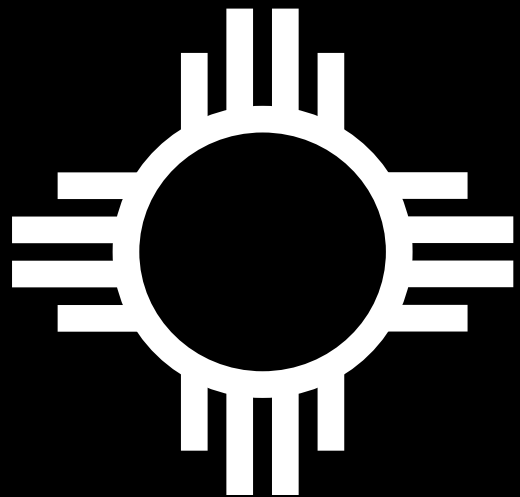


**NEW  
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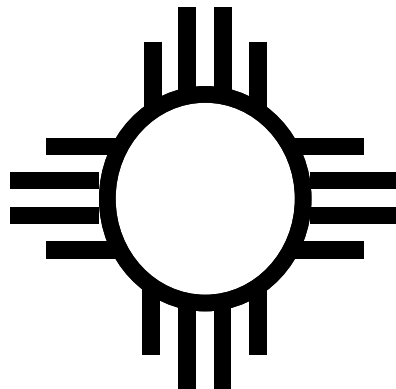
Volume XVI  
Issue Number 16  
August 31, 2005



# **New Mexico Register**

**Volume XVI, Issue Number 16**

**August 31, 2005**



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

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Administrative Law Division  
Santa Fe, New Mexico  
2005

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# New Mexico Register

Volume XVI, Number 16

August 31, 2005

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#### Effective Date and Validity of Rule Filings

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

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

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

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

## Notices of Rulemaking and Proposed Rules

### NEW MEXICO DEPARTMENT OF AGRICULTURE

#### Notice of Hearing

New Mexico Department of Agriculture will hold two public hearings under the New Mexico Pesticide Control Act, 76-4-1 through 39, NMSA 1978. NMDA is proposing to increase the fees authorized for pesticide product registration, private applicator certification, dealer licenses, and testing.

A hearing will be held in Albuquerque at the New Mexico Department of Agriculture, Albuquerque District Office, located at 2604 Aztec NE, beginning at 10:00 a.m. on September 22, 2005.

The hearing in Las Cruces will be held at the New Mexico Department of Agriculture building, 3190 South Espina (SE corner of Gregg and Espina), beginning at 1:30 p.m. on September 26, 2005.

Written statements in support or opposition, signed by the submitting person, will be accepted if received prior to 5:00 p.m., September 26, 2005. Written statements, inquiries, or requests for copies of the rule should be directed to Bonnie Rabe, New Mexico Department of Agriculture, Bureau of Pesticide Management, PO Box 30005, MSC 3AQ, Las Cruces, NM 88003 or at (505) 646-2133.

### NEW MEXICO ATHLETIC COMMISSION

#### Legal Notice

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

Amend: Part 14

The Rule Hearing will be held at the Regulation & Licensing Department, Real Estate Conference Room on October 11, 2005 at 9:00 a.m.

The Athletic Commission will consider adoption of this rule after their next scheduled Board Meeting following the October 11, 2005 rule hearing. Copies of the proposed rule are available on request from Laron Lewis, at the Regulation and Licensing Department, Athletic Commission, 5200 Oakland NE,

Albuquerque, New Mexico or you can request a copy via e-mail addressed to Laron.Lewis@state.nm.us or write to the above address or telephone (505) 222-9860. You may view a copy of the proposed rule at the following website: [www.rld.state.nm.us](http://www.rld.state.nm.us) Athletic Commission.

Anyone wishing to present their views on the proposed rule may appear in person at the Hearing, or may send written comments to the Athletic Commission office. Written comments must be received by October 3, 2005 to allow time for distribution to the Athletic Commission.

Disabled members of the public who wish to attend the meeting or hearing and are in need of reasonable accommodations should contact Mr. Lewis, at (505) 222-9860 no later than October 3, 2005.

### 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 Friday, September 30, 2005 from 2:00 p.m. to 4:00 p.m. in the conference room at the Family Services Offices located at 1920 5<sup>th</sup> Street, Santa Fe, New Mexico to receive public comments regarding proposed changes to regulations 8.16.3 NMAC Requirements Governing the Child Care Facility Loan Act.

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 September 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 (CCSB) at 505-827-7499. CCSB requests at least 10 days advance notice to provide requested alternative formats and special

accommodations.

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

#### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC MEETING AND HEARING

#### Proposed Revision of 20.2.74 NMAC — Permits — Prevention of Significant Deterioration (PSD) and 20.2.79 NMAC — Permits — Nonattainment Areas (EIB 05-09 (R))

The New Mexico Environmental Improvement Board (Board) will hold a public hearing on November 1, 2005, in conjunction with their normal November meeting. The hearing will begin at 9:30 a.m. at the New Mexico State Capitol Building, Room 317, in Santa Fe, New Mexico. At this hearing, the Board will consider proposed revisions to the EIB 05-09(R) Air Quality Control Regulations 20.2.74 NMAC — Permits — Prevention of Significant Deterioration (PSD) and 20.2.79 NMAC — Permits — Nonattainment Areas.

The purpose of the public hearing is to consider and take possible action on a petition from the New Mexico Environment Department (NMED) regarding proposed revisions to the above-listed State Implementation Plan (SIP) revision. These proposed changes are intended to incorporate mandated revisions from the U.S. Environmental Protection Agency for new source review permitting. The NMED proposal includes amendments to 20.2 NMAC Parts 74 and 79 that incorporate EPA's changes to 40 CFR Part 51.

The proposed changes may be reviewed during regular business hours at the NMED Air Quality Bureau office located at 2044 Galisteo, Santa Fe, New Mexico. A full text of the NMED's proposed changes are also available on the NMED's web site at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us), or by contacting Rita Trujillo by phone at (505) 955-8024 or by e-mail at [rita.trujillo@state.nm.us](mailto:rita.trujillo@state.nm.us).

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality Control Act Section 72-2-6 NMSA 1978 and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

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

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than **5:00 pm on October 17, 2005**, and should reference case number **EIB 05-09 (R)**, the name of the SIP revision and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Barbara Claire, Board Administrator  
Office of the Environmental Improvement Board  
Harold Runnels Building  
1190 St. Francis Dr., Room N-2150 / 2150 Santa Fe, NM 87502  
Phone: (505) 827-2425, Fax (505) 827-2836

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony. A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by October 19, 2005 at the New Mexico Environment Department, Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may deliberate and rule on the proposed amendments at the close of the hearing or the Board may convene a meeting after the hearing to consider action on the proposal.

cc: Ms. Gay Dillingham, Chair

**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:

Rule Number	Rule Name	Proposed Action
1.4.1 NMAC	<b>PROCUREMENT CODE REGULATIONS</b>	Repeal existing Rule and Replace with new Rule

The Department proposes to repeal and replace 1.4.1. Procurement Code Regulations. 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  
INFORMATION  
TECHNOLOGY  
COMMISSION**

STATE OF NEW MEXICO  
INFORMATION TECHNOLOGY COM-  
MISSION

IN THE MATTER OF ADOPTING 1.12.9  
NMAC,  
"PROJECT CERTIFICATOIN OF TECH-  
NOLOGY PROJECTS"

NOTICE OF PROPOSED RULEMAK-  
ING 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: 1.12.9 NMAC, "Project Certification of Technology Projects." The Commission requests written comments from all interest-

ed 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 20, 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, 5301 Central Avenue NE, Suite 1500, Albuquerque, NM 87108 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, Central Avenue NE, Suite 1500,



Albuquerque, NM 87108.

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 August 31, 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 Central Avenue NE, Suite 1500, Albuquerque, NM 87108; (2) call the Office of the Chief Information Officer at 505-841-6605 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, Central Avenue NE, Suite 1500, Albuquerque, NM 87108.

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)841-6605.

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

INFORMATION TECHNOLOGY COMMISSION

By: Carroll Cagle, Chair

**NEW MEXICO OIL CONSERVATION COMMISSION**

**NOTICE OF RULE MAKING**

**STATE OF NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION COMMISSION SANTA FE, NEW MEXICO**

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the Commission will conduct a public hearing at 9:00 A.M. on **September 15, 2005**, in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, concerning the adoption of amendments to 19.15.1 NMAC. The proposed amendments will amend paragraph 9 of subsection W of 19.15.1.7 NMAC to change the definition of “working interest owners,” and will adopt of a new section of 19.15.1 NMAC, to be codified as 19.15.1.36 NMAC. The new section will provide for the drilling of infill wells within compulsory-pooled units, subject to certain provisions and exceptions. Copies of the text of the proposed amendments are available from Division Administrator Florene Davidson at (505)-476-3458 or from the Division’s web site at <http://www.emnrd.state.nm.us/ocd/what-snew.htm>. Written comments on the proposed amendments must be received no later than 5:00 P.M. on Thursday, September 8, 2005. Written comments may be hand-delivered or mailed to Ms. Davidson at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at 476-3462. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ms. Davidson at (505)-476-3458 or through the New Mexico Relay Network (1-800-659-1779) as soon as possible.

**Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 10<sup>th</sup> day of August, 2005.**

STATE OF NEW MEXICO

OIL CONSERVATION DIVISION

**Mark E. Fesmire, P.E.**  
**Director, Oil Conservation Division**

**NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION**

**STATE OF NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION NOTICE OF PUBLIC HEARING**

Public meetings will be held on the dates and at the locations listed below to receive comments regarding the amendments to the following rules: Title 14, Chapter 6, Part 3, Contractors’ License Requirements, Part 4, Journeyman Certification, and Part 6, Classifications and Scopes; Chapter 5, Part 2, Permits; Chapter 7, Part 8, the 2003 New Mexico Historic Earthen Building Code; Chapter 10, Part 5, the 2005 New Mexico Electrical Safety Code; and Title 19, Chapter 15, the New Mexico Liquefied Petroleum Gas Standard. In general, these amendments will clarify and streamline the rules on licensing and liquefied petroleum gas and will adopt new construction and electrical codes. In addition, they will make technical corrections respecting grammar, formatting and internal consistency.

\* **Santa Fe, NM** -  
October 5, 2005, 9:00 a.m. - 12:00 Noon  
CID Conference Room,  
2550 Cerrillos Rd., Third Floor, Santa Fe

\* **Albuquerque, NM** -  
October 5, 2005, 9:00 a.m. - 12:00 Noon  
CID Conference Room,  
5200 Oakland Ave., Albuquerque

\* **Las Cruces, NM** -  
October 5, 2005, 9:00 a.m. - 12:00 Noon  
CID Conference Room,  
505 S. Main, Suite 150, Las Cruces

\* **Farmington, NM** -  
October 5, 2005, 9:00 a.m. - 12:00 Noon  
Civic Center, Room A  
& B, 200 W. Arrington, Farmington

You are invited to attend and express your opinion on the adoption of the above referenced draft regulations. If you cannot attend the meeting, you may send your written comments to the General Construction Bureau, Construction Industries Division,

2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico 87504. Telephone (505) 476-4700. FAX (505) 476-4685. All comments must be received no later than 5:00 p.m., October 5, 2005.

Copies of the draft rules will be available at the Construction Industries Division Offices beginning September 15, 2005.

**If you require special accommodations, please notify the Division of such needs no later than September 30, 2005.**

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

### NEW MEXICO TAXATION AND REVENUE DEPARTMENT

#### NOTICE OF HEARING AND PROPOSED RULES

The Department proposes to adopt the following regulations:

- 18.19.5.9 NMAC Section 66-5-21 NMSA 1978 Motor Vehicle Code  
*(Prorating of Driver's License Fees)*
- 18.19.5.34 NMAC Section 66-5-19 NMSA 1978 Motor Vehicle Code  
*(Shortening of Licensure Period)*
- 3.13.5.8 NMAC Section 7-9F-6 NMSA 1978 Technology Jobs Tax Credit Act  
*(Amounts Constituting Wages to Meet Eligibility Requirements)*
- 3.13.5.9 NMAC Section 7-9F-9 NMSA 1978 Technology Jobs Tax Credit Act  
*(Statute of Limitations)*
- 3.13.5.10 NMAC Section 7-9F-6 NMSA 1978 Technology Jobs Tax Credit Act  
*(Eligibility Requirements - Additional Credit)*
- 3.5.19.19 NMAC Section 7-4-19 NMSA 1978 Uniform Division of Income for Tax Purposes Act  
*(Special Rules: Publishing)*

The proposals were placed on file in the Office of the Secretary on August 4, 2005. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about October 31, 2005.

A public hearing will be held on the proposals on Tuesday, October 11, 2005, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before October 11, 2005.

18.19.5.9 **PRORATING OF DRIVER'S LICENSE FEES:** The fees imposed for the issuance of a driver's license or commercial driver's license may be prorated if the licensure period is shortened pursuant to Section 66-5-19 NMSA 1978. Fees shall be prorated on an annual basis. In no case shall the fee be less than the prorated fee for one full year.

18.19.5.34 **SHORTENING OF LICENSURE PERIOD**

A. The division, whenever good cause appears, may issue a restricted license that has a shortened licensure period pursuant to Section 66-5-19 NMSA 1978. The licensure period for a restricted license may be shortened to a period of less than one year depending on the nature of the restriction.

B. Example: Y, who has been issued a New Mexico driver's license, has had a seizure and has informed the motor vehicle division. In order to remain validly licensed in New Mexico, Y must first submit to the division a statement from a licensed physician or licensed osteopathic physician, on the appropriate medical form supplied by the division, attesting that Y has been free of any seizures or episodes for at least one year and either is not under medication or is taking medication without side effects.

**TITLE 3: TAXATION**  
**CHAPTER 13: BUSINESS TAX CREDITS**  
**PART 5: TECHNOLOGY JOBS TAX CREDIT**

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

[3.13.5.1 NMAC - N, XXX]

3.13.5.2 **SCOPE:** This part applies to persons conducting qualified research at a qualified facility in New Mexico.

[3.13.5.2 NMAC - N, XXX]

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

[3.13.5.3 NMAC - N, XXX]

3.13.5.4 **DURATION:** Permanent.

[3.13.5.4 NMAC - N, XXX]

3.13.5.5 **EFFECTIVE DATE:** XXX, unless a later date is cited at the end of a section, in which case the later date is the effective date.  
[3.13.5.5 NMAC - N, XXX]

3.13.5.6 **OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Technology Jobs Tax Credit Act.  
[3.13.5.6 NMAC - N, XXX]

3.13.5.7 **DEFINITIONS:**  
[Reserved.]  
[3.13.5.7 NMAC - N, XXX]

### 3.13.5.8 **A M O U N T S CONSTITUTING WAGES TO MEET ELIGIBILITY REQUIREMENTS**

A. In calculating the annual payroll expense and base payroll expense for purposes of determining eligibility for the additional credit under Subsection B of Section 7-9F-6 NMSA 1978, a taxpayer may include total wages paid to all employees at a qualified New Mexico facility. "Wages" as used in Subsection K of Section 7-9F-3 NMSA 1978 means "wages" as defined under section 3401(a) of the Internal Revenue Code. Thus, "wages" used to meet eligibility requirements of the Technology Jobs Tax Credit Act are the same as those that are included or will be included in box 1 of the annual statement of withholding (form W-2) as required under Subsection A of Section 7-3-7 NMSA 1978.

B. Example: Taxpayer X conducts research and development at a qualified facility in New Mexico. In addition to wages paid for employees directly involved in research and development, X pays wages to administrative personnel at the facility. Wages paid to administrative personnel may also be included in annual payroll expense and base payroll expense for purposes of determining eligibility for the additional credit under the Act. Taxpayer X may not include any expenses not included as wages on form W-2, such as expenses for employee health insurance, retirement plan contributions, or the value of employee stock options when calculating annual payroll expense and base payroll expense.  
[3.13.5.8 NMAC - N, XXX]

### 3.13.5.9 **STATUTE OF LIMITATIONS**

A. A taxpayer must file its application for approval of a credit within one year of the end of the calendar year in which the qualified expenditures were made.

B. Example: Taxpayer X makes qualified expenditures from January 1 through October 30, 2005. X must submit

its application for credit under the Technology Jobs Tax Credit Act by no later than December 31, 2006.

[3.13.5.9 NMAC - N, XXX]

3.13.5.10 **ELIGIBILITY  
REQUIREMENTS - ADDITIONAL  
CREDIT:** A taxpayer claiming the additional credit must compute annual payroll expense for the period specified in the application and must compute base payroll expense as of a date one year prior to the annual payroll date.  
[3.13.5.10 NMAC - N, XXX]

### 3.5.19.19 **SPECIAL RULES:**

**PUBLISHING:** The following special rules are established with respect to the apportionment of income derived from the publishing, sale, licensing or other distribution of books, newspapers, magazines, periodicals, trade journals or other printed material.

A. *In General.* Except as specifically modified by this regulation, when a person in the business of publishing, selling, licensing or distributing newspapers, magazines, periodicals, trade journals or other printed material has income from sources both within and without this state, the amount of business income from sources within this state from such business activity shall be determined pursuant to the provisions of the Uniform Division of Income for Tax Purposes Act, Section 7-4-1 through 7-4-21, NMSA 1978.

B. *Definitions.* The following definitions are applicable to the terms contained in this regulation, unless the context clearly requires otherwise.

(1) "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but which are not physically located in any particular state.

(2) "Print or printed material" includes, without limitation, the physical embodiment or printed version of any thought or expression including, without limitation, a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any medium or property.

(3) "Purchaser" and "Subscriber" mean the individual, residence, business or other outlet which is the

ultimate or final recipient of the print or printed material. Neither of such terms shall mean or include a wholesaler or other distributor of print or printed material.

(4) "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

C. *Apportionment of business income.*

(1) The property factor.

(a) Property factor denominator. All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, which is used in the business shall be included in the denominator of the property factor.

(b) Property factor numerator.

(i) All real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor.

(ii) Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio which the value of such property that is attributable to its use by the taxpayer in business activities in this state bears to the total value of such property that is attributable to its use in the taxpayer's business activities everywhere. The value of outer-jurisdictional property to be attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of uplinks and downlinks (sometimes referred to as "half-circuits") that were used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total number of uplinks and downlinks or half-circuits that the taxpayer used for transmissions everywhere. Should information regarding such uplink and downlink or half-circuit usage not be available or should such measurement of activity not be applicable to the type of outer jurisdictional property used by the taxpayer, the value of such property to be attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time (in terms of hours and minutes of use) or such other measurement of use of outer jurisdictional property that was used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions everywhere.

(iii) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within this state when such property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located in this state.

(2) The payroll factor. The payroll factor shall be determined in accordance with Sections 7-4-14 and 7-4-15, NMSA 1978 and the regulations promulgated thereunder.

(3) The sales factor.

(a) Sales factor denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under NMAC 3.5.19.11.

(b) Sales factor numerator. The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to, the following:

(i) Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state.

(ii) Except as provided in subparagraph (C)(3)(B)(iii), gross receipts derived from advertising and the sale, rental or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's "circulation factor" during the tax period. The circulation factor shall be determined for each individual publication by the taxpayer of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its total circulation to purchasers and subscribers everywhere. The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as audit bureau of circulations or other comparable sources, provided that the source selected is consistently used from year to year for such purpose. If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the circulation factor shall be determined from the taxpayer's books and records.

(iii) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the department may require, that a portion of such receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by subparagraph (C)(3)(B)(ii). Such attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing such specific items of advertising bears to its total circulation of such printed material to purchasers and subscribers located within such regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that such receipts are not double counted or otherwise included in the numerator of any other state.

(iv) In the event that the purchaser or subscriber is the United States government or that the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer's lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for such state, shall be included in the numerator of the sales factor of this state if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this state.

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

### NEW MEXICO TAXATION AND REVENUE DEPARTMENT

#### NOTICE OF HEARING AND PROPOSED RULES

The Department proposes to amend the following regulations:

#### **Gross Receipts and Compensating Tax Act**

3.2.1.11 NMAC Section 7-9-3.4 NMSA 1978

#### **(Construction)**

3.2.1.18 NMAC Section 7-9-3.5 NMSA 1978

#### **(Gross Receipts; Services)**

3.2.1.29 NMAC Section 7-9-3(M) NMSA 1978

#### **(Services)**

3.2.10.18 NMAC Section 7-9-7 NMSA 1978

#### **(Compensating Tax on Dealer Use of Parts)**

3.2.201.13, 14 and 19 NMAC Section 7-9-43 NMSA 1978

#### **(Multijurisdictional Uniform Sales and Use Tax Certificates; Good Faith Acceptance of Nontaxable Transaction Certificates; Border States Uniform Sale for Resale Certificate)**

3.2.204.14 and 16 NMAC Section 7-9-46 NMSA 1978

#### **(Upholstery Materials; Receipts from Custom Software Developed for Manufacturer of Packaged Software not Deductible)**

3.2.205.10, 11, 13, 14, 18, 19 and 20 NMAC Section 7-9-47 NMSA 1978

#### **(Tangibles Sold for Use in Performance of a Service Versus Simultaneous Transactions - Billing Practices; Sale of Tangible Personal Property To a Federal Contractor or Subcontractor; Packaging and Related Materials; Medicines and Medical Supplies; Parts and**

**Supplies Sold Under Service Contracts; Computer Software; Use of Tangible Personal Property by hotels, Motels and Similar Facilities)**

3.206.20, 21 and 22 NMAC Section 7-9-48 NMSA 1978

**(Telecommunications Services; Garage Collection; Receipts From Sale of Services to Fulfill Promisor's Obligation Under Automotive Service Contract Not Deductible)**

3.2.210.10 NMAC Section 7-9-52 NMSA 1978

**(Transportation Services)**

3.2.212.19 and 24 NMAC Section 7-9-54 NMSA 1978

**(Proof of Payment; Custom Software)**

3.2.215.11 NMAC Section 7-9-57 NMSA 1978

**(Product of Service Which is Reviewed and Accepted Outside of New Mexico But Initially Used in New Mexico)**

3.2.218.11 NMAC Section 7-9-60 NMSA 1978

**(Sale of Meals)**

3.2.235.10 and 11 NMAC Section 7-9-75 NMSA 1978

**(Receipts From Manufacturer for "Get Ready"; Receipts From Non-Manufacturers for "Get Ready")**

3.2.220.11 NMAC Section 7-9-62 NMSA 1978

**(Feed Storage)**

3.2.20.7 NMAC Section 7-9-3.2 NMSA 1978

**(Definitions)****Income Tax Act**

3.3.12.14 NMAC Section 7-2-12 NMSA 1978

**(Composite Returns for Owners of Pass-Through Entities)****Withholding Tax Act**

3.3.2.8 and 10 NMAC Section 7-3-3 NMSA 1978

**(Withholding From Irregular Wages)**

3.3.2.10 NMAC Section 7-3-12 NMSA 1978

**(Withholding By Pass-Through Entities)**

The Department also proposes to repeal 3.13.3.7 NMAC (**Definitions - Depreciable Equipment**) to Section 7-9D-3 NMSA 1978, 3.13.3.8 NMAC (**Application of the Credit**) to Section 7-9D-7 NMSA 1978, 3.13.3.9 NMAC (**Used Equipment**) to Section 7-9D-5 NMSA 1978 and 3.13.3.10 NMAC (**Credit Not Transferable**) to Section 7-9D-7 NMSA 1978 of the Capital Equipment Tax Credit Act.

