basis.

B. ~~A new employee in a Manager Category must complete a Board-~~

~~approved core course of study within nine months of appointment. Current managers, as of the effective date of this Rule, must complete the approved course of study within eighteen months. All Manager Category position employees must attend refresher training every four years.~~

~~C. Agencies must submit a plan to enhance and promote the development of managers' competencies annually. The plan must include implementation steps, content, and anticipated resources for two years. The plan shall include content to enhance manager awareness and address Diversity in the workplace, such as an awareness of the benefits and competencies that persons with mental and/or physical disabilities can contribute to the efficient operation of state government.~~

~~D. Agencies must submit for the Director's approval the plan and content of supervisory training for First Line Supervisors, regardless of the Technical Occupation Group(s) they supervise. First Line Supervisors must attend an agency sponsored orientation and training for their role, including opportunities to enhance First Line Supervisor awareness and address Diversity in the workplace, such as an awareness of the benefits and competencies that persons with mental and/or physical disabilities can contribute to the efficient operation of state government. Current First Line Supervisors must attend such training within one year of the effective date of this Rule. Agencies may require employees in a Manager Category to also attend supervisory training.~~

~~E. Agencies must submit a plan to enhance and promote the development of supervisory behavioral competencies as defined by the agency and described in the Performance Appraisal Document (PAD). The plan must include implementation steps, content, and anticipated resources for two years. The plan shall include content to enhance First Line Supervisor awareness and address Diversity in the workplace, such as an awareness of the benefits and competencies that persons with mental and/or physical disabilities can contribute to the efficient operation of state government.~~

~~F. First Line Supervisors must attend agency sponsored refresher training every four years in such position. Agencies may require employees in a Manager Category to also attend agency sponsored supervisory refresher training.~~

~~G. Agencies must provide to each new employee a general overview of state government employment, including specific agency expectations and policies, within one month of appointment. An expanded orientation to employment in state government shall be provided to each new employee within three months of~~

appointment. Implementation, content, and resources shall be contained in the agency plan submitted to the Director.

~~H.~~ Agencies may request, from the Director, exception to ~~Subsections C through G of 1.7.1.15 NMAC.~~ The request, which may among other things be for budget limitations, will include an addendum to their plan that identifies the cause for the request, steps necessary to comply with the Rule, and a timeline for the necessary steps to be completed. All approved requests will be reviewed annually by the Board.

~~I.~~ Agencies shall collect Director required information outlined in ~~Subsection A of 1.7.1.15 NMAC~~ and costs related to Manager Category Training and Development, and report it to the Office annually.

~~J.~~ Agencies shall collect Director required information outlined in ~~Subsection A of 1.7.1.15 NMAC~~ and costs related to Technical Occupation Group Training and Development, and report it to the Office annually.]

[1.7.1.15 NMAC - N, 07/07/01; A, 11/14/02; A, 7-15-05]

NEW MEXICO PERSONNEL BOARD

This is an amendment to 1.7.2 NMAC, Section 8, effective 7-15-05.

1.7.2.8 PROBATION:

A. A probationary period of one year is required of all employees unless otherwise provided for by these rules.

B. The probationary period includes all continuous employment in the classified service except temporary service-

C. A break in employment of at least one work day or more will require an employee to serve another probationary period upon rehire into the classified service with the exception of those employees returned to work under 1.7.10.10 or 1.7.10.14 NMAC.

~~C]D.~~ Any full-time continuous leave, except for military leave, taken during the probationary period exceeding 30 calendar days shall extend the probationary period by the number of days of leave that exceeds 30 calendar days.

~~D]E.~~ A probationer may have their appointment expired for non-disciplinary reasons with a minimum of 24 hours written notice without right of appeal to the board. Such employees shall be advised in writing of the reason(s) for the expiration of appointment.

[1.7.2.8 NMAC - Rp, 1 NMAC 7.2.8, 07/07/01; A, 11/14/02; A, 7-15-05]

NEW MEXICO PERSONNEL BOARD

This is an amendment to 1.7.3 NMAC, Sections 7, 8, 9, and 10, effective 7-15-05.

1.7.3.7 DEFINITIONS:

A. "Classification plan" means a document developed by the director and [reviewed annually] approved by the board, that [provides guidance to agencies on the application of the Rules and serves as a tool for effective classification management. The Classification Plan describes the Board's classification philosophy and is the foundation for ensuring consistent application of the philosophy.] describes the board's classification philosophy and is the foundation for ensuring consistent application of the philosophy.

~~B.~~ "Competency" means any motivation, attitude, behavior, or other personal characteristic that is essential to job performance, predicts success in performing the job, and differentiates performance. A competency is HOW a person performs their job successfully. Competencies are sets of behavior that top performers exhibit much more consistently than average or poor performers.

C. "Family Group" means a group of jobs tied together by either responsibilities, distinguishing characteristics, knowledge, skills, abilities or competencies.

~~D.~~ "Manager Category Group Family Group Description" means a written statement of responsibilities, distinguishing characteristics, and competencies required to perform the work of the Manager Category.

~~E.~~ "Technical Occupation Group Family Group Description" means a written statement of responsibilities, distinguishing characteristics, knowledge, skills, abilities, and competencies characteristic of each Role in an occupation group and required to perform the work of the occupation group Roles.

F. "Working Title" means a position title established by an agency which represents the job duties and, as appropriate, the professional background and relevant statutory requirements applicable to the job.]

[1.7.3.7 NMAC - Rp, 1 NMAC 7.3.7, 07/07/01; A, 11/14/02; A, 7-15-05]

1.7.3.8 CLASSIFICATION PLAN:

A. The director, pursuant to direction from the board, shall establish, maintain and, in conjunction with state agencies, administer a classification plan for all positions throughout the classified service.

~~B.~~ Technical Occupation Groups and Manager Categories shall reflect quantifiably distinct jobs, shall be classified separately from one another and shall encompass broad Family Groups which meet the needs of all agencies, while keeping the number to a minimum.

~~C]B.~~ The board will review, approve and adopt [all] new [Technical Occupation Group Family Group Descriptions and Manager Category Family Group] or revised classification [D] descriptions.

~~D]C.~~ The director may authorize the deletion of unused [Family Group D] classification [D] descriptions and revisions to [Family Group] classification [D] descriptions if the revision does not necessitate a study.

~~E]D.~~ The director shall provide affected parties an opportunity to comment on the creation, revision, and deletion of [Family Group] classification [D] descriptions prior to implementation.

E. Agencies may request classification reviews, classification studies and/or classification re-evaluations.

~~F.~~ Competencies:

~~(1)~~ Competencies required for the State of New Mexico's classified service will be tied to all positions.

~~(2)~~ Competencies are representative of the behaviors needed to meet performance expectations and goals.

~~(3)~~ Agencies shall develop policies governing their use of competencies; such policies shall be submitted to the Director for approval and reviewed by the Board.

~~G.~~ Technical Occupation Group:

~~(1)~~ Technical Occupation Groups shall contain a Basic Role, Operational Role, and an Advanced Role representative of the continuum of job levels within an occupation family.

~~(2)~~ Every non-managerial position in an agency will fit into one of the three Roles within its designated occupation group.

~~(3)~~ Supervision in a Technical Occupation Group will be a job duty associated with a Technical Occupation Group Role rather than a separate supervisory occupation group or role.

~~(4)~~ First Line Supervisors in a Technical Occupation Group Role may be required to supervise employees in a different Technical Occupation Group.

~~H.~~ Manager Category:

~~(1)~~ All jobs represented in a specific Manager Category are sufficiently similar in job size.

~~(2)~~ The Manager Categories are representative of distinct jobs and are not a career ladder.]

[1.7.3.8 NMAC - Rp, 1 NMAC 7.3.8,

07/07/01; A, 11/14/02; A, 7-15-05]

1.7.3.9 POSITION ASSIGNMENT:

A. The director, in conjunction with state agencies, shall ensure that each position in the classified service is assigned to the [~~Technical Occupation Group Role or the Manager Category~~] classification that best represents the duties assigned by the employer [~~according to job size and agency utilization~~] and performed by the employee. [~~The Authorized Agent may authorize the proper Technical Occupation Group Role or the Manager Category of positions in that agency.~~]

B. When a filled position is assigned a [~~Technical Occupation Group Role or Manager Category~~] classification with a lower pay band or pay opportunity, in accordance with the provisions *Subsection A of 1.7.3.9 NMAC*, the employee may elect to take a reduction in accordance with *Subsection II of 1.7.1.7 NMAC*, or overfill the position in their current [~~Technical Occupation Group Role or Manager Category~~] classification.

C. A position assignment decision may be appealed to the director through the agency's chain-of-command. Appeals to the director must be in writing and include the agency's analysis of the reasons for the appeal. The director's decision is final and binding. [~~Prior to the end of each calendar year, the Director will report these decisions to the Board.~~]

[1.7.3.9 NMAC - Rp, 1 NMAC 7.3.9, 07/07/01; A, 11/14/02; A, 7-15-05]

1.7.3.10 IMPLEMENTATION OF [~~TECHNICAL OCCUPATION GROUP OR MANAGER CATEGORY~~] CLASSIFICATION STUDY RESULTS:

On a date determined by the director, employees affected by a [~~Technical Occupation Group or Manager Category~~] classification study shall be assigned to the resulting new [~~Technical Occupation Group or Manager Category~~] classification which best represents the job performed without having to meet the established requirements, unless minimum qualifications are required by law.

[1.7.3.10 NMAC - Rp, 1 NMAC 7.3.10, 07/07/01; A, 7-15-05]

NEW MEXICO PERSONNEL BOARD

This is an amendment to 1.7.4 NMAC, Sections 7, 8, 9, 12, 13, 14, 18 and 19, effective 7-15-05.

1.7.4.7 DEFINITIONS:

A. "Alternative pay band" means the range of pay rates, from the min-

imum to the maximum for a technical occupation group role based on the current market rate for benchmark jobs in the relevant labor market(s).

B. "Appropriate placement" means [~~a value, established or anticipated, of an individual employee's contribution relative to the value of the full scope of duties and responsibilities of the job as represented by the midpoint pay of a Pay Band or Pay Opportunity.~~] those elements to be considered in determining pay upon hire, promotion, transfer or reduction including the employee's education, experience, training, certification, licensure, internal pay equity, budgetary availability and, when known and applicable, employee performance.

C. "Comparison market" means an identified group of employers for which similar jobs can be recognized for the primary purpose of obtaining information that can be used to assess how competitive employee pay levels are relative to the market.

D. "Contributor proficiency zones" means subdivisions of the pay band that designate the employee's contribution in their job role. These proficiency zones are characterized as associate, independent and principal zones.

E. "In pay band adjustment" means movement within a pay band for demonstrated performance, skill or competency development, and/or internal alignment, which allows agency management to provide salary growth within a pay band.

F. "In pay opportunity adjustment" means movement within a pay opportunity for a field of work within a manager category for demonstrated performance, skill or competency development, and/or internal alignment, which allows agency management flexibility to provide salary growth within a pay opportunity.

G. "Internal alignment" means an adjustment that addresses pay issues involving the proximity of one employee's salary to the salaries of others in the same agency and technical occupation group role or manager category who have comparable levels of training, education and experience, duties and responsibilities, performance, knowledge, skills, abilities, and competencies, and who are appropriately placed.

H. "Manager category span of pay" means a range of pay from the minimum rate for a manager category up to the maximum rate of pay for a manager category regardless of pay opportunities within the manager category.

I. "Pay opportunity alignment" means the range of pay rates, from the minimum to the maximum for a field of work within a manager category based on

the current market rate for benchmark jobs in the relevant labor market(s).

J. "Pay plan" means a document developed by the director and [~~reviewed~~] approved annually by the board, that [~~provides guidance to agencies on the application of the Rules and serves as a tool for effective compensation management.~~ The Pay Plan describes the Board's compensation philosophy and it is the foundation for ensuring consistent application of the philosophy.] describes the board's compensation philosophy and it is the foundation for ensuring consistent application of the philosophy.

K. "Total compensation" means all forms of cash compensation and the dollar value of the employer-sponsored benefit.

L. "Workweek" means a period of time which begins at 12:01 a.m. Saturday, and ends at 12:00 midnight, the following Friday. The director may approve alternative workweeks.

[1.7.4.7 NMAC - Rp, 1.7.4.7 NMAC, 11/14/02; A, 7-15-05]

1.7.4.8 PAY PLAN:

A. The director, pursuant to the direction of the board, shall establish, maintain and, in conjunction with state agencies, administer a pay plan for all positions throughout the classified service, which shall include the pertinent factors that should be considered by managers for determining and justifying appropriate placement within a pay band or pay opportunity.

B. Agencies shall develop [~~and file~~] and utilize a compensation policy that is in compliance with *1.7.4 NMAC*. [~~Subsequent revisions to the compensation policy shall be filed director with the Office prior to adoption of the policy.~~] Agency compensation policies will be [~~reviewed by the Board on an annual basis~~] filed with, and reviewed by, the director. Subsequent revisions to the compensation policy shall be filed with the office prior to adoption of the policy.

C. The board shall adopt a recognized method of job evaluation to uniformly and consistently establish the value of each [~~Technical Occupation Group Role or Manager Category~~] level.

D. The director shall conduct an annual compensation survey that includes [~~off~~] total compensation. The comparison market shall be comprised of private and public entities within the state of New Mexico, regional state government employers, and central, western and southwestern state government employers. The board or director may authorize additional comparison markets when deemed necessary and appropriate.

E. Prior to the end of each calendar year, the director shall submit a

compensation report that includes a summary of the status of the classified pay system and the results of the annual compensation survey that includes [of] total compensation [and options for maintaining and enhancing the pay plan,] to the board. The board shall [adopt] review, adopt and submit [recommendations] this report to the governor and the legislative finance committee [based upon the report].

[1.7.4.8 NMAC - Rp, 1.7.4.8 NMAC, 11/14/02; A, 7-15-05]

1.7.4.9 ASSIGNMENT OF PAY BANDS AND MANAGER CATEGORY SPANS OF PAY: ~~[The Director shall appoint a pool of job evaluation committee members trained in the method of job evaluation, adopted in Subsection C of 1.7.4.8 NMAC which shall evaluate jobs to determine the relative value of each Technical Occupation Group Role and Manager Category in the classified service. A committee shall meet when necessary to evaluate new or revised descriptions for a Technical Occupation Group Role and/or Manager Category or to consider agency appeals for re-evaluation in accordance with Subsection B of 1.7.4.9 NMAC. Job Evaluation Committee members shall serve at the discretion of the Director.] The director shall appoint a job evaluation committee consisting of 10 members. The director will provide training in the job evaluation and measurement process. The committee shall apply the job evaluation and measurement process to all newly created or revised classifications.~~

A. The committee shall submit the results of the job evaluation(s) as recommendations to the director. The director shall review the results and convert the total job evaluation points to the appropriate pay band or manager category assignment. The director shall submit the pay band or manager category span of pay assignment results to the board for adoption [and Pay Band or Manager Category Span of Pay assignment].

B. Agencies may request a re-evaluation of a ~~[Technical Occupation Group Role or Manager Category]~~ classification which, based upon their analysis, is inappropriately valued. Re-evaluations may be conducted no more than once every 24 months unless otherwise approved by the director.

~~[C. The Committee shall submit the results of job re-evaluation(s) as recommendations to the Director. The Director shall submit the results to the Board for adoption and Pay Band or Manager Category Span of Pay assignment.]~~

[1.7.4.9 NMAC - Rp, 1.7.4.8.F NMAC, 11/14/02; A, 7-15-05]

1.7.4.12 SALARY SCHEDULES:

A. Based on the pay plan, the director shall develop and maintain salary schedules for the classified service that shall consist of pay bands and pay opportunities.

B. No employee in the classified service shall be paid a salary less than the minimum nor greater than the maximum of their designated pay band or pay opportunity unless otherwise authorized by the director, or provided for in these rules, or the employee has been transferred into the classified service by statute, executive order, or order of a court of competent jurisdiction. ~~[Prior to the end of each calendar year, the Director shall submit a report to the Board outlining those employees paid a salary less than the minimum or greater than the maximum of their designated Pay Band or Pay Opportunity.]~~

~~C. The Director, pursuant to the direction of the Board, shall adjust the salary schedules to address the external competitiveness of the service and/or other concerns. Such salary schedule adjustments may result in employees temporarily falling below the minimum or above the maximum of their Pay Band or Pay Opportunity upon implementation. The pay of employees who would be above the maximum of the Pay Band or Pay Opportunity shall not be reduced. Employees whose Pay Band or Pay Opportunity is adjusted upward or downward shall retain their current salary.]~~

C. The director, pursuant to the direction of the board, shall adjust the salary schedules to address the external competitiveness of the service and/or other concerns. Employees whose pay band or pay opportunity is adjusted upward or downward shall retain their current salary. Such salary schedule adjustments may result in employees temporarily falling below the minimum or above the maximum of their pay band or pay opportunity upon implementation.

(1) The pay of employees who would be above the maximum of the pay band or pay opportunity shall not be reduced.

(2) The pay of employees who fall below the minimum of their pay band or pay opportunity shall be raised to the minimum unless the director confirms that the agency does not have budget availability. In these instances, agencies shall raise the pay of employees to the minimum of their pay band or pay opportunity within six months of the effective date of the salary schedule adjustment. The director may grant an extension to the six month time period upon submission and approval of a plan by the agency to raise the pay of employees to the minimum of their pay band or pay opportunity.

D. An employee's placement in the pay band or pay opportunity will be identified by a compa-ratio value.

[1.7.4.12 NMAC - Rp, 1.7.4.10 NMAC, 11/14/02; A, 7-15-05]

1.7.4.13 ADMINISTRATION OF THE SALARY SCHEDULES:

A. Entrance Salary:

(1) Upon entrance to a technical occupation group role, a newly-appointed employee's salary, subject to budget availability, should reflect appropriate placement within the pay band. Any entrance salary in the principal contributor zone must receive approval from the director ~~[or authorized agent]~~ prior to appointment.

(2) Upon entrance to a manager category, a newly-appointed employee's salary, subject to budget availability, should reflect appropriate placement within the pay opportunity. Any entrance salary which exceeds a compa-ratio of 100.0% must receive approval from the director ~~[or authorized agent]~~ prior to appointment.

B. [Pay for Performance Increase] Legislative Authorized Salary Increase:

(1) Subject to specific statutory authorization for each state fiscal year ~~[and subject to agency budget availability]~~, employees ~~[who fulfill established performance criteria shall]~~ may be eligible for a salary increase within their assigned pay band or pay opportunity.

(2) Employees with a salary at or above the maximum of the position's pay band or pay opportunity shall not be eligible for an increase unless authorized by statute.

~~[(3) Employees in a technical occupation group role or manager category with a higher pay band or pay opportunity than that assigned to the position shall not be eligible for a pay for performance increase unless the employee's technical occupation group role or manager category is adjusted to the technical occupation group role or manager category assigned to the position before the end of that state fiscal year. Thereafter, the employee shall be eligible for a pay for performance increase during the first full pay period following the adjustment provided that the employee's salary does not equal or exceed the maximum value of the new pay band or pay opportunity.]~~

C. Salary Upon In Pay Band or In Pay Opportunity Adjustment:

Upon in pay band adjustment or in pay opportunity salary adjustment, subject to director approval, budget availability and reflective of appropriate placement, agencies may increase an employee's salary up to ten percent (10%) during a fiscal year. An employee may receive more than one adjustment within a fiscal year provided the salary increases do not exceed more than

ten percent (10%) and the employee's base salary does not exceed the maximum of the assigned pay band or pay opportunity. ~~[An employee's salary being adjusted in accordance with **Subsection I of 1.7.4.13 NMAC** may be increased, subject to budget availability and board approval, greater than ten percent (10%) to bring the employee's salary to the minimum of the pay band or pay opportunity.]~~ When reviewing requests for in pay band or in pay opportunity adjustments the director will take into consideration those instances where the requesting agency has employees with a current rate of pay that falls below the minimum of their pay band or pay opportunity.

D. Salary Upon

Promotion: Upon promotion, an employee's salary subject to budget availability, should reflect appropriate placement within the pay band or pay opportunity. A salary increase of less than five percent (5%) or greater than fifteen percent (15%) shall require approval of the director ~~[or authorized agent]~~. A salary increase greater than fifteen percent (15%) to bring an employee's salary to the minimum of the pay band or pay opportunity or less than five percent (5%) to prevent an employee's salary from exceeding the maximum of the pay band or pay opportunity does not require the approval of the director ~~[or authorized agent]~~. The salary of a promoted employee shall be in accordance with **Subsection B of 1.7.4.12 NMAC**.

E. Salary Upon

Demotion: Upon demotion, an employee's salary shall be decreased to an hourly rate of pay which does not result in more than a fifteen percent (15%) decrease from the previous salary unless a greater decrease is required to bring the salary to the maximum of the new pay band or pay opportunity or the decrease is being made in accordance with **Paragraph (2) of Subsection F of 1.7.4.13 NMAC**.

F. Pay Allowance for Performing First Line Supervisor Duties:

(1) An agency shall grant a pay allowance to an employee in a technical occupation group who accepts and consistently performs additional duties which are characteristic of a first line supervisor. The amount of the pay allowance shall reflect the supervisory responsibilities which transcend the technical responsibilities inherent in the technical occupation ~~[role]~~ group and shall be between 0% and 20% above the employee's base pay rate.

(2) When the ~~[first line]~~ supervisor duties are no longer being performed, the agency shall revert the employee to the hourly rate of pay held prior to granting the pay allowance, plus any authorized pay increases.

(3) Agencies shall require that a form, established by the director, be signed

by all employees at the time of acceptance of a pay allowance evidencing their agreement to the terms and conditions of the pay allowance.

~~[(4) The director shall submit to the board a quarterly report on pay allowance.]~~

G. Salary Upon

Suspension: The salary of an employee who has been suspended in accordance with **1.7.11 NMAC** may be temporarily reduced by up to fifteen percent (15%) for a period not to exceed 160 consecutive work hours.

H. Salary Upon Transfer:

(1) The salary of employees who are transferring in accordance with the provisions of **Subsection QQ of 1.7.1.7 NMAC** shall remain the same unless the director approves a higher or lower value.

(2) Employees shall be compensated, in accordance with agency policy, for all accumulated leave, other than sick, annual, or personal leave, prior to inter-agency transfer.

I. Salary Upon Pay

Band or Pay Opportunity Change: When a change of pay band or pay opportunity is authorized in accordance with the provisions of **1.7.4.9 NMAC, 1.7.4.10 NMAC, 1.7.4.11 NMAC and/or 1.7.4.12 NMAC** the salaries of affected employees shall be determined in accordance with **Subsection C of 1.7.4.12 NMAC**. Employees whose pay band or pay opportunity is adjusted upward or downward shall retain their current salary in the new pay band or pay opportunity. Employees' salaries may be addressed through in pay band or in pay opportunity adjustment unless otherwise allowed by statute.

