

**NEW  
MEXICO  
REGISTER**



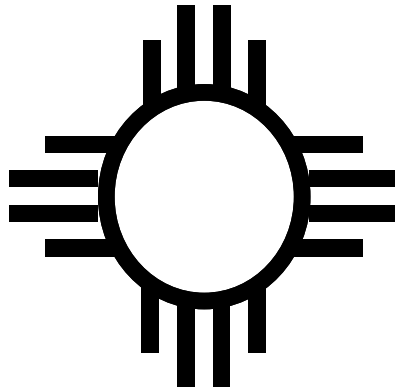
Volume XVI  
Issue Number 14  
July 29, 2005



# **New Mexico Register**

**Volume XVI, Issue Number 14**

**July 29, 2005**



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

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# New Mexico Register

Volume XVI, Number 14

July 29, 2005

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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 CHILDREN, YOUTH AND FAMILIES DEPARTMENT FAMILY SERVICES DIVISION

#### NOTICE OF PUBLIC HEARING

The Children, Youth and Families Department, Family Services, Child Care Services Bureau will hold a formal public hearing on Tuesday, August 30, 2005 from 2:00 p.m. to 4:00 p.m. in the conference room at the Family Services Offices located at 3401 Pan American Freeway NE, Albuquerque, New Mexico to receive public comments regarding proposed changes to regulations 8.15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers and 8.16.2 NMAC Child Care Centers, Out of School Time Programs, Family Child Care Homes, and Other Early Care and Education Programs.

The proposed regulation changes may be obtained at [www.newmexicokids.org](http://www.newmexicokids.org) or by contacting Percy Armijo at 505-827-7499. Interested persons may testify at the hearing or submit written comments no later than 5:00 p.m. on August 30, 2005. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Percy Armijo, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number: 505-827-7361.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact the Child Care Services Bureau at 505-827-7499. CCSB requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

### NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

#### Notice of Hearing and Proposed Amendments to Rule 2.40.2 NMAC, the Regulations Governing the Approval of Contracts for the Purchase of Professional Services

New Mexico Department of Finance and Administration

The Department of Finance and

Administration (DFA) hereby gives notice that DFA will conduct a public hearing at Mabry Hall, Department of Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico, 87501, on August 30, 2005 at 10:00 a.m. concerning the proposed amendments to Rule 2.40.2 NMAC, the Regulations Governing the Approval of Contracts for the Purchase of Professional Services. The amendments make changes to comport with statutory amendments to the New Mexico Procurement Code, Section 13-1-125 NMSA 1978, that have occurred since January 14, 2005 as follows: amending 2.40.2.2 NMAC by raising the limit from \$1500 to \$5000 for DFA review and approval of all professional services contracts or contract amendments and amending 2.40.2.11 NMAC to reflect the same as well as raising the limit from \$20,000 to \$30,000 for what constitutes a small purchase contract.

Interested individuals may testify at the public hearing or submit written comments no later than 5:00 p.m., August 26, 2005, to the Office of the Secretary, DFA, Bataan Memorial Building, Room 180, Santa Fe, New Mexico, 87501. All written and oral testimony will be considered prior to adoption of the amendments. Copies of the text of the proposed rules are available from Ms. Renee Windham, Room 180, Bataan Memorial Building, Santa Fe, New Mexico, 87501 or at 505-827-4985 or from the DFA internet website <http://www.state.nm.us/clients/dfa/index.html>.

#### TITLE 2 PUBLIC FINANCE CHAPTER 40 EXPENDITURE OF PUBLIC FUNDS PART 2 GOVERNING THE APPROVAL OF CONTRACTS FOR THE PURCHASE OF PROFESSIONAL SERVICES

**2.40.2.1 ISSUING AGENCY:**  
Department of Finance and Administration.  
[5-15-97; 2.40.2.1 NMAC - Rn, 2 NMAC  
40.2.1, 1-14-2005]

#### **2.40.2.2 SCOPE:**

A. The contracts review bureau of the department of finance and administration shall review and approve all professional services contracts which result in expenditures equal to or greater than ~~fourteen hundred dollars (\$1500);~~ five thousand (\$5,000) excluding gross receipts tax, and all amendments to those contracts for all state agencies except as provided in Subsections B and C of Section 2.40.2.2 NMAC of this rule. Contracts expending public funds in accordance with the

Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978 as amended are included within the scope of this rule.

B. The following state agencies are currently exempt from submitting professional services contracts and amendments through the contracts review bureau of the department of finance and administration:

(1) state agencies within the judicial branch of government as defined by the New Mexico Constitution, Article VI;

(2) state agencies within the legislative branch of government as defined by the New Mexico Constitution, Article IV;

(3) state educational institutions as defined by the New Mexico Constitution, Article XII, Section 11 and Chapter 21, Articles 13, 14, 16 and 17 NMSA 1978;

(4) the state fair pursuant to Section 16-6-8 NMSA 1978;

(5) the New Mexico public school insurance authority pursuant to Sections 22-29-6 (F) and 22-29-8 NMSA 1978 for contracts for procuring goods or services and paying for insurance or insurance-related services;

(6) the New Mexico mortgage finance authority pursuant to Section 58-18-20 NMSA 1978;

(7) the livestock board pursuant to Section 77-2-10 NMSA 1978; and

(8) other state agencies exempt by statute.

C. Pursuant to Section 6-5-9 NMSA 1978, the secretary of the department of finance and administration may exempt a state agency's contracts from contracts review bureau review and approval when the secretary of the department of finance and administration determines that efficiency or economy so requires. A state agency seeking an exemption must:

(1) apply in writing to the secretary of the department of finance and administration; and

(2) meet all of the following requirements:

(a) issue its own warrants;

(b) be exempt from prior submission of vouchers or purchase orders to the financial control division of the department of finance and administration;

(c) receive the majority of its money from non-general fund sources;

(d) maintain pre-audit and post-audit fiscal accounting controls;

(e) maintain and operate its own administrative unit for procurement and controls its own encumbrance of funds available for professional service contracts;

(f) provide administrative control and review of professional services con-

tracts through its own administrative unit; and

(g) employs in-house counsel to prepare, review, and approve professional services contracts for form and legal sufficiency and to advise the state agency with respect to all applicable laws and regulations; provided, however, that the attorney general shall also review and approve all contracts subject to Paragraph (1) of Subsection C of 2.40.2.10 NMAC of this rule prior to approval and execution by the state agency.

[7-1-76, 8-15-77, 7-1-78, 7-1-84, 7-10-85, 7-1-87, 12-20-89, 5-15-97, 7-1-01; 2.40.2.2 NMAC - Rn & A, 2 NMAC 40.2.2, 1-14-2005]

**2.40.2.11 SMALL PURCHASES:** A contract for professional services having a value over [~~\$1500~~] five thousand (\$5000) but not exceeding [~~\$20,000~~] (thirty thousand (\$30,000)) excluding applicable gross receipts taxes, except for the services of architects, landscape architects engineers, or surveyors for state public works projects, may be procured in accordance with the Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978 and Procurement Code Regulations, GSD Rule 1.4.1 NMAC or subsequent GSD regulations.  
[7-10-85, 7-1-87, 5-15-97, 6-15-98, 7-1-01; 2.40.2.11 NMAC - Rn & A, 2 NMAC 40.2.11, 1-14-2005]

**NEW MEXICO GENERAL SERVICES DEPARTMENT  
STATE PURCHASING DIVISION**

**New Mexico General Services Department-State Purchasing Division  
NOTICE OF PROPOSED RULE AMENDMENT**

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 30, 2005 to obtain input on the following rules:

<b>Rule Number</b>	<b>Rule Name</b>	<b>Proposed Action</b>
1.4.1 NMAC	<b>Procurement Code Regulations</b>	Amend

The Department proposes to amend the current 1.4.1 Procurement Code Regulations Rule.

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 30, 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 HIGHER EDUCATION  
DEPARTMENT**

**NOTICE OF PROPOSED  
RULEMAKING**

The New Mexico Higher Education Department will convene a public hearing on Tuesday, August 9, 2005 from 10:00 a.m. to 2:00 p.m. Final actions on the proposed rulemaking will be taken at that meeting, which will be held in Santa Fe, New Mexico, at the Santa Fe Community College. Information regarding the location of the meeting, the addition or change of meeting days, and the agenda for the meeting, will be available at least twenty-four hours prior to the meeting from the Higher Education Department staff at 505-476-6500 and on our website at <http://nmche.state.nm.us>. Please contact the Higher Education Department at 505-476-6500 for additional information. The Higher Education Department may consider the following items of rulemaking at the meeting:

<b>Rule Number</b>	<b>Rule Name</b>	<b>Proposed Action</b>
5.7.2 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, NEW MEXICO HEALTH PROFESSIONS STUDENT LOAN-FOR-SERVICE ACTS	Amend rule
5.7.3 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, NEW MEXICO HEALTH PROFESSIONAL LOAN REPAYMENT PROGRAM (HPLRP)	Amend rule
5.7.8 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, STATE STUDENT INCENTIVE GRANT (SSIG) PROGRAM	Amend rule
5.7.9 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, NEW MEXICO SCHOLARS PROGRAM	Amend rule
5.7.10 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, STATE WORK STUDY PROGRAM	Amend rule
5.7.11 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, STUDENT CHOICE PROGRAM	Amend rule



5.7.12 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, MINORITY DOCTORIAL ASSISTANCE	Amend rule
5.7.13 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, TEACHER LOAN-FOR-SERVICE ACT	Amend rule
5.7.14 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, NEW MEXICO COMPETITIVE SCHOLARSHIP PROGRAM	Amend rule
5.7.15 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, GRADUATE SCHOLARSHIP PROGRAM	Amend rule
5.7.16 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, VIETNAM VETERANS' SCHOLARSHIPS	Amend rule
5.7.17 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, TEACHERS' LOAN-FOR-SERVICE PROGRAM	Amend rule
5.7.18 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, RESIDENCY FOR TUITION PURPOSES	Amend rule
5.7.19 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, REDUCED TUITION FOR SENIOR CITIZENS	Amend rule
5.7.20 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, SUCCESS SCHOLARSHIP PROGRAM	Amend rule
5.7.21 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, WICHE LOAN-FOR-SERVICE PROGRAM	Amend rule
5.7.22 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, LEGISLATIVE ENDOWMENT SCHOLARSHIP PROGRAM	Amend rule
5.7.23 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, FAFSA REQUIREMENT	New rule

Copies of the proposed rule changes may be obtained from the Higher Education Department. Written comments concerning the rules should be submitted to Ms. Katherine B. Cantrell, Interim Secretary, 1068 Cerrillos Road, Santa Fe, NM 87505, by facsimile at (505) 476-6511, or via electronic mail at [kcantrell@che.state.nm.us](mailto:kcantrell@che.state.nm.us). Comments will be accepted until 5 p.m. on August 8, 2005; however, submission of written comments as soon as possible is encouraged.

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, please contact the Higher Education Department at (505) 476-6500 at least one week prior to the meeting, or as soon as possible.

Comments, questions, or requests for copies of the agenda should be directed to the Higher Education Department, 1068 Cerrillos Road, Santa Fe, NM 87505, 505-476-6500 or fax 505-476-6511.

**NEW MEXICO  
INFORMATION  
TECHNOLOGY  
COMMISSION**

STATE OF NEW MEXICO  
INFORMATION TECHNOLOGY  
COMMISSION

IN THE MATTER OF ADOPTING  
1.12.12 NMAC, "APPLICATION  
SOFTWARE SELECTION"

NOTICE OF PROPOSED  
RULEMAKING AND PROCEDURAL  
ORDER

I. SOLICITATION OF COMMENTS

The Information Technology Commission ("Commission") issues this Notice of Proposed Rulemaking and Procedural Order to provide an opportunity for public comment and to create a record for a decision on adoption of a new rule: 1.12.12 NMAC, "Application Software Selection." The Commission requests written comments from all interested persons and entities on the proposed new rule.

II. ORDER

IT IS THEREFORE ORDERED that this Notice of Proposed Rulemaking and Procedural Order ("Notice") be issued.

IT IS FURTHER ORDERED that all interested parties may file written comments on the proposed rule on or before September 1, 2005. All relevant and timely comments, including data, views, or arguments will be considered by the Commission before final action is taken in this proceeding. Written comments must be filed prior to the deadline for receipt of comments either in hard copy with the Chief Information Officer, Office of the Chief Information Officer, 404 Montezuma, Santa Fe, NM 87501 or by electronic mail to the Chief Information Officer at [cio@state.nm.us](mailto:cio@state.nm.us). The rule number must appear on each submittal. Comments will be available for public inspection during regular business hours in the Office of the Chief Information Officer, 404 Montezuma, Santa Fe, NM 87501.

PLEASE BE ADVISED that the Office of the Chief Information Officer ("Office") shall review all comments for compliance with the State information architecture and the State strategic plan, prepare a summary

of all comments received before the deadline, and report its findings and recommendation to the Commission. The Commission shall consider the comment draft of the proposed rule, the summary of comments, and the findings and recommendations of the Office at a meeting held after the comment period. The Commission may adopt without revision, revise and adopt, revise and seek additional comments, or reject the proposed adoption of the new rule at the public meeting to be held on Tuesday, September 20, 2005 at 8:30am in the New Mexico State Capitol Building, Room 307, Santa Fe, NM.

IT IS FURTHER ORDERED that the Commission may modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

IT IS FURTHER ORDERED that staff of the Office of the Chief Information Officer shall cause a copy of this Notice to be published once in the *New Mexico Register*, once in the *Albuquerque Journal*, and to be posted to the Internet at <http://www.cio.state.nm.us> all on or before July 29, 2005. To obtain a copy of the proposed rule: (1) send the rule name, rule number, and a self-addressed envelope to

the Office of the Chief Information Officer, 404 Montezuma, Santa Fe, NM 87501; (2) call the Office of the Chief Information Officer at 505-476-0400 with the rule name and rule number; e-mail the Chief Information Officer at [cio@state.nm.us](mailto:cio@state.nm.us) with the rule name and rule number (you will receive a copy of the rule in Microsoft WORD format by return e-mail); or download the proposed rule from the Internet at <http://www.cio.state.nm.us>. The proposed rule is also available for inspection and copying during regular business hours in the Office of the Chief Information Officer, 404 Montezuma, Santa Fe, NM 87501.

PLEASE BE ADVISED THAT individuals with a disability who are in need of summaries or other types of accessible forms of the proposed rule or comments may contact the Chief Information Officer at (505)476-0400.

DONE, this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

INFORMATION TECHNOLOGY COMMISSION

By: Carroll Cagle, Chair

## NEW MEXICO MASSAGE THERAPY BOARD

### PUBLIC RULE HEARING AND REGULAR BOARD MEETING

Notice is hereby given that the New Mexico Massage Therapy will convene a public rule hearing at 10:00 a.m. on Monday, August 29, 2005, at 10:00 a.m. in the Rio Grande Conference Room at the Toney Anaya Building located in the West Capitol Complex at 2550 Cerrillos Road, Santa Fe, New Mexico. A regular business meeting will follow the hearing, and action will be taken on the proposed rules at that time. During the regular meeting, the Board may enter into Executive Session to discuss licensing matters pursuant to Section 10-15-1.H (1) and (3) of the Open Meetings Act.

The purpose of the rule hearing is to consider for adoption proposed amendments to the following Board Rules and Regulations in 16.7 NMAC: Part 4, "Requirements For Licensure"; Part 5, "Requirements For Schools"; Part 10, "Examinations"; Part 11, "Continuing Education"; and Part 12, "License/Registration Renewal".

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building (address above)

or call (505) 476-4624; or access the proposed in the "News" link on the Board's Website at [www.rld.state.nm.us/b&c/message](http://www.rld.state.nm.us/b&c/message) after August 1, 2005. All written comments mailed to the Board office or e-mailed to [Message.Board@state.nm.us](mailto:Message.Board@state.nm.us) or [Carmen.payne@state.nm.us](mailto:Carmen.payne@state.nm.us), must be received no later than Thursday, August 18, 2005, in order for the Board members to receive the comments in their meeting packets for review before the rule hearing. Persons wishing to present their comments at the hearing will need eight (8) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4624 at least two weeks prior to the meeting or as soon as possible.

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

### NEW MEXICO PUBLIC EDUCATION DEPARTMENT

#### CANCELLATION OF NOTICE OF PROPOSED RULEMAKING

The Public Education Department ("Department") published a Notice of Proposed Rulemaking in the New Mexico Register Volume XVI, Issue Number 13 (July 15, 2005) and in the Albuquerque Journal informing of a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on August 18, 2005, from 10:00 a.m. to noon. The purpose of the public hearing was to obtain input on the following rules: 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); and 6.30.6 NMAC, Suspension of Authority of a Local School Board, Superintendent or Principal (adopt new rule).

THE DEPARTMENT HEREBY CANCELS ITS NOTICE OF PROPOSED RULEMAKING REGARDING THE PROPOSED AMENDMENTS TO 6.19.1 NMAC and 6.19.2 NMAC. All information regarding proposed new rule 6.30.6 NMAC (Suspension of Authority of a Local School Board, Superintendent or Principal) remains in effect. At a later date, the Department

intends to initiate the rulemaking process with regard to 6.19.1 NMAC and 6.19.2 NMAC, at which time a notice of proposed rulemaking will be published and a public hearing scheduled.

## NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

### STATE OF NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

#### IN THE MATTER OF ADOPTING 13.8.6 NMAC, PERSONAL INSURANCE CREDIT INFORMATION

DOCKET NO.  
05-00274-IN

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

NOTICE IS HEREBY GIVEN that the New Mexico Superintendent of Insurance ("Superintendent") on his own motion proposes to adopt 13.8.6 NMAC, Personal Insurance Credit Information. The Superintendent, being fully advised, **FINDS** and **CONCLUDES**:

1. The Personal Insurance Credit Information Act ("Act"), Laws 2005, Chapter 275 authorizes the Superintendent to adopt rules he deems necessary to implement and ensure full compliance with its provisions. In particular, Section 8 of the Act states that adverse action notifications required under the Act shall include additional language prescribed by rule issued by the Superintendent.

2. The Superintendent finds that additional language regarding credit reports and related issues should be required in adverse action notifications given by insurers to consumers. In addition, the Superintendent finds that the confidential nature of insurance scoring filings should be addressed in an administrative rule.

3. Copies of the proposed rule may be downloaded from the Public Regulation Commission's website, [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us), under "Insurance Division," then "Proposed Rule, 13.8.6 NMAC, Personal Insurance Credit Information." You may also obtain a copy of the proposed rule by sending a written request with the docket number, rule name, and rule number to the Public Regulation Commission's Docketing Office, P.O. Box

1269, Santa Fe, NM 87504-1269 along with a self-addressed envelope and a check for \$5.00 made payable to the Public Regulation Commission to cover the cost of copying. The proposed rule is also available for inspection and copying during regular business hours in the Public Regulation Commission's Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

4. The Superintendent requests written and oral comments from all interested persons and entities on the proposed replacement rule. All relevant and timely comments, including data, views, or arguments, will be considered by the Superintendent. In reaching his decision, the Superintendent may take into account information and ideas not contained in the comments, providing that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of the Superintendent's reliance on such information is noted in the order the Superintendent ultimately issues.

**IT IS THEREFORE ORDERED** that this Notice of Hearing on Proposed Rulemaking and Procedural Order be issued.

**IT IS FURTHER ORDERED** that an informal public hearing pursuant to Section 59A-4-18 NMSA 1978 be held on **Wednesday, August 31, 2005** at 9:30 a.m. in the Fourth Floor Hearing Room of the P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico for the purpose of receiving oral public comments including data, views, or arguments on the proposed rule. All interested persons wishing to present oral comments may do so at the hearing. Interested persons should contact the Insurance Division ahead of time to confirm the hearing date, time, and place since hearings are occasionally rescheduled.

**IT IS FURTHER ORDERED** that all interested parties may file written comments on the proposed rule on or before **Friday, August 26, 2005**. An original and two copies of written comments must be filed with the Public Regulation Commission's Docketing Office, Room 406, P.O. Box 1269, Santa Fe, NM 87504-1269. The docket number must appear on each submittal. If possible, please also e-mail a copy of written comments in Microsoft Word format to [alan.seeley@state.nm.us](mailto:alan.seeley@state.nm.us). Comments will be available for public inspection during regular business hours in the Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

**IT IS FURTHER ORDERED** that the Superintendent may require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

**IT IS FURTHER ORDERED** that Insurance Division Staff shall cause a copy of this Notice to be published once in the *New Mexico Register* and once in the *Albuquerque Journal*.

**PLEASE BE ADVISED THAT** the New Mexico Lobbyist Regulation Act, Section 2-11-1 *et seq.*, NMSA 1978 regulates lobbying activities before state agencies, officers, boards and commissions in rulemaking and other policy-making proceedings. A person is a lobbyist and must register with the Secretary of State if the person is paid or employed to do lobbying or the person represents an interest group and attempts to influence a state agency, officer, board or commission while it is engaged in any formal process to adopt a rule, regulation, standard or policy of general application. An individual who appears for himself or herself is not a lobbyist and does not need to register. The law provides penalties for violations of its provisions. For more information and registration forms, contact the Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM 87503, (505) 827-3600.

**PLEASE BE ADVISED THAT** individuals with a disability who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, may contact Ann Echols, on or before August 24, 2005, at (505) 827-4559. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should also be addressed to Ms. Echols.

**DONE**, this 15<sup>th</sup> day of July 2005.

**NEW MEXICO PUBLIC REGULATION COMMISSION  
INSURANCE DIVISION**

ERIC P. SERNA,  
Superintendent of Insurance

**NEW MEXICO  
PUBLIC REGULATION  
COMMISSION  
INSURANCE DIVISION**

**STATE OF NEW MEXICO  
PUBLIC REGULATION  
COMMISSION  
INSURANCE DIVISION**

**IN THE MATTER  
OF 13.10.8 NMAC,  
HEALTH INSURANCE  
FOR SENIORS**

**DOCKET NO.  
05-00284-IN**

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

**NOTICE IS HEREBY GIVEN** that the New Mexico Superintendent of Insurance ("Superintendent") on his own motion proposes to repeal and replace 13.10.8 NMAC, Health Insurance for Seniors. The Superintendent, being fully advised, **FINDS** and **CONCLUDES**:

1. Section 59A-24A-4 NMSA 1978 authorizes the Superintendent to adopt regulations in several enumerated areas related to Medicare Supplement policies. In particular, Subsection E of 59A-24A-4 states in relevant part that "[t]he superintendent may adopt reasonable regulations necessary to conform Medicare Supplement Policies and certificates to the requirements of federal law."

2. Health Insurance for Seniors, 13.10.8 NMAC, addresses Medicare Supplement Policies issued in New Mexico. The rule is New Mexico's version of the National Association of Insurance Commissioner's ("NAIC") model Medicare Supplement policy regulation. The NAIC has amended the NAIC model regulation to respond to changes in Medicare resulting from the United States Congress's enactment of the Medicare Modernization Act in 2003. *See* Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, 8/16/04 Revisions, Revisions to Model 651. The Superintendent finds that 13.10.8 NMAC should be repealed and replaced with a revised rule to make it consistent with the amendments to the NAIC model regulation resulting from the Medicare Modernization Act. The Superintendent further finds that certain other provisions of 13.10.8 NMAC, unrelated to the Medicare Modernization Act, should be revised to match the language in the NAIC model regulation.

3. Copies of the proposed replacement rule may be downloaded from the Public Regulation Commission's website, [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us), under "Insurance Division," then "Proposed Rule, 13.10.8 NMAC, Health Insurance for Seniors." You may also obtain a copy of the proposed rule by sending a written request with the docket number, rule name, and rule number to the Public Regulation Commission's Docketing Office, P.O. Box 1269, Santa Fe, NM 87504-1269 along with a self-addressed envelope and a check for \$5.00 made payable to the Public Regulation Commission to cover the cost of copying. The proposed rule is also available for inspection and copying during regular business hours in the Public Regulation Commission's Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

4. The Superintendent requests written and oral comments from all interested persons and entities on the proposed replacement rule. All relevant and timely comments, including data, views, or arguments, will be considered by the Superintendent. In reaching his decision, the Superintendent may take into account information and ideas not contained in the comments, providing that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of the Superintendent's reliance on such information is noted in the order the Superintendent ultimately issues.

**IT IS THEREFORE ORDERED** that this Notice of Hearing on Proposed Rulemaking and Procedural Order be issued.

**IT IS FURTHER ORDERED** that an informal public hearing pursuant to Section 59A-4-18 NMSA 1978 be held on **Friday, September 2, 2005** at 9:30 a.m. in the Fourth Floor Hearing Room of the P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico for the purpose of receiving oral public comments including data, views, or arguments on the proposed rule. All interested persons wishing to present oral comments may do so at the hearing. Interested persons should contact the Insurance Division ahead of time to confirm the hearing date, time, and place since hearings are occasionally rescheduled.

**IT IS FURTHER ORDERED** that all interested parties may file written comments on the proposed rule on or before **Wednesday, August 31, 2005**. An original and two copies of written comments must be filed with the Public Regulation Commission's Docketing Office, Room

406, P.O. Box 1269, Santa Fe, NM 87504-1269. The docket number must appear on each submittal. If possible, please also e-mail a copy of written comments in Microsoft Word format to [michael.batte@state.nm.us](mailto:michael.batte@state.nm.us). Comments will be available for public inspection during regular business hours in the Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

**IT IS FURTHER ORDERED** that the Superintendent may require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

**IT IS FURTHER ORDERED** that Insurance Division Staff shall cause a copy of this Notice to be published once in the *New Mexico Register* and once in the *Albuquerque Journal*.

**PLEASE BE ADVISED THAT** the New Mexico Lobbyist Regulation Act, Section 2-11-1 *et seq.*, NMSA 1978 regulates lobbying activities before state agencies, officers, boards and commissions in rulemaking and other policy-making proceedings. A person is a lobbyist and must register with the Secretary of State if the person is paid or employed to do lobbying or the person represents an interest group and attempts to influence a state agency, officer, board or commission while it is engaged in any formal process to adopt a rule, regulation, standard or policy of general application. An individual who appears for himself or herself is not a lobbyist and does not need to register. The law provides penalties for violations of its provisions. For more information and registration forms, contact the Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM 87503, (505) 827-3600.

**PLEASE BE ADVISED THAT** individuals with a disability who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, may contact Ann Echols, on or before September 9, 2005, at (505) 827-4559. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should also be addressed to Ms. Echols.

**DONE**, this 20<sup>th</sup> day of July 2005.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

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**INSURANCE DIVISION**

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ERIC P. SERNA,  
Superintendent of Insurance

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**End of Notices and  
Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.3 NMAC, Sections 9 and 14, effective 07-29-2005.

#### 16.60.3.9 INITIAL CERTIFICATE/LICENSE REQUIREMENTS:

**A.** An applicant for initial certification/licensure shall demonstrate to the board's satisfaction that he:

(1) is of good moral character and lacks a history of dishonest or felonious acts;

(2) meets the education, experience and examination requirements of the board; and

(3) passes the American institute of certified public accountants ethics examination with a score of 90 percent or higher.

**B.** Moral character requirements: The board may assess moral character requirements based upon applicant-provided character references and background checks to determine an applicant's history of dishonest or felonious acts.

**C.** Education and examination requirements: Education and examination requirements are specified in the Act, Section 61-28B7 and Section 61-28B8 (After July 1, 2004) and are further delineated in Part 2 of board rules. An applicant who has passed the uniform CPA examination prior to July 1, 2004, is exempt from the 150-semester-hour requirement.

**D.** Experience required: Applicants documenting their required experience for issuance of an initial certificate pursuant to Section 7H of the act, and after July 1, 2004 Section 8H of the act shall:

(1) provide documentation of experience in providing any type of services or advice using accounting, attest, management advisory, financial advisory, tax or consulting skills; acceptable experience shall include experience gained through employment in industry, government, academia or public practice;

(2) have their experience verified by an active, licensed CPA as defined in the act or by an active, licensed CPA from another state; the board shall consider and evaluate factors such as complexity and diversity of the work in determining acceptability of experience submitted:

(a) one year of experience shall consist of full or part-time employment that extends over a period of no less than 1 year and no more than 3 years and includes no fewer than 2,000 hours of performance of services described above;

(b) experience documented in support of an initial application must be

obtained within the 7 years immediately preceding passing of the examination or within 7 years of having passed the examination upon which the application is based; this does not apply to applicants who qualified and sat for the examination during or prior to the November 2001 administration;

(c) any licensee requested by an applicant to submit evidence of the applicant's experience and who has refused to do so shall, upon request of the board, explain in writing or in person the basis for such refusal; the board may require any licensee who has furnished evidence of an applicant's experience to substantiate the information;

(d) the board may inspect documentation relating to an applicant's claimed experience; any applicant may be required to appear before the board or its representative to supplement or verify evidence of experience.

**E.** Swearing in ceremony: Every new licensee must participate in a swearing in ceremony before the board within one year from the date of the issuance of the initial license. Swearing in ceremonies shall be held two times per year in locations to be determined by the board. Upon good cause presented in writing prior to the expiration of the one-year period of initial licensure, the board may extend the period for being sworn in or arrange an alternate method for the licensee to be sworn in. If an extension for good cause is granted, the licensee shall arrange with the board director to present him or herself for swearing in before the board within the time prescribed by the board. Failure to appear at a swearing in ceremony before the board may result in the imposition of a fine or other disciplinary action, as deemed appropriate by the board.

**[E]E.** Replacement wall certificates and licenses to practice: Replacement wall certificates and licenses to practice may be issued by the board in appropriate cases and upon payment by the CPA or RPA of the fee as set by the board. A certificate/license holder is specifically prohibited from possessing more than one wall certificate and more than one license to practice as a CPA or RPA. When a replacement wall certificate or license to practice is requested, the certificate/license holder must return the original certificate/license or submit a notarized affidavit describing the occurrence that necessitated the replacement certificate or license.

**[F]G.** Renewal requirements: Certificates/licenses for individuals will have staggered expiration dates based on the individual's birth month. Deadline for receipt of certificate/license renewal applications and supporting continuing profes-

sional education affidavits or reports is no later than the last day of the CPA or RPA certificate/license holder's birth month or the next business day if the deadline date falls on a weekend or holiday.

(1) The board may accept a sworn affidavit as evidence of certificate/license holder compliance with CPE requirements in support of renewal applications.

(2) Renewal applications and CPE reports received after prescribed deadlines shall include prescribed delinquency fees.

(3) Applications will not be considered complete without satisfactory evidence to the board that the applicant has complied with the continuing professional education requirements of Sections 9E and 12A of the act and of these rules.

(4) The board shall mail renewal application notices no less than 30 days prior to the renewal deadline.

[16.60.3.9 NMAC - Rp 16 NMAC 60.4.8.2 & 16 NMAC 60.4.8.3, 02-14-2002; A, 01-15-2004; A, 06-15-2004; A, 12-30-2004; A, 04-29-2005; A, 07-29-2005]

**16.60.3.14 SUBSTANTIAL EQUIVALENCY/INTENT TO PRACTICE REQUIREMENTS:** Pursuant to Section 26 of the act, a person whose principal place of business is not New Mexico and who has a valid certificate/license as a certified public accountant from a state that the board-approved qualification service has verified to be in substantial equivalence with the certified public accountant requirements of the act shall be presumed to have qualifications substantially equivalent to New Mexico's requirements.

**A.** The board may rely on NASBA, AICPA, or other professional bodies approved as acceptable to the board to provide qualification appraisal in determining whether an applicant's qualifications are substantially equivalent to New Mexico's requirements.

**[B-]** ~~A person whose qualifications are deemed substantially equivalent may apply for and obtain intent to practice privileges. Application shall be made on board prescribed forms and include related fees. The board may grant practice privileges in New Mexico under substantial equivalency provisions for a period not to exceed 1 year. Upon approval, a person afforded the privilege of practicing in New Mexico under substantial equivalency provisions shall, as a condition of the granting of this privilege.~~

**B.** A person whose qualifications are deemed substantially equivalent shall submit a notification of intent to practice under substantial equivalency and include related fees. An individual practic-

ing in New Mexico under substantial equivalency provisions shall:

(1) provide written notice to the board [~~in advance of any practice of public accountancy within New Mexico each time the person intends to enter the state to practice~~] no later than 30 days after commencing practice in New Mexico;

(2) consent to personal and subject matter jurisdiction of the board;

(3) agree to full compliance with the act and related board rules; and

(4) consent to appointment of the state board of the state of their principal place of business as their agent, upon whom process may be served in an action or proceeding by the New Mexico public accountancy board against it.

~~[C. Individuals may re-apply for practice privileges under this provision at the end of each approved practice period. However, persons practicing in New Mexico under substantial equivalency provisions for a period of greater than 60 days within a 1 calendar year period shall not be permitted to re-apply for intent to practice under substantial equivalency provisions.~~

~~D. Individuals exceeding 60 days practice within a 1 calendar year period under substantial equivalency/intent to practice provisions shall be required to apply for and obtain a New Mexico certificate/license under reciprocity requirements and apply for and obtain a New Mexico firm permit as prescribed in board rules.]~~

C. As a condition of this practice privilege, an individual shall renew their notification of intent to practice every 12 months.

D. The individual shall be subject to disciplinary action for any violation of the act or board rules committed in New Mexico.

E. Pursuant to the Uniform Accountancy Act, an individual entering into an engagement to provide professional services via a web site pursuant to Section 23 shall disclose, via any such web site, the individual's principal state of licensure, license number, and an address as a means for regulators and the public to contact the individual regarding complaints, questions, or regulatory compliance.  
[16.60.3.14 NMAC - N, 02-14-2002; A, 07-30-2004; A, 07-29-2005]

## NEW MEXICO ADMINISTRATIVE OFFICE OF THE COURTS

### TITLE 22 COURTS CHAPTER 50 EDUCATION AND TRAINING

#### PART 1 GENERAL PROVISIONS

**22.50.1.1 ISSUING AGENCY:**  
Administrative Office of the Courts.  
[7/1/2000; 22.50.1.1 NMAC - Rn, 7/29/2005]

**22.50.1.2 SCOPE:** Judges and all judicial personnel.  
[7/1/2000; 22.50.1.2 NMAC - Rn, 7/29/2005]

**22.50.1.3 STATUTORY AUTHORITY:** NM Const. Art. VI, Sec. 3 and Supreme Court Rules Governing Judicial Education, Rule 25-103, approved March 23, 1998.  
[7/1/2000; 22.50.1.3 NMAC - Rn, 7/29/2005]

**22.50.1.4 DURATION:** Permanent.  
[7/1/2000; 22.50.1.4 NMAC - Rn, 7/29/2005]

**22.50.1.5 EFFECTIVE DATE:** July 1, 2000 unless a later date is cited in the history note at the end of a section.  
[7/1/2000; 22.50.1.5 NMAC - Rn, 7/29/2005]

**22.50.1.6 OBJECTIVE:** The objective of this rule is to provide general definitions and policy guidelines for judicial education and training.  
[7/1/2000; 22.50.1.6 NMAC - Rn, 7/29/2005]

**22.50.1.7 DEFINITIONS:**

A. "AOC" means the administrative office of the courts.

B. "CJE" means continuing judicial education.

C. "CLE" means continuing legal education.

D. "Code of judicial conduct" means supreme court rules 21-001 through 21-901.

E. "JEC" means the judicial education center.

F. "MCLE" means minimum continuing education committee of the state bar of New Mexico.  
[7/1/2000; 22.50.1.7 NMAC - Rn, 7/29/2005]

**HISTORY OF 22.50.1 NMAC:**  
[RESERVED]

## NEW MEXICO ADMINISTRATIVE OFFICE OF THE COURTS

### TITLE 22 COURTS CHAPTER 50 EDUCATION AND TRAINING

#### PART 10 MAGISTRATE COURTS - JUDGES

**22.50.10.1 ISSUING AGENCY:**  
Administrative Office of the Courts.  
[7/1/2000; 22.50.10.1 NMAC - Rn, 7/29/2005]

**22.50.10.2 SCOPE:** Magistrate judges.  
[7/1/2000; 22.50.10.2 NMAC - Rn, 7/29/2005]

**22.50.10.3 STATUTORY AUTHORITY:** NM Const. Art. VI, Sec. 3 and Supreme Court Rules Governing Judicial Education, Rule 25-103, approved March 23, 1998.  
[7/1/2000; 22.50.10.3 NMAC - Rn, 7/29/2005]

**22.50.10.4 DURATION:** Permanent.  
[7/1/2000; 22.50.10.4 NMAC - Rn, 7/29/2005]

**22.50.10.5 EFFECTIVE DATE:** July 1, 2000 unless a later date is cited in the history note at the end of a section.  
[7/1/2000; 22.50.10.5 NMAC - Rn, 7/29/2005]

**22.50.10.6 OBJECTIVE:** The objective of this rule is to establish and detail continuing judicial education requirements for magistrate court judges. These requirements are designed to ensure that magistrate court judges function efficiently and in accordance with the law of New Mexico.  
[7/1/2000; 22.50.10.6 NMAC - Rn, 7/29/2005]

**22.50.10.7 DEFINITIONS:**  
[RESERVED]

**22.50.10.8 HOURS REQUIRED — COMPUTATION OF CREDIT HOUR:**

A. Magistrate judges shall be required to complete 15 hours of continuing judicial education during each calendar year.

B. One credit hour equals 50 minutes of actual instruction time, which may include lecture, panel discussion, question-and-answer periods and video or film. Credit shall not be given for speeches given at luncheons or banquets.

C. At least one credit hour of continuing judicial education each year shall be completed in ethics and the Code of Judicial Conduct.

D. Magistrate judges shall complete at least one credit hour of continuing judicial education each year in understanding domestic violence; and as part of their annual requirements, shall attend any JEC domestic violence seminar of up to one day's duration if designated for the judiciary within the district court's judicial district in which the magistrate sits.

[7/1/2000; 22.50.10.8 NMAC - Rn, 7/29/2005]

**22.50.10.9 APPROVED PROGRAMS:**

A. Each magistrate judge must satisfy his/her minimum judicial education requirements either by:

(1) attending the annual magistrate training program conducted by JEC; or

(2) attending the training program conducted by JEC for newly appointed or newly elected magistrates; and

(3) attending JEC programs on domestic violence as provided in subsection D. of 22.50.10.8 NMAC;

(4) Judges may also earn CJE credit for each hour they spend preparing and presenting educational programs in cooperation with JEC and AOC.

B. A magistrate may request the chief justice to be excused from attending all or part of such programs due to illness, physical disability, personal or family emergencies, or other unanticipated and unpreventable occurrences, provided that any magistrate judge so excused must view videotapes of all sessions that the judge has been excused from attending, if videotapes are available from the JEC. A newly elected or appointed judge reviewing a videotape to fulfill the requirements for initial certification shall have his/her mentor judge or another qualified judge or attorney present during the viewing to discuss the videotape and address any questions.

C. AOC encourages magistrate judges to attend, to the extent that time and funding permit,

(1) courses offered by the National Judicial College or other national educational programs appropriate for magistrate judges,

(2) programs offered by other public or private organizations or by self-study of videotapes approved by the AOC.

D. Magistrates may claim CJE credit and/or reimbursement for attending programs authorized under Paragraphs (1) or (2) of Subsection C of this section only if the AOC has approved the course under the following standards:

(1) the course shall have significant intellectual or practical content and its

primary objective must be to increase the participant's professional competence as a magistrate;

(2) the course shall deal primarily with matters directly related to the magistrate court jurisdiction or the magistrate judge profession; and

(3) each instructor shall be qualified by practical or academic experience to teach the subject to be covered.

[7/1/2000; 22.50.10.9 NMAC - Rn, 7/29/2005]

**22.50.10.10 REPORTING REQUIREMENTS.**

A. Attendance at the annual training program or any other training program approved by the AOC shall be strictly monitored by the provider.

B. Reports from attendance at the annual training program or any approved training programs or approved CLE's shall be submitted to JEC by the judge or the course provider.

C. On or before December 31 of each year, JEC will report attendance hours to the AOC, and the AOC shall certify that a judge has completed his or her number of required hours of approved continuing judicial education programs.

[7/1/2000; 22.50.10.10 NMAC - Rn, 7/29/2005]

**22.50.10.11 FAILURE TO SATISFY MINIMUM CONTINUING JUDICIAL EDUCATION REQUIREMENTS.**

A. Pursuant to Supreme Court Rules Governing Judicial Education, Rule 25-104, the Supreme Court may suspend or remove any magistrate judge who fails to attend the initial training or the minimum number of required annual judicial education hours.

B. If at the end of the calendar year a magistrate judge has not completed the minimum requirements, he must submit to the AOC a specific plan for making up the deficiency. The deficiency must be made up within 90 days after the date the plan is approved. The plan shall include the names and locations of approved activities, the number of credits that will be earned and the dates on which the credits will be earned. The number of credits must be sufficient to make up the deficiency.

[7/1/2000; 22.50.10.11 NMAC - Rn, 7/29/2005]

**HISTORY OF 22.50.10 NMAC:**  
[RESERVED]

**NEW MEXICO  
ADMINISTRATIVE OFFICE  
OF THE COURTS**

**TITLE 22 COURTS  
CHAPTER 50 EDUCATION AND  
TRAINING  
PART 12 MUNICIPAL  
COURTS - JUDGES**

**22.50.12.1 ISSUING AGENCY:**  
Administrative Office of the Courts.

[7/1/2000; 22.50.12.1 NMAC - Rn, 7/29/2005]

**22.50.12.2 SCOPE:** Municipal court judges.

[7/1/2000; 22.50.12.2 NMAC - Rn, 7/29/2005]

**22.50.12.3 STATUTORY AUTHORITY:** NM Const. Art. VI, Sec. 3 and Supreme Court Rules Governing Judicial Education, Rule 25-103, approved March 23, 1998.

[7/1/2000; 22.50.12.3 NMAC - Rn, 7/29/2005]

**22.50.12.4 DURATION:** Permanent.

[7/1/2000; 22.50.12.4 NMAC - Rn, 7/29/2005]

**22.50.12.5 EFFECTIVE DATE:** July 1, 2000 unless a later date is cited in the history note at the end of a section.

[7/1/2000; 22.50.12.5 NMAC - Rn, 7/29/2005]

**22.50.12.6 OBJECTIVE:** The objective of this rule is to establish and detail continuing judicial education requirements for municipal court judges. These requirements are designed to ensure that municipal court judges function efficiently and in accordance with the law of New Mexico.

[7/1/2000; 22.50.12.6 NMAC - Rn, 7/29/2005]

**22.50.12.7 DEFINITIONS:** [RESERVED]

**22.50.12.8 HOURS REQUIRED — COMPUTATION OF CREDIT HOUR:**

A. Municipal judges shall be required to complete 12 hours of continuing judicial education during each calendar year.

B. One credit hour equals 50 minutes of actual instruction time, which may include lecture, panel discussion, question-and-answer periods and video or film. Credit shall not be given for speeches at luncheons or banquets.

C. At least one credit hour of continuing judicial education each year shall be completed in ethics and the code of judicial conduct.

D. Municipal judges shall complete at least one credit hour of continuing judicial education each year in understanding domestic violence; and as part of their annual requirements, shall attend any JEC domestic violence seminar of up to one day's duration if designated for the judiciary within the district court's judicial district in which the municipal judge sits.

E. Temporary/alternate municipal judges who regularly and frequently handle significant numbers of cases may attend the annual municipal training program conducted by JEC or the training program conducted by JEC for newly appointed and newly elected municipal judges. JEC shall also make available for the use of all temporary/alternate municipal judges appropriate written, videotaped and/or web-based instructional material to enable them to perform their responsibilities competently and knowledgeably. [7/1/2000; 22.50.12.8 NMAC - Rn, 7/29/2005]

#### **22.50.12.9 APPROVED PROGRAMS.**

A. Each municipal judge must satisfy his/her minimum judicial education requirements either by:

(1) attending the annual municipal training program conducted by the judicial education center (JEC); or

(2) attending the training program conducted by JEC for newly appointed or newly elected municipal judges; *and*

(3) attending JEC programs on domestic violence as provided in Subsection D of 22.50.12.8 NMAC;

(4) judges may also earn CJE credit for each hour they spend preparing and presenting educational programs in cooperation with JEC and AOC.

B. A municipal judge may request the chief justice to be excused from attending all or part of such programs due to illness, physical disability, personal or family emergencies, or other unanticipated and unpreventable occurrences, provided that any municipal judge so excused must view videotapes of all sessions that the judge has been excused from attending, if videotapes are available from the JEC. A newly elected or appointed judge reviewing a videotape to fulfill the requirements for initial certification shall have his/her mentor judge or another qualified judge or attorney present during the viewing to discuss the videotape and address any questions.

C. AOC encourages municipal judges to attend, to the extent that time and funding permit,

(1) courses offered by the nation-

al judicial college or other national educational programs appropriate for magistrate judges,

(2) programs offered by other public or private organizations or by self-study of videotapes approved by the AOC.

D. Municipal judges may claim CJE credit and/or reimbursement for attending programs authorized under paragraphs (1) or (2) of subsection C of this section only if the AOC has approved the course under the following standards:

(1) the course shall have significant intellectual or practical content and its primary objective must be to increase the participant's professional competence as a municipal judge;

(2) the course shall deal primarily with matters directly related to the municipal court jurisdiction or the municipal judge profession; and

(3) each instructor shall be qualified by practical or academic experience to teach the subject to be covered.

[7/1/2000; 22.50.12.9 NMAC - Rn, 7/29/2005]

#### **22.50.12.10 REPORTING REQUIREMENTS.**

A. Attendance at the annual training program or any other training program approved by the AOC shall be strictly monitored by the provider.

B. Reports from attendance at the annual training program or any approved training programs or approved CLE's shall be submitted to JEC by the judge or the course provider.

C. On or before December 31 of each year, JEC will report attendance hours to the AOC, and the AOC shall certify that a judge has completed his or her number of required hours of approved continuing judicial education programs.

[7/1/2000; 22.50.12.10 NMAC - Rn, 7/29/2005]

#### **22.50.12.11 FAILURE TO SATISFY MINIMUM CONTINUING JUDICIAL EDUCATION REQUIREMENTS.**

A. Pursuant to Supreme Court Rules Governing Judicial Education, Rule 25-104, the Supreme Court may suspend or remove any municipal judge who fails to satisfy the minimum continuing judicial education requirements.

B. If at the end of the calendar year a municipal judge has not completed the minimum requirements, he must submit to the AOC a specific plan for making up the deficiency. The deficiency must be made up within 90 days after the date the plan is approved. The plan shall include the names and locations of approved activities, the number of credits that will be earned and the dates on which the credits will be earned. The number of credits must be suf-

ficient to make up the deficiency.

[7/1/2000; 22.50.12.11 NMAC - Rn, 7/29/2005]

#### **HISTORY OF 22.50.12 NMAC: [RESERVED]**

### **NEW MEXICO ADMINISTRATIVE OFFICE OF THE COURTS**

#### **TITLE 22 COURTS CHAPTER 50 EDUCATION AND TRAINING PART 15 PROBATE COURTS - JUDGES**

**22.50.15.1 ISSUING AGENCY:** Administrative Office of the Courts. [7/1/2000; 22.50.15.1 NMAC - Rn, 7/29/2005]

**22.50.15.2 SCOPE:** Probate court judges. [7/1/2000; 22.50.15.2 NMAC - Rn, 7/29/2005]

**22.50.15.3 STATUTORY AUTHORITY:** NM Const. Art. VI, Sec. 3 and Supreme Court Rules Governing Judicial Education, Rule 25-103, approved March 23, 1998.

[7/1/2000; 22.50.15.3 NMAC - Rn, 7/29/2005]

**22.50.15.4 DURATION:** Permanent. [7/1/2000; 22.50.15.4 NMAC - Rn, 7/29/2005]

**22.50.15.5 EFFECTIVE DATE:** July 1, 2000 unless a later date is cited in the history note at the end of a section. [7/1/2000; 22.50.15.5 NMAC - Rn, 7/29/2005]

**22.50.15.6 OBJECTIVE:** The objective of this rule is to establish and detail continuing judicial education requirements for probate court judges. These requirements are designed to ensure that probate court judges function efficiently and in accordance with the law of New Mexico. [7/1/2000; 22.50.15.6 NMAC - Rn, 7/29/2005]

**22.50.15.7 DEFINITIONS:** [RESERVED]

**22.50.15.8 HOURS REQUIRED — COMPUTATION OF CREDIT HOUR:**

A. Probate judges shall be required to complete seven hours of continuing judicial education during each calendar



year by attending the annual training program conducted or approved by the AOC or by the JEC.

B. One credit hour equals 50 minutes of actual instruction time, which may include lecture, panel discussion, question-and-answer periods and video or film. Credit shall not be given for speeches at luncheons or banquets.

C. At least one credit hour of continuing judicial education each year shall be completed in ethics and the Code of Judicial Conduct.

[7/1/2000; 22.50.15.8 NMAC - Rn, 7/29/2005]

#### **22.50.15.9 APPROVED PROGRAMS.**

A. Annual probate judge continuing judicial education credit may be earned in one or a combination of the following ways:

(1) attendance at the annual training program conducted or approved by the AOC or by the JEC;

(2) attendance at a training program conducted or approved by the AOC or the JEC;

(3) attendance at the national judicial college;

(4) attendance at programs offered by other public or private organizations or by self-study of videotapes approved by the AOC.

B. For the purpose of Paragraph (4) of Subsection A of this section, the following standards shall be met:

(1) the course shall have significant intellectual or practical content and its primary objective must be to increase the participant's professional competence as a probate judge;

(2) the course shall deal primarily with matters directly related to the probate court jurisdiction or the probate judge profession;

(3) each instructor shall be qualified by practical or academic experience to teach the subject to be covered;

(4) a newly appointed probate judge reviewing a videotape as part of their initial certification shall have a judge or an attorney present as a facilitator to discuss the videotape and answer any questions;

(5) an attorney probate judge is limited to five hours of self-study pursuant to MCLE Rule 18-203(C);

(6) courses and self-study videotapes must be approved by the AOC prior to attendance or viewing in order to receive credit; and

(7) proof of attendance, including actual time and the number of credit hours, shall be transmitted to the JEC by the course provider or videotape facilitator.

[7/1/2000; 22.50.15.9 NMAC - Rn, 7/29/2005]

#### **22.50.15.10 REPORTING REQUIREMENTS.**

A. Attendance at the annual training program or any other training program approved by the AOC shall be strictly monitored by the provider.

B. Reports from attendance at the annual training program or any approved training programs or approved CLE's shall be submitted to JEC by the probate judge or the course provider.

C. On or before December 31 of each year, JEC will report attendance hours to the AOC, and the AOC shall certify that the judge has completed the number of required hours of approved continuing judicial education programs.

[7/1/2000; 22.50.15.10 NMAC - Rn, 7/29/2005]

#### **22.50.15.11 FAILURE TO SATISFY MINIMUM CONTINUING JUDICIAL EDUCATION REQUIREMENTS.**

A. Pursuant to Supreme Court Rules Governing Judicial Education, Rule 25-104, the Supreme Court may suspend or remove any probate judge who fails to satisfy the minimum continuing judicial education requirements.

B. If at the end of the calendar year a probate judge has not completed the minimum requirements, he must submit to the AOC a specific plan for making up the deficiency. The deficiency must be made up within 90 days after the date the plan is approved. The plan shall include the names and locations of approved activities, the number of credits that will be earned and the dates on which the credits will be earned. The number of credits must be sufficient to make up the deficiency.

[7/1/2000; 22.50.15.11 NMAC - Rn, 7/29/2005]

**HISTORY OF 22.50.15 NMAC:**  
[RESERVED]

### **NEW MEXICO ADMINISTRATIVE OFFICE OF THE COURTS**

#### **TITLE 22 COURTS CHAPTER 50 EDUCATION AND TRAINING PART 17 DOMESTIC VIOLENCE SPECIAL COMMISSIONERS AND DOMESTIC RELATIONS HEARING OFFICERS**

**22.50.17.1 ISSUING AGENCY:** Administrative Office of the Courts.

[7/1/2000; 22.50.17.1 NMAC - Rn, 7/29/2005]

**22.50.17.2 SCOPE:** Domestic violence special commissioners and domes-

tic relations hearing officers.

[7/1/2000; 22.50.17.2 NMAC - Rn, 7/29/2005]

#### **22.50.17.3 STATUTORY AUTHORITY:**

NM Const. Art. VI, Sec. 3 and Supreme Court Rules Governing Judicial Education, Rule 25-103, approved March 23, 1998.

[7/1/2000; 22.50.17.3 NMAC - Rn, 7/29/2005]

#### **22.50.17.4 DURATION:**

Permanent.

[7/1/2000; 22.50.17.4 NMAC - Rn, 7/29/2005]

#### **22.50.17.5 EFFECTIVE DATE:**

July 1, 2000 unless a later date is cited in the history note at the end of a section.

[7/1/2000; 22.50.17.5 NMAC - Rn, 7/29/2005]

#### **22.50.17.6 OBJECTIVE:**

The objective of this rule is to establish and detail continuing judicial education requirements for domestic violence special commissioners and domestic relations hearing officers. These requirements are designed to ensure that domestic violence special commissioners and domestic relations hearing officers function efficiently and in accordance with the law of New Mexico.

[7/1/2000; 22.50.17.6 NMAC - Rn, 7/29/2005]

#### **22.50.17.7 DEFINITIONS:**

[RESERVED]

#### **22.50.17.8 HOURS REQUIRED — COMPUTATION OF CREDIT HOUR:**

A. Domestic violence special commissioners and domestic relations hearing officers (commissioners and hearing officers) shall be required to complete 7 hours of continuing judicial education during each calendar year.

B. One credit hour equals 50 minutes of actual instruction time, which may include lecture, panel discussion, question-and-answer periods and video or film. Credit shall not be given for speeches given at luncheons or banquets.

C. At least one credit hour of continuing judicial education each year shall be completed in ethics and the code of judicial conduct.