The proposals were placed on file in the Office of the Secretary on August 4, 2005. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about October 31, 2005.

A public hearing will be held on the proposals on Thursday, October 13, 2005, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before October 13, 2005.

**3.2.1.11 CONSTRUCTION.**

D. Construction does not include.

(2) A person engaged in the construction business, however, may deliver to the seller a [Type 6] nontaxable transaction certificate for the purchase of carpets, draperies, or installed carpet or installed draperies [to the seller].

(3) Even though receipts from selling carpet installation services or drapery installation services to a person engaged in the construction business are receipts from the sale of a service for resale, a person engaged in the construction business may deliver a [Type 7] nontaxable transaction certificate for the purchase of carpet installation services or drapery installation services.

**3.2.1.18 GROSS RECEIPTS; SERVICES.**C. **Allocating receipts from selling services performed within and without New Mexico.**

(3) If a subcontract service is actually a service purchased for resale, and all conditions of Section 7-9-48 NMSA 1978 are met and the subcontracted service is actually sold intact to the prime contractor's customer, the prime contractor may issue a [Type 5] nontaxable transaction certificate to the subcontractor. [and the] The receipts from such subcontracted service will be deductible from the subcontractor's gross receipts.

**3.2.1.29 SERVICES.**D. **When a transaction is predominantly a service:**

(2) When the transaction is predominantly a service other than construction, any tangible personal property transferred in conjunction with the service is incidental to the service, and the value of the property becomes an element of and is incorporated into the value of the service sold. [Type 2] Nontaxable transaction certificates (nttc) may not be executed to acquire the property so incorporated.

(3) Example A1: C, a consultant, reviews operations of clients; C does not engage in the business of selling office supplies. C is hired to evaluate certain operations of L. C presents the evaluation to L as a written report[;] with supplemental data on computer disks. C contends that the paper used for the report and the computer disks were sold to L, and therefore C may execute [a Type 2] an nttc to

acquire these tangibles. The transaction with L is predominantly the performance of a service. The paper and computer disks convey the result of ~~the~~ C's service and are incidental to that service. C may not execute ~~[Type 2]~~ nttcs for the purchase of these tangibles.

(4) Example A2: X is engaged in the business of performing certain services and is not engaged in selling tangible personal property in the ordinary course of business. X enters into a cost plus a fixed fee contract with Y to conduct a survey of residents of this state to determine consumer acceptability of and demand for particular household products which Y manufactures and plans to distribute into New Mexico. The contract specifies that on completion or termination of the contract any tangible property purchased by X, and billed by X, will be paid by Y as a cost of fulfilling the requirements of the contract. X chooses to purchase a personal computer to use in the performance of the service. X will enter results of the surveys into the computer ~~[which]~~ that will classify the responses and generate reports which X will analyze, interpret and submit to Y. Since X has the power to exert significant influence over the degree of involvement (use) of the computer under the contract, and since X is not engaged in selling computers or similar property in the ordinary course of business, X's receipts attributed to the cost of the computer are receipts from performing a service. X may not execute ~~a [Type 2]~~ an nttc for the purchase of the computer.

(5) Example A3. A well-servicing company uses disposable bits and other disposable "rubber goods" in servicing oil and natural gas wells. The disposable items are ~~used up~~ depleted in the course of the servicing; pieces of the abraded material are left in the well. The company claims it should be allowed to execute ~~[Type 2]~~ nttcs because the disposable items are left with the owner(s) of the well. These materials are incidental to the performance of the service. The company may not execute ~~[Type 2]~~ nttcs in acquiring these disposable items.

(8) Example B1: B, an engineering company, contracts to design a product for Y, a manufacturer[,] who intends to manufacture the product for sale to the general public. The contract requires B to submit plans for the product and a prototype of it. B contends that the plans and prototype are tangible personal property and therefore ~~[Type 1 or Type 2 nttcs]~~ an nttc may properly be executed. B is performing a research and development service, even though the product of the service is embodied in tangible personal property. The tangibles used are incidental to the performance of the service. ~~[Type 1 and Type 2 nttcs]~~ Nttcs may not be executed to

acquire the tangible personal property making up the plans and prototype.

(9) Example B2: B, an engineering company, is a qualified contractor within the meaning of Section 3.2.205.11 NMAC under a contract with D, an agency of the United States. The contract is a research and development contract covered by the agreement between the state of New Mexico and several agencies of the United States, including D. The contract calls for B to design and submit plans for a rocket motor and to develop and deliver a facsimile of the rocket casing to a research facility for testing. B maintains that B is selling tangible personal property to the federal government. B is performing research and development services. The plans and facsimile are products of that service. The transaction is predominantly the performance of a service rather than the sale of tangible personal property. B is not selling tangible personal property to the federal government but may be eligible to execute ~~[Type 15]~~ nttcs if the conditions specified by Section 3.2.205.11 NMAC and the State-Federal agreement are met.

(10) When the performer of the service either is regularly engaged in selling or leasing by itself the type of tangible personal property transferred in the transaction, a single transaction may encompass both the sale of a service and the sale of property as distinct and separable parts of the transaction. In such a case, ~~[Type 2 nttcs]~~ an nttc may be executed to acquire the tangible personal property resold if the conditions in Subsection A of Section 3.2.205.10 NMAC are met.

(12) Example B4: H, who operates a computer hardware and software company, is hired to write computer programs for one of M's divisions, acquire and set up 25 computer stations for use of the division and to train the division personnel in the use of the stations and programs. H contends that the computer stations are sold to M and therefore H may execute ~~[Type 2]~~ nttcs to acquire them for resale. The transaction encompasses both the performance of services (developing the programs and training the division personnel) as well as the sale of tangible personal property (the computer stations) as separable elements. ~~[Therefore]~~ H may execute ~~[Type 2]~~ nttcs in acquiring the computer stations.

3.2.10.18 **COMPENSATING TAX ON DEALER USE OF PARTS:** The value of parts, motor oils and similar items taken from inventory held for sale, or purchased under ~~[Type 2 (resale) nttcs]~~ an appropriate nttc, by automobile dealers for use in repairing or maintaining vehicles used by the dealers in the operation of the dealerships, as distinguished from vehicles held for sale, is subject to compensating tax.

A new vehicle ~~[which]~~ that has been titled and registered, other than pursuant to Subsection C of Section 66-3-118 NMSA 1978 pertaining to new vehicles held for sale and allowed to be registered without payment of the motor vehicle excise tax, will be treated as a vehicle used in the dealer's business for purposes of applying Section 3.2.10.18 NMAC.

### 3.2.201.13 **MULTIJURISDICTIONAL UNIFORM SALES AND USE TAX CERTIFICATES:**

A. The department deems the uniform sales and use tax certificate issued by the multistate tax commission or by any member state other than new mexico to a taxpayer not required to be registered in New Mexico to be a nontaxable transaction certificate (nttc) equivalent to ~~a [type 1 or a type 2]~~ an nttc, as appropriate, issued by the department. The department will accept as evidence of the deductibility of a specific transaction the multistate tax commission uniform sales and use tax certificate only in those situations in which possession of a properly executed ~~[type 1 or type 2]~~ nttc is acceptable evidence of the deductibility of the transaction, and the uniform sales and use tax certificate is issued by the multistate tax commission or a member state other than New Mexico to a taxpayer not required to be registered in New Mexico.

B. No certificate or other document from any other state or taxing jurisdiction is acceptable evidence under Section 3.2.201.13 NMAC.

C. This version of Section 3.2.201.13 NMAC applies to transactions occurring on or after July 1, 1998.

### 3.2.201.14 **GOOD FAITH ACCEPTANCE OF NONTAXABLE TRANSACTION CERTIFICATES:**

A. Acceptance of nontaxable transaction certificates (nttcs) in good faith that the property or service sold thereunder will be employed by the purchaser in a nontaxable manner is determined at the time of each transaction. The taxpayer claiming the protection of a certificate continues to be responsible that the goods delivered or services performed thereafter are of the type covered by the certificate.

B. Example 1: ~~[A type 6]~~ An nttc, which may be executed and accepted for the purchase of construction materials, will not protect the deduction taken by an automobile dealer for receipts from the sale of automobile parts or a lumber yard for receipts from the sale of a power saw.

C. Example 2: An automobile dealer who accepts ~~a [type 2]~~ an nttc from an airline for the purchase of parts cannot rely on the ~~[type 2 (resale of tangibles)]~~ nttc to protect the deduction of

receipts, pursuant to Section 7-9-47, from such sale unless the dealer can demonstrate good faith acceptance by showing that the airline is in the business of reselling parts. A statement on the back of or attached to the certificate separately signed by a responsible employee of the airline showing that the airline runs a retail parts store would protect the dealer who did not know the statement was false.

### 3.2.201.19 **BORDER STATES UNIFORM SALE FOR RESALE CERTIFICATE:**

A. For transactions specified below, the department deems a border states uniform sale for resale certificate issued by a border state other than New Mexico to a taxpayer not required to be registered in New Mexico to be a nontaxable transaction certificate (nttc) ~~[equivalent to a type 1 or type 2 nttc]~~, as appropriate, issued by the department. The department will accept as evidence of the deductibility of a specific transaction, the border states uniform sale for resale certificate only when the following conditions exist:

B. No other certificate or document from any other state or taxing jurisdiction is acceptable evidence under Section 3.2.201.19 NMAC.

C. For the purposes of Section 3.2.201.19 NMAC:

(1) "border state" means Arizona, California, New Mexico and Texas and any other state joining the Border States Caucus subsequent to January 1, 1996; and

(2) "northern border region" means:

(a) the border strip of 20 kilometers parallel, north and south, to the international dividing line between the United Mexican States and the United States of America;

(b) all territory of the Lower California states, South Lower California and Quintana Roo, the municipality of Cananea, Sonora and part of the State of Sonora as delimited by the Border States Caucus; and

(c) any additional territory of the United Mexican States incorporated into the definition by the Border States Caucus subsequent to January 1, 1996.

D. Section 3.2.201.19 NMAC is retroactively applicable to taxable events occurring on or after January 1, 1996.

3.2.204.14 **UPHOLSTERY MATERIALS:** Upholsterers are engaged in the business of performing a service and are not manufacturers. If an upholsterer separately states on the billings to customers the value of the material used in conjunction with the services, the upholsterer may issue

a [Type 2] nontaxable transaction certificate (nttc) of the appropriate type to the supplier of the material. If the value of the material is not separately stated on the billings to customers and either an nttc is issued or the materials are purchased without a sales or gross receipts tax appearing on the invoice from an out-of-state vendor, the upholsterer will be liable for compensating tax on the value of the material.

### 3.2.204.16 **RECEIPTS FROM CUSTOM SOFTWARE DEVELOPED FOR MANUFACTURER OF PACKAGED SOFTWARE NOT DEDUCTIBLE:**

A. Receipts from developing custom software for a manufacturer of packaged software are not deductible under Section 7-9-46 NMSA 1978 because the deduction under Section 7-9-46 NMSA 1978 is available only for receipts from selling tangible personal property which is incorporated as an ingredient or component part of the manufactured product. Developing custom software is a service.

B. Example: M, a manufacturer of packaged software, contracts with S, a software development company, for the development of a new personal finances program which M plans to manufacture and sell. S is performing a service under this contract. M may not execute and S may not accept a [Type 1 or Type 2] nontaxable transaction certificate for the purchase of tangible personal property because the property is not for resale or incorporation into a manufactured product.

### 3.2.205.10 **TANGIBLES SOLD FOR USE IN PERFORMANCE OF A SERVICE VERSUS SIMULTANEOUS TRANSACTIONS - BILLING PRACTICES**

A. **Use of tangible personal property in performing a service:**

(1) When a taxpayer uses tangible personal property in the performance of a service, the tangible personal property is acquired for use and not for sale in the ordinary course of business. Therefore, a nontaxable transaction certificate may not be executed under Section 7-9-47 NMSA 1978 to acquire the tangible personal property.

(2) [Reserved.]

(3) [Reserved.]

(4) Example 1: X, a dry cleaner, mends clothing that is brought to X for cleaning. X uses thread, material and buttons to mend the clothing. X maintains that X is selling these products. X does not sell thread, buttons or material; rather X is engaged in performing a service and uses the materials in the performance of the service. Therefore, the sale of these products to

X is not a sale for resale. If, in this situation, X delivered an nttc to its supplier for the purchase of thread and buttons and if the supplier did not pay the gross receipts tax on those receipts, X will be subject to the compensating tax.

(5) Example 2: A person giving tangible personal property as prizes for performing certain skills at carnivals, amusement parks, fairs or similar recreation facilities is using the tangible personal property in the performance of its entertainment service. If this tangible personal property is acquired within New Mexico, the person may not execute [Type 2 nttc] an nttc to buy these items because the tangible personal property is not to be re-sold but used in the performance of an amusement or recreation service. If the tangible personal property were acquired from sources outside New Mexico, the person is subject to the compensating tax on the value of the tangible personal property.

(6) Example 3: An accountant purchases journal and ledger sheets, forms and supplies necessary to maintain books of account for clients. The accountant analyzes transactions and prepares journal entries and posts information to the ledgers. The accountant also prepares periodic financial statements and completes tax returns and other reports on behalf of the client. In billing for the services performed, the accountant separately states the value of the journal and ledger sheets, forms and other property used in the performance of the service. The accountant is using the tangible personal property in the performance of the service and may not execute a nontaxable transaction certificate under Section 7-9-47 NMSA 1978 to acquire these items. The fact that the accountant separately states the value of these tangibles is immaterial in this case.

(7) Example 4: O & G Service Company uses swabbing cups and other rubber goods in the course of its servicing an oil well. In fact, this tangible personal property loses its separate identity in the course of the service. As is customary in the industry, O & G Service Company separately states the value of the swabbing cups and other rubber goods in its billing to the person who contracted for the servicing of the well. O & G may not execute nontaxable transaction certificates under Section 7-9-47 NMSA 1978 to acquire the swabbing cups and other rubber goods because O & G is using those goods in the performance of its service. In this case, it is immaterial whether O & G Service Company separately states the value of such tangibles or whether it is the industry practice to do so.

(8) If a business regularly sells tangible personal property by itself as well as in connection with the performance of a

service and if the property is not used by the business in the course of the performance of the service, a transaction in which tangible personal property is transferred to the buyer as the result of, or in connection with, the performance of a service contains as separate components both the performance of a service and the sale of tangible personal property. When it is the custom of both the industry and the business to separately state the value of the service and the value of the tangible personal property transferred to the buyer in the billing to the buyer, the tangible personal property is acquired for sale in the ordinary course of business. In this case, a nontaxable transaction certificate may be executed under Section 7-9-47 NMSA 1978 to acquire the tangible personal property.

**B. Purchase of blueprints by architects:** Architects are engaged in the business of performing services which include furnishing drawings and blueprints to their clients. Thus, they may not issue nontaxable transaction certificates for the purchase of extra copies of blueprints since they are not sellers of tangible personal property in the ordinary course of business as required under Section 7-9-47 NMSA 1978.

**C. Lawn service:** Receipts from selling fertilizer, insecticides, herbicides and similar items of tangible personal property to a person engaged in the business of providing lawn maintenance services may not be deducted from gross receipts pursuant to Section 7-9-47 NMSA 1978. Such receipts are not receipts from selling tangible personal property for resale since the property is being used by the person in the course of providing lawn maintenance services.

**D. Sale of landscape items:** Receipts from selling landscape items such as plants, shrubs, trees, rocks, seed, sod and ornaments to a person engaged in the business of designing landscapes and selling and installing landscape items are receipts from selling tangible personal property for resale since it is the trade practice of persons engaged in the landscape business to bill landscape items separately from the design and installation services involved.

**E. Morticians:** Receipts from selling boxes and vaults, shipping pouches, burial clothing, monuments, grave markers, tombstones, flowers, memorial books, acknowledgement cards and caskets to morticians for use in their business are receipts from selling tangible personal property for resale since it is the custom of the undertaking industry to bill these items separately from the services rendered.

**F. Watch repair:** The receipts from selling watch repair parts and materials to watchmakers for use in the repair of watches are not receipts from sell-

ing tangible personal property for resale because it is not the custom of watchmakers to bill these parts and materials separately from watch repair services.

**G. Photographic processors:** If a person engaged in the business of processing photographic materials bills the charge for a finished photographic print separately from the charge for the services and the cost of the finished photographic print bears a reasonable relation to the cost of production of the finished photographic print, the receipts from the sale of the finished photographic print may be deducted from gross receipts if the sale of the print is made to a buyer who delivers a nontaxable transaction certificate under Section 7-9-47 NMSA 1978, because it is the custom of the photographic processing industry to bill labor separately from tangibles.

**H. Sale of paint to body shops:** Receipts from selling paint, primer, filler and other tangible personal property that is applied to and becomes part of a repaired vehicle, when such sales are made to a body shop, may be deducted from the gross receipts of the seller if the body shop issues a ~~[Type 2]~~ nontaxable transaction certificate (nttc) of the appropriate type, it being the custom of this industry to state separately those items in billings. If the seller delivering the nttc does not separately state the tangible personal property in its billings, compensating tax is due. A body shop may not issue ~~a Type 2~~ an nttc for items such as emery cloth, grinding wheels, buffers and sand for blasting which are consumed by the body shop in the performance of its services.

### 3.2.205.11 SALE OF TANGIBLE PERSONAL PROPERTY TO A FEDERAL CONTRACTOR OR SUBCONTRACTOR:

**A.** Receipts from selling tangible personal property to a federal contractor or subcontractor may be deducted from the seller's gross receipts if the federal contractor or subcontractor issues a ~~[Type 15]~~ nontaxable transaction certificate (nttc) to the seller. The federal contractor or subcontractor is authorized to issue ~~a Type 15~~ an nttc only if the federal contract number is entered on the appropriate line of the ~~[Type 15]~~ nttc and all of the criteria contained in the agreement between New Mexico and the U.S. Government are met and if the contracting agency is one of the United States agencies signatory to the agreement.

**B.** If the federal contractor or subcontractor issuing the ~~[Type 15]~~ nttc does not meet the criteria outlined in the agreement, it shall be liable for compensating tax on the value of the tangible personal property. A federal contractor or subcontractor may not issue ~~a Type 15~~ an nttc for the purchase of services.

### 3.2.205.13 PACKAGING AND RELATED MATERIALS.

**A. Containers, wrapping paper and other packaging products.**

**(1) Nonreturnable containers.** Sales of nonreturnable containers to persons who use them to package tangible personal property so that the containers become part of the products ultimately sold are sales for resale. The buyer of this type of container may give a nontaxable transaction certificate (nttc) for the containers purchased. Thus a person who sells nonreturnable containers to one who has delivered an nttc and uses the containers in packaging food which is then sold may deduct the receipts from the sales to the person who delivered the nttc under Section 7-9-47 NMSA 1978.

**(2) Returnable containers.** Sales of returnable containers to persons who use the containers for the delivery of their goods are not sales for resale. The purchase of the returnable containers by the person who packages the goods for sale is a purchase for use. Therefore, the seller of the containers must pay the gross receipts tax on the receipts from the sale. Normally included in the category of returnable containers are glass milk bottles, some gasoline and oil cans, water bottles and milk and soft drink cases.

**(3) Wrapping materials.** The sale of bags, wrapping paper, twine and similar articles to persons who use the materials to package merchandise which has been sold is a sale for resale. The receipts from these sales may be deducted by a seller who has received an nttc from the buyer. The buyer of the bags, wrapping paper and twine may give an nttc for their purchase.

**(4) Paper towels, sales slips.** Sales of paper towels, toilet tissue, and like items, when sold to a person engaged in the business of performing a service are not sales for resale. The seller must pay the gross receipts tax on these sales. The sale of sales slips is subject to tax unless the buyer resells the sales slips in the ordinary course of business.

**(5) Crowns, bottles, crates, cartons.**

**(a) Crowns.** The sale of caps or crowns to persons who use them in bottling soft drinks are treated as sales for resale. The sale of caps or crowns as a part of the bottled beverage to a person selling the beverage for ultimate consumption also is a sale for resale.

**(b) Bottles.** The sale of nonreturnable bottles, cans or other types of containers to a bottler or canner for use in packaging soft drinks is a sale for resale. The sale of the bottle or can as a part of the drink to a person selling the beverage for ultimate consumption also is a sale for resale.

**(c) Crates.** The sale of crates, made of any material, to a soft drink bottler



is not a sale for resale. The seller of the crate must pay the gross receipts tax if the sale is made in New Mexico. If the sale is not made in this state then the compensating tax must be paid by the buyer.

(d) Cartons or cases. The sale of paper, cardboard or plastic cartons and can and bottle holders to a soft drink bottler or canner is a sale for resale. The sale of the carton to a person engaged in selling soft drinks to consumers also is a sale for resale.

(6) **Labels, product name tags, price tags.** Receipts from selling labels, product name tags or price tags to a person who delivers [a Type 2] an nttc to the seller may be deducted from gross receipts. The buyer delivering the nttc must resell the labels, product name plates or price tags either by themselves or in combination with other tangible personal property in the ordinary course of business, or the buyer is subject to the compensating tax on their value. These items are resold in combination with tangible personal property if they are affixed to and sold along with the other property.

(7) *Example:* Z, a book and stationery store, is engaged in the business of selling office supplies. Among the items Z carries for sale to other merchants are sales slips which Z purchases from X. The sales slips which Z sells to its customers who use the sales slips in the regular course of their businesses are not sales for resale. Z must pay the gross receipts tax on its receipts from selling sales slips to other stores. X Company will be allowed to treat the sale of sales slips to Z as sales for resale if it has received an nttc from Z. Z also uses some of the sales slips which it purchases to record transactions between itself and its customers and to bill the customers. As to these purchases, Z may abide by the following procedure: Z may give X an nttc for the total purchases and then pay compensating tax on those sales slips which it uses because Z is in the business of purchasing sales slips for resale and its own use of the slips is minor in comparison to the total number of slips purchased.

**B. Sales to a burlap bag processor.**

(1) Receipts derived from the sale of used burlap bags to a person engaged in the business of processing burlap bags for sale in the ordinary course of business may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate (nttc) to the seller pursuant to Section 7-9-47 NMSA 1978.

(2) If the buyer delivering the nttc does not resell the used burlap bags in the ordinary course of business, the compensating tax is due.

**C. Sale of bagging and ties.** Receipts from the sale of bagging and ties to a person who operates a cotton gin

for use in baling cotton are not receipts from selling tangible personal property for resale since the bagging and ties are used by the person in the course of his service of baling cotton.

**D. Steel strapping.**

(1) Receipts from selling strapping used to contain individual ingots of copper in packages may be deducted from gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate (nttc) to the seller. The buyer delivering an nttc must resell the steel strapping either by itself or in combination with other tangible personal property in the ordinary course of business.

(2) If the buyer delivering the nttc does not resell the steel strapping in the ordinary course of business, the compensating tax is due.

**E. Sale of baling wire to a farmer.**

(1) Receipts from selling baling wire to a farmer who bales hay for sale to others may be deducted from the seller's gross receipts if the farmer issues a [Type 2] nontaxable transaction certificate. The baling wire is resold by the farmer in combination with other tangible personal property. The deduction would not apply to sales made to farmers of baling wire for their own use.