J. Salary Upon

Reduction: The salary of employees who take a reduction may be reduced by up to fifteen percent (15%) unless the reduction is made in accordance with **Paragraph (2) of Subsection F of 1.7.4.13 NMAC**. An employee's salary should reflect appropriate placement within the pay band or pay opportunity. The director ~~[or authorized agent]~~ may approve a salary reduction greater than fifteen percent (15%) due to special circumstances that are justified in writing.

K. Salary Upon Return

To Work Or Reemployment: The salary of former employees who are returned to work or re-employed in accordance with the provisions of **1.7.10.10 NMAC, 1.7.10.11 NMAC, 1.7.10.12 NMAC, or 1.7.10.14 NMAC** shall not exceed the hourly pay rate held at the time of separation unless a higher salary is necessary to bring the employee to the minimum of the pay band.

L. Salary Upon

Temporary Promotion: Pay for a temporary promotion under **Subsection E of 1.7.5.12 NMAC**, will be administered in

accordance with **Subsection D of 1.7.4.13 NMAC**. The agency shall discontinue the temporary promotion increase when the temporary conditions cease to exist or at the end of the 12 month period, whichever occurs first.

M. Temporary Salary

Increase: An agency may, with the approval of the director ~~[or authorized agent]~~, grant a temporary salary increase of up to fifteen (15%), for a period not to exceed 1 year, from the effective date of the salary increase, for temporarily accepting and consistently performing additional duties which are characteristic of ~~[technical occupation group assigned to a higher pay band or of a manager category assigned to a higher manager category span of pay, or of a manager category if employee holds a position assigned to a technical occupation group role.]~~ a job requiring greater responsibility/accountability and/or a higher valued job. The director may approve temporary salary increases above the maximum of the employee's current ~~[technical occupation group role/manager category,]~~ pay band or pay opportunity. ~~[; provided that the increase does not exceed the maximum of the higher pay band or pay opportunity assigned to the additional duties of the technical occupation group /manager category characteristics or fifteen (15%).]~~ The agency shall discontinue the temporary salary increase when the temporary conditions cease to exist or at the end of the 12 month period, whichever occurs first.

N. Shift Pay:

Employees shall be paid, in addition to their regular pay rate, no less than \$0.60 per hour for each hour of regularly scheduled work between 6:00 p.m. and 7:00 a.m. Agencies shall notify the director of any change in this rate.

O. Salary Adjustment to

Minimum: An employee whose salary falls below the minimum of the pay band or pay opportunity will be adjusted in accordance with **Paragraph (2) of Sub-Section C of 1.7.4.12 NMAC**.

[1.7.4.13 NMAC - Rp, 1.7.4.11 NMAC, 11/14/02; A, 10/30/03; A, 7-15-05]

1.7.4.14 PAY DIFFERENTIALS:

A. Temporary

Recruitment Differential: The director ~~[or Authorized Agent]~~ may authorize, in writing, a pay differential of up to fifteen percent (15%) of the position's pay band or pay opportunity midpoint to an employee who fills a position which has been documented as critical to the effective operation of the agency and has been demonstrated and documented to be a severe recruitment problem for the agency.

(1) A differential authorized under this provision shall be tied to the position

and may not transfer with the employee should the employee leave that position. Payment of this differential shall be separate from the employee's base salary. Agencies shall demonstrate to the office, at least biennially, the circumstances which justified the differential to determine the necessity for its continuance.

(2) A differential of more than fifteen percent (15%) of midpoint or a total salary (base pay plus differential amount) that exceeds the maximum of the pay band or pay opportunity may be authorized if approved by the director.

B. Temporary Retention Differential: The director [~~or Authorized Agent~~] may authorize, in writing, a pay differential of up to twenty percent (20%) of the position's pay band or pay opportunity midpoint upon receipt of documentation indicating that the employee is in a position which has been designated as essential to the effective operation of the agency and the employee's departure would disrupt the agency's ability to fulfill its mission or the employee is in a position which has a documented history of severe retention difficulties.

(1) The agency must provide a detailed plan that outlines how they intend to resolve the problems associated with the retention difficulties.

(2) A differential authorized under this provision shall not exceed one calendar year under any circumstances and shall not result in a total (base pay plus differential amount) salary which exceeds the maximum of the pay band or pay opportunity without the approval of the director.

(3) Payment of this differential shall be separate from the employee's base salary.

(4) The retention differential shall be tied to the position, may not be in conjunction with a temporary recruitment differential, and may not transfer with the employee should the employee leave that position.

C. Out-of-State Differential: The director [~~or Authorized Agent~~] may authorize an out-of-state differential to an employee up to the maximum of the pay band or pay opportunity if the agency is able to substantiate that the employee's current salary is insufficient to adequately pay an employee while working or residing out of state. Payment of this differential should be separate from the employee's base salary. A total salary (base pay plus differential amount) that exceeds the maximum of the pay band or pay opportunity may be authorized if approved by the director.

[1.7.4.14 NMAC - Rp, 1.7.4.12 NMAC, 11/14/02; A, 7-15-05]

1.7.4.18

HOLIDAY PAY:

A. When an authorized holiday falls on an employee's regularly scheduled work day and the employee is not required to work, the employee shall be paid at their hourly rate of pay for the number of hours they would have normally worked.

B. Full-time employees, whose normal work schedule does not include the day observed as a holiday, shall be entitled to time off equal to the employee's normal workday.

C. Employees required to work on the day a holiday is observed, shall be compensated at two and one-half times their hourly rate of pay for all hours actually worked on the holiday. Such compensation shall be in the form of straight time cash payment for all hours actually worked and additional premium compensation, at the agency's discretion, of either compensatory time off or cash payment at one and one-half times the usual hourly rate of pay for all hours actually worked.

D. Part-time employees whose normal work schedule does not include the day a holiday is observed shall not be compensated for the holiday.

E. Employees who have been charged [~~leave without pay or~~] absence without leave on the workday prior to or directly following a holiday shall not be paid for the holiday.

[1.7.4.18 NMAC - Rp, 1.7.4.16 NMAC, 11/14/02; A, 7-15-05]

1.7.4.19 GOVERNMENT COST SAVINGS INCENTIVE AWARDS:

Agencies may provide cash awards to employees with the approval of the board in accordance with the provisions of *NMSA 1978, Section 10-7-12*. The director and the secretary of the department of finance and administration shall jointly issue and administer guidelines for submitting proposed awards to the board.

[1.7.4.19 NMAC - Rp, 1 NMAC 7.4.17, 11/14/02; A, 7-15-05]

NEW MEXICO PERSONNEL BOARD

This is an amendment to 1.7.5 NMAC, Sections 8, 9, 11, and 12, effective 7-15-05.

1.7.5.8 VACANT POSITIONS:

A. All vacant positions to be filled shall be open for recruitment unless otherwise authorized by the director [~~or Authorized Agent~~] or provided for in these rules.

B. Positions in the classified service shall be filled at the assigned [~~Technical Occupation Group Role~~] classification [~~or Manager Category~~]. An under-

fill may be approved by the director. An authorized underfill may not exceed one year unless extended by the director.

C. The director [~~or Authorized Agent~~] may approve a position to be doublefilled for up to one year.

~~[D. Prior to the end of each calendar year, the Director shall submit a report to the Board outlining the decisions made in accordance with 1.7.5.8 NMAC by the Director or Authorized Agent].~~

~~[E.]~~ **D.** Agencies may allow part-time employees to share the same position.

[1.7.5.8 NMAC - Rp, 1 NMAC 7.5.8, 07/07/01; A, 7-15-05]

1.7.5.9 RECRUITMENT:

A. The director shall establish a means to effectively advertise and recruit for vacant positions within the classified service.

B. Any qualified applicant shall have the opportunity to compete for vacant positions open for recruitment without regard to race, color, religion, national origin, ancestry, sex, sexual orientation, age, or mental or physical disability unless based on a bona fide occupational requirement.

C. Agencies shall be sensitive to creating diversity in the workplace [~~such as an awareness of the benefits and competencies that persons with mental and/or physical disabilities can contribute to the efficient operation of state government~~].

D. Applications shall be filed in accordance with the director-established recruitment criteria, received within the prescribed time limits and be for positions open for recruitment.

[1.7.5.9 NMAC - Rp, 1 NMAC 7.5.9, 07/07/01; A, 11/14/02; A, 7-15-05]

1.7.5.11 EXAMINATION:

A. Security:

(1) The director shall maintain the security of all examinations.

(2) Examinations shall be developed by the office in accordance with established professional techniques and relevant federal laws, regulations, and guidelines. Examinations shall measure critical or important knowledge, skills, and abilities necessary for successful job performance.

~~(3) [Agencies shall be sensitive to creating Diversity in the workplace, such as an awareness of the benefits and competencies that persons with mental and/or physical disabilities can contribute to the efficient operation of state government.~~

(4) Except as provided in *Paragraph (5) (4) of Subsection A of 1.7.5.11 NMAC* an agency shall administer any examination to an applicant or employee without the examination and the examination administration having been approved

by the director unless otherwise authorized by statute.

~~(5)~~ (4) An agency may request a description or demonstration of the skill or ability needed to perform an essential job function in accordance with the *Americans with Disabilities Act of 1990* (42 U.S.C. Section 12101 Note 29C.F.R. Part 1630.14(a) *Pre-employment inquiry*).

B. Exemptions from Examinations:

(1) The director shall exempt from examinations those applicants who possess recognized licensure, registration, or certification by the state of New Mexico and who are applying for positions in the classified service that require such licensure, registration, or certification.

(2) The director shall exempt from examinations applicants who, in the course of their duties:

(a) develop, administer, or otherwise have access to such examinations; or

(b) formerly developed or administered such examinations within a period of one year from separating from the office.

C. **Administration of Examinations:** In accordance with the provisions of *NMSA 1978, Section 10-9-12(F)*, the director shall supervise all examinations and establish procedures for their administration.

D. Preference Points:

(1) In accordance with the provisions of *NMSA 1978, Section 10-9-13.2 and NMSA 1978, Section 20-4-9*, veterans honorably discharged from the United States armed forces and applicants currently serving in the national guard shall have five points added to their final passing numerical scores on examinations. Veterans honorably discharged from the United States armed forces with a service-connected disability shall have 10 points added to their final passing numerical scores on examinations. A veteran with or without a service-connected disability has his/her name placed on the employment list in accordance with numerical rating of other veterans and non-veterans.

(2) In accordance with the provisions of *NMSA 1978, Section 10-9-13*, applicants who pass the examination shall have two preference points added for each year of residency in New Mexico, not to exceed 10 points.

~~(3) Agencies shall be sensitive to creating Diversity in the workplace, such as an awareness of the benefits and competencies that persons with mental and/or physical disabilities can contribute to the efficient operation of state government.]~~

[1.7.5.11 NMAC - Rp, 1 NMAC 7.5.11, 07/07/01; A, 11/14/02; A, 7-15-05]

1.7.5.12 SELECTION:

A. In accordance with the

purpose of the *Personnel Act NMSA, Section 10-9-2*, selection shall be based solely on qualification and ability. Selection for any appointment to positions in the classified service shall be justified in writing and made from employment lists.

B. Agencies shall develop policies governing their use of the employment lists; such policies shall be submitted to the director for approval.

C. Agencies shall be sensitive to creating diversity in the workplace; ~~such as an awareness of the benefits and competencies that persons with mental and/or physical disabilities can contribute to the efficient operation of state government.]~~

D. Employment lists shall include names of ranked candidates who have made application and met the established requirements plus any candidates certified by the New Mexico department of education, division of vocational rehabilitation, the commission for the deaf and hard of hearing, or the commission for the blind, in accordance with the provisions of *NMSA 1978, Section 28-10-12*.

(1) The director shall certify the names of former employees who are currently receiving temporary total or permanent partial workers' compensation benefits, resultant from an injury sustained while employed in the classified service and who apply for a position in accordance with the provisions of *1.7.10.12 NMAC*.

(2) The director shall certify only the name(s) of former employees who are currently eligible for reemployment from a reduction in force per *1.7.10.10 NMAC*.

E. **Temporary Promotions:** Employees may be temporarily promoted for a period not to exceed 12 months to a temporarily or effectively vacant position for which the agency certifies that the employee holds qualifications and abilities necessary for successful job performance. At the end of the temporary promotion period, employees shall return to their former position without right of appeal.

F. **Intra-Agency Transfers:** An agency may transfer an employee without the employee's consent to a position in the same [~~Technical Occupation Group Role~~] classification [~~or Manager Category~~] within the same geographic location, which is 35 miles from the boundaries of the community in which the employee is employed or if the established requirements state that willingness to accept a change of geographic location is a condition of employment.

G. **Exempt to Career Appointments:** Employment in the exempt service shall not count towards the probationary period required by *Subsection A of 1.7.2.8 NMAC*.

H. Emergency

Appointments: Emergency appointments shall be made in accordance with *1.7.2.12 NMAC*.

I. **Reduction:** Employees may request a [~~Technical Occupation Group, Technical Occupation Group Role~~] classification [~~or Manager Category~~] reduction to a position for which the agency certifies that the employee holds qualifications and abilities necessary for successful job performance.

J. **Physical Examinations:** Agencies may require physical examinations of candidates who have been selected for appointment contingent upon their meeting the prescribed physical health standards. The costs of such physical examinations shall be borne by the agency.

K. **Human Immunodeficiency Virus-Related (AIDS) Test:** No agency shall require a candidate or employee to take the human immunodeficiency virus-related (AIDS) test or disclose the results of same test as a condition of selection, promotion or continued employment unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification for the job in question. Agencies must adhere to the provisions of the *Human Immunodeficiency Virus Test Act NMSA 1978 Sections 24-2B-1 to 24-2B-8 Cum. Supp. 1993*. [1.7.5.12 NMAC - Rp, 1 NMAC 7.5.12, 07/07/01; A, 11/14/02; A, 7-15-05]

NEW MEXICO PERSONNEL BOARD

This is an amendment to 1.7.7 NMAC, Sections 9, 14, and 16, effective 7-15-05.

1.7.7.9 ~~DONATION OF ANNUAL LEAVE:~~

~~A. Employees may donate annual leave to another employee in the same agency for a medical emergency with approval of the head of the agency.~~

~~B. An agency shall maintain the following documentation:~~

~~(1) the name, position title, and hourly rate of pay of the proposed leave recipient;~~

~~(2) a licensed health care provider's description of the nature, severity, and anticipated duration of the emergency involved which has been provided by the employee or legally authorized representative and a statement that the recipient is unable to work all or a portion of their work hours; and~~

~~(3) any other information which the employing agency may reasonably require.~~

~~C. Supporting documentation for the request to donate annual leave~~

shall be kept confidential and not subject to public inspection without the written consent of the employee.

D. ~~The agency shall transfer the leave to the leave account of the employee converting the dollar value of the donor's leave based on the donor's hourly rate of pay to hours of leave based on the recipient's hourly rate of pay.~~

E. ~~The recipient of donated annual leave may not use such leave until first exhausting all accrued annual and sick leave, compensatory time and personal leave day.~~

F. ~~Donated annual leave shall revert to the employees who donated the leave on a prorated basis when the medical emergency ends or the employee separates from the agency.]~~

DONATION OF ANNUAL AND/OR SICK LEAVE:

A. Employees may donate leave to another employee in the same agency for a medical emergency with approval of the head of the agency.

B. Employees may donate annual leave to the full amount of their accumulated hours.

C. In accordance with the provisions of *NMSA 1978, Section 10-7-10*, the donation of sick leave is governed by the following restrictions:

(1) employees who have accumulated more than six hundred hours of sick leave can transfer the additional amounts over 600 hours to another employee;

(2) the dollar value of the transferred leave shall equal 50% of the monetary value of the total hours transferred by the donor employee;

(3) no more than 120 hours of sick leave may be transferred by the donor in any one fiscal year, with the exception of the year in which an employee retires, when an employee may transfer up to 400 hours of sick leave;

(4) donations of sick leave may be made only once per fiscal year on either the pay date immediately following the first full pay period in January or the first full pay period in July, unless the employee is retiring.

D. An agency shall maintain the following documentation:

(1) the name, position title, and hourly rate of pay of the proposed leave recipient;

(2) a licensed health care provider's description of the nature, severity, and anticipated duration of the emergency involved which has been provided by the employee or legally authorized representative and a statement that the recipient is unable to work all or a portion of their work hours; and

(3) any other information which the employing agency may reasonably

require.

E. Supporting documentation for the request to donate leave shall be kept confidential and not subject to public inspection without the written consent of the employee.

E. The agency shall transfer the leave to the leave account of the employee converting the dollar value of the donor's leave based on the donor's hourly rate of pay to hours of leave based on the recipient's hourly rate of pay.

G. The recipient of donated leave may not use such leave until first exhausting all accrued annual and sick leave, compensatory time and personal leave day.

H. Donated leave shall revert to the employees who donated the leave on a prorated basis when the medical emergency ends or the employee separates from the agency.

[1.7.7.9 NMAC - Rp, 1 NMAC 7.7.9, 07/07/01; A, 11/14/02; A, 7-15-05]

1.7.7.14 ADMINISTRATIVE LEAVE:

A. An agency may authorize employees leave with pay for up to five consecutive work days when it is in the best interests of the agency to do so. Administrative leave in excess of five consecutive work days must have the prior written approval of the director [~~or Authorized Agent~~] except for administrative leave granted in accordance with the provisions of *Paragraph (2) of Subsection B of 1.7.8.19 NMAC* or *Paragraph (2) of Subsection D of 1.7.8.19 NMAC* or *1.7.11.12 NMAC*.

B. Employees who are members of a state board or commission may be entitled to leave with pay to attend meetings or transact business of the board or commission.

C. Employees who are registered voters may absent themselves from work for two hours for the purpose of voting between the time of the opening and the time of the closing of the polls. The employer may specify the hours during the period in which the voter may be absent. This leave is not available to employees whose work day begins more than two hours subsequent to the time of opening the polls or ends more than three hours prior to the time of closing the polls.

D. Employees shall be entitled to administrative leave when appearing during regularly scheduled work hours in obedience to a subpoena as a witness before a grand jury or court or before a federal or state agency. Fees received as a witness, excluding reimbursement for travel, shall be remitted to the employee's agency.

E. Employees shall be

entitled to leave with pay for serving on a grand or petit jury during regularly scheduled work hours. Fees received as a juror, excluding reimbursement for travel, shall be remitted to the employee's agency.

[1.7.7.14 NMAC - Rp, 1 NMAC 7.7.14, 07/07/01; A, 11/14/02; A, 7-15-05]

1.7.7.16 MILITARY LEAVE:

A. Members of organized reserve units or the national guard ordered to active duty training shall be given up to 15 workdays of paid military leave per federal fiscal year. These 15 workdays are in addition to other authorized leave. [~~This Rule does not apply to employees in temporary or emergency status.~~]

B. The governor may grant members of the national guard paid military leave for active duty training, in addition to that already given by law. Such additional leave must not exceed 15 workdays per federal fiscal year.

C. Members of the state defense force shall be granted paid military leave to attend officially authorized training or instruction courses. Such leave applies only to full-time employees and must not exceed 15 workdays per federal fiscal year.

D. Members of the civil air patrol shall be granted military leave not to exceed 15 workdays per calendar year for search and rescue missions.

E. Employees on military leave with pay shall accrue annual and sick leave.

F. Employees who are members of a reserve component of the United States armed forces shall, upon request, be granted unpaid leave for the period required to perform active duty for training or inactive duty training in the United States armed forces [~~in accordance with the provisions of 38 U.S.C. Section 2024~~]. [~~This Rule does not apply to employees in temporary or emergency status~~].

G. This rule does not apply to employees in temporary or emergency status.

[1.7.7.16 NMAC - Rp, 1 NMAC 7.7.16, 07/07/01; A, 11/14/02; A, 7-15-05]

NEW MEXICO PERSONNEL BOARD

This is an amendment to 1.7.8 NMAC, Sections 11, 13, and 16, effective 7-15-05.

1.7.8.11 AUTHORIZED DRUG AND ALCOHOL TESTING:

A. All external candidates for safety-sensitive positions are required to submit to drug testing after an offer of employment is made and prior to final selection for appointment.

B. Prior to assuming a

safety-sensitive position from a nonsafety-sensitive position, employees shall be required to submit to drug testing.

C. Agencies that require employees in safety-sensitive positions to undergo regular physical examinations shall require such employees to undergo drug testing as part of those physical examinations.

D. Each agency shall require employees to undergo drug and/or alcohol testing if the agency has a reasonable suspicion that the employee has committed drug or alcohol abuse based on, but not limited to:

(1) direct observation of the physical symptoms or manifestations of being under the influence of a drug or alcohol while on duty such as liquor on breath, slurred speech, unsteady walk, or impaired coordination; or

(2) direct observation of the use or possession of drugs or drug paraphernalia, or the use of alcohol while on duty.

E. Before an employee is required to submit to reasonable suspicion drug and/or alcohol testing, a supervisor must secure the approval of the next level supervisor unless the requesting supervisor is the agency head. The supervisor must prepare a memorandum within 24 hours after the specimen collection stating what gave rise to the reasonable suspicion and submit the memorandum to the drug abuse coordinator.

F. At least ten percent (10%) of employees in safety-sensitive positions shall be required to undergo drug testing on a yearly basis.

(1) The director or a contractor shall identify the employees on a random selection basis.

(2) At the discretion of the director, employees may be excused from random drug testing if:

(a) they have previously requested referral in accordance with the provisions of **Subsection B of 1.7.8.19 NMAC**;

(b) the selection for random drug testing is made during the first 30 calendar days following the request for referral; or

(c) they are on an authorized absence.

[1.7.8.11 NMAC - Rp, 1 NMAC 7.8.11, 07/07/01; A, 7-15-05]

1.7.8.13 DRUG TESTS:

A. The initial and confirmatory drug tests, shall be performed in accordance with DHHS/DOT testing guidelines and by an independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing. The laboratory shall have the

capability, on the same premises, of performing initial and confirmatory tests for each drug or metabolite for which service is offered.

B. The following initial cutoff levels shall be used when screening specimens on the initial drug tests to determine whether they are negative for these five drugs or classes of drugs:

- (1) Marijuana metabolites50 (ng/ml)
- (2) Cocaine metabolites300 (ng/ml)
- (3) Opiate metabolites.....2,000 (ng/ml)
- (4) Phencyclidine25 (ng/ml)
- (5) Amphetamines.....1,000 (ng/ml)

[~~(6)~~ +25 mg/ml if immunoassay specific for free morphine.]

C. All specimens identified as positive on the initial drug test, shall be confirmed by the laboratory at the cutoff values listed below for each drug. All confirmations shall be by quantitative analysis:

- (1) Marijuana metabolites¹.....15 (ng/ml)
- (2) Cocaine metabolites².....150 (ng/ml)
- (3) **Opiates:**
 - (a) Morphine2,000 (ng/ml)
 - (b) Codeine.....2,000 (ng/ml)
- (4) Phencyclidine25 (ng/ml)
- (5) **Amphetamines:**
 - (a) Amphetamine.....500 (ng/ml)
 - (b) Methamphetamine.....500 (ng/ml)
- (6) ¹Delta - 9-tetrahydrocannabinol - 9-carboxylic acid
- (7) ²Benzoylcegonine

D. The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens reported as positive on the confirmatory test shall be reported positive for a specific drug.