D. Commissioners and hearing officers shall complete at least one credit hour of continuing judicial education each year in understanding domestic violence; and as part of their annual requirements, shall attend any JEC domestic violence seminar of up to one day's duration if designated for the judiciary within the district court's judicial district in which the

commissioner or hearing officer is appointed.  
[7/1/2000; 22.50.17.8 NMAC - Rn, 7/29/2005]

**22.50.17.9 APPROVED PROGRAMS.**

A. Annual commissioners and hearing officers continuing judicial education requirements may be satisfied in one or a combination of the following ways:

(1) attendance at the annual training program conducted by the AOC or JEC; and

(2) attending JEC programs on domestic violence as provided in subsection D. of 22.50.17.8 NMAC;

(3) attendance at other training programs offered by the AOC or the JEC;

(4) attendance at the national judicial college;

(5) attendance at programs offered by other public or private organizations or by self-study of videotapes approved by the AOC.

B. For the purposes of Paragraph (5) of Subsection A of this section, the following standards shall be met:

(1) the course shall have significant intellectual or practical content and its primary objective must be to increase the participant's professional competence;

(2) the course shall deal with matters related to those areas of the law in which the commissioners and hearing officers perform service;

(3) each instructor shall be qualified by practical or academic experience to teach the subject to be covered;

(4) in the case of videotape self-study, commissioners that are not attorneys shall have another judge or an attorney available to discuss the videotape and answer any questions; provided, however, that an attorney commissioner or hearing officer is limited to five hours of self-study pursuant to MCLE Rule 18-203(D);

(5) courses and self-study videotapes must be approved by the AOC prior to attendance or viewing in order to receive credit; and

(6) proof of attendance, including actual time and the number of credit hours, shall be transmitted to the AOC by the course provider or videotape facilitator.

[7/1/2000; 22.50.17.9 NMAC - Rn, 7/29/2005]

**22.50.17.10 REPORTING REQUIREMENTS.**

A. Attendance at the annual training program or any other training program approved by the AOC shall be strictly monitored by the provider.

B. Reports from attendance at the annual training program or any

approved training programs or approved CLE's shall be submitted to JEC by the commissioner and or hearing officer or by the course provider.

C. On or before December 31 of each year, JEC will report attendance hours to the AOC, and the AOC shall certify that the commissioner or hearing officer has completed the number of required hours of approved continuing judicial education programs.

[7/1/2000; 22.50.17.10 NMAC - Rn, 7/29/2005]

**22.50.17.11 FAILURE TO SATISFY MINIMUM CONTINUING JUDICIAL EDUCATION REQUIREMENTS.**

A. Pursuant to Supreme Court Rules Governing Judicial Education, Rule 25-104, the supreme court may suspend or remove any commissioner or hearing officer who fails to satisfy the minimum continuing judicial education requirements.

B. If at the end of the calendar year a commissioner or hearing officer has not completed the minimum requirements, he must submit to the AOC a specific plan for making up the deficiency. The deficiency must be made up within 90 days after the date the plan is approved. The plan shall include the names and locations of approved activities, the number of credits that will be earned and the dates on which the credits will be earned. The number of credits must be sufficient to make up the deficiency.

[7/1/2000; 22.50.17.11 NMAC - Rn, 7/29/2005]

**HISTORY OF 22.50.17 NMAC:**  
[RESERVED]

**NEW MEXICO  
ADMINISTRATIVE OFFICE  
OF THE COURTS**

**TITLE 22 COURTS  
CHAPTER 50 EDUCATION AND TRAINING  
PART 20 MAGISTRATE COURT - MAGISTRATE JUDGES PRO TEMPORE**

**22.50.20.1 ISSUING AGENCY:**  
Administrative Office of the Courts.  
[7/1/2000; 22.50.20.1 NMAC - Rn, 7/29/2005]

**22.50.20.2 SCOPE:** Magistrate judges *pro tempore*.  
[7/1/2000; 22.50.20.2 NMAC - Rn, 7/29/2005]

**22.50.20.3 STATUTORY AUTHORITY:** NM Const. Art. VI, Sec. 3

and Supreme Court Rules Governing Judicial Education, Rule 25-103, approved March 23, 1998.

[7/1/2000; 22.50.20.3 NMAC - Rn, 7/29/2005]

**22.50.20.4 DURATION:**  
Permanent.

[7/1/2000; 22.50.20.4 NMAC - Rn, 7/29/2005]

**22.50.20.5 EFFECTIVE DATE:**  
July 1, 2000 unless a later date is cited in the history note at the end of a section.

[7/1/2000; 22.50.20.5 NMAC - Rn, 7/29/2005]

**22.50.20.6 OBJECTIVE:** The objective of this rule is to establish and detail continuing judicial education requirements for magistrate judges *pro tempore*. These requirements are designed to ensure that magistrate judges *pro tempore* function efficiently and in accordance with the law of New Mexico.

[7/1/2000; 22.50.20.6 NMAC - Rn, 7/29/2005]

**22.50.20.7 DEFINITIONS:**  
[RESERVED]

**22.50.20.8 HOURS REQUIRED — COMPUTATION OF CREDIT HOUR:**

A. Magistrate judges *pro tempore* shall be required to complete 15 hours of continuing judicial education during each calendar year.

B. One credit hour equals 50 minutes of actual instruction time, which may include lecture, panel discussion, question-and-answer periods and video or film. Credit shall not be given for speeches given at luncheons or banquets.

C. At least one credit hour of continuing judicial education each year shall be completed in ethics and the code of judicial conduct.

D. Magistrate judges *pro tempore* shall complete at least one credit hour of continuing judicial education each year in understanding domestic violence; and as part of their annual requirements, shall attend any JEC domestic violence seminar of up to one day's duration if designated for the judiciary within the district court's judicial district in which the magistrate *pro tempore* resides.

[7/1/2000; 22.50.20.8 NMAC - Rn, 7/29/2005]

**22.50.20.9 APPROVED PROGRAMS.**

A. Each magistrate judge *pro tempore* must satisfy his/her minimum judicial education requirements either by:

(1) attending the annual magis-

trate training program conducted by the JEC; or

(2) attending the training program conducted by JEC for newly appointed or newly elected magistrates; *and*

(3) attending JEC programs on domestic violence as provided in Subsection D of 22.50.20.8 NMAC;

(4) magistrate judges *pro tempore* may also earn CJE credit for each hour they spend preparing and presenting educational programs in cooperation with JEC and AOC.

B. A magistrate *pro tempore* may request the chief justice to be excused from attending all or part of such programs due to illness, physical disability, personal or family emergencies, or other unanticipated and unpreventable occurrences, provided that any magistrate judge *pro tempore* so excused must view videotapes of all sessions that the judge has been excused from attending, if videotapes are available from the JEC.

[7/1/2000; 22.50.20.9 NMAC - Rn, 7/29/2005]

**22.50.20.10 REPORTING REQUIREMENTS.**

A. Attendance at the annual training program or any other training program approved by the AOC shall be strictly monitored by the provider.

B. Reports from attendance at the annual training program or any approved training programs or approved CLE's shall be submitted to JEC by the judge or the course provider.

C. On or before December 31 of each year, JEC will report attendance hours to the AOC, and the AOC shall certify that a magistrate judge *pro tempore* has completed his or her number of required hours of approved continuing judicial education programs.

[7/1/2000; 22.50.20.10 NMAC - Rn, 7/29/2005]

**22.50.20.11 FAILURE TO SATISFY MINIMUM CONTINUING JUDICIAL EDUCATION REQUIREMENTS.**

Pursuant to Supreme Court Rules Governing Judicial Education, Rule 25-104, any retired judge who fails during the preceding calendar year to satisfy the minimum continuing judicial education requirements for magistrate judges shall not serve as a magistrate judge *pro tempore*.

[7/1/2000; 22.50.20.11 NMAC - Rn, 7/29/2005]

**HISTORY OF 22.50.20 NMAC: [RESERVED]**

**NEW MEXICO DEPARTMENT OF AGRICULTURE**

This is an amendment to 21.17.45 NMAC, Section 8, effective July 29, 2005.

**21.17.45.8 ASSESSMENT:**

A. The committee assessment rate is set forth at [~~6 dollars (\$6)~~] 3 dollars (\$3) per land acre of irrigated cotton and [~~6 dollars (\$6)~~] 3 dollars (\$3) per land acre for dryland cotton to be collected each annum from cotton producers in the control district. The control committee may annually set an incentive for early payment of the assessment.

B. Payment of the assessment levied by a local control committee against a cotton producer will be due and payable when the cotton producer receives an assessment statement from the control committee or their authorized agent.

C. The number of acres used in calculating the assessment amount due will be the number of land acres the cotton producer has certified with the farm service agency, or if the cotton acreage is not certified by the farm service agency the number of land acres used in calculating the assessment amount due shall be determined by other methods set by the control committee or their authorized agent. Any cotton acreage is subject to verification by the control committee.

D. Failure to comply with payment of assessment to the committee or their authorized agent may result in the recording of a lien on the cotton crop and/or property in the county clerk's office where the property is located. The lien will remain in effect until foreclosure or balance subject to the lien is paid in full. Interest may be assessed at a rate of 8½ percent per annum on the balance unpaid after 30 days.

[21.17.45.8 NMAC - N, 02/28/2001; A, 05/14/2004; A, 07/29/2005]

**NEW MEXICO DEPARTMENT OF AGRICULTURE**

This is an amendment to 21.17.46 NMAC, Section 8, effective July 29, 2005.

**21.17.46.8 ASSESSMENT:**

A. The committee assessment rate is set forth at [~~6 dollars (\$6)~~] 3 dollars (\$3) per land acre of irrigated cotton and [~~4 dollars (\$4)~~] 3 dollars (\$3) per land acre for dryland cotton to be collected each annum from cotton producers in the control district. The control committee may annually set an incentive for early payment of

the assessment.

B. Payment of the assessment levied by a local control committee against a cotton producer will be due and payable when the cotton producer receives an assessment statement from the control committee or their authorized agent.

C. The number of acres used in calculating the assessment amount due will be the number of land acres the cotton producer has certified with the farm service agency, or if the cotton acreage is not certified by the farm service agency the number of land acres used in calculating the assessment amount due shall be determined by other methods set by the control committee or their authorized agent.

D. Failure to comply with payment of assessment to the committee or their authorized agent may result in the recording of a lien on the cotton crop and/or property in the county clerk's office where the property is located. The lien will remain in effect until foreclosure or balance subject to the lien is paid in full. Interest may be assessed at a rate of 8 ½ percent per annum on the balance unpaid after 30 days.

[21.17.46.8 NMAC - N, 02/14/2001; A, 05/14/2004; A, 07/29/2005]

**NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD**

20 NMAC 3.2 NMAC named "Radiologic Technology Certification" (filed 12-15-95) is repealed and replaced with 20.3.20 NMAC named "Radiologic Technology Certification". The repeal and replace will become effective 8/31/2005.

**NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD**

**TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 3 RADIATION PROTECTION PART 20 RADIOLOGIC TECHNOLOGY CERTIFICATION**

**20.3.20.1 ISSUING AGENCY:** Environmental Improvement Board. [20.3.20.1 NMAC - Rp, 20 NMAC 3.2.I.100, 8/31/2005]

**20.3.20.2 SCOPE:** All persons engaged in the practice of radiologic technology in the application of ionizing radiation. [20.3.20.2 NMAC - Rp, 20 NMAC 3.2.I.101, 8/31/2005]

[20.3.20.2 NMAC - Rp, 20 NMAC 3.2.I.101, 8/31/2005]

**20.3.20.3 STATUTORY**

**AUTHORITY:** Medical Radiation Health and Safety Act, Sections 61-14E-1 to 61-14E-12 NMSA 1978 and Section 74-1-8 NMSA 1978.

[20.3.20.3 NMAC - Rp, 20 NMAC 3.2.I.102, 8/31/2005]

**20.3.20.4 DURATION:** Permanent.

[20.3.20.4 NMAC - Rp, 20 NMAC 3.2.I.103, 8/31/2005]

**20.3.20.5 EFFECTIVE DATE:** August 31, 2005, unless a later date is cited at the end of a section.

[20.3.20.5 NMAC - Rp, 20 NMAC 3.2.I.104, 8/31/2005]

**20.3.20.6 OBJECTIVE:** To maximize the protection practicable for the citizens of New Mexico from the harmful effects of ionizing radiation in the practice of the healing arts by establishing requirements for appropriate education and training of persons operating medical equipment emitting ionizing radiation, establishing standards of education and training for the persons who administer radiologic procedures and providing for the appropriate examination and certification of those persons.

[20.3.20.6 NMAC - Rp, 20 NMAC 3.2.I.105, 8/31/2005]

**20.3.20.7 DEFINITIONS:** As used in this part (20.3.20 NMAC).

A. "ACLS" means advanced cardiac life support.

B. "ACRRT" means American chiropractic registry of radiologic technologist.

C. "Act" means the Medical Radiation Health and Safety Act, Sections 61-14E-1 to 61-14E-12 NMSA 1978.

D. "Advisory council" means the radiation technical advisory council (RTAC).

E. "Applying ionizing radiation" means to use ionizing radiation for diagnostic or therapeutic purposes, including tasks having direct impact on the radiation burden of the patient, such as, but not limited to:

(1) positioning the patient, film and beam;

(2) selection of exposure factors or treatment parameters;

(3) preparation, calibration and injection of radiopharmaceuticals; and

(4) actuating the production of radiation.

F. "Approved program" means an educational program for either a full certificate, radiologist assistant certificate, fusion imaging certification or a certificate of limited x-ray machine operation,

which meets the provisions of 20.3.20.200 NMAC and paragraphs (1) through (4) of this subsection.

(1) Full certificate. All curricula and programs to train individuals to perform radiologic procedures must be accredited by the United States department of education including but not limited to the joint review committee on education in nuclear medicine technology (JRCNMT) or the joint review committee on education in radiologic technology (JRCERT).

(2) Radiologist assistant certificate. All programs to train individuals to perform procedures as a radiologist assistant must be an advanced academic program encompassing a radiologist assistant curriculum culminating in a baccalaureate degree, postbaccalaureate certificate or master's degree and that incorporates a radiologist-directed clinical preceptorship and makes the individual eligible to be certified as a radiologist assistant by the American registry of radiologic technologists.

(3) Fusion imaging certificate. All programs to train individuals to perform fusion imaging must conform with current curriculum for fusion imaging published by the American society of radiologic technologists or society of nuclear medicine technologist.

(4) Certificate of limited x-ray machine operation. All programs to train individuals to perform limited x-ray machine operation must conform with the current curriculum for limited x-ray machine operators published by the American society of radiologic technologists.

G. "ARRT" means the American registry of radiologic technologists.

H. "Assistance" means any activity performed under the supervision or direction of a licensed practitioner or certified radiographer, radiation therapist, nuclear medicine technologist or radiologist assistant except:

(1) positioning the patient;

(2) positioning the source of radiation;

(3) selecting any exposure factors; or

(4) actuating the production of radiation.

I. "Auxiliary or health practitioner" means a physician assistant, registered nurse, dental hygienist or dental assistant licensed or certified by an independent board who applies radiation to humans while under the supervision of a licensed practitioner, provided that the certification and examination program established by the independent board is reviewed by the advisory council (RTAC) and approved by the board.

J. "Board" means the

environmental improvement board.

K. "Category A credits" means an activity that qualifies as a continuing education activity and is approved for category A credit by the American college of radiology, American healthcare radiology administrators, American institute of ultrasound in medicine, American society of radiologic technologists, Canadian association of medical radiation technologists, radiological society of North America, society of diagnostic medical sonography, society of nuclear medicine, society of vascular ultrasound, or other RCEEM's recognized by the department.

L. "Certificate" means a full certificate issued by the department pursuant to the Act and this part (20.3.20 NMAC) to any person who is a radiologic technologist, radiologic therapy technologist, nuclear medicine technologist or radiologist assistant and who is certified pursuant to the Act.

M. "Certificate of limited x-ray machine operation" means a certificate issued by the department pursuant to the Act and this part (20.3.20 NMAC) to an individual other than a radiologic technologist who performs diagnostic x-ray procedures on designated anatomical sites under the supervision of a licensed practitioner or a radiologic technologist:

(1) chest and thorax;

(2) extremities;

(3) dentistry;

(4) vertebral column;

(5) podiatric; or

(6) cranium.

N. "Chest and thorax" means radiographic examinations of the lungs, anteroposterior AP, posterior-anterior PA, lateral and apical lordotic views and ribs, but does not include mammography and radiography of the abdomen.

O. "Clinical instruction" means hands-on educational experience in a health care setting such as a hospital, clinic, or physician's office, under the supervision of a licensed practitioner or the direct supervision of a radiologic technologist.

P. "Contact hour" means fifty (50) minutes.

Q. "Continuing education" means a learning activity that is planned, organized and administered to enhance the professional knowledge and skill underlying professional performance that a holder of a full certificate, radiologist assistant certificate, fusion imaging certificate or certificate of limited x-ray machine operation uses to provide services for patients, the public or the medical profession. In order to qualify as continuing education, the activity must be planned, organized and provide sufficient depth and scope of a subject area.

R. "Contrast media study" means a study performed whereby contrast

media is introduced into the human body to define a part or parts not normally visualized on a radiograph.

S. "Cranium" means radiographic examination of the skull, facial bones, nasal bones, orbits, pantomography mandible or paranasal sinuses.

T. "Department" means the New Mexico environment department.

U. "Didactic instruction" means classroom instruction.

V. "Direct supervision" means in the physical presence of a licensed practitioner or radiologic technologist who assists, evaluates and approves of the individual's performance of the various tasks involved with application of ionizing radiation.

W. "Education background" means high school diploma or general education diploma, diploma or transcripts of completed secondary education or approved radiology program certificate of completion.

X. "Extremities" means radiographic examination of the fingers, hand, wrist, radius/ulna, elbow, humerus, pectoral girdle (shoulder joint and clavicle), toes, foot, ankle, calcaneus, tibia/fibula, patella, knee, distal femur, but does not include the hip or pelvis.

Y. "Full time" means a standard forty (40) hour week.

Z. "Fusion imaging" means the fusion of images acquired from two or more imaging modalities, such as x-rays, computed tomography, magnetic resonance, positron emission tomography, single photon emission computed tomography, radiopharmaceuticals or measurements of radioactivity to produce a medical image of the metabolic function of cells and relevant human anatomy.

AA. "Fusion imaging certificate" means a full certificate issued by the department pursuant to the Act and this part (20.3.20 NMAC) to any person who performs fusion imaging and who is a radiologic technologist, certified pursuant to the Act.

AB. "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high speed electrons, neutrons, protons, and other nuclear particles; but not ultrasound, sound or radio waves, nor visible, infrared or ultraviolet light.

AC. "Licensed practitioner" means a person licensed to practice medicine, dentistry, podiatry, chiropractic or osteopathy in this state.

AD. "Limited x-ray machine operator" means a person holding a certificate of limited x-ray machine operation and who may be referred to as a "LXMO".

AE. "NMTCB" means the nuclear medicine technologist certification board.

AF. "Nuclear medicine technologist" means a person other than a licensed practitioner who compounds, calibrates, dispenses and administers radiopharmaceuticals, pharmaceuticals, and radionuclides, who performs venipuncture under the direction of an authorized user for benefit of performing a comprehensive scope of nuclear medicine procedures.

AG. "Personal identification" means applicants full legal name, permanent and mailing address, social security number, date of birth, home phone number, cellular phone number, work number, pager, e-mail address, web site, and other related information.

AH. "Podiatric" means radiographic examination of the toes, foot, ankle, calcaneus, distal tibia/fibula, but does not include the knee joint.

AI. "Radiation technologist" means a radiographer, radiologic therapy technologist or nuclear medicine technologist certified pursuant to the Act and holding a full certificate and who may be referred to as a "RT".

AJ. "Radiation therapist" means a person other than a licensed practitioner who utilizes ionizing radiation under the supervision of a licensed practitioner for the planning and delivery of therapeutic procedures.

AK. "Radiographer" means a person other than a licensed practitioner who applies radiation to humans for diagnostic purposes.

AL. "Radiologist assistant" means a radiographer certified as a radiologist assistant by the American registry of radiologic technologists to perform advanced radiologic procedures under the supervision of a radiologist.

AM. "Radiologist assistant certificate" means a full certificate issued by the department pursuant to the Act and this part (20.3.20 NMAC) to any person who is a radiologist assistant and who is certified pursuant to the Act.

AN. "Recognized continuing education evaluation mechanism" (RCEEM) means a mechanism recognized by the American registry of radiologic technologists for evaluating the content, quality and integrity of an educational activity which includes a review of educational objectives, content selection, faculty qualifications, and educational methods and materials by an organization that is national in scope, non-profit, radiology based, and willing to evaluate the continuing education activity developed by any technologist within a given discipline.

AO. "Student" means a person enrolled in and attending a school or college of medicine, osteopathy, chiropractic, podiatry, dentistry, dental hygiene, or a department-approved program or school of

radiologic technology who applies ionizing radiation to humans while under the supervision of a licensed practitioner or the direct supervision of a radiologic technologist.

AP. "Supervision" means responsibility for, and control of quality, radiation safety and protection and technical aspects of the application of ionizing radiation to human beings for diagnostic or therapeutic purposes.

AQ. "Vertebral column" means radiographic examination of the cervical, thoracic and lumbar spine and scoliosis survey.

[20.3.20.7 NMAC - Rp, 20 NMAC 3.2.I.106, 8/31/2005]

**20.3.20.8 ADMINISTRATION AND ENFORCEMENT:** The administration and enforcement of the Act and this part (20.3.20 NMAC) is vested in the department.

[20.3.20.8 NMAC - Rp, 20 NMAC 3.2.I.107, 8/31/2005]

**20.3.20.9 - 20.3.20.199**  
[RESERVED]

**20.3.20.200 EDUCATIONAL REQUIREMENTS:**

**A. Full certificate.** The educational program for a full certificate shall be in nuclear medicine, radiation therapy, or radiography, and shall be accredited by the United States department of education, joint review committee on education in radiologic technology and joint review committee on education in nuclear medicine technology.

**B. Certificate of limited x-ray machine operation.**

(1) The approved program for a certificate of limited x-ray machine operation shall include didactic and clinical instruction of the type and quantity indicated in the applicable subsections of this section. The recommended topics for radiation safety and protection should include a discussion of ionizing radiation including definition, sources, radiation bio-effects, radiation safety and protection relevant to national council of radiation protection and measurement reports and standards (NCRPMRS) and radiation risks associated with the specific procedure. The ratio between human and educational aid assisted instruction should be at least forty to sixty (40:60), that is, a particular subject category should consist of no less than forty percent (40%) human instruction and no more than sixty percent (60%) educational aids assisted content in a didactic setting. The minimum recommended hours are specified in subparagraphs (a) through (f) of this paragraph.

(a) For chest and thorax procedures, the didactic educational program shall include:

<b>SUBJECT</b>	<b>CONTACT HOURS</b>
Fundamentals, ethics and law of health care	10
Medical terminology	10
Patient care in radiologic sciences	30
Human structure and function	10
Chest and thorax procedures and positioning	15
Imaging production and evaluation	60
Imaging equipment and radiation production	50
Radiation protection and radiobiology	40
<b>TOTAL</b>	<b>225</b>

Clinical instruction for chest and thorax procedures shall be competency based and shall be a minimum of 160 hours.

(b) For extremities procedures, the didactic educational program shall include:

<b>SUBJECT</b>	<b>CONTACT HOURS</b>
Fundamentals, ethics and law of health care	10
Medical terminology	10
Patient care in radiologic sciences	30
Human structure and function	10
Extremities procedures and positioning	40
Imaging production and evaluation	60
Imaging equipment and radiation production	50
Radiation protection and radiobiology	<u>40</u>
<b>TOTAL</b>	<b>250</b>

Clinical instruction for extremities procedures shall be competency based and shall be a minimum of 480 hours.

(c) For dental diagnostic procedures, the didactic educational program shall include:

<b>SUBJECT</b>	<b>CONTACT HOURS</b>
Oral anatomy with radiographic dental technique and positioning	8
Radiation safety and protection	5
Darkroom and processing techniques	3
Laboratory on above subjects	<u>9</u>
<b>TOTAL</b>	<b>25</b>

(d) For vertebral column procedures, the didactic educational program shall include:

<b>SUBJECT</b>	<b>CONTACT HOURS</b>
Fundamentals, ethics and law of health care	10
Medical terminology	10
Patient care in radiologic sciences	30
Human structure and function	10
Vertebral procedures and positioning	15
Imaging production and evaluation	60
Imaging equipment and radiation production	50
Radiation protection and radiobiology	<u>40</u>
<b>TOTAL</b>	<b>225</b>

Clinical instruction for vertebral column procedures shall be competency based and shall be a minimum of 240 hours.

(e) For podiatric procedures, the didactic educational program shall include:

<b>SUBJECT</b>	<b>CONTACT HOURS</b>
Fundamentals, ethics and law of health care	10
Medical terminology	10
Patient care in radiologic sciences	30
Human structure and function	10
Podiatric procedures and positioning	10
Imaging production and evaluation	60
Imaging equipment and radiation production	50
Radiation protection and radiobiology	<u>40</u>
<b>TOTAL</b>	<b>220</b>

Clinical instruction for podiatric procedures shall be competency based and shall be a minimum of 160 hours.

(f) For cranium procedures, the didactic educational program shall include:

<b>SUBJECT</b>	<b>CONTACT HOURS</b>
Fundamentals, ethics and law of health care	10
Medical terminology	10
Patient care in radiologic sciences	30
Human structure and function	10
Cranium procedures and positioning	20
Imaging production and evaluation	60
Imaging equipment and radiation production	50
Radiation protection and radiobiology	40
<b>TOTAL</b>	<b>230</b>

Clinical instruction for cranium procedures shall be competency based and shall be a minimum of 240 hours.

(2) Appropriate records shall be maintained for three (3) years.

**C. Radiologist assistant certificate.** The educational program for a radiologist assistant certificate shall be an educational program culminating in the award of a baccalaureate degree or post-baccalaureate certificate from an institution approved by the American registry of radiologic technologists, that incorporates a radiologist-directed clinical preceptorship and meets the eligibility requirements for certification by the American registry of radiologic technologists.

**D. Fusion imaging certificate.** The education program for a fusion imaging certificate shall be an educational program recognized by the department or an agency whose program recognition is accepted by the department. All programs to educate individuals must meet the content specified in the current positron emission tomography (PET)-computed tomography (CT) curriculum published by the American society of radiologic technologists and society of nuclear medicine technologist section.

[20.3.20.200 NMAC - Rp, 20 NMAC 3.2.200.II - 201.II, 8/31/2005]

### 20.3.20.201 - 20.3.20.299

[RESERVED]

### 20.3.20.300 CERTIFICATION:

**A. Requirement.** It is unlawful for any person, other than a person certified by the department, to:

(1) use ionizing radiation on humans;

(2) engage in any of the radiology specialties as defined by the Act and described in this part (20.3.20 NMAC);

(3) use the title "radiologic technologist", "certified radiologic technologist", "radiologist assistant", "certified radiologist assistant", "limited x-ray machine operator", or "certified limited x-ray machine operator";

(4) use the abbreviated title "CRT", "RT", "RA", "CRA", "LXMO", or "CLXMO"; or

(5) use any other title, abbreviated title, abbreviation, letters, figures, signs, or other devices to indicate the person is a certified radiologic technologist, certified radiologist assistant or a certified limited x-ray machine operator.

**B. Types of certification.** Certificates granted by the department shall be of five (5) types, identifiable and applicable as specified in this subsection.

**(1) Full certificate.** This certification is utilized for radiologic technologists who, within their areas of radiologic specialization, apply radiopharmaceutical agents or radiation to humans for therapeutic or diagnostic purposes under the direc-

tion of a licensed practitioner; and who demonstrates or successfully complete the requirements established for the certificate. Each certificate shall identify the radiology specialty of the certified technologist. The certificate of a person qualified in more than one area of radiological specialization shall identify all areas of specialization. A person holding a certificate may use the title "radiologic technologist" or "certified radiologic technologist" or the abbreviated title "CRT".

**(2) Certificate of limited x-ray machine operation.** This certification is utilized for persons who perform restricted diagnostic radiography, under the supervision of a licensed practitioner or a radiologic technologist with respect to the supervision and areas of specialty; and who demonstrate or successfully complete the requirements for the certificate of limited x-ray machine operation. Each certificate of limited x-ray machine operation shall identify the procedural specialty of the certified limited x-ray machine operator, i.e., chest and thorax, extremities, podiatric, cranium, vertebral column or dental diagnostics. Persons holding a limited certificate in one or more categories may not perform radiologic procedures involving the use of contrast media, utilization of fluoroscopic equipment, mammography, computed tomography, bedside radiography, nuclear medicine or radiation therapy procedures. A person holding a certificate of limited x-ray machine operation may use the title "limited x-ray machine operator" or "certified limited x-ray machine operator", or the abbreviated title "LXMO" or "CLXMO".

#### **(3) Temporary certification.**

(a) The department may issue a temporary certificate to practice as a radiologic technologist to a person who satisfactorily completes an approved program in radiologic technology and who is awaiting results of the radiologic technology examination. A temporary certificate must be applied for within one year of graduation from an approved program, expires one year from the date issued, and is issued only once and cannot be renewed or extended.

(b) Applicants must submit a completed application, accompanied by the application fee and copies of graduation certificates, diplomas or transcripts indicating the successful completion date.

(c) Applicants passing the radiologic technology certification examination should apply for full or limited certification at least 60 calendar days prior to the expiration of their temporary certificate.

**(4) Radiologist assistant certification.** The department may issue a certificate to practice as a radiologist assistant to a person who satisfactorily completes an approved program and who:

(a) is certified by the American

registry of radiologic technologists as a radiologist assistant;

(b) is certified by the American registry of radiologic technologists as a radiographer;

(c) is certified in advanced cardiac life support (ACLS);

(d) furnishes to the department an employment letter from the supervising radiologist; and

(e) holds a full certificate from the department.

**(5) Fusion imaging certificate.** The department may issue a certificate to a radiologic technologist to perform fusion imaging to perform fusion imaging upon completion of a course of study in fusion imaging technology approved by the department.

**C. Display of certificate.** Original certificates shall be publicly displayed at the place of employment. Persons with more than one place of employment shall publicly display a duplicate certificate at each secondary place of employment. Duplicate certificates must be obtained from the department.

**D. Application.** Any person seeking certification shall submit a completed application form to the department. The department will make available to radiologic technologist or students a variety of application forms created by the department, which include an exam application form, a new application form, renewal application form, and a request for New Mexico certification verification form application form. The application shall be on a form provided by the department and shall include the applicant's:

- (1) personal identification;
- (2) education background;
- (3) medical radiography, radiation therapy, nuclear medicine technology, radiologist assistant, or limited x-ray machine operator education and training;
- (4) medically-related professional affiliations, certifications and licenses;
- (5) medically-related work experience;
- (6) proposed certification and radiologic technology specialty;
- (7) check or money order number and date;
- (8) compliance agreement; and,
- (9) signature and date.

**E. Certification by examination of credentials.** Any person seeking a certificate through examination of credentials shall submit an application to the department accompanied by the application fee, demonstrating that the applicant completed school through the twelfth (12th) grade or has passed the high school equivalency test, and:

(1) is currently certified by a nationally recognized certifying organiza-

tion, (i.e., the ARRT or the NMTCB), provided that the department finds that certification was granted on standards that are adequate to meet the purposes of the Act and will afford at least as much protection to the public as are afforded by the standards established by the standards established in this part (20.3.20 NMAC); or

(2) is currently certified as a radiologic technologist or radiologic assistant in another state and has been actively employed as a radiologic technologist or radiologist assistant for a period totaling no less than one year in the three years prior to application at a rate of no less than 1,000 hours per year, such employment must have been in the radiology specialty for which certification is requested, provided the certificate was issued on the basis of qualifications at least as stringent as standards established by this part (20.3.20 NMAC).

**F. Certification by written examination.**

(1) Certificate. Any person seeking a certificate by written examination shall:

(a) submit an application to the department, accompanied by the application and examination fee, demonstrating that the applicant:

(i) has completed school successfully through the twelfth (12th) grade or has passed the high school equivalency test; and

(ii) has graduated from an approved program in the radiologic technology specialty for which certification is requested or has been a radiologic technologist for a period totaling no less than three years in the five years prior to application at a rate of no less than 1,000 hours per year (such employment must be in the radiologic specialty for which certification is requested);

(b) completed successfully the written examination prescribed by the department for each radiologic technology specialty for which certification is requested.

(2) Certificate of limited x-ray machine operation. Any person seeking a certificate of limited x-ray machine operation by written examination shall:

(a) submit an application to the department, accompanied by the application and examination fees, demonstrating that the applicant:

(i) has completed school through the twelfth (12th) grade or has passed the high school equivalency test; and

(ii) has satisfactorily completed an approved program for the limited specialty for which certification is requested;

(b) completed successfully the written examination prescribed by the

department for each limited specialty for which the certificate of limited x-ray machine operation is requested, or be certified by the ACRRT for a spine limited x-ray machine operator certificate.

(3) Reexamination. Any person failing a state examination three times will be required to demonstrate to the department the successful completion of additional remedial education or training for the certification being sought by the individual approved by the department and outlined in the ARRT rules and regulations section on the requirements for reexamination.

**G. Written or computerized examinations.** Written or computerized examinations should be given at least once each year, at such times and places as the department may determine. The department shall prepare, administer, and grade the examinations, though at its option, the department may contract for such preparation, administration, and grading services. In preparing, administering and grading examinations or in contracting for those services, the department may follow standards and guidelines established by nationally accepted professional organizations (such as ARRT, ACRRT and NMTCB) for the full, radiologist assistant and limited x-ray machine operator examinations, as applicable.

**H. Certification term.** Fees shall be paid in full before a certificate will be issued by the department. See 20.3.20.501 NMAC for renewal requirements. The full certificate or limited certificate shall be valid for two years.

**I. Exceptions.**

(1) The requirements for certification by the department shall not apply to:

(a) licensed practitioners;  
(b) auxiliary or health practitioners; or

(c) students.

(2) The department may temporarily exempt applicants from the certificate requirements upon determining that the experience or training of the applicant is such that no apparent danger to the public exists and the people in the localities of the state to be served by the applicants would otherwise be denied adequate medical care because the unavailability of radiologic technologists or limited x-ray machine operators. Each exception shall be supported by an application accompanied by the application fee and shall be reflected in a special permit granted by the department for a limited period of time, not in excess of one year, although such permit may be renewed if the circumstances have not changed and if deemed warranted by the department. Appeals from the decisions of the department hereunder shall be resolved by the board with the advice of the advisory council (RTAC). When making a determination

of the existence of community hardship the department will consult health agencies and will evaluate the availability of alternative radiology service and trained personnel. In addition, the department shall require the applicant's employer or prospective employer to demonstrate that recruitment of qualified personnel, at competitive compensation, has been attempted and unsuccessful. Such demonstration may take the form of documented advertising in publications intended to reach radiologic technologists. [20.3.20.300 NMAC - Rp, 20 NMAC 3.2.III.300 - III.308, 8/31/2005]

**20.3.20.301 RADIOLOGIST ASSISTANT SCOPE OF PRACTICE:**

A. After demonstrating competency, the radiologist assistant, when ordered to do so by the supervising radiologist, may:

(1) perform selected procedures including static and dynamic fluoroscopic procedures;

(2) assess and evaluate the physiologic and psychological responsiveness of patients undergoing radiologic procedures;

(3) participate in patient management including acquisition of additional imaging for completion of the examination and record documentation in medical records;

(4) evaluate image quality, make initial image observations and communicate observations to the supervising radiologist; and

(5) administer intravenous contrast media or other prescribed medications.

B. The radiologist assistant may not interpret images, make diagnoses or prescribe medications or therapies.

C. The radiologist assistant shall maintain values congruent with the code of ethics of the American registry of radiologic technologists as well as adhere to national, institutional and department standards, policies and procedures regarding the standards of care for patients.

D. For the purposes of this section, "direct supervision" means the radiologist must be present in the office suite and immediately available to furnish assistance and direction throughout the performance of the procedure. It does not mean that the radiologist must be present in the room when the procedure is performed. [20.3.20.301 NMAC - N, 8/31/2005]

**20.3.20.302 - 20.3.20.399**  
[RESERVED]

**20.3.20.400 DENIAL, REVOCATION OR SUSPENSION OF CERTIFICATE:**

A. Failure to meet requirements. No certificate or limited certificate will be issued to an applicant failing to meet



the requirements for certification.

B. Suspension, revocation, application of Uniform Licensing Act. The board, pursuant to the advice and recommendation of the advisory council (RTAC), may deny, revoke or suspend any certificate held or applied for under the Act, pursuant to the procedures established in the Uniform Licensing Act, upon grounds that the radiologic technologist or applicant:

(1) is guilty of fraud or deceit in procuring or attempting to procure a full certificate or certificate of limited x-ray machine operation;

(2) has been convicted of a felony subsequent to certification;

(3) is unfit or incompetent;

(4) is habitually intemperate or is addicted to the use of habit-forming drugs;

(5) is mentally incompetent;

(6) has aided and abetted a person who is not certified pursuant to the Act or otherwise authorized by the Act in engaging in the activities of a certified holder;

(7) has engaged in any practice beyond the scope of authorized activities of a full certificate or certificate of limited x-ray machine operation holder pursuant to the Act;

(8) is guilty of unprofessional conduct or unethical conduct as defined by rules promulgated by the board;

(9) has interpreted a diagnostic imaging procedure to a patient, the patient's family, or the public;

(10) has willfully or repeatedly violated any provisions of the Act; or

(11) is not in compliance with the terms of the New Mexico Parental Responsibility Act [NMSA 1978, 40-5A-1 to 40-5A-13] provided, in taking action under this provision the board shall follow the procedures in 20.1.7 NMAC named "Parental Responsibility Act Compliance".

C. Unprofessional or unethical conduct. With respect to the grounds for denial, revocation or suspension under NMSA 1978 section 61-14E-11, references to "unprofessional conduct" or "unethical conduct" shall be deemed to include, but shall not be limited to:

(1) engaging in the practice of radiologic technology while in an intoxicated condition or under the influence of a narcotic or any drug which impairs consciousness, judgment or behavior;

(2) unethical conduct while engaged in the practice of radiologic technology or unethical behavior indicating unfitness to practice radiologic technology;

(3) willful falsification of records, or destruction or theft of property or records relating to the practice of radiologic technology;

(4) failure to exercise due regard for safety of life or health of the patient;

(5) unauthorized disclosure of

information relating to a patient's records;

(6) discrimination in the practice of radiologic technology against any person on account of race, religion, creed, color, national origin, age or sex;

(7) convicted of a felony subsequent to certification;

(8) impersonation of a current or former radiologic technologist or engaging in the activities of a radiologic technologist under an assumed name;

(9) applying ionizing radiation to a human being without the specific direction of a duly licensed practitioner as defined herein;

(10) being found guilty of incompetence or negligence in activities as a radiologic technologist;

(11) continuing to practice without obtaining a certificate renewal as required by the Act;

(12) using the prefix "Dr.," unless entitled to do so pursuant to a degree granted, the word "doctor" or any suffix or affix to indicate or imply that the radiologic technologist is a duly licensed practitioner as defined herein when not so licensed;

(13) providing false, misleading or deceptive information on a certification application, a renewal application or continuing education documents; and

(14) failing to conform to accepted principles, standards and ethics of the radiologic technology profession and which results in the disregard for the health or safety of the public or patients.

[20.3.20.400 NMAC - Rp, 20 NMAC 3.2.IV.400 - IV.402, 8/31/2005]

#### 20.3.20.401 - 20.3.20.499 [RESERVED]

**20.3.20.500 CONTINUING EDUCATION:** For the purpose of protecting the citizens of New Mexico from the harmful effects of ionizing radiation, radiologic technologists, radiologist assistants and limited x-ray machine operators shall be obligated to continue their education and training regarding radiologic technology. The department approval of educational and training programs will be based on whether the program or event has been approved by a RCEEM or the department for "category A" credits.

[20.3.20.500 NMAC - Rp, 20 NMAC 3.2.V.500 - V.502, 8/31/2005]

#### 20.3.20.501 CERTIFICATION RENEWAL:

A. To renew a full certificate or limited certificate, the renewal application shall be accompanied by evidence of satisfactory completion of at least twenty-four (24) hours of approved "category A" continuing education or training. Such evidence shall be a condition of certification

renewal.

B. Renewal applications of persons qualified in more than one radiologic or procedural specialty need not demonstrate more continuing education and training than is required for one area of specialization.

C. Each radiologic technologist is responsible for renewing the certificate before the expiration date and shall not be excused from paying late fees.

D. Failure to receive notification by the department prior to the expiration date will not be an excuse for failure to file a timely renewal.

E. A renewal application is considered late if the application is mailed less than thirty (30) days before the expiration date of the certificate. The postmark date shall be considered the date of mailing.

F. The department shall not renew the certificate of a radiologic technologist or limited x-ray machine operator who is in violation of this part (20.3.20 NMAC), at the time of renewal.

G. A person whose certificate has expired shall not continue to practice.

[20.3.20.501 NMAC - N, 8/31/2005]

#### 20.3.20.502 -20.3.20.599 [RESERVED]

**20.3.20.600 APPLICATION FEE:** The fee for each type of application shall be \$10.00.

[20.3.20.600 NMAC - Rp, 20 NMAC 3.2.VI.600 - VI.604, 8/31/2005]

**20.3.20.601 EXAMINATION FEE:** Required fees for examination of credentials or written examination.

A. Full certificate. In accordance with ARRT fees for each assigned test window.

B. Certificate of limited x-ray machine operation. In accordance with ARRT fees for each assigned test window.

C. Temporary certificate: \$35.00.

[20.3.20.601 NMAC - N, 8/31/2005]

**20.3.20.602 BIENNIAL RENEWAL FEE:** Required fees for biennial review.

A. Full certificate: \$100.00.

B. Certificate of limited x-ray machine operation: \$60.00.

[20.3.20.602 NMAC - N, 8/31/2005]

**20.3.20.603 MISCELLANEOUS FEES:** Required miscellaneous fees, as applicable.

A. Replacement with new name, upon return of original certificate: \$15.00.

B. First duplicate original: \$15.00.  
 C. Additional duplicate originals: \$5.00.  
 D. Completion of submitted verification forms to the department for the purpose of New Mexico certification verification: \$10.00.  
 [20.3.20.603 NMAC - N, 8/31/2005]

**20.3.20.604 FEE CONDITIONS:**

A. Notwithstanding the various areas of specialization of examinations applied for, only one application fee will be levied.

B. The examination fee described above shall be charged for each assigned test window.

C. Notwithstanding the various areas of specialization for which a person has qualified, only one renewal fee shall be applicable to each biennial renewal.

D. Failure to pay the renewal fee on or before the certification expiration date will cause the certification to expire. An expired certification may be reinstated upon the submission of evidence demonstrating that all renewal requirements have been met and that the fee for the current biennium and a reinstatement fee of \$25.00 have been paid. Reapplication and recertification pursuant to this part (20.3.20 NMAC) will be required for certificates that have lapsed for more than one year.  
 [20.3.20.604 NMAC - N, 8/31/2005]

**20.3.20.605 - 20.3.20.699 [RESERVED]**

**20.3.20.700 SEVERABILITY:** If any provision or application of this part (20.3.20 NMAC) is held invalid, the remainder, or its application to other situations or persons, shall not be affected.  
 [20.3.20.700 NMAC - Rp, 20 NMAC 3.2.VII.700 - VII.704]

**20.3.20.701 AMENDMENT AND SUPERSESION OF PRIOR REGULATIONS:** This part (20.3.20 NMAC) shall be construed as amending and superseding the Regulations on the Practice of Radiologic Technology, EIB/MRHS A 1, filed January 11, 1988, as amended. All references to the regulations on the practice of radiologic technology in any other rule shall be construed as a reference to this part (20.3.20 NMAC).  
 [20.3.20.701 NMAC - N; 8/31/2005]

**20.3.20.702 SAVING CLAUSE:** Supersession of the regulations on the practice of radiologic technology shall not affect any administrative or judicial enforcement action pending on the effective date of this part (20.3.20 NMAC) nor the validity of any certificate or certificate of limited practice issued pursuant to the regulations on the

practice of radiologic technology.  
 [20.3.20.702 NMAC - N; 8/31/2005]

**20.3.20.703 CONSTRUCTION:**

This part (20.3.20 NMAC) shall be liberally construed to effectuate the purpose of the Act.  
 [20.3.20.703 NMAC - N; 8/31/2005]

**20.3.20.704 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this part (20.3.20 NMAC) does not relieve a person from the obligation to comply with other applicable state and federal regulations.  
 [20.3.20.704 NMAC - N; 8/31/2005]

**HISTORY OF 20.3.20 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records - state records center and archives. EIB/MRHS A 1, Regulations on the Practice of Radiologic Technology, 11/11/1988.

**History of repealed material:** 20 NMAC 3.2, Radiologic Technology Certification, (filed 12/15/95), repealed 08/31/2005.

**Other History:**

EIB/MRHS A 1, Regulations on the Practice of Radiologic Technology (filed 11/11/1988) was renumbered, reformatted and amended as 20 NMAC 3.2, Radiologic Technology Certification, effective 01/14/96.

20 NMAC 3.2, Radiologic Technology Certification, (filed 12/15/95) was replaced by 20.3.20, Radiologic Technology Certification, effective 08/31/2005.

**NEW MEXICO  
 ENVIRONMENTAL  
 IMPROVEMENT BOARD**

**Explanatory Paragraph:** These are amendments to 20.3.3 NMAC named "Licensing of Radioactive Material." The amendments include the addition of section 20.3.3.300 NMAC, which contains generic records development and retention requirements not previously specified in 20.3.3 NMAC. Amendments to 20.3.3.303 NMAC clarify the difference between specific and general licenses, and to reconcile apparent conflict between the description of a general license and requirements for registering generally licensed radioactive materials. Amendments to 20.3.3.305 NMAC, 20.3.3.315 NMAC, and 20.3.3.317 NMAC are related to requirements for possession and registration of certain generally licensed industrial devices containing byproduct material. Subsection D of 20.3.3.317 NMAC is amended to stream-

line referencing of calibration intervals for industrial radiography and well-logging that are already specified in 20.3.5 NMAC and 20.3.12 NMAC. Subsections D and E are added to 20.3.3.324 NMAC to clarify requirements for New Mexico environment department licensees to seek reciprocal recognition of their license in areas of exclusive federal jurisdiction or in other agreement states. These amendments will become effective 08/31/05.

**20.3.3.300 RECORDS:** Each person who receives radioactive material pursuant to a license issued pursuant to the regulations in this part (20.3.3 NMAC) and parts 20.3.5 NMAC, 20.3.7 NMAC, 20.3.12 NMAC, 20.3.13 NMAC, 20.3.14 NMAC, and 20.3.15 NMAC is subject to the requirements of this section (20.3.3.300 NMAC).

A. The licensee shall keep records showing the receipt, transfer, and disposal of the radioactive material as follows:

(1) the licensee shall retain each record of receipt of radioactive material as long as the material is possessed and for three years following transfer or disposal of the material;

(2) the licensee who transferred the material shall retain each record of transfer for three years after each transfer unless a specific requirement in another part of the regulations in this chapter dictates otherwise; and

(3) the licensee who disposed of the material shall retain each record of disposal of radioactive material until the department terminates each license that authorizes disposal of the material.

B. The licensee shall retain each record required by applicable parts of these regulations (20.3 NMAC) or by license condition for the period specified by the applicable regulation or license condition. If a retention period is not otherwise specified by regulation or license condition, the record shall be retained until the department terminates each license that authorizes the activity that is subject to the record-keeping requirement.

C. Records which must be maintained pursuant to these regulations (20.3 NMAC) may be the original or a reproduced copy or microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by department regulations. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, shall

include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

D. If there is a conflict between the regulations (20.3 NMAC), license condition, or other written department approval or authorization pertaining to the retention period for the same type of record, the retention period specified in these regulations (20.3 NMAC) for such records shall apply unless the department, pursuant to Subsection A of 20.3.1.107 NMAC, has granted a specific exemption from the record retention requirements specified in these regulations (20.3 NMAC).

E. Prior to license termination, each licensee shall forward the records required by Subsection G of 20.3.3.311 NMAC to the department.

**20.3.3.303 TYPES OF LICENSES:** Licenses for radioactive materials are of two types: general and specific.

A. ~~[General licenses provided in this part (20.3.3 NMAC) are effective without the filing of applications with the department or the issuing of licensing documents to the particular persons, although the filing of a certificate with the department may be required by the particular general license. The general license is subject to all other applicable portions of these regulations and any limitations on the general license.]~~ A general license is provided by regulation, grants authority to a person for certain activities involving radioactive material, and is effective without the filing of an application with the department or the issuance of a licensing document to a particular person. However, registration with the department may be required by the particular general license.

B. ~~[Specific licenses require the submission of an application to the department and the issuance of a licensing document by the department. The licensee is subject to all applicable portions of these regulations as well as any limitations specified in the licensing document.]~~ A specific license is issued by the department to a named person who has filed an application for the license under the specific licensing provisions of parts 20.3.3 NMAC, 20.3.5 NMAC, 20.3.7 NMAC, 20.3.12 NMAC, 20.3.13 NMAC, 20.3.14 NMAC, and 20.3.15 NMAC.

**20.3.3.305 GENERAL LICENSES - RADIOACTIVE MATERIAL OTHER THAN SOURCE MATERIAL:** [...]

B. **Certain Measuring, Gauging and Controlling Devices:** [...]

(2) The general license in

Paragraph (1) of Subsection B of 20.3.3.305 NMAC applies only to radioactive material contained in devices which have been manufactured or initially transferred and labeled in accordance with the specifications contained in a specific license issued by the department pursuant to Subsection D of 20.3.3.315 NMAC or in accordance with the specifications contained in an equivalent specific license issued by the U.S. nuclear regulatory commission or an agreement state~~[which authorizes distribution of devices to persons generally licensed by the NRC or agreement state]~~. The devices shall have been received from one of the specific licensees described in Paragraph (1) of Subsection B of 20.3.3.305 NMAC, or through a transfer made under Subparagraph (h) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC. Regulations of the Federal Food, Drug, and Cosmetic Act authorizing the use of radioactive control devices in food production require certain additional labeling thereon which is found in 21 CFR 179.21.

(3) Any person who owns, receives, acquires, possesses, uses or transfers radioactive material in a device pursuant to the general license in Paragraph (1) of Subsection B of 20.3.3.305 NMAC~~[.]~~ shall comply with the requirements of this paragraph (Paragraph (3) of Subsection B of 20.3.305 NMAC).

(a) ~~[shall a]~~ Assure that all labels affixed to the device at the time of receipt, and bearing a statement that removal of the label is prohibited, are maintained thereon and shall comply with all instructions and precautions provided by such labels~~[.]~~.

(b) ~~[shall a]~~ Assure that the device is tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at no longer than six month intervals or at such other intervals as are specified in the label; however:

(i) devices containing only krypton need not be tested for leakage of radioactive material; and

(ii) devices containing only tritium or not more than 100 microcuries (3.7 MBq) of other beta or gamma emitting material or 10 microcuries (0.37 MBq) of alpha emitting material and devices held in storage in the original shipping container prior to initial installation need not be tested for any purpose~~[.]~~.

(c) ~~[shall a]~~ Assure that the test required by Subparagraph (b) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC and other testing, installation, servicing, and removal from installation involving the radioactive materials, its shielding or containment are performed:

(i) in accordance with instructions provided by the labels; or

(ii) by a person holding a specific license from the department, the

NRC, or an agreement state to perform such activities~~[.]~~.

~~[ (d) shall maintain records for two years showing compliance with the requirements of Subparagraphs (b) and (c) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC; the records shall show the results of tests; the records also shall show the dates of performance of, and the names of persons performing testing, installation, servicing, and removal from installation concerning the radioactive material, its shielding or containment; records of tests for leakage of radioactive material required by Subparagraph (c) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC shall be maintained for 1 year after the next required leak test is performed or until the sealed source is transferred or disposed of; records of tests of the "on off" mechanism and indicator required by Subparagraph (b) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC shall be maintained for 1 year after the next required test of the "on off" mechanism and indicator is performed or until the sealed source is transferred or disposed of; records which are required by Subparagraph (c) of Paragraph (3) of Subsection B of 20.3.3.306 NMAC shall be maintained for a period of 2 years from the date of the recorded event or until the device is transferred or disposed of;]~~

(d) Maintain records showing compliance with the requirements of Subparagraph (b) and (c) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC. The records shall show the results of tests. The records also shall show the dates of performance of, and the names of persons performing, testing, installing, servicing, and removing from the installation radioactive material and its shielding or containment. The licensee shall retain these records as follows:

(i) each record of a test for leakage or radioactive material required by Subparagraph (b) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC shall be retained for three years after the next required leak test is performed or until the sealed source is transferred or disposed of;

(ii) each record of a test of the on-off mechanism and indicator required by Subparagraph (b) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC shall be retained for three years after the next required test of the on-off mechanism and indicator is performed or until the sealed source is transferred or disposed of; and

(iii) each record that is required by Subparagraph (c) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC shall be retained for three years from the date of the recorded event or until the device is transferred or disposed of.