(2) A seller may not deduct the receipts from selling baling wire to a "custom worker" who bales hay for farmers for a consideration, since the wire is used by the worker in the course of performing his services.

### 3.2.205.14 MEDICINES AND MEDICAL SUPPLIES

**A. Dental supplies:**

(1) The receipts from selling supplies, gold, silver and similar items of tangible personal property used in making dentures, cement used in fillings, amalgam, anesthetics, orthodontia platinum wire, facing, backing, x-ray film and the like to dentists for use in their practices are not receipts from selling tangible personal property for resale since it is not the custom of the dental profession to bill material separately from the services involved.

(2) The receipts derived from selling the items mentioned in Paragraph (1) of Subsection A of Section 3.2.205.14 NMAC may not be deducted from gross receipts pursuant to Section 7-9-73 NMSA 1978 because the items sold are not prosthetic devices within the meaning of Section 7-9-73 NMSA 1978.

**B. Medical supplies:** Receipts from selling supplies, drugs, bandages, splints, syringes, tongue depressors, medicine used as injections and other similar items to practitioners of the healing arts for use in their practices are not receipts

derived from selling tangible personal property for resale since it is not the custom of such practitioners to bill material separately from the services involved.

**C. Sale of radioisotopes:**

(1) Receipts from selling radioisotopes to a professional association of medical radiologists which furnishes a nontaxable transaction certificate (nttc) are receipts derived from selling tangible personal property for resale since it is the custom of radiologists to bill these materials separately from the services involved.

(2) If the radiologists delivering the nttc do not resell the radioisotopes in the ordinary course of business, the compensating tax is due.

**D. Issuance of nontaxable transaction certificates by oncologists:** Receipts from selling drugs used in the treatment of cancer by an oncologist who separately states these items in billings may be deducted by the seller if the oncologist delivers to the seller a [Type 2] nontaxable transaction certificate (nttc). If the oncologist delivering the nttc does not sell the items in the ordinary course of business or does not separately state the charges for the sale price of the items on the billings, the compensating tax is due. Receipts from the sale of other tangibles, such as supplies, bandages, syringes, etc., are not deductible.

**E. Sale of medicine to veterinarians:**

(1) Receipts from selling drugs, medicine, braces, dressings and other substances and preparations used in treating animals to a veterinarian who is engaged in the business of selling such items and who does not administer the items are receipts derived from selling tangible personal property for resale and may be deducted by the seller if the veterinarian delivers a [Type 2] nontaxable transaction certificate (nttc). If the veterinarian delivering the nttc does not resell the above items in the ordinary course of business, the compensating tax is due.

(2) Receipts from selling drugs, medicine, braces, dressings and other substances and preparations used in treating animals to a veterinarian who administers the items and who separately states these items in the billings may be deducted by the seller if the veterinarian delivers to the seller [a Type 2] an nttc because it is the custom of the trade to separately state these items in billings. If the veterinarian delivering the nttc does not resell the items in the ordinary course of business or does not separately state the charges for the sale price of the items on the billings, the compensating tax is due.

**F. Vitamins and drugs sold to sale barn:** Receipts from selling vitamins and drugs to a person engaged in the business of conducting a sale barn who administers vitamins and drugs to livestock

consigned to the barn and who bills the consignor of the livestock for this property without charge for the service of administering the property are receipts from selling tangible personal property for resale.

### 3.2.205.18 PARTS AND SUPPLIES SOLD UNDER SERVICE CONTRACTS

**A. Receipts from sale of parts to fulfill promisor's obligation under automotive service contract not deductible:** The receipts of a repair facility from the promisor under an automotive service contract, as that term is defined in Subsection C of Section 3.2.1.16 NMAC, for furnishing parts to fulfill the promisor's obligation under the contract are taxable gross receipts of the repair facility. The receipts are not deductible by the repair facility even though the promisor may have furnished the repair facility with a ~~[Type 2 (property for resale)]~~ a properly executed nontaxable transaction certificate since the parts were sold by the repair facility to the purchaser of the automotive service contract for a consideration to be received from the promisor who makes the payment to the repair facility to discharge the promisor's obligation to the purchaser to pay for the parts

**B. Supplies billed by automotive dealer on repair orders subject to compensating tax:** New Mexico automotive dealers who issue ~~[Type 2 (resale of tangibles)]~~ nontaxable transaction certificates to suppliers of shop supplies purchased for use in the dealers' service departments and body shops are liable for compensating tax on those supplies. Dealers are using and are not reselling (i.e., transferring) the shop supplies as required by Section 7-9-47 NMSA 1978 and are, therefore, liable for the compensating tax imposed by Paragraph (3) of Subsection A of Section 7-9-7 NMSA 1978. Separately stating a charge on the customer's billing for shop supplies used by a dealer does not constitute the resale of such supplies.

### 3.2.205.19 COMPUTER SOFTWARE

**A. Packaged software - sale of tangible personal property versus sale of a license:**

(1) When a person sells packaged software with restrictions such that the buyer may not transfer the software to another or may not permit another to use the software, the seller has receipts from the sale of a license.

(2) When a person sells packaged software without restrictions on the buyer's ability to transfer the property to another or to permit another to use the software, the seller has receipts from the sale of tangible personal property even if there may

be restrictions on the number of simultaneous users or on the number of computers on which the software may be simultaneously installed.

**B. Packaged software - sale for resale:**

(1) Receipts from the sale of packaged software for resale may be deducted from gross receipts if the seller receives in good faith a ~~[Type 2]~~ nontaxable transaction certificate (nttc) of the appropriate type from the buyer.

(a) Example 1: X, a software manufacturer, sells its packaged software directly and through distributors. If X receives in good faith ~~[a Type 2]~~ an nttc from a distributor, X may deduct receipts from the sale of its software for resale to the distributor.

(b) Example 2: Y, a software manufacturer, has developed an application. Y reached an agreement with M, a manufacturer of a desktop computer, in which M would sell its desktop computer with a copy of Y's software already installed. Copies of diskettes and instruction manuals for Y's software would also be delivered to the buyer. The manufacturer buys the packaged software from Y at a discount. If Y receives in good faith ~~[a Type 2]~~ an nttc from M, Y may deduct receipts from the sale for resale of its packaged software to the manufacturer. In this case, it does not matter whether the ultimate buyer of the computer with the installed software is restricted from selling the software or authorizing others to use it.

(2) Receipts from the sale of packaged software in combination with a computer for a single price are receipts from the sale of tangible personal property whether or not the packaged software is installed on the computer. Example: Z is in the business of selling computers and software at the distributor level. Z prepares special packages for sale at a single price in which selected models of computer are sold with certain software already installed. Z may accept properly executed ~~[Type 2]~~ nontaxable transaction certificates (nttcs) from retailers who intend to resell the package either by itself or in combination with other devices or software. Z may execute ~~[Type 2]~~ nttcs to acquire the computers, related hardware and packaged software.

**C. Packaged software - sale for use:**

(1) Except as provided in Paragraph (2) of Subsection C of Section 3.2.205.19 NMAC, receipts from the sale of packaged software which is intended to be used by the purchaser for a purpose other than resale are not deductible under Section 7-9-47 NMSA 1978, even if the purchaser is regularly engaged in the business of developing, manufacturing or selling software.

(a) Example 1: V, a vendor of software, sells to Z, a software development

company, a package of CASE tools (programming designed to assist the development of other programs) which Z intends to use in creating new products. Although a sale of tangible personal property has occurred, the software is not intended to be resold. The receipts from this sale are not deductible. Z may not execute a ~~[Type 2]~~ nontaxable transaction certificate (nttc) with respect to this transaction. If Z does execute ~~[a Type 2]~~ an nttc and V can and does accept it in good faith, Z will owe compensating tax on the value of the CASE tools acquired.

(b) Example 2: S, a seller of computer hardware and software, buys packaged software to do S's own bookkeeping. After using the packaged software for a period of time, S sells it. If S executed ~~[a Type 2]~~ an nttc to acquire the packaged software, S owes compensating tax for using the software in New Mexico. S also owes gross receipts tax on S's receipts from the sale of the packaged software.

(2) If the buyer is a qualified contractor of the federal government and uses packaged software to fulfill an appropriate research and development contract with a signatory federal agency, the buyer may execute, and the seller may accept in good faith, ~~[a Type 15 nttc]~~ an nttc, pursuant to Section 3.2.205.11 NMAC with respect to the packaged software. Example: X, a research and development company, enters into a qualifying research and development contract with a signatory agency of the United States. The contract is to develop a program to test certain devices which the United States is considering purchasing. To create the testing program X buys several pieces of packaged software and develops new programming to interconnect the packaged software into a coherent testing program. X may execute, and the vendors may accept in good faith, ~~[Type 15]~~ nttcs for the purchase of the packaged software.

(3) Receipts from the sale of packaged software which is designed to enable the purchaser to provide a service to its own customers are not deductible under Section 7-9-47 NMSA 1978. Example: An accountant opens a tax preparation service. The accountant purchases packaged software applications to assist in the preparation of various federal and state tax forms. Receipts from the sale of the software to the accountant are not deductible. The accountant may not execute nttcs to acquire the software in a nontaxable transaction. If the accountant does execute an nttc with respect to this transaction and the vendor can and does accept it in good faith, the accountant owes compensating tax on the value of the packaged software acquired.

### 3.2.205.20 USE OF TANGIBLE PERSONAL PROPERTY BY HOTELS,

**MOTELS AND SIMILAR FACILITIES.**

A. Hotels, motels, inns, rooming houses and similar facilities are engaged in the business of granting a license to use real and tangible personal property. Tangible personal property provided to a guest in conjunction with the license and intended to be consumed by the guest, such as soap, paper products and single serving packets of coffee, is resold in the ordinary course of business.

B. *Example 1:* M, a motel, buys from Z bathroom tissue and single-serving coffee packets to use in M's motel business. M maintains that it is entitled to execute a [Type-2] nontaxable transaction certificate (nttc) in purchasing the tangible personal property. M contends that, because the cost of the tangibles is included in the charge M sets for rooms, M is reselling the products in combination with the license to use the room. M is correct and may execute [a Type-2] an nttc to purchase these goods.

C. *Example 2:* H, a hotel, offers its guests at no additional charge a continental breakfast with the rental of rooms. H may execute [a Type-2] an nttc to purchase the food provided at these breakfasts and related non-food tangible personal property, such as paper napkins, provided [in conjunction] with the food.

D. Tangible personal property, such as sales slips, computer paper or forms, cleaning materials, vacuum cleaners and computers, to be used or consumed by the hotel, motel, inn or similar facility or its staff is not resold in the ordinary course of business. Tangible personal property provided by a hotel, motel, inn or similar facility for the use of guests, such as furniture, tableware, bedding and towels, but intended to be retained by the facility are not resold in the ordinary course of business. Tangible personal property not resold by itself or in conjunction with other tangible personal property or licenses is not deductible under Section 7-9-47 NMSA 1978. [A Type-2] An nttc may not be executed with respect to such tangible personal property.

E. This version of Section 3.2.205.20 NMAC is retroactively applicable to receipts from transactions on or after 11/1/97.

3.2.206.20 **TELECOMMUNICATIONS SERVICES.**

A. **Cable television hook-up.** Receipts from selling the service of hook-ups to cable television for resale may be deducted from gross receipts if the sale is made to a buyer who delivers a nontaxable transaction certificate (nttc) to the seller. The subsequent sale must be in the ordinary course of business and the receipts subject to the gross receipts tax. This version of Subsection A of Section 3.2.206.20 NMAC

applies to transactions occurring on or after July 1, 2000.

B. **Telephone services.**

(1) Receipts of a telephone company from the performance of telephone services for a hotel or motel, to the extent that they are attributable to calls made from the rooms of the hotel's or motel's guests, may be deducted from gross receipts if the hotel or motel delivers a nontaxable transaction certificate (nttc) to the telephone company. The charge must be subject to the gross receipts tax or the hotel or motel will be subject to the compensating tax on the value of the telephone services.

(2) In order to apportion the use of telephone service at a hotel or motel between local calls made from the rooms of the hotel's or motel's guests and other local calls made from the hotel or motel, the department will, on audit of the telephone company claiming the deduction described in the preceding paragraph, allow as a deduction that portion of the receipts of the telephone company which are calculated in the following manner with respect to the month's billing to the hotel or motel:

(a) the telephone company's receipts from charges, indicated on its billing to the hotel or motel, as local service and additional local call and message units, which represent local telephone service are calculated; and

(b) the total calculated in Subparagraph (a) of Paragraph (2) of Subsection B of Section 3.2.206.20 NMAC is multiplied by a fraction, the numerator of which is the number of message units, as the term is used by the telephone company, indicated on its billing to the hotel or motel which represent local telephone calls which were made from the hotel or motel and the denominator of which is the total of message units, as the term is used by the telephone company, indicated on the telephone company's billing to the hotel or motel.

(3) The method set forth in Paragraph (2) of Subsection B of Section 3.2.206.20 NMAC is acceptable to the department as an "apportionment of use". However, other methods which more accurately reflect the apportionment of use may be acceptable to the department.

(4) *Example:* X is engaged in the business of selling alarm systems in New Mexico. As a part of these systems, a telephone line is leased by X from Y, a telephone company. Y bills X for each line on a monthly basis. X bills each customer on a monthly basis for service plus a telephone line charge. Receipts of Y from the performance of the telephone service for X may be deducted from Y's gross receipts if X delivers [a type-5] an appropriate nttc to Y. Receipts of X from its customers must be subject to the gross receipts tax, or X will be

liable for the compensating tax on the value of the telephone services at the time they were rendered.

(5) This version of Subsection B of Section 3.2.206.20 NMAC applies to transactions occurring on or after July 1, 2000.

3.2.206.21 **GARBAGE COLLECTION:** Receipts from selling the service of garbage collection for resale may be deducted from gross receipts if the sale is made to a buyer who delivers a [type-5] nontaxable transaction certificate (nttc) to the seller. The subsequent sale must be in the ordinary course of business and subject to the gross receipts tax or governmental gross receipts tax, or the buyer will be liable for the compensating tax on the value of the service at the time it was rendered. If the seller of the service of garbage collection is a political subdivision of the state of New Mexico, its receipts from the sale are [exempted] exempt from the gross receipts tax but will be subject to the governmental gross receipts tax. This version of Section 3.2.206.21 NMAC applies to transactions occurring on or after July 1, 2000.

3.2.206.22 **RECEIPTS FROM SALE OF SERVICES TO FULFILL PROMISOR'S OBLIGATION UNDER AUTOMOTIVE SERVICE CONTRACT NOT DEDUCTIBLE:** The receipts of a repair facility from the promisor under an automotive service contract, as that term is defined in Subsection C of Section 3.2.1.16 NMAC, for furnishing services to fulfill the promisor's obligation under the contract are taxable gross receipts of the repair facility and are not deductible by the repair facility. Even though the promisor may have furnished the repair facility with [a type-5 (service for resale)] an appropriate nontaxable transaction certificate, the receipts are not deductible because the services were sold by the repair facility to the purchaser of the automotive service contract for a consideration to be received from the promisor who makes the payment to the repair facility to discharge the promisor's obligation to the purchaser to pay for the services.

3.2.210.10 **TRANSPORTATION SERVICES**

A. **HAULING:** Receipts from hauling materials and supplies to and from a building site for a person engaged in the construction business are not deductible from the hauler's gross receipts pursuant to Section 7-9-52 NMSA 1978 because hauling materials and supplies to and from a construction site is not a construction service.

B. **HAULING PREFAB-**

**RICATED BUILDINGS:** A builder of pre-fabricated buildings may not issue a [Type 7] nontaxable transaction certificate for the purchase of construction services to a company hired to move completed buildings from the builder's lot to the permanent site. Haulers are not engaged in construction as defined under Section 7-9-3 NMSA 1978. A deduction may be available under Section 7-9-48 NMSA 1978 if all the criteria of that section are met.

**C. HAULING AND SPREADING MATERIALS WITHIN CONSTRUCTION PROJECT:** Receipts of a person from hauling and spreading dirt, sand, gravel and rock, treated or untreated, for the purpose of furnishing materials to a construction project when such materials have been obtained from a source which is on or in the proximity of that construction project are receipts from performing a construction service. Such receipts may be deducted from the seller's gross receipts if the buyer delivers a nontaxable transaction certificate to the seller.

**3.2.212.19 PROOF OF PAYMENT:**

A. A seller must be able to prove that payment for the tangible personal property sold was made from the United States, or any agency or instrumentality thereof, or from the state of New Mexico, or any political subdivision thereof, or from the governing body of any Indian nation, tribe or pueblo or the deduction will not be allowed.

B. Proof of payment acceptable to the secretary consists of either [a Type 9] an appropriate nontaxable transaction certificate or other documentation demonstrating payment by a governmental entity. Such other documentation includes:

(1) for sales to any governmental entity (including federal agencies), documents related to the transaction showing the governmental entity's name, such as purchase orders, copies of warrants issued in payment and contracts covering the items purchased;

(2) for sales to federal agencies only, the federal contract number; and

(3) other documents determined by the secretary to constitute proof of payment.

**3.2.212.24 CUSTOM SOFTWARE:**

A. Because it is a service, receipts from developing or selling custom software for governmental entities are not deductible under Section 7-9-54 NMSA 1978.

B. Example 1: X contracts with the United States to develop software to test certain devices which the United States is considering purchasing. X is per-

forming a service under this contract.

C. Example 2: Same facts as in Example 1 except that X is to modify an existing software test program. X is nonetheless performing a service under the contract.

D. Example 3: X enters into a qualifying research and development contract with a signatory agency of the United States. The contract is to develop software to test certain devices which the United States is considering purchasing. X is performing a service under this contract. To create the testing program X buys several pieces of packaged software and develops new programming to interconnect the packaged software into a coherent testing program. X may execute, and the vendors may accept in good faith, [Type 15] nttc pursuant to Section 3.2.205.11 NMAC, for the purchase of the packaged software.

**3.2.215.11 PRODUCT OF SERVICE WHICH IS REVIEWED AND ACCEPTED OUTSIDE OF NEW MEXICO BUT INITIALLY USED IN NEW MEXICO:**

A. Effective July 1, 1989, and for so long as the provisions of that version of Section 7-9-57 NMSA 1978 enacted by Laws 1989, Chapter 262, Section 6 remain in effect, the deduction provided by Section 7-9-57 NMSA 1978 does not apply to the receipts from the sale of a service the product of which is initially used for the intended purpose in New Mexico even though the product of the service is delivered to the buyer outside of New Mexico for review and acceptance. Review and acceptance of the product of the service does not constitute "initial use" or "initially used" as those terms are defined in Section 7-9-3 NMSA 1978. The initial use of the product of the service is the "first employment for the intended purpose".

B. Example 1: X, an architect, prepares in New Mexico plans for a construction project to be built in New Mexico. On completion of the plans, X delivers the plans outside of New Mexico to the project owner for the owner's review and acceptance. After accepting the plans, the owner delivers the plans to the construction contractor who uses the plans during the construction of the project in New Mexico. Since the intended purpose of architectural plans is to serve as instructions for construction of a project, the initial use of the plans occurred when the contractor used the plans during the actual construction of the project in New Mexico. Therefore, X's receipts for preparing architectural plans for a construction project to be built in New Mexico are not deductible under the provisions of Section 7-9-57 NMSA 1978.

C. Example 2: Y, a

research and development contractor, has a contract with the government to develop a new application for existing technology. In order to complete the contract, Y subcontracts a portion of the service to Z who analyzes particular data and prepares a report, all work being done outside New Mexico. Z delivers the report to the government in Washington, D.C., for review and acceptance. Upon granting approval of Z's report, the government delivers the report to Y in New Mexico. Y uses the report to construct a prototype as a component of the service which Y performs under the terms of its contract with the government. The initial use of Z's report is Y's use of the information contained in the report to construct the prototype. The review and acceptance of the report is not the initial use of the report. Since the initial use occurred in New Mexico, Z's receipts from the sale of Z's service are not deductible under the provisions of Section 7-9-57 NMSA 1978. Z, however, may be entitled to the deduction provided by Section 7-9-48 NMSA 1978 if Y provides [a Type 5] an appropriate nontaxable transaction certificate (nttc) to Z. Y must meet the requirements set forth by Section 7-9-48 NMSA 1978 if Y issues the nttc to Z.

D. Section 3.2.215.11 NMAC applies to transactions on or after July 1, 1989.

**3.2.218.11 SALE OF MEALS:**

Meals are tangible personal property. Therefore receipts from selling meals to a 501(c)(3) organization are receipts from selling tangible personal property. Such receipts may be deducted from gross receipts under Section 7-9-60 NMSA 1978 if the organization delivers a properly executed [Type 9] nttc [with] to the seller. Sales of meals directly to members of a 501(c)(3) organization may not be deducted under Section 7-9-60 NMSA 1978 even if the meals are served at a function of the organization. The 501(c)(3) organization is an entity distinct from its members.

**3.2.235.10 RECEIPTS FROM MANUFACTURER FOR "GET READY":**

Amounts paid to, or credited against the account of, an automotive dealer by a manufacturer to compensate the dealer for inspection and other "get ready" operations performed on new vehicles manufactured by that manufacturer may be deducted from gross receipts if the dealer has in possession a [Type 13 (manufacturing services)] nontaxable transaction certificate (nttc) of the appropriate type (manufacturing services) issued by the manufacturer of the vehicles since the dealer is performing services directly on the property which the manufacturer is in the business of manufacturing. A reduction in the dealer's

invoice price for a new vehicle to compensate the dealer for "get ready" operations on that vehicle involves a receipt by the dealer, but a deduction of that amount may be claimed by the dealer who has ~~[a Type 13 nttc]~~ an nttc issued by the manufacturer.

3.2.235.11 **RECEIPTS FROM NON-MANUFACTURERS FOR "GET READY":** Amounts paid to a New Mexico automotive dealer by another dealer for inspection and other "get ready" operations performed on new vehicles being sold by the other dealer may not be deducted under a ~~[Type 13]~~ nontaxable transaction certificate pursuant to Section 7-9-75, issued by the other dealer since the New Mexico dealer is not performing the services for the manufacturer.

3.2.220.11 **FEED STORAGE:** ~~[The receipts from selling metal]~~ Metal bins and similar devices designed to store feed on a farm or ranch, which, in addition to storing, measure and control the flow of livestock, are agricultural implements. Therefore, 50% of the receipts derived from selling those articles may be deducted from gross receipts pursuant to Section 7-9-62 NMSA 1978.

3.2.20.7 **DEFINITIONS.**

A. **Admission:** An "admission" to a recreational, athletic or entertainment event includes the granting of permission to observe or participate in a recreational, athletic or entertainment activity.

(1) Example 1: City C charges a "greens fee" for use of a public golf course maintained by the city. Receipts from the greens fee are admissions.

(2) Example 2: County Y charges a fee for use of a swimming pool and surrounding area maintained by the county. Receipts from this fee are admissions.

B. **Agency, institution or instrumentality:**

(1) An agency, institution or instrumentality includes all parts of the agency, institution or instrumentality. An entity which is administratively attached to an agency, institution or instrumentality is not thereby part of the agency, institution or instrumentality. An agency, institution or instrumentality which is subject to the supervisory or regulatory authority of another is not thereby part of the supervising or regulating entity.