E. The laboratory shall retain and place those specimens confirmed positive in properly secured long-term frozen storage for at least 365 calendar days. An agency may request the laboratory to retain the specimen for an additional period of time. If the laboratory does not receive a request to retain the specimen during the initial 365 calendar day period, the specimen may be discarded.

[1.7.8.13 NMAC - Rp, 1 NMAC 7.8.13, 07/07/01; A, 11/14/02; A, 7-15-05]

1.7.8.16 EXPLANATION OF POSITIVE TEST RESULTS:

A. Candidates for employment who test positive for drugs may, within 2 workdays of being advised of the test results, submit a written request to the agency's drug abuse coordinator for a review of the test results by the medical review officer. The test results of all employees who test positive for drugs and/or alcohol shall be referred by the agency's drug abuse coordinator to the medical review officer.

(1) If the candidate does not request a review of the test results within two work days, the candidate waives review by the medical review officer and any retesting of the sample and consents to rejection for selection.

(2) The medical review officer shall examine any proffered or possible explanations concerning the validity of the confirmed positive test results. This action may include conducting a medical interview, review of the medical history, review of the chain of custody, and discussions with the collection or laboratory personnel. The medical review officer shall review all medical records made available by the individual when a positive test could have resulted from legally prescribed medications and/or medical or dental treatment. The medical review officer shall also review the results of any retest done according to the provisions of **1.7.8.17 NMAC**.

(a) Should any questions arise as to the accuracy or validity of a confirmed positive test result, only the medical review officer is authorized on behalf of the state to order a reanalysis of the original sample and such retests are authorized to be performed only at an independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing.

(b) Prior to making a final decision to verify a positive test result, the medical review officer shall give the candidate or employee an opportunity to discuss the test results. The discussion between the medical review officer and the candidate or employee may be in person or by telephone.

(c) The medical review officer shall advise the appropriate drug abuse coordinator of his or her medical conclusions from the review of the test results. If there are conflicting factual statements, the medical review officer shall not attempt to resolve that fac-

tual conflict, but shall report it along with his or her medical conclusions to the drug abuse coordinator for the agency. Similarly, the medical review officer shall not attempt to ascertain the factual correctness of any claim by the candidate or employee of involuntary ingestion of drugs or alcohol, but shall simply report such claims to the drug abuse coordinator for the agency, all with his or her medical opinion as to the possibility that such occurrence could have affected the test results.

B. Based upon the medical review officer's report and such other inquiries or facts as the agency may consider, the agency shall determine whether the candidate's or employee's explanations or challenges of the confirmed positive test results are satisfactory.

(1) If the candidate's or employee's explanations or challenges of the positive test results are unsatisfactory to the agency:

(a) a written explanation as to why the explanation is unsatisfactory, along with the test results, shall be provided to the candidate or employee within ~~[+0]~~ 11 calendar days of the agency's determination; and

(b) such records shall be kept confidential by the agency and shall be retained for one year.

(2) If the candidate's or employee's explanations or challenges of the positive test results are satisfactory to the agency:

(a) the agency shall notify the candidate or employee of the agency's determination within ~~[+0]~~ 11 calendar days of the determination; and

(b) such records shall be kept confidential by the agency and shall be retained for one year.

[1.7.8.16 NMAC - Rp, 1 NMAC 7.8.16, 07/07/01; A, 11/14/02; A, 7-15-05]

NEW MEXICO PERSONNEL BOARD

This is an amendment to 1.7.10 NMAC, Sections 8, 9, 12, and 13, effective 7-15-05.

1.7.10.8 FURLOUGH:

A. In the event of the need for a furlough, an agency shall submit a plan identifying organizational units to be affected by the furlough to the board for approval to effect the furlough. The director may approve such plans if an emergency exists and there is insufficient time for the board to consider such plans.

B. The furlough plan shall affect all employees within the organizational unit impacted to the same extent.

C. No furlough shall exceed 12 months in duration.

D. Employees shall be

given at least 14 calendar days written notice of furlough, unless the time limit is waived by the director [~~or Authorized Agent~~]. Notice shall be served in accordance with the provisions of *1.7.1.10 NMAC*.

E. Employees shall be returned from furlough when the reasons for the furlough cease to exist. Wherever possible, all affected employees shall be returned at the same time, to the same extent.

[1.7.10.8 NMAC - Rp, 1 NMAC 7.10.8, 07/07/01; A, 7-15-05]

1.7.10.9 REDUCTION IN FORCE:

A. An agency may lay off employees only for deletion of positions, shortage of work or funds, or other reasons that do not reflect discredit on the services of the employees.

B. An agency shall identify organizational units for purposes of a layoff and submit a written plan to the board. Such organizational units may be recognized on the basis of geographic area, function, funding source, or other factors. The agency must define the [~~Technical Occupation Group(s) or Manager Category(ies)~~] classifications affected within the organizational unit.

C. Upon board approval of a layoff plan, the agency effecting the layoff shall initiate a right of first refusal within the agency. All employees affected by the layoff shall be provided the following rights:

(1) employees to be affected by the reduction in force (RIF) shall be provided the right of first refusal to any position to be filled within the agency for which they meet the established requirements, at the same or lower midpoint than the midpoint of the position the employee currently holds, unless there is an actual layoff candidate exercising RIF rights for that position;

(2) affected employees shall compete only with other employees in the same agency affected by the reduction in force;

(3) the agency's list of eligible candidates for the open positions shall be comprised of those affected employees meeting the established requirements of the position;

(4) employees shall have eleven calendar days from the date of an offer to accept the position unless otherwise agreed; employees who do not accept an offer shall not lose the right of first refusal status to other positions; and

(5) the right of first refusal under *Subsection C of 1.7.10.9. NMAC* shall extend until the first effective date of layoff as defined in the plan.

D. The order of layoff due to reduction in force shall be by service date

which is determined based upon the agency hire date. [~~with additional service credit provided under the following formula.~~

(1) An employee's performance appraisal of official employment record pursuant to *1.7.1.12 NMAC* on the date of notice of a reduction in force shall determine entitlement to additional service credit. If there is no performance appraisal on file, it shall be assumed that the employee's performance "meets expectations".

(a) An employee who has a rating of "greatly exceeds expectations," or its equivalent, shall have four years of service added to the employee's creditable service.

(b) An employee who has a rating of "exceeds expectations," or its equivalent, shall have two years of service added to the employee's creditable service.

(c) An employee who has a rating of "meets expectations," or its equivalent, shall have one year of service added to the employee's creditable service.

(2) In the event of a tie, the director shall determine an appropriate mechanism for breaking the tie.

E. No employee in career status shall be laid off while there are term, probationary, emergency or temporary status employees in the same [~~Technical Occupation Group(s) or Manager Category~~] classification in the same organizational unit.

F. Employees in career status shall be given at least 14 calendar days written notice of layoff. Notice shall be served according to the provisions of *1.7.1.10 NMAC*.

[1.7.10.9 NMAC - Rp, 1 NMAC 7.10.9, 07/07/01; A, 11/14/02; A, 03/31/04; A, 7-15-05]

1.7.10.12 EARLY RETURN-TO-WORK/MODIFIED DUTY ASSIGNMENTS:

A. Agencies shall implement a policy to enable employees who have been unable to work because of a compensable injury or illness under the workers' compensation act to return to work in a modified duty assignment for up to 6 months and may be extended for a period of up to 6 additional months if substantial progress in the recovery of an injured or ill employee has been demonstrated and it has been anticipated the injured or ill employee will be able to return to full duty within the time frame of the considered extension.

B. The agency shall make a good faith effort to identify and offer modified duty/return to work opportunities to injured or ill employees in accordance with the provisions of *NMSA 1978, Section 52-1-25.1 and NMSA 1978 52-3-49.1* At the agency's discretion the employee may be assigned to his or her current [~~Technical Occupation Group(s) or Manager Category~~]

classification with modified duties or to a temporary assignment comprised of a combination of duties from a variety of positions.

C. Employees on modified duty assignment to a temporary position shall maintain their salary and status for the duration of such temporary assignment.

[1.7.10.12 NMAC - Rp, 1 NMAC 7.10.12, 07/07/01; A, 11/14/02; A, 7-15-05]

1.7.10.13 INVOLUNTARY OR VOLUNTARY SEPARATION:

A. Employees who have suffered [~~a job-related~~] an injury or illness which is compensable under the workers' compensation act and are physically or mentally unable to perform the essential functions of their pre-injury/pre-illness position, with or without reasonable accommodation, shall be involuntarily or voluntarily separated from the service without prejudice provided:

(1) the employee has been afforded modified duty in accordance with *1.7.10.12 NMAC*;

(2) the employee has reached maximum medical improvement prior to the completion of up to 12 months of modified duty; or, the employee has not reached maximum medical improvement upon the expiration of up to 12 months of modified duty;

(3) all efforts to accommodate the medical restrictions of the employee have been made and documented; and

(4) the employing agency has made reasonable efforts to find other suitable vacant positions within the agency at the same or lower midpoint than the midpoint of the pre-injury/pre-illness position for which:

(a) the employee meets the established requirements and can perform the essential functions of the job, either with or without reasonable accommodation, or

(b) the agency certifies that the employee holds qualifications and abilities necessary for successful job performance and can perform the essential functions of the job, either with or without reasonable accommodation.

B. Employees who have suffered [~~a non job related injury or illness~~] an illness or injury that is not compensable under the workers' compensation act and are [~~permanently~~] unable to perform the essential functions of their pre-injury/pre-illness position, with or without reasonable accommodation, as a result of the physical or mental disability created by the non job-related injury or illness shall be involuntarily or voluntarily separated from the service without prejudice provided:

(1) all efforts to reasonably accommodate the medical restrictions of the employee have been made and documented;

and

(2) the employing agency has made reasonable efforts to find other suitable vacant positions within the agency at the same or lower midpoint than the midpoint of the pre-injury/pre-illness position for which:

(a) the employee meets the established requirements and can perform the essential functions of the job, either with or without reasonable accommodation; or

(b) the agency certifies that the employee holds qualifications and abilities necessary for successful job performance and can perform the essential functions of the job, either with or without reasonable accommodation.

C. Agencies may provide modified duty to employees for a period of up to 4 months during the separation process if required to meet the provisions of this rule.

D. Notice of contemplated separation:

(1) to initiate the involuntary separation of an employee who has completed the probationary period, the agency shall serve a notice of contemplated separation on the employee which: describes the circumstances which form the basis for the contemplated separation; gives a general explanation of the evidence the agency has; advises the employee of his or her right to inspect and obtain copies of any documentary evidence relied upon; specifies what the contemplated action is; and states that the employee has 11 calendar days from service of the notice to respond in writing to the notice or to request an opportunity for an oral response;

(2) when the notice of contemplated separation is served by mail, the employee receiving service shall have 3 additional calendar days in which to file a response;

(3) at the time the notice of contemplated separation is served on the employee, the agency shall notify the director and the risk management division of the general services department of the proposed separation and submit a copy of the separation notice along with documentation to support efforts to provide modified duty and to support efforts to find other suitable vacant positions.

E. Response to notice of contemplated separation:

(1) a representative of the employee's choosing may respond in writing to the notice of contemplated separation on behalf of the employee;

(2) if there is a request for an oral response to the notice of contemplated separation, the agency shall meet with the employee within 11 calendar days of a request for an oral response, unless the employee and the agency agree in writing to

an extension of time; a representative of the employee's choosing may represent the employee.

(3) the purpose of the oral response is not to provide an evidentiary hearing but is an opportunity for the employee to present his or her side of the story; it is an initial check against mistaken decisions, essentially a determination of whether there are reasonable grounds to support the proposed involuntary separation.

F. Notice of final separation:

(1) if the employee does not respond to the notice of contemplated separation the agency shall issue a notice of final separation within 11 calendar days following the response period;

(2) if the employee has filed a written response or has been provided an opportunity for oral response, the agency shall issue a notice of final separation no later than 11 calendar days from the date of receipt of the response;

(3) the notice of final separation shall:

(a) specify the action to be taken;

(b) describe the circumstances which form the basis for the involuntary separation, which may not include allegations not included in the notice of contemplated separation;

(c) give a general explanation of the evidence the agency has;

(d) specify when the final separation will be effective, which must be at least 24 hours from the time of service of the notice of final separation; and

(e) inform the employee that the final separation may be appealed to the board with a written statement of the grounds for the appeal delivered to the state personnel office in Santa Fe, New Mexico, and received by the director within 30 calendar days of the effective date of the separation.

[1.7.10.13 NMAC - Rp, 1 NMAC 7.10.13, 07/07/01; A, 11/14/02; A, 06/08/04; A, 10/29/04; A, 7-15-05]

NEW MEXICO PERSONNEL BOARD

This is an amendment to 1.7.11 NMAC, Sections 12, and 13, effective 7-15-05.

1.7.11.12 ADMINISTRATIVE LEAVE PENDING DISCIPLINARY ACTION: Agencies may authorize administrative leave for a period up to 160 consecutive work hours during a disciplinary action proceeding or investigation. Administrative leave in excess of 160 consecutive work hours must be approved by the director [~~or Authorized Agent~~].

[1.7.11.12 NMAC - Rp, 1 NMAC 7.11.12, 07/07/01; A, 7-15-05]

1.7.11.13 EMPLOYEES IN CAREER STATUS:

A. Notice of Contemplated Action:

(1) To initiate the suspension, demotion, or dismissal of an employee in career status and an employee in term status who has completed the probationary period, the agency shall serve a notice of contemplated action on the employee which describes the conduct, actions, or omissions which form the basis for the contemplated disciplinary action; gives a general explanation of the evidence the agency has; advises the employee of his or her right to inspect and obtain copies of any documentary evidence relied upon; specifies what the contemplated action is; and states that the employee has ~~seven~~ eleven calendar days from service of the notice to respond in writing to the notice or to request an opportunity for an oral response.

(2) When the notice of contemplated action is served by mail, the employee receiving service shall have 3 additional calendar days in which to file a response.

B. Response to Notice of Contemplated Action:

(1) A representative of the employee's choosing may respond in writing to the notice of contemplated action on behalf of the employee.

(2) If there is a request for an oral response to the notice of contemplated action, the agency shall meet with the employee within ~~seven~~ 11 calendar days of a request for an oral response, unless the employee and the agency agree in writing to an extension of time. A representative of the employee's choosing may represent the employee.

(3) The purpose of the oral response is not to provide an evidentiary hearing but is an opportunity for the employee to present his or her side of the story. It is an initial check against mistaken decisions, essentially a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.

C. Notice of Final Action:

(1) If the employee does not respond to the notice of contemplated action the agency shall issue a notice of final action within ~~10~~ 11 calendar days following the response period.

(2) If the employee has filed a written response or has been provided an opportunity for oral response, the agency shall issue a notice of final action no later than ~~10~~ 11 calendar days from the date of receipt of the response.

(3) The notice of final action shall:

(a) specify the final action to be taken, which may be upholding the contemplated action, a lesser form of discipline than contemplated, or no disciplinary action;

(b) describe the conduct, actions, or omissions which form the basis for the disciplinary action, which may not include allegations not included in the notice of contemplated action;

(c) give a general explanation of the evidence the agency has;

(d) specify when the disciplinary action will be effective, which must be at least 24 hours from the time of service of the notice of final action; and

(e) inform the employee that the disciplinary action may be appealed to the board with a written statement of the grounds for the appeal delivered to the state personnel office in Santa Fe, New Mexico, and if it is, it must be received by the director within 30 calendar days of the effective day and that the employee must submit a copy of the notice of final action with the notice of appeal.

[1.7.11.13 NMAC - Rp, 1 NMAC 7.11.13, 07/07/01; A, 11/14/02; A, 7-15-05]

NEW MEXICO PERSONNEL BOARD

This is an amendment to 1.7.12 NMAC, Sections 8, 9, 12, 13, 15, and 16 effective 7-15-05. Section 9 is new material and Sections 10 - 25 are also the result of renumbering effective 7-15-05.

1.7.12.8 FILING AN APPEAL:

A. Employees who have completed the probationary period as required by *Subsection A of 1.7.2.8 NMAC* and have been demoted, dismissed, or suspended have the right to appeal to the board for a public hearing before a hearing officer designated by the board.

B. A notice of appeal must be in writing and filed with the director no later than 30 calendar days from the effective date of the dismissal, demotion, or suspension. A copy of the notice of final action and a statement of the grounds for the appeal must accompany the notice of appeal. Appeals not filed within 30 calendar days shall be dismissed by the hearing officer for lack of jurisdiction.

C. Upon acceptance of a notice of appeal, the hearing officer shall send the agency a copy of the notice of appeal and issue a scheduling order directing the parties, in part, to submit to the hearing officer a stipulated pre-hearing order for his/her approval, which shall contain at least: a statement of any contested facts and issues; proposed stipulation of those facts

not in dispute; the relief or remedy requested by the appellant; a deadline for disclosure of all probable witnesses with a brief summary of their anticipated testimony and documentary evidence; a list of exhibits; a deadline for the completion of discovery and filing of motions; and a deadline for requesting subpoenas.

(1) The hearing officer may further revise the pre-hearing order.

(2) Any discussion concerning possible settlement of an appeal shall not be a part of the pre-hearing order and may not be introduced at the hearing.

[1.7.12.8 NMAC - Rp, 1 NMAC 7.12.8, 07/07/01; A, 7-15-05]

1.7.12.9 AGENCY WITHDRAWAL OF DISCIPLINE:

A. An agency may withdraw a completed disciplinary action prior to commencement of a personnel board appeals hearing so long as the appellant is fully restored to pre-disciplinary status insofar as employment, back pay and benefits are concerned.

B. Upon agency withdrawal of a disciplinary action, the hearing officer may dismiss the appeal without prejudice to the agency, which may reinitiate disciplinary action.

[1.7.12.9 NMAC - Rp, 1 NMAC 7.12.9, 07/07/01; 1.7.12.9 NMAC - N, 7-15-05]

~~1.7.12.9~~ 1.7.12.10 HEARING OFFICER:

A. The hearing officer shall not participate in any adjudicatory proceeding if, for any reason, the hearing officer cannot afford a fair and impartial hearing to either party. Either party may ask to disqualify the designated hearing officer for cause by filing an affidavit of disqualification within 14 calendar days of the order. The affidavit must state the particular grounds for disqualification. The designated hearing officer shall rule on motions for disqualification and an appeal of the ruling may be made to the board within 14 calendar days of the hearing officer's ruling.

B. Appeals from employees of the office shall be heard by the board or a member of the board designated as hearing officer.

C. No person shall discuss the merits of any pending adjudicatory proceeding with the designated hearing officer or member of the board unless both parties or their representatives are present.

D. The hearing officer may dismiss an appeal with prejudice in accordance with the provisions of a settlement agreement approved by the hearing officer or upon the filing of a motion to withdraw the appeal at any time before the deadline for the completion of discovery.

E. The hearing officer may dismiss an appeal with prejudice upon the filing of a motion to withdraw the appeal after the deadline for the completion of discovery upon such terms and conditions as the hearing officer deems proper, up to and including the assessment of costs. [1.7.12.10 NMAC - Rp, 1 NMAC 7.12.10, 07/07/01; 1.7.12.10 NMAC - Rn, 1.7.12.9 NMAC, 7-15-05]

~~[4-7.12.10]~~ **1.7.12.11 CONSOLIDATION AND JOINDER:**

A. The hearing officer may consolidate cases in which two or more appellants have cases containing identical or similar issues.

B. The hearing officer may join the appeals of an appellant who has two or more appeals pending.

C. The hearing officer may consolidate or join cases if it would expedite final resolution of the cases and would not adversely affect the interests of the parties. [1.7.12.11 NMAC - Rp, 1 NMAC 7.12.11, 07/07/01; 1.7.12.11 NMAC - Rn, 1.7.12.10 NMAC, 7-15-05]

~~[4-7.12.11]~~ **1.7.12.12 DISCOVERY:** The hearing officer has the power to compel, by subpoena or order, the production of written materials or other evidence the hearing officer may deem relevant or material. The parties shall have a right to discovery limited to depositions, interrogatories, requests for production, and requests for admission and witness interviews. All discovery shall be subject to the control of the hearing officer. [1.7.12.12 NMAC - Rp, 1 NMAC 7.12.12, 07/07/01; 1.7.12.12 NMAC - Rn, 1.7.12.11 NMAC & A, 7-15-05]

~~[4-7.12.12]~~ **1.7.12.13 MOTIONS:**

A. Any defense, objection, or request that can be determined on the merits prior to a hearing may be raised by motion before the deadline set by the hearing officer unless good cause is shown for the delay.

B. Prior to filing the motion, the filing party shall determine whether the non-filing party concurs with the motion. If the non-filing party concurs, the filing party shall include a stipulated order with the motion. If the non-filing party does not concur, the filing party shall indicate the non-concurrence in the motion and include a proposed order.

C. A response to a motion is due twelve (12) calendar days from the date of filing of the motion. A reply to a response is due seven (7) days from the date of filing the response. The response and reply schedule may also be set or modified by the hearing officer.

~~[B-]~~ **D.** Responses to any motions shall be filed according to a schedule set by the hearing officer.

[C] E. During the course of a hearing, motions may be renewed or made for the first time, if such a motion then becomes appropriate.

[D] E. The hearing officer shall rule on all motions except for dispositive motions on the merits. [1.7.12.13 NMAC - Rp, 1 NMAC 7.12.13, 07/07/01; 1.7.12.13 NMAC - Rn, 1.7.12.12 NMAC & A, 7-15-05]

~~[4-7.12.13]~~ **1.7.12.14 ADDITIONAL WITNESSES:** Witnesses who are not disclosed by the deadline contained in the pre-hearing order shall not be permitted to testify except for good cause shown and to prevent manifest injustice. [1.7.12.14 NMAC - Rp, 1 NMAC 7.12.14, 07/07/01; 1.7.12.14 NMAC - Rn, 1.7.12.13 NMAC, 7-15-05]

~~[4-7.12.14]~~ **1.7.12.15 SUBPOENA:**

A. The hearing officer has the power to subpoena witnesses.

B. The hearing officer has the power to subpoena documents or other tangible items.

C. Subpoenas shall be prepared in triplicate by the party requesting the subpoena and will be issued by the hearing officer. A copy of each subpoena shall be sent to the opposing party by the requesting party, together with a transmittal letter listing all persons subpoenaed.

~~[B-]~~ **D.** Subpoenas shall be hand delivered unless otherwise agreed to.

[C] E. In order to compel attendance at a hearing, the subpoena shall be received by the witness at least 72 hours prior to the time the witness is to appear. The hearing officer may waive this rule for good cause shown.