~~[ (e) upon the occurrence of a fail-~~

ure of or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator or upon the detection of 0.005 microcurie (185 Bq) or more removable radioactive material, shall immediately suspend operation of the device until it has been repaired by the manufacturer or other person holding a specific license from the department, the NRC or an agreement state to repair such devices, or disposed of by transfer to a person authorized by a specific license to receive the radioactive material contained in the device and, within 30 days, furnish to the department a report containing a brief description of the event and the remedial action taken;]

(e) Immediately suspend operation of the device if there is a failure of, or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 0.005 microcuries (185 becquerel) or more removable radioactive material. The device may not be operated until it has been repaired by the manufacturer or other person holding a specific license to repair such devices that was issued by the department, the nuclear regulatory commission, or by an agreement state. The device and any radioactive material from the device, may only be disposed of by transfer to a person authorized by a specific license to receive the radioactive material in the device, or as otherwise approved by the department. A report shall be furnished to the department within 30 days containing a brief description of the event and the remedial action taken. In the case of detection of 0.005 microcurie or more removable radioactive material or failure of, or damage to, a source likely to result in contamination of the premises or the environs, the report shall include a plan for ensuring that the premises and environs are acceptable for unrestricted use. Under these circumstances, the criteria set out in Subsection B of 20.3.4.426 NMAC, "Radiological criteria for unrestricted use", may be applicable, as determined by the department on a case-by-case basis.

(f) [shall not abandon the device containing radioactive material;]The device containing radioactive material shall not be abandoned.

[ (g) except as provided in Subparagraph (h) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC, shall transfer or dispose of the device containing radioactive material only by transfer to a specific license of the department, the NRC, or an agreement state whose specific license authorizes him to receive the device and within 30 days after transfer of a device to a specific licensee shall furnish to the department a report containing identification of

the device by manufacturer's name and model number and the name and address of the person receiving the device; no report is required if the device is transferred to the specific licensee in order to obtain a replacement device;]

(g) Device Transfer Requirements:

(i) Transfer or dispose of the device containing radioactive material only by transfer to another general licensee as authorized in Subparagraph (h) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC, or to a person authorized to receive the device by a specific license issued: 1) by the department; 2) by the U.S. nuclear regulatory commission (NRC) under 10CFR Part 30 and 32; 3) by NRC under 10CFR Part 30 that authorizes waste collection; 4) by an agreement state under equivalent regulations; or, 5) as otherwise approved under item (iii) of Subparagraph (g) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC.

(ii) Within 30 days after the transfer of a device to a specific licensee or export, furnish a report to the department at the address indicated in 20.3.1.116 NMAC. The report shall contain: 1) the identification of the device by manufacturer's (or initial transferor's) name, model number, and serial number; 2) the name, address, and license number of the person receiving the device (license number not applicable if exported); and 3) the date of the transfer.

(iii) Obtain written department approval before transferring the device to any other specific licensee not specifically identified above in item (i) of Subparagraph (g) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC.

(iv) Export of devices containing byproduct material shall be in accordance with the requirements of the U.S. nuclear regulatory commission in 10CFR Part 110.

[ (h) shall transfer the device to another general licensee only:

(i) where the device remains in use at a particular location; in each case, the transferor shall give the transferee a copy of this regulation and any safety documents identified in the label on the device and within 30 days of the transfer, report to the department the manufacturer's name and model number of device transferred, the name and address of the transferee, and the name or position of an individual who may constitute a point of contact between the department and the transferee; or

(ii) where the device is held in storage in the original shipping container at its intended location of use prior to initial use by a general licensee; and]

(h) Transfer the device to another

general licensee only if:

(i) the device remains in use at a particular location, in which case: 1) the transferor shall give the transferee a copy of this section (20.3.3.305 NMAC), a copy of 20.3.3.317 NMAC, a copy of 20.3.4.451 NMAC, a copy of 20.3.4.452 NMAC, and any safety documents identified in the label of the device; 2) within 30 days of the transfer, the transferor shall report to the department at the address indicated in 20.3.1.116 NMAC, stating the manufacturer's (or initial transferor's) name; the model number and the serial number of the device transferred; the transferee's name and mailing address for the location of use; and the name, title, and phone number of the responsible individual identified by the transferee in accordance with Subparagraph (j) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC to have knowledge of and authority to take actions to ensure compliance with the appropriate regulations and requirements; or

(ii) the device is held in storage by an intermediate person in the original shipping container at its intended location of use prior to initial use by a general licensee.

(i) [Shall e]Comply with the provisions of 20.3.4.452 NMAC for reporting radiation incidents, theft, or loss of licensed material, but shall be exempt from the other requirements of Parts 4 and 10 (20.3.4 NMAC and 20.3.10 NMAC).

(j) Appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure the day-to-day compliance with appropriate regulations and requirements. This appointment does not relieve the general licensee of any of its responsibility in this regard.

(k) Registration Requirements:

(i) Register, in accordance with items (ii) and (iii) of this subparagraph (Subparagraph (k) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC), devices containing at least 10 millicuries (370 MBq) of cesium-137, 0.1 millicuries (3.7 MBq) of strontium-90, 1 millicurie (37 MBq) of cobalt-60, or 1 millicurie (37 MBq) of americium-241 or any other transuranic (i.e., element with atomic number greater than uranium (92)), based on the activity indicated on the label.

(ii) If in possession of a device meeting the criteria of item (i) of Subparagraph (k) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC, register these devices annually with the department. Registration shall be done by verifying, correcting, and/or adding to the information provided in a request for registration

received from the department. The registration information shall be submitted to the department within 30 days of the date of the request for registration or as otherwise indicated in the request. In addition, a general licensee holding devices meeting the criteria of item (i) of Subparagraph (k) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC is subject to the bankruptcy notification requirement in Subsection E of 20.3.3.317 NMAC.

(iii) In registering devices, the general licensee shall furnish the following information and any other information specifically requested by the department: 1) name and mailing address of the general licensee; 2) information about each device: the manufacturer (or initial transferor), model number, serial number, the radioisotope and activity (as indicated on the label); 3) name, title, and telephone number of the responsible person designated as a representative of the general licensee under Subparagraph (j) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC; 4) address or location at which the device(s) are used and/or stored; for portable devices, the address of the primary place of storage; each address for a location of use represents a separate general licensee and requires a separate registration; 5) certification by the responsible representative of the general licensee that the information concerning the device(s) has been verified through a physical inventory and checking of label information; and, 6) certification by the responsible representative of the general licensee that they are aware of the requirements of the general license.

(iv) Persons generally licensed by the U.S. nuclear regulatory commission and an agreement state with respect to devices meeting the criteria in item (i) of Subparagraph (k) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC are not subject to registration requirements if the devices are used in areas subject to department jurisdiction for a period less than 180 days in any calendar year. The department will not request registration information from such licensees.

(l) Report changes to the mailing address for the location of use (including change in name of general licensee) to the department at the address indicated in 20.3.1.116 NMAC, within 30 days of the effective date of the change. For a portable device, a report of address change is only required for a change in the device's primary place of storage.

(m) Devices that are not in use may not be held for longer than 2 years. If devices with shutters are not in use, the shutter shall be locked in the closed position. The testing required by Subparagraph (b) of Paragraph (3) of Subsection B of

20.3.3.305 NMAC need not be performed during the period of storage only. However, when devices are put back into service or transferred to another person, and have not been tested within the required test interval, they shall be tested for leakage before use or transfer and the shutter tested before use. Devices kept in standby for future use are excluded from the two-year time limit if the general licensee performs quarterly physical inventories of these devices while they are in standby.

(4) The general license in Paragraph (1) of Subsection B of 20.3.305 NMAC does not authorize the manufacture or import of devices containing radioactive material.

[...]

**20.3.3.315 SPECIAL REQUIREMENTS FOR A SPECIFIC LICENSE TO MANUFACTURE, ASSEMBLE, REPAIR, OR DISTRIBUTE COMMODITIES, PRODUCTS OR DEVICES WHICH CONTAIN RADIOACTIVE MATERIAL:**

[...]

**D. Licensing the Manufacture and Distribution of Devices to Persons Generally Licensed Under Subsection B of ~~20.3.3.313~~ 20.3.3.305 NMAC.**

**(1) Requirements for Approval of a License Application:** An application for a specific license to manufacture or distribute devices containing radioactive material, excluding special nuclear material, to persons generally licensed under Subsection B of ~~20.3.3.313~~ 20.3.3.305 NMAC or equivalent regulations of the U.S. nuclear regulatory commission or an agreement state will be approved if:

[...]

;

(d) each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the isotope and quantity, the words, "Caution-Radioactive Material," the radiation symbol described in 20.3.4.427 NMAC, and the name of the manufacturer or initial distributor; and,

(e) each device meeting the criteria of item (i) in Subparagraph (k) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC, bears a permanent (e.g., embossed, etched, stamped, or engraved) label affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "Caution-Radioactive Material," and, if practicable, the radiation symbol described in 20.3.4.427 NMAC.

**(2) Requests for Lengthening of Test Intervals:** In the event the applicant

desires that the device be required to be tested at longer intervals than six months, either for proper operation of the on-off mechanism and indicator, if any, or for leakage of radioactive material or for both, he shall include in his application sufficient information to demonstrate that such longer interval is justified by performance characteristics of the device or similar devices and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the on-off mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the department will consider information which includes, but is not limited to:

[...]

**(3) Authorizations for General Licensees to Perform Certain Activities.**

In the event the applicant desires that the general licensee under Subsection B of 20.3.3.305 NMAC, or under equivalent regulations of the nuclear regulatory commission or an agreement state, be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the on-off mechanism and indicator, or remove the device from installation, he shall include in his application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with such activity or activities, and bases for such estimates. The submitted information shall demonstrate that performance of such activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a yearly dose in excess of ten percent of the limits specified in 20.3.4.405 NMAC to 20.3.4.412 NMAC.

[ ~~(4) Each person licensed under Subsection D of 20.3.3.315 NMAC to distribute devices to generally licensed persons shall:~~

~~(a) furnish a copy of the general license contained in Subsection B of 20.3.3.305 NMAC to each person to whom he directly or through an intermediate person transfers radioactive material in a device for use pursuant to the general license contained in Subsection B of 20.3.3.305 NMAC;~~

~~(b) furnish a copy of the general license contained in the U.S. nuclear regulatory commission or agreement state's regulation equivalent to Subsection B of 20.3.3.305 NMAC, or alternatively, furnish a copy of the general license contained in Subsection B of 20.3.3.305 NMAC to each person to whom he directly or through an intermediate person transfers radioactive material in a device for use pursuant to the~~

general license of the U.S. nuclear regulatory commission or the agreement state; if a copy of the general license in Subsection B of 20.3.3.305 NMAC is furnished to such a person, it shall be accompanied by a note explaining that the use of the device is regulated by the United States nuclear regulatory commission or agreement state under requirements substantially the same as those in Subsection B of 20.3.3.305 NMAC;

(e) report to the department all transfers of such devices to persons for use under the general license in Subsection B of 20.3.3.305 NMAC; such report shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the department and the general licensee, the type and model number of device transferred, and the quantity and type of radioactive material contained in the device; if one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user; if no transfers have been made to a person generally licensed under Subsection B of 20.3.3.305 NMAC during the reporting period, the report shall so indicate; the report shall cover each calendar quarter and shall be filed within 30 days thereafter;

(d) report to the U.S. nuclear regulatory commission all transfers of such devices to persons for use under the U.S. nuclear regulatory commission general license in 10 CFR 31.5;

(e) report to the responsible agreement state agency all transfers of such devices to persons for use under a general license in an agreement state's regulations equivalent to Subsection B of 20.3.3.305 NMAC;

(f) such reports shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the licensing agency and the general licensee, the type and model of the device transferred, and the quantity and type of radioactive material contained in the device. If one or more of the intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user; the report shall be submitted within 30 days after the end of each calendar quarter in which such a device is transferred to the generally licensed person;

(g) if no transfers have been made to the U.S. nuclear regulatory commission licensees during the reporting period, this

information shall be reported to the U.S. nuclear regulatory commission;

(h) if no transfers have been made to general licensees within a particular agreement state during the reporting period, this information shall be reported to the responsible agreement state agency upon request of the agency; and

(i) keep records showing the name, address, and the point of contact for each general licensee to whom he directly or through an intermediate person transfers radioactive material in devices for use pursuant to the general license provided in Subsection B of 20.3.3.305 NMAC, or equivalent regulations of the U.S. nuclear regulatory commission or an agreement state; the records should show the date of each transfer, the isotope and the quantity of radioactivity in each device transferred, the identity of any intermediate person, and compliance with the report requirements in this section.]

#### **(4) Transfer Provisions:**

(a) If a device containing radioactive material is to be transferred for use under the general license contained in Subsection B of 20.3.3.305 NMAC, each person that is licensed under Paragraph (1) of Subsection D of 20.3.3.315 NMAC shall provide the information specified in this paragraph to each person to whom a device is to be transferred. This information shall be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information shall also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(i) a copy of the general license contained in Paragraph (1) of Subsection D of 20.3.3.315 NMAC (if Subparagraphs (b) through (d) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC or Subparagraph (k) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC do not apply to the particular device, those paragraphs may be omitted);

(ii) a copy of Subsection F of 20.3.3.317 NMAC, 20.3.3.300 NMAC, 20.3.4.451 NMAC, and 20.3.4.452 NMAC;

(iii) a list of the services that can only be performed by a specific licensee; and

(iv) information on acceptable disposal options including estimated costs of disposal.

(b) If radioactive material is to be transferred in a device for use under an equivalent general license of the U.S. nuclear regulatory commission (NRC) or an agreement state other than New Mexico, each person that is licensed under Subsection D of 20.3.3.315 NMAC shall provide the information specified in this paragraph to each person to whom a device

is to be transferred. This information shall be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information shall also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(i) a copy of the NRC's or agreement state's regulations equivalent to Subsection B of 20.3.3.305 NMAC, Subsection F of 20.3.3.317 NMAC, 20.3.3.312 NMAC, 20.3.4.451 NMAC, and 20.3.4.452 NMAC (equivalent to NRC's regulations in 10CFR Sections 31.5, 31.2, 30.51, 20.2201, and 20.2202); if a copy of the NRC regulations is provided to a prospective general licensee in lieu of the agreement state's regulations, it shall be accompanied by a note explaining that use of the device is regulated by the agreement state; if certain paragraphs of the regulations do not apply to the particular device, those paragraphs may be omitted;

(ii) a list of the services that can only be performed by a specific licensee;

(iii) information on acceptable disposal options including estimated costs of disposal; and

(iv) the name or title, address, and phone number of the contact at the agreement state regulatory agency from which additional information may be obtained.

(c) An alternative approach to informing customers may be proposed by the licensee for approval by the department.

(d) Each device shall meet the labeling requirements in Subparagraphs (c) through (e) of Paragraph (1) of Subsection D of 20.3.3.315 NMAC.

(e) If a notification of bankruptcy has been made under Subsection E of 20.3.3.317 NMAC or the license is to be terminated, each person licensed under Paragraph (1) of Subsection D of 20.3.3.315 NMAC shall provide, upon request, to the department, NRC, and any appropriate agreement state, records of final disposition required under Subparagraph (c) of Paragraph (5) of Subsection D of 20.3.3.315 NMAC.

**(5) Material Transfer Reports and Records:** Each person licensed under Paragraph (1) of Subsection D of 20.3.3.315 NMAC to initially transfer devices to generally licensed persons shall comply with the requirements of this section.

(a) The person shall report to the department in accordance with 20.3.1.116 NMAC, all transfers of such devices to persons for use under the general license in Subsection B of 20.3.3.305 NMAC and all receipts of devices from persons licensed under Subsection B of 20.3.3.305 NMAC. The report shall be clear and legible, submitted on a quarterly basis containing all of

the data required by NRC form 653 entitled *transfers of industrial devices report*.

(i) The required information for transfers to general licensees includes: 1) the identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternate address for the general licensee shall be submitted along with information on the actual location of use; 2) the name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements; 3) the date of transfer; 4) the type, model number, and serial number of the device transferred; and 5) the quantity and type of radioactive material contained in the device.

(ii) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report shall include the same information for both the intended user and each intermediate person, and clearly designate the intermediate person(s).

(iii) For devices received from a person licensed pursuant to Subsection B of 20.3.3.305 NMAC, the report shall include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(iv) If the licensee makes changes to a device possessed by a person licensed pursuant to Subsection B of 20.3.3.305 NMAC, such that the label must be changed to update required information, the report shall identify the general licensee, the device, and the changes to information on the device label.

(v) The report shall cover each calendar quarter, shall be filed within 30 days of the end of the calendar quarter, and shall clearly indicate the period covered by the report.

(vi) The report shall clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(vii) If no transfers have been made to or from persons generally licensed under Subsection B of 20.3.3.305 NMAC during the reporting period, the report shall so indicate.

(b) The person shall report all transfers of devices to persons for use under a general license issued by NRC under 10CFR § 31.5 or by an agreement state pursuant to regulations that are equivalent to 10CFR § 31.5, and all receipts of devices from general licensees in the NRC's or

agreement state's jurisdiction, to the NRC or the responsible agreement state agency. The report shall be clear and legible, containing all of the data required by NRC form 653 entitled *transfers of industrial devices report*.

(i) The required information for transfers to general licensees includes: 1) the identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternate address for the general licensee shall be submitted along with information on the actual location of use; 2) the name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements; 3) the date of transfer; 4) the type, model number, and serial number of the device transferred; and 5) the quantity and type of radioactive material contained in the device.

(ii) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report shall include the same information for both the intended user and each intermediate person, and clearly designate the intermediate person(s).

(iii) For devices received from a general licensee, the report shall include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(iv) If the licensee makes changes to a device possessed by a general licensee, such that the label must be changed to update required information, the report shall identify the general licensee, the device, and the changes to information on the device label.

(v) The report shall cover each calendar quarter, shall be filed within 30 days of the end of the calendar quarter, and shall clearly indicate the period covered by the report.

(vi) The report shall clearly identify the specific licensee submitting the report and must include the license number of the specific licensee.

(vii) If no transfers have been made to or from NRC or a particular agreement state during the reporting period, this information shall be reported to NRC or the responsible agreement state agency upon request of the agency.

(c) The person shall maintain all information concerning transfers and receipts of devices that supports the reports required by Subparagraphs (a) and (b) of

Paragraph (5) of Subsection D of 20.3.3.315 NMAC. Records shall be maintained for a period of 3 years following the date of the recorded event.

[...]

### 20.3.3.317 ~~[SPECIFIC]~~ TERMS AND CONDITIONS OF LICENSES:

[...]

D. C a l i b r a t i o n Frequencies. All licensees (other than radiography and well-logging licensees) required to have radiation detection or survey instruments, shall have the instrument calibrated annually. Industrial radiography licensees shall calibrate radiation detection or survey instruments at [~~three (3) month~~] intervals specifically required for industrial radiography by 20.3.5 NMAC. Well-logging licensees shall calibrate radiation detection or survey instruments at [~~six (6) month~~] intervals specifically required for well-logging by 20.3.12 NMAC.

E. Each general licensee that is required to register by Paragraph (k) of Subsection B of 20.3.3.305 NMAC and each specific licensee shall notify the department in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code by or against:

[...]

F. The general licenses provided in this part (20.3.3 NMAC) are subject to those provisions of this part not specifically exclusive of general licenses and to the provisions of parts 20.3.4 NMAC and 20.3.10 NMAC unless indicated otherwise by a particular provision of the general license.

### 20.3.3.324 R E C I P R O C A L RECOGNITION OF LICENSES:

[...]

D. Reciprocity in Areas of Exclusive Federal Jurisdiction:

(1) Before radioactive material can be used at temporary jobsites at any federal facility, the jurisdictional status of the jobsites shall be determined. If a temporary jobsite is under exclusive federal jurisdiction, the general license authorized under Subsection A of 20.3.3.324 NMAC is subject to all the rules, regulations, orders, and fees of the U.S. nuclear regulatory commission (NRC).

(2) Authorizations for use of radioactive materials in areas of exclusive federal jurisdiction shall be obtained from the NRC by:

(a) filing an NRC form 241 in accordance with 10CFR §150.20(b); or

(b) applying for a specific NRC license.

E. Reciprocity in Other States:

(1) Before radioactive material can be used at a temporary jobsite in another state, authorization shall be obtained from the state if it is an agreement state, or from NRC for any non-agreement state, either by filing for reciprocity or applying for a specific license.

(2) The general license authorized under Subsection A of 20.3.3.324 NMAC is subject to all the rules, regulations, orders, and fees of the agreement state, or those of the NRC for any non-agreement state.

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

**Explanatory Paragraph:** These are amendments to 20.3.4 NMAC named "Standards for Protection Against Radiation." An amendment is made to 20.3.4.7 NMAC, 20.3.4.421 NMAC, 20.3.4.422 NMAC, and 20.3.4.424 NMAC pertaining to requirements for respiratory protection and controls to restrict internal exposure. Sections 20.3.4.423 NMAC and 20.3.4.460 NMAC are amended with new requirements pertaining to respiratory protection and controls to restrict internal exposure. The other amendment is made to 20.3.4.7 NMAC and 20.3.4.405 NMAC to define shallow-dose equivalent, and to change the method for calculating shallow-dose equivalents. The amendments will become effective 08/31/05.

**20.3.4.7 DEFINITIONS:** As used in this part (20.3.4 NMAC).

A. "Air-purifying respirator" means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

[A-]B. "Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 5 rem (0.05 Sv) or a committed dose equivalent of 50 rem (0.5 Sv) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of 20.3.4.461 NMAC.

C. "Assigned protection factor" (APF) means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can

be estimated by dividing the ambient airborne concentration by the APF.

D. "Atmosphere-supplying respirator" means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

[B-]E. "Background radiation" means radiation from cosmic sources; naturally occurring radioactive material, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include radiation from source, byproduct, or special nuclear materials regulated by the commission.

[C-]E. "Class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for class D, days, of less than 10 days, for class W, weeks, from 10 to 100 days, and for class Y, years, of greater than 100 days. For purposes of these regulations, "lung class" and "inhalation class" are equivalent terms.

[D-]G. "Constraint" (dose constraint) means a value above which specified licensee actions are required.

[E-]H. "Critical Group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

[F-]I. "Declared pregnant woman" means a woman who has voluntarily informed the licensee, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

[G-]J. "Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits:

(1) release of the property for unrestricted use and termination of the license; or

(2) release of the property under restricted conditions and termination of the license.

K. "Demand respirator" means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

[H-]L. "Derived air concentration" (DAC) means the concentration of a

given radionuclide in air which, if breathed by reference man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these regulations, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Table I, Column 3, of 20.3.4.461 NMAC.

[I-]M. "Derived air concentration-hour" (DAC-hour) means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 5 rem (0.05 Sv).

N. "Disposable respirator" means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

[J-]O. "Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

[K-]P. "Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

Q. "Filtering facepiece" (dust mask) means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

R. "Fit factor" means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

S. "Fit test" means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

T. "Helmet" means a rigid respiratory inlet covering that also provides head protection against impact and penetration.



U. “Hood” means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

~~[L.]V.~~ “Inhalation class” [see “class”].

~~[M.]W.~~ “Lens dose equivalent” (LDE) applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm<sup>2</sup>).

X. “Loose-fitting facepiece” means a respiratory inlet covering that is designed to form a partial seal with the face.

~~[N.]Y.~~ “Lung class” [see “class”].

Z. “Negative pressure respirator” (tight fitting) means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

~~[O.]AA.~~ “Nonstochastic effect” means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these regulations, “deterministic effect” is an equivalent term.

~~[P.]AB.~~ “Planned special exposure” means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

AC. “Positive pressure respirator” means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

AD. “Powered air-purifying respirator” (PAPR) means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

AE. “Pressure demand respirator” means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

AF. “Qualitative fit test” (QLFT) means a pass/fail fit test to assess the adequacy of respirator fit that relies on the individual’s response to the test agent.

AG. “Quantitative fit test” (QNFT) means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

~~[Q.]AH.~~ “Quarter” means a period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and

that no day is omitted or duplicated in consecutive quarters.

~~[R.]AI.~~ “Reference man” means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health employees to standardize results of experiments and to relate biological insult to a common base. A description of reference man is contained in the international commission on radiological protection report, ICRP publication 23, *report of the task group on reference man*.

~~[S.]AJ.~~ “Residual radioactivity” means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee’s control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 20.3.4 NMAC.

~~[T.]AK.~~ “Respiratory protective equipment” means an apparatus, such as a respirator, used to reduce an individual’s intake of airborne radioactive materials.

~~[U.]AL.~~ “Sanitary sewerage” means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

AM. “Self-contained breathing apparatus” (SCBA) means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

AN. “Shallow-dose equivalent” (H<sub>S</sub>), which applies to the external exposure of the skin of the whole body or the skin of an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm<sup>2</sup>)

~~[V.]AO.~~ “Stochastic effect” means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of these regulations, “probabilistic effect” is an equivalent term.

AP. “Supplied-air respirator” (SAR) or airline respirator means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

AQ. “Tight-fitting facepiece” means a respiratory inlet covering that forms a complete seal with the face.

AR. “User seal check” (fit check) means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamylacetate check.

~~[W.]AS.~~ “Very high radiation area” means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (5 grays) in 1 hour at 1 meter from a radiation source or 1 meter from any surface that the radiation penetrates.

~~[X.]AT.~~ “Weighting factor” w<sub>T</sub> for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w<sub>T</sub> are:

[...]

#### 20.3.4.405 OCCUPATIONAL DOSE LIMITS FOR ADULTS:

A. The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures pursuant to 20.3.4.410 NMAC, to the following dose limits:

[...]

(2) the annual limits to the lens of the eye, to the skin of the whole body, and to the skin of extremities which are:

[...]

(b) a shallow dose equivalent of 50 rem (0.5 Sv) to the skin of the whole body or to the skin of any extremity.

[...]

C. [~~The assigned deep dose equivalent and shallow dose equivalent shall be for the portion of the body receiving the highest exposure.~~] Determining, Assessing, and Assigning Dose Equivalent:

[~~(1) the deep dose equivalent, lens dose equivalent, and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable; or~~]

(1) The assigned deep dose equivalent shall be for the part of the body receiving the highest exposure. The assigned shallow-dose equivalent shall be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure. The deep-dose equivalent, lens dose equivalent, and shallow-dose equivalent may be assessed from surveys or other

radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.

(2) ~~[w]~~When a protective apron is worn while working with medical fluoroscopic equipment and monitoring is conducted as specified in Paragraph (4) of Subsection A of 20.3.4.417 NMAC, the effective dose equivalent for external radiation shall be determined as follows:

[...]

#### 20.3.4.421 USE OF PROCESS OR OTHER ENGINEERING CONTROLS:

The licensee or registrant shall use, to the extent practicable, process or other engineering controls, such as, containment, decontamination, or ventilation, to control the concentrations of radioactive material in air.

#### 20.3.4.422 USE OF OTHER CONTROLS:

~~[—When it is not practicable to apply process or other engineering controls to control the concentrations of radioactive material in air to values below those that define an airborne radioactivity area, the licensee or registrant shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means:~~

- ~~A. control of access; or~~
- ~~B. limitation of exposure times; or~~
- ~~C. use of respiratory protection equipment; or~~
- ~~D. other controls.]~~

A. When it is not practical to apply process or other engineering controls to control the concentrations of radioactive material in the air to values below those that define an airborne radioactivity area, the licensee or registrant shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means:

- (1) control of access;
- (2) limitation of exposure times;
- (3) use of respiratory protection equipment; or
- (4) other controls.

B. If the licensee or registrant performs an ALARA analysis to determine whether or not respirators should be used, the licensee or registrant may consider safety factors other than radiological factors. The licensee or registrant should also consider the impact of respirator use on workers' industrial health and safety.

#### 20.3.4.423 USE OF INDIVIDUAL RESPIRATORY PROTECTION

EQUIPMENT: The requirements of this section (20.3.4.423 NMAC) apply to licensees and registrants who assign or permit the use of respiratory protection equipment to limit the intake of radioactive material.

[A. If the licensee or registrant uses respiratory protection equipment to limit intakes pursuant to 20.3.4.422 NMAC:

(1) except as provided in Paragraph (2) of Subsection A of 20.3.4.423 NMAC, the licensee or registrant shall use only respiratory protection equipment that is tested and certified or had certification extended by the national institute for occupational safety and health (NIOSH) and the mine safety and health administration (MSHA);

(2) the licensee or registrant may use equipment that has not been tested or certified by NIOSH and MSHA has not had certification extended by the NIOSH or MSHA, or for which there is no schedule for testing or certification provided the licensee or registrant has submitted to the department and the department has approved an application for authorized use of that equipment, including a demonstration by testing, or a demonstration on the basis of test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use;

(3) The licensee or registrant shall implement and maintain a respiratory protection program that includes:

(a) air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate exposures; and

(b) surveys and bioassays, as appropriate, to evaluate actual intakes; and

(c) testing of respirators for operability immediately prior to each use; and

(d) written procedures regarding selection, fitting, issuance, maintenance, and testing of respirators, including testing for operability immediately prior to each use; supervision and training of personnel; monitoring, including air sampling and bioassays; and recordkeeping; and

(e) determination by a physician prior to the initial fitting of respirators, and either every 12 months thereafter or periodically at a frequency determined by a physician, that the individual user is medically fit to use the respiratory protection equipment;

(4) the licensee or registrant shall issue a written policy statement on respirator usage covering:

(a) the use of process or other engineering controls, instead of respirators;

(b) the routine, nonroutine, and emergency use of respirators; and

(c) the length of periods of respi-

rator use and relief from respirator use;

(5) the licensee or registrant shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief;

(6) the licensee or registrant shall use respiratory protection equipment within the equipment manufacturer's expressed limitations for type and mode of use and shall provide proper visual, communication, and other special capabilities, such as adequate skin protection, when needed.

B. When estimating exposure of individuals to airborne radioactive materials, the licensee or registrant may make allowance for respiratory protection equipment used to limit intakes pursuant to 20.3.4.422 NMAC, provided that the following conditions, in addition to those in Subsection A of 20.3.4.423 NMAC, are satisfied:

(1) the licensee or registrant selects respiratory protection equipment that provides a protection factor, specified in 20.3.4.460 NMAC, greater than the multiple by which peak concentrations of airborne radioactive materials in the working area are expected to exceed the values specified in column 3 of table I of 20.3.4.461 NMAC; however, if the selection of respiratory protection equipment with a protection factor greater than the peak concentration is inconsistent with the goal specified in 20.3.4.422 NMAC of keeping the total effective dose equivalent ALARA, the licensee or registrant may select respiratory protection equipment with a lower protection factor provided that such a selection would result in a total effective dose equivalent that is ALARA; the concentration of radioactive material in the air that is inhaled when respirators are worn may be initially estimated by dividing the average concentration in air, during each period of uninterrupted use, by the protection factor; if the exposure is later found to be greater than initially estimated, the corrected value shall be used; if the exposure is later found to be less than initially estimated, the corrected value may be used; and

(2) the licensee or registrant shall obtain authorization from the department before assigning respiratory protection factors in excess of those specified in 20.3.4.460 NMAC; the department may authorize a licensee or registrant to use higher protection factors on receipt of an application that:

(a) describes the situation for which a need exists for higher protection factors; and

(b) demonstrates that the respira-

~~tory protection equipment provides these higher protection factors under the proposed conditions of use.~~

~~C. In an emergency, the licensee or registrant shall use as emergency equipment only respiratory protection equipment that has been specifically certified or had certification extended for emergency use by NIOSH and MSHA.~~

~~D. The licensee or registrant shall notify the department in writing at least 30 days before the date that respiratory protection equipment is first used pursuant to either Subsections A or B of 20.3.4.423 NMAC.]~~

A. The licensee or registrant shall use only respiratory protection equipment that is tested and certified by the national institute for occupational safety and health (NIOSH) except as otherwise noted in this part (20.3.4 NMAC).

B. If the licensee or registrant wishes to use equipment that has not been tested or certified by NIOSH, or for which there is no schedule for testing or certification, the licensee or registrant shall submit an application to the department for authorized use of this equipment except as provided in this part (20.3.4 NMAC). The application shall include evidence that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use. This shall be demonstrated either by testing made by the licensee or registrant, or on the basis of reliable test information.

C. The licensee or registrant shall implement and maintain a respiratory protection program that includes:

(1) air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate doses;

(2) surveys and bioassays, as necessary, to evaluate actual intakes;

(3) testing of respirators for operability (user seal check for face sealing devices and functional check for others) immediately prior to each use;

(4) written procedures regarding:

(a) monitoring, including air sampling and bioassays;

(b) supervision and training of respirator users;

(c) fit testing;

(d) respirator selection;

(e) breathing air quality;

(f) inventory and control;

(g) storage, issuance, maintenance, repair, testing, and quality assurance of respiratory protection equipment;

(h) recordkeeping; and

(i) relief from respirator use and limitations on periods of respirator use;

(5) determination by a physician that the individual user is medically fit to use respiratory protection equipment;

before:

(a) the initial fitting of a face sealing respirator;

(b) before the first field use of nonface sealing respirators; and

(c) either every 12 months thereafter, or periodically at a frequency determined by a physician;

(6) fit testing, with fit factor greater than or equal to 10 times the APF for negative pressure devices, and a fit factor that is greater than or equal to 500 for any positive pressure, continuous flow, and pressure-demand devices, before the first field use of tight fitting, face-sealing respirators and periodically thereafter at a frequency not to exceed 1 year. Fit testing shall be performed with the facepiece operating in the negative pressure mode.

D. The licensee or registrant shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief.

E. The licensee or registrant shall also consider limitations appropriate to the type and mode of use. When selecting respiratory devices the licensee or registrant shall provide for vision correction, adequate communication, low temperature work environments, and the concurrent use of other safety or radiological protection equipment. The licensee or registrant shall use equipment in such a way as not to interfere with the proper operation of the respirator.

F. Standby rescue persons are required whenever one-piece atmosphere-supplying suits, or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself. The standby persons shall be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards. The standby rescue persons shall observe or otherwise maintain continuous communication with the workers (visual, voice, signal line, telephone, radio, or other suitable means), and be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress. A sufficient number of standby rescue persons shall be immediately available to assist all users of this type of equipment and to provide effective emergency rescue if needed.

G. Atmosphere-supplying respirators shall be supplied with respirable air of grade D quality or better as defined by the compressed gas association in publication G-7.1, commodity specification for air,

1997, and included in the regulations of the occupational safety and health administration at 29 CFR 1910.134(i)(1)(ii)(A) through (E). Grade D quality air criteria include:

(1) oxygen content (v/v) of 19.5-23.5%;

(2) hydrocarbon (condensed) content of 5 milligrams per cubic meter of air or less;

(3) carbon monoxide (CO) content of 10 ppm or less;

(4) carbon dioxide content of 1,000 ppm or less; and

(5) lack of noticeable odor.

H. The licensee or registrant shall ensure that no objects, materials or substances, such as facial hair, or any conditions that interfere with the face-facepiece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator facepiece.

I. In estimating the dose to individuals from intake of airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is initially assumed to be the ambient concentration in air without respiratory protection, divided by the assigned protection factor. If the dose is later found to be greater than the estimated dose, the corrected value shall be used. If the dose is later found to be less than the estimated dose, the corrected value may be used.

J. Application for Use of Higher Assigned Protection Factors. The licensee or registrant shall obtain authorization from the department before using assigned protection factors in excess of those specified in 20.3.4.460 NMAC. The department may authorize a licensee or registrant to use higher assigned protection factors on receipt of an application that:

(1) describes the situation for which a need exists for higher protection factors; and

(2) demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

**20.3.4.424 FURTHER RESTRICTIONS ON THE USE OF RESPIRATORY PROTECTION EQUIPMENT.** The department may impose restrictions in addition to those in sections 20.3.4.422 NMAC, 20.3.4.423 NMAC, and 20.3.4.460 NMAC [~~necessary~~], in order to:

A. ensure that the respiratory protection program of the licensee or registrant is adequate to limit [~~exposure of~~] doses to individuals [~~to~~] from intakes of airborne radioactive materials consistent with

maintaining total effective dose equivalent ALARA; and  
[...]

**20.3.4.460 APPENDIX A. PROTECTION FACTORS FOR RESPIRATORS:** The assigned protection factors specified in this section apply only in a respiratory protection program that meets the requirements of this part (20.3.4 NMAC). They are applicable only to airborne radiological hazards and may not be appropriate to circumstances when chemical or other respiratory hazards exist instead of, or in addition to, radioactive hazards. Selection and use of respirators for such circumstances shall also comply with department of labor regulations. Radioactive contaminants for which the concentration values in Column 3 of Table 1 of 20.3.4.461 NMAC are based on internal dose due to inhalation may, in addition, present external exposure hazards at higher concentrations. Under these circumstances, limitations on occupancy may have to be governed by external dose limits.

<b>PROTECTION FACTORS FOR RESPIRATORS<sup>1</sup></b>				
Description <sup>2</sup>	Protection Factors <sup>4</sup>			Tested & Certified Equipment
	Modes <sup>3</sup>	Particulates only	Particulates-gases vapors <sup>5</sup>	National Institute for Occupational Safety and Health Administration tests for permissibility
<b>I. AIR PURIFYING RESPIRATORS<sup>6</sup></b>				
Facepiece, half mask <sup>7</sup>	NP	10		30 CFR 11, Subpart K.
Facepiece, full	NP	50		
Facepiece, half mask,				
Full, or hood	PP	1000		
<b>II. ATMOSPHERE SUPPLYING RESPIRATORS</b>				
<b>1. Air line respirator</b>				30 CFR 11, Subpart J.
Facepiece, half mask	CF	1000		
Facepiece, half mask	D	5		
Facepiece, full	CF	2000		
Facepiece, full	D	5		
Facepiece, full	PD	2000		
Hood	CF	( <sup>10</sup> )	( <sup>10</sup> )	
Suit	CF	( <sup>10</sup> )	( <sup>10</sup> )	
<b>2. Self contained breathing apparatus (SCBA)</b>				30 CFR 11, Subpart H.
Facepiece, full	D	50		
Facepiece, full	PD	10,000( <sup>11</sup> )		
Facepiece, full	RD	50		
Facepiece, full	RP	5,000( <sup>12</sup> )		
<b>III. COMBINATION RESPIRATORS</b>				
Any combination of air purifying and atmosphere supplying respirators		Protection factor for type and mode of operation as listed above		30 CFR 11, Sec. 11.63(b).

**NOTES:**

1. For use in the selection of respiratory protective equipment to be used only where the contaminants have been identified and the concentrations, or possible concentrations, are known.

2. Only for shaven faces and where nothing interferes with the seal of tight fitting facepieces against the skin. Hoods and suits are exempted.

3. The mode symbols are defined as follows:

CF= continuous flow

D= demand

NP= negative pressure, that is, negative phase during inhalation

PD= pressure demand, that is, always positive pressure

PP= positive pressure

RD= demand, recirculating or closed circuit

RP= pressure demand, recirculating or closed circuit

**4. Protection Factors**

A. The protection factor is a measure of the degree of protection afforded by a respirator, defined as the ratio of the concentration of airborne radioactive material outside the respiratory protective equipment to that inside the equipment, usually inside the facepiece, under

conditions of use. It is applied to the ambient airborne concentration to estimate the concentrations inhaled by the wearer according to the following formula:

$$\text{Concentration inhaled} = \frac{\text{Ambient airborne concentration}}{\text{Protection factor}}$$

B. The protection factors apply:

(1) Only for individuals trained in using respirators and wearing properly fitted respirators that are used and maintained under supervision in a well-planned respiratory protective program;

(2) For air purifying respirators only when high efficiency particulate filters, above 99.97% removal efficiency by thermally generated 0.3 micrometer dactyl phthalate (DOP) test or equivalent, are used in atmospheres not deficient in oxygen and not containing radioactive gas or vapor respiratory hazards;

(3) No adjustment is to be made for the use of sorbents against radioactive material in the form of gases or vapors; and

(4) For atmosphere supplying respirators only when supplied with adequate respirable air. Respirable air shall be provided of the quality and quantity required in accordance with the national institute for occupational safety and health (NIOSH) and the mine safety and health administration (MSHA) certification described in 30 CFR 11. Oxygen and air shall not be used in the same apparatus.

5. Excluding radioactive contaminants that present an absorption or submersion hazard. For tritium oxide, approximately one third of the intake occurs by absorption through the skin so that an overall protection factor of less than 2 is appropriate when atmosphere supplying respirators are used to protect against tritium oxide. If the protection factor for respiratory protective equipment is 5, the effective protection factor for tritium is about 1.4; with protection factors of 10, the effective factor for tritium oxide is about 1.7; and with protection factors of 100 or more, the effective factor for tritium oxide is about 1.9. Air purifying respirators are not suitable for protection against tritium oxide. See also footnote 9 concerning supplied air suits.

6. Canisters and cartridges shall not be used beyond service life limitations.

7. Under chin type only. This type of respirator is not satisfactory for use where it might be possible, such as, if an accident or emergency were to occur, for the ambient airborne concentrations to reach instantaneous values greater than 10 times the pertinent values in Column 3 of Table I of Appendix B (20.3.4.461 NMAC). This type of respirator is not suitable for protection against plutonium or other high toxicity materials. The mask is to be tested for fit prior to use, each time it is donned.

#### 8. Hood Usage

A. Equipment shall be operated in a manner that ensures that proper air flow rates are maintained. A protection factor of no more than 1000 may be utilized for tested and certified supplied air hoods when a minimum air flow of 6 cubic feet per minute ( $0.17 \text{ m}^3/\text{min}$ ) is maintained and calibrated air line pressure gauges or flow measuring devices are used. A protection factor of up to 2000 may be used for tested and certified hoods only when the air flow is maintained at the manufacturer's recommended maximum rate for the equipment, this rate is greater than 6 cubic feet per minute ( $0.17 \text{ m}^3/\text{min}$ ) and calibrated air line pressure gauges or flow measuring devices are used.

B. The design of the supplied air hood or helmet, with a minimum flow of 6 cubic feet per minute ( $0.17 \text{ m}^3/\text{min}$ ) of air, may determine its overall efficiency and the protection it provides. For example, some hoods aspirate contaminated air into the breathing zone when the wearer works with hands over head. This aspiration may be overcome if a short cape like extension to the hood is worn under a coat or overalls. Other limitations specified by the approval agency shall be considered before using a hood in certain types of atmospheres. See footnote 9.

9. Appropriate protection factors shall be determined, taking into account the design of the suit and its permeability to the contaminant under conditions of use. There shall be a standby rescue person equipped with a respirator or other apparatus appropriate for the potential hazards and communications equipment whenever supplied air suits are used.

10. No approval schedules are currently available for this equipment. Equipment is to be evaluated by testing or on the basis of reliable test information.

11. This type of respirator may provide greater protection and be used as an emergency device in unknown concentrations for protection against inhalation hazards. External radiation hazards and other limitations to permitted exposure, such as skin absorption, must be taken into account in such circumstances.

12. Quantitative fit testing shall be performed on each individual, and no more than 0.02% leakage is allowed with this type of apparatus. Perceptible outward leakage of gas from this or any positive pressure self-contained breathing apparatus is unacceptable because service life will be reduced substantially. Special training in the use of this type of apparatus shall be provided to the wearer.

**Subnote 1:** Protection factors for respirators approved by the U.S. bureau of mines and the national institute for occupational safety and health (NIOSH), according

to applicable approvals for respirators for type and mode of use to protect against airborne radionuclides, may be used to the extent that they do not exceed the protection factors listed in this table. The protection factors listed in this table may not be appropriate to circumstances where chemical or other respiratory hazards exist in addition to radioactive hazards. The selection and use of respirators for such circumstances should take into account applicable approvals of the U.S. bureau of mines and the national institute for occupational safety and health (NIOSH).

**Subnote 2:** Radioactive contaminants, for which the concentration values in Column 3 of Table I of Appendix B (20.3.4.461 NMAC) are based on internal dose due to inhalation, may present external exposure hazards at higher concentrations. Under these circumstances, limitations on occupancy may have to be governed by external dose limits.]

[Continued on page 754]

<u>Configuration</u> (air purifying respirators only)	<u>Operating Mode</u>	<u>Assigned Protection Factors</u>
<u>Filtering facepiece disposable.</u> (Refer to paragraph (4) of this subsection.)	<u>Negative Pressure</u>	(Refer to paragraph (4) of this subsection.)
<u>Facepiece, half</u> (Refer to paragraph (5) of this subsection.)	<u>Negative Pressure</u>	<u>10</u>
<u>Facepiece, full</u>	<u>Negative Pressure</u>	<u>100</u>
<u>Facepiece, half</u>	<u>Power air-purifying respirators</u>	<u>50</u>
<u>Facepiece, full</u>	<u>Power air-purifying respirators</u>	<u>1000</u>
<u>Helmet/hood</u>	<u>Power air-purifying respirators</u>	<u>1000</u>
<u>Facepiece, loose-fitting</u>	<u>Power air-purifying respirators</u>	<u>25</u>

**A. Air purifying respirators.**

(1) The assigned protection factors apply for protection against particulate only.

(2) Air purifying respirators with APF <100 shall be equipped with particulate filters that are at least 95 percent efficient. Air purifying respirators with APF = 100 shall be equipped with particulate filters that are at least 99 percent efficient. Air purifying respirators with APFs >100 shall be equipped with particulate filters that are at least 99.97 percent efficient.

(3) The licensee or registrant may apply to the department for the use of an APF greater than 1 for sorbent cartridges as protection against airborne radioactive gases and vapors (e.g., radioiodine).

(4) **Special requirements and indications for filtering facepiece disposable respirators:** Licensees and registrants may permit individuals to use this type of respirator who have not been medically screened or fit tested on the device provided that no credit be taken for their use in estimating intake or dose. It is also recognized that it is difficult to perform an effective positive or negative pressure pre-use user seal check on this type of device. All other respiratory protection program requirements listed in 20.3.4.423 NMAC apply. An assigned protection factor has not been assigned for these devices. However, an APF equal to 10 may be used if the licensee can demonstrate a fit factor of at least 100 by use of a validated or evaluated, qualitative or quantitative fit test.

(5) **Special requirements and indications for half facepiece, negative pressure respirators:** This applies to the under-chin configuration only. No distinction is made in this appendix (20.3.4.460 NMAC) between elastomeric half-masks with replaceable cartridges and those designed with the filter medium as an integral part of the facepiece (e.g., disposable or reusable disposable). Both types are acceptable so long as the seal area of the latter contains some substantial type of seal-enhancing material such as rubber or plastic, the two or more suspension straps are adjustable, the filter medium is at least 95 percent efficient and all other requirements of this part (20.3.4 NMAC) are met.

**B. Air-line respirators (atmosphere supplying).**

<u>Configuration</u> (air-line respirators only)	<u>Operating Mode</u>	<u>Assigned Protection Factors</u>
<u>Facepiece, half</u>	<u>Demand</u>	<u>10</u>
<u>Facepiece, half</u>	<u>Continuous Flow</u>	<u>50</u>
<u>Facepiece, half</u>	<u>Pressure Demand</u>	<u>50</u>
<u>Facepiece, full</u>	<u>Demand</u>	<u>100</u>
<u>Facepiece, full</u>	<u>Continuous Flow</u>	<u>1000</u>
<u>Facepiece, full</u>	<u>Pressure Demand</u>	<u>1000</u>
<u>Helmet/hood</u>	<u>Continuous</u>	<u>1000</u>
<u>Facepiece, loose-fitting</u>	<u>Continuous</u>	<u>25</u>
<u>Suit</u>	<u>Continuous</u>	(Refer to paragraph (3) of this subsection.)

(1) The assigned protection factors apply for protection against particulate, gases and vapors.  
 (2) The assigned protection factors for gases and vapors are not applicable to radioactive contaminants that present an absorption or submersion hazard. For tritium oxide vapor, approximately one-third of the intake occurs by absorption through the skin so that an overall protection factor of 3 is appropriate when atmosphere-supplying respirators are used to protect against tritium oxide. Exposure to radioactive noble gases is not considered a significant respiratory hazard, and protective actions for these contaminants should be based on external (submersion) dose considerations.

(3) **Special requirements and indications for suits:** No NIOSH approval schedule is currently available for atmosphere supplying suits. This equipment may be used in an acceptable respiratory protection program as long as all the other minimum program requirements, with the exception of fit testing, are met (i.e., 20.3.4.423 NMAC).

**C. Self-contained breathing apparatus "SCBA" (atmosphere supplying).**

<u>Configuration</u> (SCBA respirators only)	<u>Operating Mode</u>	<u>Assigned Protection Factors</u>
<u>Facepiece, full</u>	<u>Demand</u>	<u>100 (Refer to paragraph (3) of this subsection.)</u>
<u>Facepiece, full</u>	<u>Pressure Demand</u>	<u>10,000 (Refer to paragraph (4) of this subsection.)</u>
<u>Facepiece, full</u>	<u>Demand-Recirculating</u>	<u>100 (Refer to paragraph (3) of this subsection.)</u>
<u>Facepiece, full</u>	<u>Positive Pressure Recirculating</u>	<u>10,000 (Refer to paragraph (4) of this subsection.)</u>

(1) The assigned protection factors apply for protection against particulate, gases and vapors.  
 (2) The assigned protection factors for gases and vapors are not applicable to radioactive contaminants that present an absorption or submersion hazard. For tritium oxide vapor, approximately one-third of the intake occurs by absorption through the skin so that an overall protection factor of 3 is appropriate when atmosphere-supplying respirators are used to protect against tritium oxide. Exposure to radioactive noble gases is not considered a significant respiratory hazard, and protective actions for these contaminants should be based on external (submersion) dose considerations.

(3) **Special requirements and indications for demand and demand-recirculating SCBA:** The licensee or registrant should implement institutional controls to assure that these devices are not used in areas immediately dangerous to life or health (IDLH).

(4) **Special requirements and indications for pressure demand and positive pressure recirculating SCBA:** This type of respirator may be used as an emergency device in unknown concentrations for protection against inhalation hazards. External radiation hazards and other limitations to permitted exposure such as skin absorption shall be taken into account in these circumstances. This device may not be used by any individual who experiences perceptible outward leakage of breathing gas while wearing the device.

**D. Combination respirators.**

<u>Configuration</u> (combination respirators only)	<u>Operating Mode and Assigned Protection Factors</u>
<u>Any combination of air -purifying and atmosphere -supplying respirators</u>	<u>Assigned protection factor for type and mode of operation as listed above.</u>

**NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD**

**Explanatory Paragraph:** These are amendments to 20.3.12 NMAC named "Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies." Section 20.3.12.1216 NMAC is amended with language regarding new dosimetry technology. Amendments to Sections 20.3.12.7 NMAC, 20.3.12.1200 NMAC, 20.3.12.1201 NMAC, 20.3.12.1202 NMAC are related to changes to energy compensation sources and other clarifications to new exploration practices. Section 20.3.12.1203 NMAC is amended to consolidate language regarding

requirements for retrieval or abandonment of sources [many of these requirements were previously covered by both 20.3.12.1203 NMAC and 20.3.12.1224 NMAC]. Section 20.3.12.1208 NMAC is amended with new requirements for leak testing of sealed sources, and Section 20.3.12.1211 NMAC is revised with new language on the design and performance criteria for sealed sources. Section 20.3.12.1224 NMAC is amended to focus its language specifically on requirements for notifications of incidents, lost sources, and abandonment [many of the provisions previously covered by 20.3.12.1224 NMAC are consolidated with related requirements in 20.3.12.1203 NMAC]. These amendments will become effective 08/31/05.

**20.3.12.7 DEFINITIONS:** As used in this part (20.3.12 NMAC), the following definitions apply.

**A.** "Energy compensation source" (ECS) means a small sealed source, with an activity not exceeding 100 microcuries (3.7 MBq), used within a logging tool, or other tool components, to provide a reference standard to maintain the tool's calibration when in use.

**[A]B.** "Field station" means a facility where radioactive sources may be stored or used and from which equipment is dispatched to temporary job sites.

**[B]C.** "Injection tool" means a device used for controlled subsurface injection of radioactive tracer material.

**[E]D.** "Logging assistant" means any individual who, under the personal supervision of a logging supervisor,

handles sealed sources or tracers that are not in logging tools or shipping containers or who performs surveys required by 20.3.12.1221 NMAC.

[D]E. "Logging supervisor" means the individual who uses sources of radiation or provides personal supervision of the utilization of sources of radiation at the well site.

[E]F. "Logging tool" means a device used subsurface to perform well logging.

[F]G. "Mineral logging" means any logging performed for the purpose of mineral exploration other than oil and gas.

[G]H. "Personal supervision" means guidance and instruction by the supervisor who is physically present at the job site and watching the performance of the operation in such proximity that contact can be maintained and immediate assistance given as required.

[H]I. "Radioactive marker" means radioactive material placed subsurface or on a structure intended for subsurface use for the purpose of depth determination or direction orientation.

[I]J. "Source holder" means a housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source in well-logging operations.

[J]K. "Subsurface tracer study" means the release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the well-bore or adjacent formation.

[K]L. "Temporary job site" means a location where radioactive materials are present for the purpose of performing wireline service operations or subsurface tracer studies.

M. "Tritium neutron generator target source" means a tritium source used within a neutron generator tube to produce neutrons for use in well-logging applications.

[L]N. "Uranium sinker bar" means a weight containing depleted uranium used to pull a logging tool down toward the bottom of a well.

[M]O. "Well-bore" means a drilled hole in which wireline service operations or subsurface tracer studies are performed.

[N]P. "Well-logging" means all operations involving the lowering and raising of measuring devices or tools which may contain sources of radiation into well-bores or cavities for the purpose of obtaining information about the well or adjacent formations.

[O]Q. "Wireline" means a cable containing one or more electrical conductors which is used to lower and raise

logging tools in the well-bore.

[P]R. "Wireline service operation" means any evaluation or mechanical service which is performed in the well-bore using devices on a wireline.

#### **20.3.12.1200 URANIUM SINKER**

**BARS:** The licensee may use a uranium sinker bar in well-logging applications only if it is legibly impressed with the words "CAUTION-RADIOACTIVE-DEPLETED URANIUM" and "NOTIFY CIVIL AUTHORITIES (or COMPANY NAME) IF FOUND."

#### **20.3.12.1201 ENERGY COMPENSATION SOURCE:**

A. The licensee may use an energy compensation source which is contained within a logging tool, or other tool components, only if the ECS contains quantities of licensed material not exceeding 100 microcuries (3.7 megabecquerels).