(2) Example 1: The New Mexico Museum of Natural History is part of the museum division of the office of cultural affairs. The New Mexico museum of natural history is not an "agency" or "institution" for purposes of the governmental

gross receipts tax but only a component of an agency. In contrast, the office of cultural affairs is administratively attached to the department of finance and administration. The office of cultural affairs is not part of the department of finance and administration, which merely provides the office with some administrative support. The office of cultural affairs is an "agency" for the purposes of the governmental gross receipts and is responsible for reporting for all of its components.

(3) Example 2: Under the Property Tax Code, the Taxation and revenue department has general supervisory power over county assessors and the department of finance and administration has certain enforcement powers relating to county treasurers. The existence of these authorities does not make either county officer a part of the superintending state agency.

C. **Entertainment, athletic or recreational services or events:** The term "entertainment, athletic or recreational services or events" includes any recreational, athletic or entertainment activity.

D. **State of New Mexico and any agency, institution, instrumentality or political subdivision thereof:**

(1) For the purposes of the Gross Receipts and Compensating Tax Act, the term "state of New Mexico and any agency, institution, instrumentality or political subdivision thereof" includes:

(a) The legislature of the state of New Mexico and any committee or employee thereof; Examples of committee: the legislative council, the legislative finance committee, the legislative education study committee and any interim committee; staff of such a committee are part of the committee.

(b) The Supreme Court, Court of Appeals, district courts, metropolitan courts, magistrate courts, probate courts and any agency thereof; Examples of agency: the administrative office of the courts, the judicial standards commission and the compilation commission.

(c) The office of the Governor and every state executive agency subject to the authority of the governor; Examples of agency: every state cabinet agency, such as the taxation and revenue department, every agency not a cabinet agency whose head is directly responsible to the governor for the operations of the agency, such as the public defender department, whether or not the agency is administratively attached to a state cabinet agency, and every advisory committee established pursuant to Section 9-1-9 NMSA 1978.

(d) Every other state executive agency, board, commission or authority whose governing body is a board or commission either elected by the people or

appointed by the governor, with or without consent of the Senate, whose actions are not formally subject to the control or approval of the governor, whether or not such agency is administratively attached to a state cabinet agency; Examples: the state public regulation commission, the state racing commission, the public service commission, the state personnel board, and the state game commission ~~[and the commission on higher education]~~.

(e) A state officer other than the governor whose office is created by the state Constitution, together with the agency or office such person heads, whether or not the officer is elected or appointed; Examples: The secretary of state, the attorney general, the state treasurer, the state auditor, the commissioner of public lands and the state mine inspector.

(f) Every executive agency created by the state Constitution not included in items c through e above; Examples: The state board of education, the state department of education and the department of agriculture.

(g) Every health, educational, penal or other institution of the state; every entity controlled or operated by such an institution is part of that institution;

(i) Examples of institutions: the entities enumerated in Article XII, Section 11 and Article XIV, Section 1 of the state Constitution, community colleges, branch colleges, junior colleges, technical and vocational institutions, area vocational institutions and hospitals not enumerated in Article XIV, Section 11 of the state Constitution.

(ii) Examples of controlled entities: any newspaper published by a state university or college, whether or not operated as an educational function of the university, or any radio or television stations, the license to operate which is held by an entity or entities described in Section 3.2.20.1 NMAC.

(h) Every instrumentality of the state which has the power to levy a tax or assessment, whether the instrumentality was created by the state Constitution or by law, whether the governing power is vested in an officer or a board or commission or whether the officer or members of the board or commission are elected or appointed; Examples: New Mexico beef council, economic advancement districts, irrigation districts, conservancy districts, soil and water conservation districts and flood control districts.

(i) Every instrumentality of the state administering state retirement and other programs benefitting employees of the state: Examples: The public employees retirement association and its governing board and the educational retirement board.

(j) Every instrumentality of the state other than those described in Subparagraph (h) of Subsection D of Section 3.2.20.7 above, whether created by the state Constitution or by law, whether the governing power is vested in an officer or a board or commission or whether the officer or members of the board or commission are elected or appointed; Examples: the mortgage finance authority, the industrial and agricultural finance authority, the business development corporation and any corporation established under the Educational Assistance Act;

(k) Every county of New Mexico, which includes all of its parts, instrumentalities and elected officials; Example: a county hospital, regardless of whether operation of the hospital is conducted by another entity under contract, or any entity with power of taxation or assessment authorized to be established with the permission of the county commission or the voters of the county under Article 4 NMSA 1978, such as a county improvement district.

(l) Every municipality of New Mexico, whether incorporated under special law or general law, which includes all of its parts, instrumentalities and elected officials; Examples: any municipal housing authority, any municipally-owned transit, water, sewer, electric or gas utility, any municipally-controlled organization operating a convention center, any regional planning commission or any entity with power of taxation or assessment authorized to be established with the permission of the governing body of the municipality or the voters of the municipality under Article 3 NMSA 1978, such as a municipal parking authority or community development agency.

(m) Every public school district of New Mexico;

(n) Community ditch or acequia associations;

(o) Community land grants, whether incorporated or not, which have statutory power of taxation or assessment; and

(p) Every other political subdivision of New Mexico, including every component or instrumentality of that political subdivision.

(2) The term "state of New Mexico and any agency, institution, instrumentality or political subdivision thereof" does not include:

(a) organizations created by interstate compact; Examples: Cumbres and Toltec scenic railroad commission, multistate tax commission, interstate agricultural grain marketing commission, western interstate commission for higher education and the council of state governments.

(b) or any entity not created by the state Constitution or by law or local

ordinance, which has no power of taxation and in which membership is voluntary; Examples: New Mexico association of counties, New Mexico municipal league, any union of government employees and any association advancing the professional interests of its members.

### 3.3.12.14 COMPOSITE RETURNS FOR OWNERS OF PASSTHROUGH ENTITIES

A. For the purposes of 3.3.12.14 NMAC:

(1) "authorized representative" means any of the qualifying owners, the entity the qualified owner is an owner of or the entity's or the qualifying owners' contractor or agent authorized to file composite returns for the qualified owners;

(2) "entity" means a partnership which has not elected to be taxed for federal income tax purposes as a corporation, a limited liability company which is not taxed as a corporation for federal income tax purposes or an S corporation;

(3) "owner" means an individual who is a partner in a partnership which has not elected to be taxed for federal income tax purposes as a corporation, a shareholder in an S corporation or a member of a limited liability company which is not taxed as a corporation for federal income tax purposes; and

(4) "qualifying owner" means an owner who is a not a resident of New Mexico and who has no income from New Mexico sources (including spouse's income on a joint return) other than the owner's share of the entity's income from New Mexico or the owner's share of income from New Mexico of other entities, the income from which is reported on composite returns.

B. Qualifying owners of a qualifying entity may elect to have the entity file a composite income tax return on behalf of certain individual owners with prior approval of the department on a form prescribed by the secretary. The filing of a composite return by the entity is in lieu of the filing of individual personal income tax returns by each owner included in the return and if properly completed the filing of the composite return shall fulfill the filing requirement for each owner qualified to be included in, and included in, the return.

C. An entity may file a composite return on behalf of its qualified owners if the following conditions are met:

(1) the entity assumes responsibility for payment of any liability of each qualified owner included in the composite return for income tax due to New Mexico for the taxable year for which the return is filed.

(2) all qualified owners included in the composite return report, for feder-

al income tax purposes, on the same fiscal year basis as the fiscal year for which the composite return is being reported.

D. The entity shall exclude from the composite filing any owner who is a resident of New Mexico or who is a non-resident of New Mexico having income from other sources within New Mexico, including any income of a spouse.

E. Corporations shall always be excluded from composite returns filed by any entity. Corporations which are partners in a partnership or members of a limited liability company which partnership or company derives income from New Mexico sources must file, in accordance with the Corporate Income and Franchise Tax Act, a New Mexico corporate income and franchise tax return and must include all sources of income, including income from the partnership or limited liability company, in that return.

(1) A partnership which has elected to report for federal income tax purposes as a corporation may not file composite returns. Each partner of such a partnership shall file separate individual or corporate income tax returns for New Mexico.

(2) A limited liability company which is taxed as a corporation for federal income tax purposes may not file composite returns. Each member of such a company shall file separate individual or corporate income tax returns for New Mexico.

F. The following requirements must be met for an authorized representative to file a composite return on behalf of qualifying owners of an entity:

(1) All qualifying owners included in the composite return must authorize in writing the authorized representative to file the New Mexico income tax return on their behalf.

(2) No qualifying owner may be included in a composite return if that owner files an individual New Mexico income tax return for the same taxable year for which the composite return is filed. A qualifying owner may be included in more than one composite return if the qualifying owner has income from more than one entity and does not file an individual New Mexico income tax return for that same year.

(3) The composite return must be accompanied by the following information for each owner of the entity, whether included or excluded from the composite return:

(a) the name of each owner;  
 (b) the owner's address;  
 (c) the owner's social security number;  
 (d) the income distributed to the owner;  
 (e) the owner's percentage of ownership in the entity; and

(f) a statement of whether the owner is included or excluded from the composite return.

(4) The composite return shall be filed under the name of the entity and shall not be filed under the name of any individual owner.

(5) The entity shall allocate and apportion to New Mexico the income of each owner included in the composite return in accordance with the provisions of the Uniform Division of Income for Tax Purposes Act and the regulations and instructions of the department under the Income Tax Act and under the Uniform Division of Income for Tax Purposes Act. The sum of the income allocable to New Mexico plus the income apportionable to New Mexico shall be divided by the entity's total income. The result, carried to four places in decimal form, will be referred to hereinafter as the "New Mexico ratio".

(6) With respect to taxable years beginning on or after January 1, 1998, to determine the amount due for an owner included in the composite return, apply ~~the rate of 7.7%~~ a rate equal to the maximum bracket rate set by Section 7-2-7 NMSA 1978 to the distribution of entity income to the owner without allowance for exemptions, deductions or rebates of any kind other than the deduction for interest from investments in obligations of New Mexico, the United States or other jurisdictions which states are prohibited from taxing by the laws of the United States. The resulting tax shall be multiplied by the New Mexico ratio. The amount due on the composite return shall be the aggregate amount due for all of the owners included on the return.

G. If it is determined that an individual owner who was previously included in one or more composite returns had income from sources in New Mexico other than that reported in the composite return or returns, that owner shall file an amended individual income tax return for each year in which the owner was included in a composite return and had income from sources in New Mexico other than that included in the composite return or returns. The individual owner shall receive credit against the tax due on the filing of the owner's amended individual income return for the owner's share of any income tax actually paid to this state with the composite return.

H. The filing of a composite income tax return does not relieve any owner included in the return from any liability for income tax due this state unless the tax due from the individual has actually been paid with the filing of the composite return.

3.3.2.8

**WITHHOLDING****FROM IRREGULAR WAGES**

A. Employers who make lump sum distributions, one time bonuses and other irregular payments to employees in addition to regular wages and employers required to withhold tax on fringe benefits for federal purposes shall compute the state withholding in the same manner used for computing federal withholding on these items. The employer will then use the withholding tax tables issued by the department to compute the amount of withholding tax due.

B. If an employer elects to withhold, for federal purposes, a flat percentage of the ~~[lump sum] lump-sum~~ distribution, ~~[one-time] one-time~~ bonus, fringe benefits and other irregular wages as provided in the Internal Revenue Code, the employer shall withhold ~~[8.2% of the lump sum distribution, one-time bonus, fringe benefits and other irregular wages]~~ a flat percentage for state withholding tax purposes. The flat percentage for state withholding tax purposes shall be a rate equal to the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the taxable year.

**3.3.2.10 WITHHOLDING BY PASS-THROUGH ENTITIES**

A. **Withholding by pass-through entities; rate.** For periods beginning on or after January 1, 2004, the rate of withholding by pass-through entities pursuant to the provisions of Subsection D of Section 7-3-12 NMSA 1978 [is 7.1%] shall equal the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the taxable year.

B. **Withholding by pass-through entities; agreements; reasonable cause.** The obligation to collect and remit withholding amounts pursuant to Subsection D of Section 7-3-12 NMSA 1978 may be avoided if the nonresident owner submits to the pass-through entity an agreement authorized by Subsection E of that section in the form and manner prescribed by the secretary. An agreement may be restricted to a single taxable year, may cover multiple years or may be put into effect for an indefinite term subject to revocation by the nonresident owner. An agreement must be in the possession of the pass-through entity at the time the pass-through entity files its return for the taxable year to which the agreement pertains. When a nonresident owner becomes a resident of New Mexico, the agreement submitted by that owner is revoked automatically, effective for the taxable year in which the change in residence took place. The obligation to withhold may also be avoided if the pass-through entity demonstrates that failure to withhold is due to a reasonable cause pursuant to Subsection B of Section 7-3-5

NMSA 1978.

C. **Due date exception.** The due date specified in Section 7-3-6 NMSA 1978 does not apply to payment of amounts withheld in accordance with Section 7-3-12 NMSA 1978. The due date specified in Section 7-3-12 NMSA 1978 with respect to such amounts controls.

D. **Crediting to tax year.** Amounts withheld pursuant to the provisions of Section 7-3-12 NMSA 1978 with respect to an owner shall be credited to the owner for the same taxable year for which the income is required to be reported for federal income tax purposes.

3.13.3.7 **[DEFINITIONS — DEPRECIABLE EQUIPMENT:** For purposes of Part 3.13.3 NMAC, "equipment that is depreciable for federal income tax purposes" means equipment depreciated on the books and records of the taxpayer and that the expense of the depreciation shall be reflected on the federal income tax return as a depreciation expense. Equipment depreciated under the accelerated cost recovery system, Internal Revenue Code Section 168, and property for which the taxpayer makes an election under Internal Revenue Code Section 179 shall also qualify for the credit.] [RESERVED]

3.13.3.8 **[APPLICATION OF THE CREDIT:** The credit allowed by Section 7-9D-7 NMSA 1978 may not be applied against any local option gross receipts tax imposed by a county or municipality.] [RESERVED]

3.13.3.9 **[ U S E D EQUIPMENT:** Equipment used at a site outside New Mexico but subsequently imported into New Mexico and installed at a New Mexico call center may be eligible for the capital equipment tax credit if compensating tax was due and paid when the equipment was imported, the equipment was purchased by the operator of the New Mexico call center on or after July 1, 1999, and the equipment is used as required by Subsection C of Section 7-9D-5 NMSA 1978. The valuation of the used equipment for purposes of the Capital Equipment Tax Credit Act is the same as for purposes of the compensating tax.] [RESERVED]

3.13.3.10 **[CREDIT — NOT TRANSFERABLE:**

A. Any amount of capital equipment tax credit claimed and approved may be applied by the claimant only against the gross receipts, compensating and withholding taxes owed by the claimant. The credit amount may not be transferred to any other person, including affiliates.

B. Example: Corporation

~~T sets up a call center in New Mexico. T subsequently qualifies for \$50,000 in capital equipment tax credit. After applying \$13,000 to its own gross receipts, compensating and withholding tax liabilities, T creates a subsidiary corporation, S, to own and operate all of T's New Mexico business, including the call center. T may not transfer the \$37,000 remaining authorized capital equipment tax credit to S nor may S apply any of the remaining tax credit to S's gross receipts, compensating and withholding tax liability. T, to the extent T still has gross receipts, compensating and withholding tax obligations, may apply the \$37,000 balance against those obligations.] [RESERVED]~~

## **NEW MEXICO WATER QUALITY CONTROL COMMISSION**

### **NEW MEXICO WATER QUALITY CONTROL COMMISSION NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMEND- MENTS TO 20.6.2.7, 3108, 3109, 3112 AND 4114 NMAC – GROUND AND SURFACE WATER PROTECTION**

The New Mexico Water Quality Control Commission (WQCC) will hold a public hearing on October 11, 2005, at the State Capitol Building, Room 321, Paseo de Peralta / Old Santa Fe Trail, Santa Fe, NM, immediately following its regularly scheduled monthly meeting starting at 9:00 am. The hearing is to consider proposed amendments to Sections 20.6.2.7, 20.6.2.3108, 20.6.2.3109, 20.6.2.3112 and 20.6.2.4114 NMAC.

The purpose of these proposed amendments to 20.6.2 NMAC are to bring the regulations into conformance with recent statutory changes to NMSA 1978, Section 74-6-5.

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

The Environment Department's proposal may be viewed on the Department's web site at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us) or during regular business hours in the office of the Commission Administrator, 1190 St. Francis Drive, Room N-2153, Santa Fe, New Mexico. Please refer to Docket No. **WQCC 05-03 (R)**.

The hearing will be conducted in accordance with NMSA 1978, Section 74-6-6, the Guidelines for Water Quality Control

Commission Regulation Hearings, and other specific statutory procedures that may apply. A copy of the Guidelines for Water Quality Control Commission Regulation Hearings may be obtained from Barbara Claire at the Commission's office, Room N-2153, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502, (505) 827-2425 or at the WQCC website: <http://www.nmenv.state.nm.us/wqcc>.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce relevant exhibits and to examine witnesses testifying at the hearing.

Persons desiring to present technical testimony at the hearing must file with the Commission a written notice of intent by September 26, 2005 by close of business at 5:00 pm. Written notices must be filed in the Commission's office and should reference Docket No. WQCC 05-03(R), 20.6.2 NMAC and the date of the hearing, October 11, 2005.

Any person who wishes to submit a non-technical written statement in lieu of oral testimony may do so at or before the hearing.

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

The Commission may deliberate and rule on the proposed amendments at the close of the hearing.

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### **End of Notices and Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

This is an amendment to 16.30.3 NMAC, Section 10, effective September 9, 2005.

#### 16.30.3.10 REGISTRATION THROUGH RECIPROCIITY:

**A.** An individual who holds a current NCARB certificate and is seeking registration through reciprocity or endorsement shall return a completed application and all fees to NCARB for processing. The application shall be valid for six (6) months from the time ~~[received by the board]~~ the board receives it from NCARB.

~~**B.** An individual who cannot meet the requirements for NCARB certificate and is seeking registration through reciprocity or endorsement as a broadly experienced architect must hold a current and valid registration issued by the licensing authority of another jurisdiction and have held such registration in a position of responsibility for at least five (5) years. The broadly experienced category applicant shall return to the board a completed application, on the form prescribed by the board, along with other pertinent documents and the application fee. The board shall have the right to institute procedures for the broadly experienced architect process as it deems necessary. Each broadly experienced category applicant shall provide to the board evidence of academic training and work experience directly related to architecture and demonstrating minimum competencies as described in 16.30.6 NMAC, including but not limited to evidence of training or experience in the following areas:~~

- ~~(1) design and construction documents;~~  
~~(2) construction administration;~~  
~~(3) management; and~~  
~~(4) related activities.]~~

**C. B.** Each applicant must attest on an affidavit that the applicant:

(1) has not performed or offered to perform, and will not perform or offer to perform, architectural services in the state of New Mexico until such time as the applicant becomes a New Mexico registered architect;

(2) is in good standing and has disclosed all requested information on disciplinary proceedings in any other jurisdiction; and

(3) has secured a copy and has read the Architectural Act, Sections 61-15-1 through -13 NMSA 1978 and the New Mexico board of examiners for architects rules and regulations, and shall comply with

the same.

~~**D. C.**~~ All applicants must pass a New Mexico architectural jurisprudence exam administered by the board. An applicant who has failed two (2) successive architectural jurisprudence exams shall not be eligible to apply for architectural registration for a period of one (1) year from the date of the last jurisprudence exam failed.

~~**E. D.**~~ Applicants for registration through reciprocity or endorsement shall present a certificate of good standing from a jurisdiction in which a current and valid registration is held.

~~**F. E.**~~ Seismic design requirements: Applicants for registration through reciprocity or endorsement shall present evidence satisfactory to the board of their qualification in design for seismic forces. The evidence shall be based on NCARB requirements existing at the time of application.

~~**G. F.**~~ The board may require an applicant for registration through reciprocity or endorsement to appear before the board for a personal interview and to complete a written or oral examination.

~~**H. G.**~~ The board shall review all applications on a case-by-case basis.

~~**I. H.**~~ Provisional registration:

(1) An applicant for registration through reciprocity or endorsement may be issued a provisional registration prior to full registration upon satisfaction of the following requirements:

(a) the applicant has complied with all requirements prescribed in Subsections A-G of 16.30.3.10 NMAC above;

(b) the board director has certified that the application is complete and there are no apparent disciplinary actions pending or in force in any jurisdiction at the time of the application; and

(c) the exam and reciprocity committee has reviewed the application and will recommend registration at the next board meeting.

(2) The board may issue provisional registration to an applicant upon the review and recommendation of the application by the exam and reciprocity committee.

(3) Any provisional registration shall be valid only from the date of issuance through the date of the next regularly scheduled board meeting.

(4) An applicant for registration through reciprocity or endorsement who has received provisional registration and who engages in the practice of architecture during the term of provisional registration shall do so under the regulatory authority of the Architectural Act, Sections 61-15-1 through

-13 NMSA 1978 and these rules and regulations.

~~**J. L.**~~ Upon approval of the board, a new registrant will receive a wall certificate within a reasonable period following the board's decision.

[16.30.3.10 NMAC - Rp 16 NMAC 30.3.10, 9/6/2001; A, 9/15/2003; A, 9/16/2004; A, 9/9/2005]

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

#### JUVENILE JUSTICE DIVISION

8 NMAC 14.1, General Provisions, filed November 2, 1998 is repealed and replaced by 8.14.1 NMAC, General Provisions, effective August 31, 2005.

8 NMAC 14.11, Contracted Facility: Camp Sierra Blanca, filed August 27, 1997 is repealed and replaced by 8.14.11 NMAC, Contracted Facility: Camp Sierra Blanca, effective August 31, 2005.

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

#### JUVENILE JUSTICE DIVISION

#### TITLE 8 SOCIAL SERVICES CHAPTER 14 JUVENILE JUSTICE PART 1 GENERAL PROVISIONS

**8.14.1.1 ISSUING AGENCY:** Children, Youth and Families Department.  
[8.14.1.1 NMAC - Rp, 8 NMAC 14.1.1, 08/31/05]

**8.14.1.2 SCOPE:** This rule applies to clients and staff of juvenile justice services of the children, youth and families department.  
[8.14.1.2 NMAC - Rp, 8 NMAC 14.1.2, 08/31/05]

**8.14.1.3 STATUTORY AUTHORITY:** Sections 32A-1-1 et seq., 32A-2-1 et seq., 32A-3-1 et seq., 32A-4-1 et seq., 32A-11-1 et seq., 32A-15-1 et seq. NMSA 1978 Comp., as amended. Chapter 66-1-1 et seq., 66-5-2 et seq., 66-7-3 et seq., 66-7-5 et seq. NMSA 1978 Comp. as amended.  
[8.14.1.3 NMAC - Rp, 8 NMAC 14.1.3, 08/31/05]

**8.14.1.4 DURATION:** Permanent.  
[8.14.1.4 NMAC - Rp, 8 NMAC 14.1.4,

08/31/05]

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

[8.14.1.5 NMAC - Rp, 8 NMAC 14.1.5, 08/31/05]

**8.14.1.6 OBJECTIVE:** To establish standards and guidelines for programs which serve the best interest of the clients, persons and property under the supervision and/or in the custody of the department. This rule further establishes guidelines to address the safety of clients and staff and for the protection of department resources. This rule emphasizes the value and importance of staff in the delivery of services to our clients.