[D] E. Employees under subpoena shall be granted administrative leave as required by the provisions of *Subsection D of 1.7.7.14 NMAC*. [1.7.12.15 NMAC - Rp, 1 NMAC 7.12.15, 07/07/01; 1.7.12.15 NMAC - Rn, 1.7.12.14 NMAC & A, 7-15-05]

~~[4-7.12.15]~~ **1.7.12.16 SANCTIONS:**

A. The hearing officer may impose sanctions upon the parties as necessary to serve the cause of justice including, but not limited to the instances set forth below.

(1) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, a request for admission, and/or production of witnesses, the hearing officer may:

(a) draw an inference in favor of the requesting party with regard to the information sought;

(b) prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought;

(c) permit the requesting party to introduce secondary evidence concerning the information sought; or

(d) strike any part of the pleadings or other submissions of the party failing to comply with such request.

(2) The hearing officer may refuse to consider any motion or other action which is not filed in a timely fashion.

B. The hearing officer may issue an order to show cause why an appeal should not be dismissed for failure to prosecute, or rule either for the appellant or the appellee, so long as the merits of the case are not concerned. If the order is uncontested, the hearing officer may dismiss the appeal or rule for the appellant. If the order is contested and the hearing officer dismisses the appeal or rules for the appellant, such decision is appealable to the board within 14 calendar days of the order.

C. The board may prohibit a representative from appearing before the board or one of its hearing officers for a period of time set by the board for good cause shown.

[1.7.12.16 NMAC - Rp, 1 NMAC 7.12.16, 07/07/01; 1.7.12.16 NMAC - Rn, 1.7.12.15 NMAC & A, 7-15-05]

~~[4-7.12.16]~~ **1.7.12.17 NOTICE OF HEARING:** Notice of hearing shall be made by certified mail with return receipt requested at least 14 calendar days prior to the hearing, unless otherwise agreed to by the parties and the hearing officer.

[1.7.12.17 NMAC - Rp, 1 NMAC 7.12.17, 07/07/01; A, 11/14/02; 1.7.12.17 NMAC - Rn, 1.7.12.16 NMAC, 7-15-05]

~~[4-7.12.17]~~ **1.7.12.18 HEARINGS:**

A. The hearing shall be open to the public unless the parties agree that it shall be closed.

B. A party may appear at the hearing through a representative, provided such representative has made a written entry of appearance prior to the hearing date.

C. The hearing officer may clear the room of witnesses not under examination, if either party so requests, and of any person who is disruptive. The agency is entitled to have a person, in addition to its representative, in the hearing room during the course of the hearing, even if the person will testify in the hearing.

D. The agency shall pres-

ent its evidence first.

E. Oral evidence shall be taken only under oath or affirmation.

F. Each party shall have the right to:

(1) make opening and closing statements;

(2) call and examine witnesses and introduce exhibits;

(3) cross-examine witnesses;

(4) impeach any witness;

(5) rebut any relevant evidence; and

(6) introduce evidence relevant to the choice of discipline if it was raised as an issue in the pre-hearing order.

G. The hearing shall be conducted in an orderly and informal manner without strict adherence to the rules of evidence that govern proceedings in the courts of the state of New Mexico. However, in order to support the board's decisions, there must be a residuum of legally competent evidence to support a verdict in a court of law.

H. The hearing officer shall admit all evidence, including affidavits, if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs. The hearing officer shall exclude immaterial, irrelevant, or unduly cumulative testimony.

I. If scientific, technical, or other specialized knowledge will assist the hearing officer to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise. In the case of evidence relating to polygraph examinations, the proponent must have followed all the provisions of rule *11-707 NMRA*.

J. The hearing officer may take administrative notice of those matters in which courts of this state may take judicial notice.

K. The rules of privilege shall be effective to the extent that they are required to be recognized in civil actions in the district courts of the state of New Mexico.

L. The hearing officer shall admit evidence relevant only to those allegations against the appellant included in both the notice of contemplated action and the notice of final action or which are contested issues as set forth in the pre-hearing order.

M. The hearing shall be recorded by a sound-recording device under the supervision of the hearing officer. No other recording of the hearing, by whatever means, shall be permitted without the approval of the hearing officer.

N. The board shall provide an interpreter to appellants whose hearing is

so impaired that they can not understand voice communications. Appellants must provide proof of disability.

O. The hearing officer shall appoint an interpreter to appellants who do not understand English well enough to understand the proceedings.

[1.7.12.18 NMAC - Rp, 1 NMAC 7.12.18, 07/07/01; 1.7.12.18 NMAC - Rn, 1.7.12.17 NMAC, 7-15-05]

[1.7.12.18] 1.7.12.19 P O S T - HEARING BRIEFS: The hearing officer may require or permit written closing arguments, post-hearing briefs and proposed findings of fact and conclusions of law according to a scheduling order issued by the hearing officer. If case law is cited, a copy of the case shall be provided to the hearing officer.

[1.7.12.19 NMAC - Rp, 1 NMAC 7.12.19, 07/07/01; 1.7.12.19 NMAC - Rn, 1.7.12.18 NMAC, 7-15-05]

[1.7.12.19] 1.7.12.20 R E C O M - MENDED DECISION: The hearing officer shall recommend a decision to the board as soon as practicable upon conclusion of the hearing. The hearing officer shall provide a copy of the recommended decision to the parties by certified mail with return receipt requested.

[1.7.12.20 NMAC - Rp, 1 NMAC 7.12.20, 07/07/01; 1.7.12.20 NMAC - Rn, 1.7.12.19 NMAC, 7-15-05]

[1.7.12.20] 1.7.12.21 E X C E P - TIONS TO RECOMMENDED DECISION:

A. The parties to a proceeding may file exceptions with supporting briefs to a hearing officer's recommended decision according to a scheduling order issued by the hearing officer.

B. Copies of such exceptions and any briefs shall be served simultaneously on all parties, and a statement of such service shall be furnished to the board's hearing officer.

C. Exceptions to a hearing officer's recommended decision shall cite the precise substantive or procedural issue to which exceptions are taken.

D. Any exception not specifically made shall be considered waived. Any exception that fails to comply with the foregoing requirements may be disregarded. Any brief in support of exceptions shall not contain matters not related to or within the scope of the exceptions.

[1.7.12.21 NMAC - Rp, 1 NMAC 7.12.21, 07/07/01; 1.7.12.21 NMAC - Rn, 1.7.12.20 NMAC, 7-15-05]

[1.7.12.21] 1.7.12.22 DECISIONS OF THE BOARD:

A. As a general rule, the

board shall only consider post-hearing briefs, and proposed findings of fact and conclusions of law, the hearing officer's recommended decision, and exceptions to the recommended decision. Where circumstances warrant, the board may review all or a portion of the record before the hearing officer.

B. The board shall not consider any additional evidence or affidavits not in the record before the hearing officer or pleadings not filed in accordance with the hearing officer's scheduling order.

C. The board may consider the record in executive session. Should the board have questions of the hearing officer, the questions shall be put to the hearing officer in open session.

D. Unless otherwise ordered by the board in advance of its consideration of the appeal, the board shall not permit any oral arguments.

E. If the board determines that the credibility of a witness is at issue, it shall review at least as much of the record as is necessary to support its decision.

[1.7.12.22 NMAC - Rp, 1 NMAC 7.12.22, 07/07/01; 1.7.12.22 NMAC - Rn, 1.7.12.21 NMAC, 7-15-05]

[1.7.12.22] 1.7.12.23 R E I N - STATEMENT:

A. The board may order agencies to reinstate appellants. Such appellants shall be reinstated to their former position, or to a position of like status and pay, that they occupied at the time of the disciplinary actions.

B. In the event the board's order includes any back pay, the appellant shall provide the agency with a sworn statement of gross earnings and unemployment compensation since the effective date of the disciplinary action. The agency shall be entitled to offset earnings and unemployment compensation received during the period covered by the back pay award against the back pay due. The hearing officer shall retain jurisdiction of the case for the purpose of resolving any disputes regarding back pay.

[1.7.12.23 NMAC - Rp, 1 NMAC 7.12.23, 07/07/01; 1.7.12.23 NMAC - Rn, 1.7.12.22 NMAC, 7-15-05]

[1.7.12.23] 1.7.12.24 REPORT OF DECISIONS: The director shall prepare a synopsis of each decision made by the board and shall make copies available to all agencies and interested parties.

[1.7.12.24 NMAC - Rp, 1 NMAC 7.12.24, 07/07/01; A, 11/14/02; 1.7.12.24 NMAC - Rn, 1.7.12.23 NMAC, 7-15-05]

[1.7.12.24] 1.7.12.25 WORKERS' COMPENSATION JUDGES:

A. The board's duly appointed hearing officer shall hear all complaints filed in accordance with the provisions of *NMSA 1978, Section 52-5-2(C)*.

B. Whenever some action is required to be taken within a certain number of calendar days, the hearing officer may extend the time for a reasonable period.

C. Upon receipt of a complaint, the hearing officer shall serve a copy of the complaint on the judge by certified mail.

D. Within 14 calendar days after service of a complaint, the judge shall file an answer with the hearing officer. The facts alleged in the complaint may be deemed admitted if not specifically denied by answer or if no answer is filed within the prescribed time.

E. Upon the filing of an answer or upon the expiration of the time for its filing, the hearing officer shall issue an order directing the parties to submit a stipulated pre-hearing order for the hearing officer's approval and signature, which shall contain at least: a statement of any contested facts and issues; stipulation of those matters not in dispute; the identity of all witnesses to be called and a brief summary of their testimony; a list of exhibits; and requests for subpoenas.

F. The hearing officer has the power to subpoena witnesses, compel their attendance, and require the production of any books, records, documents or other evidence the hearing officer may deem relevant or material.

G. The Hearing:

(1) The hearing officer shall receive evidence admissible under the rules of evidence, that govern proceedings in the courts of the state of New Mexico and oral evidence shall be taken only under oath or affirmation.

(2) The hearing officer shall make procedural rulings.

(3) The formal hearing shall be open unless the hearing officer, for compelling reasons, determines otherwise. Reasons for closing the hearing shall be stated in the record.

(4) A judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel and to examine and cross-examine witnesses.

(5) The hearing shall be recorded by a sound recording device under the supervision of the hearing officer.

H. The hearing officer may require post-hearing briefs and proposed findings.

I. The hearing officer shall, within a reasonable time, prepare and submit to the parties a report which shall contain a brief statement of the proceedings

and the answer thereto, if any; a summary of the evidence; and findings with respect to the allegations.

J. Within 14 calendar days of receipt of the hearing officer's report, the parties may file objections to the hearing officer's report, setting forth all objections to the report and all reasons in opposition to the findings.

K. The board shall consider the report of the hearing officer and the record made before the hearing officer and in connection therewith make its findings as to whether there was a violation of the code of judicial conduct and transmit its findings to the director of the workers' compensation administration.

[1.7.12.25 NMAC - Rn, 1.7.12.24 NMAC, 7-15-05]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

Notice of Repeal

1.18.601 NMAC, Executive Records Retention and Disposition Schedule for the Commission on the Status of Women, is being repealed and replaced with the new 1.18.601 NMAC, Executive Records Retention and Disposition Schedule for the Commission on the Status of Women, effective July 25, 2005. The New Mexico Commission of Public Records at their June 21, 2005 meeting repealed the current rule. The New Mexico Commission of Public Records at their June 21, 2005 meeting approved the new rule.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 18 EXECUTIVE RECORDS RETENTION AND DISPOSITION SCHEDULES (ERRDS) PART 601 ERRDS, COMMISSION ON THE STATUS OF WOMEN

1.18.601.1 ISSUING AGENCY: State Commission of Public Records - State Records Center and Archives
[1.18.601.1 NMAC - Rp, 1.18.601.1 NMAC, 07/25/2005]

1.18.601.2 SCOPE: commission on the status of women
[1.18.601.2 NMAC - Rp, 1.18.601.2 NMAC, .07/25/2005]

1.18.601.3 STATUTORY AUTHORITY: Section 14-3-6 NMSA

1978. The administrator shall establish a records management program for the application of efficient and economical management methods for the creation, utilization, maintenance, retention, preservation and disposal of public records.

[1.18.601.3 NMAC - Rp, 1.18.601.3 NMAC, 07/25/2005]

1.18.601.4 DURATION: permanent
[1.18.601.4 NMAC - Rp, 1.18.601.4 NMAC, 07/25/2005]

1.18.601.5 EFFECTIVE DATE: July 25, 2005, unless a later date is cited at the end of a section.
[1.18.601.5 NMAC - Rp, 1.18.601.5 NMAC, 07/25/2005]

1.18.601.6 OBJECTIVE: To establish a records retention schedule for the orderly management and retirement of records necessary for carrying out the Public Records Act per Section 14-3-6 NMSA 1978.
[1.18.601.6 NMAC - Rp, 1.18.601.6 NMAC, 07/25/2005]

1.18.601.7 DEFINITIONS:
A. "Administrator" means the state records administrator (Section 14-3-2 NMSA 1978).

B. "Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico (Section 14-3-2 NMSA 1978).

C. "Archives" means the state archives of the commission of public records.

D. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

E. "Displaced homemakers" means persons in New Mexico who, in their middle years and having fulfilled the role of homemaker, find themselves displaced because of dissolution of marriage, death of a spouse or other loss of family income.

F. "Microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission of public records.

G. "Non-record" means extra copies of documents kept solely for convenience of reference, stocks of publications, records not usually included within

the scope of the official records of an agency or government entity, and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency; extra copies of correspondence; preliminary drafts; blank forms, transmittal letters or forms that do not add information; sample letters; and reading file or informational files.

H. "Public record" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein (Section 14-4-2)

I. "Records custodian" means the statutory head of the agency using or maintaining the records or the custodian's designee.

J. "Records management" means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

K. "Records retention and disposition schedule" means rules adopted by the commission pursuant to Section 14-3-6 NMSA 1978 describing records of an agency, establishing a timetable for their life cycle and providing authorization for their disposition.

L. "Retention" means the period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

[1.18.601.7 NMAC - Rp, 1.18.601.7 NMAC, 07/25/2005]

1.18.601.8 ABBREVIATIONS AND ACRONYMS:

A. "CFR" stands for code of federal regulations.

B. "NMAC" stands for New Mexico administrative code.

C. "NMSA" stands for New Mexico statutes annotated.

D. "USC" United States code.

[1.18.601.8 NMAC - N, 07/25/2005]

1.18.601.9 INSTRUCTIONS:

A. For records of a general administrative nature, refer to the GRRDS,

General Administrative Records Retention and Disposition Schedule, 1.15.2 NMAC.

B. For records of a financial nature, refer to the GRRDS, General Financial Records Retention and Disposition Schedule, 1.15.4 NMAC.

C. For records of a personnel nature, refer to the GRRDS, General Personnel Records Retention and Disposition Schedule, 1.15.6 NMAC.

D. For records of a medical nature, refer to the GRRDS, General Medical Records Retention and Disposition Schedule, 1.15.8 NMAC.

E. Retention periods shall be extended until six months after all current or pending litigation, current claims, audit exceptions or court orders involving a record have been resolved or concluded.

F. Descriptions of files are intended to be evocative, not complete. For example, there will always be some documents that are filed in a file that are not listed in the description, and similarly not every file will contain an example of each document listed in the description.

G. Confidentiality is denoted for files likely to contain confidential materials, but files without a confidentiality note nonetheless may contain confidential or privileged materials, and failure to include an express confidentiality note in the description of a file does not waive the confidential or privileged nature of those materials. Refer questions concerning the confidentiality of a file or portions of a file to legal counsel for the agency.

H. Access to confidential documents and files shall be only by authorization of the records custodian, or by court order, unless otherwise provided by statute. Release of confidential documents to law enforcement and other government agencies shall only be upon specific statutory authorization or court order.

I. Records, papers or documents may be reformatted through microphotography. Such reformatted records shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies (Sections 14-1-5, 14-1-6 NMSA 1978).

J. Public records placed on magnetic tapes, disks or other data processing media shall be retained for the length of time specified in records retention and disposition schedules and are subject to the same confidentiality and access restrictions as paper records. See also 1.13.70 NMAC, Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems.

[1.18.601.9 NMAC - Rp, 1.18.601.9 NMAC, 07/25/2005]

1.18.601.10 - 1.18.601.20 [RESERVED]

1.18.601.21 DISPLACED HOME-MAKERS, WOMEN IN TRANSITION FILES:

A. Program: workforce development

B. Maintenance system: chronological by fiscal year, then by date of workshop

C. Description: records concerning the workforce development program, *displaced homemakers*, that prepares women to enter the work force. File may contain date, time, location and title of workshops, sign in sheets, registration forms (age, gender, address, marital status, number of children, employment information, annual income range, highest education level), career opportunities, career assistance, skill development, job search training, *strategies for success* handouts, *financial planning* handouts, *class evaluation* form, community resources, flyers, etc.

D. Retention: three years from close of fiscal year in which workshop was given

[1.18.601.21 NMAC - N, 07/25/2005]

1.18.601.22 TRANSFORMING WOMENS LIVES FILES: [TEAMWORKS]

A. Program: workforce development

B. Maintenance system: chronological by date of workshop

C. Description: records concerning the *teamworks* program that is designed to improve employment skills for women who are receiving benefits from the temporary assistance to needy families program. File may contain date, time, location; and type of workshop, community resources, training offered, registration forms, etc.

D. Retention: six years from close of fiscal year in which workshop was given

[1.18.601.22 NMAC - N, 07/25/2005]

[This program is administered through human services department temporary assistance to needy families program.]

1.18.601.23 TOWN HALL MEETING FILES:

A. Program: workforce development

B. Maintenance system: chronological by fiscal year, then by date of meeting

C. Description: records concerning town hall meetings held statewide by the commission on the status of women to solicit information on women's issues to develop future workshops. File may contain date, time and location of meeting, sign in sheets, a list of

women's issue's (i.e. health care, work skills, divorce, child custody, domestic violence, housing), notes, information distributed, etc.

D. Retention: one year from close of fiscal year in which meeting occurred

[1.18.601.23 NMAC - N, 07/25/2005]

1.18.601.24 ADVOCACY AND AWARENESS CONFERENCE FILES:

A. Program: workforce development

B. Maintenance system: chronological by date of event

C. Description: records concerning outreach activities, public events, conferences, and services offered to individuals, agencies, and organizations to increase awareness regarding of women's issues. File may contain non monetary contributions; list of goals achieved by an agency that improve the status of women in our state; research and reports submitted to the general public and government officials to improve awareness of the rights, responsibilities and interests of women and girls; self-sufficiency and status; etc.

D. Retention: five years after date of event then transfer to archives for review and final disposition

[1.18.601.24 NMAC - N, 07/25/2005]

1.18.601.25 YEAR OF THE NEW MEXICO GIRL PROGRAM FILES:

A. Program: training development

B. Maintenance system: chronological by fiscal year, then by date received

C. Description: records concerning statewide program dedicated to addressing issues pertaining to middle and high school girls such as, health, education, substance and domestic abuse, self-esteem, teen pregnancy, and career choices. File may contain surveys, statistical and demographic information, lists of issues and concerns, conference materials, sponsors' information, conference dates, etc.

D. Retention: five years after close of calendar year in which program ends

[1.18.601.25 NMAC - N, 07/25/2005]

[Information is entered into an external database and a statistical report is printed at the end of the fiscal year]

1.18.601.26 GOVERNORS AWARD FOR OUTSTANDING NEW MEXICO WOMEN FILES:

A. Program: special events

B. Maintenance system: chronological by year, then alphabetical by last name

C. Description: records

concerning nominees for governor's award. File may contain nomination packets, nomination form, name of award program, name of winner, list of individuals nominated, winner biography, list of individuals nominated, etc.

D. Retention:

(1) Nominees: one year after date of nomination

(2) Winner: five years after close of fiscal year in which award was presented then transfer to archives for review and final disposition

[1.18.601.26 NMAC - N, 07/25/2005]

HISTORY OF 1.18.601 NMAC:

PRE-NMAC FILING HISTORY:

The material in this part was derived from that previously filed with the State Records Center under: SRC Rule No. 89-10, Records Retention and Disposition Schedule for Commission on the Status of Women, filed 12-18-89.

HISTORY OF REPEALED MATERIAL:

1.18.601 NMAC, ERRDS, Commission of the Status of Women - Repealed 07/25/2005

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.780 NMAC, Section 16, effective July 25, 2005

1.18.780.16 CVR CLAIM FILES:

A. Program: reparation claims

B. Maintenance system: alphabetical by victims' surnames

C. Description: records concerning the application for reparation for a violent crime, the determination of eligibility of claim and the decision of the CVRC. File may contain application, police reports, court orders, medical reports, itemized billings, loss of wages form, request of collateral sources, time sheet for time spent on claim, copy of form letter, medical investigator report, death certificate, *claim summary*, payment or denial form, authorization form, authorization for release of information, *case log*, *monthly claim summary report*, *claim summary report for additional expenses*, *request for additional counseling*, correspondence, memoranda, etc.

D. Retention:

~~(1) Approved: 100~~ 75 years after date application received, then transfer to archives for final review and disposition

~~(2) Denied:~~

~~(a) Applications denied by director only 100 years after date applica-~~

tion received

~~(b) Applications denied by CVRC: 25 years after date application received]~~

E. Confidentiality:

Portions of these files are confidential per Section 31-22-18 NMSA 1978 ("The claim file, which contains confidential reports, records and personal information, shall not be released.")

[1.18.780.16 NMAC - Rp, 1.18.780.101 NMAC, 4/5/2004; A, 7/25/2005]

NEW MEXICO PUBLIC REGULATION COMMISSION

Effective 7-15-05, the Public Regulation Commission repeals SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department (filed 3-15-84) and SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department (filed 11-8-84).

NEW MEXICO PUBLIC REGULATION COMMISSION

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 3 BUSINESS ASSOCIATIONS
PART 1 GENERAL PROVISIONS

12.3.1.1 ISSUING AGENCY: New Mexico Public Regulation Commission.

[12.3.1.1 NMAC - N, 7-15-05]

12.3.1.2 SCOPE: This rule applies to all domestic and foreign corporations, limited liability companies, cooperative associations, sanitary projects act associations, water users associations, waterworks corporations and foreign business trusts, unless exempted by law.

[12.3.1.2 NMAC - N, 7-15-05]

12.3.1.3 STATUTORY AUTHORITY: NMSA 1978 Sections 8-8-4, 39-3-1.1, 53-18-1, and 53-19-66.

[12.3.1.3 NMAC - N, 7-15-05]

12.3.1.4 DURATION: Permanent.

[12.3.1.4 NMAC - N, 7-15-05]

12.3.1.5 EFFECTIVE DATE: July 15, 2005.

[12.3.1.5 NMAC - N, 7-15-05]

12.3.1.6 OBJECTIVE: The

purpose of this rule is to set forth general provisions governing corporate and certain legislatively mandated entities in New Mexico.