B. For well-logging applications with a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of 20.3.12.1208 NMAC, 20.3.12.1209 NMAC, and 20.3.12.1210 NMAC.

C. For well logging applications without a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of Subsections A, B, and C of 20.3.12.1203 NMAC, 20.3.12.1208 NMAC, 20.3.12.1209 NMAC, 20.3.12.1210, and 20.3.12.1224 NMAC.

#### **20.3.12.1202 TRITIUM NEUTRON GENERATOR TARGET SOURCE:**

A. Use of a tritium neutron generator target source, containing quantities not exceeding 30 curies (1,110 megabecquerels) and in a well with a surface casing to protect fresh water aquifers, is subject to the requirements of this part (20.3.12 NMAC) except Subsections A, B, and C of 20.3.12.1203 NMAC, 20.3.12.1211 NMAC, and 20.3.12.1224 NMAC.

B. Use of a tritium neutron generator target source, containing quantities exceeding 30 curies (1,110 megabecquerels) or in a well without a surface casing to protect fresh water aquifers, is subject to the requirements of this part (20.3.12 NMAC) except 20.3.12.1211 NMAC.

**20.3.12.1203 [PROHIBITIONS:] RETRIEVAL OR ABANDONMENT OF SEALED SOURCES:** ~~No licensee shall perform wireline service operations with a sealed source(s) unless, prior to commencement of the operation, the licensee has a written agreement with the well operator, well owner, drilling contractor, or land~~

owner that:

A. ~~in the event a sealed source is lodged downhole, a reasonable effort at recovery will be made; and~~

B. ~~in the event a decision is made to abandon the sealed source downhole, the requirements of Subsection C of 20.3.12.1224 NMAC and all other applicable state regulations shall be met.]~~

#### **A. Agreement with Well Owner or Operator:**

(1) A licensee may perform well-logging with a sealed source only after the licensee has a written agreement with the employing well owner or operator. This written agreement shall identify who will meet the requirements of Subsections B and C of 20.3.12.1203 NMAC.

(2) The licensee shall retain a copy of the written agreement for 3 years after the completion of the well-logging operation.

(3) A written agreement between the licensee and the well owner or operator is not required if the licensee and the well owner or operator are part of the same corporate structure or otherwise similarly affiliated. However, the licensee shall still otherwise meet the requirements in Subsections B and C of 20.3.12.1203 NMAC.

#### **B. Retrieval of Lodged Sealed Sources:**

(1) If a sealed source becomes lodged in the well, a reasonable effort shall be made to recover it.

(2) Recovery of a sealed source shall not be attempted in a manner which, in the licensee's opinion, could result in its rupture.

(3) The radiation monitoring requirements of this part (20.3.12 NMAC) shall be performed.

(4) If the environment, any equipment, or personnel are contaminated with licensed material, they shall be decontaminated before release from the site or release for unrestricted use.

#### **C. Irretrievable Sealed Sources:**

If the sealed source is classified as irretrievable after reasonable efforts at recovery have been expended, the licensee shall implement the requirements of this subsection (Subsection C of 20.3.12.1203 NMAC) within 30 days.

(1) Each irretrievable well-logging source shall be immobilized and sealed in place with a cement plug.

(2) Develop a means to prevent inadvertent intrusion on the source, unless the source is not accessible to any subsequent drilling operations.

(3) Install a permanent identification plaque, constructed of long lasting material such as stainless steel, brass, bronze, or monel, shall be mounted at the



surface of the well, unless the mounting of the plaque is not practical. The size of the plaque shall be at least 17 centimeters (7 inches) square and 3 millimeters (1/8 inch) thick. The plaque shall contain:

- (a) the word "CAUTION";
- (b) the radiation symbol (the color requirement in Subsection A of 20.3.4.427 NMAC need not be met);
- (c) the date the source was abandoned;
- (d) the name of the well owner or well operator, as appropriate;
- (e) the well name and well identification number(s) or other designation;
- (f) an identification of the sealed source(s) by radionuclide and quantity;
- (g) the depth of the source and depth to the top of the plug; and
- (h) an appropriate warning, such as, "DO NOT RE-ENTER THIS WELL."

(4) A licensee may apply, pursuant to Section A of 20.3.1.107 NMAC, for department approval, on a case-by-case basis, of proposed procedures to abandon an irretrievable well-logging source in a manner not otherwise authorized in this subsection (Subsection C of 20.3.12.1203 NMAC).

**D. Additional Requirements for Abandonment:** If a sealed source becomes lodged in a well, and when it becomes apparent that efforts to recover the sealed source will not be successful, the licensee shall implement the requirements of this subsection (Subsection D of 20.3.12.1203 NMAC).

(1) Notify the department by telephone of the circumstances that resulted in the inability to retrieve the source, and:

- (a) obtain department approval to implement abandonment procedures; or
- (b) state that the licensee implemented abandonment before receiving department approval because the licensee believed there was an immediate threat to public health and safety.

(2) Advise the well owner or operator, as appropriate, of the abandonment procedures under Subsection C of 20.3.12.1203 NMAC.

(3) Either ensure that abandonment procedures are implemented within 30 days after the sealed source has been classified as irretrievable or request an extension of time if unable to complete the abandonment procedures.

(4) The licensee, within 30 days after a sealed source has been classified as irretrievable, make a report in writing to the department. The licensee shall also send a copy of the report to the New Mexico oil conservation division that issued permits, and to each appropriate state or federal agency that issued permits or otherwise approved of the drilling operation. The report shall contain the following informa-

tion:

- (a) date of occurrence;
- (b) a description of the irretrievable well-logging source involved including the radionuclide and its quantity, chemical, and physical form;
- (c) surface location and identification of the well;
- (d) results of efforts to immobilize and seal the source in place;
- (e) a brief description of the attempted recovery effort;
- (f) depth of the source;
- (g) depth of the top of the cement plug;
- (h) depth of the well;
- (i) the immediate threat to public health and safety justification for implementing abandonment if prior department approval was not obtained (refer to subparagraph (b) of paragraph (1) of Subsection D of 20.3.12.1203 NMAC);
- (j) any other information, such as a warning statement, contained on the permanent identification plaque; and
- (k) state and federal agencies receiving copy of this report.

#### 20.3.12.1208 LEAK TESTING OF SEALED SOURCES:

**A. Requirements:** Each licensee using sealed sources of radioactive material shall have the sources tested for leakage. Records of leak tests results shall be kept in units of microcuries [(Bq)] and maintained for inspection by the department for [two] three years after the [next required] leak test is performed [or until transfer or disposal of the sealed source].

**B. Method of testing:** [Tests for leakage shall be performed only by persons specifically authorized to perform such tests by the department. The test sample shall be taken from the surface of the source, source holder, or from the surface of the device in which the source is stored or mounted and on which one might expect contamination to accumulate. The test sample shall be analyzed for radioactive contamination and the analysis shall be capable of detecting the presence of 0.005 microcurie (185 Bq) of radioactive material on the test sample.] The wipe of a sealed source shall be performed using a leak test kit or method approved by the department, the nuclear regulatory commission, or an agreement state. The wipe sample shall be taken from the nearest accessible point to the sealed source where contamination might accumulate. The wipe sample shall be analyzed for radioactive contamination. The analysis shall be capable of detecting the presence of 0.005 microcuries (185 Bq) of radioactive material on the test sample and shall be performed by a person approved by the department, the U.S. nuclear regulatory commission, or an agree-

ment state to perform the analysis.

**C. Interval of testing:** [Each sealed source of radioactive material shall be tested at intervals not to exceed 6 months. In the absence of a certificate from a transferor indicating that a test has been made prior to the transfer, the sealed source shall not be put into use until tested. If, for any reason, it is suspected that a sealed source may be leaking, it shall be removed from service immediately and tested for leakage as soon as practical.]

(1) Each sealed source (except an energy compensation source ("ECS")) shall be tested at intervals not to exceed 6 months. In the absence of a certificate from a transferor that a test has been made within the 6 months before the transfer, the sealed source may not be used until tested.

(2) Each ECS that is not exempt from testing in accordance with paragraph (e) of this section shall be tested at intervals not to exceed 3 years. In the absence of a certificate from a transferor that a test has been made within the 3 years before the transfer, the ECS may not be used until tested.

**D. [Leaking or contaminated sources:** If the test reveals the presence of 0.005 microcurie (185 Bq) or more of leakage or contamination, the licensee shall immediately withdraw the source from use and shall cause it to be decontaminated, repaired, or disposed of in accordance with these regulations. A report describing the equipment involved, the test results, and the corrective action taken shall be filed with the department within five days of receiving the test results.] **Removal of leaking source from service:** If the test conducted pursuant to Subsections A and B of this section (20.3.12.1208 NMAC) reveals the presence of 0.005 microcuries (185 Bq) or more of removable radioactive material, the licensee shall remove the sealed source from service immediately and have it decontaminated, repaired, or disposed of by a licensee authorized by the department, the U.S. nuclear regulatory commission, or an agreement state to perform these functions. The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated, have it decontaminated or disposed of by a licensee that is authorized by the department, the U.S. nuclear regulatory commission, or an agreement state to perform these functions.

**E. Exemptions:** The following sources are exempted from the periodic leak test requirements of Subsections A through D of 20.3.12.1208 NMAC:

- (1) hydrogen-3 (tritium) sources; [...]

**20.3.12.1211 DESIGN, PERFORMANCE, AND CERTIFICATION] AND**

**PERFORMANCE CRITERIA FOR SEALED SOURCES]~~USED IN DOWN-HOLE OPERATIONS~~]:**

[ **A.** Each sealed source, except those containing radioactive material in gaseous form used in downhole operations, shall be certified by the manufacturer, or other testing organization acceptable to the department, to meet the following minimum criteria:

(1) be of doubly encapsulated construction;

(2) contain radioactive material whose chemical and physical forms are as insoluble and non dispersible as practical; and

(3) has been individually pressure tested to at least 24,656 pounds per square inch absolute ( $170 \text{ MN/m}^2$ ) without failure.

**B.** For sealed sources, except those containing radioactive material in gaseous form, in the absence of a certificate from a transferor certifying that an individual sealed source meets the requirements of Subsection A of 20.3.12.1208 NMAC, the sealed source shall not be put into use until such determinations and testing have been performed.

**C.** Each sealed source, except those containing radioactive material in gaseous form used in downhole operations, shall be certified by the manufacturer, or other testing organization acceptable to the department, as meeting the sealed source performance requirements for oil well logging as contained in the American National Standard N43.6, "classification of sealed radioactive sources", (formerly N542, ANSI/NBS 126) in effect on the effective date of these regulations.

**D.** Certification documents shall be maintained for inspection by the department for a period of two years after source disposal. If the source is abandoned downhole, the certification documents shall be maintained until the department authorizes disposition.]

**A.** A licensee may use a sealed source for use in well-logging applications if:

(1) the sealed source is doubly encapsulated;

(2) the sealed source contains licensed material whose chemical and physical forms are as insoluble and nondispersible as practical; and

(3) meets the requirements of Subsections B, C, and D of this section (20.3.12.1211 NMAC).

**B.** For a sealed source manufactured on or before July 14, 1989, a licensee may use the sealed source, for use in well-logging applications if it meets the requirements of USASI N5.10-1968, *classification of sealed radioactive sources*, or the requirements in Subsections C and D of this section (20.3.12.1211 NMAC).

**C.** For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source, for use in well-logging applications if it meets the oil well-logging requirements of ANSI/HPS N43.6-1997, *sealed radioactive sources - classification*.

**D.** For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source, for use in well-logging applications, if the sealed source's prototype has been tested and found to maintain its integrity after each of the tests in paragraphs (1) through (5) of this subsection (20.3.12.1211 NMAC).

(1) **Temperature.** The test source shall be held at -40 degrees C for 20 minutes, 600 degrees C for 1 hour, and then be subject to a thermal shock test with a temperature drop from 600 degrees C to 20 degrees C within 15 seconds.

(2) **Impact test.** A 5 kilogram steel hammer, 2.5 centimeter in diameter, shall be dropped from a height of 1 meter onto the test source.

(3) **Vibration test.** The test source shall be subject to a vibration from 25 Hz to 500 Hz at 5 g amplitude for 30 minutes.

(4) **Puncture test.** A 1 gram hammer and pin, 0.3 centimeter pin diameter, shall be dropped from a height of 1 meter onto the test source.

(5) **Pressure test.** The test source shall be subject to an external pressure of  $1.695 \times 10^7$  pascals [24,600 pounds per square inch absolute].

**E.** The requirements in Subsections A, B, C, and D of this section (20.3.12.1211 NMAC) do not apply to sealed sources that contain licensed material in gaseous form.

**F.** The requirements in Subsections A, B, C, and D of this section (20.3.12.1211 NMAC) do not apply to energy compensation sources (ECS). ECSs shall be registered with the U.S. nuclear regulatory commission under 10CFR Section 32.210 or with an agreement state.

**20.3.12.1216 PERSONNEL MONITORING:**

[ **A.** No licensee or registrant shall permit any individual to act as a logging supervisor or to assist in the handling of sources of radiation unless each such individual wears either a film badge or a thermoluminescent dosimeter (TLD). Each film badge or TLD shall be assigned to and worn by only one individual. Film badges must be replaced at least monthly and TLDs replaced at least quarterly. After replacement, each film badge or TLD must be promptly processed.

**B.** Personnel monitoring records shall be maintained for inspection until the department authorizes disposition.]

**A.** The licensee may not

permit an individual to act as a logging supervisor or logging assistant unless that person wears, at all times during the handling of licensed radioactive materials or operation of registered machine sources of radiation, a personnel dosimeter that is processed and evaluated by an accredited national voluntary laboratory accreditation program (NVLAP) processor. Each personnel dosimeter shall be assigned to and worn by only one individual. Film badges shall be replaced at least monthly and other personnel dosimeters replaced at least quarterly. After replacement, each personnel dosimeter shall be promptly processed.

**B.** The licensee shall provide bioassay services to individuals using licensed radioactive materials in subsurface tracer studies if required by the license.

**C.** The licensee shall retain records of personnel dosimeters required by Subsection A of 20.3.12.1216 NMAC and bioassay results for inspection until the department authorizes disposition of the records.

**20.3.12.1224 NOTIFICATION OF INCIDENTS, ~~ABANDONMENT AND LOST SOURCES~~ LOST SOURCES, AND ABANDONMENT:**

[ **A.** Notification of incidents and sources lost in other than downhole logging operations shall be made in accordance with appropriate provisions of Part 4 (20.3.4 NMAC):

**B.** Whenever a sealed source or device containing radioactive material is lodged downhole, the licensee shall:

(1) monitor at the surface for the presence of radioactive contamination with a radiation survey instrument or logging tool during logging tool recovery operation; and

(2) notify the department immediately by telephone and subsequently, within 30 days, by confirmatory letter, if the licensee knows or has reason to believe that a sealed source has been ruptured; this letter shall identify the well or other location; describe the magnitude and extent of the escape of radioactive material; assess the consequences of the rupture; and explain efforts planned or being taken to mitigate these consequences.

**C.** When it becomes apparent that efforts to recover the radioactive source will not be successful, the licensee shall perform the requirements of this subsection (Subsection C of 20.3.12.1224 NMAC).

(1) Advise the well operator of the department and oil conservation division regulations, and an appropriate method of abandonment, which shall include:

(a) the immobilization and sealing in place of the radioactive source with a

cement plug;

(b) the setting of a whip stock or other deflection device; and

(c) the mounting of a permanent identification plaque at the surface of the well containing the appropriate information required by Subsection D of 20.3.12.1224 NMAC.

(2) Notify the department by telephone, giving the circumstances of the loss, and request approval of the proposed abandonment procedures.

(3) Either ensure that abandonment procedures are implemented within 30 days after the sealed source has been classified as irretrievable, or request an extension of time if unable to complete the abandonment procedures.

(4) File a written report with the department within 30 days of the abandonment. The licensee shall also send a copy of the report to New Mexico oil conservation division that issued permits, or otherwise approved of the drilling operation. The report shall contain the following information:

(a) date of occurrence;

(b) a description of the well logging source involved, including the radionuclide and its quantity, chemical and physical form;

(c) surface location and identification of the well;

(d) results of efforts to immobilize and seal the source in place;

(e) a brief description of the attempted recovery effort;

(f) depth of the source;

(g) depth of the top of the cement plug;

(h) depth of the well;

(i) any other information, such as a warning statement, contained on the permanent identification plaque; and

(j) the names of state agencies receiving a copy of this report.

**D.** Whenever a sealed source containing radioactive material is abandoned downhole, the licensee shall provide a permanent plaque for posting the well or well bore. (An example of a suggested plaque is shown in 20.3.12.1226 NMAC.) This plaque shall:

(1) be constructed of long lasting material, such as stainless steel or monel; and

(2) contain the following information engraved on its face:

(a) the word "CAUTION";

(b) the radiation symbol without the conventional color requirement;

(c) the date of abandonment;

(d) the name of the well operator or well owner;

(e) the well name and well identification number(s) or other designation;

(f) the sealed source(s) by

radionuclide and activity;

(g) the source depth and the depth to the top of the plug; and

(h) an appropriate warning, depending on the specific circumstances of each abandonment; **note:** appropriate warning may include: (a) "Do not drill below plug-back depth"; (b) "Do not enlarge casing"; or (c) "Do not re enter the hole", followed by the words, "before contacting the New Mexico Environment Department's radiation control program".

**E.** The licensee shall immediately notify the department by telephone and subsequently by confirming letter if the licensee knows or has reason to believe that radioactive material has been lost in or to an underground potable aquifer. Such notice shall designate the well location and shall describe the magnitude and extent of loss of radioactive material, assess the consequences of such loss, and explain efforts planned or being taken to mitigate these consequences.]

**A.** The licensee shall immediately notify the appropriate department by telephone and subsequently, within 30 days, by confirmation in writing if the licensee knows or has reason to believe that a sealed source has been ruptured. The written confirmation shall designate the well or other location, describe the magnitude and extent of the escape of licensed materials, assess the consequences of the rupture, and explain efforts planned or being taken to mitigate these consequences.

**B.** The licensee shall notify the department of the theft or loss of radioactive materials, radiation overexposures, excessive levels and concentrations of radiation, and certain other accidents as required by 20.3.4.451 NMAC, 20.3.4.452 NMAC, 20.3.4.453 NMAC, and 20.3.3.312 NMAC.

**C.** The licensee shall immediately notify the department by telephone and subsequently by confirming letter if the licensee knows or has reason to believe that radioactive material has been lost in or to an underground potable aquifer. Such notice shall designate the well location and shall describe the magnitude and extent of loss of radioactive material, assess the consequences of such loss, and explain efforts planned or being taken to mitigate these consequences.

**D.** The licensee shall notify the department in accordance with the requirements of Subsection D of 20.3.12.1203 NMAC regarding irretrievable sources intended for abandonment.

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

**Explanatory Paragraph:** These are amendments to 20.3.15 NMAC named "Licenses and Radiation Safety Requirements for Irradiators." Sections 20.3.15.1519 NMAC and 20.3.15.1527 NMAC are revised to integrate considerations of recent advances in external dosimetry technology, and notably terminology changes with respect to these advances in technology. These amendments will become effective 08/31/2005.

### 20.3.15.1519 PERSONNEL MONITORING:

**A.** Irradiator operators shall wear [either a film badge or a thermoluminescent dosimeter (TLD)] a personnel dosimeter that is processed and evaluated by an accredited national voluntary laboratory accreditation program (NVLAP) processor while operating a panoramic irradiator, or while in the area around the pool of an underwater irradiator. The [film badge or TLD] personnel dosimeter processor must be accredited [by the national voluntary laboratory accreditation program] for high-energy photons in the normal and accident dose ranges (see Subsection C of 20.3.4.416 NMAC). Each [film badge or TLD] personnel dosimeter must be assigned to and worn by only one individual. Film badges must be processed at least monthly, and [TLDs] other personnel dosimeters must be processed at least quarterly.

[...]

**20.3.15.1527 RECORDS AND RETENTION PERIODS:** The licensee shall maintain the following records at the irradiator for the periods specified.

[...]

**E.** [Film badge and TLD results] Evaluations of personnel dosimeters required by 20.3.15.1519 NMAC until the department terminates the license.

[...]

## NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.3.12 NMAC, Sections 1 and 6 through 10, effective 7/31/2005.

**5.3.12.1 ISSUING AGENCY:** State of New Mexico [Commission on Higher Education 1068 Cerrillos Road, Santa Fe, New Mexico 87505] Higher Education Department

[3/16/51, 7/1/94; 5.3.12.1 NMAC - Rn & A,

5 NMAC 3.12.1, 11/30/01; A, 7/31/05]

### 5.3.12.6 OBJECTIVE AND PURPOSE:

A. The objective of 5.3.12 NMAC is to identify and define on- and off-campus instruction that is eligible to receive funding through New Mexico's higher education funding formulae.

B. The purpose of 5.3.12 NMAC is to provide public higher education institutions with adequate and equitable funding in support of on-campus instruction as well as with the resources to enhance educational opportunities for the many New Mexico citizens who can not readily attend on-campus courses or programs. It is also anticipated that this funding will better enable post-secondary educational institutions to quickly respond to changing community and workforce educational needs. The New Mexico ~~[commission on higher education]~~ higher education department believes that the delivery of instructional programming to students via alternative delivery modes will not only provide them improved educational opportunities, but will also provide the state a cost-effective alternative to the development of additional new campuses and facilities.

C. ~~[Commission]~~ Department policy encourages the evolution of existing campuses and the development of new models of delivery that take advantage of the opportunities offered by technology. Use of the internet to deliver instruction has revealed that students participating in web-based courses may be located on-campus or off-campus. In order to recognize and support the increased use of technology, the ~~[commission]~~ department has adopted a policy that regards web-based courses as on-campus instruction for reporting purposes. [9/30/96, 5.3.12.6 NMAC - Rn & A, 5 NMAC 3.12.6, 11/30/01; A, 7/31/05]

### 5.3.12.7 DEFINITIONS:

A. "Academic credit" means student credit hours for courses that through institutional policy and academic convention are determined to have the academic resources and support to meet traditional expectations for certificate and degree credit in academic and vocational programs.

B. ~~["Commission"]~~ "Department" means the New Mexico ~~[commission on higher education]~~ higher education department.

C. "Course file" is the ~~[commission's]~~ department's data file containing one record for each course-section at a given public post-secondary educational institution per academic term.

D. "Developmental credit" means student credit hours for courses

which provide preparatory work (basic skills) that is prerequisite to the level of work expected for college.

E. "Extended learning" means the full range of available and developing modes for bringing instruction to learners, including live instructor delivery, instructional television, computer conferencing, video conferencing, audio conferencing, etc.

F. "Extension, correspondence, or self-study credits" are student credit hours for courses that are limited in academic content, academic resources and/or setting (such as formal and regular student-instructor contact), or are so specialized that they do not meet traditional standards of applicability to degree program requirements. These courses are marked by the label, "extension," "correspondence," "self-study," or "home study" so that their special nature is considered in evaluation for degree credit.

G. "Off-campus credits" are student credit hours earned from courses offered that do not meet the definition of on-campus credits but are offered for regular academic credit and are applicable to an approved degree or certification program, taught by regular faculty or equivalent and delivered via extended learning instruction. Off-campus credits are reported in separate extended services data files to generate funding and include additional data fields to indicate the delivery location(s) of the instruction.

H. "On-campus credits" are student credit hours earned from courses that are offered within the geographical boundaries of the campus or via institutional web-based delivery systems for academic credit and for which regular main campus tuition is charged.

I. "Registrar file" is the ~~[commission's]~~ department's data file containing summary data of enrollments and residency of students at a given public post-secondary educational institution for Fall term only.

J. "Restricted credits" are student credit hours earned in a course offered for academic credit for which the expenses of delivery are covered by funds from restricted sources (i.e., grants or contracts), by direct third-party payment (e.g., ROTC), or by the pooling of tuition and fees (i.e., self support).

K. "Right of first refusal" means that an institution assigned a service area must first decline to provide requested educational services before another New Mexico public post-secondary institution may offer those services in that service area.

L. "Service area" is an assigned geographic region where the local two-year higher education institution has the exclusive right to meet the lower divi-

sion post-secondary educational needs of the area, subject only to limitations imposed by its enabling legislation, and consistent with the provisions of this policy. An institution may utilize its right of first refusal to allow other public higher education institutions to deliver offerings within its designated service area.

M. "Student file" is the ~~[commission's]~~ department's data file containing one record for each student taking courses at a given public post-secondary educational institution per academic term.

N. "Student-course file" is the ~~[commission's]~~ department's data file containing one record for each course that each student at a given public post-secondary educational institution is enrolled in each academic term.

O. "Student credit hours" are instructional time units derived from the structure of academic degrees and programs. Generally, one student credit hour is considered to require no less than fifteen contact hours between the student and instructor and thirty hours of independent effort by the student in course preparations per academic term.

P. "Tuition credit base" means the base revenue anticipated to be available from tuition sources to assist in funding the cost of instruction at New Mexico's public post-secondary educational institutions.

Q. "Unrestricted credits" are student credit hours earned in a course offered for academic credit for which the faculty salary is paid by funds from the regular instruction and general sources and for which the student cost is the regular, on-campus tuition.

R. "Web-based courses" are courses offered for academic credit and delivered synchronously or asynchronously over the Internet to students located at sites other than the classroom, including sites that may be off-campus. A web-based course may include the requirement that a student meet in a physical setting for lecture, laboratory, examination or other purposes as long as the required student presence in the physical setting does not exceed 25% of the total course time.

[2/27/85, 1/10/91, 9/30/96, 5.3.12.7 NMAC - Rn & A, 5 NMAC 3.12.7, 11/30/01; A, 7/31/05]

### 5.3.12.8 GENERAL PRINCIPLES GUIDING INSTRUCTIONAL FUNDING:

A. **Funding priorities:** The ~~[commission]~~ department is committed to ensuring equitable access to quality educational services to give all citizens the opportunity to fulfill their potential, regardless of their place of residence. Therefore, a major objective of the ~~[commission's]~~

department's annual funding recommendations will be to encourage the most effective and efficient means of delivering higher education services to citizens throughout New Mexico.

**B. Academic quality:**

Quality is an essential component of the [commission's] department's agenda for higher education in New Mexico.

(1) By reporting student credit hours earned for state support, an institution concurs and agrees that all credits are derived from courses and programs that meet generally accepted principles of quality as used by the appropriate regional accrediting association, including, but not limited to:

(a) Each program of study results in learning outcomes appropriate to the rigor and breadth of the degree or certificate awarded.

(b) Degree or certificate programs are coherent and complete.

(c) The program provides for appropriate interaction between faculty and students and among students.

(d) Qualified faculty provide appropriate oversight of each course and program.

(e) The program is consistent with the institution's role and mission.

(f) Institutional review and approval processes ensure that each course and program is appropriate for the learning delivery system being used.

(g) The institution provides appropriate training and support services for faculty.

(h) The program ensures that appropriate learning resources are available to students.

(i) The program provides students with clear, complete and timely information on the curriculum, course and degree requirements, nature of faculty/student interaction, assumptions about technological competence and skills, technical equipment required, availability of support services and financial aid resources, and cost and payment policies.

(j) Students accepted for the course or program have the background, knowledge and technical skills needed to undertake the program.

(k) Students enrolled in the course or program have reasonable and adequate access to the range of student services appropriate to support their learning.

(l) The institution evaluates the program's educational effectiveness, including assessment of student learning outcomes, student retention, and student and faculty satisfaction. Students have access to such program evaluation data.

(m) Policies for faculty evaluation include appropriate consideration of

teaching and scholarly activities related to various learning delivery systems.

(n) The institution demonstrates a commitment to ongoing support, both financial and technical, and to continuation of the program for a period sufficient to enable students to complete a degree/certificate.

(2) In implementing regular enrollment audit and program review processes, the [commission] department has both a right and a responsibility to test credits to ensure these standards are met.

**C. Funding mechanisms:**

The [commission] department affirms its expectation that educational services provided to students be of the highest quality regardless of where or when instruction is offered. Therefore, in order to provide an adequate and equitable distribution of state funds to public higher education institutions in support of both on- and off-campus instruction, all eligible student credit hours will be used in the calculation of the recommended instructional and general appropriation.

**D. Tuition credit:**

While the governing boards of New Mexico's public higher education institutions are assigned the responsibility for setting tuition and fee charges at their respective institutions, as part of its statutory responsibility the [commission] department is concerned with the adequate financing of these institutions and with the equitable distribution of funds among them. Because it is the policy of the [commission] department that every New Mexico citizen who desires public post-secondary education should have access to these educational opportunities, tuition credit for off-campus instruction shall be established for the sponsoring institutions at the same level as that set for resident and nonresident students on-campus.

**E. Funding eligibility:**

To meet its responsibility to ensure access to high quality education for New Mexico's residents in a manner that promotes the effective and efficient use of available public tax dollars, the [commission] department recognizes that it is necessary to define types of instruction eligible for state funding. Therefore, the [commission] department asserts as a matter of public policy, that courses and programs provided by public institutions of higher education in New Mexico that are received within the geographic boundaries of the state are eligible for state funding if they meet the following criteria:

(1) Courses and programs must demonstrate academic quality, consistent with the expectations stated in Subsection B of 5.3.12.8 NMAC.

(2) Courses must be offered for academic credit, or for developmental cred-

it at non-doctoral institutions.

(3) Courses typically must be accessible to members of the general public who meet admissions standards and prerequisites. However, this paragraph is not intended to preclude state funding for course sections offered to specialized audiences or at locations inaccessible to the general public (e.g., secure areas on military reservations).

(4) In order to promote the responsible use of public resources and build upon existing institutional strengths, courses available off-campus must be related to educational programs offered by the institution to students on-campus. Likewise, programs available off-campus must fall within program areas offered on-campus and degrees available off-campus may not be at a level higher than offered on-campus.

**F. Geographic service areas:**

The [commission] department acknowledges that rapidly evolving information technologies can deliver instructional services to many individuals without regard to their geographic location. However, the [commission] department also acknowledges that public two-year post-secondary institutions are provided supplemental funding through local tax levies, and are thus expected to meet the local taxpayers' educational needs. The [commission] department is committed to responding to the changing needs of the state and will examine alternative means of ensuring access and local accountability. At this time the [commission] department maintains that each two-year higher education institution's local taxing district shall constitute its geographic service area for the direct provision of lower division instruction, subject only to limitations imposed by its enabling legislation, and consistent with the provisions of Subsection C of 5.3.12.9 NMAC until [June 30, 2004 June 30, 2006.]

[1/10/91, 9/30/96, 5.3.12.8 NMAC - Rn & A, 5 NMAC 3.12.8, 11/30/01; A, 7/31/05]

**5.3.12.9 IMPLEMENTATION:**

In order to ensure uniformity and equity in the implementation of this policy, it is necessary to clarify and make formal certain concepts described in Section 8 that determine differences in the fundability of certain types of credits.

**A. Types of credit:**

Generally courses offered for academic credit are also eligible to count toward certificate and degree requirements; however, in some cases the special nature of the courses and their purpose make them inappropriate for degree credit, and thus ineligible for certain types of state funding.

(1) Academic credit: Credits for these courses are eligible for reporting to

generate regular funding, as long as they meet all eligibility criteria contained in this policy.

(2) **Developmental credit:** Developmental course credits are not eligible for funding credit at the doctoral institutions, nor for degree or certificate credit at any institution.

(3) **Extension, correspondence, self-study credit:** Credits for courses that do not award credit applicable to a certificate or degree, or courses that do not include formal and regular contact between a student and instructor but are delivered through self-study, are not eligible for reporting to generate regular funding and must be supported by restricted or self-support funding.

**B. Sources of revenue:**

The sources of revenue used to generate current instructional credits affect the state's interest in funding future activities based upon this record of past credits. In particular, the state may choose not to generate new funding levels from past activity that was compensated by a non-state source, thus avoiding double support for the same activity. For this reason, concepts of unrestricted and restricted credits are delineated within this policy. See also 5.3.12.7 NMAC for definitions.

(1) **Unrestricted credit:** Unrestricted credits are counted by the ~~[commission]~~ department as credits in the regular state funding process. Tuition for unrestricted credits is estimated as a revenue credit in developing the Instruction and general funding recommendations.

(2) **Restricted credit:** Restricted credits do not count as credits in the regular state funding process and are not considered by the ~~[commission]~~ department when determining instruction and general funding recommendations.

**C. Boundaries of a campus:** In order to differentiate between on-campus and off-campus instruction, it is necessary to define the limits of a campus. This policy provides such definitions, noting the differences between two-year and four-year boundaries relating to the unique circumstances of local supplementary funds for two-year institutions.

(1) **On-campus credits:** These are earned from courses that are offered within the defined boundaries of the campus for academic or developmental credit, including credits generated from institutional web-based delivery systems, and for which regular main campus tuition is charged.

(a) For four-year institutions: The geographic boundaries of the campus are the limits of the municipality or metropolitan statistical area where the university is located.

(b) **Special and arranged on-campus credits:** Because of the special nature of some courses, there are circumstances

which of necessity require that they be taught, either in whole or in part, beyond the geographical boundaries of the campus and yet be classified as on-campus credit. These courses include those listed below or those arranged through timely, written agreement with the commission and the chief academic officer of the institution. The approved special on-campus programs include:

- (i) student teaching;
- (ii) internships;
- (iii) cooperatives;
- (iv) practica;
- (v) field instruction;
- (vi) physical education and recreation activity courses;
- (vii) study abroad; and
- (viii) thesis and dissertation courses.

(c) For two-year institutions: The geographic boundaries of the campus are the geographic boundaries of their taxing district or approved service area.

(d) **Service areas - enabled:** The ~~[commission]~~ department hereby assigns service areas to the public two-year higher education institutions consistent with the geographic boundaries of their taxing districts and subject only to limitations imposed by their enabling legislation. One institution will not deliver courses in another institution's service area without contacting that institution in a timely manner and obtaining concurrence in writing from that institution's chief academic officer, copy to the commission. Subparagraph (d), Paragraph 1, Subsection C of 5.3.12.9 NMAC shall expire on ~~[June 30, 2004]~~ June 30, 2006.

(e) For areas of the state without local taxing districts, both four-year and two-year post-secondary institutions may offer educational services on a free-market basis.

(f) **Right of first refusal - general provision:** Two-year post-secondary institutions assigned a service area shall have a right of first refusal to meet lower division instructional needs within their service area and have an obligation to assist that area's citizens in obtaining appropriate institutional services where financially, programmatically, and otherwise feasible. See also 5.3.12.7 NMAC for definitions.

(g) **Right of first refusal - overlapping campus boundaries:** No lower division offerings of any main campus of a four-year post-secondary institution that is located within a two-year higher education institution's local taxing district shall be subject to the provisions of Subparagraphs (d) or (f), Paragraph 1, Subsection C of 5.3.12.9 NMAC of this policy with regard to that two-year institution.

(h) **Right of first refusal - branch campuses and educational centers:** While branch campuses and educational centers

have the right of first refusal with regard to the offerings of other post-secondary institutions within their service area, the right of first refusal does not extend to the offerings of their own main campuses. Such offerings are subject only to internal institutional decision making.

(2) **Off-campus credits:** These are earned from courses offered that do not meet the above definitions of on-campus credits but are offered for academic or developmental credit and are part of an approved degree or certification program, taught by regular faculty or equivalent and/or delivered via extended learning. Tuition for off-campus credits reported for formula funding is estimated as a revenue credit in the calculation of the instruction and general funding recommendations.

(a) **Types of off-campus instruction credit:** Public post-secondary educational institutions should use any appropriate form of instruction and/or delivery mode to meet the needs of students and programs, consistent with the provisions of Subsection B of 5.3.12.8 NMAC of this policy.

(b) Two-year institutions may offer course work for off-campus credits at sites remote from their defined service area that are not in another designated service area, or where the two-year institution has obtained concurrence from another two-year institution to provide the course within the latter's service area. Such course work will be at the lower division level, subject only to limitations imposed by their enabling legislation, provided that main campus academic expectations for staff and support are met.

(c) Four-year institutions may offer course work for off-campus credits at sites remote from the main campus provided that they meet main campus academic expectations for staff and support. Generally, such course work will be at the upper division or graduate levels, except where there is no designated two-year institutional service area or where the four-year institution has obtained concurrence from the two-year institution to provide the course within the latter's service area.

(d) Any public post-secondary institution offering off-campus instruction in the vicinity of another public post-secondary institution will notify and seek the cooperation of that institution.

(e) The ~~[commission]~~ department has the authority to resolve disputes between or among higher education institutions regarding the delivery of instruction both within or outside of designated service areas.

**D. Collaborative efforts, consortia, and extended learning instruction:** The ~~[commission]~~ department supports efforts to promote the sharing of resources by existing public post-secondary

educational institutions to provide quality educational services. Where appropriate, the development of collaborative approaches to deliver courses and programs to students is encouraged. In order to ensure the efficient and effective provision of such services, public post-secondary institutions engaging in such joint ventures must have written agreements clarifying the various responsibilities and benefits of the collaborating parties. These agreements must address, but need not be limited to, the following points:

- (1) cost and revenue sharing arrangements;
- (2) student credit hour reporting arrangements;
- (3) accommodations for alternative delivery methods at the receiving site;
- (4) arrangements and responsibilities for evaluating the effectiveness of the joint venture;
- (5) provision of student support services; and
- (6) provision of academic support services.

[9/21/84, 1/10/91, 9/30/96, 5.3.12.9 NMAC - Rn & A, 5 NMAC 3.12.9, 11/30/01; A, 7/31/05]

**5.3.12.10 REPORTING:** In order to ensure uniformity and equity in the implementation of this policy, it is necessary to clarify and make formal certain concepts and credit reporting procedures. Institutions must report the student credit hours that they generate in categories according to enrollment and data reporting policies and procedures promulgated by the [commission] department. Eligibility for funding will be determined by the [commission] department and may require a combination of categorization from these definitions. Credits from courses offered at reporting institutions are to be categorized according to the classifications below. In some cases, this policy defines credits that are ineligible for funding. In other cases, credits are to be reported and their use in or eligibility for funding depends on formulae and other calculations that are used in the annual recommendation process.

A. **Credits:** Enrollments that are eligible for funding are defined by counting student credit hours or "credits." See also 5.3.12.7 NMAC for definitions.

B. **Level:** Generally, courses are structured in a pattern of increasing levels of difficulty, preparation and specificity in the following pattern:

- (1) Lower division: Courses designed primarily for freshman (100's) and sophomore (200's) level students and for high school students enrolled under advanced placement agreements or under concurrent enrollment agreements.

- (2) Upper division: Courses designed primarily for junior (300's) and senior (400's) level students.

- (3) Graduate division: Courses designed primarily for master's (500's) and doctoral (600's, 700's) level students.

C. **Source of revenue:** Student credit hours from a course are designated by their revenue sources.

- (1) Unrestricted credits are reported in the [commission's] department's course file and counted as credits in the regular funding formulae.

- (2) Restricted credits are reported in the [commission's] department's course file but are coded so that they do not count as credits for the regular funding formulae.

D. **Data file submission requirements for off-campus instruction:** Institutions must report the student credit hours that they generate from off-campus instruction in accordance with the [commission's] department's enrollment and data reporting policies and procedures.

- (1) Course file: Courses offered for off-campus credit must be reported in an extended services course file. This file uses a special campus code of 61. The point of delivery fields in this data file must have valid values for extended services file submissions. Students enrolled in these courses should be included in the extended services student and student-course files. See also 5.3.12.7 NMAC for definitions.

- (2) Student file: Students enrolled in courses offered for off-campus credit must be included in an extended services student file. This file uses a special campus code of 61. See also 5.3.12.7 NMAC for definitions.

- (3) Student-course file: Students enrolled in courses offered for off-campus credit must be included in an extended services student-course file. This file uses a special campus code of 61. See also 5.3.12.7 NMAC for definitions.

- (4) Registrar file: If there is an extended services student file then a registrar file also must be generated. This file uses a special campus code of 61. See also 5.3.12.7 NMAC for definitions.

[1/10/91, 9/30/96, 5.3.12.10 NMAC - Rn, 5 NMAC 3.12.10; 11/30/01; A, 7/31/2005]

## NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.3.13 NMAC, Sections 1, 2, 3 and 6 through 10, effective 7/31/2005.

**5.3.13.1 ISSUING AGENCY:** New Mexico [Commission on Higher Education 1068 Cerrillos Road, Santa Fe,

New Mexico 87505] Higher Education Department

[5.3.13.1 NMAC - Rp, 6 NMAC 8.2.1.1, 6/30/2003; A, 7/31/05]

**5.3.13.2 SCOPE:** 5.3.13 NMAC applies to the allocation and distribution of money appropriated to the adult basic education fund by the legislature for use in a given fiscal year and further applies to the allocation and distribution of those monies made available to the state of New Mexico for basic education of adults and available for formula allocation and distribution to pay for the establishment or expansion of adult education programs to be carried out by [local educational agencies,] public schools and school districts, universities, community colleges as defined by Section 21-13-2 NMSA 1978, branch community colleges as defined by Section 21-14-1 NMSA 1978, technical and vocational institutes as defined by Section 21-16-2 NMSA 1978, learning centers established pursuant to Section 21-16A NMSA 1978, state-supported educational programs, post-secondary educational institutions operated by tribal entities, and bureau of Indian affairs controlled postsecondary schools located in New Mexico.

[5.3.13.2 NMAC - Rp, 6 NMAC 8.2.1.2, 6/30/2003; A, 12/30/2004; A, 7/31/05]

**5.3.13.3 STATUTORY AUTHORITY:** Section ~~[22-8-30-4]~~ 21-1-27.5, 21-1-27.6 NMSA 1978 ~~[and the Workforce Investment Act, 20 U.S.C. 9201 et seq.]~~

[5.3.13.3 NMAC - Rp, 6 NMAC 8.2.1.3, 6/30/03, A, 7/31/05]

**5.3.13.6 OBJECTIVE:** This regulation establishes a formula funding process whereby monies appropriated by the New Mexico legislature to the adult basic education fund and monies made available to the state of New Mexico for basic education of adults and available for formula allocation and distribution to pay for the establishment or expansion of adult education programs ~~[to be carried out by local educational agencies, community colleges as defined by Section 21-13-2 NMSA 1978, branch community colleges as defined by Section 21-14-1 NMSA 1978, technical and vocational institutes as defined by Section 21-16-2 NMSA 1978, learning centers established pursuant to Section 21-16A NMSA 1978, postsecondary educational institutions operated by tribal entities, and bureau of Indian affairs controlled postsecondary schools]~~ are allocated and distributed.

[5.3.13.6 NMAC - Rp, 6 NMAC 8.2.1.6, 6/30/03; A, 12/30/2004, A, 7/31/05]

**5.3.13.7 DEFINITIONS:**

A. "Adult basic education" (ABE) means adult education as defined by 20 U.S.C. Section 9202(1).

B. "Adult basic education fund" means that fund established pursuant to Section ~~[22-8-30-1]~~ 21-1-27.5 NMSA 1978 for the purpose of funding adult basic education programs for educationally disadvantaged adults.

C. "State administrative site" means an entity submitting a proposal meeting the criteria established by the ~~[commission on]~~ higher education department and approved for formula funding through the adult basic education fund for a given fiscal year, including public schools and school districts, universities, community colleges as defined by Section 21-13-2 NMSA 1978, branch community colleges as defined by Section 21-14 -1 NMSA 1978, technical and vocational institutes as defined by Section 21-16-2 NMSA 1978, learning centers established pursuant to Section 21-16A NMSA 1978, state-supported educational programs, ~~[and]~~ postsecondary educational institutions operated by tribal entities, and bureau of Indian affairs controlled postsecondary schools located in New Mexico.

[5.3.13.7 NMAC - Rp, 6 NMAC 8.2.1.7, 6/30/03; A, 12/30/2004; A, 7/31/05]

#### 5.3.13.8 APPROPRIATION TO STATE ADMINISTRATIVE SITES:

The ~~[commission on]~~ higher education department will convene a task force on ABE formula funding with members representing ABE programs, post-secondary institution fiscal offices, and the association of community colleges to ~~[review and modify]~~ make recommendations on changes to the funding formula as appropriate.

[5.3.13.8 NMAC - Rp, 6 NMAC 8.2.1.8, 6/30/03; A, 12/30/2004; A, 7/31/05]

#### 5.3.13.9 BUDGET

A. The ~~[commission on]~~ higher education department will notify each state administrative site of its program allocation no later than June 15 of the fiscal year immediately preceding the fiscal year for which the allocation is being made.

B. State administrative sites will submit to the ~~[commission on]~~ higher education department budgets based upon program allocations, together with executed written agreements as required by the ~~[commission on]~~ higher education department, no later than June 30 of the fiscal year immediately preceding the fiscal year for which the allocations are made.

C. State administrative sites will comply with reporting dates and reporting requirements established by the ~~[commission on]~~ higher education department.

[5.3.13.9 NMAC - Rp, 6 NMAC 8.2.1.9,

6/30/03; A, 12/30/2004; A, 7/31/05]

#### 5.3.13.10 DISTRIBUTIONS:

A. Distributions will be made to state administrative sites upon timely submission of expenditure and program reports in accordance with procedures established by the ~~[commission on]~~ higher education department. Distributions may be requested on a monthly basis.

B. Distributions will be made solely on a reimbursement basis.

C. Unless otherwise provided by law, reimbursement will not be made for expenditures not obligated on or before June 30 of the fiscal year for which the allocation is being made.

[5.3.13.10 NMAC - Rp, 6 NMAC 8.2.1.10, 6/30/03; A, 7/31/05]

### NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.30 NMAC, sections 1 and 10, effective 7/31/2005.

5.7.30.1 ISSUING AGENCY: EDUCATION TRUST BOARD, State of New Mexico, C/O ~~[Commission on Higher Education]~~ Higher Education Department.

[5.7.30.1 NMAC - N, 6/29/2001; A, 11/15/2001; A, 7/31/2005]

5.7.30.10 CONTACT ENTITY INQUIRIES REGARDING THIS ISSUANCE SHOULD BE ADDRESSED TO: Education Trust Board, State of New Mexico, c/o ~~[Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico 87501 4295, Attention: Dr. Bruce D. Hamlett Phone: (505) 827-7 383]~~ higher education department, attention: secretary of higher education

[5.7.30.10 NMAC - N, 6/29/2001; A, 7/31/2005]

### NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.100.2 NMAC, Sections 1, 3, 5 through 20, 23, 25 through 33, effective 7/31/2005.

5.100.2.1 ISSUING AGENCY: New Mexico ~~[Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico 87501]~~ Higher Education Department.

[9-30-96, 5.100.2.1 NMAC - Rn & A, 5 NMAC 100.2.1, 5-15-01; A, 07/31/05]

#### 5.100.2.3 STATUTORY

**AUTHORITY:** The Post-Secondary Educational Institution Act (Section 21-23-1 through 21-23-5 NMSA 1978 as amended) authorizes the New Mexico ~~[Commission on higher education~~ higher education department ("department") to establish and monitor guidelines for the licensure of all private post-secondary institutions operating in New Mexico.

[2-27-85, 6-30-92, 7-1-94, 5.100.2.3 NMAC - Rn, 5 NMAC 100.2.3, 5-15-01; A, 7/31/05]

#### 5.100.2.5 EFFECTIVE DATE:

September 30, 1996, unless a later date is cited at the end of a section ~~[or paragraph]~~.

[9-30-96, 5.100.2.5 NMAC - Rn, 5 NMAC 100.2.5, 5-15-01; A, 7/31/05]

#### 5.100.2.6 OBJECTIVES AND GENERAL PRINCIPLES:

A. "The purpose of the Post-Secondary Educational Institution Act is to improve the quality of private post-secondary education, to prevent misrepresentation, fraud and collusion in offering educational programs to persons over the compulsory school attendance age and to protect consumers enrolled in private post-secondary educational institutions when those schools cease operation or fail to meet standards of quality established by the ~~[commission]~~ department. [Section 21-23-2 NMSA 1978, as amended]

B. The purpose of 5.100.2 NMAC is to guide implementation of the Post-Secondary Educational Institution Act by defining clear expectations of institutions operating in the state while recognizing the varied purposes and clientele of those institutions. It is the intent of the New Mexico ~~[commission on]~~ higher education department to encourage sound institutional practices that result in high quality educational programs and expand the array of educational options available to New Mexico's citizens.

C. GENERAL PRINCIPLES:

(1) Each private post-secondary institution providing on-site education within New Mexico or otherwise operating from a site within New Mexico may be classified by the New Mexico ~~[commission on higher education~~ ("commission") higher education department ("department") as subject to or exempt from provisions of the Post-Secondary Educational Institution Act ("the act"). An institution is subject to the act unless expressly exempted by the ~~[commission]~~ department.

(2) Career schools and non-accredited colleges and universities must be licensed by the ~~[commission]~~ department and are subject to the standards and procedures for licensed institutions specified in



## 5.100.2 NMAC.

(3) Private institutions in other states that pay agents to recruit students in New Mexico for attendance in other states must register with the [commission] department pursuant to the Out-of-State Proprietary School Act (Sections 21-24-1 et seq. NMSA 1978, as amended) and 5.100.3 NMAC of the [commission] department.

(4) Private, regionally accredited colleges or universities that provide academic instruction within New Mexico comparable to that provided by public colleges and universities are exempt from regulation by the [commission] department, but must provide the [commission] department with copies of their catalog and information about their curricula, enrollments, and financial condition, as specified in section 5.100.2.8 NMAC, below. Such institutions are not subject to regulation by the [commission] department. Such institutions may use the term exempt but may not refer to their status with the [commission] department using terms such as "accredited," "licensed," "approved," or "endorsed."

D. Institutions that are not licensed, but meet the definition of presence in New Mexico, whether offering degrees, course credits, certificates or diplomas shall be notified by certified mail that they shall cease immediately to offer such until they obtain a license or exemption from the commission; the [commission] department shall initiate appropriate legal action if institutions fail to comply; whoever violates any provision of Chapter 21-23-10 of the Post-Secondary Educational Institution Act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 5.100.2.6 NMAC - Rn, 5 NMAC 100.2.6, 5-15-01; A, 5/15/02; A, 7/31/05]

**5.100.2.7 DEFINITIONS:**

A. "Accreditation" means a verified accreditation status with an accrediting agency recognized by the United States department of education.

B. [~~"Board" or "commission"~~] "~~Department~~" means the New Mexico [commission on] higher education department or its designated employee.

C. "Branch facility" means a facility of a licensed school when all of the following occur:

(1) the facility has the same ownership, financial management or control as that of the main institution;

(2) all financial decisions regarding the branch facility are made at the main institution; and

(3) the curriculum offered at such facility is at the same academic credential level or less than the courses offered at the

parent campus.

D. "Career school" means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a certificate, diploma, associate degree, or comparable confirmation of completion of the curriculum.

E. "College" or "university" means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a baccalaureate degree, master's degree, or doctoral degree or comparable confirmation of completion of the curriculum.

F. "Continuing education" means only brief courses of instruction designed to teach specific skills that may be applicable in a work setting but are not sufficient in themselves to be considered a program of training for employment. Typically, a student only enrolls for one course rather than a sequence of courses or the courses are on-site or contract training.

G. "Degree" means any title, designation, mark, abbreviation, appellation, or series of letters or words, including "associate", "bachelor's", "master's", "doctor's" and their equivalents, which are generally taken to signify satisfactory completion of the requirements of a program of study designed to be comparable to those provided by institutions accredited by agencies recognized by the United States department of education.

H. "Exemption" means a written acknowledgment by the [commission] department that an institution, organization, or other entity, has met requirements and filed pertinent information as required by the [commission] department to provide educational services in New Mexico, without regulation by the [commission] department.

I. "License" means a written acknowledgment by the [commission] department that a private career school or non-accredited college or university has met the requirements of the [commission] department for offering a formal educational curriculum in New Mexico.

J. "Non-traditional instruction" means instruction provided in other than a traditional on-site manner involving direct contact between instructor and student(s), for example, instruction provided all or mostly through means such as correspondence, electronic delivery, or individualized or mentored study.

K. "Post-secondary educational institution" includes an academic, vocational, technical, business, profession-

al, or other school, college, or university or other organization or person offering or purporting to offer courses, instruction, training, or education, through correspondence or in person, to any person within New Mexico.

L. "Presence" in the state is defined as offering courses, programs or degrees on site or from a geographical site in New Mexico or maintaining an administrative, corporate or other address in the state.

M. "Qualified reviewer" means an individual who possesses educational credentials and/or experience compatible with the program being reviewed.

N. "Regional accreditation" means a verified accreditation status with an accrediting agency recognized by the United States department of education that accredits degree granting institutions operating in a designated geographic region.

O. "Registration" means a written acknowledgment by the [commission] department that a private out-of-state institution, legally approved by its home state, has filed pertinent information as required by the [commission] department to recruit students in New Mexico.

P. "Work day" means a week day, Monday through Friday, that is not recognized as a federal holiday.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 2-15-00, 5.100.2.7 NMAC - Rn, 5 NMAC 100.2.7, 5-15-01; A, 5/15/02; A, 7/31/05]

**5.100.2.8 INSTITUTIONS OR ORGANIZATIONS EXEMPT FROM THE ACT:**

A. The Post-Secondary Educational Institution Act specifies several bases for exemption from provisions of the act. An institution, organization, or other entity wishing to qualify for exemption from the act must present to the [commission] department the information necessary for the [commission] department to determine eligibility for exemption. Upon determination of eligibility by the [commission] department, the following may be granted an exemption:

(1) a post-secondary institution accredited by the north central association of colleges and schools, commission on institutions of higher education or by a comparable regional accrediting body recognized by the [commission] department;

(2) a post-secondary institution supported in whole or part by state or local taxation or by an Indian tribe or pueblo in the state of New Mexico;

(3) a nonprofit institution whose sole purpose is to train students in religious disciplines to prepare them to assume a vocational objective relating primarily to

religion;

(4) an occupational, trade, or professional school operating pursuant to a New Mexico occupational licensing law under the jurisdiction of the New Mexico regulation and licensing department;

(5) an institution or organization exclusively offering education that is solely a vocational or recreational in nature;

(6) an institution or organization providing instruction to an employer for its employees or providing instruction sponsored by a recognized fraternal, trade, business, or professional organization for its members; and

(7) an organization providing only brief courses of instruction designed to teach specific skills that may be applicable in a work setting but are not sufficient in themselves to be considered a program of training for employment; normally, such instruction shall meet at least three criteria:

(a) each course consists of no more than 40 hours of direct instruction or the equivalent;

(b) the tuition or fee charged for each course of instruction does not exceed \$500; and

(c) a typical student enrolls for only one course rather than a sequence of courses.