[8.14.1.6 NMAC - Rp, 8 NMAC 14.1.6, 08/31/05]

**8.14.1.7 DEFINITIONS:**

**A. 15-day diagnostic evaluation:** The court-ordered evaluation of a child committed to the legal custody of CYFD for purposes of diagnosing the child and preparing a report to the court indicating what disposition appears most suitable when the interests of the child and the public are considered (Section 32A-2-17(D) NMSA 1978). 15-day diagnostic evaluations are conducted at YDDC.

**B. 15-day diagnostic evaluation report:** The written report prepared for the court incorporating the findings of the 15-day diagnostic evaluation.

**C. Abuse:** Knowingly, intentionally or negligently, causing or permitting a child to be placed in a situation that may endanger his life or health as a result of torture, cruel confinement or cruel punishment. Abuse may be physical, emotional, psychological, or sexual and includes sexual exploitation.

**D. Adjudication:** A judicial determination that a juvenile has committed a delinquent act.

**E. CYFD:** The New Mexico children, youth and families department.

**F. Children's court attorney (CCA):** Each district attorney is the ex-officio children's court attorney for the judicial district (Section 32A-1-6A).

**G. Client:** A person receiving services from the department.

**H. Client family baseline assessment (CFBA):** A report prepared for juvenile justice services use after the disposition of a client's case and the transfer of custody to CYFD by an order of the court or the placing of a client on probation or under supervision by an order of the court.

**I. Communicable disease:** Any infectious disease that is potentially communicable through common

social or sexual contact, and poses a significant health risk if contracted.

**J. Corporal punishment:** Any act of inflicting punishment directly on the body, causing pain or injury.

**K. Critical incidents:** Incidents involving clients or staff which result in physical harm and/or death to others.

**L. DCRC:** Department community residential center, including Albuquerque boys' reintegration center, Carlsbad reintegration center, Eagle Nest reintegration center, and La Placita reintegration center.

**M. Damage to property:** Intentionally or through negligence, causing partial or complete damage to any real or personal property belonging to another without the consent of the owner.

**N. Delinquent act:** An act committed by a juvenile that would be designated as a crime under the law if committed by an adult.

**O. Department:** The New Mexico children, youth and families department.

**P. Detention:** The temporary care of juveniles alleged to be delinquent who require secure custody in a facility certified for that purpose by the department (Section 32A-2-4 NMSA 1978).

**Q. Due process:** Procedures which establish notices of allegations, impartial and objective fact finding, the right to counsel, a written record of proceedings, a statement of any disposition ordered with the reasons for it, and the ability to confront accusers, call witnesses, and present evidence.

**R. Emergency:** Any significant disruption of normal facility operations that may be precipitated by events such as riot, escape of a client, fire, or natural disaster.

**S. Escape:** An unauthorized client departure from department facility custody.

**T. FACTS:** The department's family automated client tracking system.

**U. Facility:** A residential program operated by juvenile justice services or its agents for the confinement and treatment of clients in the custody of the New Mexico children, youth and families department.

**V. Grievance:** A written complaint initiated by any employee, client, parent, guardian, or custodian and submitted to juvenile justice services staff.

**W. JJS:** Juvenile justice services.

**X. Juvenile justice services:** to the organizational unit within CYFD that operates juvenile justice facilities, and provides other services under the

Delinquency Act, NMSA 1978 section 32A-2-1 et seq.

**Y. Juvenile justice services director (or simply, "director"):** The designated director of CYFD's juvenile justice services.

**Z. JPPO:** Juvenile probation and parole officer.

**AA. Mechanical restraint:** Approved or authorized devices used to limit the movement of the client's body.

**BB. Media:** Representatives of general circulation newspapers and news magazines sold through newsstands and/or mail subscriptions to the general public; representatives of news programs of radio and television stations that hold federal communications commission licenses; news services that provide material to these news outlets.

**CC. Medical file:** Medical and dental information including exam results, medications prescribed and administered, treatment progress notes.

**DD. Medical research:** Biological experimentation involving human or animal subjects.

**EE. "Need to know" standard:** The standard by which individual(s) are identified as required to receive confidential information, based upon risk of transmission of a specific disease.

**FF. Parole:** The status of a client who has been released from an institution before the end of the commitment period. This time of release may be also referred to as aftercare.

**GG. Petition:** A legal document in which the state formally alleges the client to be a delinquent or youthful offender due to the commission of a delinquent act(s), or of a family subject to FINS

**HH. Plan of care:** The plan for treatment or supervision of clients in the custody of or under the supervision of the department.

**II. Preliminary inquiry:** A conference for JPPOS to assess whether a referral to the children's court attorney should be made to file a delinquency action.

**JJ. Psychological file:** Client current and previous psychological assessments, evaluations, emotional screening, cognitive and projective test results, treatment progress notes and aftercare/discharge planning information.

**KK. Pre-dispositional report:** A written report ordered by the court prepared by the JPPO after adjudication of a juvenile and submitted to the court and counsel, for use at the disposition hearing.

**LL. Records disposal:** The disposal of records of no further value by shredding, burial, incineration, pulping, electronic over write, or any other process resulting in the obliteration of information

contained on the record.

MM. **Records retention and disposition schedule:** The document that specifies actions for the retention and disposition of active, inactive, and non-current records of juvenile justice services.

NN. **Referral:** A report alleging delinquency or families in need of services (FINS) which comes from law enforcement, schools, parents or citizens.

OO. **Sealing of records:** A court order which closes or restricts access to, or purges the record from further public disclosure in accordance with the provisions of the Children's Code Section 32A-2-26, NMSA 1978.

PP. **Secretary:** The secretary of the New Mexico children, youth and families department.

QQ. **Staff:** Any employee or employees of the New Mexico children, youth and families department.

RR. **Superintendent:** The individual in charge of a juvenile justice facility.

SS. **TDM:** Team decision making.

TT. **Universal precautions:** The standardized protocol for the prevention and transmission of communicable diseases.

UU. **Use of force:** The application of physical and/or mechanical intervention utilizing the minimal amount of force necessary to control the situation.

VV. **Volunteer:** An authorized person who donates time and/or effort to enhance the activities and programs of juvenile justice services.

WW. **YDDC:** Youth diagnostic and development center. [8.14.1.7 NMAC - Rp, 8 NMAC 14.1.7, 08/31/05]

#### 8.14.1.8 LEGAL AUTHORITY AND GUIDELINES:

A. The department and its contractors provide services and licenses without regard to age, gender, race, religion, disability, marital status, tribal affiliation or political views.

B. The department provides legal advice and assistance to department staff regarding department related issues. [8.14.1.8 NMAC - Rp, 8 NMAC 14.1.8, 08/31/05]

#### 8.14.1.9 INTERAGENCY RELATIONSHIPS:

The juvenile justice services works with other service areas within the department and other state agencies to provide services to clients. [8.14.1.9 NMAC - Rp, 8 NMAC 14.1.9, 08/31/05]

#### 8.14.1.10 INTRADIVISION

**COLLABORATION AND COOPERATION:** Juvenile probation/parole offices, juvenile correctional and residential facilities work together to assist one another in providing services to clients. [8.14.1.10 NMAC - Rp, 8 NMAC 14.1.10, 08/31/05]

#### 8.14.1.11 REGULATION, POLICY AND PROCEDURES DEVELOPMENT, REVIEW, AND ACCESS:

A. The interpretation and application of these policies and procedures is the sole responsibility of the agency's secretary and director of juvenile justice.

B. Any executive directives or administrative instructions modifying policies and procedures are the sole responsibility of the agency's secretary and director of juvenile justice.

C. Supervisory staff are responsible for in juvenile justice services offices and facilities are responsible for staff knowing and implementing policies and procedures.

D. Juvenile justice services is responsible for reviewing and implementing policies and procedures to reflect changes in practice, to comply with federal and state laws, as well as changes in department philosophy and standards practice. Revisions to policies and procedures are made as provided by statute and regulations.

E. JJS holds a public hearing prior to adoption, inclusion, amendment, or repeal of any regulation and/or policy in accordance with the State Rules Act.

F. Upon approval by the secretary, JJS policies and procedures will be placed on the internet and department's intranet

G. For good cause, JJS may issue rules on an emergency basis without notice or hearing if the secretary determines that immediate action is in the public's best interest. An emergency rule is effective for no longer than 30 days unless JJS, within seven (7) days of the issuance of the emergency rule, complies with the public hearing notice requirements of this section.

H. If an administrative instruction is necessary, JJS takes steps to hold a public hearing within 90 days to amend the policy.

I. Field and facility staff are not authorized to promulgate policies and procedures. Juvenile justice supervisory staff in offices and facilities is responsible for staff knowing the policies. Juvenile justice services consider requests for revisions to policies and procedures by any individual.

[8.14.1.11 NMAC - Rp, 8 NMAC 14.1.11, 08/31/05]

#### 8.14.1.12 RIGHTS AND RESPONSIBILITIES:

A. Clients and families have a right to be treated with respect and recognition of their dignity and need for privacy.

B. Clients and families have a right to participate in decision-making regarding their supervision and treatment plan.

C. Clients and families have the right to voice complaints about juvenile justice services, their case manager or the supervision/services provided.

D. Clients and families may make recommendations regarding juvenile justice services policies on clients' rights and responsibilities.

E. Clients and families have a responsibility to provide, to the extent possible, accurate information that juvenile justice services and providers need to provide services.

F. Clients and families have a responsibility to follow the plans of care and action steps they agree upon with their case managers or team decision making (TDM) meeting.

G. Clients and families have a responsibility to participate, to the degree possible, in understanding their legal and behavioral health problems and developing mutually agreed upon treatment goals.

H. Juvenile justice services staff distributes the policy on clients' rights and responsibilities to clients and families.

I. Juvenile justice services have policies and procedures for the timely resolution of client, family complaints and grievances, 8.14.1.14 NMAC.

J. Juvenile justice services protect the confidentiality of client information and records 8.14.1.16 NMAC and 8.14.1.23 NMAC.

K. Juvenile justice services provide information to clients and families that is comprehensible, readable, easily understood and in the language clients and families understand.

L. Juvenile justice services prohibits in policy, procedure and practice: corporal or other physical punishment.

(1) Corporal punishment is not permitted for any client in juvenile justice services custody.

(2) Staff are prohibited from using techniques of physical restraints that unduly risk serious harm or needless pain to the client. These techniques include:

(a) restricting respiration in any way, such as applying a chokehold or pressure to a client's back or chest or placing the client in a position that is capable of causing asphyxia;

(b) using any method that is capable of causing loss of consciousness or harm to the neck;

(c) pinning down with knees to torso, head and/or neck;

(d) slapping, punching, kicking or hitting;

(e) using pressure point, pain compliance and joint manipulation techniques, other than the department's approved method for release of a chokehold, bite or hair pull.

(f) modifying restraint equipment or applying any cuffing technique that connects handcuffs behind the back to ankle restraints;

(g) dragging or lifting of the client by the hair or by any type of mechanical restraints;

(h) using other clients or untrained staff to assist with the restraint;

(i) securing a client to another client or to a fixed object; or

(j) attributable to mental illness and the drug is authorized by a licensed physician and administered by a licensed medical professional.

(k) degrading punishment or personal abuse;

(l) group punishment for one individual's behavior;

(m) punitive work assignments;

(n) isolation or seclusion,

(o) chemical/aerosol restraints; and

(p) mechanical restraints, except as stated in behavior management, 8.14.1.22 NMAC.

M. Staff are prohibited from using medical care, religious programming, education, recreation and client communication with parents, guardians or legal counsel as a reward or punishment for conduct.

N. Staff report incidents of corporal punishment, abuse and neglect to the chief juvenile probation/parole officer, superintendent or administrative supervisor in accordance to juvenile justice services' policy on notification, 8.14.1.19 NMAC. The alleged perpetrators of the alleged corporal punishment, abuse and neglect includes but is not limited to: parent or guardians, juvenile justice services staff, detention center employees, law enforcement officers, school officials and other department staff.

O. Any parent or guardian of a child in the custody of the department retains all residual rights and responsibilities in accordance with the law concerning that child unless modified by court order. Parents or guardians continue to be financially responsible. If parents are unable to provide financially for their child and the child is receiving services from juvenile justice services, the department will seek alter-

native funding sources.

P. Juvenile justice clients are held accountable for their behavior.

Q. Due process safeguards are provided in any hearing or procedure determining client accountability.

R. Juvenile justice clients may access courts, counsel, and advocacy groups. For facility clients, any contact with counsel is confidential and subject to the limitations necessary to maintain facility order and security. The reasons for any limitations imposed, must be documented in the client's master file and in FACTS.

S. To ensure the safety of clients and staff, the chief juvenile probation/parole officer prominently posts director approved guidelines for appropriate client behavior in all juvenile probation and parole offices.

T. Juvenile justice clients housed in facilities other than the DCRCs, are subject to uniform grooming and dress rules. Juvenile justice clients housed in the DCRCs have freedom in personal grooming and dress except when a justified interest exists. In all facilities, clients are permitted to decorate living and sleeping quarters with personal possessions subject to the limitations necessary to maintain facility order and security.

[8.14.1.12 NMAC - N, 08/31/05]

#### **8.14.1.13 PROVISION OF SERVICES:**

A. CYFD and its contractors provide services and licenses without regard to age, race, ethnicity, gender, religion, national origin, physical and developmental disabilities, mental disorders, marital status, sexual preference, tribal affiliation or political views.

B. CYFD and its contractors provide services that promote and build on individual and family strengths and are provided in the least restrictive setting and most normative environment and are integrated and linked, both within the department and with other child-serving agencies and which use peers, family and natural supports.

C. Clients and families have access to a comprehensive array of services that are individualized, community based and, whenever possible, in-home to meet the unique needs and potential of each child and family.

D. Clients and families are provided services based on evidence or promising or emerging practices to achieve a positive outcome including the risk, needs and strengths of the client and/or family.

E. Clients and families have full participation and choice in all aspects in the planning and delivery of services.

F. Clients, families and

the public are provided objective client criteria for juvenile justice services program involvement or program exclusion.

G. Juvenile probation and parole services identify an Indian child for the purpose of contacting the Indian child's tribe in delinquency cases.

H. The department provides probation/parole services 24 hours a day, seven days a week. Juvenile probation and parole offices are open during the lunch hour, 12:00 pm to 1:00 pm. Offices with one staff member have voice mail or answering machine capability and posts contact numbers for the public to use if staff is out to lunch, in court or out of the office.

I. Juvenile justice services will manage the case in a manner that is consistent with the New Mexico Children's Code, including not placing a client under the age of eleven in detention. If a child under the age of eleven poses a substantial risk to harm to himself or others, a peace officer may detain and transport the child for an emergency mental health evaluation and care. Juvenile justice services receive complaints alleging delinquency. Juvenile probation/parole officers conduct a preliminary inquiry to determine the best interests of the child and of the public with regard to any action to be taken.

(1) Juvenile justice services staff date stamps the referral on the date the office receives the referral from law enforcement.

(2) If the client is not detained, the preliminary inquiry shall be conducted within thirty calendar days of receipt of the referral from law enforcement. The thirty calendar day time period may be extended upon determination by the department that an extension is necessary to conduct a thorough preliminary inquiry and that the extension is not prejudicial to the best interests of the client. Within two business days of the completion of the preliminary inquiry, probation and parole services shall forward information therein to the children's court attorney.

(3) If the client is detained prior to conducting a preliminary inquiry, the juvenile probation and parole officer gives reasonable notice to the client's parent, guardian or custodian or the child's attorney and an opportunity to be present at the preliminary inquiry.

(4) At the commencement of the preliminary inquiry, the juvenile probation and parole officer shall advise the client, parent, guardian, or custodian of the client's basic rights.

(a) The client has the right to remain silent. If the client is questioned, the client has the right to refuse to answer any questions and may stop answering questions at any time.

(b) A child alleged to be a delin-

quent or in need of supervision has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communication, either oral or written, between the child, parent, guardian or custodian and a probation officer which is made during the course of a preliminary inquiry (Rules of Evidence 11-509B NMRA).

(c) The client has the right to be represented by an attorney present at the PI and have an attorney present at all court proceedings against the client. If the client does not have an attorney for court proceedings, an attorney will be appointed.

(d) If the client is thirteen years or older, a statement made by the client can be used against the client only if the constitutional rights have been explained to the client, and the client knowingly and voluntarily waived his constitutional rights.

(e) The state is not entitled to use against the client: a statement made out of court which is constitutionally inadmissible; evidence illegally seized or obtained or a statement or admission made out of court, unless it is corroborated by other evidence; and no confession, statements, or admissions may be introduced against a child, under the age of thirteen (13) years on the allegation of the petition.

(f) If the client is under the age of thirteen years and is charged or adjudicated as a delinquent child, the client may not be finger printed or photographed for identification purposes without a court order.

(g) If the client does not have a parent, guardian or custodian appearing on the client's behalf, or the client's interest are in conflict with the his parent, guardian or custodian, the client may request appointment of a guardian by the court.

(h) If the child is taken into custody and detained, then the client has a right to a judicial determination of probable cause by a judge, special master, or magistrate court within forty-eight (48) hours including Saturdays, Sundays and legal holidays.

(i) The client may introduce evidence on his own behalf, confront and cross-examine witnesses testifying against him, have witnesses subpoenaed of his choosing, and may admit or deny the charges in the petition.

(5) After the completion of the preliminary inquiry on a delinquency complaint involving a misdemeanor, probation services may notify the children's court attorney and recommend an appropriate disposition for the case. If the child has been referred for three or more prior misdemeanors within two years of the instant offense, probation services shall notify the children's court attorney and recommend an

appropriate disposition for the case.

(6) Juvenile justice services shall notify the children's court attorney of the receipt of any complaint involving an act that constitutes a felony under the applicable criminal law. Juvenile justice services shall also recommend a disposition to the children's court attorney.

(7) After a petition has been filed and either a finding with respect to the allegations of the petitions has been made or a notice of intent to admit the allegations has been filed, the court may direct juvenile justice services or an appropriate agency designated by the court to write a predisposition study and report. Juvenile justice services provides court ordered predisposition reports to the parties and the court five business days before the actual disposition or sentencing.

(8) The department shall prepare a predisposition report for:

(a) a serious youthful offender who is convicted of an offense other than first degree murder;

(b) a youthful offender concerning the youthful offender's amenability to treatment; or

(c) a delinquent offender.

(9) If the court does not order a pre-disposition report, juvenile justice services prepares a client family baseline assessment (CFBA), the appropriate structured decision making tools and the plan of care according to procedures.

(10) The juvenile probation/parole officer supervises and provides assistance to a child placed on probation by a court order.

(11) The court may order an adjudicated client to be transferred to YDDC for a period of not more than fifteen days within a three hundred sixty-five day time period for purposes of diagnosis. Once the client is committed, the department shall determine when the client is released. The release shall be any time after commitment, but not more than fifteen days after commitment. Upon petition by the department to the court, the judge may extend the commitment for an additional fifteen days upon good cause.

(a) The 15 day diagnostic evaluation process includes a client history and previous evaluations, interviews with clients and others close to the case, substance abuse screening, psychopathology screening, and other screening appropriate to the client.

(b) Mental health staff arrange for any crisis intervention that is needed during the 15 day stay, including on-site and off-site mental health care.

(c) The 15 day diagnostic evaluation report is prepared and provided to the court.

(12) An adjudicated delinquent

client may be committed to the custody of the department. The department determines the appropriate placement, supervision and rehabilitation program for the child.

(a) Adjudicated clients receiving a short-term commitment of one year shall be paroled at least 90 days prior to the expiration of the commitment unless parole is revoked or the commitment is extended pursuant to Section 32A-2-23 NMSA, 1978

(b) Adjudicated clients receiving a long -term commitment shall serve no more than twenty-one months at the facility and no less than ninety (90) days on parole unless parole is revoked or the commitment is extended pursuant to Section 32A-2-23 NMSA 1978.

(13) Prior to the expiration of short term or long term commitment the department may petition the court for an extension to safeguard the welfare of the child or the public safety. Juvenile justice clients receiving a short-term commitment may have his commitment extended for one six month period, while a client receiving a long -term commitment may have his commitment extended for additional periods of one year until the child reaches the age of twenty-one. If the court extends commitments, the mandatory ninety-day parole is included in the extension.

(14) Juvenile probation and parole services supervise and assist a client placed on parole as ordered by the juvenile parole board.

(15) Juvenile probation and parole services shall release a child under supervision when it appears that the purpose of the order has been achieved before the expiration of the judgment. Juvenile probation and parole officer prepares a release or termination and promptly submits the release or termination in writing to the court.

(16) If the court permits a discretionary release for a bench warrant, a JPPO may authorize a release from detention for a client booked into detention and prior to a court hearing.

[8.14.1.13 NMAC - Rp, 8 NMAC 14.1.12 & 16, 08/31/05]

#### **8.14.1.14 CLIENT GRIEVANCES:**

A. Clients can complain verbally or in writing of an alleged deviation of policies and procedures without fear of punishment or retaliation.

B. The published process for submitting a grievance is posted in conspicuous places in each juvenile probation/parole office and facility living unit.

[8.14.1.14 NMAC - Rp, 8 NMAC 14.1.14, 08/31/05]

#### **8.14.1.15 CRIMINAL LAW**

**VIOLATION:**

A. Staff refer clients receiving department services who allegedly commit delinquent and/or criminal acts to appropriate law enforcement officials.

B. Superintendents and chief juvenile probation parole officers or designees report staff members who may have committed a criminal act, including acts against a client, to the appropriate law enforcement officials and the director.

C. Physical evidence obtained in connection with a violation of law or facility regulation is preserved, controlled and disposed of in accordance with department procedures.

[8.14.1.15 NMAC - Rp, 8 NMAC 14.1.15, 08/31/05]

**8.14.1.16 CONFIDENTIALITY:**

A. All CYFD staff, contractors and volunteers maintain confidentiality of information in accordance with the laws and regulations that apply to specific services.

B. Any information concerning a client referred to, receiving services, supervised or in the custody of CYFD, is confidential and may only be released as allowed by law.

C. All records in the custody or control of CYFD, including but not limited to client records are confidential and may only be released as allowed by law.

[8.14.1.16 NMAC - N, 08/31/05]

**8.14.1.17 COMMUNICABLE DISEASE:**

A. CYFD provides services to individuals at risk of being, or who have been determined to be infected with a communicable disease.

B. Staff are trained and use universal precautions.

C. Clients can request testing for communicable or infectious diseases.

D. Release of information is in accordance with the "need to know" standard.

[8.14.1.17 NMAC - Rp, 8 NMAC 14.1.17, 08/31/05]

**8.14.1.18 MEDICAL RESEARCH ON CLIENTS:**

It is prohibited to use clients for medical, pharmaceutical, or cosmetic experiments. This does not preclude individual treatment of a client based on his/her need for a special medical procedure that is not generally available.

[8.14.1.18 NMAC - Rp, 8 NMAC 14.1.18, 08/31/05]

**8.14.1.19 NOTIFICATION:**

A. All instances or complaints of alleged or suspected neglect or

abuse are reported to the appropriate local law enforcement agency and to the director immediately upon knowledge of the incident (Section 32A-4-3 NMSA 1978).

B. A client's parents, guardians or custodians are promptly notified of a client's injury, serious illness, or death.

[8.14.1.19 NMAC - Rp, 8 NMAC 14.1.19, 08/31/05]

**8.14.1.20 USE OF VEHICLES:**

A. State vehicles are driven only by authorized drivers and occupied by authorized passengers, and only in the furtherance of official state business (GSD 90-202-4.1) [now Subsection A of 1.5.3.8.NMAC].