[12.3.1.6 NMAC - N, 7-15-05]

12.3.1.7 DEFINITIONS: In addition to the definitions in NMSA 1978 Sections 3-29-2, 53-4-1, 53-7-19, 53-8-2, 53-11-2, 53-19-2, 53-20-2, as used in these rules:

A. biennial means every other year;

B. bureau means the corporations bureau of the public regulation commission;

C. commission means the public regulation commission;

D. director means the director of the administrative services division or his designee;

E. division means the administrative services division of the public regulation commission;

F. person means an individual, general partnership, limited liability company, limited partnership, trust, estate, association, corporation or any other legal entity;

G. these rules means the rules adopted by the commission in Title 12, Chapter 3 of the New Mexico Administrative Code.

[12.3.1.7 NMAC - N, 7-15-05]

12.3.1.8 COMPLIANCE WITH LAW: All corporations and other regulated entities shall comply with these rules and all applicable state laws and rules. [12.3.1.8 NMAC - N, 7-15-05]

12.3.1.9 REQUIREMENTS FOR FILED DOCUMENTS: In addition to the requirements stated here, particular rules may include other filing requirements. All documents required by these rules to be filed with the commission shall be filed with the bureau as follows.

A. Address for filing documents.

(1) Documents filed by mail shall be sent to the New Mexico Public Regulation Commission Corporations Bureau, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

(2) Documents filed in person or by delivery service shall be delivered to the New Mexico public regulation commission, corporations bureau filing desk, P.E.R.A. Building, Room 413, 1120 Paseo de Peralta, Santa Fe, New Mexico 87505.

B. Required format. All reports, articles, applications and other documents filed with the commission shall be typewritten, clearly legible, on good quality white paper 8 1/2 x 11 inches in size, have a 1 inch

margin on each side and at least a one-inch margin at the top and bottom of each page, and be signed or executed in black or blue-black ink. The bureau will accept for filing documents or certificates provided by foreign jurisdictions on paper that is of another size.

C. Good standing required. A corporation or other legal entity may not file, and the bureau will not accept, any document unless the corporation or entity is in good standing. For purposes of this subsection, good standing means the corporation or entity has timely filed all required reports and has paid all assessed fees, penalties, and interest.

D. Filing and requests by facsimile or electronic mail. A person may obtain a current telephone number for facsimile filing, and may make requests, by calling the bureau at 505-827-4508. Electronic filings and requests may be sent to the address on the commission's website at www.nmprc.state.nm.us. The bureau will not accept documents filed by facsimile or electronic means, except for the following:

(1) a certificate of good standing and compliance from the appropriate official of another state or country, for the purpose required by NMSA 1978 Sections 53-8-69, 53-17-6, and 53-19-48, provided that the certificate is sent directly to the bureau by the appropriate official;

(2) requests for certificates, certified copies, or other documents pursuant to 12.3.1.13 NMAC; and

(3) requests for forms pursuant to 12.3.1.10 NMAC.

E. Date of filing. The commission shall consider any document filed pursuant to this rule as filed on the date it was received and stamped by the bureau, unless the document is returned pursuant to 12.3.1.11 NMAC except that:

(1) if a report required by the Corporate Reports Act, NMSA 1978 Sections 53-5-1 through 53-5-9, is mailed to the commission, the commission shall add three days to the postmark date for purposes of NMSA 1978 Section 53-5-7; and

(2) if the commission receives a document after regular business hours, the commission shall stamp and consider it received on the next regular business day.

F. Filing fees. The commission shall not accept any document for filing unless it is accompanied by the appropriate filing fee, paid as required by 12.3.1.14 NMAC.

G. Required addresses. All reports filed by corporations and other regulated entities shall include the street address of the registered office and addresses for each of the entity's directors and officers. The report shall clearly indicate the titles of all officers and directors.

[12.3.1.9 NMAC - N, 7-15-05]

12.3.1.10 COMMISSION-PRESCRIBED FORMS:

A. Use required. The commission has prescribed forms required by law to carry out certain requirements of these rules. The most current version of a commission-prescribed form must be used when a form exists for that purpose, unless these rules state otherwise or the commission waives this requirement.

B. Use optional. The commission has available for use optional forms that may be used to comply with the requirements of these rules and strongly prefers the use of such forms for ease and consistency of data entry. However, a corporation or other entity may instead file the information and documents required by these rules in the order in which they are listed in the applicable statute or these rules.

C. How to obtain. Interested parties may obtain copies of commission-prescribed forms and other optional forms:

(1) on the commission's website at www.nmprc.state.nm.us;

(2) by electronic request to the bureau on the commission's website, by clicking on "corporations" and then "corporations inquiry;"

(3) by calling the bureau at 505-827-4508; or

(4) by writing to the New Mexico public regulation commission, corporations bureau, P.O. Box 1269, Santa Fe, New Mexico 87504-1269

[12.3.1.10 NMAC - N, 7-15-05]

12.3.1.11 INCOMPLETE FILINGS:

A. Criteria. A filing will be considered incomplete if:

(1) it is unsigned;

(2) it omits any information required by law or commission rule or order;

(3) it is not submitted on a commission-prescribed form and a form is required for that purpose;

(4) it is not accompanied by the appropriate filing fee, paid as required by 12.3.1.14 NMAC; or

(5) the commission determines the filing is otherwise insufficient.

B. Return of incomplete filings. The director shall return an incomplete filing with a statement indicating the nature of the insufficiency to:

(1) the address on any cover letter included with the form or document;

(2) if no cover letter was included, then to the return address on the envelope in which the document or form was received;

(3) if no cover letter or envelope return address were included, then to the

address on any check delivered with the form or document for filing; and

(4) if none of the above were included, then to any other address in the file for the entity involved.

[12.3.1.11 NMAC - N, 7-15-05]

12.3.1.12 REVIEW OF DOCUMENTS:

Any person who wishes to inspect public records or other documents relating to corporations or other regulated legal entities shall file a written request to the bureau as provided in 12.3.1.9 NMAC. The request shall meet the requirements of the Inspection of Public Records Act, NMSA 1978 Section 14-2-8 and shall follow the procedure required by that law.

[12.3.1.12 NMAC - N, 7-15-05]

12.3.1.13 REQUESTS FOR COPIES AND RECORD SEARCHES:

A. Types of documents available. The bureau may provide the following:

(1) a certificate of good standing and compliance;

(2) a miscellaneous certificate as requested by a corporation or other regulated legal entity;

(3) certified copies of reports, instruments or other documents relating to a corporation or other regulated legal entity;

(4) non-certified copies of reports, instruments or other documents relating to a corporation or other regulated legal entity; or

(5) reports of record searches for categories of documents or other types of information.

B. Filing of request. A person shall make a request in writing for copies of a document or a record search report and shall list all documents or information requested. A request may be mailed or delivered to the bureau, or faxed or filed electronically pursuant to 12.3.1.9 NMAC. If a person cancels a request within twenty-four (24) hours, the bureau shall not assess any fees.

C. Estimate of fees. When the bureau receives a request, the bureau shall issue an informal estimate of fees.

(1) The estimate of fees for copies shall be as prescribed in NMSA 1978 Section 53-2-1.

(2) The fee for a record search report shall be a minimum of sixty dollars (\$60.00) pursuant to the fee schedule approved by the department of finance and administration.

D. Completion of request.

(1) If the person approves the estimate, the bureau shall prepare the copies or record search report within ten (1) business days. The director may approve expedited

requests on a showing of good cause.

(2) When the requested documents are ready, the bureau shall provide a written or electronic statement of fees due and shall release the copies or record search report electronically, by email or in hard copy, as requested, upon payment of all fees due.

[12.3.1.13 NMAC - N, 7-15-05]

12.3.1.14 PAYMENT OF FEES:

A person shall pay fees charged by the commission by check or money order from funds on deposit with a United States financial institution, made payable to the New Mexico public regulation commission.

[12.3.1.14 NMAC - N, 7-15-05]

12.3.1.15 PROCEDURES FOR CHOOSING A NAME:

Corporations and other regulated legal entities shall comply with statutory name requirements, and may use the procedures in this section for checking the availability of a name, reserving a name, or applying for a corporate or company name.

A. Informal inquiry about name availability. A corporation or other regulated legal entity may informally request, orally or in writing, that the bureau determine whether a proposed name is available. The bureau shall search its records to determine whether the proposed name is the same as, or confusingly similar to, the name of another corporation or other regulated entity previously on file, reserved, or registered with the commission.

B. Formal application for a name. The bureau shall not make a final determination of whether a proposed name is available until the corporation or other entity files with the bureau an application to reserve a specified name, articles of incorporation, an application for a certificate of authority, or other organizational documents.

C. Reserving a name. A corporation or other legal entity may file an application with the bureau to reserve a proposed name. If the bureau determines the name is available, it shall reserve the name for the corporation or other legal entity for one hundred twenty (120) days. An applicant may not extend the time period of a name reservation.

D. Registering a name. A foreign profit corporation may register its name by complying with NMSA 1978 Section 53-11-9, and may renew its name registration by meeting the requirements of NMSA 1978 Section 53-11-10.

E. Administrative revocation and reserving a name. If the commission administratively revokes a corporation or other legal entity, it shall reserve its name for the period allowed by law for reinstatement. If a corporation or other legal

entity that has been administratively revoked applies for reinstatement in compliance with applicable requirements, the commission shall grant reinstatement and restore the entity's exclusive right to its name.

F. Waiver of right to a name. A corporation or other legal entity may waive its right to its name by filing a statement with the commission that the entity waives its exclusive right to its name. Once the commission receives such a waiver, it may release the name of the corporation or other legal entity for use by another. If the original corporation or other legal entity then wants to reinstate, it must do so under another name.

[12.3.1.15 NMAC - N, 7-15-05]

12.3.1.16 RULES OF PROCEDURE:

In all matters before the commission involving corporations or other legislatively mandated entities, the commission shall follow the commission rules of procedure. A specific provision in these rules shall control over a conflicting general provision in the commission rules of procedure.

[12.3.1.16 NMAC - N, 7-15-05]

12.3.1.17 APPEALS: A person, corporation or other legal entity aggrieved by any decision of the bureau, director, or commission made pursuant to these rules may appeal the decision to district court in accordance with NMSA 1978 Section 39-3-1.1 except that appeals concerning the Corporate Reports Act shall be made pursuant to NMSA 1978 Section 53-5-7.

[12.3.1.17 NMAC - N, 7-15-05]

HISTORY OF 12.3.1 NMAC:

Pre-NMAC History. The material in this part was derived from that previously filed with the state records center:

Docket No. 83-1-CORP, In the Matter of Rules and Regulations for the Corporation and Franchise Tax Department, 2-22-83.

SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department, 3-15-84.

SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department, 11-8-84.

History of Repealed Material.

SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department (filed 3-15-84), repealed 7-15-05.

SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department (filed 11-8-84), repealed 7-15-05.

Other History.

Only those applicable portions of SCC-84-

1-CF, Regulations of the Corporations and Franchise Tax Department (filed 3-15-84) and SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department (filed 11-8-84) were replaced by 12.3.1 NMAC, Business Associations - General Provisions, effective 7-15-05.

NEW MEXICO PUBLIC REGULATION COMMISSION

TITLE 12 TRADE, COM- MERCE AND BANKING CHAPTER 3 BUSINESS ASSOCI- ATIONS PART 2 PROFIT CORPORA- TIONS

12.3.2.1 ISSUING AGENCY:
New Mexico Public Regulation
Commission.
[12.3.2.1 NMAC - N, 7-15-05]

12.3.2.2 SCOPE: This rule
applies to all domestic and foreign profit
corporations, unless exempted by law.
[12.3.2.2 NMAC - N, 7-15-05]

**12.3.2.3 STATUTORY
AUTHORITY:** NMSA 1978 Sections 8-8-
4 and 53-18-1.
[12.3.2.3 NMAC - N, 7-15-05]

12.3.2.4 DURATION:
Permanent.
[12.3.2.4 NMAC - N, 7-15-05]

12.3.2.5 EFFECTIVE DATE:
July 15, 2005.
[12.3.2.5 NMAC - N, 7-15-05]

12.3.2.6 OBJECTIVE: The
purpose of this rule is to facilitate the for-
mation and continuation of profit corpora-
tions as provided by law.
[12.3.2.6 NMAC - N, 7-15-05]

12.3.2.7 DEFINITIONS: See
12.3.1.7 NMAC.
[12.3.2.7 NMAC - N, 7-15-05]

**12.3.2.8 DOMESTIC PROFIT
CORPORATIONS:** A domestic profit cor-
poration shall comply with the requirements
of the Business Corporations Act, NMSA
1978, chapter 53, articles 11 through 18.

A. Filing requirements.
A domestic profit corporation shall file all
documents required by this section in com-
pliance with 12.3.1 NMAC, General
Provisions, and shall pay all filing fees
required by NMSA 1978 Section 53-2-1.

B. Name. A domestic
profit corporation shall comply with the

name requirements in NMSA 1978 Section
53-11-7 and may use the procedures in
12.3.1.15 NMAC for inquiring about,
reserving, formally applying for, or reinstat-
ing a name. A corporation in existence on
June 17, 1983 is deemed to be in compli-
ance with the requirements of NMSA 1978
Section 53-11-7 for a separate word or
abbreviation describing the type of corpora-
tion named.

C. Filing year. A domes-
tic profit corporation shall file biennial cor-
porate reports and supplemental reports
with the bureau:

(1) in even-numbered calendar
years if the last digit of its New Mexico cer-
tificate of incorporation number is an even
number;

(2) in odd-numbered calendar
years if the last digit of its New Mexico cer-
tificate of incorporation number is an odd
number;

(3) in the calendar year deter-
mined by the bureau if it was assigned a
duplicate number before 1980; the bureau
shall notify the corporation of the appropri-
ate filing years.

D. Taxable year. For a
new domestic corporation for which no tax-
able year period has been determined, the
bureau will presume that the corporation's
taxable year ends December 31. If a new
domestic profit corporation selects a differ-
ent end date for its taxable year, it shall so
inform the commission in its initial report.

E. Required documents.

(1) Articles of incorporation. A
domestic profit corporation shall adopt and
file with the commission articles of incor-
poration that comply with NMSA 1978
Sections 53-12-2 and 53-12-3. The corpo-
ration may amend or restate the articles as
provided in NMSA 1978 Sections 53-13-1
through 53-13-12.

(2) **Statement designating regis-
tered agent and office.** A domestic profit
corporation shall have and continuously
maintain on file with the commission a reg-
istered agent and office that meet the
requirements in NMSA 1978 Sections 53-
11-11, 53-11-12, and 53-11-13.

**F. Merger and consoli-
dation.** Two or more domestic corporations
may merge or consolidate in compliance
with the applicable requirements of NMSA
1978 Sections 53-14-1 through 53-14-7 and
shall file articles of merger, consolidation,
or exchange as required by NMSA 1978
Sections 53-14-4 and 53-14-5. Shareholders
may convert a domestic profit corporation
into a limited liability company
by complying with NMSA 1978 Section 53-
19-60.

G. Dormant status. A
domestic profit corporation that meets the
requirements of NMSA 1978 Section 53-5-
9 for dormant status, may, in lieu of filing a

required corporate report, file a statement
that it is no longer actively engaged in busi-
ness in New Mexico. A dormant corpora-
tion may extend its dormant status, or may
be fully revived by complying with NMSA
1978 Section 53-5-9.

H. Dissolution. A domes-
tic profit corporation seeking voluntary dis-
solution shall comply with the requirements
for dissolution provided in NMSA 1978
Sections 53-16-1 through 53-16-24, and file
a statement of intent to dissolve as required
by NMSA 1978 Section 53-16-4, and arti-
cles of dissolution that comply with NMSA
1978 Sections 53-16-11 and 53-16-12. A
domestic profit corporation may revoke
voluntary dissolution proceedings as pro-
vided in NMSA 1978 Sections 53-16-7 and
53-16-8 by filing a statement of revocation
required by NMSA 1978 Section 53-16-9.

**I. Administrative revo-
cation and reinstatement.** The commis-
sion may administratively revoke a domes-
tic profit corporation by issuing a certificate
of revocation under the circumstances and
following the process provided in NMSA
1978 Section 53-11-12. A corporation may
apply to the commission for reinstatement
following the process and within the time
period provided in NMSA 1978 Section 53-
11-12.

[12.3.2.8 NMAC - N, 7-15-05]

**12.3.2.9 DOMESTIC PROFIT
CORPORATION INITIAL REPORT:** A
domestic profit corporation shall file an ini-
tial report on the schedule prescribed by and
as required by NMSA 1978 Sections 53-5-2
through 53-5-9 on the following commis-
sion-prescribed form available as provided
in 12.3.1 NMAC.

Please see instructions on back of page.

[Please see form on page 702.]

RETURN TO:
 NM PUBLIC REGULATION COMMISSION
 CORPORATIONS BUREAU
 P.O. BOX 1269
 SANTA FE NM 87504 -1269

**DOMESTIC
 PROFIT CORPORATION
 INITIAL REPORT**
 For proposed taxable year ending ____/____/____

INSTRUCTIONS

1	EXACT CORPORATE NAME AND U.S. MAILING ADDRESS	Name	
		Address	
		City, State, Zip	

2	NMPRC Certificate of Incorporation No.	3	Principal Place of Business in New Mexico
			Street
			City, Zip

4	REGISTERED AGENT AND OFFICE LOCATION WITHIN NEW MEXICO FOR SERVICE OF PROCESS (Filing corporation cannot be its own agent)
	Name
	Street Address
	City, Zip

5	TAX ID NUMBER	6	NEXT ANNUAL MEETING

7	DIRECTORS AND OFFICERS List the names and addresses of ALL the directors and officers and identify every title each director holds. A New Mexico corporation shall consist of 1 or more directors.			
	Office/Title	Name	Address	(optional) Additional Titles
	Director			Term Expires
	Director			
	Director			
	President			
	Vice-President			
	Secretary			
	Treasurer			

8	SIGNATURE Under penalties of perjury, I declare and affirm that I have examined this report, including the accompanying schedules and statements, and that all statements contained therein are true and correct.		
	Date	Printed Name	Signature
			Title

9	PAYMENT OF FILING FEE AND LATE FILING PENALTY		NMPRC USE ONLY	
	a	Report filing fee	\$ 25.00	
	b	Late filing penalty (\$200.00) <i>PRC extension, if any, must be submitted with this report</i>		
	c	TOTAL AMOUNT DUE with corporate report (lines a + b)	\$	Amount Remitted
		PLEASE DO NOT SUBMIT CASH FOR PAYMENT		Postmark Date

A domestic profit corporation must file an initial report as required by Sections 53-5-2 through 53-5-9 and 12.3.2.9 NMAC.

Please type or print legibly.

At the top right of the form, indicate the proposed closing date of the taxable year of the corporation; you may obtain more information on determining taxable year in 12.3.2.8 NMAC.

1. Provide the exact name of the corporation and U.S. postal mailing address. If available, attach a mailing label from the Public

Regulation Commission.

2. Insert the Certificate of Incorporation number issued by the Public Regulation Commission.
3. Provide the address of your principal place of business in New Mexico, or "NONE" if applicable.
4. Indicate the address of the registered office of the corporation in New Mexico, and the name of its registered agent at that address. For additional information on the requirements for registered office and agent, see NMSA 1978 Sections 53-11-11, 53-11-12, and 53-11-13 and 12.3.2.8 NMAC. If within a municipality, the address must be a street address; if outside a municipality, you must include geographic location, including well-known landmarks.
5. Insert the corporation's taxpayer identification number issued by the revenue processing division of the taxation and revenue department.
6. Provide the date for the next annual meeting of shareholders for election of directors.
7. Indicate the names and respective addresses of the directors and officers of the corporation, and when their terms of office expire. You are not required to use the titles President, Vice President, Secretary and Treasurer, but you are required to have officers and you must indicate officers whose duties most closely correspond to the requirements of NMSA 1978 Section 53-11-48. If the corporation's articles of incorporation or by-laws confer additional titles on the officers, you may provide these in the next to last column, but this is not required. Attach schedule of additional directors and officers if needed.
8. The chairman of the board, president, vice president, secretary, principal accounting officer, or authorized agent of the corporation must sign and swear to the statements in the report.
9. An initial report is due within thirty (30) days after the date on which the Commission issued the corporation's Certificate of Incorporation. If not filed by this date, you owe a late penalty of two hundred dollars (\$200.00), unless the Commission granted an extension pursuant to NMSA Section 53-5-6. If the report is late and the Commission did not grant an extension, insert two hundred dollars (\$200.00) in box 9b and total the fees owed. Payment of fees must accompany this report or the Commission will not accept it for filing. You may pay by check or money order made out to the New Mexico Public Regulation Commission. If the Commission granted an extension, you must attach a copy of the extension to this report.
[12.3.2.9 NMAC - N, 7-15-05]

12.3.2.10 DOMESTIC PROFIT CORPORATION BIENNIAL AND SUPPLEMENTAL REPORT: A domestic profit corporation shall file biennial and supplemental reports on the schedule prescribed by and as required by NMSA 1978 Sections 53-5-2 through 53-5-9 on the following commission-prescribed form available as provided in 12.3.1 NMAC.

RETURN TO:
 NM PUBLIC REGULATION COMMISSION
 CORPORATIONS BUREAU
 P.O. BOX 1269
 SANTA FE NM 87504 -1269

**DOMESTIC
 PROFIT CORPORATION
 BIENNIAL REPORT _____
 SUPPLEMENTAL REPORT _____**
 For taxable year ending ____ / ____ / _____

Please see instructions on back of page.

1	EXACT CORPORATE NAME AND U.S. MAILING ADDRESS	Name	
		Address	
		City, State, Zip	

2	NMPRC Certificate of Incorporation No.	3	Principal Place of Business in New Mexico	
			Street	
			City, Zip	

4	REGISTERED AGENT AND OFFICE LOCATION WITHIN NEW MEXICO FOR SERVICE OF PROCESS (Filing corporation cannot be its own agent)	
	Name	
	Street Address	
	City, Zip	

5	TAX ID NUMBER	6	NEXT ANNUAL MEETING

7	DIRECTORS AND OFFICERS List the names and addresses of ALL the directors and officers and identify every title each director holds. A New Mexico corporation shall consist of 1 or more directors.				
	Office/Title	Name	Address	(optional) Additional Titles	Term Expires
	Director				
	Director				
	Director				
	President				
	Vice President				
	Secretary				
	Treasurer				

8	SIGNATURE Under penalties of perjury, I declare and affirm that I have examined this report, including the accompanying schedules and statements, and that all statements contained therein are true and correct.			
	Date	Printed Name	Signature	Title

9	PAYMENT OF FILING FEE AND LATE FILING PENALTY		NMPRC USE ONLY	
	a	Report filing fee	\$ 25.00	
	b	Late filing penalty (\$200.00) <i>IRS or PRC extension, if any, must be submitted with this report</i>		Amount Remitted
	c	TOTAL AMOUNT DUE with corporate report (lines a + b)	\$	Postmark Date
		PLEASE DO NOT SUBMIT CASH FOR PAYMENT		

INSTRUCTIONS

This report is required by, and must comply with the requirements of, NMSA 1978 Sections 53-5-2 through 53-5-9 and 12.3.2.10 NMAC. A corporation must file a supplemental report if the corporation makes any change listed in NMSA 1978 Section 53-5-2.