B. Examples of organizations that may be included under this exemption are those that provide instruction in computer operation as part of the purchase price of computer hardware or software or those that provide instruction designed to prepare students for standardized tests needed for admission to further educational programs.

C. Organizations that schedule, advertise to the general public, and charge a fee for training intended to develop skills needed to obtain or advance in employment may be classified by the [commission] department as subject to licensure. Examples of organizations that may be so classified are those that regularly schedule training sessions in computer hardware and software operation or those that provide training for employment as a truck driver or as a cook or chef.

D. An institution, organization, or other entity wishing to qualify for exemption from the Act shall provide the [commission] department with evidence of its qualification on one or more of the bases stated above and shall provide sufficient description of the nature of its organization and educational program(s) for the [commission] department to make a determination. Upon making a determination that an institution, organization, or other entity is qualified for exemption from the act, the [commission] department will issue a letter designating the entity's status as "exempt from regulation."

E. An exemption status shall in no way constitute state approval. Therefore, references to the [commission] department shall not be used in any advertisements, brochures, etc. without written consent of the [commission] department.

F. Each institution holding exempt status shall report to the [commission] department, in a form acceptable to the [commission] department and as requested by the [commission] department: (1) an update on institutional and program changes; and (2) statistical data about programs and enrollments annually.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 5.100.2.8 NMAC - Rn, 5 NMAC 100.2.8, 5-15-01; A, 7/31/05]

#### 5.100.2.9 INFORMATION REQUIRED FOR REGISTRATION OR LICENSURE

A. Each private, regionally accredited institution operating in New Mexico but exempt from licensure requirements shall report to the [commission] department, in a form acceptable to the [commission] department:

(1) the institution's headcount and full-time-equivalent enrollment figures for the prior year, including separate counts for continuing education, to be provided by July 15;

(2) copy of data forms prepared to meet federal integrated post-secondary education data system (IPEDS) and student right-to-know requirements, or subsequent requirements, as requested by the [commission] department to be provided as such forms are submitted to the relevant federal agency;

(3) copy of the current catalog of the institution; and

(4) such other information as may be requested by the [commission] department as necessary for implementation of the Post-secondary Educational Institution Act.

B. In addition, each regionally accredited institution shall keep the [commission] department informed of each program of study offered by the institution, identified by title, certificate or degree status, and federal classification of instructional program (CIP) code. It shall be the responsibility of each institution to assure that its list of programs remains accurate.

C. Each private career school or non-accredited institution licensed by the [commission] department shall report to the [commission] department, in a format and by a date specified by the [commission] department:

(1) certification of current ownership, address, telephone, and principal operating officers of the institution;

(2) the number of students first admitted to the institution during the institu-

tion's prior operating year, classified by program of study, including separate counts for continuing education;

(3) the institution's total headcount enrollment (each student served) during the prior operating year, classified by program of study, including separate counts for continuing education;

(4) the institution's gross annual tuition revenue for all courses, but excluding revenue from continuing education for the purpose of calculating licensure renewal fees, in New Mexico during the prior operating year;

(5) a copy of the current catalog of the institution plus any additional documents that define student policies in effect at the institution and relevant to the [commission's] department regulations for licensure; policies that must be included in this submission include admission policies, policies for award of financial aid, policies for payment of tuition and fees and for refunds of tuition and fees when a student withdraws, and complaint policies for students and other citizens with grievances against the institution;

(6) for institutions subject to federal reporting requirements, a copy of data forms prepared to meet federal integrated post-secondary education data system (IPEDS) and student right-to-know requirements, or subsequent requirements, as requested by the [commission] department, to be provided as such forms are submitted to the relevant federal agency;

(7) evidence of the institution's liability insurance and of its surety bond or alternative surety, as specified below;

(8) as appropriate and requested by the [commission] department, analyses of program completion rates, educational placement (transfer) rates, and/or employment rates for the institution;

(9) such other information as may be requested by the [commission] department as necessary for implementation of the Post-secondary Educational Institution Act; and

(10) accredited career schools shall provide the [commission] department with copies of all accreditation self-study reports submitted to their accrediting agency and all visitation reports upon receipt from the accrediting agency.

D. In addition, each career school or non-accredited institution shall keep the [commission] department informed of each program of study offered by the institution, identified by title, certificate or degree status, and federal classification of instructional program (CIP) code (if applicable). It shall be the responsibility of each institution to assure that its list of programs remains accurate.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 2-15-00, 5.100.2.9 NMAC - Rn, 5 NMAC

100.2.9, 5-15-01; A, 7/31/05]

### 5.100.2.10 GENERAL STANDARDS FOR LICENSURE:

A. New degree-granting institutions making application on or after September 30, 1996 will be required to obtain within three (3) years, accreditation with the distance education and training council (DETC) or another accrediting agency recognized by the U.S. department of education and the New Mexico ~~[commission]~~ higher education department as an authority on the quality of institutions awarding such degrees. Institutions operating prior to September 30, 1996 shall be exempt from this requirement.

B. In addition to the information requirements specified in section 5.100.2.9 NMAC, above, each institution licensed by the ~~[commission]~~ department shall maintain and be able to produce within a time period specified by the ~~[commission]~~ department any or all of the following lists for inspection by the ~~[commission]~~ department or use by the ~~[commission]~~ department in selecting samples to verify accuracy of the institution's files and reports:

(1) all students currently enrolled, by program of study, including separate counts for continuing education;

(2) all students admitted during each of the past two years; students on this list shall be classified as no longer enrolled, currently enrolled, and program completed as of the date that the list is prepared;

(3) all students who have been awarded government financial aid during each of the past two years, displaying the total amounts awarded to each student from grants and from loans;

(4) all students who have completed a program and received a certificate, diploma, or degree from the institution during each of the past two years, by program of study; and

(5) in the case of vocational/technical/occupational programs, a list of employers who have been active in hiring graduates of the institution during the past two years.

C. Upon approval of the ~~[commission]~~ department, a licensed school may operate a branch facility in New Mexico under its current license without applying for a new license.

(1) Prior to the approval to operate a branch facility, the licensee shall provide to the ~~[commission]~~ department the following information:

(a) documentation of the scope, purpose and mission of the branch facility;

(b) documentation of the geographical site of the branch facility;

(c) documentation demonstrating

adequate financial support by the parent campus;

(d) evidence that all building fire and safety standards have been met;

(e) documentation of the branch manager's qualifications; and

(f) any other documentation requested in writing by the ~~[commission]~~ department.

(2) The ~~[commission]~~ department may deny the approval of a branch facility for any of the following reasons:

(a) failure to provide the above information;

(b) parent campus does not have adequate financial means to support a branch facility;

(c) building safety is in question; and

(d) curriculum is substantially different from the curriculum offered at the parent campus.

(3) All branch facilities shall provide annual demographic information separate from the parent campus. [See Subsection C of 5.100.2.9 NMAC]

D. The ~~[commission]~~ department is statutorily charged with evaluating each individual institution in order to determine the school's compliance with the standards outlined in this regulation. This evaluation may take the form of a physical visit to the school or school offices or may be a desk audit if a physical visit is not feasible. It is the responsibility of the institution to maintain full compliance with the Post-Secondary Educational Institution Act (Section 21-23-1 through 21-23-15 NMSA 1978) and this rule (5 NMAC 100.2) at all times.

(1) Typically, materials to be evaluated when applicable may include:

(a) verification of insurances;

(b) past 12 month's NM gross receipts tax reports;

(c) list of current students;

(d) list of dropped or withdrawn students within the past year or period since last visit;

(e) list of students that have graduated in the last year or period since last visit;

(f) samples of all advertising, including online advertising, if applicable;

(g) student/faculty complaint file;

(h) student/faculty evaluations;

(i) advisory committee meeting minutes for last 24 months;

(k) advisory committee membership;

(l) program curriculum and requirements;

(m) access to all student files;

(n) access to all faculty files;

(o) bank statements or monthly financials for the last year.

(2) The four types of site visits include:

(a) Initial site visit: In making a determination regarding issuance of a new license, a site review may be conducted during the initial start-up phase to determine the adequacy of items included on the application for licensure. This visit is for information gathering purposes only.

(b) Regular site visit: The ~~[commission]~~ department shall determine an appropriate schedule (typically on a bi-annual basis) on which to re-evaluate each individual licensed institution and the specific programs offered by that institution in order to determine continued compliance with this rule. ~~[Commission]~~ Department staff will give prior notification of at least two weeks of the date and time of the visit. A short exit interview will be held at the conclusion of the visit. This exit interview will include a discussion of findings and a final written site visit report will be sent to the school for review and comment. The outcome of the regular site visit may be continued licensure.

(c) Triggered site visit: any occurrence listed in Section 28(E) of this rule may trigger a site visit to the institution in order to evaluate compliance with these standards. The exit interview will include a discussion of any findings. The outcome of a triggered site visit may be a recommendation for a probationary license or revocation of a license.

(d) Required special site visit: The ~~[commission]~~ department may request a required special site visit as a requirement for initial licensure, probation, or for licensure renewal. At the conclusion of a required special site visit, the exit interview will include a discussion of any findings [2-27-85, 6-30-92, 7-1-94, 9-30-96, 2-15-00, 5.100.2.10 NMAC - Rn & A, 5 NMAC 100.2.9, 5-15-01; A, 5/15/02; A, 6/30/03; A, 7/31/05]

### 5.100.2.11 NAME OF THE INSTITUTION:

A. No institution licensed by the ~~[commission]~~ department to operate within the state of New Mexico shall include in its name the terms "college" or "university" unless it meets the following conditions:

(1) institutions including the term "college" in their name must offer at least an associate degree and enroll a substantial portion of their students in such degree programs; and

(2) institutions including the term "university" in their name must offer graduate degree programs and must enroll a preponderance of their students in baccalaureate and graduate degree programs.

B. The ~~[commission]~~

department reserves the right to deny licensure to an institution proposing to operate under a name that the [commission] department determines to be misleading and/or so similar to that of another institution operating within the state that it may result in substantial confusion.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 5.100.2.11 NMAC - Rn & A, 5 NMAC 100.2.11, 5-15-01; A, 7/31/05]

#### **5.100.2.12 OWNERSHIP AND ADMINISTRATION OF THE INSTITUTION:**

A. Principal owners and managers of institutions licensed under the act shall demonstrate their qualifications for their particular responsibilities. In assessing such qualifications, the [commission] department will consider educational background, relevant work experience, and record of accomplishment in previous educational work settings.

B. No institution shall be licensed to operate in New Mexico that has filed bankruptcy during the past five years or that is under the control of or is managed by a person who has filed bankruptcy associated with the operation of an educational institution during the past five years.

C. An institution shall certify that no owner or manager of the institution: (a) has been convicted of or has pled no contest or guilty to a crime involving abuse of public funds; or (b) has controlled or managed an institution that has ceased operation during the past five years without providing for the completion of programs by its students. No institution shall be licensed to operate in New Mexico that does not provide such certification.

D. An institution shall notify the [commission] department in writing within ten working days whenever the institution changes ownership, whenever there is a change in control of the institution, or whenever the management is changed. Following such changes continued licensure by the [commission] department shall be subject to the [commission's] department's determination that the institution continues to meet standards for licensure.

E. No institution found to be operating illegally in another state shall be licensed to operate in New Mexico.

F. An institution which loses its legal authority to operate in another state shall be required to wait five (5) years before making application in New Mexico.

G. P r i n c i p a l owners/administrators of an institution will be required to provide information regarding their prior or current association with any defunct private institutions.

H. For the purposes of the

above paragraphs, "manager," "managed," and "management" shall include the chief executive officer, senior business or finance officer, senior financial aid administrator, and senior academic officer of an institution's New Mexico facility. Any institution failing to disclose information relevant to the above shall be subject to denial or revocation of its license.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 5.100.2.12 NMAC - Rn, 5 NMAC 100.2.12, 5-15-01; A, 5-15-02; A, 7/31/05]

#### **5.100.2.13 FINANCIAL STABILITY OF THE INSTITUTION:**

A. Neither quality academic programs nor student satisfaction can be sustained where serious financial difficulties prevail in an institution. Therefore, standards for reviewing and analyzing financial stability are a critical component of the institution's overall assessment. The intent of this section is twofold: (1) to outline measures to ensure the detection of financial situations which may adversely impact academic programs, thereby placing the consumer in jeopardy; and (2) to provide a stimulus for institutions to assess their financial management practices more aggressively, inducing the development of strategic planning activities for enhancing the total operation of the institution.

B. New applicants not previously licensed by the [commission] department will be expected to demonstrate liquid assets sufficient to operate the institution for a period of one year exclusive of anticipated revenue from tuition and fees. These assets shall be sufficient to pay all projected salary and benefits of employees and the rent, utilities, insurance and other costs of operating the institution's facilities for a period of one year. In no case shall these assets be less than \$50,000.

C. Licensed institution must demonstrate, at a minimum, it has sufficient financial resources to:

(1) fulfill its contracted obligations to students;

(2) meet all refund obligations incurred as a result of the cancellation and refund policy specified in these rules; and

(3) meet the school's operational expenses and maintain its financial obligations.

D. An institution with seven hundred fifty thousand dollars (\$750,000) or more in gross annual tuition revenue and all federal Title IV financial aid institutions shall submit, on a schedule set by the [commission] department, an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act (61-28B-1 et seq. NMSA 1978 as amended).

E. An institution with

gross annual tuition revenue of two hundred fifty thousand dollars (\$250,000) or more but less than seven hundred fifty thousand dollars (\$750,000) shall submit, on a schedule set by the [commission] department, either an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act (61-28B-1 et seq. NMSA 1978 as amended) or a review of financial statements prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act.

F. An institution with gross annual tuition revenue of less than two hundred fifty thousand dollars (\$250,000) shall submit on a schedule set by the [commission] department either an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act (61-28B-1 et seq. NMSA 1978 as amended), a review of financial statements prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, or an income statement and balance sheet in the format provided by the [commission] department and certified as correct by the institution. In addition to the audit report and management letter, the review of financial statements, or the income statement and balance sheet as described in this paragraph, the institution shall submit copies of business tax returns and bank statements for the most current year.

G. Institutions licensed by the [commission] department shall maintain standard, commercial liability insurance, worker's compensation insurance, and property insurance sufficient to protect students, employees, and other citizens from hazards in the institution's facilities. Where appropriate, institutions shall have liability insurance covering students involved in internships at sites/locations other than the institution.

H. The [commission] department will include consideration of up to three years of financial stability history when considering action against a licensed institution for failure to meet standards of financial stability.

I. In determining financial stability the [commission] department shall review all financial information submitted by an applicant.

J. In the case where an institution submits an audit report and management letter provided by a certified public accountant, the [commission] department shall normally accept the report as accurate and rely on the auditor's professional responsibility to evaluate and to make known whether there is substantial doubt about the entity's ability to continue as a going concern for a reasonable period

of time, not to exceed one year beyond the period of the financial statement being audited; and

K. In determining stability of an institution providing a compiled report, the [commission] department shall review the following areas:

- (1) financial statement analysis;
- (2) ability to meet current obligations;

(3) insurance coverage;

(4) review of conditions and events.

L. The following are examples of conditions and events that may be considered in this review:

M. Negative trends — recurring operating losses, working capital deficiencies, negative cash flows from operating activities, unpaid past due taxes, unpaid past due tuition refunds, adverse key financial ratios;

N. Other indicators — default on loan or similar agreements, restructuring of debt, non-compliance with statutory capital requirements, inability to obtain a bond, untimely reporting of financial information, need to seek new sources or methods of financing or to dispose of substantial assets;

O. Internal matters — work stoppage or other labor difficulties, substantial student complaints involving financial concerns, substantial dependence on the success of a particular project, uneconomic long-term commitments, need to significantly revise operations; and

P. External matters — legal proceedings, legislation or similar matters that might jeopardize an institution's ability to operate; loss of accreditation; loss of a principal customer or supplier; uninsured or underinsured catastrophe, such as fire, earthquake or flood.

Q. If considerable concern is established as to the institution's ability to maintain its operation, [commission] department staff will contact the school to obtain additional information that may influence the institution's financial picture:

(1) if concerns are not addressed through the additional information requested, an internal financial analyst will conduct a second financial review; and

(2) if after the second review, substantial doubt remains about the institution's ability to continue, [commission] department may contract for further independent review of the records.

R. Following appropriate review and based on the determination of the [commission] department:

(1) the institution may be approved for operation, or

(2) the institution may be placed on probationary status and required to sub-

mit a "management plan of action", or

(3) the [commission] department may take appropriate actions to forward the file to the attorney general's office for issuance of a notice of contemplated action to deny licensure.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 2-15-00, 5.100.2.13 NMAC - Rn & A, 5 NMAC 100.2.13, 5-15-01; A, 7/31/05]

#### 5.100.2.14 QUALIFICATIONS OF FACULTY:

A. Accredited institutions shall be subject to the requirements of their accrediting agencies regarding the qualifications of their faculty.

B. For non-accredited institutions, each member of the teaching faculty must have an educational background, including licensure and/or occupational certification or credential, and experience appropriate to his or her teaching assignment. Faculty degrees, licensure, certification, and credentials must be in the appropriate field of instruction unless the institution demonstrates to the satisfaction of the [commission] department on an individual basis that alternative qualifications are sufficient.

(1) Faculty providing instruction leading to an undergraduate certificate, diploma, or other course of study less than a degree and in a subject not normally transferable to a degree program must have at least the vocational credential for which their students are studying, granted by an accredited institution, unless the institution demonstrates to the satisfaction of the [commission] department that alternative qualifications are sufficient.

(2) Faculty providing instruction in general education courses must hold a baccalaureate or graduate degree from an accredited institution that includes appropriate education in the specific courses being taught. "Appropriate education" is defined as 15 semester hours of instruction or the quarter hour equivalent.

(3) Faculty teaching non-general education transfer courses (i.e., courses in subject areas where work toward a credential carries transfer credit toward higher degrees - business, technology, and a growing number of other fields) or courses in a degree program must hold degrees in the field of instruction from an accredited institution at a minimum one degree level higher than the level of instruction, and in no case less than a baccalaureate unless the institution demonstrates to the satisfaction of the [commission] department that alternative qualifications are sufficient.

(4) Unless approved by the [commission] department, no more than twenty percent (20%) of the faculty of an institution may be employed under alternative

qualifications. The following are guidelines for "alternative qualifications":

(a) At the undergraduate certificate/diploma level of instruction, hold an associate degree or higher out of field and five or more years of documented current on-the-job experience in the subject to be taught, or hold a high school diploma or its equivalent and ten or more years of documented current on-the-job experience in the subject to be taught.

(b) At the associate degree level of instruction, hold a baccalaureate degree or higher out of field and five or more years of documented current on-the-job experience in the subject to be taught, or hold an associate degree out of field, and ten or more years of documented, current, on-the-job experience in the subject to be taught.

(c) At the baccalaureate degree level of instruction, hold a baccalaureate degree or higher out of field and five or more years of documented, current, on-the-job experience in the subject to be taught.

(d) At the master's degree level of instruction, hold a master's degree or higher out of field and five or more years of documented, current, on-the-job experience in the subject to be taught.

(e) At the doctoral degree level of instruction, hold a doctoral degree or higher out of field and five or more years of documented, current, on-the-job experience in the subject to be taught.

C. For each proposed degree offering, the institutions shall employ at least one faculty member with the appropriate training who shall have the responsibility for providing oversight of the instructional program.

D. Faculty shall be sufficient in number to provide appropriate instruction and attention to the work of students of the institution. Continuity of instruction for a given course is expected. Except in self-paced courses, repeated instances in which the instructor of a course is changed more than once during the course may provide grounds for review of the instructional operations of the institution.

E. All institutions shall maintain a file open to inspection by the [commission] department or its representative confirming the academic status and adequacy of each faculty member to meet the instructional demands of his or her assignment. Such files shall at a minimum include: (a) the results of periodic student and peer/supervisor assessment of teaching; (b) original official transcripts of record sent directly to the hiring institution from institutions issuing the faculty member a degree and appropriate license/certification demonstrating the educational qualifications of the faculty member; (c) documenta-

tion of appropriate experience for faculty members with alternative qualifications; and (d) a separate file available for review containing documentation regarding all complaints lodged against the faculty member during the prior twelve months.

F. All institutions shall provide evidence of ongoing professional development and a professional development plan for all faculty. This evidence shall be maintained in a file open to inspection by the [commission] department or its representative confirming date(s), location(s) and topic(s) of completed professional development programs.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 2-15-00, 5.100.2.14 NMAC - Rn & A, 5 NMAC 100.2.14, 5-15-01; A, 7/31/05]

#### 5.100.2.15 INSTITUTIONAL ADVISORY COMMITTEE(S):

A. As a condition of licensure, an institution must demonstrate to the [commission] department that it maintains and regularly consults one or more advisory committees or boards composed of persons appropriately qualified to advise the institution regarding program(s) offered or under consideration. Members of advisory committees may not be employees of the institution.

B. For institutions offering primarily vocational/technical or other employment-related programs, the advisory committee(s) will normally be consulted by the institution for assistance in assessing the employment needs of the community (ies) served by the institution and the adequacy of the institution's program(s) and staffing to meet these needs, including periodic assessment of the success of these programs and their graduates.

C. For non-accredited degree-granting institutions, the advisory committee(s) will normally be consulted regarding the content of academic programs and acceptance of such programs in employment settings and in other academic settings.

D. The institution shall maintain a file with appropriate documentation of the meetings and actions of the advisory committee(s) which shall be available for inspection on request. This file shall contain at a minimum:

- (1) names, addresses and telephone numbers of committee members; and
- (2) minutes from all committee meetings within the past twenty-four (24) months.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 5.100.2.15 NMAC - Rn, 5 NMAC 100.2.15, 5-15-01; A, 7/31/05]

#### 5.100.2.16 PROGRAMS, CURRICULUM, EQUIPMENT AND FACILITIES:

A. Non accredited institutions proposing to change existing programs or add new degree programs to their curriculum shall submit application to the [commission] department for approval prior to enrolling students.

B. Accredited institutions shall be governed by their accrediting agencies in making changes or additions to their programs. The [commission] department shall be formally notified of all program changes/additions.

C. A new applicant for licensure will be approved to offer no more than six degree programs during its first two years of operation.

D. Each branch which is not located in the same state as its parent campus or which does not offer substantially the same curriculum as is offered at the parent campus shall be considered to be a separate private institution and must obtain a separate license to operate.

E. For each program and course of instruction offered by an institution, a current, detailed outline, syllabus, or curriculum guide shall be available to students and to representatives of the [commission] department from instructors or administrators of the institution. Such materials shall accurately describe the objectives, content, and methods of the program or course.

F. The objectives, content, and methods of each program and course of instruction shall meet generally accepted standards of quality, as demonstrated by endorsement of the institution's advisory committee(s) (see Section 15, above) and an authorized representative for an accrediting agency or other qualified reviewers as approved by the [commission] department.

G. Any equipment and facilities utilized by a program shall be reasonably current in comparison to those of other institutions and intended sites of employment, shall be sufficient for the number of students using them, and shall be appropriate to the objectives set for the program. Equipment and facilities shall meet all applicable standards for safety and sanitation.

H. For vocational/technical programs, institutions shall be able to demonstrate that each program is designed to provide training for an occupation that is recognized in New Mexico and that the training provided is sufficient in length and quality to prepare students for immediate employment in the occupation(s).

I. Evidence of satisfactory/appropriate health and fire inspections must be on file. Where inspections are not satisfactory, the institution shall have on file a corrective plan.

J. The institution should provide evidence of compliance with regu-

lations pursuant to the American with Disabilities Act (ADA).

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 5.100.2.16 NMAC - Rn, 5 NMAC 100.2.16, 5-15-01; A, 5/15/02; A, 7/31/05]

#### 5.100.2.17 STUDENT SUPPORT SERVICES:

A. Financial aid. Institutions offering financial aid to students must employ personnel qualified to administer the financial aid programs according to the regulations of all cognizant agencies.

B. Academic counseling and progress. Institutions shall provide adequate counseling for students regarding their academic progress. Students shall receive warning when their academic status is at risk and shall be given clear information about their academic status and whatever actions are needed to maintain satisfactory progress.

C. The institution's catalog and other publications of the institution shall clearly inform students about the institution's standards for academic progress and any academic counseling and support services available to students.

D. Employment counseling and placement. Institutions offering programs that are primarily vocational/technical or occupational in nature shall provide appropriate services that assist students in locating and qualifying for employment opportunities within the community served by the institution. Such services must be provided at no additional charge to students. No institution shall be expected to provide employment counseling and placement services beyond provision of academic and financial aid transcripts for more than one year following a student's receipt of a diploma, certificate, or degree, except by such policy of the institution.

E. Academic and financial aid transcripts. As a condition of licensure by the [commission] department, an institution agrees to provide students with access to their academic transcripts in perpetuity after a student has departed from the institution. Such records shall be accessible either through the institution, a successor institution, or through the New Mexico state records center and archives or a comparable retrieval facility. An institution shall provide access to financial aid transcripts for at least five (5) years after a student has departed from the institution or for whatever period is required by federal law or regulation or by rules of the New Mexico student loan guarantee corporation, whichever is longest.

F. The method by which students and graduates may obtain transcripts shall be described clearly in the institution's catalog or in other documents provided to students.

[2-27-85, 6-30-92, 7-1-94, 5.100.2.17 NMAC - Rn, 5 NMAC 100.2.17, 5-15-01; A, 7/31/05]

**5.100.2.18 ADVERTISING, RECRUITMENT AND ADMISSION OF STUDENTS:**

A. All advertisements and promotional literature must be truthful regarding the content of an institution's educational program(s), the duration of the program(s), student attributes and skills needed for successful completion of the program(s), and costs of the program(s). An institution shall use no advertisements or promotional materials that are false, deceptive, inaccurate, or misleading.

B. Prior to a student signing a financial aid agreement, each student must be informed in writing regarding his or her obligations associated with receipt of financial aid and the institution must take reasonable steps to assure that the student understands that obligation.

C. Advertisements and promotional literature shall not contain promises of job placement or employment, either explicitly or implicitly, but may refer to an institution's services to assist students in obtaining employment. Advertisements shall clearly indicate by their content and location in media that the institution is offering education or training and may not either explicitly or implicitly suggest that the institution is offering employment. "Blind" advertising is prohibited.

D. An institution advertising salary ranges or averages for its graduates must have on file and available to inspection by students, the [commission] department, or their representatives current and accurate data that includes New Mexico employees and that validates such claims.

E. An institution licensed by the [commission] department may not use terms such as "accredited," "endorsed," or "recommended" in reference to its approval by the [commission] department but may use the phrase "licensed by the New Mexico [commission] higher education department" in its advertising and promotional literature. Such use shall indicate the [commission's] department's licensure of the institution but shall not state nor suggest [commission] department approval or endorsement for any particular program offered by the institution.

F. An institution shall not advertise the transferability of its courses or programs to a regionally accredited institution unless it has signed transfer agreements with that institution.

G. An institution shall not include in its advertising or promotional materials any photograph or other illustration of facilities unless those facilities serve

predominantly as sites of instruction or related activities provided by the institution, either in New Mexico or in other states. Photographs or other illustrations must accurately depict the size and condition of any facilities or equipment illustrated.

H. No person shall for a fee solicit enrollment at an institution who is not employed by and under supervision of the institution. The institution shall be responsible for the representations of its employees.

I. Prospective students shall not be solicited by any representative of an institution on the sites of any government agency such as motor vehicle registration offices, unemployment offices, or public assistance offices. However, leaflets or other promotional material may be made available at such sites.

J. Prospective students shall not be solicited by any representative of an institution on the site of any public school, except at the invitation of school personnel. No institution shall offer or provide financial inducement to any public school in return for permission to solicit students.

K. No institution shall solicit the enrollment of any student who is currently attending another institution in New Mexico by using any inducement of greater financial assistance in meeting the costs of education.

L. The institution shall retain for a minimum of 3 years, all forms of advertising and make them available on request.

M. An institution is prohibited from making offers of training in any form or manner without including therein the full name under which it is licensed. Permutations of its name, e.g., initials, or shortened name or nicknames, cannot be employed without prior written permission of the [commission] department.

N. An institution may not make claims to or advertise an accreditation status if the accrediting agency is not recognized by the U.S. department of education. [2-27-85, 6-30-92, 7-1-94, 9-30-96, 5.100.2.18 NMAC - Rn, 5 NMAC 100.2.18, 5-15-01; A, 7/31/05]

**5.100.2.19 QUALIFICATIONS OF STUDENTS FOR ADMISSION:**

A. No student shall begin a certificate or diploma program who has not received a high school diploma or the equivalent or who has not demonstrated ability to benefit from the program through a process of assessment that meets standards of the U.S. department of education or the [commission] department or who is participating in a concurrent enrollment program with a secondary school.

B. Institutions enrolling students who are of compulsory school age or who are concurrently attending an elementary or secondary school shall have in their possession a signature or other written confirmation by elementary/secondary officials or by the student's parent or guardian that it is in the best interest of the student to be enrolled.

C. Institutions using an ability-to-benefit admission option shall provide the [commission] department with a clear and detailed statement describing their ability-to-benefit assessment programs (including cut off scores and validity data for any test used) and shall be able to demonstrate that ability-to-benefit assessment is performed in a consistent and valid manner.

D. No student shall be admitted to an associate degree or baccalaureate degree program who has not received a high school diploma or the equivalent.

E. No student shall be admitted to a graduate degree program who has not received a baccalaureate degree from an institution accredited by an agency recognized by the U.S. department of education, or received a baccalaureate degree from a non-accredited institution licensed by the [commission] department or by the cognizant state agency in another state, or qualified in an alternative manner approved by the [commission] department.

F. An institution shall in its catalog or other appropriate materials provide prospective students with a description of the criteria and methods used to admit or reject students and methods used to assess their ability to complete program requirements.

G. An institution shall periodically prepare an analysis demonstrating the relationship between (a) its system for assessing ability to benefit and (b) the likelihood of students successfully completing a program at the institution. Such analyses shall be prepared in a manner acceptable to the [commission] department and a report of each analysis shall be provided to the [commission] department.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 5.100.2.19 NMAC - Rn, 5 NMAC 100.2.19, 5-15-01; A, 7/31/05]

**5.100.2.20 PAYMENT OF TUITION AND FEES; REFUNDS OF TUITION AND FEES:**

A. Cooling off period. Any student signing an enrollment agreement or making an initial deposit or payment toward tuition and fees of the institution shall be entitled to a cooling off period of at least three work days from the date of agreement or payment or from the date that the student first visits the institution,

whichever is later. During the cooling off period the agreement can be withdrawn and all payments shall be refunded. Evidence of personal appearance at the institution or deposit of a written statement of withdrawal for delivery by mail or other means shall be deemed as meeting the terms of the cooling off period.

B. Refunds prior to commencing instruction. Following the cooling off period but prior to the beginning of instruction, a student may withdraw from enrollment, effective upon personal appearance at the institution or deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than \$100 or 5% in tuition or fees, whichever is less, as registration charges.

(1) In the case of students enrolling for non-traditional instruction, a student may withdraw from enrollment following the cooling off period, prior to submission by the student of any lesson materials and effective upon deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than \$100 or 5% in tuition or fees, whichever is less, as registration charges or an alternative amount that the institution can demonstrate to have been expended in preparation for that particular student's enrollment.

(2) Upon request by a student or by the [commission] department, the institution shall provide an accounting for such amounts retained under this standard within five work days.

C. Refunds following commencement of instruction. An institution licensed by the [commission] department shall adhere to either the following tuition refund schedule or to a schedule established by the institution's accrediting body and recognized by the U.S. department of education. Exceptions may be made on a case by case basis by the [commission] department or its designee.

D. A student may withdraw after beginning instruction or submitting lesson materials, effective upon appearance at the institution or deposit of a written statement of withdrawal for delivery by mail or other means. In accordance with the most recent U.S. department of education guidelines, the institution shall be entitled to retain, as registration charges, no more than \$100 or 5% of tuition and fees, whichever is less. Additionally, institutions are eligible to retain tuition and fees earned and state gross receipts taxes at a pro-rata amount according to the following schedule, as outlined by the U.S. department of education:

Date of student withdrawal as a % of the enrollment period for which the student was obligated	Portion of tuition and fees obligated and paid that are eligible to be retained by the institution
On 1 <sup>st</sup> class day	0%
After 1 <sup>st</sup> day; within 10%	10%
After 10%; within 25%	50%
After 25%; within 50%	75%
50% or thereafter	100%

E. "Enrollment period for which the student was obligated" means a quarter, semester, or other term of instruction followed by the institution which the student has begun and for which the student has agreed to pay tuition.

F. Tuition/fee refunds must be made within 30 calendar days of the institution receiving written notice of a student's withdrawal or of the institution terminating enrollment of the student, whichever is earlier.

G. Upon request by a student or the [commission] department, the institution shall provide an accounting for such amounts retained under this standard within five workdays.

H. The institution's payment and refund policies shall be clearly articulated in the institution's catalog and as part of all enrollment agreements.

I. Tuition and fee charges shall be the same for all students admitted to a given program for a given term of instruction. An institution may not discount its tuition and fees charged to individual students as an incentive to quick enrollment or early payment. An institution may negotiate special rates with business, industrial, governmental, or similar groups for group training programs and may establish special rates for students who transfer between programs. An institution may charge a reasonable carrying fee associated with deferred or time payment plans.

J. In the case of vocational/technical/occupational programs, an institution shall be able to demonstrate that its tuition and fees for completing each program are reasonable in relation to the earnings that a graduate or completer of the program can be reasonably expected to earn.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 5.100.2.20 NMAC - Rn & A, 5 NMAC 100.2.20, 5-15-01; A, 7/31/05]

**5.100.2.23 STUDENTS' ACADEMIC PROGRESS AND RECORDS:**

A. An institution shall have a clear statement of what constitutes satisfactory academic progress toward completion of a program and shall make such statement available to all students.

B. An institution shall have a clear policy and procedure for assessing the progress of students toward their program objectives. Records of the institution, including individual student records, shall reflect consistent application of such policy and procedure.

C. An institution's policy regarding academic progress shall include a procedure for determining when a student is unable satisfactorily to complete the requirements of a program, for notifying the student in an appropriate manner and terminating enrollment in a manner that minimizes the financial cost to the student.

D. Records of student progress shall be maintained in the official student file and available for inspection by each student and by the [commission] department or its representative(s).

E. Upon completion of a program of study or withdrawal by a student, an institution shall prepare for that student an appropriate summary transcript of record, including:

(1) designation of the program(s) of study for which the student has been enrolled;

(2) each course completed by the student and the grade or other indication of performance assigned; and

(3) a dated statement of completion of the program and award of any certificate, diploma, or degree earned by the student.

F. Transcript records are subject to the maintenance and access provisions specified in Subsection E of 5.100.2.17 NMAC, above.

G. An institution offering placement services for its students and/or graduates shall maintain records listing, for each student who has been assisted, each placement conference held with the student and each placement contact made in behalf of the student. Such records must be maintained for a minimum of three years after the student departs from the institution.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 5.100.2.23 NMAC - Rn, 5 NMAC 100.2.23, 5-15-01; A, 7/31/05]

**5.100.2.25 COMPLAINTS AGAINST THE INSTITUTION:**

A. An institution licensed by the [commission] department shall have



and make available to all students a written procedure that describes in detail how students or other parties may register a complaint or grievance, how the institution will investigate the complaint, and how the institution will attempt to resolve the complaint. Such policies shall at a minimum include the following components:

(1) requirement that students or other parties with complaints or grievances against an institution first seek to resolve their complaint or grievance directly with the institution;

(2) a time frame within which the institution will investigate the complaint and respond to the complainant;

(3) assurance of the involvement of a person who will serve as an impartial representative of the institution but not be directly involved in the area of the complaint;

(4) assurance that no adverse action will be taken against the complainant for registering the complaint; and

(5) identification of the [commission] higher education department as the agency to be contacted in cases where a complaint cannot be resolved.

B. The institution shall maintain adequate records of all complaints and their resolutions for a period of not less than three years.

C. Complaint to the [commission] department. A student or other party not satisfied with an institution's resolution of a complaint may submit a complaint to the [commission] department in writing on a form provided by the [commission] department. A student must file a complaint with the [commission] department within three (3) years of his/her last date of enrollment.

D. Upon receipt of a written complaint, the [commission] department or its authorized representative shall verify that the complaint involves one or more standards for licensure of the institution and is therefore a legitimate subject of complaint to the [commission] department. If the complaint is determined to be legitimate, the [commission] department or its authorized representative shall forward the complaint to the institution for a written response and shall encourage resolution of the complaint between the student and the institution. The institution shall have thirty (30) days to forward its response to the [commission] department. A copy of the institution's response will be forwarded to the student with a request that the student indicate satisfaction or dissatisfaction with the response.

E. In attempting to resolve a verified complaint, the [commission] department or its authorized representative may, but is not obliged to, convene a hear-

ing and shall give written notice to the institution and to all persons involved, regarding the time, date, and place of the hearing. Such hearings, if held, shall be informal and for the purpose of determining the facts surrounding the claim and, if the claim is correct, to effect a settlement by persuasion and conciliation.

F. In the event that the party complained against refuses to attend the hearing or effect the settlement of any claim determined by the [commission] department to be correct, the [commission] department shall invoke its powers to take such action as shall be necessary for the indemnification of the claimant.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 2-15-00, 5.100.2.25 NMAC - Rn, 5 NMAC 100.2.25, 5-15-01; A, 7/31/05]

#### 5.100.2.26 EVALUATION AND APPRAISAL OF PROGRAMS AND THE INSTITUTION:

A. The institution shall maintain a program of periodically assessing the satisfaction of its graduates and shall make available to the [commission] department all reports of these assessments prepared during the past five years. The institution may submit to the [commission] department additional measures of institutional success such as the results of surveys of employers of recent graduates.

B. The institution shall have a written plan/process for keeping its courses current.

C. The institution shall have a plan for faculty improvement in terms of content knowledge and relevant instructional techniques. The institution shall provide evidence that the plan is in operation.

D. The institution shall have a written plan for using new and appropriate technologies to support instruction.

E. Any institution subject to federal reporting of student outcomes such as graduation rates or other measures required under the Student-Right-to-Know Act shall provide the [commission] department with copies of all reports submitted to the cognizant federal agency.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 5.100.2.26 NMAC - Rn, 5 NMAC 100.2.26, 5-15-01; A, 7/31/05]

#### 5.100.2.27 ADDITIONAL STANDARDS FOR DEGREE-GRANTING INSTITUTIONS:

"The [commission] department shall promulgate and file, in accordance with the State Rules Act, rules and regulations that provide standards for the award of associate, baccalaureate, master's and doctoral degrees..." [Section 21-23-6.2.C NMSA 1978 as

amended]. In addition to the general standards for licensure, institutions awarding degrees must meet the following standards.

A. Program requirements:

(1) new degree-granting institutions making application on or after September 30, 1996 will be required to obtain within three years, accreditation with the distance education and training council (DETC) or another accrediting agency recognized by the United States department of education and the [commission] department as an authority on the quality of institutions awarding such degrees. Institutions operating prior to September 30, 1996 shall be exempt from this requirement;

(2) institutions proposing to add degree programs to their curriculum shall submit application to the [commission] department for degree approval prior to enrolling students;

(3) associate degree programs must include both technical/vocational and general education instruction. No associate degree program shall consist of less than 60 semester credit hours of study or the equivalent;

(4) associate of applied science degrees, associate of occupational studies degrees or comparable appellations must be based upon the institution's certification that the recipient is prepared for immediate employment in a specified career field and must be comprised primarily of technical/vocational study;

(5) associate of arts or associate of science degrees must be based upon the institution's certification that the recipient is prepared both for immediate employment in a specified career field and transfer to another institution for more advanced study; associate of arts and associate of science degree programs will normally consist of approximately equal numbers of technical/vocational and general education courses;

(6) baccalaureate and graduate degree programs must be comparable in quality to those offered by institutions operating in New Mexico that are accredited by agencies recognized by the United States department of education as authorities regarding the quality of such degree programs; award of degrees must be based upon the institution's certification that the recipient has met standards of performance and competency comparable to the standards of institutions so accredited;

(7) at a minimum, issuance of a baccalaureate degree shall require at least 120 semester hours of academic credit or the equivalent; the degree program must include at least 35 semester hours of general education core requirements;

(8) at a minimum, issuance of a master's degree shall require at least 30

semester hours of academic credit or the equivalent beyond a baccalaureate degree;

(9) a minimum, issuance of a doctoral degree shall require at least 90 semester credit hours of academic credit or the equivalent beyond a baccalaureate degree or at least 60 semester credit hours or the equivalent beyond the master's degree and shall require successful completion and defense of a major independent project, involving original research or application of knowledge;

(10) the research/project shall include a review of the literature, bibliography, and citations and shall otherwise conform to a recognized writing style manual;

(11) a research/project committee composed of no fewer than three qualified readers shall review the project at various stages of development; documentation shall be provided to support this requirement;

(12) a final defense of the project shall be required; the committee members shall be present and participate in the process; the final version of the research/project shall be accompanied by the original signature of each committee member;

(13) the institution shall maintain a copy of the final report of the research/project and make it available upon request;

(14) the research component shall provide no more than 30 percent of the degree credit requirement; and

(15) all baccalaureate and graduate degree programs at an institution licensed by the [commission] department must be reviewed and approved periodically by teaching faculty of the institution; in non-traditional institutions, the institution must be able to demonstrate that representatives of the teaching faculty designated by the teaching faculty have, at intervals no longer than five years, provided such review and approval for each program offered.

B. Academic support resources:

(1) an institution offering degrees shall provide or otherwise assist students in gaining access to resources needed for completion of their degree programs, including library materials, laboratories, equipment and materials, and relevant experiences needed to meet program requirements; no institution shall absolve itself from this requirement solely by referring students to the resources of other private or public institutions or facilities, except by written agreement with such institutions or facilities; and

(2) in assessing this requirement the following will apply:

(a) the institution shall have provisions for ensuring that students have access to appropriate learning resources;

(b) the institution shall ensure that

resources are adequate to support the programs;

(c) the institution shall insure that students are adequately informed about learning resources available to them and how to access such resources and services;

(d) the institution shall make training available for accessing learning resources; and

(e) the institution shall ensure that resources are delivered within a reasonable period of time.

C. Credit for life experience: if an institution offers academic credit for life experience or employment related experience, the institution must have and adhere to the following requirements:

(1) applicable life experience shall be limited to work experience, military experience or a combination of the two;

(2) no more than 30 percent of the credit in a student's degree program may be awarded for life or work experience;

(3) the institution shall utilize the methodologies outlined by the council for adult and experimental learning (CAEL) for evaluating life experience or shall have in place a comparable plan which describes procedures and requirements for the assessment of experiential learning;

(4) the institution shall maintain documentation for at least three years of all materials used to assess and award credit for experiential learning;

(5) the institution shall clearly indicate on the student degree plan the course(s) for which the experiential learning is being substituted;

(6) the institution shall evaluate extra institutional learning only in subject areas in which it has or can arrange for faculty expertise or where it can rely on nationally validated examinations or other procedures for establishing credit equivalencies; and

(7) no life experience credit shall be awarded toward the doctorate degree beyond master's level study.

D. Special requirements for non-campus-based instruction: when evaluating the suitability for licensure of institutions offering nontraditional instruction, the [commission] department shall consider the extent to which instructional materials and procedures are:

(1) suitable for students to learn by self-direction within whatever guidance is provided by the institution;

(2) suitable for students typically admitted to the institution, considering students' reading ability, educational backgrounds, and interests;

(3) organized in a manner that assists students in mastery of the necessary information and skills required to meet the stated objectives of the program and the types of further learning or employment sit-

uations for which the student is being prepared;

(4) designed to assist students in gaining access to those materials, equipment, facilities, or experiences that are characteristic of comparable programs provided through traditional means and that are generally considered essential to earning an award for completion of such a program;

(5) designed to permit students to assess their progress and to apply knowledge learned, for example, by using student checklists, examinations, sample problems, exercises, internships or cooperative work experiences, or other means; and

(6) accompanied by valid and secure means of evaluating student performance, so that records of progress, grades, and/or awards for program completion remain comparable to those characteristic of sound traditional instructional programs.

E. Principles of good practice for electronically offered academic degree and certificate programs: quality is an essential component of the [commission's] department's agenda for higher education in New Mexico. The [commission] department endorses the principles of good practice established by the western interstate [commission] department for higher education (WICHE). It is expected that all distance learning courses and programs meet the following principles:

(1) each program of study results in learning outcomes appropriate to the rigor and breadth of the degree or certificate awarded;

(2) an electronically offered degree or certificate program is coherent and complete;

(3) the program provides for appropriate real-time or delayed interaction between faculty and students and among students;

(4) qualified faculty provide appropriate oversight of the program electronically offered;

(5) the program is consistent with the institution's role and mission;

(6) review and approval processes ensure the appropriateness of the technology being used to meet the program's objectives;

(7) the program provides faculty support services specifically related to teaching via an electronic system;

(8) the program provides training for faculty who teach via the use of technology;

(9) the program ensures that appropriate learning resources are available to students;

(10) the program provides students with clear, complete, and timely information on the curriculum, course and degree requirements, nature of faculty/stu-

dent interaction, assumptions about technological competence and skills, technical equipment requirements, availability of academic support services and financial aid resources, and costs and payment policies;

(11) enrolled students have reasonable and adequate access to the range of student services appropriate to support their learning;

(12) accepted students have the background, knowledge and technical skills needed to undertake the program;

(13) advertising, recruiting, and admissions materials clearly and accurately represent the program and the services available;

(14) policies for faculty evaluation include appropriate consideration of teaching and scholarly activities related to electronically offered programs;

(15) the institution demonstrates a commitment to ongoing support, both financial and technical, and to continuation of the program for a period sufficient to enable students to complete a degree/certificate;

(16) the institution evaluates the program's educational effectiveness, including assessments of student learning outcomes, student retention, and student and faculty satisfaction; students have access to such program evaluation data; and

(17) the institution provides for assessment and documentation of student achievement in each course and at completion of the program.

F. Licensed, private degree-granting institutions may issue honorary degrees or certificates. An honorary degree/certificate shall identify in its title or name that it is an honorary degree/certificate and shall bear such on its face.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 2-15-00, 5.100.2.27 NMAC - Rn & A, 5 NMAC 100.2.27, 5-15-01; A, 5/15/02; A, 7/31/05]

#### **5.100.2.28 ISSUANCE OF A LICENSE:**

A. Application for and acceptance of a license constitutes an agreement by the institution to abide by each of the requirements specified in 5.100.2. NMAC pertinent to award of the license.

B. A "provisional approval to operate" (PAO) will be granted annually for up to two years to new applicants meeting basic regulation requirements. The PAO is not a license, and the issuance of the PAO does not imply automatic eligibility for licensure. During operation under the provisional status, the school must demonstrate its ability to meet all standards and must provide evidence of financial stability. By the end of the first two years of operation, the appropriate administrative staff and facilities must be in place. Site reviews will

be conducted during the initial start-up phase and prior to the final review for licensure.

C. In making its decision regarding issuance of a license, the [commission] department may consider curricula and other descriptive and evaluative information submitted by the institution; information gathered during visits to the institution by representatives of the [commission] department; and information supplied by federal or state agencies, accrediting agencies, licensing boards, or other entities or their representatives judged by the [commission] department to be knowledgeable about the institution.

D. The [commission's] department's determination shall normally be based upon, but need not be limited to consideration of the following factors as defined by the [commission] department:

(1) adequacy of the administration of the institution;

(2) adequacy of the financial condition of the institution;

(3) adequacy of the curriculum and program completion requirements of the institution and of its programs;

(4) adequacy of qualifications and performance of the teaching faculty of the institution;

(5) adequacy of the support services needed by and available to students, including access to equipment and materials needed in specific programs;

(6) adequacy of the institution's policies and procedures for admitting students, for advising and counseling students, and for informing students of their progress;

(7) adequacy of the institution's policies and procedures regarding payment and refund of tuition and fees and regarding complaints by students or their representatives or by other citizens with grievances against the institution; and

(8) the institution's effectiveness, as reflected in student outcomes such as program completion rates, withdrawal rates, and indices of satisfaction from students, employers, and other knowledgeable sources;

(9) has been renumbered to Subsection E of 5.100.2.28 NMAC.

(10) has been renumbered to Subsection F of 5.100.2.28 NMAC.

E. The [commission] department shall determine an appropriate schedule on which to evaluate each individual institution and the specific programs offered by that institution in order to evaluate compliance with these standards. Immediate evaluations of each individual institution will be conducted when:

(1) an institution involuntarily loses its accreditation status;

(2) the [commission] department

is notified of an institution's non-compliance with federal financial aid program regulations or the outcome of an audit from another state agency;

(3) the institution fails to renew its surety bond, or appropriate alternative in a timely manner;

(4) an institution is experiencing financial difficulties sufficient to threaten program quality;

(5) an institution has significant staff turnover;

(6) an institution fails to immediately notify the [commission] department of a change in ownership/management; or

(7) the [commission] department becomes aware of any other factor that could alter basis for licensure.

F. An institution licensed by the [commission] department may use the term "licensed," but may not use terms such as "accredited", "endorsed" or "recommended" in reference to its approval by the [commission] department.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 2-15-00, 5.100.2.28 NMAC - Rn, 5 NMAC 100.2.28, 5-15-01; A, 7/31/05]

#### **5.100.2.29 DENIAL OF A**

**LICENSE:** An applicant that fails to satisfy the requirements of Section 5.100.2.28 NMAC and/or fails to adequately address the specific criteria set forth in Subsection D of 5.100.2.28 NMAC shall be subject to denial of licensure. If the [commission] department contemplates denial of licensure to any applicant, the [commission] department shall commence proceedings pursuant to and in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-31 NMSA 1978.

[02-15-00, 5.100.2.29 NMAC - Rn, 5 NMAC 100.2.29, 5-15-01; A, 7/31/05]

#### **5.100.2.30 REVOCATION OF A LICENSE:**

A. The [commission] department may revoke an institution's license to operate or approval to offer a specific degree program(s) at any time, upon finding that:

(1) Any statement made in the institution's application for licensure is untrue;

(2) The institution has failed to maintain the faculty, facilities, equipment, or other necessary support for its program(s) of study on the basis of which the license or approval was granted; and

(3) The institution has failed to advise the [commission] department about significant factors which serve as a basis for licensure, such as:

(a) financial difficulties sufficient to threaten program quality;

(b) significant staff changes in a

short period of time;

(c) change of ownership/management;

(d) outcomes of audits by other state agencies;

(e) loss or lowering of accreditation status; or

(f) any other factor that could alter basis for licensure.

(4) The institution has failed to renew annual license in a timely manner.

(5) The institution has failed to comply with one or more standards of licensure established by the [commission] department or with applicable law.

B. Prior to revoking a license, the [commission] department, or its designee, shall give the institution notice of ten work days and shall provide an opportunity for the institution to demonstrate why the license should not be revoked.

C. At its discretion, the [commission] department, or its designee, may institute a probationary period of continued licensure for the institution during which time the institution must demonstrate its resolution of deficiencies to the satisfaction of the [commission] department. Under no circumstance shall this probationary period exceed one year.

D. If the institution fails to sufficiently demonstrate that its licensure should not be revoked, as provided by Subsection B of 5.100.2.30 NMAC, the [commission] department shall commence proceedings pursuant to and in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-31 NMSA 1978.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 2-15-00, 5.100.2.30 NMAC - Rn, 5 NMAC 100.2.30, 5-15-01; A, 7/31/05]

#### 5.100.2.31 ANNUAL FEES:

A. Initial licensure. Institutions seeking initial approval to operate in New Mexico shall provide all information on a form specified by the [commission] department and shall pay a fee in an amount set by the [commission] department for the first year of operation ending June 30. In setting the fee, consideration shall be given to the projected revenue of the institution in New Mexico and the projected cost of performing a review of the institution; provided, that the fee shall not be less than \$200 nor more than \$5,000. Exemptions: Institutions that are not regionally accredited and are seeking an "exemption from licensure" on or after September 30, 1996 shall pay an exempt application fee in an amount equal to the minimal licensure renewal fee, as outlined in Subsection B of 5.100.2.31 NMAC.

B. Licensure renewal. By July 1 of each year or as soon thereafter as requested by the [commission] department, each institution licensed by the [commis-

sion] department and wishing to continue to operate in New Mexico shall pay a fee in an amount set by the [commission] department or shall have reached agreement with the [commission] department regarding a schedule of payment. The fee shall be proportionate to the school's gross annual tuition revenue, excluding continuing education, during a period specified by the [commission] department; provided, that the fee shall not be less than \$200 nor more than \$5,000.

C. Late fee. The [commission] department will establish and impose an additional fee to be assessed each institution that has filed for renewal of its license but is more than twenty (20) working days delinquent in submission of its annual fee.