B. Staff are licensed in accordance with the state of New Mexico traffic laws and motor vehicle division regulations.

C. Vehicles are maintained in a safe condition.

[8.14.1.20 NMAC - Rp, 8 NMAC 14.1.20, 08/31/05]

**8.14.1.21 SAFETY:**

A. Weapons are not permitted or used in department vehicles, offices, facilities and the grounds of the facilities; certified law enforcement officers, during the performance of their duties, are exempt.

B. When facility clients are transported and temporarily housed outside the department's jurisdiction, staff review these arrangements for safety and security.

[8.14.1.21 NMAC - Rp, 8 NMAC 14.1.21, 08/31/05]

**8.14.1.22 USE OF FORCE:**

A. Use of force is restricted to justifiable self defense, protection of others, protection of property, and prevention of escapes; the amount of force is limited to that minimally necessary to control the situation. Force is not used as punishment.

B. CYFD issued mechanical restraints are authorized and are used only with the approval of the chief juvenile probation/parole officer, superintendent, or designees. Staff are trained on the use of mechanical restraints.

C. Clients are not left in control of other clients under any circumstances.

[8.14.1.22 NMAC - Rp, 8 NMAC 14.1.22, 08/31/05]

**8.14.1.23 RECORDS MANAGEMENT:**

A. The client master file contains written reports, progress notes, legal documents, and correspondence relat-

ing to the client made during the length of stay at a department facility or while under probation/parole supervision.

B. Medical, psychological, and educational records can be located in medical, psychological and educational areas of the office/facility; records are cross-referenced to the client's master file.

C. CYFD client records are secure and confidentiality is maintained.

D. CYFD maintains a schedule for records disposal.

E. Upon transfer of a client or resident from one facility or office of supervision to another, the client file is transferred promptly.

F. Sealing of records: Sealed records are prepared for storage at the state records center in accordance with state statute and the records retention and disposition schedule.

G. Information and research management:

(1) An information system based on accurate and evaluated data is established so that research and timely responses to clients needs and authorized outside inquiries can be made.

(2) Staff have access to and use of an organized system of information collection, storage, retrieval, reporting and review.

(3) CYFD collaborates whenever possible with criminal and juvenile justice agencies in the gathering, exchange and standardization of information.

(4) Written procedures are developed which govern the security of the information and data collection system, including verification, access to data and protection of the privacy of juveniles under the jurisdiction of the department.

(5) CYFD determines participation in research programs; research conducted complies with professional and scientific ethics and with state and federal guidelines for the use and dissemination of research findings.

[8.14.1.23 NMAC - Rp, 8 NMAC 14.1.23, 08/31/05]

**8.14.1.24 CHANNELS OF COMMUNICATION:**

A. Superintendents and chief juvenile probation parole officers are responsible for managing daily operations.

B. Clients have access to staff to discuss issues during business hours.

C. Superintendents and chief juvenile probation and parole officers, or designees, are responsible for reporting critical incidents to department personnel.

[8.14.1.24 NMAC - Rp, 8 NMAC 14.1.24, 08/31/05]

**8.14.1.25 NEW EMPLOYEE**

**SCREENING:**

A. A criminal record check is conducted on new employees and volunteers. Ex-offenders are not categorically excluded from employment.

B. Employees who have direct contact with clients may be required to have a medical screening prior to job assignment, in accordance with state personnel rules.

[8.14.1.25 NMAC - Rp, 8 NMAC 14.1.25, 08/31/05]

**8.14.1.26 VOLUNTEERS:**

A. Superintendents and chief juvenile probation/parole officers coordinate volunteer programs. Volunteers follow lines of authority, responsibility and accountability; services may be terminated at will.

B. Volunteers who are certified and licensed to perform professional services may perform such services, so long as such services are clinically indicated and fall within the volunteers expertise and qualifications.

C. Volunteers complete an appropriate, documented orientation and/or training program prior to assignment. Records are maintained.

[8.14.1.26 NMAC - Rp, 8 NMAC 14.1.26, 08/31/05]

**8.14.1.27 MEDIA ACCESS:**

A. Media inquiries

(1) The department's director of communications responds to inquiries from the media.

(2) Requests to attend juvenile parole board hearings are referred to the juvenile parole board.

B. Disclosure of client information: Department documents and information, pursuant to the Children's Code [Section 32A-2-32, NMSA 1978] are confidential and are not released to the public, including reporters.

C. Disclosure of information on staff: Information on CYFD employees that may be released to the media is limited to:

- (1) name,
- (2) classification;
- (3) salary; and

(4) length of services with the department or the state.

D. Staff access to media: Unless authorized in writing by the director's office and communications office, staff do not communicate with the media as a representative of the department regarding CYFD matters.

E. Media access to JJS offices and facilities and client access to media: Request for media access to juvenile justice clients and a client's access to

the media, will be balanced against the department's duty to protect the client's confidentiality and privacy. The department will promulgate procedures to achieve this goal.

[8.14.1.27 NMAC- N, 08/31/05]

**8.14.1.28 CRITICAL SELF ANALYSIS:** CYFD may conduct an internal review of any critical situation in which self-analysis is determined to be appropriate.

A. Critical self-analysis is confidential and privileged and not for publication or release.

B. The intent of the critical self-analysis is to evaluate CYFD's internal decision-making process and to make improvements to protect the client and the public or where an event or a series of events may result in potential litigation. The analysis or recommendation section is confidential to encourage and foster candid expression of recommendations and advice from personnel who would otherwise temper their remarks because of concern for their own personal interest, safety or reputation.

[8.14.1.28 NMAC - N, 08/31/05]

**HISTORY OF 8.14.1 NMAC:**

**Pre-NMAC History:** The material in this part replaces the material that was previously filed with the State Records Center and Archives under:

NMYA/CSD 89-I-8, Neglect/Abuse, filed 12/28/89.

NMYA/CSD 89-I-10, Use of Force, filed 12/28/89.

NMYA/CSD 89-I-13, Firearms/Chemical Agent Use, filed 12/28/89.

NMYA/CSD 89-I-15, Client Grievance Procedure; filed 12/28/89.

YDDC/GS 09-04, Criminal Law Violations, filed 5/23/90.

YDDC/GS 13-03, Use of Force, filed 5/23/90.

YDDC/GS 15-01, Equal Opportunities for Juvenile Programs, filed 5/23/90.

YDDC/GS 17-15, Prohibition of Medical Experimentation, filed 5/23/90.

YDDC/GS 17-20, Proper Notifications In Case of Serious Illness, Surgery, Injury or Death, filed 5/23/90.

BS 67-1, Exchanging, Giving, Buying Clothing, filed 5/23/67.

BS 67-2, No Title, filed 5/23/67.

BS 67-3, No Title, filed 5/23/67.

BS 67-4, No Title, filed 5/23/67.

BS 67-5, No Title, filed 5/23/67.

BS 67-6, No Title, filed 5/23/67.

BS 67-7, No Title, filed 5/23/67.

BS 67-8, No Title, filed 5/23/67.

BS 67-9, No Title, filed 5/23/67.

BS 67-10, No Title, filed 5/23/67.

BS 67-11, No Title, filed 5/23/67.

BS 67-12, No Title, filed 5/23/67.

BS 67-13, Workmans Compensation Insurance Report, filed 5/23/67.

BS 67-14, Regarding Compensatory Time and Annual Leave, filed 5/23/67.

BS 67-17, Records Management Disposition Instructions, filed 5/23/67.

BS 67-18, Vehicle Accident Reports, filed 5/23/67.

BS 67-20, Performance Evaluation Policy, filed 5/23/67.

BS 67-21, Performance Evaluation Procedure, filed 5/23/67.

BS 67-24, Students Notification of Parents Regarding Illness or Injury, filed 5/23/67.

BS 67-25, Personnel Observance of Speed Limits, filed 5/23/67.

BS 67-26, Records Management Case Record File, filed 5/23/67.

BS 67-28, Professional Services, Educational Personnel Teachers Contracts, Qualifications, Salary, and Sick Leave, filed 5/23/67.

BS 67-30, Organization and Management on Premise Sales Soliciting, filed 5/23/67.

BS 67-31, Students Use of Boys Case Files, filed 5/23/67.

BS 67-32, Personnel Political Activities, filed 5/23/67.

BS 67-34, Organization and Management Administrative Minutes of Selected Supervisory Conferences, filed 5/23/67.

BS 67-35, Personnel Dismissal or Demotion of Employees, filed 5/23/67.

BS 67-36, Personnel Payment for Meals, filed 5/23/67.

BS 67-37, Professional Services Students Case Records Confidentiality of Boys Case File Material, filed 5/23/67.

BS 67-39, Organization and Management Firearms on Boys School Property Prohibited, filed 5/23/67.

BS 67-42, Personnel Policy Promotional Procedure, filed 5/23/67.

BS 67-44, Personnel Policy National Guard, filed 5/23/67.

BS 67-51, Organization and Management Use of New Mexico Boys School Facilities, filed 5/23/67.

BS 67-52, Personnel Leave Policy, filed 7/26/67.

BS 67-55, Organization and Management Travel, filed 9/7/67.

**History of Repealed Material:**

8 NMAC 14.1, General Provisions - Repealed 08/31/05

**NEW MEXICO CHILDREN,  
YOUTH AND FAMILIES  
DEPARTMENT**

JUVENILE JUSTICE DIVISION

**TITLE 8 SOCIAL SERVICES  
CHAPTER 14 JUVENILE JUSTICE  
PART 11 CONTRACTED  
FACILITY: CAMP SIERRA BLANCA**

**8.14.11.1 ISSUING AGENCY:**  
Children, Youth and Families Department.  
[8.14.11.1 NMAC - Rp, 8 NMAC 14.11.1,  
08/31/05]

**8.14.11.2 SCOPE:** This policy applies to all employees of the juvenile justice services of the children, youth and families department, its clients, and the contractor operating at Camp Sierra Blanca, and the contractor's employees and agents.  
[8.14.11.2 NMAC - Rp, 8 NMAC 14.11.2,  
08/31/05]

**8.14.11.3 STATUTORY AUTHORITY:** Chapters 32A-1-1 et seq., NMSA 1978 Comp. as amended; 32A-2-1 et seq. NMSA Comp., as amended; 32A-4-1 et seq. NMSA 1978 Comp. as amended; 32A-6-1 et seq. NMSA 1978 Comp. as amended; 32A-7-1 et seq. NMSA 1978 as amended; 32A-15-3 et seq. NMSA Comp. as amended.  
[8.14.11.3 NMAC - Rp, 8 NMAC 14.11.3,  
08/31/05]

**8.14.11.4 DURATION:** Permanent.  
[8.14.11.4 NMAC - Rp, 8 NMAC 14.11.4,  
08/31/05]

**8.14.11.5 EFFECTIVE DATE:** August 31, 2005, unless a later date is cited at the end of a section.  
[8.14.11.5 NMAC - Rp, 8 NMAC 14.11.5,  
08/31/05]

**8.14.11.6 OBJECTIVE:** To establish policies for the operation of Camp Sierra Blanca by a private contractor while maintaining the camp as an integral part of the New Mexico juvenile justice system.  
[8.14.11.6 NMAC - Rp, 8 NMAC 14.11.6,  
08/31/05]

**8.14.11.7 DEFINITIONS:**

A. **Abuse:** Knowingly, intentionally or negligently, causing or permitting a child to be placed in a situation that may endanger his life or health as a result of torture, cruel confinement or cruel punishment. Abuse may be physical, emotional, psychological, or sexual and includes sexual exploitation.

B. **CSB:** Camp Sierra Blanca.

C. **CYFD:** The New Mexico children, youth and families department.

D. **Children's court attorney (CCA):** Each district attorney is the ex-officio children's court attorney for the judicial district (Section 32A-1-6A).

E. **Client:** A person receiving services from the department.

F. **Contractor:** The company which has contracted with children, youth and families department to operate camp Sierra Blanca.

G. **Department:** The children, youth and families department of the state of New Mexico.

H. **Design capacity:** The maximum number of clients for which the camp Sierra Blanca facility is designed.

I. **Escape:** An unauthorized client departure from department facility custody.

J. **JJS:** Juvenile justice services.

K. **Juvenile justice services:** The organizational unit within CYFD that operates juvenile justice facilities, and provides other services under the Delinquency Act, NMSA 1978 section 32A-2-1 et seq.

L. **Juvenile justice services director (or simply, "director"):** the designated director of CYFD's juvenile justice services.

M. **JPPO:** Juvenile probation and parole officer.

N. **Program manager:** A juvenile justice services central office staff member designated to be the department's main point of contact for CSB.

O. **TDM:** Team decision making.  
[8.14.11.7 NMAC - Rp, 8 NMAC 14.11.7,  
08/31/05]

**8.14.11.8 APPLICABILITY OF REGULATIONS:**

A. Regulations for the operation of the state juvenile corrections system do not apply to the operation of camp Sierra Blanca. Regulations promulgated for other purposes, including but not limited to health and safety, fire and building codes, and education standards apply to CSB if CSB is within the scope of such regulations.

B. CSB will operate in compliance with state and federal law, this regulation, and the contract for the operation of a between the department and the contractor.

C. The contractor will ensure compliance with the compulsory school attendance law by providing an adequate on-site educational program.

D. CSB will be operated in accordance with the current version of the

applicable American correctional association (ACA) standards for juvenile training schools. The contractor shall apply to ACA to begin, achieve and maintain the accreditation process.

E. The contractor will submit and the department will approve a policy manual for the operation of CSB. The children, youth and families department shall approve any revisions to the policy manual.

[8.14.11.8 NMAC - Rp, 8 NMAC 14.11.8,  
08/31/05]

**8.14.11.9 NOTIFICATION OF INCIDENTS:**

A. The contractor will immediately notify the program manager and CYFD's director of communications, and follow up with a written notification within 24 hours, of the following incidents:

(1) the escape of a client;

(2) the death of a client;

(3) the injury of a client when hospitalization is required;

(4) any allegation of abuse or neglect involving a client;

(5) any uprising or riot situation;

(6) any request for assistance

from law enforcement;

(7) any other event which, in the judgment of the contractor, would be of immediate concern to the department or would result in inquiries to the department.

B. The contractor, in conjunction with local law enforcement in Lincoln county, will develop a written protocol regarding incident notification procedures with the local community. The contractor will provide a copy of this protocol to CYFD.

[8.14.11.9 NMAC - Rp, 8 NMAC 14.11.9,  
08/31/05]

**8.14.11.10 REFERRALS:**

A. CSB is a residential transitional living program for adjudicated juvenile offenders deemed to be amenable to the CSB treatment program as an alternative to other juvenile justice facility placement or as a condition of probation or parole. A client will reside at CSB for or during a period of time specified in the program's contract, and the client will receive services at CSB as prescribed by the program's contract or guidelines; and the client will receive services at CSB as prescribed by the program's contract.

B. CSB will only accept referrals as provided by the program's contract or by law.

C. Clients committed to the custody of the department will be screened at central intake for possible placement to CSB.

D. Clients accepted into CSB will include clients adjudicated of



delinquent acts, between the ages of fourteen (14) to eighteen (18) years of age but not clients adjudicated of:

- (1) any violent offense;
- (2) criminal sexual contact or criminal sexual penetration; or
- (3) arson .

F. If a client is subject to pending delinquency charges that would not disqualify the client from admission to the program, at the time of transfer to CSB juvenile justice services shall contact the appropriate children's court attorney and seek their agreement as part of an adjudication and disposition, that if the client successfully completes the CSB program, the pending charges will be subject to probationary conditions which may include completion of the CSB program or other probationary conditions ordered by the court. If the CCA does not agree to such probation, the department will hold a case staffing and consult with the contractor concerning whether the client still should participate in the CSB program.

G. Clients with mental illness requiring psychotropic medication or intensive mental health intervention will be evaluated by treatment decision making team (TDM) to determine if placement at CSB is in the best interests of the client.  
[8.14.11.10 NMAC - Rp, 8 NMAC 14.11.10, 08/31/05]

#### 8.14.11.11 REPORTS:

A. The contractor will provide to the program manager daily population reports in a format to be agreed upon by the department and the contractor. This report will contain, as a minimum, total counts of clients by location (in-house, aftercare, hospitalized, etc.) and the name, date of birth, and commitment date of each camp Sierra Blanca client.

B. The contractor will maintain necessary records and progress notes on each client in a format to be agreed on by the department and the contractor. These records will be the property of the department and will become part of the client's permanent record (master file).

C. The contractor will prepare case records and discharge plans as required by the juvenile parole board and juvenile justice services policies and procedures.

D. Juvenile probation parole officers (JPPOS) are responsible for monitoring the client's compliance to the probation or parole agreement and plan of care.  
[8.14.11.11 NMAC - Rp, 8 NMAC 14.11.11, 08/31/05]

#### 8.14.11.12 DISCHARGE AND AFTERCARE:

A. The contractor will supervise CSB clients during work projects in the community. The contractor is responsible for determining when a client is ready to participate in community service and supervised activities away from the CSB site.

B. The contractor and team decision making (TDM) participants will determine when a client is ready to participate in the discharge and aftercare phase of the CSB program, as provided in the contract.

(1) The contractor is responsible for complying with the Victim Notification Act.

(2) The contractor will notify the program manager at least one week in advance of discharge to the aftercare phase of the program. The program manager shall have the right to object to or question the release before its effective date. If the question cannot be resolved, the juvenile justice services director may direct the contractor to delay the client's release.

C. The contractor or JPPO will have the authority to revoke discharge of a client from the residential program if the client fails to comply with the conditions of his discharge.

D. In addition to contractor employees, the department's juvenile probation and parole staff provide supervision of clients who are in the residential program and in reintegration phase of the CSB program.

E. Clients who are in the aftercare phase of the CSB program are eligible for participation in juvenile community corrections programs.  
[8.14.11.12 NMAC - Rp, 8 NMAC 14.11.13, 08/31/05]

#### 8.14.11.13 FAILURE TO COMPLETE THE PROGRAM:

In exceptional circumstances, a client may be recommended for transfer out of the CSB program for unsatisfactory program participation. In the event of a potential transfer, the contractor will contact the program manager and arrange for TDM prior to transfer to determine the appropriate placement of the client.

A. If the client is under court ordered supervision, the JPPO may initiate revocation proceedings.

B. If the client is in the custody of the department, the client may be transferred to a juvenile justice services secure facility as provided in policy and procedure.

C. If the client is in the custody of the department and is on parole, the JPPO may initiate parole revocation proceedings.  
[8.14.11.13 NMAC - Rp, 8 NMAC

14.11.14, 08/31/05]

**8.14.11.14 CIVIL RIGHTS:** Clients at CSB will have the right to contact, by telephone or in writing, protection and advocacy, legal counsel, and/or will have the right to legal representation.  
[8.14.11.14 NMAC - Rp, 8 NMAC 14.11.15, 08/31/05]

**8.14.11.15 ACCESS TO CAMP SIERRA BLANCA:** At all times, the department will have access to CSB, its clients, and all records pertaining to the facility's operation and the treatment of its clients.  
[8.14.11.15 NMAC - Rp, 8 NMAC 14.11.16, 08/31/05]

#### 8.14.11.16 PAROLE SUPERVISION:

A. The contractor and TDM will determine when a client is ready to be considered for parole.

B. When parole is denied or deferred for a client at CSB, the department and the contractor shall immediately convene a case staffing to discuss the disposition of the client.  
[8.14.11.16 NMAC - Rp, 8 NMAC 14.11.17, 08/31/05]

**8.14.11.17 ABUSE AND NEGLECT:** All allegations of abuse or neglect shall be reported immediately to local law enforcement for investigation and to the department as required by law (Section 32A-4-3, NMSA 1978)  
[8.14.11.17 NMAC - Rp, 8 NMAC 14.11.18, 08/31/05]

**8.14.11.18 TRAINING:** In addition to training requirements specified by American correctional association standards, contractor employees shall receive training on the New Mexico Children's Code.  
[8.14.11.18 NMAC - Rp, 8 NMAC 14.11.19, 08/31/05]

#### 8.14.11.19 CONTRACTOR AND STAFF:

A. **Employees:** A criminal records check and background screen are conducted on all employees, in accordance with 8.14.1 NMAC.

B. **Medical screening:** Employees who have direct contact with clients have a medical screening prior to job assignment, in accordance with state personnel rules.

C. The contractor shall comply with all of the terms and conditions of the contract for the operation of CSB, including all applicable facility operations requirements and facility program require-

ments, unless contract, policies and procedures peculiar to CSB are different.  
[8.14.11.19 NMAC - N, 08/31/05]

#### HISTORY OF 8.14.11 NMAC:

##### History of Repealed Material:

8 NMAC 14.11, Camp Sierra Blanca - Repealed 08/31/05

### NEW MEXICO OFFICE OF THE STATE ENGINEER

SE-66-1, Article 4, Rules and Regulations Governing Drilling of Wells and Appropriation and Use of Ground Water in New Mexico, Well Drillers Licensing, Construction, Repair and Plugging of Wells is hereby repealed and replaced by 19.27.4 NMAC, Well Driller Licensing; Construction, Repair and Plugging of Wells, effective 8/31/2005.

### NEW MEXICO OFFICE OF THE STATE ENGINEER

**TITLE 19 N A T U R A L RESOURCES AND WILDLIFE  
CHAPTER 27 UNDERGROUND WATER  
PART 4 WELL DRILLER LICENSING; CONSTRUCTION, REPAIR AND PLUGGING OF WELLS**

**19.27.4.1 ISSUING AGENCY:** Office of the State Engineer.  
[19.27.4.1 NMAC - N, 8-31-2005]

**19.27.4.2 SCOPE:** The rules for well driller licensing, drill rig supervisor registration, and well drilling within the state of New Mexico. These rules also apply to mine drill holes that encounter water. These rules do not apply to oil wells, gas wells, or cathodic protection wells.  
[19.27.4.2 NMAC - N, 8-31-2005]

**19.27.4.3 STATUTORY AUTHORITY:** Section 72-12-1 NMSA provides that the water of underground streams, channels, artesian basins, reservoirs, or lakes having reasonably ascertainable boundaries are declared to be public waters which belong to the public and are subject to appropriation for beneficial use. Section 72-2-8 NMSA gives the state engineer authority to adopt regulations and codes to implement and enforce any provision of any law administered by him. Section 72-12-12 NMSA states that it shall be unlawful for any person, firm, or corporation to drill or to begin the drilling of a well for water from an underground source without a valid, existing license for the drilling of such wells issued by the state engineer of New Mexico. Section 72-12-13

NMSA states any person desiring to engage in the drilling of one or more wells for underground water within the boundaries of any underground source shall file an application with the state engineer for a driller license. Sections 72-12-14 through 72-12-17 NMSA further detail requirements for well drillers in New Mexico. Sections 72-13-1 through 72-13-12 NMSA detail the requirements for the drilling of artesian wells.

[19.27.4.3 NMAC - N, 8-31-2005]

**19.27.4.4 DURATION:** Permanent.  
[19.27.4.4 NMAC - N, 8-31-2005]

**19.27.4.5 EFFECTIVE DATE:** August 31, 2005, unless a later date is cited at the end of a section.  
[19.27.4.5 NMAC - N, 8-31-2005]

**19.27.4.6 OBJECTIVE:** To update written rules for well driller licensing, drill rig supervisor registration, and well drilling within the state of New Mexico.  
[19.27.4.6 NMAC - N, 8-31-2005]

**19.27.4.7 DEFINITIONS:** Unless defined below or in a specific section of these rules, all other words used herein shall be given their customary and accepted meaning. The use of a masculine pronoun to refer to individuals is for grammatical convenience and is intended to be gender neutral.