Please type or print legibly.

At the top right of the form, indicate whether the report is a biennial or supplemental report, and the closing date of the taxable year of the report (if a biennial report).

1. Provide the exact name of the corporation and U.S. postal mailing address. If available, attach a mailing label from the Public Regulation Commission.
2. Insert the Certificate of Incorporation number issued by the Public Regulation Commission.
3. Provide the address of your principal place of business in New Mexico, or "NONE" if applicable.
4. Indicate the address of the registered office of the corporation in New Mexico, and the name of its registered agent at that address. For additional information on the requirements for registered office and agent, see NMSA 1978 Sections 53-11-11, 53-11-12, and 53-11-13. If within a municipality, the address must be a street address, or if outside a municipality must include geographic location, including well-known landmarks.
5. Insert the corporation's taxpayer identification number issued by the revenue processing division of the taxation and revenue department.
6. Provide the date for the next annual meeting of shareholders for election of directors.
7. Indicate the names and respective addresses of the directors and officers of the corporation, and when their terms of office expire. You are not required to use the titles President, Vice President, Secretary and Treasurer, but you are required to have officers and you must indicate officers whose duties most closely correspond to the requirements of NMSA 1978 Section 53-11-48. If the corporation's articles of incorporation or by-laws confer additional titles on the officers, you may provide these in the next to last column, but this is not required. Attach schedule of additional directors and officers if needed.
8. The chairman of the board, president, vice president, secretary, principal accounting officer, or authorized agent of the corporation must sign and swear to the statements in the report.
9. A biennial report is due on or before the fifteenth day of the third month following the end of the corporation's taxable year (see Subsection C of 12.3.2.8 NMAC for information on determining your filing year). A supplemental report is due within thirty (30) days of

the change necessitating the report. If not filed by these dates, you owe a late penalty of two hundred dollars (\$200.00), unless the Commission granted an extension pursuant to NMSA Section 53-5-6. If the report is late and the Commission did not grant an extension, insert two hundred dollars (\$200.00) in box 9b and total the fees owed. Payment of fees must accompany this report or the Commission will not accept it for filing. You may pay by check or money order made out to the New Mexico Public Regulation Commission. If the Commission granted an extension, you must attach a copy of the extension to this report.

[12.3.2.10 NMAC - N, 7-15-05]

12.3.2.11 FOREIGN PROFIT CORPORATIONS: A foreign profit corporation shall comply with the applicable requirements of the Business Corporations Act, NMSA 1978, chapter 53, articles 11 through 18.

A. Filing requirements. A foreign profit corporation shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions, and shall pay all filing fees required by NMSA 1978 Section 53-2-1.

B. Name. A foreign profit corporation shall comply with the name requirements in NMSA 1978 Section 53-17-3 and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, registering, formally applying for, or reinstating a name. A corporation in existence on June 17, 1983 is deemed to be in compliance with the requirement of NMSA 1978 Section 53-11-7 for a separate word or abbreviation describing the type of corporation named.

C. Filing year. A foreign profit corporation shall file biennial corporate reports and supplemental reports with the bureau:
(1) in even-numbered calendar years if the last digit of its New Mexico certificate of authority number is an even number;
(2) in odd-numbered calendar years if the last digit of its New Mexico certificate of authority number is an odd number;
(3) in the calendar year determined by the bureau if it was assigned a duplicate number before 1980; the bureau shall notify the corporation of the appropriate filing years.

D. Taxable year. For a new foreign profit corporation for which no taxable year period has been determined, the bureau will presume that the corporation's taxable year ends December 31. If a new foreign profit corporation selects a different end date for its taxable year, it shall so inform the commission in its initial report.

E. Required documents.

(1) Certificate of authority. Before transacting business in New Mexico, a foreign profit corporation shall obtain a certificate of authority from the commission pursuant to NMSA 1978 Section 53-17-1 by filing an application containing the information and supporting documents required in NMSA 1978 Sections 53-17-5 through 53-17-7. A foreign profit corporation shall amend its certificate of authority as provided in NMSA 1978 Section 53-17-14.

(2) Statement designating registered agent and office. A foreign profit corporation shall have and continuously maintain on file with the commission a registered office and agent that meet the requirements of NMSA 1978 Sections 53-17-9 and 53-17-10.

F. Merger and conversion. A foreign profit corporation that is a party to a statutory conversion or merger shall comply with, and file articles of merger or conversion as required by, NMSA 1978 Section 53-17-13.

G. Dormant status. A foreign profit corporation that meets the requirements of NMSA 1978 Section 53-5-9 for dormant status may, in lieu of filing a required corporate report, file a statement that it is no longer actively engaged in business in New Mexico. A dormant corporation may extend its dormant status, or may be fully revived by complying with NMSA 1978 Section 53-5-9.

H. Withdrawal. A foreign profit corporation seeking to withdraw from doing business in New Mexico may procure a certificate of withdrawal from the commission by filing an application for withdrawal that complies with the requirements of NMSA 1978 Section 53-17-15 and 53-17-16.

I. Administrative revocation and reinstatement. The commission may revoke a foreign profit corporation's certificate of authority for the reasons provided in NMSA 1978 Section 53-17-17 by issuing a certificate of revocation pursuant to NMSA 1978 Section 53-17-18. A foreign profit corporation may apply to the commission for reinstatement following the process and within the time period provided in NMSA 1978 Section 53-17-18.

[12.3.2.11 NMAC - N, 7-15-05]

12.3.2.12 FOREIGN PROFIT CORPORATION INITIAL REPORT: A foreign profit corporation shall file an initial report on the schedule prescribed by and as required by NMSA 1978 Section 53-5-2 on the following commission-prescribed form available as provided in 12.3.1 NMAC.

RETURN TO:
 NM PUBLIC REGULATION COMMISSION
 CORPORATIONS BUREAU
 P.O. BOX 1269
 SANTA FE NM 87504 -1269

FOREIGN
 PROFIT CORPORATION
 INITIAL REPORT
 For taxable year ending ____/____/____

Please see instructions on back of page.

1	EXACT CORPORATE NAME AND U.S. MAILING ADDRESS	Name	
		Address	
		City, State, Zip	

2	NMPRC Certificate of Authority Number	3	State or country of incorporation	4	Principal Office Outside New Mexico	
					Street	
					City, State, Zip	

5	REGISTERED AGENT AND OFFICE LOCATION WITHIN NEW MEXICO FOR SERVICE OF PROCESS (Filing corporation cannot be its own agent)	
	Name	
	Street Address	
	City, Zip	

6	REGISTERED OFFICE LOCATION IN STATE OR COUNTRY OF INCORPORATION	
	Street Address	
	City, State, Zip	

7	TAX ID NUMBER	8	NEXT ANNUAL MEETING	9	Principal Place of Business In New Mexico	
					Street	
					City, State, Zip	

10	DIRECTORS AND OFFICERS List names and addresses of ALL the directors and officers and identify every title each director holds.			
	Office/Title	Name	Address	(optional) Additional Titles
	Director			
	Director			
	Director			
	President			
	Vice President			
	Secretary			
	Treasurer			
	<i>Attach schedule of additional directors and officers if needed</i>			

11	SIGNATURE Under penalties of perjury, I declare and affirm that I have examined this report, including the accompanying schedules and statements, and that all statements contained therein are true and correct.			
	Date	Printed Name	Signature	Title

12	PAYMENT OF FILING FEE AND LATE FILING PENALTY		NMPRC USE ONLY		
	a	Report filing fee	\$ 25.00	Amount Remitted	Postmark Date
	b	Late filing penalty (\$200.00) <i>PRC extension, if any, must be submitted with this report</i>			
	c	TOTAL AMOUNT DUE with corporate report (lines a + b) <i>PLEASE DO NOT SUBMIT CASH FOR PAYMENT</i>	\$		

INSTRUCTIONS

A foreign profit corporation must file an initial report as required by Sections 53-5-2 through 53-5-9 and 12.3.2.12 NMAC.

Please type or print legibly.

At the top right of the form, indicate the closing date of the taxable year of the corporation.

- Provide the exact name of the corporation and U.S. postal mailing address. If available, attach a mailing label from the Public Regulation Commission.
- Insert the Certificate of Authority Number issued by the New Mexico Public Regulation Commission.
- Indicate the state or country under whose laws the corporation is incorporated.
- Provide the address of your principal place of business outside New Mexico if different from the address of the registered office, or "NONE" if applicable.
- Indicate the address of the registered office of the corporation in New Mexico, and the name of its registered agent at that address. For additional information on the requirements for registered office and agent, see NMSA 1978 Sections 53-11-11, 53-11-12, and 53-11-13

and 12.3.2.11 NMAC. If within a municipality, the address must be a street address; if outside a municipality, you must include geographic location, including well-known landmarks.

6. Insert the address of the registered office of the corporation in the state or country of incorporation.
7. Provide the corporation's taxpayer identification number issued by the revenue processing division of the New Mexico taxation and revenue department.
8. Provide the date for the next annual meeting of shareholders for election of directors.
9. Provide the address of your principal place of business within New Mexico.
10. Indicate the names and respective addresses of the directors and officers of the corporation. You must list any officers and titles required by the state or country under whose laws the corporation is incorporated. If the corporation's articles of incorporation or by-laws confer additional titles on the officers, you may provide these in the right column, but this is not required.
11. The chairman of the board, president, vice president, secretary, principal accounting officer, or authorized agent of the corporation must sign and swear to the statements in the report.
12. An initial report is due within thirty (30) days after the date on which the Commission issued the corporation's Certificate of Authority. If not filed by this date, you owe a late penalty of two hundred dollars (\$200.00), unless the Commission granted an extension pursuant to NMSA Section 53-5-6. If the report is late and the Commission did not grant an extension, insert two hundred dollars (\$200.00) in box 12b and total the fees owed. Payment of fees must accompany this report or the Commission will not accept it for filing. You may pay by check or money order made out to the New Mexico Public Regulation Commission. If the Commission granted an extension, you must attach a copy of the extension to this report.
[12.3.2.12 NMAC - N, 7-15-05]

12.3.2.13 FOREIGN PROFIT CORPORATION BIENNIAL AND SUPPLEMENTAL REPORT: A foreign profit corporation shall file biennial and supplemental reports as required by NMSA 1978 Section 53-5-2 on the following commission-prescribed form available as provided in 12.3.1 NMAC

RETURN TO:
 NM PUBLIC REGULATION COMMISSION
 CORPORATIONS BUREAU
 P.O. BOX 1269
 SANTA FE NM 87504 -1269

**FOREIGN
 PROFIT CORPORATION
 BIENNIAL REPORT _____
 SUPPLEMENTAL REPORT _____**
 For taxable year ending ____ / ____ / ____

Please see instructions on back of page.

1	EXACT CORPORATE NAME AND U.S. MAILING ADDRESS	Name	
		Address	
		City, State, Zip	

2	NMPC Certificate of Authority Number	3	State or country of incorporation	4	Principal Office Outside New Mexico	
					Street	
					City, State, Zip	

5	REGISTERED AGENT AND OFFICE LOCATION WITHIN NEW MEXICO FOR SERVICE OF PROCESS (Filing corporation cannot be its own agent)	
	Name	
	Street Address	
	City, Zip	

6	REGISTERED OFFICE LOCATION IN STATE OR COUNTRY OF INCORPORATION	
	Street Address	
	City, State, Zip	

7	TAX ID NUMBER	8	NEXT ANNUAL MEETING	9	Principal Place of Business In New Mexico	
					Street	
					City, State, Zip	

10	DIRECTORS AND OFFICERS List names and addresses of ALL the directors and officers and identify every title each director holds.			
	Office/Title	Name	Address	(optional) Additional Titles
	Director			
	Director			
	Director			
	President			
	Vice President			
	Secretary			
	Treasurer			
<i>Attach schedule of additional directors and officers if needed</i>				

11	SIGNATURE Under penalties of perjury, I declare and affirm that I have examined this report, including the accompanying schedules and statements, and that all statements contained therein are true and correct.			
	Date	Printed Name	Signature	Title

12	PAYMENT OF FILING FEE AND LATE FILING PENALTY		NMPRC USE ONLY	
	a	Report filing fee	\$ 25.00	
	b	Late filing penalty (\$200.00) <i>PRC extension, if any, must be submitted with this report</i>		Amount Remitted
	c	TOTAL AMOUNT DUE with corporate report (lines a + b)	\$	Postmark Date
	PLEASE DO NOT SUBMIT CASH FOR PAYMENT			

INSTRUCTIONS

This report is required by, and must comply with the requirements of, NMSA 1978 Sections 53-5-2 through 53-5-9 and 12.3.2.13 NMAC. A corporation must file a supplemental report if the corporation makes any changes listed in NMSA 1978 Section 53-5-2.

Please type or print legibly.

At the top right of the form, indicate whether the report is a biennial or supplemental report, and the closing date of the taxable year of the report (if a biennial report).

1. Provide the exact name of the corporation and U.S. postal mailing address. If available, attach a mailing label from the Public Regulation Commission.
2. Insert the Certificate of Authority Number issued by the New Mexico Public Regulation Commission.
3. Indicate the state or country under whose laws the corporation is incorporated.
4. Provide the address of your principal place of business outside New Mexico if different from the address of the registered office, or "NONE" if applicable.
5. Indicate the address of the registered office of the corporation in New Mexico, and the name of its registered agent at that address. For additional information on the requirements for registered office and agent, see NMSA 1978 Sections 53-11-11, 53-11-12, and 53-11-13 and 12.3.2.11 NMAC. If within a municipality, the address must be a street address; if outside a municipality, you must include geographic location, including well-known landmarks.
6. Insert the address of the registered office of the corporation in the state or country of incorporation.
7. Provide the corporation's taxpayer identification number issued by the revenue processing division of the New Mexico taxation and revenue department.
8. Provide the date for the next annual meeting of shareholders for election of directors.
9. Provide the address of your principal place of business within New Mexico.
10. Indicate the names and respective addresses of the directors and officers of the corporation. You must list any officers and titles required by the state or country under whose laws the corporation is incorporated. If the corporation's articles of incorporation or by-laws

confer additional titles on the officers, you may provide these in the right column, but this is not required.

11. The chairman of the board, president, vice president, secretary, principal accounting officer or authorized agent of the corporation must sign and swear to the statements in the report.

12. A biennial report is due on or before the fifteenth day of the third month following the end of the corporation's taxable year (see Subsection C of 12.3.2.11 NMAC for information on determining your filing year). A supplemental report is due within thirty (30) days of the change necessitating the report. If not filed by these dates, you owe a late penalty of two hundred dollars (\$200.00), unless the Commission granted an extension pursuant to NMSA Section 53-5-6. If the report is late and the Commission did not grant an extension, insert two hundred dollars (\$200.00) in box 12b and total the fees owed. Payment of fees must accompany this report or the Commission will not accept it for filing. You may pay by check or money order made out to the New Mexico Public Regulation Commission. If the Commission granted an extension, you must attach a copy of the extension to this report.
[12.3.2.13 NMAC - N, 7-15-05]

HISTORY OF 12.3.2 NMAC:

Pre-NMAC History. The material in this part was derived from that previously filed with the state records center:

Docket No. 83-1-CORP, In the Matter of Rules and Regulations for the Corporation and Franchise Tax Department, 2-22-83.

SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department, 3-15-84.

SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department, 11-8-84.

History of Repealed Material.

SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department (filed 3-15-84), repealed 7-15-05.

SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department (filed 11-8-84), repealed 7-15-05.

Other History.

Only those applicable portions of SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department (filed 3-15-84) and SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department (filed 11-8-84) were replaced by 12.3.2 NMAC, Profit

Corporations, effective 7-15-05.

NEW MEXICO PUBLIC REGULATION COMMISSION

TITLE 12 TRADE, COM- MERCE AND BANKING CHAPTER 3 BUSINESS ASSOCI- ATIONS PART 3 NONPROFIT COR- PORATIONS

12.3.3.1 ISSUING AGENCY:
New Mexico Public Regulation
Commission.
[12.3.3.1 NMAC - N, 7-15-05]

12.3.3.2 SCOPE: This rule
applies to all domestic and foreign nonprof-
it corporations, unless exempted by law.
[12.3.3.2 NMAC - N, 7-15-05]

**12.3.3.3 S T A T U T O R Y
AUTHORITY:** NMSA 1978 Sections 8-8-
4, 3-29-20, 53-8-7, 53-8-7.1, 53-8-8, 53-8-
9, 53-8-31, 53-8-32, 53-8-35 through 53-8-
45, 53-8-47 through 53-8-49, 53-8-50
through 53-8-54, 53-8-60, 53-8-64, 53-8-66
through 53-8-69, 53-8-71, 53-8-72, 53-8-75
through 53-8-80, 53-8-82, 53-8-83, 53-8-
85, 53-8-88.1 and 53-19-60.
[12.3.3.3 NMAC - N, 7-15-05]

12.3.3.4 D U R A T I O N :
Permanent.
[12.3.3.4 NMAC - N, 7-15-05]

12.3.3.5 EFFECTIVE DATE:
July 15, 2005.
[12.3.3.5 NMAC - N, 7-15-05]

12.3.3.6 OBJECTIVE: The
purpose of this rule is to facilitate the for-
mation and continuation of nonprofit corpo-
rations as provided by law.
[12.3.3.6 NMAC - N, 7-15-05]

12.3.3.7 DEFINITIONS: See
12.3.1.7 NMAC.
[12.3.3.7 NMAC - N, 7-15-05]

**12.3.3.8 DOMESTIC NON-
PROFIT CORPORATIONS:** A domestic
nonprofit corporation shall comply with the
applicable requirements of the Nonprofit
Corporation Act, NMSA 1978 Sections 53-
8-1 through 53-8-99.

A. Filing requirements.
A domestic nonprofit corporation shall file
all documents required by this section in
compliance with 12.3.1 NMAC, General
Provisions, and shall pay all filing fees
required by NMSA 1978 Section 53-8-85.

B. Name. A domestic
nonprofit corporation shall comply with

name requirements of NMSA 1978 Sections
53-8-7 and 53-8-7.1, and may use the pro-
cedures in 12.3.1.15 NMAC for inquiring
about, reserving, formally applying for, or
reinstating a name.

C. Taxable year determi- nation.

(1) When a domestic nonprofit
corporation has a taxable year which is less
than twelve (12) months, the corporation
shall file satisfactory proof with, and notify
the bureau, of its 12-month taxable year
reporting period for purposes of corporate
reports. Satisfactory proof shall include
appropriately authenticated copies of inter-
nal revenue service approval of the short
taxable year and of the corporation's taxable
year end.

(2) For a new domestic nonprofit
corporation for which no taxable year peri-
od has been determined, the bureau will
presume that the corporation's taxable year
ends December 31 and that the corporation
will report on a calendar-year basis. When
a new nonprofit corporation determines the
end of its first taxable year, the corporation
will notify the bureau within thirty (30)
days.

(3) For a domestic nonprofit cor-
poration, for which no taxable year has been
determined because it is exempt from
reporting to the internal revenue service or
otherwise, the bureau will presume that the
corporation's taxable year for reporting pur-
poses ends on December 31 and the corpo-
ration will report on a calendar-year basis.

D. Documents required.
All corporate reports shall include the street
address of the business office of the regis-
tered agent and addresses for each of the
corporation's directors and officers.

(1) Articles of incorporation. A
domestic nonprofit corporation shall adopt
and file with the commission articles of
incorporation that comply with NMSA
1978 Sections 53-8-31 and 53-8-32. The
corporation may amend or restate its articles
as provided in NMSA 1978 Sections 53-8-
35 through 53-8-39.

**(2) Statement designating regis-
tered agent and office.** A domestic non-
profit corporation shall have and continu-
ously maintain on file with the commission
a registered office and agent that meet the
requirements of NMSA 1978 Sections 53-8-
8 and 53-8-9.

E. Merger and consoli- dation.

(1) Merger of domestics. Two or
more domestic nonprofit corporations may
merge or consolidate in compliance with the
applicable requirements of NMSA 1978
Sections 53-8-40 through 53-8-45 and shall
file articles of merger or articles of consoli-
dation as required by NMSA 1978 Section
53-8-43.

(2) Merger or consolidation of

foreign and domestic. One or more foreign nonprofit corporations and one or more domestic nonprofit corporations may merge or consolidate in compliance with the applicable requirements of NMSA 1978 Section 53-8-45 and shall file articles of merger or articles of consolidation as required by NMSA 1978 Section 53-8-43.

(3) Reorganization as sanitary projects act association. A nonprofit corporation may reorganize under the Sanitary Projects Act by complying with NMSA 1978 Section 3-29-20.

F. Dormant status. A domestic nonprofit corporation that meets the requirements of NMSA 1978 Section 5-8-88.1 for dormant status may, in lieu of filing a required corporate report, file a statement that it is no longer actively engaged in business in New Mexico. A dormant corporation may extend its dormant status, or may be fully revived by complying with NMSA 1978 Section 5-8-88.1.

G. Dissolution. A domestic nonprofit corporation shall comply with the requirements for dissolution provided in NMSA 1978 Sections 53-8-47 through 53-8-49 and file articles of dissolution that comply with NMSA 1978 Sections 53-8-51 and 53-8-52. A domestic nonprofit corporation may cancel voluntary dissolution proceedings as provided in NMSA 1978 Section 53-8-50.

H. Administrative revocation and reinstatement. The commission may revoke a domestic nonprofit corporation's certificate of incorporation for the reasons provided in NMSA 1978 Section 53-8-53, by issuing a certificate of revocation pursuant to NMSA 1978 Section 53-8-54. A nonprofit corporation may apply for reinstatement following the process and within the time period provided in NMSA 1978 Section 53-8-54.

[12.3.3.8 NMAC - N, 7-15-05]

12.3.3.9 DOMESTIC NONPROFIT CORPORATION INITIAL REPORT: A domestic nonprofit corporation shall file an initial report complying with the schedule and requirements of NMSA 1978 Sections 53-8-82 and 53-8-83 on the following commission-prescribed form available as provided in 12.3.1 NMAC.

RETURN TO:
 NM PUBLIC REGULATION COMMISSION
 CORPORATIONS BUREAU
 P.O. BOX 1269
 SANTA FE NM 87504 -1269

**DOMESTIC
 NONPROFIT CORPORATION
 INITIAL REPORT**
 For taxable year ending ____/____/____

See instructions on back of page.