D. The [commission] department shall maintain and circulate a written summary of the factors and rates that are being observed in setting fees for licensure.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 2-15-00, 5.100.2.31 NMAC - Rn & A, 5 NMAC 100.2.31, 5-15-01; A, 7/31/05]

#### 5.100.2.32 SURETY BONDS:

A. Each institution licensed by the [commission] department shall maintain in force a surety bond or alternative surety accepted by the [commission] department, in an amount set by the [commission] department, and payable to the [commission] department.

B. The amount of the bond or alternative surety shall be sufficient to indemnify any student damaged as a result of fraud or misrepresentation by a licensed institution or as a result of the institution ceasing operation prior to its students having completed the programs for which they have contracted. If a licensed institution closes, the [commission] department may draw upon the bond to pay costs associated with preservation of student records.

C. The [commission] department shall establish the amount of bond required for each institution, taking into consideration factors such as the institution's size, number of students, and total income and assets of the institution within New Mexico. Provided that, in no case shall the bond be less than \$5,000 nor shall it exceed twenty percent of the institution's anticipated or actual gross annual tuition and fee revenue in New Mexico.

D. Surety bonds may be canceled only following delivery of written notice to the [commission] department no less than ninety calendar days prior to the date of cancellation. In case of cancellation, the institution shall provide the [commission] department with a like surety or acceptable alternative in order to maintain licensure.

E. Bonds provided by

institutions must be accompanied by the name, office address and phone number of the issuing company representative.

F. Alternative Forms of Surety. An institution may request a waiver from the bond requirement and provide to the [commission] department an explanation of the alternative form for which they are seeking approval. The [commission] department has the authority to accept or reject any request. Such alternative may be a cash deposit escrow account, irrevocable letter or credit, or similar alternative payable to the [commission] department in the amount equal to the bond requirement. [2-27-85, 6-30-92, 7-1-94, 9-30-96, 5.100.2.32 NMAC - Rn, 5 NMAC 100.2.32, 5-15-01; A, 7/31/05]

#### 5.100.2.33 CLOSURE OF INSTITUTIONS:

A. As a condition of licensure, an institution agrees that it will not cease operation within New Mexico without making appropriate provisions for the completion of programs by its students, if and when the institution ceases operations in New Mexico, or if and when the institution makes a substantial change of location within New Mexico.

B. An institution shall notify the [commission] department as soon as possible but in no case fewer than 30 calendar days prior to terminating or moving operations in New Mexico and shall present to the [commission] department a plan that provides for (a) completion of programs by its students; (b) preservation of student records, as prescribed in section 17, above; and (c) identification of the location of a responsible agent for the school for a period of at least one year following closure.

C. Prior to terminating or substantially moving operations in New Mexico, an institution shall arrange with another public or private institution(s) to complete the instruction of any currently enrolled students who will not have completed their programs at the time of closure or move. Such teach-out shall be arranged at no additional cost to the students beyond that originally agreed to by the student.

D. The [commission] department may find that teach-out arrangements are not feasible for students in one or more programs offered by the institution, in which case the institution shall refund all tuition and fees paid by the students in question for the current period of enrollment and shall provide appropriate transcripts and evaluations to assist students in transferring their work to another institution.

E. If any private institution discontinues its operation, the chief administrative officer shall file with the appropriate receiving agent, the original or legible true copies of all educational records

required by the agency. The ~~[commission department]~~ may seek a court order to protect and if necessary take possession of the records.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 2-15-00, 5.100.2.33 NMAC - Rn, 5 NMAC 100.2.33, 5-15-01; A, 7/31/05]

## NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.1.3 NMAC, Sections 1, 5, 6 and 8, effective July 31, 2005. This rule was also reformatted and renumbered from 5 NMAC 1.3 to comply with current NMAC requirements.

**5.1.3.1 ISSUING AGENCY:** State of New Mexico ~~[Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico 87501 4295, (505) 827-7383]~~ Higher Education Department [12/31/98; 5.1.3.1 NMAC - Rn & A, 5 NMAC 1.3.1, 7/31/05]

**5.1.3.5 EFFECTIVE DATE:** December 31, 1998, unless a later date is cited at the end of a section. [12/31/98; 5.1.3.5 NMAC - Rn & A, 5 NMAC 1.3.5, 7/31/05]

**5.1.3.6 OBJECTIVE AND PURPOSE:** Several laws passed by congress dealing with higher education call upon the governor of a state to designate an agency to administer various federal programs in the state. On several occasions, the governor of New Mexico has designated the ~~[commission on higher education]~~ higher education department to be responsible for administering federal programs dealing with higher education, teacher quality and adult basic education in New Mexico. In addition to having responsibility for administering certain acts, the staff is often called upon to serve on advisory committees dealing with other federal legislation and programs, both at the state and federal levels. The purpose of 5.1.3 NMAC is to describe the ~~[commission's]~~ higher education department's responsibilities for administering certain federal acts. [12/31/98; 5.1.3.6 NMAC - Rn & A, 5 NMAC 1.3.6, 7/31/05]

**5.1.3.8 [COMMISSION] HIGHER EDUCATION DEPARTMENT RESPONSIBILITIES:** In administering federal programs, the policy of the ~~[commission]~~ higher education department shall be to carry out its interpretation of the intent of applicable federal laws as well as to comply with the statute itself and applicable regulation.

A. The ~~[commission]~~

higher education department and its staff will render all reasonable assistance to institutions of higher education in carrying out its responsibility under any federal program. This reasonable assistance includes the preparation of applications for grants where necessary.

B. The ~~[commission]~~ higher education department staff shall stay informed of trends in federal programs and report to the ~~[commission]~~ secretary promptly any problem regarding any federal program concerning higher education.

C. The staff is authorized to attend U.S. department of education conferences when requested to participate.

~~[D. The commission will affirmatively seek changes in federal laws where changes are apparently needed, and the staff is to maintain avenues of communication with other states so as to be in a position to work together with regard to suggested amendments in federal acts which the commission supports.]~~

~~[E.] D.~~ The ~~[commission]~~ higher education department will comply with requests for information submitted by the U.S. department of education and to prepare whatever ~~[studies]~~ reports are required concerning both public and private institutions of higher education in the state in order to supply the U.S. department of education with the information ~~[it requests]~~ requested. [12/31/98; 5.1.3.8 NMAC - Rn & A, 5 NMAC 1.3.8, 7/31/05]

## NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.3.7 NMAC, Sections 1, 5 and 8, effective 7/31/2005. This rule was also reformatted and renumbered from 5 NMAC 3.7 to comply with current NMAC requirements.

**5.3.7.1 ISSUING AGENCY:** State of New Mexico ~~[Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico 87501 4295, (505) 827-7383]~~ Higher Education Department. [12/31/98; 5.3.7.1 NMAC - Rn & A, 5 NMAC 3.7.1, 07/31/05]

**5.3.7.5 EFFECTIVE DATE:** December 31, 1998, unless a later date is cited at the end of a section. [12/31/98; 5.3.7.5 NMAC - Rn & A, 5 NMAC 3.7.5, 07/31/05]

**5.3.7.8 REVIEW CRITERIA:**

A. The state educational institutions clearly have statutory authority to borrow money.

(1) Sections 6-13-1 through 6-13-26 NMSA 1978 authorizes each of the governing boards to issue and sell bonds for the purpose of erecting, purchasing or otherwise acquiring, altering, improving furnishing and equipping any necessary buildings or structures or acquiring any necessary land. Permanent fund income and income from the lease of the institutions lands may be pledged as security for the repayment of the bonds. Board of finance approval is required prior to the issuance and sale of bonds. Board of finance policy requires ~~[CHE]~~ higher education department approval prior to their consideration of any matter related to higher education.

(2) Section 6-17-1 through 6-17-13 NMSA 1978 authorizes the boards of regents of each of the state educational institutions to borrow money for the purpose of purchasing, erecting, altering, improving, repairing furnishing and/or the equipping of any income-producing dormitory, auditorium, dining hall, refectory, stadium, swimming pool, or any type of building including classroom buildings and administration buildings. For income-producing projects, the board of regents shall impose charges and student fees in the amount needed to retire the debt plus enough to operate and maintain the facility. Approval by the board of finance is required.

(3) Section 6-17-14 allows the pledge of additional revenues including the net income from all auxiliary facilities, land and permanent fund income, and lease and rental income.

(4) Various articles in Section 21 grant each individual board of regents authority to borrow money through the issuance and sale of bonds. For example, Section 21-7-13 NMSA 1978 states: That for the purpose of erecting, altering, improving, furnishing or equipping any necessary buildings at the university of New Mexico at Albuquerque, or for acquiring any necessary land for the use of said university, or for retiring the whole or any part of any series of bonds previously issued under the provisions hereof, or for any of such purposes, the board of regents of the university of New Mexico is hereby authorized to borrow money in conformity with the terms of this act (Sections 21-7-13 to 21-7-25 NMSA 1978).

(5) Section 21-7-19 describes the income pledged for redemption of building and improvement bonds as follows: "For the faithful and prompt payment of all interest and principal of said bonds as and when the same shall mature according to the tenor thereof, the issue thereof shall constitute an irrevocable pledge by said board of so much of each year's income from the permanent fund of the university of New Mexico in the hands of the treasurer of this state, as shall

be necessary to provide the interest and retirement fund herein mentioned, for the ensuing year, and to at all times fully and faithfully keep the same in not less than the amount necessary to pay the interest and principal maturing as aforesaid; and in addition thereto the issue of said bonds shall constitute an irrevocable pledge by said board of so much of each year's income from the income and current fund derived from the lease of such of its lands as remain unsold, as may be necessary to fully protect the interest and retirement fund for the ensuing year, and keep the same at all times in proper amount as herein provided."

(6) Similar provisions are included in Section 21 for each of the state educational institutions.

B. A proposal to issue revenue bonds must contain the following information:

(1) current bonded debt including debt service requirements and revenue sources being used to meet the principal and interest payments;

(2) amount of new bonds to be issued;

(3) projected bond retirement schedule;

(4) sources of revenue to be used for debt retirement;

(5) projects to be funded with bond issue proceeds.

C. Typical sources of revenue available for debt service include required student fees, net revenues from auxiliaries including athletics, lease and rental income, and land and permanent fund income. It is expected that bonds sold to finance income-producing facilities (auxiliary activities) will be retired without the use of land and permanent fund income. Since the use of land and permanent fund income for debt service reduces the amount of revenue available from that source for operating purposes, it increases the level of need from the general fund. Because of this legislative impact, the [CHE] higher education department shall report all revenue bond issue approvals to the legislative finance committee, particularly noting any proposed use of land and permanent fund income.

[12/31/98; 5.3.7.8 NMAC - Rn & A, 5 NMAC 3.7.8, 07/31/05]

## NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.3.9 NMAC, Sections 1, 5, 6, 8 and 9, effective 7/31/2005. This rule was also reformatted and renumbered from 5 NMAC 3.9 to comply with current NMAC requirements.

**5.3.9.1 ISSUING AGENCY:**  
State of New Mexico [~~Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico 87501 4295, (505) 827-7383~~] Higher Education Department.  
[12/31/98; 5.3.9.1 NMAC - Rn & A, 5 NMAC 3.9.1, 07/31/05]

**5.3.9.5 EFFECTIVE DATE:**  
December 31, 1998, unless a later date is cited at the end of a section.  
[12/31/98; 5.3.9.5 NMAC - Rn & A, 5 NMAC 3.9.5, 07/31/05]

**5.3.9.6 OBJECTIVE:**  
A. The objective of 5.3.9 NMAC is to establish a process by which the [~~facilities committee of the commission on~~] higher education department will review capital outlay funding recommendation packages developed by institutions and present those to the [commission] higher education department and submit those approved to the legislature annually.

B. The purpose of 5.3.9 NMAC is to provide public higher education institutions with an equitable process by which the [commission] department can review packages from institutions that contain capital projects, listed in priority order, that are considered to represent the greatest needs of the state and of the institutions. The [~~facilities committee, as charged by the CHE bylaws~~] higher education department, will review requests for capital outlay funding submitted by postsecondary institutions and special constitutional schools, recommend the projects in priority order, and present funding recommendations for approval by the [commission] department.  
[12/31/98; 5.3.9.6 NMAC - Rn & A, 5 NMAC 3.9.6, 07/31/05]

**5.3.9.8 REVIEW CRITERIA:**

A. Reviewing and recommending: In reviewing and recommending capital project requests, the [CHE] higher education department will be guided by the general criteria listed below. Specific determinants for evaluating the projects may vary from year to year as the immediate capital needs of the institutions evolve and as requirements for code compliance are revised. These influences will be explained each year in the capital project recommendations document prepared for the New Mexico legislature. In general, the [CHE] higher education department will give preference to the following types of projects:

(1) projects which are strongly related to instructional programs and which support an institutions mission and particular role;

(2) projects to provide high quality educational settings which represent up-to-date technologies;

(3) projects which are necessary to accommodate enrollment growth;

(4) projects to address major health and safety problems and elimination of physical barriers to handicapped persons;

(5) projects resulting from unforeseen conditions that if uncorrected would result in major property deterioration;

(6) projects to renovate facilities or to make wise use of other existing resources whenever feasible and economical;

(7) projects to improve utilities systems or building energy efficiency that will result in rapid capitalization of initial costs and long-term reduction of energy costs;

(8) projects for which there is no other available or more appropriate funding source, such as building renewal and replacement funds, local bonds, revenue bonds, auxiliary revenues, or research revenues.

B. Projects eligible for capital outlay recommendation: Capital outlay projects which are primarily used to support the following activities are eligible for consideration by the [CHE] higher education department for state funding:

(1) Instruction: Instructional space includes classrooms, laboratories, other teaching facilities, and office space for faculty deans, and instructional department heads and related clerical staff.

(2) Library: All activities necessary to operate libraries are eligible.

(3) Administration services: All activities related to student services or institutional administration are included in this category (e.g., admissions, administrative vice presidents, comptroller, computer center, dean of students, maintenance work shops, placement services, university architect, vocational director).

(4) Research: Only four-year institutions may submit requests for state funds for capital outlay projects to house research activities which will enhance fulfillment of the institution's mission. All sponsored research and organized research units, including administration and management of research activities, may qualify for support.

(5) Public service: Institutions may submit requests for state funds for capital outlay projects to house public service activities. Eligibility under this category is limited to sponsored public service activities and organized public service units, such as public broadcasting services, small business development centers, and cooperative extension services. See Subsection C of 5.3.9.8 NMAC below for activities not eligible for state funding.

(6) Physical plant: Circulation and support space, such as halls, restrooms,

and mechanical equipment rooms, for buildings housing eligible activities will be included in all capital outlay projects. In addition, the following types of projects are eligible for consideration: stand-alone utility structures such as heating and cooling plants, electric substations, and utility tunnels; physical plant shops offices and storage areas; and site improvements for infrastructure systems such as roads, parking lots, drainage or storm sewers, water or wastewater, telecommunications cables, or heating/cooling loops.

(7) Multi-use facilities: Capital projects with buildings that house more than one activity, one or more of which are eligible for state funding, may be submitted. However, only space devoted to eligible activities may be considered for state funding. A plan for funding the ineligible space from non-state sources must be included with the proposed project. For individual projects with common space used for both eligible and ineligible activities, state funding will be prorated based upon the percentage of time and amount of space allocated to eligible activities; the balance must be supported from other sources. (See the proration formula in Subsection D of 5.3.9.8 NMAC.)

(8) Land acquisitions: Land to be used for eligible activities will be considered for state funding.

C. Projects ineligible for capital outlay recommendation: Capital outlay projects which are primarily used for the following activities are not eligible for ~~[CHE] higher education department~~ recommendation:

(1) Non-instructional athletics, such as intercollegiate sports. Examples of ineligible facilities are Pan American center at NMSU and the UNM arena.

(2) Recreational or entertainment events, for either students or the general public. Single purpose auditoriums such as Popejoy hall at UNM are ineligible.

(3) All auxiliaries, such as bookstores, golf courses, student unions, student housing, etc. These operations are not eligible for state funding and are expected to be fully self-supporting and self-liquidating from the revenues generated by their operations.

D. Proration of funding: When a multi-use building will be used for both eligible and ineligible activities, the funding request must be prorated between state and other sources according to the amount of time and space devoted to eligible vs. ineligible activities. For example: A new fine arts building is being proposed with a total of 70,000 gross square feet (GSF) at a cost of \$80/GSF, for a total of \$5,600,000. Net assignable square feet (NASF) within the building will be 56,000.

Of this amount, 35,000 NASF will be used by activities eligible for state funding; 15,000 NASF will be multi-use 60 percent of the time for eligible activities (instruction) and 40 percent of the time for ineligible activities (community concerts); and 6,000 NASF is ineligible. To determine the portion of the total capital project that is eligible for consideration for state funding, the following formula is used:

$$(1) \frac{ES + (MU \times EU)}{NASF} \times$$

GSF x cost per GSF = State funding for eligible space

$$(2) \frac{(35,000 + (15,000 \times .60))}{45,000} \times$$

70,000 x \$80 = \$4,400,000

(3) ES = Eligible net assignable square feet

(4) MU = Multi-use net assignable square feet

(5) EU = Eligible use (percent of available time used for eligible activities)

(6) NASF = Net assignable square feet

$$(7) GSF = \text{Gross square feet}$$

E. Exceptions for two-year colleges: Space for certain functions that are ineligible for state funding at four-year institutions, such as bookstore operations, food services, community services, and student social, cultural, recreational activities, may be included as a portion of capital projects submitted by two-year colleges. The rationale for this exception is that two-year colleges usually do not have large-scale auxiliary enterprises which can provide an adequate revenue stream for financing auxiliary facilities. These exceptions apply only if a two-year college has provided the required local match of 25 percent as described in the following Subsection F of 5.3.9.8 NMAC.

F. Required local match: For two-year institutions, the ~~[CHE] higher education department~~ requires local matching participation in the amount of 25 percent of the total cost for each project or group of projects. However, the ~~[commission] higher education department~~ may waive or reduce the 25 percent matching requirement if the institution is not authorized to issue local general obligation bonds, is at maximum bonding capacity, or has already contributed from local sources at least 25 percent of all construction costs, including the cost of the proposed project. [12/31/98; 5.3.9.8 NMAC - Rn & A, 5 NMAC 3.9.8, 07/31/05]

**5.3.9.9 INSTITUTIONAL FACILITY PLANNING:** Each four-year university and two-year college must have on file at the ~~[CHE] higher education~~

~~department~~ a current five-year institutional plan containing the information on capital resources which is required by the institutional planning guidelines. The required information for branches of four-year institutions may be included in the main campus institutional plan, but must be provided in full for each branch campus.

[12/31/98; 5.3.9.9 NMAC - Rn & A, 5 NMAC 3.9.9, 07/31/05]

## NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.6.2 NMAC, Sections 1, 5 and 8, effective 7/31/2005. This rule was also reformatted and renumbered from 5 NMAC 6.2 to comply with current NMAC requirements.

**5.6.2.1 ISSUING AGENCY:** State of New Mexico ~~[Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico 87501-4295, (505) 827-7383]~~ Higher Education Department [12/31/98; 5.6.2.1 NMAC - Rn & A, 5 NMAC 6.2.1, 7/31/05]

**5.6.2.5 EFFECTIVE DATE:** December 31, 1998, unless a later date is cited at the end of a section. [12/31/98; 5.6.2.5 NMAC - Rn & A, 5 NMAC 6.2.5, 7/31/05]

**5.6.2.8 PRINCIPLES GUIDING ENROLLMENT REPORTING:**

A. Fall and spring semesters: Application of the following guidelines will ensure consistency of reporting among institutions:

(1) The census date will be Friday of the third week of classes.

(2) Only students representing a load on the instructional function of the institution as of the census date may be counted. Course additions prior to the census date should be added. Course drops and withdrawals as of the close of the census date should be subtracted. The date on which course additions and/or subtractions are processed is irrelevant.

~~(3) Only courses taught on the main campus can be included as main campus enrollment.~~

~~(a) Main campus: Courses offered for students enrolled on the main campus and attending classes on the main campus. Logistically, the student does not leave campus for instruction unless the instruction received off campus enhances the on-campus experience (i.e., student teaching or a laboratory experience in course work such as geology, ecology, agriculture, etc.).~~

~~(b) Off campus: Courses~~

~~designed to attract enrollees in locations off the main campus. Logistically, instructional activities which normally occur on campus are taken to the student instead of the student coming to the campus. This type of course work is only eligible for off-campus funding and is subject to meeting criteria developed by the academic council for higher education and approved by the commission on higher education as the policy on developing funding recommendations for off-campus graduate instructional programs.]~~

(3) All courses taught through auspices of the reporting campus will be included regardless of delivery site or mode. This includes on-line and other distance education delivery methods which originate from the reporting campus. In cases where a main campus university offers courses on the branch campus such enrollments should be reported as main campus courses.

(4) Two-year institutions shall include all lower division credit courses taught within their district. Courses taught outside the district will not be certified for state support and should be reported separately.

(5) Enrollment in courses not taught on the regular calendar should be reported as of the date the course is one-third complete. Enrollment in open-entry/open-exit courses should be based on average daily enrollment.

(6) Full-time equivalence in noncredit vocational-technical courses is determined as follows:

(a) Conversion of noncredit contact hour courses to equivalent semester credit hours:

<u>Contact Hours</u>	<u>Equivalent Semester Credit Hours</u>
10-14	.25
15-21	.50
22-29	.75
30-37	1.00
38-44	1.25
45-52	1.50
53-59	1.75
60-74	2.00
75-89	2.50
90-119	3.00
120-149	4.00
150-179	5.00
180-209	6.00
210-239	7.00
240-269	8.00
270-299	9.00
300-329	10.00
330-359	11.00
360-389	12.00
390-419	13.00
420-449	14.00
450-479	15.00
480-509	16.00
510-539	17.00
540-	18.00

(b) 18 credit hours is the maximum credit that can be earned per semester.

B. Summer session and special sessions:

(1) The census date for a summer session shall be the last date to register for that session. Enrollment in short courses which occur during the summer session may be included in this report.

(2) Only those classes taught on the main campus will be reported in the first column of the summer enrollment report form. Off-campus courses, programs and residence centers should be reported separately.

(3) Short courses, mini-courses and workshops occurring at other times during the year should be reported along with interim sessions or reported separately.

[12/31/98; 5.6.2.8 NMAC - Rn & A, 5 NMAC 6.2.8, 7/31/05]

## NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.6.3 NMAC, Sections 1, 5 and 8, effective 7/31/2005. This rule was also reformatted and renumbered from 5 NMAC 6.3 to comply with current NMAC requirements.

**5.6.3.1 ISSUING AGENCY:** State of New Mexico [~~Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico 87501 4295, (505) 827-7383~~] Higher Education Department.

[12/31/98; 5.6.3.1 NMAC - Rn & A, 5 NMAC 6.3.1, 7/31/05]

**5.6.3.5 EFFECTIVE DATE:** December 31, 1998, unless a later date is cited at the end of a section.

[12/31/98; 5.6.3.5 NMAC - Rn & A, 5 NMAC 6.3.5, 7/31/05]

**5.6.3.8 PRINCIPLES GUIDING VARIABLE SCHEDULING:** The following guidelines govern the funding of courses that start after the semester census date:

A. Courses may be offered intensively over a period less than a semester, starting and ending at any convenient time within the semester calendar, provided that:

(1) the courses be proposed to and reviewed by the same faculty committees and administrative offices as are any other courses, and that the courses be listed in the appropriate catalog of the [~~university~~] public postsecondary education institution;

(2) the courses are acceptable for credit toward degrees or certificates at the appropriate level in the [~~university~~] public postsecondary education institution;

(3) the credit award be consistent with academic council for higher education policy on contact hours/credit hours.

B. Formula funding credit for the student credit hours generated by courses offered under these guidelines which start after the census date will be obtained by including the student credit hours as an addendum, separately identified, in the course file submitted following the semester during which the courses are offered.

C. The intention is to include courses in which the only difference from other main-campus courses is their starting and ending times.

[12/31/98; 5.6.3.8 NMAC - Rn & A, 5 NMAC 6.3.8, 7/31/05]



## NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.6.4 NMAC, Sections 1, 5, 6, 8, 9 and 10, effective 7/31/2005. This rule was also reformatted and renumbered from 5 NMAC 6.4 to comply with current NMAC requirements.

**5.6.4.1 ISSUING AGENCY:**  
State of New Mexico [~~Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico 87501 4295, (505) 827-7383~~] Higher Education Department.  
[12/31/98; 5.6.4.1 NMAC - Rn & A, 5 NMAC 6.4.1, 7/31/05]

**5.6.4.5 EFFECTIVE DATE:**  
December 31, 1998, unless a later date is cited at the end of a section.  
[12/31/98; 5.6.4.5 NMAC - Rn & A, 5 NMAC 6.4.5, 7/31/05]

**5.6.4.6 OBJECTIVE:**

A. An on-site enrollment verification visit will be scheduled at each institution and campus at least once every five years. If earlier verification visits and procedures indicate problem areas in reporting, the verification schedule and [~~commission~~] department consultation with the campus will be on a more frequent basis.

B. The objectives of an on-site enrollment verification of campus data submissions to the [~~commission~~] department are:

(1) Clarify [~~commission~~] department data requirements, definition and procedures with campus personnel.

(2) Evaluate campus compliance with [~~commission~~] department data submission guidelines and policies, especially as such compliance affects calculations for enrollment funding.

(3) Identify problem areas regarding clarity of [~~commission~~] department policies and procedures or campus compliance with [~~commission~~] department data requirements.

(4) Solicit institutional assistance in refining [~~commission~~] department data elements, submission procedures and data use.

[12/31/98; 5.6.4.6 NMAC - Rn & A, 5 NMAC 6.4.6, 7/31/05]

**5.6.4.8 PRINCIPLES GUIDING ENROLLMENT VERIFICATION:**  
The on-site [~~commission~~] department data verification will be done by the [~~commission~~] department staff, with additional assistance if warranted by the content and scope of the verification. The verification process includes the following:

A. Arrangements will be made with the institution, including dates of the visit and data to be provided by the institution to the verification team.

B. Preparation of the [~~commission~~] department data to be used in conjunction with the visit.

C. Meetings with institutional administration at beginning and end of the verification visit to discuss objectives, procedures, time frame and follow-up.

D. Preliminary report of the visit shared with institution for review and comment.

E. Final report which contains the data elements and institutional procedures that were examined, the findings and summaries of concerns or problems, recommended corrective action and suggestions as to modifications in [~~commission~~] department definitions, submission procedures or data use.

[12/31/98; 5.6.4.8 NMAC - Rn & A, 5 NMAC 6.4.8, 7/31/05]

**5.6.4.9 MAJOR AREAS OF VERIFICATION:**

A. Is the degree credit student population reported correctly in the [~~commission~~] department student file submissions and can the differences in data between the student file and the registrars enrollment report to the [~~commission~~] department on student enrollments be reconciled?

B. Is the course-section population reported correctly on the [~~commission~~] department course file and do the credits reported correspond with those reported on the student file?

C. Are the credits for which the degree-credit student population registered by the census date properly reported?

D. Does the tuition paid by students correspond to the credits which are reported on the [~~commission~~] department student and course files?

E. Are [~~commission~~] department data collected and transmitted in an accurate and timely manner?

[12/31/98; 5.6.4.9 NMAC - Rn & A, 5 NMAC 6.4.9, 7/31/05]

**5.6.4.10 VERIFICATION PROCEDURES:** A more detailed description of the verification process follows as it relates to each of the concerns addressed above. Both the areas to be reviewed and the materials and data needed for such a review are discussed.

A. Student Population: Is the degree-credit student population reported correctly in the [~~commission~~] department student and course file submissions?

This is the most critical area for review in the verification process, since the student population determines the amount of enrollment funding allocated to each institution or campus. Student enrollments are to be reported as of the census date. The student population should not include early withdrawals, late registrants or those students who have made no financial commitment to complete registration. It also should not include students enrolled in extension classes, continuing education courses or non-credit vocational programs.

(1) Late registrants are students who register after the census date. They should not be included in the [~~commission~~] department data submissions. Campuses should recognize cut-off dates in order to maintain reporting integrity. Campus data must reflect the census date and [~~commission~~] department guidelines in order to ensure that the student population reported is eligible for funding. Procedure:

(a) Review campus late registration policies and [~~commission~~] department census date cut-off procedures.

(b) Compare campus lists of late registrants with [~~commission~~] department student and course lists to show if any late registrants were submitted to the [~~commission~~] department. Check registration activity close to census date.

(2) Noncommitted students are those who have completed the registration process but have not paid required tuition and fees and have made no arrangement or commitment for doing so by the [~~commission~~] department census date. Since a student who does not pay appropriate tuition and fees will eventually have his/her registration canceled and not receive credit for any work begun, students with no serious financial commitment toward registration should not be included in the student population as bona fide enrollees. Campuses should have clearly specified policies and procedures for determining whether a student has made a financial commitment by the census date. Procedure:

(a) Review campus policies regarding financial commitment as a part of registration and procedures to identify and follow up on noncommitted students.

(b) Compare campus list of students with no financial commitment by the census date with the [~~commission~~] department student and course files to identify the extent of reporting of such students.

(c) Verify fee payments on a sample of students from the [~~commission~~] department submission.

(3) Withdrawals for the purposes of [~~commission~~] department data are students who register for courses but withdraw completely from the institution by the [~~commission~~] department census date. Students

who have withdrawn by the census date should not be included on the [commission] department student or course files. Procedure:

(a) Review campus policies and procedures for identifying and processing students who withdraw and for ensuring that these students are not included in the [commission] department data submissions.

(b) Compare campus lists of withdrawn students and lists of student fee reimbursements with [commission] department student and course file data to ensure that those students withdrawn by the census date are not on the [commission] department files.

(4) Materials needed for review process:

(a) printouts of [commission] department student and course files;

(b) list of class schedules by student as of the census date;

(c) list of students who registered after the census date (late registrants), including social security number, course-sections and credits;

(d) list of students who withdrew from the institution, including social security number, course-sections, credits and withdrawal date;

(e) list of students who had registered but not made a financial commitment by the census date, including social security number and amount owed;

(f) list of students whose registration was canceled for the term due to non-payment of fees.

B. Course-section population: Should the course-sections reported to the [commission] department be included on the course file, have any sections been missed, or are any sections inappropriately identified? Sections to be reported are those in which students were registered by the date of record, were part of the institution's academic mission, were paid for out of the institution's instructional budget, and were taught as a part of load. Sections not to be reported include extension, continuing education and non-credit vocational courses. Courses paid for by restricted funds must be identified separately so they may be removed from funding calculations.

(1) Off-campus or extension courses are considered self-supporting and are not to be reported to the [commission] department. Procedure:

(a) Review campus definitions of off-campus courses and procedures to avoid including them in [commission] department data submissions.

(b) Compare campus list of off-campus courses and the printed campus schedule of courses or timetable with [commission] department course file.

(2) Courses paid for in whole or in part by restricted funds must be identified

so the resulting credits are not included in funding calculations. Procedure:

(a) Compare campus list of restricted funds sections with the [commission] department course file and hard-copy data on restricted credits.

(b) Compare campus list of faculty and salary by funding source from the payroll with [commission] department staff and course file data.

(3) Course numbering policies and practices of the four-year institutions impact enrollment funding calculations since funding by level of instruction is based on the course numbers of the sections generating the credits. Procedure:

(a) Review institutional policies on course numbering.

(b) Check prerequisites, course requirements and eligibility of course for undergraduate or graduate credit for a sample of upper division and graduate sections.

(c) Compare course numbers of a sample of upper division and graduate sections with a campus list of enrollments in those sections by student classification (level of student).

(4) Materials needed for review process:

(a) printouts of [commission] department course and staff files;

(b) campus schedule of courses or timetable;

(c) lists of off-campus and restricted funds course sections;

(d) list of faculty and salary by funding source from payroll.

C. Student choice: Are the credits for which the student population registered by the census date properly reported? Since credits reported are used to generate enrollment funding, all reported credits should be valid and appropriate.

(1) Add/drop transactions may impact considerably the reporting of student credits to the [commission] department. It is critical that all add and drop transactions made on or before the census date be included in the [commission] department submission and that all transactions after that date not be reflected in [commission] department data. Procedure:

(a) Review campus processed add/drop forms, campus processing procedures and campus policies as to when the "add" or "drop" is official.

(b) Review the add/drop processing lists by week to determine whether there are significant "adds" prior to the census date and significant "drops" after that date. Sample adds after the census date to determine whether they were included erroneously in the [commission] department submissions. Sample "drops" before the census date to determine whether their processing was delayed until after the [commission] department files were submitted.

(2) Tuition payments by student should correspond with student credits for which they were registered as reported on the [commission] department data files. Resident or non-resident tuition charges should be based on the [commission] department residency policy. Procedure:

(a) Compare data on fee collections with credits, residence status and tuition special status on the [commission] department student file.

(b) Review campus procedures for determining residence status for evidence of accuracy of campus records.

(3) Materials needed for review process:

(a) printouts of [commission] department student and course files;

(b) list of all course-section "adds" and "drops" by date of transactions, including social security number, course-section number, credits, add or drop indicator;

(c) Campus data on tuition revenues received.

[12/31/98; 5.6.4.10 NMAC - Rn & A, 5 NMAC 6.4.10, 7/31/05]

## NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.3 NMAC, Sections 1, 5, 7, 8, 11, 12, 13 and 14, effective 7/31/2005. This rule was also reformatted and renumbered to comply with current NMAC requirements.

**5.7.3.1 ISSUING AGENCY:**  
State of New Mexico [~~Commission on Higher Education~~ 1068 Cerrillos Road, Santa Fe, New Mexico, 87501-4295, (505) 827-7383.] Higher Education Department [7/15/98; 5.7.3.1 NMAC - Rn & A, 5 NMAC 7.3.1, 7/31/05]

**5.7.3.5 EFFECTIVE DATE:**  
July 15, 1998, unless a later date is cited at the end of a section.  
[7/15/98; 5.7.3.5 NMAC, Rn & A, 5 NMAC 7.3.5, 7/31/05]

**5.7.3.7 DEFINITIONS:**  
A. [~~"Commission" means the New Mexico commission on higher education.~~] **"Department"** means the New Mexico higher education department.

B. "Committee" means the health professions advisory committee of the [commission] department.

C. "Eligible educational loan" means government and commercial loans for actual costs paid for tuition, reasonable education expenses including fees, books, supplies and materials; and reasonable living expenses including room and

board and other itemized expenses incurred during an individual's enrollment at a post-secondary institution in a health occupation educational program. Expenses incurred must be related to the acquiring of said education.

D. "Eligible participant" includes primary care physicians, physician assistants, advanced practice nurses, dentists, pediatricians, optometrists and allied health care providers. Other specialties may be considered at the discretion of the committee.

E. "Extenuating circumstances" means circumstances not within the control of the recipient.

F. "Health professional shortage area" means an area of the state or a facility which has been determined by the health professions advisory committee as an acceptable practice site in which program participants may fulfill their commitment.

G. "Primary care physician" means a physician, allopathic or osteopathic with a specialty in family or general medicine, general internal medicine, general pediatrics and obstetrics and gynecology. Other specialties may be considered at the discretion of the committee. [7/15/98; 5.7.3.7 NMAC - Rn & A, 5 NMAC 7.3.7, 7/31/05]

**5.7.3.8 HEALTH PROFESSION ADVISORY COMMITTEE:** The health profession advisory committee is created to advise the [commission] department on matters relating to the administration of the Health Professions Student Loan-for-Service Acts and the Health Professional Loan Repayment Act.

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

- (1) a representative of the department of health;
- (2) a representative of the New Mexico health policy commission;
- (3) representatives of public post-secondary health and medical training programs;
- (4) representatives of recruiting and placement organizations;
- (5) representatives of professional health and medical associations; and
- (6) other representatives as appointed by the [commission] department.

B. The responsibilities of the committee shall include:

- (1) designate health professional shortage areas of the state;
- (2) make recommendations to the [commission] department on applicants for Medical, Osteopathic, Nursing and Allied Health Loan-For-Service Acts and the Health Professional Loan Repayment Act;

and

(3) give advice or other assistance to the [commission] department as requested.

[7/15/98; 5.7.3.8 NMAC - Rn & A, 5 NMAC 7.3.8, 7/31/05]

**5.7.3.11 PARTICIPATION AGREEMENT:** Upon approval, a participation agreement shall be drawn between each eligible participant receiving loan repayment and the [commission] department on behalf of the state of New Mexico. The agreement shall state both the participant's obligation under the program as well as the [commission's] department's responsibility. No payment will be made until a duly signed document is on file at the [commission] department offices. The participation agreement shall include, but not be limited to, the following stipulations:

A. provide for the repayment of a specified sum as determined in Section 10; the commission will pay the amount due for each quarter of completed service by the program participant, directly to the participant or their lender(s) for payment of their health professional education loans; any amounts allocated to repay loans will be divided equally by the number of quarters in the service period covered by the award; quarters comprise an average of thirteen weeks including paid leave or any combination of hours and weeks thereof for the entire service period;

B. state that the [commission] department will complete annual reports to all tax authorities delineating award payments made to the program participant;

C. state that payment of the award is conditioned upon the program participant submitting timely reports and requests for reimbursement to the [commission] department or its designee, as required by the commission;

D. state the participant's obligations including a minimum two year period of service in a practice providing continuous clinical services in the field of their profession in an area designated by the committee as eligible;

E. state that the program participant is responsible for payment(s) of their eligible health professional education loans until such time that actual loan repayment is performed by the [commission] department. Repayment by the [commission] department will begin following the first certified quarter of completed clinical service in an area designated by the committee;

F. state that the recipient will charge for professional services at the usual and customary rate prevailing in the area where the services are provided, except

that if a person is unable to pay such charge, such person shall be charged at a reduced rate or not charged any fee;

G. in providing health services, the participant shall not discriminate against any person on the basis of such person's ability to pay for such services or because payment for the health services provided to such person will be made under the insurance program established under Part A or B of Title XVIII of the Social Security act or under a state plan for medical assistance approved under Title XIX of such act;

H. the participant will accept assignment under Sections 1842(b)(3)(B)(ii) of the Social Security act for all services for which payment may be under Part B of Title XVIII of such act and enter into an appropriate agreement with the state agency which administers the state plan for medical assistance under Title XIX of such Act to provide services to individuals entitled to medical assistance under the plan;

I. the award will be terminated if any of the following should occur:

(1) the participant fails to perform continuous clinical service at the approved facility, unless a change of facility or an interruption in service is approved in advance and in writing by the [commission] department; no interruption in service exceeding six months will be approved;

(2) the employment of the participant at an approved location is terminated;

(3) the participant loses his/her professional license, board certification or medicaid and/or medicare billing privileges; or

(4) the [commission] department deems termination is warranted for any other reasonable cause.

J. in the event this agreement is terminated by the commission, the commission shall have no obligation to make any further payments to or on behalf of the participant;

K. penalties as outlined in Section 12; and

L. shall state that the participant further promises:

(1) to use the allocated award solely for the purposes of repaying health professional education loans, including principal, interest and related expenses or, where approved by the commission;

(2) to be responsible for all tax liabilities incurred in the acceptance of the award; and

(3) to complete all necessary reports and requests for loan repayment required by commission and submit them to the commission or its designee on a timely basis.

[7/15/98; 5.7.3.11 NMAC - Rn & A, 5

NMAC 7.3.11, 7/31/05]

### 5.7.3.12 PENALTIES:

A. If a program participant does not comply with the terms of the participation agreement, the ~~[commission]~~ department shall assess a penalty of up to three times the amount of award disbursed, plus eighteen percent interest, unless the commission finds acceptable extenuating circumstances for why the participant could not serve and comply with the terms of the provisions. If the commission does not find acceptable extenuating circumstances for the participant's failure to comply, the commission shall require immediate repayment plus the amount of any penalty assessed pursuant to this section.

(1) The full penalty shall apply unless the circumstances reflect that the penalty should be reduced on a prorata basis reasonably reached based upon the degree of control which the recipient has over the decision not to serve. The recipient shall have the burden of proof.

(2) If the commission does not find acceptable extenuating circumstances for the recipient's failure to carry out his/her declared intent to serve in a designated shortage area in the state, the commission shall require immediate repayment of the award granted to the recipient plus the amount of any penalty assessed pursuant to this subsection.

B. Participants who have signed a participation agreement for two years and fail to complete a quarter of service will not receive a prorated award amount.

[7/15/98; 5.7.3.12 NMAC - Rn & A, 5 NMAC 7.3.12, 7/31/05]

**5.7.3.13 INELIGIBLE DEBTS:** The following educational debts are not eligible for repayment under this program:

A. amounts incurred as a result of participation in any ~~[commission]~~ department administered loan-for-service program or other state programs whose purpose states that service be provided in exchange for financial assistance, such as the New Mexico health service corps;

B. scholarships which have a service component/obligation such as the national health service corps scholarship; and

C. personal loans from friends, relatives and other family members, loans which exceed individual standard school expense levels; the committee may consider cases of extenuating circumstances.

[7/15/98; 5.7.3.13 NMAC - Rn & A, 5 NMAC 7.3.13, 7/31/05]

**5.7.3.14 REPORTS:** The

~~[commission]~~ department shall submit a report to the governor and the legislature prior to each regular legislative session. The report shall describe the program activity during the previous years, including the statistics, and analysis of the progress of the Health Professional Loan Repayment Act in meeting the health and medical needs of the citizens of the state.

[7/15/98; 5.7.3.14 NMAC - Rn & A, 5 NMAC 7.3.14, 7/31/05]

## NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.19 NMAC, Sections 1, 5, 7, 8 and 9, effective 7/31/2005. This rule was also reformatted and renumbered from 5 NMAC 7.19 to comply with current NMAC requirements.

### 5.7.19.1 ISSUING AGENCY:

State of New Mexico ~~[Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico, 87501-4295, (505) 827-7383]~~ Higher Education Department.

[7/15/98; 5.7.19.1 NMAC - Rn & A, 5 NMAC 7.19.1, 7/31/05]

### 5.7.19.5 EFFECTIVE DATE:

July 15, 1998, unless a later date is cited at the end of section.

[7/15/98; 5.7.19.5 NMAC - Rn & A, 5 NMAC 7.19.5, 7/31/05]

### 5.7.19.7 DEFINITIONS:

A. "Act" means the Senior Citizen Reduced Tuition Act of 1984.

B. ~~["Commission"]~~ "Department" means the New Mexico ~~[commission on higher education]~~ higher education department.

C. "Credit course" means a course that can be applied toward the completion of a degree.

D. "Eligible institution" means any public post-secondary degree-granting educational institution in New Mexico.

E. "Full-time equivalent credit" means credit in courses which are included in the ~~[commission's]~~ department's formula for funding purposes.

F. "Non-credit courses" means courses which cannot be applied toward completion of a degree.

G. "Senior citizen" means a person who has reached the sixty-fifth birthday by the third Friday of classes (by the census date).

H. "Space available" means that the maximum number of students in a class has not been reached by the end of the first day of registration, therefore providing room for enrollees.

[7/15/98; 5.7.19.7 NMAC - Rn & A, 5 NMAC 7.19.7, 7/31/05]

**5.7.19.8 ELIGIBILITY REQUIREMENTS:** In order to be eligible for the reduction in tuition which is stipulated in the act, students shall:

A. request the reduction in tuition;

B. demonstrate evidence that they have met the age required;

C. be resident in New Mexico according to existing criteria for residency set by the ~~[commission]~~ department;

D. enroll for six credit hours or less during the semester of enrollment;

E. meet all course requisites;

F. pay for any course fees, including extraordinary course fees in continuing education programs;

G. enroll at an eligible institution for credit or noncredit courses offered either on or off campus; and,

H. enroll if there is space available.

[7/15/98; 5.7.19.8 NMAC - Rn & A, 5 NMAC 7.19.8, 7/31/05]

### 5.7.19.9 ADMINISTRATION OF PROGRAM:

A. Institutions must allow students to register under provisions of this act if there is space available.

B. If a minimum number of students is required by the institution to offer a class, students registered under this act may not be counted toward the minimum. For noncredit courses, a maximum of two students will be allowed to register for each class under provisions of the act.

C. Students enrolling under provisions of this act are eligible for all grading options for the same courses, including audit, as permitted by the institution.

D. Students are required to comply with all rules and regulations of the institution related to registration, withdrawal from courses, transaction deadlines, academic performance and decorum.

E. Students enrolled under this act are entitled to all rights and privileges afforded all students including receipt of an I.D. card, use of library, and access to other campus facilities in accordance with institutional regulations affecting all students.

F. No full-time equivalent credit may be given to the institutions by the ~~[commission]~~ department for any courses taken by students under the provision of this act.

G. Institutions must exclude student credit hours registered

under this act from enrollment reports to the ~~[commission]~~ department.  
[7/15/98; 5.7.19.9 NMAC - Rn & A, 5 NMAC 7.19.9, 7/31/05]

## NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.100.3 NMAC, Sections 1, 2, 5, and 7 through 16, effective 7/31/2005. This rule was also reformatted and renumbered from 5 NMAC 100.3 to comply with current NMAC requirements.

**5.100.3.1 ISSUING AGENCY:**  
New Mexico ~~[Commission on Higher Education 1068 Cerrillos Road, Santa Fe, New Mexico 85501, Telephone: 505/827-7383]~~ Higher Education Department.  
[2/26/85, 6/29/92, 9/1/94, 7/15/98; 5.100.3 NMAC - Rn & A, 5 NMAC 100.3.1, 7/31/05]

**5.100.3.2 STATUTORY AUTHORITY:** The Out-of-State Proprietary School Act (Sections 21-24-1 through 21-24-9) authorizes the New Mexico ~~[commission on higher education (commission)]~~ higher education department (department) to establish and maintain regulations governing the registration of out-of-state institutions soliciting students to enroll in the institution's programs in other states.  
[2/26/85, 6/29/92, 9/1/94, 7/15/98; 5.100.3.2 NMAC - Rn & A, 5 NMAC 100.3.2, 7/31/05]

**5.100.3.5 EFFECTIVE DATE:**  
July 15, 1998, unless a later date is cited at the end of a section.  
[2/26/85, 6/29/92, 9/1/94, 7/15/98; 5.100.3.5 NMAC - Rn & A, 5 NMAC 100.3.5, 7/31/05]

**5.100.3.7 DEFINITIONS:**

A. "Agent" means any person who solicits in person and for a fee the enrollment of a student in a course of instruction offered by a proprietary school.

~~[B. "Commission" means the New Mexico commission on higher education or its designated employee.~~

~~[-] B.~~ "Course" means any course, plan, or program of instruction, conducted in person, by mail, or by other methods.

C. "Department" means the New Mexico higher education department or its designated employee.

D. "Proprietary school" means a non-public out-of-state school, academy or similar institution offering within New Mexico a course of instruction or training to be conducted outside New

Mexico, but does not include a private out-of-state post-secondary educational institution offering instruction or training within New Mexico. (The latter is subject to provisions of New Mexico's Post-secondary Educational Institution Act and the ~~[commission's]~~ department's regulation in 5.100.2 NMAC).

E. "Registration" means a written acknowledgment by the ~~[commission]~~ department that a private proprietary school has met the requirements of the ~~[commission]~~ department pursuant to 5.100.3 NMAC.

F. "Student" means any person within this state who is above compulsory school age and eligible for one or more courses of instruction.  
[2/26/85, 6/29/92, 9/1/94, 7/15/98; 5.100.3.7 NMAC - Rn & A, 5 NMAC 100.3.7, 7/31/05]

### 5.100.3.8 EXEMPTIONS:

A. The Out-of-State Proprietary School Act specifies several bases for exemption from its provisions. The ~~[commission]~~ department recognizes additional bases for exemption, derived from legislation governing institutions operating within the state. Any institution, organization, or other entity wishing to qualify for exemption from the act must present to the ~~[commission]~~ department the information necessary for the ~~[commission]~~ department to determine eligibility for exemption.

B. Upon determination of eligibility by the ~~[commission]~~ department, the following may be granted exemption:

(1) an institution supported in whole or part by state or local taxation;

(2) a nonprofit institution whose sole purpose is to train students in religious disciplines to prepare them to assume a vocational objective relating primarily to religion;

(3) a post-secondary institution accredited by the north central association of colleges and schools, commission on institutions of higher education or by a comparable regional accrediting body recognized by the ~~[commission]~~ department;

(4) an institution or organization exclusively offering education that is solely avocational or recreational in nature;

(5) an institution or organization providing instruction to an employer for its employees or providing instruction sponsored by a recognized fraternal, trade, business, or professional organization for its members; and

(6) an institution or organization solely providing courses recognized by the New Mexico state board of education for the purpose of complying with the compulsory school attendance law.

C. Out of state institutions

that conduct general advertising through print or electronic media but do not have agents working within New Mexico and do not solicit students through individual canvassing are not subject to the act. Institutions that send employees only to participate in occasional college fairs or other assemblies of institutions collectively providing information to prospective students are not subject to the act.

D. An institution, organization, or other entity wishing to qualify for exemption from the act shall provide the ~~[commission]~~ department with evidence of its qualification on one or more of the bases stated above and shall provide sufficient description of the nature of its organization and educational program(s) for the ~~[commission]~~ department to make a determination. Upon making a determination that an institution, organization, or other entity is qualified for exemption from the act, the ~~[commission]~~ department will issue a letter designating the entity as "exempt from regulation in New Mexico". The determination of the ~~[commission]~~ department will remain in effect until the ~~[commission]~~ department determines otherwise.

[2/26/85, 6/29/92, 9/1/94, 7/15/98; 5.100.3.8 NMAC - Rn & A, 5 NMAC 100.3.8, 7/31/05]

### 5.100.3.9 INFORMATION REQUIRED FOR REGISTRATION:

Each private institution wishing to be registered or to maintain its registration as an out-of-state proprietary school shall report to the ~~[commission]~~ department, in a format and by a date specified by the ~~[commission]~~ department:

A. certification of current ownership, address, telephone, and principal operating officers of the institution;

B. evidence that the institution is properly registered, licensed, or otherwise recognized by the cognizant regulatory agency in the state within which instruction will be provided;

C. for institutions accredited by an agency recognized by the United States department of education, evidence of that accreditation;

D. the number of students who are residents of New Mexico and who were enrolled at the institution during the prior operating year, classified by program of study;

E. a copy of the current catalog of the institution plus any additional documents that define student policies in effect at the institution and relevant to the ~~[commission's]~~ department's regulations for licensure; policies that must be included in this submission include admission policies, policies for award of financial aid, policies for payment of tuition and fees and

for refunds of tuition and fees when a student withdraws, and complaint policies for students and other citizens with grievances against the institution;

F. evidence of the institution's surety bond as required by the [commission] department consistent with specifications listed below; and

G. such other information as may be requested by the [commission] department as necessary for implementation of the Out-of-State Proprietary School Act. [2/26/85, 6/29/92, 9/1/94, 7/15/98; 5.100.3.9 NMAC - Rn & A, 5 NMAC 100.3.9, 7/31/05]

### 5.100.3.10 GENERAL STANDARDS FOR REGISTRATION:

A. Recognition by state of residence: Each institution registered as an out-of-state proprietary school must be properly registered, licensed, or otherwise recognized by the cognizant regulatory agency in the state within which instruction will be provided or from which instruction will be transmitted to New Mexico. The institution shall provide the [commission] department with evidence of such recognition and the identity, address, and telephone number of the cognizant agency.

B. Agents: No agent representing an out-of-state proprietary school shall sell any course or solicit students in person or by mail, telephone, or similar means in New Mexico for a consideration unless the institution has registered with the [commission] department. In addition, no person may serve as an agent of an out-of-state proprietary school unless the [commission] department has been provided information about that agent, an annual fee has been paid for that agent, and the [commission] department has acknowledged the eligibility of the agent to operate within New Mexico.

C. The act specifies that no institution or agent of that institution shall:

(1) "make or cause to be made any statement or representation, oral, written, or visual, in connection with the offering or publicizing of a course if the agent knows or reasonably should know the statement or representation to be false, deceptive, substantially inaccurate or misleading;"

(2) "promise or guarantee employment utilizing information, training, or skill purported to be provided or otherwise enhanced by a course, unless the promisor or guarantor offers the student or prospective student a bona fide contract of employment agreeing to employ the student or prospective student for a period of not less than ninety days in a business or other enterprise regularly conducted by him in which such information, training, or skill is

a normal condition of employment;" and

(3) "do any act constituting part of the conduct or administration of a course, or the obtaining of students therefor, if the agent knows or reasonably should know that any phase or incident in the conduct or administration of the course is being carried on by the use of fraud, deception, or other form of misrepresentation or by any agent soliciting students without registration."

D. Advertising, recruitment and admission of students:

(1) The following standards are provided as guidance to institutions regarding advertising, recruitment, and admission of students by the institution and its agents and the tuition payment and refund policies of the institution. The [commission] department presumes that each institution registered by the [commission] department as an out-of-state proprietary school will meet each of the following standards unless the institution is required by its state of residence to meet a comparable alternative.

(2) All advertisements and promotional literature must be truthful regarding the content of an institution's educational program(s), the duration of the program(s), student attributes and skills needed for successful completion of the program(s), and costs of the program(s). An institution shall use no advertisements or promotional materials that are false, deceptive, inaccurate, or misleading.

(3) Prior to a student signing a financial aid agreement, each student must be informed in writing regarding his or her obligations associated with receipt of financial aid and the institution must take reasonable steps to assure that the student understands that obligation.

(4) Advertisements and promotional literature shall not contain promises of job placement or employment, except as specified Paragraph (2) of Subsection C of 5.100.3.10 NMAC above, but may refer to an institution's services to assist students in obtaining employment. Advertisements shall clearly indicate by their content and location in media that the institution is offering education or training. "Blind" advertising is prohibited.

(5) An institution registered by the [commission] department may not use terms such as "licensed," "accredited," "endorsed," or "recommended" in reference to its approval by the [commission] department but may use the phrase "registered with the New Mexico [commission on higher education] higher education department" in its advertising and promotional literature. Such use shall indicate the [commission's] department's registration of the institution but shall not state nor suggest [commission] department approval or endorsement for any particular program offered by the institution.