**A. Artesian well:** A well that penetrates a saturated hydrogeologic unit and allows underground water to rise or move appreciably into another geologic unit, or allows underground water to rise to freely flow at the land surface. For regulatory purposes, the determination of whether a well or bore hole is artesian shall be made by the state engineer, taking into consideration the potential for loss of water at the land surface or into another geologic unit.

**B. Drill rig supervisor:** A person registered by the office of the state engineer who may provide onsite supervision of well drilling activities. A drill rig supervisor shall only provide onsite supervision when he is operating under the direction of a licensed well driller.

**C. Drilling:** see definition for well drilling.

**D. Mine drill hole:** A deep narrow hole drilled to explore for or delineate deposits or accumulations of ore, mineral, or rock resources.

**E. Well:** A bore hole, cased or screened bore hole, or other hydraulic structure that is drilled, driven, or dug with the intent of penetrating a saturated geologic unit. The intended use may be for developing a source of water supply, for

monitoring water levels, for monitoring water quality, for exploratory purposes, for water remediation, for injection of water, for geothermal purposes, or for other purposes.

**F. Well drilling, well drilling activities:** The activities associated with the drilling of a well, including, but not limited to, the construction, drilling, completion, repair, deepening, cleaning, plugging, and abandonment of a well.  
[19.27.4.7 NMAC - N, 8-31-2005]

**19.27.4.8 LICENSE REQUIRED:** Any person who engages in the business of well drilling within the state of New Mexico shall obtain a well driller license issued by the state engineer (except, under New Mexico state law, a well driller license is not required for driven wells that do not require the use of a drill rig and which have an outside casing diameter of two and three-eighths (2?) inches or less). A person found engaged in the business of well drilling within the state of New Mexico without a license can be prosecuted in accordance with New Mexico Statutes. A well driller license is not required for work on pumping equipment.  
[19.27.4.8 NMAC - Rp, SE 66-1, Article 4-1, 8-31-2005]

**19.27.4.9 EXISTING WELL DRILLER LICENSE RECOGNIZED:** A person holding a valid and current well driller license in the state of New Mexico on August 31, 2005 shall have his license recognized. Any amendment or change to a license shall be made pursuant to the requirements of 19.27.4.16 NMAC and 19.27.4.17 NMAC. A licensed well driller may request that his license be renewed by filing an application with the state engineer prior to the expiration of the current license (see 19.27.4.20 NMAC). A well driller that allows his license to expire and does not reinstate the license within the grace period provided for under 19.27.5.19 NMAC shall apply for a new license in accordance with the requirements of 19.27.4.12 NMAC.  
[19.27.4.9 NMAC - N, 8-31-2005]

#### 19.27.4.10 - 19.27.4.11 RESERVED

**19.27.4.12 APPLICATION FOR A NEW LICENSE:** An applicant for a well driller license shall meet the following requirements to be considered for licensure.

**A. Qualified applicant:** A qualified applicant for a well driller license shall:

- (1) have passed the national ground water association general exam; and
- (2) have passed the appropriate national ground water association methodology exam(s) for each type of drilling method for which the applicant has request-

ed to be licensed (the state engineer shall make the final determination of the test(s) necessary should a question arise regarding applicability of available test(s) to applied method(s) of well construction); and

(3) have at least two (2) years of relevant, on-site experience working under the supervision of a licensed well driller; and

(4) effective July 1, 2006, have passed the New Mexico general drilling exam.

**B. Application - form and content:** An application for a well driller license shall be completed on a form prescribed by the state engineer. The application shall include the name, address, and the phone number of the applicant, the state of residency of the applicant, three letters of reference (one of which shall be from a well driller licensed in New Mexico, or a state's licensing authority, attesting to the applicant's well drilling ability), documentation of prior well drilling experience, proof of required bonds, proof of required insurances, documentation that applicant has passed the required exams listed in Paragraphs (1), (2) and (4) of Subsection A of 19.27.4.12 NMAC, the name of each registered drill rig supervisor that the applicant plans to supervise, if known, the type of well drilling methods the applicant is applying to be licensed for, and other information deemed necessary by the state engineer. The application must also contain a description of each active drill rig owned or controlled by the applicant. The description of the drill rig shall be on a form prescribed by the state engineer and shall include a side-view photograph of the rig.

**C. Filing fee:** A fee of fifty dollars (\$50) is required to accompany an application for a new license.

**D. Bond requirements:** Each applicant for a well driller license shall file a bond in the penal sum of five thousand dollars (\$5,000) on a form acceptable to the state engineer. The surety backing the bond shall be acceptable to the state engineer. A well driller license shall be valid only so long as the bond remains in effect. The bond shall:

(1) be conditioned upon proper compliance with state law and the rules and regulations of the state engineer; and

(2) be effective for the period of time for which the license is issued; and

(3) stipulate the obligee as the "office of the state engineer"; and

(4) not be represented to the public as a performance bond.

**E. Insurance requirements:** Each applicant for a well driller license shall file with the state engineer proof of general liability insurance in the minimum amount of three hundred thou-

sand dollars (\$300,000) and proof of appropriate insurance under the Workers' Compensation Act.

[19.27.4.12 NMAC Rp SE 66-1, Article 4-2, 8-31-2005]

#### 19.27.4.13 N A T I O N A L G R O U N D W A T E R A S S O C I A T I O N E X A M S:

The national ground water association exams shall consist of the general drilling exam and the appropriate drilling methodology exam(s) developed and administered by the national ground water association. If an applicant has passed the national ground water association general exam and appropriate methodology exams in another state, the applicant shall provide written proof to the state engineer. The fee to take the national ground water association exams will be established by the national ground water association.

[19.27.4.13 NMAC - N, 8-31-2005]

#### 19.27.4.14 N E W M E X I C O G E N E R A L D R I L L I N G E X A M:

This section has an effective date of July 1, 2006. The New Mexico general drilling exam will be offered at least four (4) times a year by the state engineer or his authorized representative.

**A. Exam fee:** The fee to take the New Mexico general drilling exam will be based on the approximate cost of administering the test.

**B. Test - content:** The New Mexico general drilling exam may include questions on the following subjects:

(1) New Mexico water law as it pertains to well driller licensing, well drilling and construction, and the administration of underground water;

(2) the state engineer's rules and regulations pertaining well driller licensing, well drilling and construction, and the administration of underground water;

(3) New Mexico environment department's rules, regulations, and guidelines pertaining to set back requirements, well disinfection, sampling of underground water, and water analysis;

(4) the proper methods and techniques for well drilling;

(5) geologic formations and proper terminology used in describing underground material types;

(6) basic groundwater geology and the occurrence and movement of underground water;

(7) legal description of well location, latitude and longitude, and the New Mexico coordinate system;

(8) global positioning system terminology and receiver operation;

(9) other topics and subjects related to well driller licensing, well construction, and well drilling within the state of

New Mexico.

**C. Passing the exam:** The applicant shall obtain a minimum score of seventy percent (70%) to pass the New Mexico general drilling exam.

**D. Re-examination:** An applicant who fails to obtain the minimum passing score on the exam may retake the exam.

(1) The fee to retake the New Mexico general drilling exam will be based on the approximate cost of administering the test.

(2) Any applicant found cheating on the exam, as determined by the tester or testing agency, will not be permitted to reapply to take the exam for a period of one (1) year from the date of the transgression. [19.27.4.14 NMAC - N, 7-1-2006]

#### 19.27.4.15 A P P L I C A T I O N R E V I E W A N D L I C E N S I N G R E Q U I R E M E N T S:

If the state engineer finds that an applicant has fulfilled the requirements for licensure as set forth in 19.27.4.12 NMAC, the state engineer shall issue a well driller license to the applicant. The license shall set forth the conditions under which the well driller shall operate his well drilling activities within the state of New Mexico. The license shall also state which drilling methods the well driller may engage in.

**A. License duration:** A license issued by the state engineer will be valid for a period of two (2) years.

**B. Driller identification card:** The state engineer will issue a well driller identification card to each licensed well driller. When drilling within the state of New Mexico, a well driller shall have his identification card available for inspection upon request.

**C. Drill rig marking:** The name and license number of the well driller shall be clearly displayed on each drill rig under his control.

**D. Oversight of registered drill rig supervisor:** A licensed well driller may allow a registered drill rig supervisor to provide onsite supervision of well drilling activities. The licensed well driller is responsible for the actions of each drill rig supervisor that he directs to provide such onsite supervision of well drilling activities. [19.27.4.15 NMAC - Rp, SE 66-1, Articles 4-4 and 4-5, 8-31-2005]

#### 19.27.4.16 C H A N G E S T O L I C E N S E:

A licensed well driller shall notify the state engineer in writing within 10 days of any change to his current license, including:

**A.** change in address or any other contact information; or

**B.** change in drill rig supervisor; or

C. severing ownership or control of an active drill rig; or

D. acquiring ownership or control of an active drill rig (the description of the drill rig shall be on a form prescribed by the state engineer and shall include a side-view photograph of the rig).

[19.27.4.16 NMAC - Rp, SE 66-1, Article 4-9, 8-31-2005]

**19.27.4.17 REQUEST TO BE LICENSED IN ADDITIONAL DRILLING METHODOLOGY:**

A licensed well driller shall apply in accordance with the requirements of 19.27.4.12 NMAC to be licensed in an additional drilling methodology.

[19.27.4.17 NMAC - N, 8-31-2005]

**19.27.4.18 RESERVED**

**19.27.4.19 LICENSE EXPIRATION:**

A well driller license shall expire on the date set out on the license. An application to renew a license shall be filed in accordance with 19.27.4.20 NMAC at least ten (10) days prior to the expiration date. If an application to renew a license is not filed with the state engineer prior to the expiration of the current license, the license shall automatically expire. The state engineer will allow a forty-five (45) day grace period after the expiration of a well driller license during which time a well driller may file an application to renew his well driller license and request to have the expired license reinstated. If an application to renew a well driller license is not filed within this time period, the license shall be considered expired without option for reinstatement. A well driller that allows his license to expire and does not reinstate the license within the forty-five (45) day grace period must apply for a new license in accordance with the requirements of 19.27.4.12 NMAC.

[19.27.4.19 NMAC - N, 8-31-2005]

**19.27.4.20 LICENSE RENEWAL:**

A licensed driller may request that his license be renewed by filing an application with the state engineer prior to the expiration of his current license. The application for renewal of a well driller license shall be completed on a form prescribed by the state engineer.

A. **Form - content:** The application for renewal of a well driller license shall include the name, address, phone number, and license number of the well driller, the state of residency of the well driller, proof of required bonds, proof of required insurances, a list of registered drill rig supervisors that the well driller supervises, evidence of meeting the continuing education requirements, and other information deemed necessary by the state engineer.

B. **Filing fee:** A fee of fifty dollars (\$50) shall accompany the application.

C. **Continuing education requirements:** During each two (2) year licensing period, a licensed well driller shall complete a minimum of eight (8) continuing education hours approved by the state engineer. The continuing education hours shall relate to well drilling. At least two (2) hours of the continuing education shall be specific to regulatory requirements regarding well drilling in the state of New Mexico.

[19.27.4.20 NMAC - Rp, SE 66-1, Article 4-6, 8-31-2005]

**19.27.4.21 REPRIMANDS, SUSPENSION OR REVOCATION OF WELL DRILLER LICENSE:**

The state engineer may issue a written reprimand, a compliance order issued pursuant to Section 72-2-18 NMSA, or, after notice and hearing held pursuant to 19.25.2 NMAC and 19.25.4 NMAC, suspend or revoke a well driller license if it is found that a well driller:

A. made a material misstatement of facts in his application for license; or

B. failed to submit or submitted an incomplete well record or well log; or

C. made a material misstatement of facts in a well record or well log; or

D. drilled a well in any declared underground water basin without a state engineer permit; or

E. violated the conditions of the state engineer permit under which the well was being drilled; or

F. violated the conditions of his well driller license; or

G. the licensed well driller or his registered drill rig supervisor was not present at the drilling site during well drilling activities; or

H. violated the rules and regulations of the state engineer; or

I. failed to assure the protection of the public safety, health, welfare, and property in the well construction process.

[19.27.4.21 NMAC - Rp, SE 66-1, Article 4-10, 8-31-2005]

**19.27.4.22 - 19.27.4.24 RESERVED**

**19.27.4.25 APPLICATION FOR REGISTRATION AS A DRILL RIG SUPERVISOR:**

A person registered by the office of the state engineer as a drill rig supervisor may provide onsite supervision of well drilling activities. A drill rig supervisor shall work under the direction of a licensed well driller. The licensed well driller is responsible for the actions of each

drill rig supervisor that he directs to provide onsite supervision of well drilling activities. An applicant for registration as a drill rig supervisor shall meet the following requirements.

A. **Qualified applicant:** A qualified applicant for a registration as a drill rig supervisor shall:

(1) have at least two (2) years of relevant, on-site experience working under the supervision of a licensed well driller; and

(2) be at least eighteen (18) years of age; and

(3) effective July 1, 2006, have passed the New Mexico general drilling exam.

B. **Application - form and content:**

An application for registration as a drill rig supervisor shall be completed on a form prescribed by the state engineer. The application shall include the name, address, and phone number of the applicant, a letter of reference from a well driller licensed in New Mexico, or a state's licensing authority, attesting to applicant's well drilling ability, the license number and contact information of the well driller the applicant plans to work for, if known, documentation of prior well drilling experience, documentation that the applicant has passed the New Mexico general drilling exam, and other information deemed necessary by the state engineer.

C. **Filing fee:** There is no filing fee for the application.

[19.27.4.25 NMAC - N, 8-31-2005]

**19.27.4.26 APPLICATION REVIEW AND REGISTRATION REQUIREMENTS FOR DRILL RIG SUPERVISOR:**

If the state engineer finds that the applicant has fulfilled the requirements for registration as set forth in 19.27.4.25 NMAC, the state engineer shall register the applicant as a drill rig supervisor. The registration shall set forth the conditions under which the drill rig supervisor may provide onsite supervision of well drilling activities within the state of New Mexico.

A. **Registration duration:** A registration issued by the state engineer will be valid for a period of two (2) years.

B. **Identification card:**

The state engineer will issue a drill rig supervisor identification card with the registration. Each drill rig supervisor, when providing onsite supervision of well drilling activities within the state of New Mexico shall have his identification card available for inspection upon request.

[19.27.4.26 NMAC - N, 8-31-2005]

**19.27.4.27 RENEWAL OF DRILL RIG SUPERVISOR REGISTRATION:**

A registered drill rig supervi-

son may request that his registration be renewed by filing an application with the state engineer prior to the expiration of his current registration.

**A. Form - content:** The application shall be on a form prescribed by the state engineer and shall include the name, address, phone number, and registration number of the drill rig supervisor, the license number and contact information of the well driller the drill rig supervisor is currently working under, evidence of meeting the continuing education requirements, and other information deemed necessary by the state engineer.

**B. Filing fee:** There is no filing fee for the application.

**C. Continuing education requirements:** During each two (2) year registration period, a registered drill rig supervisor shall complete a minimum of eight (8) continuing education hours approved by the state engineer. The continuing education hours shall relate to well drilling. At least two (2) hours of the continuing education shall be specific to regulatory requirements regarding well drilling in the state of New Mexico.

**D. New Mexico general drilling exam:** Persons registered as drill rig supervisor in the state of New Mexico on or before July 1, 2006 shall be required to pass the New Mexico general drilling exam on or before August 31, 2010. [19.27.4.27 NMAC - N, 8-31-2005]

#### 19.27.4.28 RESERVED

**19.27.4.29 WELL DRILLING - GENERAL REQUIREMENTS:** All wells shall be constructed to prevent contamination, to prevent inter-aquifer exchange of water, to prevent flood waters from contaminating the aquifer, and to prevent infiltration of surface water. A licensed well driller shall ensure that an appropriate well permit or emergency authorization has been granted by the state engineer prior to the well drilling. A licensed well driller shall ensure that the well drilling activities are made in accordance with 19.27.4.30 NMAC, 19.27.4.31 NMAC, and the following requirements:

**A. On-site supervision of well drilling:** A licensed well driller or registered drill rig supervisor shall be present at the drilling site during well drilling.

**B. Materials:** Materials used in well drilling shall conform to industry standards acceptable to the state engineer. Acceptable standards include, but are not limited to, standards developed by the American water works association (AWWA), the American standard for testing materials (ASTM), the American petroleum institute (API), and the national sanitation

foundation (NSF). The state engineer shall make the final determination of applicability of standards if any of the acceptable standards are different from one another. Materials used in well construction shall be in new or good condition. No materials shall be used that may cause water contamination. Only potable water shall be placed in a well during well drilling.

**C. Cleaning of drilling equipment:** All down-hole equipment shall be maintained in a clean and sanitary condition to prevent contamination and to protect the public health. To reduce the potential of contaminating a well, equipment shall be disinfected prior to well drilling with a chlorine solution of household chlorine bleach diluted at one part bleach to nine parts water. Adequate contact time shall be allowed for the disinfectant to sanitize the equipment before rinsing (laboratory testing will not be required).

**D. Well setbacks:** All wells shall be set back a minimum of fifty (50) feet from an existing well of other ownership, unless a variance has been granted by the state engineer. All wells shall be set back from potential sources of contamination in accordance with New Mexico environment department regulations and other applicable ordinances or regulations.

**E. Casing height:** The top of all well casings shall extend a minimum of eighteen (18) inches above land surface. All vents installed in the well casing shall be protected against the entrance of foreign material by installation of downturned and screened "U" bends. All other openings in casings shall be sealed to prevent entrance of foreign material and flood waters.

**F. Subsurface vault:** The completion of a well within a subsurface vault is not recommended due to difficulty in performing well repairs and cleaning. If a well is completed within a subsurface vault, the casing shall extend a minimum of eighteen (18) inches above the floor of the vault.

**G. Surface pad:** A concrete pad is recommended on all wells. It is recommended that:

(1) the surface area of the concrete pad be a minimum of four (4) square feet; and

(2) the concrete pad be centered around the well; and

(3) the pad be at least four (4) inches in thickness and slope away from the well; and

(4) when surface casing is used, the surface pad should seal the top of the annular space between the production casing and the surface casing.

**H. Access for water level**

**monitoring:** Every well shall be constructed with a wellhead opening of at least one half (½) inch diameter to allow the water level to be measured. A water-tight removable cap or plug shall be securely placed in the opening. An artesian well that flows at land surface upon completion of the well shall be equipped with a valve to which a pressure gauge may be attached.

**I. Requirement to cover or cap wells:** During well drilling, a well shall be securely covered or capped unless a licensed well driller or registered drill rig supervisor is on-site attending to the well. A permanent well cap or cover shall be securely affixed to the well casing upon completion. All permanent caps shall have a well access opening in accordance with Subsection H of 19.27.4.29 NMAC.

**J. Well identification tag:** The state engineer may require that a well be tagged with a well identification tag. If a well tag is required, the well driller shall affix the tag in plain view. The state engineer will provide a well tag when a permit is issued. Replacement well tags will be issued upon request. The permit holder is responsible for maintaining the well identification tag. A missing, damaged, or illegible well identification tag shall be replaced with a duplicate tag.

**K. Well record:** The well driller shall keep a record of each well drilling activity as the work progresses.

**(1) Time for filing:** The well driller shall file a complete well record with the state engineer and the permit holder no later than twenty (20) days after completion of the well drilling.

**(2) Form - content:** The well record shall be on a form prescribed by the state engineer and shall include the name and address of the permittee, the well driller's name and license number, the state engineer file number, the name of each registered drill rig supervisor that supervised well drilling activities, the location of the well (reported in latitude and longitude using a global positioning system (gps) receiver capable of five (5) meters accuracy), the date when drilling or other work began, the date when drilling or other work concluded, the depth of the well, the depth to water first encountered, the depth to water upon completion of the well (measured by a method approved by the state engineer), the estimated well yield, the method used to estimate well yield, the size and type of casing, the location of perforations, the location of the sanitary seal, and other information deemed necessary by the state engineer. The well record shall include a completed well log. The well log shall include detailed information on the depth and thickness of all strata penetrated, including whether each stratum was water

bearing.

**L. Geologic formation samples:** When requested by the state engineer, the well driller shall furnish lithologic samples ("drill cuttings") of the geologic units penetrated during drilling operations. The method of sampling, interval of sampling, and the quantities required will be specified by the state engineer. Lithologic samples shall be placed in sample bags supplied by the state engineer.

[19.27.4.29 NMAC - Rp, SE 66-1, Articles 4-11, 4-12, and 4-13, 8-31-2005]

**19.27.4.30 WELL DRILLING - NON-ARTESIAN WELL REQUIREMENTS:** A licensed well driller shall ensure that the well drilling activities associated with the drilling of non-artesian wells are made in accordance with 19.27.4.29 NMAC and the following requirements:

**A. Annular seal:** All wells shall be constructed to prevent contaminants from entering the hole from the land surface by sealing the annular space around the outermost casing. When necessary, annular seals will be required to prevent inter-aquifer exchange of water, to prevent the loss of hydraulic head between geologic zones, and to prevent the flow of contaminated or low quality water. Sealing operations shall be made with cement grout or bentonite-based sealing material acceptable to the state engineer. Casings shall be centered in the bore hole so grout or sealing materials may be placed evenly around the casing.

**(1) Annular space:** The diameter of the hole in which the annular seal is to be placed shall be at least four (4) inches greater than the outside diameter of the outermost casing. The diameter of the hole in which the annular seal is to be placed may be reduced to three (3) inches greater than the outside diameter of the outermost casing if pressure grouting from the bottom up is used for grout placement and the well casing is centralized in the bore hole. If surface casing is used, the inside diameter of the surface casing shall be at least three (3) inches greater than the outside diameter of the production casing.

**(2) Annular seal completed to land surface:** Annular seals shall extend from land surface to at least twenty (20) feet below land surface. If a well is completed less than twenty (20) feet below land surface, the seal shall be placed from land surface to the bottom of the blank casing used. The annular seal shall extend to land surface unless a pitless adapter is installed. For wells completed with a pitless adapter, the top of the seal shall extend to one (1) foot below the pitless adapter connection. All sealing materials placed deeper than twenty (20) feet below land surface shall be placed by tremie pipe or by pressure-grouting

through the well casing and up the annulus.

**(3) Annular seals to prevent inter-aquifer exchange of water or loss of hydraulic head between geologic zones:** Sufficient annular seal shall be placed to prevent inter-aquifer exchange of water and to prevent loss of hydraulic head between geologic zones. Sufficient annular seal shall be placed to prevent loss of hydraulic head through the well annulus, through perforated or screened casing, or through an open bore interval.

**(4) Annular seals to prevent the contamination of potable water:** Wells which encounter non-potable, contaminated, or polluted water at any depth shall have the well annulus sealed and the well properly screened to prevent the commingling of the undesirable water with any potable or uncontaminated water. The use of salt-tolerant sealing materials may be required by the state engineer in wells that encounter highly mineralized water.

**(5) Annular seal requirements for community water supply wells:** Community water supply wells shall also be completed with annular seals in accordance with New Mexico environment department regulations and other applicable ordinances or regulations.