1	EXACT CORPORATE NAME AND U.S. MAILING ADDRESS	Name	
		Address	
		City, State, Zip	

2	PRINCIPAL PLACE OF BUSINESS IN NEW MEXICO	3	NMPRC Certificate of Incorporation Number
	Street		
	City, Zip		

4	REGISTERED AGENT AND OFFICE LOCATION WITHIN NEW MEXICO FOR SERVICE OF PROCESS (Filing corporation cannot be its own agent)
	Name
	Street Address
	City, Zip

5	BRIEF STATEMENT OF CHARACTER OF AFFAIRS BEING CONDUCTED

6	DIRECTORS AND OFFICERS List the names and addresses of ALL the directors and identify every title each director holds. A New Mexico corporation shall have not less than 3 directors.		
	Office/Title	Name	Address
			(optional) Additional Titles
	Director		
	Director		
	Director		
	President		
	Vice President		
	Secretary		
	Treasurer		
	<i>Attach schedule of additional directors and officers if needed</i>		

7	SIGNATURES Under penalties of perjury, we declare and affirm that we have examined this report, including the accompanying schedules and statements, and all statements contained therein are true and correct.		
	Date	Printed Name	Signature

8	PAYMENT OF FILING FEE AND LATE FILING PENALTY		NMPRC USE ONLY	
	a	Report filing fee	\$ 10.00	
	b	Late filing penalty (\$10.00) <i>PRC extension, if any, must be submitted with this report</i>		Amount Remitted
				Postmark Date
c	TOTAL AMOUNT DUE with corporate report (lines a + b)	\$		
	<i>PLEASE DO NOT SUBMIT CASH FOR PAYMENT</i>			

INSTRUCTIONS

This report is required by, and must comply with the requirements of, NMSA 1978 Sections 53-8-82 and 53-8-83 and 12.3.3.9 NMAC. In the top right of the form, insert the corporation's proposed taxable year; you may find more information on determining your taxable year in 12.3.3.8 NMAC.

Please print or type legibly.

1. Provide the exact name of the corporation and U.S. postal mailing address.
2. Provide the address of your principal place of business in New Mexico, or "NONE" if applicable.
3. Provide the Certificate of Incorporation number issued by the Public Regulation Commission.
4. Indicate the address of the registered office of the corporation in New Mexico, and the name of its registered agent at that address. For additional information on the requirements for registered office and agent, see NMSA 1978 Sections 53-8-8 and 53-8-9. If within a municipality, the address must be a street address; if outside a municipality, you must include geographic location, including well-known landmarks.
5. Provide a brief statement of the character of the affairs that the corporation is actually conducting. Attach additional pages if necessary.
6. Indicate the names and respective addresses of the directors and officers of the corporation. You are not required to indicate who is the President, Vice President, Secretary and Treasurer, but you are required to have officers and you must indicate officers whose duties most closely correspond to the requirements of NMSA 1978 Section 53-8-23. If the corporation's articles of incorporation or by-laws confer additional titles on the officers, you may provide these in the right column, but this is not required.
7. Any two of the directors or officers of the corporation, or a receiver or trustee if the corporation is in the hands of a receiver or trustee, must sign and swear to the statements in the report.
8. The Initial Report is due within thirty (30) days of the date on which the Commission issued your Certificate of Incorporation. If not filed by this date, you owe a late penalty of ten dollars (\$10.00), unless the Commission granted an extension pursuant to the terms of NMSA 1978 Section 53-8-83. If the report is late and the Commission did not grant an extension, insert ten dollars (\$10.00) in box 8b and total the fees owed. Payment of fees must accompany this report or the Commission will not accept it for filing. You may pay by check or money order made out to the New Mexico Public Regulation Commission. If the Commission granted an extension, you must attach a copy of the extension to this report.

[12.3.3.9 NMAC - N, 7-15-05]

12.3.3.10 DOMESTIC NONPROFIT CORPORATION ANNUAL AND SUPPLEMENTAL REPORT: A domestic non-profit corporation shall file annual and supplements reports as required by NMSA 1978 Sections 53-8-82 and 53-8-83 on the following commission-prescribed form available as provided in 12.3.1 NMAC.

RETURN TO:
 NM PUBLIC REGULATION COMMISSION
 CORPORATIONS BUREAU
 P.O. BOX 1269
 SANTA FE NM 87504 -1269

**DOMESTIC
 NONPROFIT CORPORATION
 ANNUAL REPORT _____
 SUPPLEMENTAL REPORT _____**
 For taxable year ending ____/____/____

See instructions on back of page

1	EXACT CORPORATE NAME AND U.S. MAILING ADDRESS	Name	
		Address	
		City, State, Zip	

2	PRINCIPAL PLACE OF BUSINESS IN NEW MEXICO		3	NMPRC Certificate of Incorporation Number	
	Street				
	City, Zip				

4	REGISTERED AGENT AND OFFICE LOCATION WITHIN NEW MEXICO FOR SERVICE OF PROCESS (Filing corporation cannot be its own agent)	
	Name	
	Street Address	
	City, Zip	

5	BRIEF STATEMENT OF CHARACTER OF AFFAIRS BEING CONDUCTED

6	DIRECTORS AND OFFICERS List the names and addresses of ALL the directors and officers and identify every title each director holds. A New Mexico non-profit corporation shall have not less than 3 directors.			
	Office/Title	Name	Address	(optional) Additional Titles
	Director			
	Director			
	Director			
	President			
	Vice President			
	Secretary			
	Treasurer			
	<i>Attach schedule of additional directors and officers if needed</i>			

7	SIGNATURES Under penalties of perjury, we declare and affirm that we have examined this report, including the accompanying schedules and statements, and that all statements contained therein are true and correct.			
	Date	Printed Name	Signature	Title

8	PAYMENT OF FILING FEE AND LATE FILING PENALTY		NMPRC USE ONLY	
	a	Report filing fee		
	b	Late filing penalty (\$10.00) <i>IRS or PRC extension, if any, must be submitted with this report</i>		Amount Remitted
	c	TOTAL AMOUNT DUE with corporate report (lines a + b) PLEASE DO NOT SUBMIT CASH FOR PAYMENT	\$	Postmark Date

INSTRUCTIONS

This report is required by, and must comply with the requirements of, NMSA 1978 Sections 53-8-82 and 53-8-83 and 12.3.3.10 NMAC.

Please print or type legibly.

At the top right of the form, indicate whether this is an annual or supplemental report, and fill in the closing date of the corporation's taxable year (if an annual report); you may find more information on determining your taxable year in 12.3.3.8 NMAC.

1. Provide the exact name of the corporation and U.S. postal mailing address.
2. Provide the address of your principal place of business in New Mexico, or "NONE" if applicable.
3. Provide the Certificate of Incorporation number issued by the Public Regulation Commission.

4. Indicate the address of the registered office of the corporation in New Mexico, and the name of its registered agent at that address. For additional information on the requirements for registered office and agent, see NMSA 1978 Sections 53-8-8 and 53-8-9. If within a municipality, the address must be a street address; if outside a municipality, you must include geographic location, including well-known landmarks.
5. Provide a brief statement of the character of the affairs that the corporation is actually conducting. Attach additional pages if necessary.
6. Indicate the names and respective addresses of the directors and officers of the corporation. You are not required to indicate who is the President, Vice President, Secretary and Treasurer, but you are required to have officers and you must indicate officers whose duties most closely correspond to the requirements of NMSA 1978 Section 53-8-23. If the corporation's articles of incorporation or by-laws confer additional titles on the officers, you may provide these in the right column, but this is not required.
7. Any two of the directors or officers of the corporation, or a receiver or trustee if the corporation is in the hands of a receiver or trustee, must sign and swear to the statements in the report.
8. The Annual Report is due on or before the fifteenth day of the fifth month following the end of the corporation's taxable year. A Supplemental Report is due within thirty (30) days of a change listed in NMSA 1978 Section 53-8-83. If not filed by this date, you owe a late penalty of ten dollars (\$10.00), unless the Commission granted an extension pursuant to the terms of NMSA 1978 Section 53-8-83. If the report is late and the Commission did not grant an extension, insert ten dollars (\$10.00) in box 8b, and total the fees owed. Payment of fees must accompany this report or the Commission will not accept it for filing. You may pay by check or money order made out to the New Mexico Public Regulation Commission. If the Commission granted an extension, you must attach a copy of the extension to this report.

[12.3.3.10 NMAC - N, 7-15-05]

12.3.3.11 FOREIGN NONPROFIT CORPORATIONS: A foreign nonprofit corporation shall comply with the applicable requirements of the Nonprofit Corporation Act, NMSA 1978 Section 53-8-1 through 53-8-99.

A. Filing requirements. A foreign nonprofit corporation shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions, and shall pay all filing fees required by NMSA 1978 Section 53-8-85.

B. Name. A foreign nonprofit corporation shall comply with the name requirements in NMSA 1978 Sections 53-8-66 and 53-8-67 and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name.

C. Required documents.

(1) Certificate of authority. A foreign nonprofit corporation shall obtain a certificate of authority from the commission pursuant to NMSA 1978 Section 53-8-64 before conducting affairs in New Mexico, by filing an application containing the information and supporting documents required in NMSA 1978 Sections 53-8-68 and 53-8-69. A foreign nonprofit corporation may obtain an amended certificate of authority by meeting the requirements of NMSA 1978 Section 53-8-76.

(2) Statement designating registered agent and office. A foreign nonprofit corporation shall have and continuously maintain on file with the commission a registered office and agent that meet the requirements of NMSA 1978 Sections 53-8-71 and 53-8-72.

D. Merger. A foreign nonprofit corporation may merge in compliance with NMSA 1978 Section 53-8-75 and shall file articles of merger as required by NMSA 1978 Section 53-8-75.

E. Dormant status. A foreign nonprofit corporation that meets the requirements of NMSA 1978 Section 5-8-88.1 for dormant status may, in lieu of filing a required corporate report, file a statement that it is no longer actively engaged in business in New Mexico. A dormant corporation may extend its dormant status, or may be fully revived by complying with NMSA 1978 Section 53-8-88.1.

F. Withdrawal. A foreign nonprofit corporation seeking to withdraw from doing business in New Mexico may procure a certificate of withdrawal from the commission by filing an application for withdrawal that complies with the requirements of NMSA 1978 Sections 53-8-77 and 53-8-78.

G. Administrative revocation and reinstatement. The commission may revoke a foreign nonprofit corporation's certificate of authority for the reasons provided in NMSA 1978 Section 53-8-79, by issuing a certificate of revocation pursuant to NMSA 1978 Section 53-8-80.

[12.3.3.11 NMAC - N, 7-15-05]

12.3.3.12 FOREIGN NONPROFIT CORPORATION INITIAL REPORT: A foreign nonprofit corporation shall file an initial report on the schedule prescribed by and as required by NMSA 1978 Sections 53-8-82 and 53-8-83 on the following commission-prescribed form available as provided in 12.3.1 NMAC.

RETURN TO:
NM PUBLIC REGULATION COMMISSION
CORPORATIONS BUREAU
P.O. BOX 1269
SANTA FE NM 87504 -1269

**FOREIGN
NONPROFIT CORPORATION
INITIAL REPORT**
For taxable year ending ____/____/____

See instructions on back of page.

1	EXACT CORPORATE NAME AND U.S. MAILING ADDRESS	Name	
		Address	
		City, State, Zip	

2	NMPRC Certificate of Authority Number	3	State or country of incorporation

4	Principal Office Outside New Mexico	5	Registered Office in State of Incorporation
	Street		Street
	City, State, Zip		City, State, Zip

6	REGISTERED AGENT AND OFFICE LOCATION WITHIN NEW MEXICO FOR SERVICE OF PROCESS (Filing corporation cannot be its own agent)
	Name
	Street Address
	City, Zip

7	BRIEF STATEMENT OF CHARACTER OF AFFAIRS BEING CONDUCTED IN NEW MEXICO

8	DIRECTORS AND OFFICERS List the names and addresses of ALL the directors and officers and identify every title each director holds.		
	Office/Title	Name	Address
			(optional) Additional Titles
	Director		
	Director		
	Director		
	President		
	Vice President		
	Secretary		
	Treasurer		
	<i>Attach schedule of additional directors and officers if needed</i>		

9	SIGNATURES Under penalties of perjury, we declare and affirm that we have examined this report, including the accompanying schedules and statements, and that all statements contained therein are true and correct.		
	Date	Printed Name	Signature
			Title

10	PAYMENT OF FILING FEE AND LATE FILING PENALTY	NMPRC USE ONLY	
	a Report filing fee	\$ 10.00	
	b Late filing penalty (\$10.00) <i>PRC extension, if any, must be submitted with this report</i>		Amount Remitted
	c TOTAL AMOUNT DUE with corporate report (lines a + b)	\$	Postmark Date
	PLEASE DO NOT SUBMIT CASH FOR PAYMENT		

INSTRUCTIONS

This report is required by, and must comply with the requirements of, NMSA 1978 Sections 53-8-82 and 53-8-83 and 12.3.3.12 NMAC.

Please type or print legibly.

At the top right of the form, indicate the closing date of the taxable year of the corporation.

1. Provide the exact name of the corporation and U.S. postal mailing address.
2. Insert the Certificate of Authority number issued by the New Mexico Public Regulation Commission.

3. Indicate the state or country under whose laws the corporation is incorporated.
4. Provide the address of your principal place of business outside New Mexico if different from the address of the registered office, or "NONE" if applicable.
5. Provide the registered office in the state or country under whose laws the corporation is incorporated.
6. Indicate the address of the registered office of the corporation in New Mexico, and the name of its registered agent at that address. For additional information on the requirements for registered office and agent, see NMSA 1978 Sections 53-8-71 and 53-8-72. If within a municipality, the address must be a street address; if outside a municipality, you must include geographic location, including well-known landmarks.
7. Provide a brief statement of the character of the affairs that the corporation is actually conducting in New Mexico. Attach additional pages if necessary.
8. Indicate the names and respective addresses of the directors and officers of the corporation. You must list any officers and titles required by the state or country under whose laws the corporation is incorporated. If the corporation's articles of incorporation or by-laws confer additional titles on the officers, you may provide these in the right column, but this is not required.
9. Any two of the directors or officers of the corporation, or a receiver or trustee if the corporation is in the hands of a receiver or trustee, must sign and swear to the statements in the report.
10. The Initial Report is due within thirty (30) days of the date on which the Commission issued your Certificate of Authority. If not filed by this date, you owe a late penalty of ten dollars (\$10.00), unless the Commission granted an extension pursuant to the terms of NMSA 1978 Section 53-8-83. If the report is late and the Commission did not grant an extension, insert ten dollars (\$10.00) in box 10b and total the fees owed. Payment of fees must accompany this report or the Commission will not accept it for filing. You may pay by check or money order made out to the New Mexico Public Regulation Commission. If the Commission granted an extension, you must attach a copy of the extension to this report.

[12.3.3.12 NMAC - N, 7-15-05]

12.3.3.13 FOREIGN NONPROFIT CORPORATION ANNUAL AND SUPPLEMENTAL REPORT: A foreign nonprofit corporation shall file annual and supplemental reports as required by NMSA 1978 Sections 53-8-82 and 53-8-83 on the following commission-prescribed form available as provided in 12.3.1 NMAC.

RETURN TO:
 NM PUBLIC REGULATION COMMISSION
 CORPORATIONS BUREAU
 P.O. BOX 1269
 SANTA FE NM 87504 -1269

**FOREIGN
 NONPROFIT CORPORATION
 ANNUAL REPORT ___
 SUPPLEMENTAL REPORT ___**
 For taxable year ending ___/___/___

See instructions on back of page.

1	EXACT CORPORATE NAME AND U.S. MAILING ADDRESS	Name	
		Address	
		City, State, Zip	

2	NMPRC Certificate of Authority Number		3	State or country of incorporation

4	Principal Office Outside New Mexico		5	Registered Office in State of Incorporation
	Street			Street
	City, State, Zip			City, State, Zip

6	REGISTERED AGENT AND OFFICE LOCATION WITHIN NEW MEXICO FOR SERVICE OF PROCESS (Filing corporation cannot be its own agent)		
	Name		
	Street Address		
	City, Zip		

7	BRIEF STATEMENT OF CHARACTER OF AFFAIRS BEING CONDUCTED IN NEW MEXICO
----------	--

8	DIRECTORS AND OFFICERS List the names and addresses of ALL the directors and officers and identify every title each director holds.			
	Office/Title	Name	Address	(optional) Additional Titles
	Director			
	Director			
	Director			
	President			
	Vice President			
	Secretary			
	Treasurer			
	<i>Attach schedule of additional directors and officers if needed</i>			

9	SIGNATURES Under penalties of perjury, we declare and affirm that we have examined this report, including the accompanying schedules and statements, and that all statements contained therein are true and correct.			
	Date	Printed Name	Signature	Title

10	PAYMENT OF FILING FEE AND LATE FILING PENALTY		NMPRC USE ONLY	
	a	Report filing fee		
	b	Late filing penalty (\$10.00) <i>IRS or PRC extension, if any, must be submitted with this report</i>		Amount Remitted
	c	TOTAL AMOUNT DUE w ith corporate report (lines a + b)	\$	Postmark Date
		<i>PLEASE DO NOT SUBMIT CASH FOR PAYMENT</i>		

INSTRUCTIONS

This report is required by, and must comply with the requirements of, NMSA 1978 Sections 53-8-82 and 53-8-83 and 12.3.3.13 NMAC.

Please type or print legibly.

At the top right of the form, indicate whether this is an annual or supplemental report, and fill in the closing date of the taxable year of the corporation (if an annual report).

1. Provide the exact name of the corporation and U.S. postal mailing address.
2. Insert the Certificate of Authority number issued by the New Mexico Public Regulation Commission.
3. Indicate the state or country under the laws of which the corporation is incorporated.
4. Provide the address of your principal place of business outside New Mexico if different from the address of the registered office, or "NONE" if applicable.
5. Provide the registered office in the state or country under whose laws the corporation is incorporated.
6. Indicate the address of the registered office of the corporation in New Mexico, and the name of its registered agent at that address. For additional information on the requirements for registered office and agent, see NMSA 1978 Sections 53-8-71 and 53-8-72. If within a municipality, the address must be a street address; if outside a municipality, you must include geographic location, including well-known landmarks.
7. Provide a brief statement of the character of the affairs that the corporation is actually conducting in New Mexico. Attach additional pages if necessary.
8. Indicate the names and respective addresses of the directors and officers of the corporation. You must list any officers and titles required by the state or country under whose laws the corporation is incorporated. If the corporation's articles of incorporation or by-laws confer additional titles on the officers, you may provide these in the right column, but this is not required.
9. Any two of the directors or officers of the corporation, or a receiver or trustee if the corporation is in the hands of a receiver or trustee, must sign and swear to the statements in the report.

10. The Annual Report is due on or before the fifteenth day of the fifth month following the end of the corporation's taxable year. A supplemental report is due within thirty (30) days of a change listed in NMSA 1978 Section 53-8-83. If not filed by this date, you owe a late penalty of ten dollars (\$10.00), unless the Commission granted an extension pursuant to the terms of NMSA 1978 Section 53-8-83. If the report is late and the Commission did not grant an extension, insert ten dollars (\$10.00) in box 10b and total the fees owed. Payment of fees must accompany this report or the Commission will not accept it for filing. You may pay by check or money order made out to the New Mexico Public Regulation Commission. If the Commission granted an extension, you must attach a copy of the extension to this report.
[12.3.3.13 NMAC - N, 7-15-05]

HISTORY OF 12.3.3 NMAC:

Pre-NMAC History. The material in this part was derived from that previously filed with the State Records Center: Docket No. 83-1-CORP, In the Matter of Rules and Regulations for the Corporation and Franchise Tax Department, 2-22-83. SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department, 3-15-84. SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department, 11-8-84.

History of Repealed Material.

SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department (filed 3-15-84), repealed 7-15-05. SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department (filed 11-8-84), repealed 7-15-05.

Other History.

Only those applicable portions of SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department (filed 3-15-84) and SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department (filed 11-8-84) were replaced by 12.3.3 NMAC, Non-Profit Corporations, effective 7-15-05.

**NEW MEXICO PUBLIC
REGULATION
COMMISSION**

**TITLE 12 TRADE, COM-
MERCE AND BANKING
CHAPTER 3 BUSINESS ASSOCI-
ATIONS
PART 4 OTHER BUSINESS**

ENTITIES

12.3.4.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[12.3.4.1 NMAC - N, 7-15-05]

12.3.4.2 SCOPE: This rule applies to certain legislatively mandated legal entities, unless exempted by law.
[12.3.4.2 NMAC - N, 7-15-05]

12.3.4.3 STATUTORY AUTHORITY: NMSA 1978 Sections 3-29-16, 3-29-17, 3-29-17.1, 3-29-17.2, 3-29-17.4, 3-29-17.5, 3-29-19, 3-29-20, 8-8-4, 53-2-1, 53-4-5, 53-4-6, 53-4-6.1, 53-4-6.2, 53-4-7, 53-4-34 through 53-4-37, 53-4-40, 53-4-41, 53-7-35, 53-7-36, 53-7-39, 53-7-42, 53-19-66, 53-20-3 through 53-20-15, 53-20-17, 62-2-1 through 62-2-3, 62-2-13, and 75-5-2 through and 75-5-5.
[12.3.4.3 NMAC - N, 7-15-05]

12.3.4.4 DURATION: Permanent.
[12.3.4.4 NMAC - N, 7-15-05]

12.3.4.5 EFFECTIVE DATE: July 15, 2005.
[12.3.4.5 NMAC - N, 7-15-05]

12.3.4.6 OBJECTIVE: The purpose of this rule is to facilitate the formation and continuation of certain legislatively mandated entities as provided by law.
[12.3.4.6 NMAC - N, 7-15-05]

12.3.4.7 DEFINITIONS: See 12.3.1.7 NMAC.
[12.3.4.7 NMAC - N, 7-15-05]

12.3.4.8 BUSINESS DEVELOPMENT CORPORATIONS: A business development corporation shall comply with the requirements of the Business Development Corporation Act, NMSA 1978 Sections 53-7-18 through 53-7-46.

A. Filing requirements.

A business development corporation shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions, and pay all filing fees required by NMSA 1978 Section 53-2-1.

B. Documents required.

(1) Articles of incorporation.

Stockholders and members shall file articles of incorporation that meet the requirements for incorporation in NMSA 1978 Section 53-7-23. The corporation may amend the articles by complying with NMSA 1978 Sections 53-7-35 and 53-7-36.

(2) Reports.

A business development corporation shall file annual reports on its general financial condition with the director of the financial institutions division of the regulation and licensing department

and the commission, pursuant to NMSA 1978 Section 53-7-39.

C. Dissolution.

Upon following dissolution requirements of NMSA 1978 Section 53-7-42, the corporation may petition the director of the financial institutions division of the regulation and licensing department for its dissolution. If the director of the financial institutions division of the regulation and licensing department approves the petition, the corporation may file with the commission documentation approving the petition.
[12.3.4.8 NMAC - N, 7-15-05]

12.3.4.9 COOPERATIVE ASSOCIATIONS:

A cooperative association shall comply with the requirements of the Cooperative Associations Act, NMSA 1978 Sections 53-4-1 through 53-4-45. Once properly formed, a cooperative association shall be deemed a nonprofit corporation as provided in NMSA 1978 Section 53-4-1.

A. Filing requirements.

A cooperative association shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions, and pay all filing fees required.

B. Name.

A cooperative association shall comply with the name requirements in NMSA 1978 Section 53-4-37, and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name.

C. Documents required.

(1) Articles of incorporation.