(6) An institution shall not advertise the transferability of its courses or programs to a regionally accredited institution unless it has signed transfer agreements with that institution.

(7) An institution shall not include in its advertising or promotional materials any photograph or other illustration of facilities unless those facilities serve predominantly as sites of instruction or related activities provided by the institution. Photographs or other illustrations must accurately depict the size and condition of any facilities or equipment illustrated.

(8) Prospective students shall not be solicited by an agent of an institution on the sites of any government agency in New Mexico such as motor vehicle registration offices, unemployment offices, or public assistance offices. However, leaflets or other promotional material may be made available at such sites.

(9) Prospective students shall not be solicited by any agent of an institution on the sites of any public school, except at the invitation of school personnel. No institution shall offer or provide an inducement, financial or otherwise, to any public school in return for permission to solicit students.

(10) No institution or agent shall solicit the enrollment of any student who is currently attending an institution in New Mexico by using any inducement of greater financial assistance in meeting the costs of education.

[2/26/85, 6/29/92, 9/1/94, 7/15/98; 5.100.3.10 NMAC - Rn & A, 5 NMAC 100.3.10, 7/31/05]

### 5.100.3.11 PAYMENT AND REFUNDS FOR TUITION:

A. Cooling off period: Any student signing an enrollment agreement or making an initial deposit or payment toward tuition and fees of the institution shall be entitled to a cooling off period of at least three work days from the date of agreement or payment or from the date that the student first visits the institution, whichever is longer. During the cooling off period the agreement can be withdrawn and all payments shall be refunded. Evidence of personal appearance at the institution or deposit of a written statement of withdrawal for delivery by mail or other means shall be deemed as meeting the terms of the cooling off period.

B. Refunds prior to commencing instruction: Following the cooling off period but prior to the beginning of instruction, a student may withdraw from enrollment, effective upon personal appearance at the institution or deposit of a written statement of withdrawal for delivery (as defined above), and the institution shall be entitled to retain no more than \$200 in tuition or fees as registration charges.

C. In the case of students enrolling for non-traditional instruction, a student may withdraw from enrollment following the cooling off period, prior to submission by the student of any lesson materials and effective upon deposit of a written statement of withdrawal for delivery (as defined above) and the institution shall be entitled to retain no more than \$200 in tuition or fees as registration charges or an alternative amount that the institution can demonstrate to have been expended in preparation for that particular student's enrollment.

D. Refunds following commencement of instruction: An institution registered with the [commission] department shall adhere to either the following tuition refund policy or to a policy established by the institution's state of residence or accrediting body.

E. A student may withdraw after beginning instruction or submitting lesson materials, effective upon appearance at the institution or deposit of a written statement of withdrawal for delivery (as defined above), and the institution shall be entitled to retain no more than \$200 in tuition or fees as registration charges or an alternative amount that the institution can demonstrate to have been expended in undertaking that particular student's instruction plus a pro rata amount of any additional tuition and fees earned and paid according to the following schedule:

Date of withdrawal as a percent of the enrollment period for which the student was obligated	Portion of tuition and fees obligated and paid that are eligible to be retained by the institution
within 1st 10 percent	10 percent
within 2nd 10 percent	25 percent
within 3rd 10 percent	40 percent
within 4th 10 percent	55 percent
within 5th 10 percent	70 percent
within 6th 10 percent	85 percent
thereafter	100 percent

F. "Enrollment period for which the student was obligated" means a quarter, semester, or other term of instruction followed by the institution which the student has begun and for which the student has agreed to pay tuition.

G. Tuition/fee refunds must be made within 30 calendar days of the institution receiving written notice of a student's withdrawal or of the institution terminating enrollment of the student, whichever is earlier. Upon request by a student or the [commission] department, the institution shall provide an accounting for such amounts retained under this standard within five work days.

H. The institution's payment and refund policies shall be clearly articulated in the institution's catalog and as part of all enrollment agreements.  
[2/26/85, 6/29/92, 9/1/94, 7/15/98; 5.100.3.11 NMAC - Rn & A, 5 NMAC 100.3.11, 7/31/05]

**5.100.3.12 ISSUANCE OF REGISTRATION:**

A. Application for and acceptance of registration constitutes an agreement by the institution to abide by each of the requirements specified in 5.100.3 NMAC pertinent to registration.

B. In making its decision regarding registration, the [commission] department may consider curricula and other descriptive and evaluative information submitted by the institution and information supplied by federal or state agencies, accrediting agencies, licensing boards, or other entities or their representatives judged by the [commission] department to be knowledgeable about the institution.

[2/26/85, 6/29/92, 9/1/94, 7/15/98; 5.100.3.12 NMAC - Rn & A, 5 NMAC 100.3.12, 7/31/05]

**5.100.3.13 REVOCATION OF REGISTRATION:**

A. The [commission] department may revoke an institution's registration or an agent's eligibility to solicit students within New Mexico at any time, upon finding that:

- (1) any statement made in the institution's application for registration or agent eligibility is untrue;
- (2) the institution has failed to maintain recognition by the cognizant agency in the state where instruction is provided or by the institution's accrediting agency (if applicable), on the basis of which the registration was granted;
- (3) the agent has failed to meet standards of conduct established in 5.100.3 NMAC; or
- (4) the institution or agent has failed to comply with other standards of registration established by the [commission] department.

B. Prior to revoking a registration or eligibility, the [commission] department shall give the institution notice of ten work days and shall provide an opportunity for the institution to demonstrate why the registration or eligibility should not be revoked.

C. At its discretion, the [commission] department may institute a probationary period of continued registration for the institution or eligibility for the agent during which time the institution must demonstrate its resolution of deficiencies to the satisfaction of the [commission] department. Under no circumstance shall this probationary period exceed one year.

[2/26/85, 6/29/92, 9/1/94, 7/15/98; 5.100.3.13 NMAC - Rn & A, 5 NMAC 100.3.13, 7/31/05]

**5.100.3.14 ANNUAL FEES:**

A. Initial registration and agent eligibility: Out-of-state proprietary schools seeking initial approval to solicit students in New Mexico shall provide all information requested by the [commission] department in a form specified by the [commission] department and shall pay a registration fee for the school and an additional fee for each agent. The fees shall be in amounts set by the [commission] department. The act specifies that the annual registration fee for the proprietary school shall not be less than \$500 and that the annual fee for each agent shall not be less than \$100.

B. Registration renewal: By July 1 of each year or as soon thereafter as requested by the [commission] department, each institution registered by the [commission] department and wishing to continue to solicit students in New Mexico shall provide information requested by the [commission] department and pay registration and agent fees in amounts set by the [commission] department. The registration fee shall not be less than \$500 and the fee for each agent shall not be less than \$100.

C. Late fee: The [commission] department may establish and impose an additional fee to be assessed each institution that has filed for renewal of its registration but is more than ten working days delinquent in submission of its annual fee.

[2/26/85, 6/29/92, 9/1/94, 7/15/98; 5.100.3.14 NMAC - Rn & A, 5 NMAC 100.3.14, 7/31/05]

**5.100.3.15 SURETY BONDS:**

A. Each out-of-state proprietary school registered by the [commission] department shall maintain in force a surety bond payable to the [commission] department and in an amount set by the [commission] department.

B. The amount of the bond shall be sufficient to indemnify any New

Mexico student damaged as a result of fraud or misrepresentation by a registered institution or as a result of the institution ceasing operation prior to its students having completed the programs for which they have contracted.

C. The [commission] department shall establish the amount of bond required for each institution, taking into consideration factors such as the institution's standing with the cognizant state agency in which instruction is being provided and the number of New Mexico students enrolled during the prior year. Provided that, in no case shall the bond be less than \$10,000 nor more than \$25,000, as specified in the act.

D. Surety bonds may be canceled only following delivery of written notice to the [commission] department no less than ninety calendar days prior to the date of cancellation. In case of cancellation, the institution shall provide the [commission] department with a like surety in order to maintain its registration.

[2/26/85, 6/29/92, 9/1/94, 7/15/98; 5.100.3.15 NMAC - Rn & A, 5 NMAC 100.3.15, 7/31/05]

**5.100.3.16 APPEALS OF REGISTRATION AND AGENT ELIGIBILITY DECISIONS:**

Parties not satisfied with a decision by the [commission] department regarding eligibility for exemption from the act, issuance, denial, or revocation of registration, or denial or revocation of agent eligibility, or related decisions of the [commission] department may be appealed to the district court of Santa Fe, New Mexico.

[2/26/85, 6/29/92, 9/1/94, 7/15/98; 5.100.3.16 NMAC - Rn & A, 5 NMAC 100.3.16, 7/31/05]

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## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

**Explanatory paragraph:** This is an amendment to Subsection J of 6.30.2.10 NMAC (STANDARDS FOR EXCELLENCE), effective July 29, 2005. The amendment deletes Subsection J in its entirety and replaces it with a new subsection that clarifies the requirements for graduation and transition planning for public school students with disabilities beginning at the end of the eighth grade or age 14 and clarifies the requirements for the use of alternative pathways to the high school diploma for students with disabilities. The amendment includes a requirement that a senior's program of study may not be changed from the standard to the career readiness pathway or from the career readiness to the ability pathway after the 20<sup>th</sup> school day of the senior year unless there are exceptional medical circumstances and the school receives approval of any such proposed change for each student from the special education bureau of the public education department. The amendment also corrects some outdated statutory references.

### 6.30.2.10 PROCEDURAL REQUIREMENTS

J. Graduation requirements

(1) The district shall be in compliance with requirements as specified in Section 22-13-1.1 NMSA 1978, and Subsection L of Section 66-7-506 NMSA 1978 (offering driver education as an elective). As specified by the PED, in order to be eligible for a diploma as a result of having met all graduation requirements, students must pass the New Mexico high school competency examination with a minimum scale score of 175 on each of five subtests (reading, language arts, mathematics, science, and social studies) and with a

minimum holistic score of 3 on the writing subtest for those students entering the 10th grade in the 2000-2001 school year.

(2) For students enrolling or re-enrolling in public schools, local school boards will establish policies as follows:

(a) Credits shall be transferable with no loss of value between schools that are accredited by a state board of education in the United States, United States territories, or department of defense schools.

(b) Local school board policies for students transferring from home schools or private schools to the public schools will be in accordance with Subsection D of Section 22-1-4 NMSA 1978.

(c) Acceptance of credits earned through correspondence extension study, foreign study, home study courses, or non-PED accredited non-public schools is determined by local school board policy.

(3) For students currently enrolled in public schools, local school boards will establish policies addressing the use of correspondence courses to meet graduation requirements.

(a) Policies should be based on the following circumstances:

(i) when road conditions or distance from access to school transportation prohibit regular daily attendance;

(ii) when a student cannot attend school due to prolonged illness or recovery from injury, as part of the individual plan to address the student's educational needs developed in accordance with applicable state and federal regulations governing the education of children with disabilities;

(iii) when the occupation of the parent or student requires prolonged periods of time away from the school district;

(iv) when a student is housed in a long-term residential facility;

(v) to enhance or supplement graduation requirements based on a student's individual need(s).

(b) Schools counting credit for correspondence courses for enrolled students must ensure that such courses are part of the student's individual plan for graduation and, if applicable, the individualized plan to address the student's educational needs developed in accordance with applicable state and federal regulations governing the education of children with disabilities, and that assistance is available to students as needed to complete the correspondence courses.

(c) Correspondence courses used to provide graduation credit to currently enrolled students shall:

(i) be provided by a school accredited by the state board of edu-

cation of the state in which the school is located, or

(ii) be provided by a college or university with regional accreditation to perform such function.

(4) A final examination shall be administered to all students in all courses offered for credit.

(5) A student cannot take the same course twice for credit.

(6) [Reserved]

(7) Other elective credit: Elective credit courses must meet PED content standards with benchmarks and must:

(a) include a written, sequential curriculum;

(b) be taught by an instructor with a secondary teaching license;

(c) include a final examination; and

(d) be reviewed and approved by the local board of education.

(8) Alternative credit: Local districts may design courses, known as alternative credit, to satisfy any of the 14 specified credits required for graduation. For notification, the district must submit documentation to PED describing these courses. The criteria listed under elective credit of Paragraph (7) of Subsection J of 6.30.2.10 NMAC must be met. Requirements for alternative credit must include:

(a) review the licensure endorsements of staff;

(b) review course competencies and summarize alignment;

(c) determine the amount of credit that will be generated;

(d) publish information in advance regarding courses;

(e) include alternative credit information in the four-year plan;

(f) determine the course title and accountability data system ("ADS") number to be placed on the transcript; and

(g) send a letter of information to the PED.

(9) Receipt of diploma or certificate: Governing principles that will guide the development, program of study, and the granting of a diploma or use of a certificate with a follow-up plan of action in the form of an IEP for students with disabilities receiving special education services are as follows:

(a) The individualized education program (IEP) team is responsible for determining whether the student has completed a planned program of study, based on the student's interests, preferences, needs, and long-term educational or occupational goals, making him/her eligible to receive a diploma or certificate. A student will be awarded a diploma upon completion of a planned program of study that meets the following requirements.

(b) A student may be awarded a diploma (Section 22-13-1.1 NMSA 1978) using any of the following programs of study. All IEP team discussion points and decisions identified herein, including the identification of the student's pathway, must be documented on the student's IEP and the prior written notice (PWN) of proposed action.

(i) A standard program of study is based upon meeting or surpassing all requirements for graduation based on the New Mexico Standards for Excellence (6.30.2 NMAC) with or without reasonable accommodations of delivery and assessment methods. In addition, a student must pass all sections of the current state graduation examination(s) administered pursuant to Section 22-13-1.1(I) NMSA 1978 under standard administration or with state-approved accommodations and meet all other standard graduation requirements of the district.

(ii) A career readiness program of study is based upon meeting the public education department's career readiness standards with benchmarks as defined in the IEP with or without reasonable accommodations of delivery and assessment methods. In addition, a student must take the current state graduation examination(s) administered pursuant to NMSA 1978, Section 22-13-1.1(I) under standard administration or with state-approved accommodations and achieve a level of competency pre-determined by the student's IEP team; earn at least the minimum number of credits required by the district for graduation through standard or alternative courses as determined by the IEP team; and achieve competency in all areas of the career readiness standards with benchmarks as determined by the IEP team.

(iii) An ability program of study is based upon meeting or surpassing IEP goals and objectives, with or without reasonable accommodations of delivery and assessment methods, referencing skill attainment at a student's ability level, which may lead to meaningful employment. The ability program of study was developed for students who have a significant cognitive disability or severe mental health issues. In addition, a student must take either the current state graduation examination(s) administered pursuant to NMSA 1978, Section 22-13-1.1(I) under standard administration or with state-approved accommodations, or the state-approved alternate assessment. The student must achieve a level of competency pre-determined by the student's IEP team on the current graduation examination or the state-approved alternate assessment and meet all other graduation requirements established by the IEP team.

(iv) At the end of the eighth grade, each student's IEP must con-

tain a proposed individual program of study for grades 9 through 12. The program of study must identify by name all course options the student may take and must reflect the student's long-range post-secondary goals. This program of study must be reviewed on an annual basis and adjusted to address the student's interests, preferences, and needs. The IEP team must document each student's progress toward earning required graduation credits and passing the current graduation examination(s).

(v) Pursuant to the federal Individuals with Disabilities Education Act at 20 USC 1414(c)(5)(B), a district shall provide each student with disabilities who graduates or reaches the maximum age for special education services after July 1, 2005, with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

(c) Students graduating on the standard program of study must meet the state's minimum requirements on all sections of the graduation examination. To establish a level of proficiency on the current graduation examination or the state-approved alternate assessment for students on a career readiness or ability program of study, IEP teams must review the student's performance on the first attempt and establish a targeted proficiency on all sections that are below the state's minimum requirement. For those students who meet participation criteria for the New Mexico alternate assessment, IEP teams must set targeted levels of proficiency based upon previous performance on the test, if the student has previously been administered the New Mexico alternate assessment. If the student achieves an advanced level of overall performance on the state-approved alternate assessment, the IEP team must arrange for the student to participate in the general graduation examination and identify appropriate accommodations that the student may require. IEP teams must document the targeted levels of proficiency on the IEP and the PWN, outlining the plan of actions to be taken by both the student and the district to ensure the student will meet the targeted levels of proficiency.

(d) Departures from the standard program of study for students receiving special education must be considered in the order of the options listed in Subparagraph (b) of Paragraph (9) of Subsection J of 6.30.2.10 NMAC. Any modified program of study may depart from a standard program only as far as is necessary to meet an individual student's educational needs as determined by the IEP team. A building administrator or designee who has knowledge about the student must be a member of the team when an alternative program of

study is developed.

(i) Districts must document changes from the standard pathway on the PWN. IEP teams must identify the reasons for changing the student's pathway, provide parents with clear concise explanations of the career readiness or ability pathway, and notify parents and students of the potential consequences that may limit the student's post-secondary options.

(ii) IEP teams shall not change a senior's program of study from the standard to the career readiness program of study or from the career readiness to the ability program of study, after the 20<sup>th</sup> school day of the senior year except in situations where seniors experience unusual medical emergencies. Waivers for special exceptions after the 20<sup>th</sup> school day must be sent to the PED special education bureau for review and approval. IEP teams may change a student's pathway from the ability to the career readiness program of study or from career readiness to the standard program of study if the student meets the graduation requirements of that program of study and if the change is made and documented appropriately in a revised IEP and PWN by a properly constituted IEP team in a properly convened meeting.

(iii) Beginning with students entering the 10<sup>th</sup> grade in 2005-06, districts shall maintain an accurate accounting of graduation pathways for students with disabilities and ensure that 80-100 percent of seniors with disabilities graduating in 2008 and later years are on the standard pathway, no more than 10 to 15 percent of students with disabilities shall graduate on the career readiness pathway, and no more than 1 to 3 percent of students with disabilities shall graduate on the ability pathway. Districts exceeding the above maximum percentages must submit a request for a waiver to the PED special education bureau for review on each student affected.

(e) A student who receives special education services may be granted a certificate with a follow-up plan of action in the form of an IEP when:

(i) the IEP team provides sufficient documentation and justification that the issuance of a certificate with a follow-up plan of action for an individual student is warranted;

(ii) at least one year before graduation, the IEP team provides PWN stating the student will receive a certificate with a follow-up plan of action;

(iii) the district ensures that prior to receiving a certificate, the student has a follow-up plan of action that is a part of transition planning before awarding a certificate; and

(iv) the IEP team has outlined measures to be taken by both the

student and the district to ensure the student receives a diploma.

(f) A student who does not return to complete the follow-up plan of action will be considered as a dropout.

(g) A student who receives a certificate is eligible to continue receiving special education services until receipt of a diploma or until the end of the academic year in which the student turns 22.

(h) Graduation plans must be a part of all IEPs:

(i) at the end of 8th grade or age 14 and concurrent with the development of the student's proposed four-year course of study;

(ii) when a student returns to a school after an extended absence, and if an IEP program of study may have been developed but needs to be reviewed; and

(iii) at any time after development of an initial graduation plan when evaluations warrant the need for a modified program of study.

(i) Graduation plans must be a part of all of all IEPs and annual reviews and must follow the student in all educational settings. Receiving institutions that fall under PED jurisdiction will recognize these graduation plans, subject to revision by new IEP teams if appropriate to meet a student's changing needs.

(j) At the exit IEP meeting the IEP team will review the student's transition plan and confirm and document that all district requirements for graduation under the final IEP have been satisfied. A building administrator who has knowledge about the student must be a member of this team, and sign specifically to verify and accept completed graduation plans; goals and objectives pursuant to (i) - (iii) of Subparagraph (b) of Paragraph (9) of Subsection J of 6.30.2.10 NMAC; or plans for a certificate and follow-up program pursuant to Subparagraph (e) of Paragraph (9) of Subsection J of 6.30.2.10 NMAC. The IEP team will also determine whether additional evaluations, reports, or documents are necessary to support a smooth and effective transition to post-secondary services for a student who will graduate on one of the three pathways. The school will arrange for any necessary information to be provided at no cost to the students or parents. A list of students who will receive the diploma through a career readiness or ability pathway shall be submitted to the local superintendent and the local school board by using the students' identification numbers. This information shall be treated as confidential in accordance with the federal Family Educational Rights and Privacy Act (FERPA).

(k) The receipt of a diploma ter-

minates the service eligibility of students with special education needs.

(l) All diplomas awarded by a school district must be identical in appearance, content, and effect, except that symbols or notations may be added to individual students' diplomas to reflect official school honors or awards earned by students.

(m) The provisions of Paragraph (9) of Subsection J of 6.30.2.10 NMAC become effective for students graduating in 2006 and future years, except as to the limitations stated in (iii) of Subparagraph (d) of Paragraph (9) of Subsection J of 6.30.2.10 NMAC on the use of the career readiness and ability programs of study that apply beginning with students graduating in 2008.

(n) Excuses from physical education: The physical education graduation requirement may be waived by the secretary of education, based upon a request by the local superintendent with documentation from a licensed medical doctor, osteopath, certified nurse practitioner with prescriptive authority, or chiropractor, that the student has a permanent or chronic condition that does not permit physical activity. A student with a disability pursuant to the Individuals with Disabilities Education Act (IDEA) and/or Section 504 of the Rehabilitation Act may also be eligible to request this waiver when appropriate medical documentation is provided in the IEP.

[10-31-96, 12-31-98; 6.30.2.10 NMAC - Rn, 6 NMAC 3.2.9 & A, 11-14-00; A, 08-15-03; A, 10-30-03; A, 08-31-04; A, 12-30-04; A, 03-15-05; A, 07-29-05]

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

**Explanatory paragraph:** This is an amendment to 6.31.2 NMAC, Sections 7, 8, 10, 11, 12 and 13 (CHILDREN WITH DISABILITIES/ GIFTED CHILDREN), effective July 29, 2005. The amendment adds language to Subsection C of 6.31.2.7, Subsection A of 6.31.2.8, and Subsection A of 6.31.2.11 to clarify that children who will have their third birthday during a school year are eligible for enrollment in public school special education programs at the beginning of that school year; adds a new Subsection D to 6.31.2.7 to define terms related to special education dispute resolution; amends Subsection A of 6.31.2.10 to clarify that child find screenings for preschool children with disabilities will serve as pre-referral interventions for those students; amends the requirements for instructional interventions that must be implemented under Subsection C of 6.31.2.10 before school-age students may be referred for special education evaluations; amends

Subsection A of 6.31.2.11 regarding the timely development of service plans for students with disabilities who enroll in public school preschool programs; amends Subsection D of 6.31.2.11 to clarify that instructional goals and objectives for students with disabilities must be tied to the New Mexico content standards and benchmarks for all students; amends Subsection E of 6.31.2.11 to clarify the requirements for the participation of students with disabilities in statewide and district-wide assessment programs; deletes 6.31.2.12 in its entirety and replaces it with a new section to clarify the requirements for gifted students' eligibility for special education services and provide alternative criteria for qualifying students whose performance on standardized assessments is affected by cultural, linguistic, socioeconomic or disability factors; and deletes Subsections G, H and I of 6.31.2.13 in their entirety and replaces them with new Subsections G, H and I to incorporate changes in the processes for dispute resolution, mediation, complaints and due process hearings from the 2004 reauthorization of the federal Individuals with Disabilities Education Act (IDEA), expand the state's menu of options for resolving special education disputes, eliminate the optional second-tier administrative review of due process hearing officer decisions, remove the option for IDEA hearing officers to hear pendent claims alleging noncompliance with Section 504 of the federal Rehabilitation Act, and make additional changes to the state rules governing IDEA dispute resolution, mediation, complaints and due process hearings. The amendment also corrects outdated references to the state board of education, the state superintendent of public instruction and the state department of education.

### 6.31.2.7 DEFINITIONS:

#### C. Additional definitions.

The following terms shall have the following meanings for purposes of these rules:

(3) "Child with a disability" means a child who meets all requirements of 34 CFR Sec. 300.7 and who:

(a) is aged 3 through 21 or will turn 3 at any time during the school year;

(5) "Developmentally delayed" means a child aged 3 through 9 or who will turn 3 at any time during the school year:

(i) with documented delays in development which are at least two standard deviations or 30 per cent below chronological age; or (ii) who in the professional judgment of the IEP team and one or more qualified evaluators needs special education or related services in at least one of the following five areas: receptive or expressive language, cognitive

abilities, gross and/or fine motor functioning, social or emotional development or self-help/adaptive functioning. Use of the developmentally delayed option by individual local educational agencies is subject to the further requirements of Paragraph F(2) of 6.31.2.10 NMAC.

**(13) "PED"** means the public education department;

~~(13)~~ **(14) "SBE"** or **"state board"** means the public education department (per N.M. Laws 2004, Chapter 27, Section 27);

~~(14)~~ **(15) "SDE"**~~["or "PED"]~~ means the public education department (per N.M. Laws 2004, Chapter 27, Section 27);

**(16) "SEB"** means the special education bureau of the public education department;

~~(15)~~ **(17)** As authorized by 34 CFR Sec. 300.7(a)(2)(ii) and 300.26(a)(2)(i), **"special education"** in New Mexico may include speech-language pathology services or any other related service that meets the following standards:

~~(16)~~ **(18)** A **"state-supported educational program"** means a publicly funded program that

~~(17)~~ **(19) "USC"** means the United States Code, including future amendments.

**D.** Definitions related to dispute resolution. Dispute resolution is a broad continuum of strategies that focuses on conflict resolution between families and public agencies, and which ranges from informal preventive processes to more formal hearing procedures. The following terms, which are listed in the order that reflects a continuum of dispute resolution options, shall have the following meanings for the purposes of these rules:

**(1) "Complaint Assistance IEP (CAIEP) meeting"** means an IEP meeting that is facilitated by the representative of the public agency who directs special education programs within the public agency, and who has decision-making authority on behalf of such agency. Once a state-level complaint has been filed, the responding public agency must offer to convene a CAIEP meeting with the parent(s) and relevant members of the IEP team, as described at Paragraph (3) of Subsection H of 6.31.2.13 NMAC. This meeting is intended to provide parents with an opportunity to discuss disputed IEP-related matters, and to provide the public agency with an opportunity to address and resolve these concerns.

**(2) "Facilitated IEP (FIEP) meeting"** means an IEP meeting that utilizes an independent, state-approved, state-funded, trained mediator as an IEP facilitator to assist the IEP team to communicate openly and effectively, in order to resolve conflicts related to a student's IEP. It is intended to result in the development of a revised IEP

for the student which resolves the parties' concerns. As with any IEP meeting, discussion between IEP team members at a FIEP meeting may be used as evidence in any subsequent due process hearing or civil proceeding.

**(3) "Mediation"** means a meeting or series of meetings that utilizes an independent, state-approved, state-funded, trained mediator to assist parties to reconcile disputed matters related to a student's IEP or other educational, non-IEP-related issues. It is intended to result in the development of a legally binding written agreement that describes the settlement reached by the parties. As described at Subparagraph (c) of Paragraph (3) of Subsection H of 6.31.2.13 NMAC, discussion that occurs during mediation must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

[6.31.2.7 NMAC - Rp 6 NMAC 5.2.7, 8/14/2000; A, 8/15/2003; A, 8/31/2004; A, 7/29/2005]

### **6.31.2.8 RIGHT TO A FREE APPROPRIATE PUBLIC EDUCATION (FAPE)**

**A.** All children with disabilities aged 3 through 21 or who will turn 3 at any time during the school year who reside in New Mexico, including children with disabilities who have been suspended or expelled from school, have the right to a free appropriate public education that is made available by one or more public agencies in compliance with all applicable requirements of 34 CFR Part 300 (especially Secs. 300.121, 300.300-300.313, 300.340-300.350 and 300.550-300.556) and these or other SBE rules and standards. Children with disabilities who are enrolled in private schools or facilities or are schooled at home have the rights provided by 34 CFR Secs. 300.400-300.461 and Subsection L of 6.31.2.11 NMAC.

**B.** Nothing in these rules shall preclude a public agency from offering additional services for children who do not meet the criteria of these rules. However, only children who meet the criteria in these rules may be included in calculating special education program units for state funding and counted as eligible children for federal flow-through funds under Part B of the IDEA.

[6.31.2.8 NMAC - Rp 6 NMAC 5.2.11.1, 8/14/2000; A, 7/29/2005]

### **6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS**

**A.** Child find. Each public agency shall adopt and implement policies and procedures to ensure that all children with disabilities who reside within the

agency's educational jurisdiction, including children with disabilities attending private schools or facilities, children who are schooled at home, highly mobile children and children who are advancing from grade to grade, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated in compliance with all applicable requirements of 34 CFR Secs. 300.125-126, 300.320, 300.451, 300.530-536 and these or other SBE rules and standards. For preschool children, child find screenings shall serve as interventions under Subsection C of 6.31.2.10 NMAC.

**C.** ~~["Prereferral interventions"]~~ The three-tiered model of student intervention

**(1)** If general screening, a referral from a parent, a school staff member or other information available to a public agency suggests that a particular student may be a child with a disability, a properly constituted student assistance team (SAT) in the agency shall:

**(a)** ensure that adequate screening in the areas of general health and well-being, language proficiency status, and academic levels of proficiency has been completed, in addition to addressing culture and acculturation, socioeconomic status, possible lack of instruction, and teaching and learning styles in order to rule out other possible causes of the child's educational difficulties; and

**(b)** conduct the SAT child study process and consider, implement and document ~~[such prereferral interventions as a properly constituted multidisciplinary team believes are appropriate under the circumstances; and]~~ the effectiveness of appropriate interventions through curriculum-based measures;

**(c)** ~~[if prereferral interventions are not effective within a reasonable time, refer the child for a full special education evaluation]~~ if, however, a student has an obvious disability or a serious and urgent problem, the SAT shall address the student's needs promptly on an individualized basis.

**(2)** If curriculum-based progress monitoring demonstrates that the student's response to intervention has not been positive and significant after no more than 18 weeks, the SAT may refer the child for a full special education evaluation, or it may resume the child study process to implement additional tier two interventions.

**(3)** If curriculum-based progress monitoring demonstrates that the student's response to intervention has been positive and significant after no more than 18 weeks, the SAT may continue to require the implementation of those interventions until the student no longer requires the interventions.

~~(2)~~ **(4)** Local school districts shall provide for ~~[prereferral]~~ interventions

through ~~[a student assistance team or similar process]~~ a properly constituted SAT pursuant to the district's educational plan for student success (EPSS) as required by the ~~[SBE]~~ PED Standards for Excellence at 6.30.2.9 NMAC. Public agencies other than local school districts shall develop and implement appropriate processes for providing ~~[prereferral]~~ interventions pursuant to the EPSS required of those agencies under 6.30.2.9 NMAC. All such processes in all public agencies shall include provisions for participation by the student's parents and, as appropriate, the student. [6.31.2.10 NMAC - Rp 6 NMAC 5.2.8.1, 5.2.9.1.5, 5.2.9.2-9.3, 8/14/2000; A, 7/29/2005]

### 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES

**A.** Preschool programs for children aged 3 and 4

(1) Each public agency shall ensure that a free appropriate public education is available for each preschool child with a disability within its educational jurisdiction no later than the child's third birthday and that an individualized education program (IEP) under Part B or an individual family services plan (IFSP) under Part C of the IDEA is in effect by that date in compliance with 34 CFR Secs. 300.121(c), 300.132 and 300.342(c). A child who will turn three at any time during the school year is eligible to enroll in a Part B preschool program at the beginning of the school year if the parent so chooses, whether or not the child has previously been receiving Part C services.

(3) In particular:

(g) Each LEA shall initiate a meeting to develop an eligible child's IFSP, IEP or IFSP-IEP no later than 15 days prior to the first day of the school year of the LEA where the child is enrolled or no later than 15 days prior to the child's entry into [the Part B preschool program] Part B preschool services if the transition process is initiated after the start of the school year, whichever is later, to ensure uninterrupted services. This IFSP, IEP, or IFSP-IEP will be developed by a team constituted in compliance with 34 CFR Sec. 300.344 that includes parents and appropriate early intervention providers who are knowledgeable about the child.

**D.** Performance goals and indicators. The content standards and benchmarks from the ~~[SBE's]~~ PED's Standards for Excellence (6.30.2 NMAC) for all children attending public schools and state-supported educational programs in New Mexico shall provide the basic performance goals and indicators for children with disabilities in the general curriculum.

The IEP goals and objectives must be directly tied to the New Mexico content standards and benchmarks, including the expanded performance standards for students with significant cognitive disabilities. Unless waivers or modifications covering individual public agencies' programs have been allowed by the ~~[SBE or the Superintendent of Public Instruction]~~ PED or the secretary of education, the general curriculum and the content standards and benchmarks shall only be ~~[modified]~~ adapted to the extent necessary to meet the needs of individual children with disabilities as determined by IEP teams in individual cases.

**E.** Participation in statewide and district-wide assessments. Each local educational agency and other public agencies when applicable shall include children with disabilities in all statewide and district-wide assessment programs ~~[with appropriate accommodations and modifications in administration if necessary. LEAs shall use the current criteria, standards, methods and instruments approved by the Department for accommodations and modifications as specified in a student's IEP and for alternate assessments for the small number of students for whom alternate assessments are appropriate].~~ Each public agency shall collect and report performance results in compliance with the requirements of 34 CFR Sec. 300.139 and any additional requirements established by the ~~[Department]~~ PED. Students with disabilities may participate:

(1) in the appropriate general assessment in the same manner as their nondisabled peers; this may include the use of adaptations that are deemed appropriate for all students by the PED; or

(2) in the appropriate general assessment with appropriate accommodations in administration if necessary; public agencies shall use the current guidance from the PED about accommodations as specified in the student's IEP; or

(3) in alternate assessments for the small number of students with significant cognitive disabilities for whom alternate assessments are appropriate under the PED's established participation criteria; the IEP team must agree and document that the student is eligible for participation in an alternate assessment according to the following criteria:

(a) the student's past and present levels of performance in multiple settings (i.e. home, school, community) indicate that a significant cognitive disability is present;

(b) the student needs intensive, pervasive, or extensive levels of support in school, home, and community settings; and

(c) the student's current cognitive and adaptive skills and performance levels

require direct instruction to accomplish the acquisition, maintenance, and generalization of skills in multiple settings (home, school, community).

[6.31.2.11 NMAC -Rp 6 NMAC 5.2.9.4, 5.2.11.1.1, 5.2.11.2, 5.2.12, 5.2.13, 8/14/2000; A, 7/29/2005]

### 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN

**A.** Gifted child defined. As used in this section 6.31.2.12 NMAC, "Gifted child" means a school-age person as defined in Sec. 22-1-2(O) NMSA 1978 whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking meets the eligibility criteria in this Section 6.31.2.12 NMAC and for whom a properly constituted IEP team determines that special education services are required to meet the child's educational needs.

**B.** Qualifying areas defined

(1) "Intellectual ability" means a score two standard deviations above the mean as defined by the test author on a properly administered intelligence measure. The test administrator must also consider the standard error of measure (SEM) in the determination of whether or not criteria have been met in this area.

(2) "Subject matter aptitude/achievement" means superior academic performance on a total subject area score on a standardized measure, or as documented by information from other sources as specified in Subparagraph (b) of Paragraph (2) of Subsection B of 6.31.2.12 NMAC.

(3) "Creativity/divergent thinking" means outstanding performance on a test of creativity/ divergent thinking, or in creativity/divergent thinking as documented by information from other sources as specified in Subparagraph (b) of Paragraph (2) of Subsection B of 6.31.2.12 NMAC.

(4) "Problem-solving/critical thinking" means outstanding performance on a test of problem-solving/critical thinking, or in problem-solving/critical thinking as documented by information from other sources as specified in Subparagraph (b) of Paragraph (2) of Subsection B of 6.31.2.12 NMAC.

(5) For students with "factors" as specified in Paragraph (2) of Subsection E of 6.31.2.12 NMAC, the impact of these factors shall be documented and alternative methods will be used to determine the student's eligibility.

**C.** Evaluation procedures for gifted children

(1) Each district must establish a child find procedure that includes a screen-

ing and referral process for students in public school who may be gifted.

(2) Analysis of data. The identification of a student as gifted shall include documentation and analysis of data from multiple sources for subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking including:

(a) standardized measures, as specified in Subsection B of 6.31.2.12 NMAC, and

(b) information regarding the child's abilities from other sources, such as collections of work, audio/visual tapes, judgment of work by qualified individuals knowledgeable about the child's performance (e.g., artists, musicians, poets and historians, etc.), interviews, or observations.

(3) The child's ability shall be assessed in all four areas specified in Subsection B of 6.31.2.12 NMAC.

**D.** Standard method for identification. Under the standard method for identification students will be evaluated in the areas of intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking. A student who meets the criteria established in Subsection B of 6.31.2.12 for intellectual ability and also meets the criteria in one or more of the other areas will qualify for consideration of service. A properly constituted IEP team, including someone who has knowledge of gifted education, will determine if special education services are required to meet the child's educational needs.

**E.** Alternative method for identification

(1) A district may apply to the public education department (PED) to utilize an alternative protocol for all students. Eligibility of a student will then be determined by a properly administered and collected, PED-approved alternative protocol designed to evaluate a student's intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving /critical thinking.

(2) If an accurate assessment of a child's ability may be affected by factors including cultural background, linguistic background, socioeconomic status or disability condition(s), an alternative protocol as described in Paragraph (1) of Subsection E of 6.31.2.12 NMAC will be used in all districts to determine the student's eligibility. The impact of these factors shall be documented by the person(s) administering the alternative protocol.

(3) The student assistance team (SAT) process requirements will not apply to students who meet the criteria established by the alternative protocols. When a student's overall demonstrated abilities are very superior (as defined by the alternative

protocol author), a properly constituted IEP team, including someone who has knowledge of gifted education, will determine if special education services are required to meet the child's educational needs.

**F.** Applicability of rules to gifted children

(1) All definitions, policies, procedures, assurances, procedural safeguards and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the district, except:

(a) the requirements of 6.31.2.8 NMAC through 6.31.2.10 NMAC and Subsections J, K and L of 6.31.2.11 NMAC regarding child find, evaluations and services for private school children with disabilities, children with disabilities in state-supported educational programs, children with disabilities in detention and correctional facilities and children with disabilities who are schooled at home; and

(b) the requirements of 34 CFR Secs. 300.519-300.528, Subsection I of 6.31.2.13 NMAC and 6.11.2.10 and 6.11.2.11 NMAC regarding disciplinary changes of placement for children with disabilities.

(2) Assuming appropriate evaluations, a child may properly be determined to be both gifted and a child with a disability and be entitled to a free appropriate public education for both reasons. The rules in this Section 6.31.2.12 NMAC apply only to gifted children.

(3) Nothing in these rules shall preclude a school district or a charter school within a district from offering additional gifted programs for children who fail to meet the eligibility criteria. However, the state shall only provide funds under Section 22-8-21 NMSA 1978 for PED-approved gifted programs for those students who meet the established criteria.

**G.** Advisory committees

(1) Establishment and membership. Pursuant to Subsection C of Section 22-13-6.1NMSA 1978, each school offering a gifted education program shall create an advisory committee of parents, community members, students and school staff members. The membership of each advisory committee shall reflect the cultural diversity of that school's enrollment. Formal documentation of committee membership, activities and recommendations shall be maintained.

(2) Purposes. The advisory committee shall:

(a) regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery;

(b) demonstrate support for the gifted program;

(c) provide information regarding the impact that cultural background, linguistic background, socioeconomic status and disability conditions within the community may have on the child referral, identification, evaluation and service delivery processes; and

(d) advocate for children who have been under-represented in gifted services due to cultural or linguistic background, socioeconomic status, or disability conditions, in order to ensure that these children have equal opportunities to benefit from services for gifted students.

[6.31.2.12 NMAC - Rp 6 NMAC 5.2.14, 8/14/2000; A, 7/29/2005]

### 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

**G.** Conflict management and resolution

(1) Each public agency shall seek to establish and maintain productive working relationships with the parents of each child the agency serves and to deal constructively with the disagreements that will inevitably arise. Toward that end, each public agency is strongly encouraged to provide appropriate training for staff and parents in skills and techniques of conflict prevention and management and dispute resolution, and to utilize an informal dispute resolution method as set forth under Subparagraph (a) of Paragraph (2) of Subsection G of 6.31.2.13 NMAC to resolve disagreements at the local level whenever practicable.

(2) Spectrum of dispute resolution options. To facilitate dispute prevention as well as swift, early conflict resolution whenever possible, the PED and the public agency shall ensure that the following range of dispute resolution options is available to parents and public agency personnel:

(a) Informal dispute resolution option. If a disagreement arises between parents and a public agency over a student's IEP or educational program, either the parents or the public agency may convene a new IEP meeting at any time to attempt to resolve their differences at the local level, without state-level intervention.

(b) Third-party assisted intervention. The special education bureau (SEB) of the PED will ensure that mediation is available to parents and public agencies who request such third-party assisted intervention before filing a state-level complaint or a request for a due process hearing. The SEB will honor a request for mediation that: (i) is in writing; (ii) is submitted to the SEB; (iii) is a mutual request signed by both parties or their designated representatives; and (iv) includes a statement of the matter(s) in dispute and a description of any previous

attempts to resolve these matters at the local level. Any request that does not contain all of these elements will be declined, with an explanation for the SEB's decision and further guidance, as appropriate.

**(c) Formal dispute resolution**

**(i)** A state-level complaint may be filed with the SEB of the PED by the parents of a student, or by another individual or organization on behalf of a student, as described under Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13 NMAC. Once a complaint has been filed, the responding public agency must offer in writing to convene a CAIEP meeting with the parent(s) and other relevant members of the IEP team to address any IEP-related issues raised in the complaint. The parent may accept or decline this offer, or the parties may agree to convene a FIEP meeting or mediation instead, as described under Paragraph (3) of Subsection H of 6.31.2.13 NMAC.

**(ii)** A request for a due process hearing may be filed by parents or their authorized representative, or by a public agency, as described under Paragraph (5) of Subsection I of 6.31.2.13 NMAC. A resolution session between the parties must be convened by the public agency following a request for a due process hearing, unless the parties agree in writing to waive that option or to convene a FIEP meeting or mediation instead, as described under Paragraph (8) of Subsection I of 6.31.2.13 NMAC.

**H. State complaint procedures**

**(1) Scope.** This Subsection H of 6.31.2.13 NMAC prescribes procedures to be used in filing and processing complaints alleging the failure of the PED or a public agency to comply with state or federal laws or regulations governing programs for children with disabilities under the IDEA or with state statutes or regulations governing educational services for gifted children.

**(2) Requirements for complaints**

**(a)** The SEB of the PED shall accept and investigate complaints from organizations or individuals that raise issues within the scope of this procedure as defined in the preceding Paragraph (1) of Subsection H of 6.31.2.13 NMAC. The complaint must: (i) be in writing; (ii) be submitted to the SEB (or to the secretary of education, in the case of a complaint against the PED); (iii) be signed by the complainant or a designated representative; (iv) include a statement that the PED or a public agency has violated a requirement of an applicable state or federal law or regulation; and (v) contain a statement of the facts on which the allegation of violation is based, and a description of any efforts the complainant has made to resolve the complaint issue(s) with the agency (for a complaint against a

public agency). Any complaint that does not contain each of these elements will be declined, with an explanation for the SEB's decision and further guidance, as appropriate.

**(b)** Pursuant to 34 CFR Sec. 300.662(c), the complaint must allege a violation that occurred not more than one year before the date the complaint is received by the SEB unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than three years before the date the complaint is received by the SEB.

**(3) Preliminary meeting**

**(a) CAIEP meeting.** Upon receipt of a complaint that meets the requirements of Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13 NMAC, the SEB of the PED shall acknowledge receipt of the complaint in writing and notify the public agency against which the violation has been alleged. Once a state-level complaint has been filed, the public agency shall offer in writing to convene a CAIEP meeting to address IEP-related issues raised in the complaint. The parent(s) may accept or decline this offer, or the parties may agree in writing instead to convene a FIEP meeting or mediation, as described in Subparagraph (b) of Paragraph (3) of Subsection H of 6.31.2.13 NMAC. The public agency must (and the parent(s) may) notify the SEB within 1 business day of agreeing to convene (or not to convene) one of these alternative dispute resolution (ADR) options. If the parties agree to convene a CAIEP meeting, as described at Paragraph D(1) of 6.31.2.7 NMAC, the following requirements apply:

**(i)** It must take place within 14 days of the date of the SEB's written acknowledgement of the complaint.

**(ii)** It must include the relevant members of the IEP team who have specific knowledge of the facts identified in the complaint.

**(iii)** It may not include an attorney of the public agency unless the parent is accompanied by an attorney.

**(b) FIEP meeting; mediation.** Parties to a state-level complaint may choose to convene a FIEP meeting or mediation instead of a CAIEP meeting. To do so, the public agency must (and the parent may) notify the SEB of the PED in writing within 1 business day of reaching their decision to jointly request one of these ADR options. A FIEP meeting or mediation shall be completed not later than 14 days from the date of the SEB's written acknowledgement of the complaint, unless a brief extension is granted by the SEB based on exceptional circumstances. Each session in the FIEP or mediation process must be scheduled in a

timely manner and must be held in a location that is convenient to the parties to the complaint.

**(c) Mediation requirements.** If the parties choose to use mediation, the following requirements apply:

**(i)** Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.

**(ii)** Any mediated agreement must state that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. Any such agreement must also be signed by both the parent and a representative of the agency who has the authority to bind such agency, and shall be enforceable in any state court of competent jurisdiction or in a district court of the United States.

**(iii)** If a mediated agreement involves IEP-related issues, the agreement must state that the public agency will subsequently convene an IEP meeting to inform the student's service providers of their responsibilities under that agreement, and revise the student's IEP accordingly or develop an IEP addendum, as appropriate.

**(iv)** The mediator shall transmit a copy of the written mediation agreement to each party within 7 days of the meeting at which the agreement was concluded. A mediation agreement involving a claim or issue that later goes to a due process hearing may be received in evidence if the hearing officer rules that part or all of the agreement is relevant to one or more IDEA issues that are properly before the hearing officer for decision.

**(v)** Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

**(4) Complaints and due process hearings on the same issues.** Pursuant to 34 CFR Sec. 300.661(c):

**(a)** The SEB of the PED shall set aside any part of a written complaint that is also the subject of a due process hearing under Subsection I of 6.31.2.13 NMAC until the conclusion of the hearing and any civil action. Any issue in the complaint that is not a part of the due process hearing or civil action will be resolved by the SEB as provided in Subsection H of 6.31.2.13 NMAC.

**(b)** If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the SEB must inform the complainant to that effect.

**(c)** A complaint alleging a public agency's failure to implement a due process decision will be resolved by the SEB as provided in this Subsection H of 6.31.2.13 NMAC.

**(5) Complaints against public agencies**

**(a) Impartial review.** Upon receipt of a complaint that meets the requirements of Paragraph (2) of Subsection H of 6.31.2.13 NMAC above, the SEB of the PED shall: (i) undertake an impartial investigation which shall include complete review of all documentation presented and may include an independent on-site investigation, if determined necessary by the SEB; (ii) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; and (iii) review all relevant information and make an independent determination as to whether the public agency is violating a requirement of an applicable state or federal statute or regulation.

**(b) Decision.** A written decision which includes findings of fact, conclusions, and the reasons for the decision and which addresses each allegation in the complaint shall be issued by the SEB and mailed to the parties within sixty (60) days of receipt of the written complaint, regardless of whether or not the parties agree to convene a CAIEP meeting, a FIEP meeting, or mediation. Such decision shall further include procedures for effective implementation of the final decision, if needed, including technical assistance, negotiations, and if corrective action is required, such action shall be designated and shall include the timeline for correction and the possible consequences for continued noncompliance.

**(c) Failure or refusal to comply.** If the public agency fails or refuses to comply with the applicable law or regulations, and if the noncompliance or refusal to comply cannot be corrected or avoided by informal means, compliance may be effected by the PED by any means authorized by state or federal laws or regulations. The PED shall retain jurisdiction over the issue of noncompliance with the law or regulations and shall retain jurisdiction over the implementation of any corrective action required.

**(6) Complaints against the PED.** If the complaint concerns a violation by the PED and (i) is submitted in writing to the secretary of education; (ii) is signed by the complainant or a designated representative; (iii) includes a statement that the PED has violated a requirement of an applicable state or federal law or regulation; and (iv) contains a statement of facts on which the allegation of violation is based, the secretary of education or designee shall appoint an impartial person or impartial persons to

conduct an investigation.

**(a) Investigation.** The person or persons appointed shall: (i) acknowledge receipt of the complaint in writing; (ii) undertake an impartial investigation which shall include a complete review of all documentation presented and may include an independent onsite investigation, if necessary; (iii) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; and (iv) review all relevant information and make an independent determination as to whether the PED is violating a requirement of an applicable state or federal statute or regulation.

**(b) Decision.** A written decision, including findings of fact, conclusions, and the reasons for the decision and addressing each allegation in the complaint, shall be issued by the person or persons appointed pursuant to this paragraph and mailed to the parties within sixty (60) days of receipt of the written complaint.

**(7) Extension of time limit.** An extension of the time limit under Subparagraph (b) of Paragraph (5) or Subparagraph (b) of Paragraph (6) of this Subsection H of 6.31.2.13 NMAC shall be permitted by the SEB of the PED only if exceptional circumstances exist with respect to a particular complaint.

**(8) Conflicts with federal laws or regulations.** If any federal law or regulation governing any federal program subject to this regulation affords procedural rights to a complainant which exceed those set forth in Subsection H of 6.31.2.13 NMAC for complaints within the scope of these rules, such statutory or regulatory right(s) shall be afforded to the complainant. In acknowledging receipt of such a complaint, the SEB shall set forth the procedures applicable to that complaint.

#### **I. Due process hearings**

**(1) Scope.** This Subsection I of 6.31.2.13 NMAC establishes procedures governing impartial due process hearings for the following types of cases:

**(a)** requests for due process in IDEA cases governed by 34 CFR Secs. 300.506-300.514 and 300.520-300.528; and

**(b)** claims for gifted services.

**(2) Definitions.** In addition to terms defined in 34 CFR Part 300 and 6.31.2.7 NMAC, the following definitions apply to this Subsection I of 6.31.2.13 NMAC:

**(a)** "Expedited hearing" means a hearing that is available on request by a public agency under 34 CFR Secs. 300.521 or 300.526 or by a parent under 34 CFR Sec. 300.525 and is subject to the requirements of 34 CFR Sec. 300.528.

**(b)** "Gifted services" means special education services to gifted children as defined in Subsection A of 6.31.2.12

NMAC.

**(c)** "Summary due process hearing" means a hearing designed to proceed more quickly and incur less expense than a standard due process hearing, as explained under Paragraph (15) of Subsection I of 6.31.2.13 NMAC.

**(d)** "Transmit" means to mail, transmit by electronic mail or telecopier (facsimile machine) or hand deliver a written notice or other document and obtain written proof of delivery by one of the following means: (i) an electronic mail system's confirmation of a completed transmission to an e-mail address that is shown to be valid for the individual to whom the transmission was sent; (ii) a telecopier machine's confirmation of a completed transmission to a number which is shown to be valid for the individual to whom the transmission was sent; (iii) a receipt from a commercial or government carrier showing to whom the article was delivered and the date of delivery; or (iv) a written receipt signed by the secretary of education or designee showing to whom the article was hand-delivered and the date delivered. A due process hearing final decision shall be transmitted to any party not represented by counsel by the U.S. postal service, certified mail, return receipt requested, showing to whom the article was delivered and the date of delivery.

**(3) Bases for requesting hearing.** A parent or public agency may initiate an impartial due process hearing on the following matters:

**(a)** the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child;

**(b)** the public agency refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child;

**(c)** the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of, or services to, a child who needs or may need gifted services.

**(d)** An IDEA due process hearing provides a forum for reviewing the appropriateness of decisions regarding the identification, evaluation, placement or provision of a free appropriate public education for a particular child with a disability by the public agency that is or may be responsible under state law for developing and implementing the child's IEP or ensuring that a FAPE is made available to the child. The IDEA does not authorize due process hearing officers to consider claims asserting that the PED should be required to provide direct services to a child with a disability pursuant to 20 USC Sec. 1413(g)(1) and 34 CFR Sec. 300.360 because the responsible public agency is unable to establish and



maintain appropriate programs of FAPE, or that the PED has failed to adequately perform its duty of general supervision over educational programs for children with disabilities in New Mexico. Accordingly, a due process hearing is not the proper forum for consideration of such claims and the PED will decline to refer such claims against it to a hearing officer. Such claims may be presented through the state-level complaint procedure under Subsection H of 6.31.2.13 NMAC above.

(4) Bases for requesting expedited hearing

(a) Pursuant to 34 CFR Sec. 300.525 and 20 USC Sec. 1415(k)(3), a parent may request an expedited hearing to review any decision regarding placement or a manifestation determination under 34 CFR Secs. 300.520-300.528.

(b) Pursuant to 34 CFR Sec. 300.526(c) and 20 USC Sec. 1415(k)(3), a public agency may request an expedited hearing if it believes that maintaining the current placement of a child is substantially likely to result in injury to the child or others.

(5) Request for hearing. A parent requesting a due process hearing shall transmit written notice of the request to the public agency whose actions are in question and to the SEB of the PED. A public agency requesting a due process hearing shall transmit written notice of the request to the parent(s) and to the SEB of the PED. The written request shall state with specificity the nature of the dispute and shall include:

(a) the name of the child;

(b) the address of the residence of the child (or available contact information in the case of a homeless child);

(c) the name of the school the child is attending;

(d) the name of the public agency, if known;

(e) the name, address and telephone number(s) of the party making the request (or available contact information in the case of a homeless party) and, if the party is represented by an attorney or advocate, the name, address and telephone number(s) of the attorney or advocate;

(f) a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem;

(g) a description of efforts the parties have made to resolve their dispute at the local level before filing a request for due process; and

(h) a proposed resolution of the problem to the extent known and available to the party requesting the hearing at the time.