A cooperative association formed in compliance with the Cooperative Associations Act, NMSA 1978 Sections 53-4-1 through 53-4-45, shall file articles of incorporation that meet the requirements of NMSA 1978 Section 53-4-5 with the fee required in NMSA 1978 Section 53-4-6. An association may file amendments to its articles of incorporation with the filing fee as provided in NMSA 1978 Section 53-4-7.

(2) Certificate of authority.

A foreign cooperative association that meets the requirements of NMSA 1978 Section 53-4-41 may request that the commission issue a certificate of authority to do business in New Mexico.

(3) Statement designating registered agent and office.

A cooperative association shall have and continuously maintain on file with the commission a registered agent and office that meet the requirements in NMSA 1978 Sections 53-4-6.1 and 53-4-6.2, and shall pay the fee provided in NMSA 1978 Section 53-2-1 for filing the required notice.

(4) Reports.

A cooperative association shall file annual reports and supplemental reports and pay the filing fee as required by NMSA 1978 Section 53-4-34, and is subject to the forfeiture and penalty

requirements of NMSA 1978 Section 53-4-35 for failure to report.

D. Merger and conversion.

(1) Converting to cooperative association. Any group incorporated under the laws of New Mexico may convert to a cooperative association by complying with, and filing amended articles as required by, NMSA 1978 Section 53-4-40.

(2) Reorganizing under sanitary projects act. A cooperative association may reorganize as a sanitary projects act association by complying with, and filing a certificate of association as required by, NMSA 1978 Section 3-29-20.

E. Dissolution. A cooperative association may voluntarily dissolve by complying with NMSA 1978 Section 53-4-36, and may file with the commission a statement indicating compliance.

F. Administrative revocation and forfeiture. The commission may administratively revoke a cooperative association by sending a notice of forfeiture under the circumstances provided in, and following the requirements of, NMSA 1978 Section 53-4-35. If the commission administratively revokes a cooperative association, the association may apply for reinstatement by complying with the applicable requirements in NMSA 1978 Section 53-4-35.

[12.3.4.9 NMAC - N, 7-15-05]

12.3.4.10 FOREIGN BUSINESS TRUSTS: A foreign business trust shall comply with the requirements of the Foreign Business Trust Registration Act, NMSA 1978 Sections 53-20-1 through 53-20-17.

A. Filing requirements. A foreign business trust shall file all documents required by this section in compliance with the 12.3.1 NMAC, General Provisions, and shall pay filing fees required by NMSA 1978 Section 53-20-17.

B. Name. A foreign business trust shall meet the requirements for names in NMSA 1978 Sections 53-20-4 and 53-20-5, and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name.

C. Documents required.

(1) Certificate of authority. In order to transact business in New Mexico, a foreign business trust must obtain a certificate of authority by complying with the application requirements and process in NMSA 1978 Sections 53-20-6 and 53-20-7. A foreign business trust may amend or change its certificate of authority by filing the documents required by NMSA 1978 Section 53-20-8.

(2) Statement designating registered agent and office. A foreign business

trust shall have and continuously maintain on file with the commission a registered office and agent that meet the requirements in NMSA 1978 Sections 53-20-9, 53-20-10, and 53-20-11.

D. Withdrawal. A foreign business trust authorized to do business in New Mexico may withdraw by obtaining a certificate of withdrawal from the commission following the process required by NMSA 1978 Sections 53-20-12 and 53-20-13.

E. Administrative revocation. The commission may revoke the certificate of authority for a foreign business trust for the reasons listed and following the process provided in NMSA 1978 Sections 53-20-14 and 53-20-15. [12.3.4.10 NMAC - N, 7-15-05]

12.3.4.11 DOMESTIC LIMITED LIABILITY COMPANIES: A domestic limited liability company shall comply with the requirements of the Limited Liability Company Act, NMSA 1978 Sections 53-19-1 through 53-19-74.

A. Filing requirements. A domestic limited liability company shall file all documents required by this section in compliance with NMSA 1978 Section 53-19-9 and 12.3.1 NMAC, General Provisions, and pay applicable fees required in NMSA 1978 Section 53-19-63.

B. Name. A domestic limited liability company shall meet the requirements for names in NMSA 1978 Sections 53-19-3 and 53-19-4, and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name.

C. Documents required. A domestic limited liability company shall execute the documents required by this section in compliance with the general provisions in NMSA 1978 53-19-12.

(1) Articles of organization. A person may form a limited liability company by complying with the requirements of NMSA 1978 Section 53-19-7 and filing articles of organization required by NMSA 1978 Sections 53-19-8, 53-19-9, and 53-19-10. A domestic limited liability company may amend or restate its articles of organization by complying with NMSA 1978 Section 53-19-11.

(2) Statement designating registered agent and office. A domestic limited liability company shall have and continuously maintain on file with the commission a registered agent and office that meet the requirements in NMSA 1978 Sections 53-19-5.

D. Conversion and merger.

(1) Converting to corporation, partnership, or limited partnership. Members or managers may convert a

domestic limited liability company to a corporation, partnership or limited partnership by meeting the requirements in, and filing a statement, articles of incorporation or a certificate as required by, NMSA 1978 Section 53-19-60.1.

(2) Converting to limited liability company. Shareholders or partners may convert a corporation, partnership, or limited partnership into a domestic limited liability company by complying with, and filing articles of organization as required by, NMSA 1978 Section 53-19-60.

(3) Merging with other entities. A domestic limited liability company may merge with or into one or more domestic limited liability companies, foreign limited liability companies, corporations, foreign corporations, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships or other domestic or foreign entities by meeting the requirements of NMSA 1978 Section 53-19-61 and 53-19-62 and shall file articles of merger as required by NMSA 1978 Section 53-19-62.1.

E. Dissolution. A domestic limited liability company is dissolved when any of the events listed in NMSA 1978 Section 53-19-39 occur. On dissolution, persons designated with authority in NMSA 1978 Section 53-19-42 shall file, and may amend, articles of dissolution as required by NMSA 1978 Section 53-19-41. A person authorized in the articles of dissolution may revoke the articles of dissolution by filing a revocation statement in compliance with NMSA 1978 Section 53-19-41.

F. Administrative revocation and reinstatement. The commission may administratively revoke a domestic limited liability company by issuing a certificate of revocation under the circumstances provided in NMSA 1978 Section 53-19-66.1. If the commission administratively revokes a domestic limited liability company, it shall notify the company of its right to reinstatement. A domestic limited liability company may apply to the commission for reinstatement following the process, and within the time period provided, in NMSA 1978 Section 53-19-66.2.

[12.3.4.11 NMAC - N, 7-15-05]

12.3.4.12 FOREIGN LIMITED LIABILITY COMPANIES: A foreign limited liability company shall comply with the applicable requirements of the Limited Liability Company Act, NMSA 1978 Section 53-19-1 through 53-19-74.

A. Filing requirements. A foreign limited liability company shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions, and pay applicable fees required in NMSA 1978 Section 53-19-63.

B. Name. A foreign limit-

ed liability company shall comply with name requirements in NMSA 1978 Section 53-19-50, and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name.

C. Documents required.

(1) Certificate of registration. Before transacting business in New Mexico, a foreign limited liability company shall register with the commission as required by NMSA 1978 Sections 53-19-48 and 53-19-49, and may amend its certificate of registration pursuant to NMSA 1978 Section 53-19-51.

(2) Statement designating registered agent and office. A foreign limited liability company shall have and continuously maintain on file with the commission a registered agent and office that meet the requirements in NMSA 1978 Sections 53-19-5.

D. Cancellation of registration. A foreign limited liability company may cancel its registration by complying with the requirements of NMSA 1978 Section 53-19-52.

E. Merger and conversion. A foreign limited liability company may file with the commission a certified copy of merger or conversion documents filed and approved in its state of organization and the filing fee required in NMSA 1978 Section 53-19-63.

F. Administrative revocation and reinstatement. The commission may administratively revoke a foreign limited liability company by issuing a certificate of revocation under the circumstances provided in NMSA 1978 Section 53-19-66.1. If the commission administratively revokes a foreign limited liability company, it shall notify the company of its right to reinstatement. A foreign limited liability company may apply to the commission for reinstatement following the process and within the time period provided in NMSA 1978 Section 53-19-66.2.

[12.3.4.12 NMAC - N, 7-15-05]

12.3.4.13 SANITARY PROJECTS ACT ASSOCIATIONS: A Sanitary Projects Act association shall comply with the requirements of the Sanitary Projects Act, NMSA 1978 Sections 3-29-1 through 3-29-20.

A. Filing requirements. A sanitary projects act association shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions.

B. Name. A sanitary projects act association shall not use a name that is the same as, or confusingly similar to, the name of another association or corporation in New Mexico, and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name.

C. Documents required.

(1) Certificate of association. A sanitary projects act association shall file a certificate of association that meet the requirements of NMSA 1978 Sections 3-29-16 and 3-29-17 with a filing fee of twenty-five dollars (\$25.00). A sanitary projects act association may file amendments to its articles of incorporation as provided in NMSA 1978 Section 53-29-19 with a filing fee of twenty dollars (\$20.00).

(2) Statement designating registered agent and office. A sanitary projects act association shall have and continuously maintain on file with the commission a registered agent and office that meet the requirements in NMSA 1978 Sections 3-29-17.1 and 3-29-17.2.

D. Dissolution. A sanitary projects act association may voluntarily dissolve by complying with the requirements for amending its certificate of association provided in Subsection C of this section.

[12.3.4.13 NMAC - N, 7-15-05]

12.3.4.14 SANITARY PROJECTS ACT ASSOCIATION ANNUAL AND SUPPLEMENT REPORT: A sanitary projects act association shall file, together with a filing fee of ten dollars (\$10.00), annual and supplemental reports as required by NMSA 1978 Sections 3-29-17.4 and 3-29-17.5 on the following commission-prescribed form available as provided in 12.3.1 NMAC.

RETURN TO:
 NM PUBLIC REGULATION COMMISSION
 CORPORATIONS BUREAU
 P.O. BOX 1269
 SANTA FE NM 87504 -1269

SANITARY PROJECTS ACT ASSOCIATION
ANNUAL REPORT _____
SUPPLEMENTAL REPORT _____
 For taxable year ending ____ / ____ / _____

Please see instructions on back of page.

1	State or country of incorporation		
2	EXACT ASSOCIATION NAME AND U.S. MAILING ADDRESS	Name	
		Address	
		City, State, Zip	
3	REGISTERED AGENT AND OFFICE LOCATION WITHIN NEW MEXICO FOR SERVICE OF PROCESS (Filing corporation cannot be its own agent)		
	Name		
	Street Address		
	City, Zip		

4	BRIEF STATEMENT OF CHARACTER OF AFFAIRS BEING CONDUCTED

5	DIRECTORS AND OFFICERS List the names and addresses of ALL the directors and officers and identify every title each director holds. The association's board of directors shall have 5 members.			
	Office/Title	Name	Address	(optional) Additional Titles
	Director			
	Director			
	President			
	Vice President			
	Secretary-Treasurer			
<i>Attach schedule of additional directors and officers if needed</i>				

6	SIGNATURES Under penalties of perjury, we declare and affirm that we have examined this report, including the accompanying schedules and statements, and that all statements contained therein are true and correct.			
	Date	Printed Name	Signature	Title

7	PAYMENT OF FILING FEE AND LATE FILING PENALTY		NMPRC USE ONLY		
	a	Report filing fee	\$ 10.00	Amount Remitted	Postmark Date
	b	Late filing penalty (\$10.00) <i>IRS or PRC extension, if any, must be submitted with this report</i>			
	c	TOTAL AMOUNT DUE with corporate report (lines a + b)	\$		
PLEASE DO NOT SUBMIT CASH FOR PAYMENT					

INSTRUCTIONS

This report is required by, and must comply with the requirements of, NMSA 1978 Sections 3-29-17.4 and 3-29-17.5 and 12.3.4.14 NMAC. At the top right of the form, indicate whether the report is an annual report or a supplemental report. If an annual report, fill in the closing date of the taxable year for the report.

1. Indicate the state or country in which the Sanitary Projects Act association was formed and filed its certificate of association. For further instructions regarding New Mexico associations, consult NMSA 1978 Sections 3-29-15, 3-29-16, and 3-29-17.
2. Provide the exact name of the association. If available, attach a mailing label from the Public Regulation Commission.
3. Indicate the address of the registered office of the association in New Mexico, and the name of its registered agent at that address. For additional information on the requirements for registered office and agent, see NMSA 1978 Sections 3-29-17.1 and 3-29-17.2. If within a municipality, the address must be a street address; if outside a municipality, you must include geographic location, including well-known landmarks.
4. Provide a brief statement of the character of the affairs that the association is actually conducting. Attach additional pages if necessary.
5. Indicate the names and respective addresses of the directors and officers of the association. You must indicate who is the President, Vice President, and Secretary-Treasurer. If the association's certificate of association or by-laws confer additional titles on the officers, you may provide these in the right column, but this is not required.
6. Any two of the members of the association, or a receiver or trustee if the association is in the hands of a receiver or trustee, must sign and swear to the statements in the report.
7. An annual report is due on or before the fifteenth day of the fifth month following the end of the association's taxable year; a supplemental report is due within thirty (30) days of a change listed in NMSA 1978 Section 3-29-17.5. If not filed by this date, you owe a late penalty of ten dollars (\$10.00), unless the Commission granted an extension pursuant to the terms of NMSA 1978 Section 3-29-17.5. If the report is late and the Commission did not grant an extension, insert ten dollars (\$10.00) into box 7b and total the fees owed. Payment of fees must accompany this report or the Commission will not accept it for filing. You may pay by check or money order made out to the New Mexico Public Regulation Commission. If the Commission granted an extension, you must attach a copy of the extension to this report.

[12.3.4.14 NMAC - N, 7-15-05]

12.3.4.15 WATER USERS ASSOCIATIONS: A water users association shall comply with the requirements in NMSA 1978 Sections 73-5-1 through 73-5-9.

A. Filing requirements.

A water users association shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions.

B. Name. A water users association shall comply with the name requirements of NMSA 1978 Section 73-5-2, and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name.

C. Certificate of organization required. A water users association shall file a certificate of organization that meets the requirements of NMSA 1978 Section 73-5-2 in accordance with NMSA 1978 Section 73-5-3 with a filing fee of twenty-five dollars (\$25.00). An association may file amendments to its certificate of organization as provided in NMSA 1978 Section 73-5-5 with a filing fee of twenty dollars (\$20.00).

D. Dissolution. A water users association may voluntarily dissolve by complying with the requirements for amending its certificate of organization provided in Subsection C of this section.

[12.3.4.15 NMAC - N, 7-15-05]

12.3.4.16 WATERWORKS CORPORATIONS: A waterworks corporation shall comply with the requirements of NMSA 1978 Sections 62-2-1 through 62-2-22.

A. Filing requirements.

A waterworks corporation shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions.

B. Required articles of incorporation. A waterworks corporation shall file articles of incorporation that meet the requirements of NMSA 1978 Sections 62-2-1, 62-2-2, and 62-2-3 with the fees required in NMSA 1978 Section 53-2-1, which may be amended by filing in the same manner as the original articles were filed.

C. Dissolution. A waterworks corporation shall comply with the requirements for dissolution provided in NMSA 1978 Sections 62-2-13, and may file the court order or decree of dissolution with the commission, for which no filing fee is required.

[12.3.4.16 NMAC - N, 7-15-05]

HISTORY OF 12.3.4:

Pre-NMAC History. The material in this part was derived from that previously filed

with the State Records Center:

Docket No. 83-1-CORP, In the Matter of Rules and Regulations for the Corporation and Franchise Tax Department, 2-22-83.

SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department, 3-15-84.

SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department, 11-8-84.

History of Repealed Material.

SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department (filed 3-15-84), repealed 7-15-05.

SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department (filed 11-8-84), repealed 7-15-05.

Other History.

Only those applicable portions of SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department (filed 3-15-84) and SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department (filed 11-8-84) were replaced by 12.3.4 NMAC, Other Business Entities, effective 7-15-05.

NEW MEXICO RACING COMMISSION

Explanatory paragraph: This is an amendment to Subsections F and G of 15.2.7.12 NMAC, amending the calculation of payouts and distribution of the Pick Three Pools and the Pick (n) Pools. Effective 07/15/2005.

15.2.7.12 CALCULATION OF PAYOUTS AND DISTRIBUTION OF POOLS:

F. PICK THREE POOLS:

(1) The pick three requires selections of the first-place finisher in each of three specified contests.

(2) The net pick three pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

(a) as a single price pool to those whose selection finished first in each of the three contests; but if there are no such wagers, then

(b) as a single price pool to those who selected the first-place finisher in any two of the three contests; but if there are no such wagers, then

(c) as a single price pool to those who selected the first-place finisher in any one of the three contest; but if there are no such wagers, then

(d) the entire pool shall be refund-

ed on pick three wagers for those contests.

(3) If there is a dead heat for first in any of the three contests involving:

(a) contestants representing the same betting interest, the pick three pool shall be distributed as if no dead heat occurred;

(b) contestants representing two or more betting interests, the pick three pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

(4) ~~[Where late scratches occur in the first leg, refund all monies for the combinations that include the scratched horse(s).]~~ **Where late scratches (hereinafter scratches includes runners declared non-starters or a non-betting starter) before the first leg is declared official, refund all monies for the combinations that include scratched horse(s).**

(5) Where late scratches occur ~~[in the middle and final legs.]~~ **after the first leg is declared official,** provide consolation payoffs to the bettors that have combined the scratched horse(s) with the winners in the other legs, similar to traditional procedures applied to late scratches in daily doubles.

(6) If all three pick three contests are cancelled or declared "no contest"; the entire pool shall be refunded on pick three wagers for those contests.

(7) If one or two of the pick three contests are cancelled or declared "no contest", the pick three pool will remain valid and shall be distributed in accordance with Subsection F Paragraph (2) of 15.2.7 NMAC.

G. PICK (n) POOLS:

(1) The pick (n) requires selection of the first-place finisher in each of a designated number of contests. The association must obtain written approval from the commission concerning the scheduling of pick (n) contests, the designation of one of the methods prescribed in Subsection G, Paragraph (2) of 15.2.7 NMAC, and the amount of any cap to be set on the carryover. Any changes to the approved pick (n) format require prior approval from the commission.

(2) The pick (n) pool shall be apportioned under one of the following methods:

(a) Method 1, pick (n) with carryover: The net pick (n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick (n) contests, based upon the official order or finish; if there are no such wagers, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests; and the remainder shall be added to the carryover;

(b) Method 2, pick (n) with minor pool and carryover: The major share of the net pick (n) pool and the carryover, if any, shall be distributed to those who selected the first-place finisher in each of the pick (n) contests, based upon the official order of finish; the minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of pick (n) contests, based upon the official order of finish; if there are no wagers selecting the first-place finisher of all pick (n) contests, the minor share of the net pick (n) pool shall be distributed as a single price pool to those who selected the first place finisher in the greatest number of pick (n) contests; and the major share shall be added to the carryover;

(c) Method 3, pick (n) with no minor pool and no carryover: The net pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests, based upon the official order of finish; if there are no winning wagers, the pool is refunded;

(d) Method 4, pick (n) with minor pool and no carryover: The major share of the net pick (n) pool shall be distributed to those who selected the first place finisher in the greatest number of pick (n) contests, based upon the official order of finish; the minor share of the net pick (n) pool shall be distributed to those who selected the first place finisher in the second greatest number of pick (n) contests, based upon the official order of finish; if there are no wagers selecting the first-place finisher in a second greatest number of pick (n) contests, the minor share of the net pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests; if the greatest number of first-place finishers selected is one (1), the major and minor shares are combined for distribution as a single price pool; if there are no winning wagers, the pool is refunded;

(e) Method 5, pick (n) with minor pool and no carryover: The major share of net pick (n) pool shall be distributed to those who selected the first-place finisher in each of the pick (n) contests, based upon the official order of finish; the minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of pick (n) contests, based upon the official order of finish; if there are no wagers selecting the first-place finisher in all pick (n) contests, the entire net pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests; if there are no wagers selecting the first-place finisher in a second greatest number of pick (n) contests,

the minor share of the net pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in each of the pick (n) contests; if there are no winning wagers, the pool is refunded.

(3) If there is a dead heat for first in any of the pick (n) contests involving:

(a) contestants representing the same betting interest, the pick (n) pool shall be distributed as if no dead heat occurred;

(b) contestants representing two or more betting interests, the pick (n) pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

(4) Where late scratches occur [~~in the first leg;~~] **before the first leg is declared official**, refund all monies for the combinations that include the scratched horse(s).

(5) Where late scratches occur after the running of the first leg, provide consolation payoffs to the bettors that have combined the scratched horse(s) with the winners in the other legs, similar to traditional procedures applied to late scratches in daily doubles.

(6) The pick (n) pool shall be cancelled and all pick (n) wagers for the individual performance shall be refunded if:

(a) at least two contests included as part of a pick 3 are cancelled or declared "no contest";

(b) at least three contests included as part of a pick 4, pick 5 or pick 6 are cancelled or declared "no contest";

(c) at least four contests included as part of a pick 7, pick 8 or pick 9 are cancelled or declared "no contest";

(d) at least five contests included as part of a pick 10 are cancelled or declared "no contest".

(7) If at least one contest included as part of a pick (n) is cancelled or declared "no contest", but not more than the number specified in Subsection G Paragraph (5) of 15.2.7 NMAC, the net pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) contests for that performance. Such distribution shall include the portion ordinarily retained for the pick (n) carryover but not the carryover from previous performances.

(8) The pick (n) carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the pick (n) carryover equals or exceeds the designated cap, the pick (n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the pick (n) carryover is frozen, 100 percent of the net pool, part of which ordinarily would be added to the pick (n) carryover, shall be distributed to those whose selection finished

first in the greatest number of pick (n) contests for that performance.

(9) A written request for permission to distribute the pick (n) carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(10) Should the pick (n) carryover be designated for distribution on a specified date and performance in which there are no wagers selecting the first-place finisher in each of the pick (n) contests, the entire pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) contests. The pick (n) carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(a) upon written approval from the commission as provided in Subsection G Paragraph (8) of 15.2.7 NMAC of this section;

(b) upon written approval from the commission when there is a change in the carryover cap, a change from one type of pick (n) wagering to another, or when the pick (n) is discontinued;

(c) on the closing performance of the meet or split meet.

(11) If, for any reason, the pick (n) carryover must be held over to the corresponding pick (n) pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The pick (n) carryover plus accrued interest shall then be added to the net pick (n) pool of the following meet on a date and performance so designated by the commission.

(12) With the written approval of the commission, the association may contribute to the pick (n) carryover a sum of money up to the amount of any designated cap.

(13) Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is strictly prohibited. This shall not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data.

(14) The association may suspend previously approved pick (n) wagering with the prior approval of the commission. Any carryover shall be held until the suspended pick (n) wagering is reinstated. An association may request approval of a pick (n) wager or separate wagering pool for specific performances.

2005

SUBMITTAL DEADLINES AND PUBLICATION DATES

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