(i) a request for an expedited hearing must also include a statement of

facts sufficient to show that a requesting parent is entitled to an expedited hearing under 34 CFR Secs. 300.525 or 300.527 or 20 USC Sec. 1415(k)(3) or that a requesting public agency is entitled to an expedited hearing under 34 CFR Sec. 300.521 or 300.526 or 20 USC Sec. 1415(k)(3).

(j) a request for a hearing must be in writing and signed and dated by the parent or the authorized public agency representative; an oral request made by a parent who is unable to communicate by writing shall be reduced to writing by the public agency and signed by the parent.

(k) a request for hearing filed by or on behalf of a party who is represented by an attorney or advocate shall include a sufficient statement authorizing the representation; a written statement on a client's behalf that is signed by an attorney who is subject to discipline by the New Mexico supreme court for a misrepresentation shall constitute a sufficient authorization; representation by other advocates must be specifically authorized in a writing signed by the party being represented.

(6) Response to request for hearing

(a) A request for a hearing shall be deemed to be sufficient unless the party receiving the notice of request notifies the hearing officer and the other party in writing that the receiving party believes the request has not met the requirements of Paragraph (5) of Subsection I of 6.31.2.13 NMAC.

(b) Public agency response

(i) In general. If the public agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process hearing request, such public agency shall, within 10 days of its receipt of the request, send to the parent a response that meets the requirements of 20 USC Sec. 1415(c)(2)(B)(i). This requirement presents an additional opportunity for parties to clarify and potentially resolve their dispute(s).

(ii) Sufficiency. A response filed by a public agency pursuant to (i) of Subparagraph (b) of Paragraph (6) shall not be construed to preclude such public agency from asserting that the parent's due process hearing request was insufficient where appropriate.

(c) Other party response. Except as provided in Subparagraph (b) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC above, the non-complaining party shall, within 10 days of its receipt of the request for due process, send to the requesting party a response that specifically addresses the issues raised in the hearing request. This requirement also presents an opportunity to clarify and potentially resolve disputed issues between the parties.

(d) A party against whom a due process hearing request is filed shall have a maximum of 15 days after receiving the request to provide written notification to the hearing officer of insufficiency under Subparagraph (a) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC. The 15-day timeline for the public agency to convene a resolution session under Paragraph (8) of Subsection I of 6.31.2.13 NMAC below runs at the same time as the 15-day timeline for filing notice of insufficiency.

(e) Determination. Within five days of receipt of a notice of insufficiency under Subparagraph (d) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC above, the hearing officer shall make a determination on the face of the due process request of whether it meets the requirements of Paragraph (5) of Subsection I of 6.31.2.13 NMAC, and shall immediately notify the parties in writing of such determination.

(f) Amended due process request. A party may amend its due process request only if:

(i) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to Paragraph (8) of Subsection I of 6.31.2.13 NMAC; or

(ii) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.

(g) Applicable timeline. The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under Paragraph (8) of Subsection I of 6.31.2.13 NMAC.

(7) Duties of the SEB of the PED. Upon receipt of a written request for due process, the SEB shall:

(a) appoint a qualified and impartial hearing officer who meets the requirements of 34 CFR Sec. 300.508 and 20 USC Sec. 1415(f)(3)(A);

(b) arrange for the appointment of a qualified and impartial mediator or IEP facilitator pursuant to 34 CFR Sec. 300.506 to offer ADR services to the parties;

(c) inform the parent in writing of any free or low-cost legal and other relevant services available in the area. The SEB shall also make this information available whenever requested by a parent; and

(d) inform the parent that in any action or proceeding brought under 20 USC Sec. 1415, a state or federal court, in its discretion and subject to the further provisions of 20 USC Sec. 1415(g)(3)(b) and 34 CFR Sec. 300.513, may award reasonable attorneys' fees as part of the costs to a prevailing party.

(e) the SEB shall also: (i) keep a list of the persons who serve as hearing officers and a statement of their qualifications; (ii) appoint another hearing officer if the initially appointed hearing officer excuses himself or herself from service; (iii) ensure that mediation and FIEP meetings are considered as voluntary and are not used to deny or delay a parent's right to a hearing; and (iv) ensure that within forty-five (45) days of commencement of the timeline for a due process hearing, a final written decision is reached and a copy transmitted to the parties, unless one or more specific extensions of time have been granted by the hearing officer at the request of either party (or at the joint request of the parties, where the reason for the request is to allow the parties to pursue an ADR option);

(f) following the decision, the SEB shall, after deleting any personally identifiable information, transmit the findings and decision to the state IDEA advisory panel and make them available to the public upon request.

**(8) Preliminary meeting**

(a) Resolution session. Before the opportunity for an impartial due process hearing under Paragraphs (3) or I(4) of Subsection I of 6.31.2.13 NMAC above, the public agency shall convene a resolution session with the parents and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process request, unless the parents and the public agency agree in writing to waive such a meeting, or agree to use the FIEP or mediation process instead. The resolution session:

(i) shall occur within 15 days of the respondent's receipt of a request for due process;

(ii) shall include a representative of the public agency who has decision-making authority on behalf of that agency;

(iii) may not include an attorney of the public agency unless the parent is accompanied by an attorney; and

(iv) shall provide an opportunity for the parents of the child and the public agency to discuss the disputed issue(s) and the facts that form the basis of the dispute, in order to attempt to resolve the dispute;

(v) if an agreement is reached following a resolution session, the parties shall execute a legally binding agreement that is signed by both the parent and a representative of the agency who has the authority to bind that agency, and which is enforceable in any state court of competent jurisdiction or in a district court of the United States; if the parties execute an agreement pursuant to a resolution session, a party may void this agreement within three business days of the agreement's execution;

cution; further, if the resolution session participants reach agreement on any IEP-related matters, the binding agreement must state that the public agency will subsequently convene an IEP meeting to inform the student's service providers of their responsibilities under that agreement, and revise the student's IEP accordingly or develop an IEP Addendum, as appropriate.

(b) FIEP meeting; mediation. Parties to a due process hearing may choose to convene a FIEP meeting or mediation instead of a resolution session. To do so, the party filing the request for the hearing must (and the responding party may) notify the hearing officer in writing within one business day of the parties' decision to jointly request one of these options. A FIEP meeting or mediation shall be completed not later than 14 days after the assignment of the IEP facilitator or mediator by the SEB, unless, upon joint request by the parties, an extension is granted by the hearing officer. Each session in the FIEP or mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the hearing. The requirements for mediation, as set forth at Subparagraph (c) of Paragraph (3) of Subsection H of 6.31.2.13 NMAC, apply to mediation in this context, as well.

**(c) Applicable timelines**

(i) If the parties agree to convene a resolution session, the applicable timelines for the due process hearing shall be suspended for up to 30 days from the date the due process request was received by the SEB (except in the case of an expedited hearing), and the meeting shall proceed according to the requirements set forth under Subparagraph (a) of Paragraph (8) of Subsection I of 6.31.2.13 NMAC above.

(ii) If the parties agree to convene a FIEP meeting or mediation, the public agency shall contact the person or entity identified by the SEB to arrange for mediation or a FIEP meeting, as appropriate. Except for expedited hearings, the parties to the FIEP meeting or mediation process may jointly request that the hearing officer grant a specific extension of time for the prehearing conference and for completion of the hearing beyond the 45-day period for issuance of the hearing decision. The hearing officer may grant such extensions in a regular case but may not exceed the 45-day deadline in an expedited case.

(iii) If the parties agree to waive all preliminary meeting options and proceed with the due process hearing, the hearing officer shall send written notification to the parties that the applicable timelines for the due process hearing procedure shall commence as of the date of that notice. The hearing officer shall thereafter proceed with the prehearing procedures, as set forth under Paragraph (12) of Subsection I of

6.31.2.13 NMAC.

(d) Resolution. Upon resolution of the dispute, the party who requested the due process hearing shall transmit a written notice informing the hearing officer and the SEB that the matter has been resolved and withdrawing the request for hearing. The hearing officer shall transmit an appropriate order of dismissal to the parties and the SEB.

(e) Hearing. If the parties convene a resolution session and they have not resolved the disputed issue(s) within 30 days of the receipt of the due process request by the SEB in a non-expedited case, the public agency shall (and the parents may) notify the hearing officer in writing within one business day of reaching this outcome. The hearing officer shall then promptly notify the parties in writing that the due process hearing shall proceed and all applicable timelines for a hearing under this part shall commence as of the date of such notice.

(f) The resolution of disputes by mutual agreement is strongly encouraged and nothing in these rules shall be interpreted as prohibiting the parties from engaging in settlement discussions at any time before, during or after an ADR meeting, a due process hearing or a civil action.

(g) Hearing officer responsibility and authority. Hearing officers shall conduct proceedings under these rules with due regard for the costs and other burdens of due process proceedings for public agencies, parents and students. In that regard, hearing officers shall strive to maintain a reasonable balance between affording parties a fair opportunity to vindicate their IDEA rights and the financial and human costs of the proceedings to all concerned. Accordingly, each hearing officer shall exercise such control over the parties, proceedings and the hearing officer's own practices as (s)he deems appropriate to further those ends under the circumstances of each case. In particular, and without limiting the generality of the foregoing, the hearing officer, at the request of a party or upon the hearing officer's own initiative and after the parties have had a reasonable opportunity to express their views on disputed issues:

(a) shall ensure by appropriate orders that parents and their duly authorized representatives have timely access to records and information under the public agency's control which are reasonably necessary for a fair assessment of the IDEA issues raised by the requesting party;

(b) shall limit the issues for hearing to those permitted by the IDEA which the hearing officer deems necessary for the protection of the rights that have been asserted by the requesting party in each case;

(c) may issue orders directing the

timely production of relevant witnesses, documents or other information within a party's control, protective orders or administrative orders to appear for hearings, and may address a party's unjustified failure or refusal to comply by appropriate limitations on the claims, defenses or evidence to be considered;

**(d)** shall exclude evidence that is irrelevant, immaterial, unduly repetitious or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in federal courts or the courts of New Mexico; and

**(e)** may issue such other orders and make such other rulings, not inconsistent with express provisions of these rules or the IDEA, as the hearing officer deems appropriate to control the course, scope and length of the proceedings while ensuring that the parties have a fair opportunity to present and support all allowable claims and defenses that have been asserted.

**(10) Duties of the hearing officer.** The hearing officer shall excuse himself or herself from serving in a hearing in which he or she believes a personal or professional bias or interest exists which conflicts with his or her objectivity. The hearing officer shall:

**(a)** make a determination regarding the sufficiency of a request for due process within 5 days of receipt of any notice of insufficiency, and notify the parties of this determination;

**(b)** schedule an initial prehearing conference within 14 days of commencement of the timeline for a due process hearing, or as soon as reasonably practicable in an expedited case pursuant to Paragraph (12) of Subsection I of 6.31.2.13 NMAC below;

**(c)** reach a decision, which shall include written findings of fact, conclusions of law, and reasons for these findings and conclusions and shall be based solely on evidence presented at the hearing;

**(d)** transmit the decision to the parties and to the SEB within 45 days of the commencement of the timeline for the hearing, unless a specific extension of time has been granted by the hearing officer at the request of a party to the hearing, or at the joint request of the parties where the reason for the request is to permit the parties to pursue an ADR option; for an expedited hearing, no extensions or exceptions beyond the 45-day deadline are permitted.

**(e)** the hearing officer may reopen the record for further proceedings at any time before reaching a final decision after transmitting appropriate notice to the parties; the hearing is considered closed and final when the written decision is transmitted to the parties and to the SEB;

**(f)** the decision of the hearing

officer is final, unless a party brings a civil action as set forth in Paragraph (25) of Subsection I of 6.31.2.13 NMAC below.

**(11) Withdrawal of request for hearing.** A party may unilaterally withdraw a request for due process at any time before a decision is issued. A written withdrawal that is transmitted to the hearing officer and the other party at least two business days before a scheduled hearing shall be without prejudice to the party's right to file a later request on the same claims, which shall ordinarily be assigned to the same hearing officer. A withdrawal that is transmitted or communicated within two business days of the scheduled hearing shall ordinarily be with prejudice to the party's right to file a later request on the same claims unless the hearing officer orders otherwise for good cause shown. A withdrawal that is entered during or after the hearing but before a decision is issued shall be with prejudice. In any event, the hearing officer shall enter an appropriate order of dismissal.

**(12) Prehearing procedures.** Unless extended by the hearing officer at the request of a party, within 14 days of the commencement of the timeline for a due process hearing and as soon as is reasonably practicable in an expedited case, the hearing officer shall conduct an initial prehearing conference with the parent and the public agency to:

**(a)** identify the issues (disputed claims and defenses) to be decided at the hearing and the relief sought;

**(b)** establish the hearing officer's jurisdiction over IDEA and gifted issues;

**(c)** determine the status of the resolution session, FIEP meeting or mediation between the parties, and determine whether an additional prehearing conference will be necessary as a result;

**(d)** review the hearing rights of both parties, as set forth in Paragraphs (16) and (17) of Subsection I of 6.31.2.13 NMAC below, including reasonable accommodations to address an individual's need for an interpreter at public expense;

**(e)** review the procedures for conducting the hearing;

**(f)** set a date, time and place for the hearing that is reasonably convenient to the parents and school personnel involved; the hearing officer shall have discretion to determine the length of the hearing, taking into consideration the issues presented;

**(g)** determine whether the child who is the subject of the hearing will be present and whether the hearing will be open to the public;

**(h)** set the date by which any documentary evidence intended to be used at the hearing by the parties must be exchanged; the hearing officer shall further inform the parties that, not less than 5 busi-

ness days before a regular hearing or, if the hearing officer so directs, not less than two business days before an expedited hearing, each party shall disclose to the other party all evaluations completed by that date and recommendations based on the evaluations that the party intends to use at the hearing; the hearing officer may bar any party that fails to disclose such documentary evidence, evaluation(s) or recommendation(s) by the deadline from introducing the evidence at the hearing without the consent of the other party;

**(i)** as appropriate, determine the current educational placement of the child pursuant to Paragraph (27) of Subsection I of 6.31.2.13 NMAC below;

**(j)** exchange lists of witnesses and, as appropriate, entertain a request from a party to issue an administrative order compelling the attendance of a witness or witnesses at the hearing;

**(k)** address other relevant issues and motions; and

**(l)** determine the method for having a written, or at the option of the parent, electronic verbatim record of the hearing; the public agency shall be responsible for arranging for the verbatim record of the hearing.

**(m)** the hearing officer shall transmit to the parties and the SEB of the PED a written summary of the prehearing conference; the summary shall include, but not be limited to, the date, time and place of the hearing, any prehearing decisions, and any orders from the hearing officer.

**(13)** Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents, child and school personnel involved.

**(14)** In order to limit testimony at the hearing to only those factual matters which remain in dispute between the parties, on or before 10 days before the date of the hearing, each party shall submit a statement of proposed stipulated facts to the opposing party. On or before five days before the date of the hearing, the parties shall submit a joint statement of stipulated facts to the hearing officer. All agreed-upon stipulated facts shall be deemed admitted, and evidence shall not be permitted for the purpose of establishing these facts.

**(15)** Summary due process hearing. These summary due process hearing procedures are designed to afford parents and public agencies an alternative, voluntary dispute resolution process that requires less time and expense than a traditional due process hearing. The use of summary due process hearing procedures shall not alter the requirement that the public agency convene a resolution session within 15 days of its receipt of the request for the hearing,

unless the parties agree to waive that option in writing or choose to use a FIEP meeting or mediation instead.

**(a)** Any party requesting a due process hearing may request that the dispute be assigned to a summary due process hearing track. A request for a summary due process hearing may be submitted simultaneously with the request for due process hearing, at the prehearing scheduling conference, or at a later time by agreement of all parties.

**(b)** Any party opposing a request for summary due process shall state its objection within 5 days of the date of receipt of the request for a summary due process hearing. The summary due process hearing option is voluntary. If a party timely states its opposition to this option, the matter will be placed on a traditional due process hearing track.

**(c)** On or before 10 days before the date of the hearing, each party shall submit a statement of proposed stipulated facts to the opposing party. On or before five days before the date of the hearing, the parties shall submit a joint statement of stipulated facts to the hearing officer. All agreed-upon stipulated facts shall be deemed admitted, and evidence shall not be permitted for the purpose of establishing these facts.

**(d)** On or before 5 days before the summary due process hearing, each party shall produce to the opposing party and to the hearing officer a copy of all documents that the party seeks to introduce into evidence at the hearing and identify all witnesses that the party intends to call to testify at the hearing.

**(e)** Each party shall have one half (1/2) day to present its case. In the event that extensive cross examination, arguments or other factors impede a party's ability to complete its case in one half day, the hearing officer shall have discretion to extend the time for the hearing, as needed.

**(f)** The hearing officer shall issue a decision to the parties within 7 days of the completion of the summary due process hearing.

**(g)** Except as modified herein, the procedural rules and procedures applicable to due process hearings as stated in Subsection I of 6.31.2.13 NMAC shall also apply to summary due process hearings.

**(16)** Any party to a hearing has the right to:

**(a)** be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

**(b)** present evidence and confront, cross-examine and compel the attendance of witnesses;

**(c)** prohibit the introduction of any evidence at the hearing that has not

been disclosed to that party at least five business days before a regular hearing or, if the hearing officer so directs in the prehearing summary, at least two business days before an expedited hearing;

**(d)** obtain a written, or, at the option of the parents, electronic verbatim record of the hearing; and

**(e)** obtain written, or, at the option of the parents, electronic findings of fact and decisions.

**(17)** Parents involved in hearings also have the right to:

**(a)** have the child who is the subject of the hearing present; and

**(b)** open the hearing to the public.

**(18)** The record of the hearing and the findings of fact and decisions described above must be provided at no cost to the parents.

**(19)** Limitations on the hearing

**(a)** The party requesting the due process hearing shall not be allowed to raise issues at the hearing that were not raised in the request for a due process hearing (including an amended request, if such amendment was previously permitted) filed under Paragraph (5) of Subsection I of 6.31.2.13 NMAC, unless the other party agrees otherwise.

**(b)** Timeline for requesting hearing. A parent or agency shall request an impartial due process hearing within two years of the date that the parent or agency knew or should have known about the alleged action that forms the basis of the due process request.

**(c)** Exceptions to the timeline. The timeline described in Subparagraph (b) of Paragraph (19) of Subsection I of 6.31.2.13 NMAC above shall not apply to a parent if the parent was prevented from requesting the hearing due to:

**(i)** specific misrepresentations by the public agency that it had resolved the problem that forms the basis of the due process request; or

**(ii)** the public agency's withholding of information from the parent that was required under this part to be provided to the parent.

**(20)** Rules for expedited hearings.

The rules in Paragraphs (4) through (19) of Subsection I of 6.31.2.13 NMAC shall apply to expedited due process hearings with the following exceptions:

**(a)** The SEB of the PED and the hearing officer shall ensure that a hearing is held within 20 school days of the date the request for hearing is received by the SEB, and a written decision is reached within 10 school days of the completion of the hearing, without exceptions or extensions, and thereafter mailed to the parties.

**(b)** The hearing officer shall seek to hold the hearing and issue a decision as soon as is reasonably practicable within the

time limit described in Subparagraph (a) of Paragraph (20) of Subsection I of 6.31.2.13 NMAC above, and shall expedite the proceedings with due regard for any progress in a resolution session, FIEP meeting or mediation, the parties' need for adequate time to prepare and the hearing officer's need for time to review the evidence and prepare a decision after the hearing.

**(c)** The parties shall decide whether to convene a resolution session, FIEP meeting, or mediation before the commencement of an expedited hearing in accordance with Paragraph (8) of Subsection I of 6.31.2.13 NMAC, and are encouraged to utilize one of these preliminary meeting options. However, in the case of an expedited hearing, agreement by the parties to convene a resolution session, FIEP meeting or mediation shall not result in the suspension or extension of the timeline for the hearing stated under Subparagraph (a) of Paragraph (20) of Subsection I of 6.31.2.13 NMAC above.

**(d)** The hearing officer may shorten the five-business-day rule for exchanging evidence before the hearing to not less than two business days and shall state the deadline established and the consequences of the parties' failure to meet the deadline in the written summary of the prehearing conference.

**(e)** The hearing officer may shorten the 15-day timeline for providing notice of insufficiency of a request for an expedited due process hearing to 10 school days.

**(f)** The hearing officer may shorten the timeline for the exchange of proposed stipulated facts between the parties as (s)he deems necessary and appropriate given the circumstances of a particular case. The hearing officer may also shorten the timeline for providing agreed-upon stipulated facts to the hearing officer to two school days before the hearing.

**(g)** Decisions in expedited due process hearings are final, unless a party brings a civil action as provided in Paragraph (25) of Subsection I of 6.31.2.13 NMAC below.

**(21)** Decision of the hearing officer

**(a)** In general. Subject to Subparagraph 21(b) of Subsection I of 6.31.2.13 NMAC below, a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (FAPE).

**(b)** Procedural issues. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:

**(i)** impeded the child's right to a FAPE;

**(ii)** significantly impeded the parents' opportunity to participate in

the decision-making process regarding the provision of a FAPE to the student; or

(iii) caused a deprivation of educational benefits.

(c) Rule of construction. Nothing in this paragraph shall be construed to preclude a hearing officer from ordering a public agency to comply with procedural requirements under this section.

(22) Rule of construction. Nothing in this Subsection I shall be construed to affect the right of a parent to file a complaint with the SEB of the PED, as described under Subsection H of 6.31.2.13 NMAC.

(23) Modification of final decision. Clerical mistakes in final decisions, orders or parts of the record and errors therein arising from oversight or omission may be corrected by the hearing officer at any time on the hearing officer's own initiative or on the request of any party and after such notice, if any, as the hearing officer orders. Such mistakes may be corrected after a civil action has been brought pursuant to Paragraph (25) of Subsection I of 6.31.2.13 NMAC below only with leave of the state or federal district court presiding over the civil action.

(24) Expenses of the hearing. The public agency shall be responsible for paying administrative costs associated with a hearing, including the hearing officer's fees and expenses and expenses related to the preparation and copying of the verbatim record, its transmission to the SEB, and any further expenses for preparing the complete record of the proceedings for filing with a reviewing federal or state court in a civil action. Each party to a hearing shall be responsible for its own legal fees or other costs, subject to Paragraph (26) of Subsection I of 6.31.2.13 NMAC below.

**(25) Civil action**

(a) Any party aggrieved by the decision of a hearing officer in an IDEA matter has the right to bring a civil action in a state or federal district court pursuant to 20 USC Sec. 1415(i) and 34 CFR Sec. 300.512. Any civil action must be filed within 30 days of the receipt of the hearing officer's decision by the appealing party.

(b) A party aggrieved by the decision of a hearing officer in a matter relating solely to the identification, evaluation, or educational placement of or services to a child who needs or may need gifted services may bring a civil action in a state court of appropriate jurisdiction within 30 days of receipt of the hearing officer's decision by the appealing party.

**(26) Attorneys' fees**

(a) In any action or proceeding brought under 20 USC Sec. 1415, the court, in its discretion and subject to the further provisions of 20 USC Sec. 1415(i) and 34

CFR Sec. 300.513, may award reasonable attorneys' fees as part of the costs to:

(i) the parent of a child with a disability who is a prevailing party;

(ii) a prevailing public agency against the attorney of a parent who files a request for due process or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(iii) to a prevailing public agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(b) Any action for attorneys' fees must be filed within one year of the last administrative decision.

(c) Opportunity to resolve due process complaints. A meeting conducted pursuant to Subparagraph (a) of Paragraph (8) of Subsection I of 6.31.2.13 NMAC shall not be considered:

(i) a meeting convened as a result of an administrative hearing or judicial action; or

(ii) an administrative hearing or judicial action for purposes of this paragraph.

(d) Hearing officers are not authorized to award attorneys' fees.

(e) Attorneys' fees are not recoverable for actions or proceedings involving services to gifted students or other claims based solely on state law.

(27) Child's status during proceedings

(a) Except as provided in 34 CFR Sec. 300.526 and Paragraph (4) of Subsection I of 6.31.2.13 NMAC, and unless the public agency and the parents of the child agree otherwise, during the pendency of any administrative or judicial proceeding regarding an IDEA due process request, the child involved must remain in his or her current educational placement. Disagreements over the identification of the current educational placement which the parties cannot resolve by agreement shall be resolved by the hearing officer as necessary.

(b) If the case involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If a hearing officer agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the public agency and the parents for purposes of Subparagraph (a) of Paragraph (27) of

Subsection I of 6.31.2.13 NMAC.

(28) Effective date and transitional provisions

(a) The procedures in this Subsection I of 6.31.2.13 NMAC shall govern due process requests received by the SEB after the July 29, 2005, effective date of this subsection.

(b) The provisions of the IDEA 2004 that took effect on July 1, 2005, shall apply to due process cases filed between July 1 and July 29, 2005, in the event of irreconcilable conflicts with the state rules as they existed during that time.

(c) The parties to due process cases that were pending on July 29, 2005, may enter into a written agreement to waive the administrative review process that would otherwise be available under the former state rules and proceed directly from a final decision by a hearing officer to a civil action in a state or federal district court. The parties to cases in which administrative appeals were pending on July 29, 2005, and in which the administrative appeal officer has not yet ruled on the merits of any substantive issue may likewise agree to waive the administrative review process but shall decide whether to do so within a reasonable time to be established by the administrative appeal officer.

(d) The parties to cases pending on July 29, 2005, may likewise enter into a written agreement to dismiss any claims under Section 504 of the federal Rehabilitation Act that would otherwise be hearable or administratively reviewable under the former state rules, provided that the hearing or appeal officer has not yet ruled on the merits of any substantive issue raised under an affected Section 504 claim.

(e) Upon receipt of a timely and sufficient motion incorporating an agreement under Subparagraphs 28(c) or 28(d) of Subsection I of 6.31.2.13 NMAC above, the authority before whom the case is pending shall enter an appropriate order to implement the agreement.

[6.31.2.13 NMAC - Rp 6 NMAC 5.2.9.1.1-9.1.4, 5.2.9.1.6-9.1.8, 5.2.10, 8/14/2000; A, 8/15/2003; A, 8/31/2004; A, 7/29/2005]

## NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

This is an amendment to 10.10.2 NMAC, Sections 2, 3, 6, 7, 8, 9, 10, 11, 12, 14 and 15, effective July 29, 2005. The part name is also amended.

### PART 2 APPLICATIONS PROCEDURES GOVERNING THE ~~DRUG CONTROL AND SYSTEM~~ IMPROVEMENT FORMULA GRANT

**PROGRAM] EDWARD BYRNE  
MEMORIAL JUSTICE ASSISTANCE  
GRANT PROGRAM**

**10.10.2.2 SCOPE:** [~~All eligible drug control and system improvement (DCSI) applicants~~] All eligible Edward Byrne justice assistance grant program (JAG) applicants  
[10.10.2.2 NMAC - Rp 10 NMAC 10.2.2, 3-15-00; A, 07-29-05]

**10.10.2.3 STATUTORY AUTHORITY:** [~~P.L. 100-690, Title VI, Subtitle C and Section 501 (B) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751) as amended; NMSA 1978 Section 9-19-6] P.L. 108-447, Consolidated Appropriations Act, 2005; NMSA 1978 Section 9-19-6  
[10.10.2.3 NMAC - Rp 10 NMAC 10.2.3, 3-15-00; A, 07-29-05]~~

**10.10.2.6 OBJECTIVE:**  
A. [~~The U.S. Department of Justice's Bureau of Justice Assistance (BJA), under the Anti-Drug Abuse Act of 1988 (P.L. 100-690, Title VI, Subtitle C) and Section 501(B) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751) as amended, provides federal financial assistance to state and local units of government for the purpose of enforcing state and local laws that establish offenses similar to offenses in the Controlled Substance Act (21 U.S.C. 801, et seq.) and/or to improve the functioning of the criminal justice system, with emphasis on violent crime and serious offenders.] The U.S. department of justice, bureau of justice assistance(BJA), under the Consolidated Appropriations Act, 2005, Public Law 108-447 provides states and units of local government with funds to provide additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for criminal justice.~~

B. [~~Grants may provide information systems, equipment, training, technical assistance and personnel for the more widespread apprehension, prosecution, adjudication, detention, and rehabilitation of persons who violate such laws, and to assist the victims of such crimes. The program is referred to as the Drug Control and System Improvement (DCSI) Formula Grant Program.] Grants may be used for law enforcement programs; prosecution and court programs; prevention and education programs; corrections and community corrections programs; drug treatment programs and planning, evaluation, and technology improvement programs.~~

C. This initiative is intended to add to, augment and/or supplement, not replace, resources already committed to the drug and violent crime control effort.

[10.10.2.6 NMAC - Rp 10 NMAC 10.2.6, 3-15-00; A, 07-29-05]

**10.10.2.8 ELIGIBLE APPLICANTS:** Eligible applicants are limited to state agencies, local units of government [~~and non-profits~~]. Indian pueblos/tribes are only eligible if they perform law enforcement functions as determined by the U.S. secretary of the interior (refer to list below). State institutions of higher learning are considered to be "state agencies" for eligibility purposes.

- A. Jicarilla Apache tribal police department
- B. Laguna tribal police department
- C. Sandia tribal police department
- D. Picuris tribal police department
- E. Pojoaque tribal police department
- F. San Juan tribal police department
- G. Santa Clara tribal police department
- H. Taos pueblo tribal police department
- I. Tesuque tribal police department
- J. Ramah Navajo division of public safety
- K. Acoma tribal police department
- L. Isleta tribal police department
- M. Santa Ana tribal police department
- N. Zuni tribal police department

[10.10.2.8 NMAC - Rp 10 NMAC 10.2.8, 3-15-00; A, 05-31-02; A, 07-29-05]

**10.10.2.9 DISTRIBUTION OF FORMULA FUNDS:** Variable pass-through: state shall distribute to its local units of government and non-profits, in the aggregate, the portion of the state's formula grant funds equal to the local government share of total state and criminal justice expenditures for the previous fiscal year (Sec. 506. (b) (1) of the Act). A minimum of 49.29% must be passed through to local units of government and non-profits; and, no more than 50.71% can be used by state agencies. States may exceed the minimum pass-through by providing funds not used at the state level to local units of government. In distributing funds among urban, rural, and suburban units of local government, the state shall give priority to those jurisdictions with the greatest need (Sec. 506. (b) (2) of the Act). [~~The state is required to set aside 5% of the total award for criminal justice records improvement. The U.S. department of justice has authorized states that have~~

~~signed a waiver, to utilize criminal justice records improvement set aside funds for anti-terrorism plan and programs. The amount contained in the set aside is not counted against the local pass-through minimum. Spending will be consistent with the criminal justice records improvement plan approved by BJA.]~~

[10.10.2.9 NMAC - Rp 10 NMAC 10.2.9, 3-15-00; A, 05-31-02; A, 05-28-04; A, 07-29-05]

**10.10.2.10 AUTHORIZED PROJECTS/PROGRAM AREAS**

[~~A. Authorized programs for 2004 funding are listed below. For additional information on priorities and areas of emphasis, see the 2004 New Mexico drug and violent crime control strategy. Descriptions for each program can be found in attachment A. Approved program abstracts:~~

- (1) law enforcement (01, 02, 07a, 08, 22, 24, 25, 27)
- (2) treatment for offenders (13)
- (3) criminal justice information systems/homeland security/anti terrorism (15b, 26)
- (4) domestic violence (18)
- (5) evaluation and research (19)
- (6) innovative programs (16)]

~~A. Authorized programs for 2005 funding are listed below. Descriptions for each program can be found in attachment A. Approved program purposes:~~

- (1) law enforcement
- (2) planning, evaluation

B. Applicants may request copies of the 2004 New Mexico drug and violent crime control strategy by writing the Department of Public Safety, [~~Grants Management Bureau~~] Grants Accountability and Compliance Section, Post Office Box 1628, Santa Fe, New Mexico 87504 or by calling [(505) 827-3338] (505) 827-9062.

[10.10.2.10 NMAC - Rp 10 NMAC 10.2.10, 3-15-00; A, 05-31-02; A, 05-28-04; A, 07-29-05]

**10.10.2.11 APPLICATION REQUIREMENTS:** All applicants for funding under the [~~DCSI~~] JAG formula grant program must adhere to the following procedures.

A. Each applicant shall forward **an original and five (5) copies** of the application to the [~~Grants Management Bureau~~] Grants Accountability and Compliance Section, Department of Public Safety, 4491 Cerrillos Road, P.O. Box 1628, Santa Fe, New Mexico 87504-1628, phone number 827-3338.

B. The application should be single-spaced and single-sided on 8 1/2 x 11" paper. Print styles and sizes should be

conducive to easy reading, i.e., no italics unless used for highlighting. The entire application packet should not exceed forty (40) pages.

**C. Application deadline:** ~~[All applications must be received at the department of public safety no later than 5:00 P.M., June 18, 2004. It is the responsibility of the applicant to ensure that the application is received by the grants management bureau, department of public safety. Any applications not received by the grants management bureau will not be considered once the deadline has expired.] All applications must be received at the grants accountability and compliance section, department of public safety no later than 5:00 P.M., August 19, 2005. It is the responsibility of the applicant to ensure that the application is received by the grants accountability and compliance section, department of public safety. Any application not received by the grants accountability and compliance section will not be considered once the deadline has expired.~~

**D. Single purpose area rule:** Only applications proposing to carry out a project in one single program ~~[area]~~ will be accepted for funding consideration. ~~[Refer to program purpose area addendum, attachment A. Applicants may, however, incorporate design elements of other program purpose areas in their project.]~~

**E. Proposed project term:** The term of the project proposed in the application may exceed 12 months; however, funding beyond the initial award for 12 months is not guaranteed. Availability of limited funds restricts the state in granting award amounts on a year-to-year basis. The state recognizes that continued funding of successful projects is paramount to the success of the overall program. Projects should be designed to be consistent with the multi-year state strategy.

**F. Certification requirements:** Drug free workplace requirement: This applies to state agencies **ONLY**. Title V, Section 5153, of the Anti-Drug Abuse Act of 1988 provides that all state agencies receiving federal funds shall certify and submit proof to the granting agency that it will provide a drug-free workplace.

**G. Debarment, suspension, ineligibility, and voluntary exclusion:** All applicants for funds will be required to complete a certification stating that the applicant has not been suspended, debarred, or is otherwise ineligible to participate in this federal program.

**H. Disclosure of lobbying activities requirement:** Section 319 of Public Law 101-121 generally prohibits recipients of federal contracts, grants and loans from using appropriated funds for lobbying the executive or legislative branches

of the federal government in connection with a specific contract, grant or loan. Section 319 also requires each person who requests or receives a federal contract, grant, cooperative agreement, loan or a federal commitment to insure or grant a loan, to disclose lobbying. The term "recipient" as used in this context does not apply to Indian tribes, organizations, or agencies.

**I. Disclosure of federal participation requirement:** Section 8136 of the Department of Defense Appropriations Act (Stevens Amendment) enacted in October 1988, requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with federal money, all grantees receiving federal funds, including but not limited to state and local governments, shall clearly state (1) the percentage of the total cost of the program or project which will be financed with federal money, and (2) the dollar amount of federal funds for the project or program. This applies only to subgrantees who receive \$500,000 or more in the aggregate during a single funding year.

**J. General financial requirements:** Grants funded under the formula grant program are governed by the provisions of 28 CFR Part 66, Common Rule, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Government and the Office of Management and Budget (OMB) Circulars applicable to financial assistance. These circulars along with additional information and guidance contained in "OJP financial guide for grants" (current edition), are available from OJP and from the ~~[grants management bureau]~~ grants accountability and compliance section. This guideline manual provides information on cost allowability, methods of payment, audits, accounting systems and financial records.

**K. Audit requirement:** Agencies applying for federal funds must assure that they will comply with the appropriate audit requirement. Subgrantees receiving \$500,000 or more a year shall have an audit made in accordance with OMB Circular A-133, as amended.

**L. Confidential funds requirement:** State agencies and local units of government may apply for and receive grants to conduct law enforcement undercover operations. Each agency must certify that it will develop policies and procedures to protect the confidentiality of the operations. Agencies must also certify that they will comply with the office of justice programs manual OJP financial guide current edition.

**M. Civil rights require-**

ment: The applicant certifies that it will comply with the non-discrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended; Title II of the Americans With Disabilities Act of 1990 42 U.S.C. 12131; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; the Department of Justice Nondiscrimination Regulations 28 CFR Part 35 and 42, Subparts C, D, E and G; and Executive Order 11246, as amended by Executive Order 11375, and their implementing regulations. This applicant further certifies that if a federal or state court or the administrative agency makes a finding of discrimination, it will immediately forward a copy of the finding to the grantor agency, for submission to the office of civil rights, office of justice programs, U.S. department of justice within 30 days of receipt.

**N. Period of project support:**

**(1) 48-month limitation:** Projects funded under this program may be funded for a maximum of four years (48 months) in the aggregate, including any period occurring before the effective date of the Anti-Drug Abuse Act. The limitation on funding applies to all projects which have received 48 months in the aggregate of formula and/or discretionary grant funding under the Omnibus Crime Control and Safe Streets Act as amended. This includes the justice assistance and the state and local law enforcement assistance programs or combinations of these programs. Sec 504 (f) of the Act. The 48-month grant period need not comprise of consecutive funding years as long as the project is substantially the same.

**(2) Exception:** The limitation on funding applies to all projects except multi-jurisdictional drug task forces (purpose area 02, multi-jurisdictional gang task forces (purpose area 24).

[10.10.2.11 NMAC - Rp 10 NMAC 10.2.11, 3-15-00; A, 05-31-02; A, 05-28-04; A, 07-29-05]

#### **10.10.2.12 ALLOWABLE/UNALLOWABLE EXPENSES:**

In order to ensure the most efficient and effective use of grant funds, the Anti-Drug Abuse Act places restrictions on the use of these funds for ~~[equipment]~~ personnel costs, construction, supplanting of applicant funds, and land acquisition.

**A. Administrative expenses and indirect costs:** Applicants ~~[are encouraged to]~~ shall limit total administrative expenses and indirect cost to no more than five percent (5%) of their grant award. The cost of operating and maintaining facil-

ities, depreciation, and administrative salaries are examples of indirect costs. Use of more than five percent of the funds for administration of a program shall be justified and itemized in the application. The final determination shall be made by the ~~[grants management bureau]~~ department of public safety. In no case can administrative expenses or indirect costs exceed ten percent (10%).

**B.** General salaries and personnel costs: Payment of personnel costs with grant funds is permitted if the costs are part of an approved program or project (Section 501 (b) of the Act). General salary and personnel cost must:

(1) reflect an after-the-fact distribution of the actual activity of each employee;

(2) account for the total activity for which each employee is compensated.

~~[C. Capital outlay: Equipment and hardware expenses which are part of an approved program or project are allowable expenses (Section 501 (b) of the Act) and shall not exceed 10% of total grant.]~~

~~[D. C.]~~ Expenditures for purchase of services, evidence, and information (confidential funds): Formula grant funds which may be used for confidential expenditures are defined as funds used for the purchase of services, purchase of physical evidence and information, including buy money, flash rolls, etc. Guidelines related to confidential expenditures are found in OJP financial guide for grants. The ~~[grants management bureau]~~ grants accountability and compliance section has the authority to approve the allocation, use, and expenditure of formula subgrantee funds for confidential expenditures. **All applications containing projects which utilize funds for confidential expenditures must contain an assurance that the guidelines found in OJP financial guide for grants will be followed.**

~~[E. D.]~~ Land acquisition: Acquisition of land with grant funds is prohibited (Section 505 (c) of the Act).

~~[F. E.]~~ Evaluation costs: Expenses associated with conducting evaluations of programs/projects funded with formula grant funds are allowable expenses and may be paid with administrative funds, program funds, or a combination of both (Sec 504 (d) of the Act).

~~[G. F.]~~ Audit costs: Expenses associated with conducting audits of programs/projects funded with formula grants are allowable expenses and may be paid with administrative funds, program funds, or a combination of both (sec 504 (d) of the Act).

~~[H. G.]~~ Non-supplantation: Formula grant funds shall not be used to supplant applicant funds, but will be used to

increase the amount of such funds that would, in the absence of federal aid, be made available for law enforcement activities.

~~[H. H.]~~ Participation in drug enforcement administration task forces: Formula grant funds may be used for expenses associated with participation of the state or units of local government, or combination thereof, in the state and local task force program established by the drug enforcement administration (Section 504 (c) of the Act.)

[10.10.2.12 NMAC - Rp 10 NMAC 10.2.12, 3-15-00; A, 07-29-05]

**10.10.2.13 MATCH REQUIREMENTS:** ~~[D.C.S.]~~ JAG funds may be used to pay up to 75 percent of the cost of a project. All subgrantees must provide a match of at least 25 percent of the **total project cost**. Agencies which are able to "over match" are encouraged to do so and to document these expenditures.

**A.** Hard (cash) match requirements: The non-federal share of expenditures shall be paid in cash (Section 504 (e) of the Act). Funds required to pay the non-federal portion of the cost of each program and project for which the grant is made shall be in addition to funds that would otherwise be made available for law enforcement by the recipients of the grant funds (Section 503 (a) (3) of the Act). Hard (cash) match may be applied from the following sources **only**:

(1) funds from state and local units of government that have been specifically appropriated or designated as matching funds for certain programs or projects;

(2) funds available through the equitable sharing (federal asset sharing) program;

(3) funds contributed from private sources; and

(4) program income funds as a result of any method used to generate program income, i.e., seized assets, forfeitures, client fees, etc.

(5) Indian pueblos/tribes which perform law enforcement functions (as determined by the secretary of the interior) are not required to match, (Section 504 (a) (2) of the Act). Joint projects which include Indian pueblos/tribes must prorate the pueblo's or tribe's portion of grant funds and apply the same percentage to the match in order to reduce the required match amount proportionately.

**B.** Use of proceeds received under the equitable sharing program (federal asset sharing) as match: State and local units of government may use cash they received under the equitable sharing program to cover the non-federal portion of costs of any OJP project or program.

**C.** Use of proceeds from

asset forfeitures as match: A state or local unit of government may use forfeiture funds as match if state and local statutes allow for the collection and retention of such funds.

**D.** Use of confidential funds as match: A state or local unit of government may use confidential funds as match as long as they can be tracked as a one-time expenditure during the life of the grant-funded project based on "chain of custody" documents.

[10.10.2.13 NMAC - Rp 10 NMAC 10.2.13, 3-15-00; A, 05-31-02; A, 05-28-04; A, 07-29-05]

#### **10.10.2.14 APPLICATION FORMAT AND RATING CRITERIA**

**A.** Application format:

(1) **Letter of transmittal** - A letter from the agency director briefly stating the purpose of the application. This letter may take any form, but it should not exceed one page in length.

(2) **Application cover sheet** - This standard form must accompany the application packet. (Refer to Attachment B, for a copy of this form.)

(3) **Table of contents** - A list of page locations for the executive summary, the various sections of the application narrative, and items in the appendix. The table of contents should list the contents of the application in the order that they appear.

(4) **Executive summary** - A brief description of the project, and a brief but thorough description of the problem or issue to which it is designed to respond. **Executive summaries should not exceed one page in length.**

(5) **Application narrative and budget summary and detailed budget justification** - Refer to attachment C for a detailed description of the format for the narrative and attachment D and D-1 for a detailed format of the budget summary and detailed budget justification. The narrative and the detailed budget justification should provide a detailed description of how the proposed project meets each of the project rating criteria.

(6) **Appendix** - The location for attachments, forms, letters, graphs, and other pertinent information. The appendix should include, at a minimum, the following items:

(a) Letters of support, letters of commitment, joint powers agreements (JPA), memorandums of understanding (MOU), etc. Letters of support must be addressed to the cabinet secretary and included in the application; but they should not be mailed to him directly. Letters of commitment should be addressed to the head of the agency applying for the funds. JPAs and MOUs must be signed by all agencies participating in joint applications.

(b) A completed budget summary



and a detailed budget justification (refer to attachment D and D-1, for ~~a sample of~~ these forms). New Mexico department of finance & administration expenditure line items (refer to attachment D-2) must be used in completing the budget summary and the detailed budget justification (refer to attachment D and D-1).

(c) Certified assurances (refer to attachment E for a copy of this form).

(d) Any other items which you believe are pertinent to the application process and which only address information requested in this rule.

**B.** Rating criteria (total value - 100 points) - The rating will be based on the oral presentations and must follow the format of the application submitted as set forth in 10.10.2.14 NMAC. Applicable program purpose areas [(refer to attachment A):]

**C.** Application narrative – utilize the rating criteria (refer to attachment C) to develop the narrative by responding to the questions under each of following sections:

- (1) projected impact.
  - (2) project design and performance.
  - (3) prior performance.
  - (4) complete the applicable section pertaining to your program purpose area.
- (a) multi-jurisdictional task forces; or

(b) other program purpose areas.

**D.** Budget summary and detailed budget justification.

(1) Provide a detailed budget justification narrative (attachment D-1) on proposed expenditures and revenue sources for the federal grant funds being requested and the match funds which will be provided. Use the New Mexico department of finance and administration (DFA) **line item codes** (attachment D-2).

(2) Complete the **budget summary** sheet (attachment D) and make reference to it in the detailed budget justification narrative.]

[10.10.2.14 NMAC - Rp 10 NMAC 10.2.14, 3-15-00; A, 05-31-02; A, 05-28-04; A, 07-29-05]

**10.10.2.15 SELECTION**

**PROCESS:** The department of public safety will make a decision on each complete application within 45 days of receipt. An applicant shall be deemed approved by the state unless the state informs the applicant in writing within 45 days of the specific reason for disapproval. The state shall not disapprove any application without first affording the applicant reasonable notice and opportunity for reconsideration (Sec 508 (a) of the Act). The failure of an application to conform to state program priorities

or to meet criteria set forth in this document may constitute reason for disapproval. The selection process is as follows:

**A.** Upon receipt of applications, the ~~[grants management bureau]~~ grants accountability and compliance section staff will review the applications for eligibility, completeness, and compliance. The ~~[grants management bureau]~~ grants accountability and compliance section staff will then schedule the eligible applicants for oral presentations before the selection panel.

**B.** Eligible applications will be forwarded to a panel for review and use during the oral presentations conducted for applicants. The selection panel through the ~~[grants management bureau]~~ grants accountability and compliance section will submit their recommendations for consideration to the cabinet secretary.

**C.** The cabinet secretary of the department of public safety has the final authority in the awarding of grants.

**D.** Unsuccessful applications may appeal if the applicant feels any federal or state regulation involving selection was violated. A three-member appeal panel shall review the alleged violation, decide on its validity, and make a recommendation to the cabinet secretary of the department of public safety. The cabinet secretary's decision shall be final.

[10.10.2.15 NMAC - Rp 10 NMAC 10.2.15, 3-15-00; A, 05-28-04; A, 07-29-05]

**NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION**

**This is an emergency amendment to 11.4.7 NMAC Section 17 effective 7/5/05.**

**11.4.7.17 DATA ACQUISITION:** ~~[Every payer shall report to the WCA, in a format to be determined by the director, the following medical information for each worker for whom they provide benefits:~~

- A:** date of service;
- B:** diagnosis;
- C:** code for each service;
- D:** billed amount;
- E:** paid amount;
- F:** type of practitioner;
- G:** bill identification number;
- H:** NDC number (for pharmaceuticals);]

**A.** The following language seeks to clarify 11.4.7.17 NMAC, which has always required that the data listed below be submitted to the workers' compensation administration. The submission requirement should be altered to include

and require the following. It is the intent of the administration to enforce this already existing rule retrospectively. Under this explanation, no new obligations will exist. All workers' compensation payers shall submit the following required data by August 3, 2005 for the period January 1, 2004 through June 30, 2005. Thereafter, payers shall submit this information on a quarterly basis as follows:

(1) January 1 through March 31 by July 1;

(2) April 1 through June 30 by October 1;

(3) July 1 through September 30 by January 1; and,

(4) October 1 through December 31 by April 1.

**B.** The data shall be in a format acceptable to the WCA. The economic research bureau shall distribute a specific set of instructions for the submission of data.

**C.** The economic research bureau will review the data to determine acceptability. If the data is determined to be unacceptable, the WCA will send a letter to the payer requesting correction and/or the addition of data within thirty days from the date of the payer's receipt of the determination. If the payer is unable to provide the data within the thirty days, it may request one thirty-day extension.

**D.** The payer may also appeal the determination of acceptability to the deputy director of internal operations within ten (10) days of the receipt of the determination letter.

**E.** If the data is not received after all appeals and extensions of time have been exhausted, the economic research bureau may petition for a hearing before the WCA director or his designee and seek penalties pursuant to NMSA 1978, section 52-1-61 (1991).

**E.** Every payer shall report to the WCA on a quarterly basis and in a format to be determined by the director, the following medical information pertaining to inpatient, outpatient, and emergency room services for each claimant for whom they provide benefits, beginning with bills for health care services provided in New Mexico where discharge or termination of services occurred between January 1, 2004 through June 30, 2005:

(1) date of service;  
(a) with inpatient data: date of admission, date of discharge;

(b) with outpatient data: date services initiated, date services terminated.

(2) diagnosis (ICD-9-CM or CPT);

(a) principal diagnosis code;

(b) 2<sup>nd</sup> diagnosis code;

(c) 3<sup>rd</sup> diagnosis code;

- (d) 4<sup>th</sup> diagnosis code;
- (e) 5<sup>th</sup> diagnosis code;
- (f) 6<sup>th</sup> diagnosis code;
- (g) 7<sup>th</sup> diagnosis code;
- (h) 8<sup>th</sup> diagnosis code;
- (i) 9<sup>th</sup> diagnosis code;
- (j) diagnosis related group (DRG)

code.

(3) code for each service: revenue codes (up to 23 codes may be reported) and corresponding HCPCS codes if available;

(4) billed amount: total gross charges for services; total charge per revenue code;

(5) paid amount: total paid amount for services;

(6) type of practitioner;

(7) bill identification number;

(8) NDC numbers (for pharmaceuticals);

(9) procedure (ICD-9-CM or CPT);

(a) principal procedure code;

(b) 2<sup>nd</sup> procedure code;

(c) 3<sup>rd</sup> procedure code;

(d) 4<sup>th</sup> procedure code;

(e) 5<sup>th</sup> procedure code;

(f) 6<sup>th</sup> procedure code.

(10) patient data;

(a) patient first name;

(b) patient last name;

(c) patient social security number;

(d) patient date of birth;

(e) patient sex;

(f) patient medical record number;

ber;

(g) patient street address;

(h) patient zip code.

(11) provider data;

(a) type of facility;

(b) NM state license number;

(c) provider zip code.

(12) employer data: identification number;

(13) insurer data: federal employer identification number;

(14) discharge status;

(15) type of admission;

(16) source of admission;

(17) type of service.

[3-14-94, 8-1-96; 11.4.7.17 NMAC - Rn, 11 NMAC 4.7.17, 8-30-02; A, 1-14-04; A/E, 7-5-05]

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**End of Adopted Rules Section**

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## Other Material Related to Administrative Law

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### NEW MEXICO ATTORNEY GENERAL

#### STATE OF NEW MEXICO NEW MEXICO NATURAL RESOURCES TRUSTEE NEW MEXICO ATTORNEY GENERAL

#### **Notice of Lodging of Consent Decree under the Comprehensive Environmental Response, Compensation and Liability Act and the New Mexico Natural Resources Trustee Act**

Notice is hereby given that on June 30, 2005, a proposed Consent Decree in *State of New Mexico, New Mexico Natural Resources Trustee and New Mexico Attorney General v. SOHIO Western Mining Company*, Civil Action No. CIV-05-727-JH/LCS, was lodged with the United States District Court for the District of New Mexico. In this action, the State of New Mexico (State), the New Mexico Natural Resources Trustee (ONRT) and the New Mexico Attorney General (NMAG) sought damages from SOHIO Western Mining Company for injury to, destruction of and loss of natural resources, under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9607(a), and Section 4 of the New Mexico Natural Resources Trustee Act, Section 75-7-4, NMSA 1978, resulting from the release of hazardous substances at or from the L-Bar Uranium Mill Tailings Site, located in Cibola County, New Mexico.

The Consent Decree provides for SOHIO to pay a total of \$36,290.27 to the State to resolve the claims alleged in the Complaint. Of this amount, \$29,830.00 will be paid to the ONRT to be used to replace or restore the natural resources or to acquire equivalent natural resources. Details of the use of this portion of the settlement proceeds will be subject to future notice and comment process. The amount of \$5,344.77 is to be paid to the ONRT and \$1,115.50 is to be paid to the NMAG to reimburse these entities for costs incurred to assess the alleged injury to, destruction of and loss of natural resources. In exchange for these payments, the State, ONRT and NMAG covenant not to sue SOHIO Western Mining Company for natural resources damages at the L-Bar Uranium Mill Tailings Site.

For a period of thirty (30) days from the date of this publication, the ONRT will receive comments relating to the Consent

Decree. Comments should be addressed to Office of New Mexico Natural Resources Trustee, 610 Gold Ave., SW, Suite 236, Albuquerque, NM 87102, and should refer to *State of New Mexico, New Mexico Natural Resources Trustee and New Mexico Attorney General v. SOHIO Western Mining Company*, Civil Action No. CIV-05-727-JH/LCS. The Consent Decree may be examined during regular business hours at the Office of the New Mexico Natural Resources Trustee, 610 Gold Ave., SW, Suite 236, Albuquerque, NM 87102.

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### End of Other Related Material Section

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## 2005

**SUBMITTAL DEADLINES AND PUBLICATION DATES**

<b>Volume XVI</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 3	January 14
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 14
Issue Number 8	April 15	April 29
Issue Number 9	May 2	May 13
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 18	July 29
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 3	October 17
Issue Number 20	October 18	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

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