**B. Well casing:** The well casing shall have sufficient wall thickness to withstand formation and hydrostatic pressures placed on the casing during installation, well development, and use.

**C. Well plugging:** A non-artesian well that is abandoned or not properly constructed shall be immediately plugged. A plan for plugging the well shall be filed with - and approved by - the state engineer prior to plugging. The state engineer may require that the plugging process be witnessed by an authorized representative.

**(1) Methods and materials:** To plug a well, the entire well shall be filled from the bottom upwards to land surface using a tremie pipe. The well shall be plugged with neat cement slurry, bentonite based plugging material, or other sealing material approved by the state engineer for use in the plugging of non-artesian wells. Wells that do not encounter a water bearing stratum shall be immediately plugged by filling the well with drill cuttings or clean native fill to within ten (10) feet of land surface and by plugging the remaining ten (10) feet of the well to land surface with a plug of neat cement slurry, bentonite based plugging material, or other sealing material approved by the state engineer.

**(2) Contamination indicated:** Wells encountering contaminated water or soil may require coordination between the office of the state engineer and the New Mexico environment department (or other authorized agency or department) prior to

the plugging of the well. Specialty plugging materials and plugging methods may be required.

**(3) Plugging record:** A licensed well driller shall keep a record of each well plugged as the work progresses. The well driller shall file a complete plugging record with the state engineer and the permit holder no later than twenty (20) days after completion of the plugging. The plugging record shall be on a form prescribed by the state engineer and shall include the name and address of the well owner, the well driller's name and license number, the name of each drill rig supervisor that supervised the well plugging, the state engineer file number for the well, the location of the well (reported in latitude and longitude using a global positioning system (gps) receiver capable of five (5) meters accuracy), the date when plugging began, the date when plugging concluded, the plugging material(s) used, the depth of the well, the size and type of casing, the location of perforations, the location of the sanitary seal, and other information deemed necessary by the state engineer. The plugging record shall include a completed well log. The well log shall include detailed information on the depth and thickness of all strata plugged, including whether each stratum was water bearing.

**D. Repair requirements:** A well driller license is not required to install or repair pumping equipment. [19.27.4.30 NMAC - Rp, SE 66-1, Article 4-14, 8-31-2005]

**19.27.4.31 WELL DRILLING - ARTESIAN WELL REQUIREMENTS:** No artesian well shall be constructed that allows ground water to flow uncontrolled to the land surface or move appreciably between geologic units. For regulatory purposes, the determination of whether a well is artesian shall be made by the state engineer. A licensed well driller shall ensure that well drilling activities associated with the drilling of artesian wells are made in accordance with 19.27.4.29 NMAC and the following requirements:

**A. Plan of operations:** The permittee or owner of the land upon which the well drilling is planned shall provide a description of the proposed work on a form prescribed by the state engineer. The plan of operations shall list the materials to be used and include the cementing and testing procedures. The plan of operations shall be completed by a licensed well driller. A plan of operations must be approved by the state engineer before the drilling of any artesian well. Drilling of an artesian well shall be made in accordance with a plan of operations approved by the state engineer.

**B. Construction inspection:** The casing, cementing, plugging, and

testing of an artesian well shall be witnessed by an authorized representative of the state engineer.

**C. Artesian wells - no prior knowledge of artesian stratum:** In the course of drilling a well, if a previously unidentified artesian stratum is encountered, such that underground water is flowing uncontrolled to the land surface or between geologic units, the flow shall be controlled immediately. The state engineer shall be immediately notified that an artesian stratum was encountered, and a plan of operations shall be submitted in accordance with Subsection A of 19.27.4.31 NMAC.

**D. Casing and coupling material requirements:** Couplings and threaded steel casing used in the construction of an artesian well shall meet minimum American petroleum institute (API) specifications (the API casing specifications are listed in the table below). If the well casing or joint connection proposed in the plan of operations is not listed in the table below, the specifications for the casing and connections shall be approved by the state engineer prior to well drilling. If casing length exceeds one thousand (1,000) feet and the diameter of the casing is thirteen and three-eighths (13 $\frac{3}{8}$ ) inch diameter or larger, H-grade or better shall be used. The casing for artesian wells shall be inspected by an authorized representative of the state engineer prior to well construction.

Outside Diameter (inches)	Weight with Couplings (lbs/ft)	Wall Thickness (inches)	Coupling O.D. (inches)	Coupling Length (inches)	Threads per Inch	Minimum Grade of Casing
4 $\frac{1}{2}$	9.50	.205	5.000	5	8	F-25
5 $\frac{1}{2}$	13.00	.225	6.050	6 $\frac{3}{4}$	8	F-25
6	15.00	.233	6.625	7	8	F-25
6 $\frac{5}{8}$	17.00	.245	7.390	7 $\frac{1}{4}$	8	F-25
7	17.00	.231	7.656	7 $\frac{1}{4}$	8	F-25
7 $\frac{5}{8}$	20.00	.250	8.500	7 $\frac{1}{2}$	8	F-25
8 $\frac{5}{8}$	24.00	.264	9.625	7 $\frac{3}{4}$	8	F-25
9 $\frac{5}{8}$	29.30	.281	10.625	7 $\frac{3}{4}$	8	F-25
10 $\frac{3}{4}$	32.75	.279	11.750	8	8	F-25
11 $\frac{3}{4}$	38.00	.300	12.750	8	8	F-25
13 $\frac{3}{8}$	48.00	.330	14.375	8	8	F-25
16	55.00	.312	17.000	9	8	F-25
20	94.00	.438	21.000	9	8	F-25

**E. Casing installation requirements:** The casing shall be centered within the bore hole so grout may be evenly placed around the casing. A commercially made float shoe shall be installed on the lowermost joint of casing to be landed unless an alternate method for cementing has been approved by the state engineer. The casing shall be un-perforated and the well shall be designed in a manner to prevent the commingling of water from the artesian stratum with water in an overlying or underlying geologic unit.

**F. Annular space:** The diameter of the hole in which the cement seal shall be placed shall be at least four (4) inches greater than the outside diameter of the casing set through the confining formation overlying the artesian aquifer. The diameter of the hole in which the cement seal shall be placed may be reduced to three (3) inches greater than the outside diameter of the casing set through the confining formation overlying the artesian aquifer if pressure grouting from the bottom up is used for grout placement and the well casing is centralized in the bore hole. If surface casing is used, the inside diameter of the surface casing shall be at least three (3) inches greater than the outside diameter of the production casing.

**G. Annular space cementing requirements:** The annular seal shall consist of a neat cement slurry acceptable to the state engineer. The cement seal shall originate within the artesian stratum and shall be continuously placed to land surface. The cementing process shall be witnessed by an authorized representative of the state engineer. When necessary, sufficient annular seal shall be placed to prevent inter-aquifer exchange of water and to prevent loss of hydraulic head between geologic zones.

**H. Annular space - cement placement:** The cement slurry shall be placed in the annular space by one of the following methods:

**(1) Tremie method:** The neat cement slurry shall be pumped using a tremie pipe to fill the annular space of the well from the origin of the seal within the artesian stratum to land surface. Flow of undiluted cement out of the top of the annular space shall be established with the tremie pipe suspended in the annulus. The lower end of the tremie shall remain immersed in the cement slurry for the duration of pumping. The tremie pipe may be gradually removed as cement level in the annulus rises.

**(2) Pressure grout method:** The neat cement slurry shall be pumped down the inside of the casing, through the float shoe, and up the annular space until undiluted cement slurry circulates out of the annulus at land surface. Excess cement may be displaced out of the casing from behind with drilling fluid, but the drilling fluid shall not be pumped entirely to the level of the float shoe except to lodge a drillable plug at the bottom of the casing. Should undiluted cement slurry not be displaced out the top of the annulus in a continuous pressure grouting operation, the cementing job may be completed by the use of the tremie method. If the tremie method is employed, a tremie pipe shall be suspended in the annulus to the approximate level of the competent cement grout. The neat cement slurry shall be pumped to fill the annular space of the well from the top of the competent cement grout to land surface.

**I. Sealing off formations:** The compressive strength of neat cement shall be five hundred (500) psi or more before well drilling is resumed. Cement must be allowed to set a minimum of forty-eight (48) hours before well drilling is resumed. Shorter set times may be requested if approved accelerants are used. Sealing off of the formations shall be checked by a method acceptable to the state engineer. In the case of remediation of unanticipated artesian bore holes, the compressive strength of neat cement shall be one thousand (1,000) psi or more before artesian head is shut-in at the wellhead.

**J. Repair requirements:** When an artesian well is in need of repair, the permittee or owner of the land upon which the well is located shall provide a plan of operations to the state engineer. The plan of operations shall be prepared in accordance with Subsection A of 19.27.4.31 NMAC. Before repairs are made to an artesian well, the well shall first be inspected by an authorized representative of the state engineer to determine if the condition of the well is such that it may be repaired. When a leak in the casing is found

and the casing and well are otherwise in good condition, the state engineer may allow the well to be repaired. A packer or bridge plug may be required to complete necessary well repairs. The use of a lead packer is prohibited. An inspection shall be made at the completion of the work to determine if the repair is satisfactory. During an inspection, the well shall be open to allow for the entrance of equipment for testing and inspection.

**K. Plugging requirements:** An artesian well that is abandoned or not properly constructed shall be immediately plugged. Plugging of an artesian well shall require submittal of a plan of operations in accordance with Subsection A of 19.27.4.31 NMAC. The well shall be plugged from the bottom upwards with a neat cement slurry. The well plugging shall be witnessed by an authorized representative of the state engineer.

**(1) Well plugging, contamination indicated:** Wells encountering contaminated water or soil may require coordination between the office of the state engineer and the New Mexico environment department (or other authorized agency or department) prior to the plugging of the well. Specialty plugging materials and plugging methods may be required.

**(2) Plugging record:** A licensed well driller shall keep a record of each well plugged as the work progresses. A plugging record shall be filed in accordance with Paragraph 3 of Subsection C of 19.27.4.30 NMAC.

[19.27.4.31 NMAC - Rp, SE 66-1, Articles 4-15, 4-16, 4-17, 4-18, and 4-19, 8-31-2005]

#### 19.27.4.32 - 19.27.4.35 RESERVED

#### 19.27.4.36 REQUIREMENTS FOR MINE DRILL HOLES THAT ENCOUNTER WATER:

Any person drilling a mine drill hole that encounters a water bearing stratum shall plug that hole in accordance with Subsection C of 19.27.4.30 NMAC or Subsection K of 19.27.4.31 NMAC within 30 days of encountering the water bearing stratum.

**A. Well record required:** Within thirty (30) days after the date of the discovery of water, a well record shall be filed in accordance with Subsection K of 19.27.4.29 NMAC.

**B. Artesian water encountered:** If artesian water is encountered in the process of drilling a mine drill hole, the drill hole shall be constructed or plugged in accordance with 19.27.4.31 NMAC.

[19.27.4.36 NMAC - Rp, SE 66-1, Article 4-21, 8-31-2005]

#### 19.27.4.37 REQUEST FOR

**VARIANCE:** The rules in 19.27.4.29 NMAC, 19.27.4.30 NMAC, and 19.27.4.31 NMAC are not intended to cover every situation encountered during well drilling. Geologic conditions vary across the state, and may warrant the need to deviate from the rules contained in 19.27.4.29 NMAC, 19.27.4.30 NMAC, or 19.27.4.31 NMAC. A request for a variance to a rule in 19.27.4 NMAC shall be submitted in writing by an qualified applicant, permit holder, or licensed well driller. It is recommended that a request for variance be prepared by a licensed well driller. The request shall include a detailed justification for the variance and shall demonstrate that such a variance is necessary to preclude unreasonable hardship or that application of a rule in 19.27.4 NMAC would not be practicable. The state engineer may grant the variance if he finds the request to be reasonable and just. The state engineer shall respond in writing to the request for variance and, if the variance is granted, the state engineer may impose terms and conditions.

[19.27.4.37 NMAC - Rp, SE 66-1, Article 4-22, 8/31/2005]

**19.27.4.38 LIBERAL CONSTRUCTION:** This part shall be liberally construed to carry out its purpose.

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

**19.27.4.39 SEVERABILITY:** If any portion of this part is found to be invalid, the remaining portion of this part shall remain in force and not be affected.

[19.27.4.39 NMAC - N, 8-31-2005]

#### HISTORY OF 19.27.4 NMAC:

**Pre NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives. SE-66-1, Rules and Regulations Governing Drilling of Wells and Appropriation and Use of Ground Water in New Mexico, Article 4, Well Drillers Licensing, Construction, Repair and Plugging of Wells, originally filed with the Supreme Court Law Library 11/1/66. Filed with the State Records Center 6/27/91.

**History of Repealed Material:** SE-66-1, Rules and Regulations Governing Drilling of Wells and Appropriation and Use of Ground Water in New Mexico, Article 4, Well Drillers Licensing, Construction, Repair and Plugging of Wells - Repealed 8/31/2005.

## NEW MEXICO DEPARTMENT OF GAME AND FISH

### TITLE 19 NATURAL RESOURCES AND WILDLIFE CHAPTER 31 HUNTING AND FISHING REGULATIONS PART 5 UPLAND GAME

**19.31.5.1 ISSUING AGENCY:** New Mexico Department of Game and Fish.

[19.31.5.1 NMAC - Rp, 19.31.5.1 NMAC, 8-31-2005]

**19.31.5.2 SCOPE:** Hunters of Upland Game. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30 and 32 through 36 of Title 19.

[19.31.5.2 NMAC - Rp, 19.31.5.2 NMAC, 8-31-2005]

**19.31.5.3 STATUTORY AUTHORITY:** 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.

[19.31.5.3 NMAC - Rp, 19.31.5.3 NMAC, 8-31-2005]

**19.31.5.4 DURATION:** August 31, 2005-March 31, 2006.

[19.31.5.4 NMAC - Rp, 19.31.5.4 NMAC, 8-31-2005]

**19.31.5.5 EFFECTIVE DATE:** August 31, 2005 unless a later date is cited at the end of individual sections.

[19.31.5.5 NMAC - Rp, 19.31.5.5 NMAC, 8-31-2005]

**19.31.5.6 OBJECTIVE:** Establishing seasons on Blue-winged teal, Green-winged teal, Cinnamon teal, pheasant, Blue grouse, Lesser prairie-chicken, Montezuma quail, Northern bobwhite, Scaled quail, Gambel's quail, Mourning dove, White-winged dove, Eurasian-collared dove, Band-tailed pigeon, Sandhill crane, Abert's squirrel, Red squirrel, and setting falconry seasons.

[19.31.5.6 NMAC - Rp, 19.31.5.6 NMAC, 8-31-2005]

**19.31.5.7 DEFINITIONS:**

**A. "Area GS-1" (GS-1),** as used herein, shall mean the area bounded by the following: beginning at the New Mexico-Colorado border at NM 551, south on NM 551 to U.S. 64/87, west on U.S.



64/87 to I-25, south on I-25 to U.S. 285, south on U.S. 285 to N.M. 41, south on N.M. 41 to U.S. 60, west on U.S. 60 to I-25, north on I-25 to N.M. 550, northwest on N.M. 550 to the southeastern border of the Jicarilla Apache Indian reservation, north on the Jicarilla Apache Indian reservation border to the New Mexico-Colorado border, east to I-25.

**B. "Area GS-2" (GS-2)**, as used herein, shall mean the area bounded by the following: beginning at the New Mexico-Arizona border at I-40, east on I-40 to I-25, south on I-25 to I-10, west on I-10 to N.M. 11, south on N.M. 11 to the New Mexico-Mexico border, west to the New Mexico-Arizona border, north to I-40.

**C. "Area S-3" (S-3)**, as used herein, shall mean the area bounded by the following: beginning at the New Mexico-Texas border at U.S. 54, north on U.S. 54 to U.S. 285, south on U.S. 285 to the New Mexico-Texas border, east to U.S. 54.

**D. "Area S-4" (S-4)**, as used herein, shall mean the area bounded by the following: beginning at the New Mexico-Arizona border at Four-corners south to I-40; east on I-40 to I-25; north on I-25 to N.M. 550; northwest on N.M. 550 to the southern reservation boundary of the Jicarilla Apache reservation; north and west along the western reservation boundary to the New Mexico-Colorado border; west along the New Mexico-Colorado border to the four-corners.

**E. "Lesser prairie-chicken hunting area"**, as used herein, shall mean the area bounded by the following: beginning at the New Mexico-Texas border at U.S. 60, south along the New Mexico-Texas border to N.M. 234, west on N.M. 234 to N.M. 8, west on N.M. 8 to N.M. 176, west on N.M. 176 to U.S. 62-180, west on U.S. 62-180 to the Pecos river, north along the Pecos river to U.S. 60, east to the New Mexico-Texas border, including all Lesser prairie-chicken management areas owned by the state game commission.

**F. "Middle Rio Grande valley hunt area (MRGV)"**, as used herein, shall mean Valencia and Socorro counties.

**G. "Eastern New Mexico Sandhill crane hunt area (eastern)"**, as used herein, shall mean that area in the following counties: Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt.

**H. "Southwest New Mexico Sandhill crane hunt area (southwest)"**, as used herein, shall mean that area bounded on the south by the New Mexico/Mexico border; on the west by the New Mexico/Arizona border north to Interstate 10; on the north by Interstate 10 east to U.S. 180, north to N.M. 26, east to

N.M. 27, north to N.M. 152, and east to Interstate 25; on the east by Interstate 25 south to Interstate 10, west to the Luna county line, and south to the New Mexico/Mexico border.

**I. "Southwest Band-tailed pigeon hunting area"** (southwest BPHA), as used herein, shall mean that portion of New Mexico both south of U.S. 60 and west of I-25.

**J. "Regular Band-tailed pigeon hunting area"** (regular BPHA), as used herein, shall mean that portion of New Mexico not included in the southwest band-tailed pigeon hunt area.

**K. "Central flyway"**, as used herein, shall mean that portion of New Mexico east of the Continental Divide, with the exception of the Jicarilla Apache Indian reservation.

**L. "Non-toxic shot"**, as used herein, shall mean that non-toxic shot approved for use by the U. S. fish and wildlife service.

**M. "Possession limit"**, as used herein, shall mean twice the daily bag limit except where otherwise defined.

**N. "Dove north zone"** (north zone), as used herein, shall mean that portion of New Mexico north of I-40 from the Arizona-New Mexico border to Tucumcari and U.S 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

**O. "Dove south zone"** (south zone), as used herein, shall mean that portion of New Mexico south of I-40 from the Arizona-New Mexico border to Tucumcari and U.S 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

**P. "Estancia valley Sandhill crane hunt area (EV)"**, as used herein, shall mean that area beginning at Mountainair bounded on the west by N.M. highway 55 north to N.M. 337, north to N.M. 14, and north to Interstate 25; on the north by Interstate 25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to N.M. 55 in Mountainair.

**Q. "Valencia county pheasant north hunt area"**, as used herein, shall mean that area including the Rio Grande between the levee roads south of highway 40 to the state highways 309/47 intersection.

**R. "Valencia county pheasant south hunt area"**, as used herein, shall mean that area including the Rio Grande between the levee roads starting at the railroad bridge at Belen, south to the Valencia county line.

[19.31.5.7 NMAC - Rp, 19.31.5.7 NMAC, 8-31-2005]

**19.31.5.8 OPEN AREAS, SPECIES, SEASONS DATES, AND DAILY BAG LIMITS:**

2005-2006 season: all dates are 2005 unless otherwise specified

*[Continued on page 916]*

SPECIES	OPEN AREAS	SEASON OPEN	DAILY BAG LIMIT
Teal	central flyway portion of state	Sept. 17-25	4 (singly or in aggregate)
Pheasant	statewide, excluding Valencia county	Dec. 8-11	3 (males)
Special Permit Required *See information; Section 19.31.5.19	Valencia county	Dec. 10	3 (males)
Youth-only pheasant Hunt *See information; Section 19.31.5.14	Seven Rivers WMA, Casa Colorada WMA and Bitter Lakes NWR	Dec. 3	3 (males)
Pheasant (special permit) *See information; Section 19.31.5.14	Seven Rivers WMA and W.S. Huey WMA	Dec. 10	3 (males)
Blue grouse	GS-1 GS-2	Sept. 1 - Oct. 15 Oct. 1-31	3 3
Lesser prairie -chicken	SEASON CLOSED		
Quail: Gambel's, scaled, Northern bobwhite and Montezuma (Mearns)	Statewide	Nov. 15 - Feb. 15, 2006	15 (singly or in aggregate; no more than 5 shall be Mearns)
Sandhill crane *Special permit required; See information Section 19.31.5.11	MRGV EV MRGV MRGV Southwest  MRGV	Nov. 5-6 Nov. 5-6 Nov.19-20 Dec.10-11 Nov.12-13 and Jan. 7-8, 2006 Jan. 14-15, 2006	2 (2 per season) 2 (4 per season) 2 (2 per season) 2 (2 per season) 2 (8 per season)  2 (2 per season) (possession -6, regular and special seasons combined)
Sandhill crane *Special permit required; See information Section 19.31.5.12	Eastern	Oct. 31 - Jan. 31, 2006	3
Band-tailed pigeon	southwest. BPHA regular BPHA	Oct. 1-20 Sept. 1-20	5 5
Dove Mourning, White -winged, and Eurasian-collared doves	north zone  south zone	Sept. 1-Oct.30  Sept. 1-30 & Dec. 1-30	15 (singly or in aggregate) See Section 19.31.5.20 15 (singly or in aggregate) See Section 19.31.5.20
Tree squirrel	GS-1  GS-2  S-3  S-4	Sept. 1-Oct. 31  Oct. 1-Nov. 30  Sept. 1-Oct. 31  Sept. 1-Oct. 31	8 (singly or in aggregate)

**A. The William S. Huey WMA** shall be open for dove, quail, and Sandhill crane hunting only on Monday, Wednesday, and Saturday during established statewide seasons. Use of vehicles will be restricted to designated areas.

**B. The Brantley** wildlife management area (excluding the Seven Rivers waterfowl management area portion, as posted) shall be open for dove, quail, pheasant, September teal, and Sandhill crane hunting during established statewide seasons. Use of vehicles will be restricted to designated areas.

**C. The Seven Rivers WMA** shall be open for dove, quail, September teal, and Sandhill crane hunting only on Monday, Wednesday, and Saturday during established statewide seasons. Use of vehicles will be restricted to designated areas.

[19.31.5.8 NMAC - Rp, 19.31.5.8 NMAC, 8-31-2005]

**19.31.5.9 WATERFOWL AREAS, DAYS OPEN, AND HUNTING HOURS FOR HUNTING SEPTEMBER TEAL:**

- A. That portion of the Bernardo WMA south of US-60 is open to teal hunting each day of the September Teal season.
- B. The entire La Joya WMA is open to teal hunting each day of the September teal season.
- C. The Seven Rivers waterfowl management area is open for hunting teal on Monday, Wednesday, and Saturday during the September Teal season.
- D. The Brantley wildlife management area is open for hunting teal each day of the September teal season.

[19.31.5.9 NMAC - Rp, 19.31.5.9 NMAC, 8-31-2005]

**19.31.5.10 OTHER STATE WILDLIFE MANAGEMENT AREAS OPEN FOR HUNTING:**

- A. The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, Water canyon, Marquez, and Elliot S. Barker wildlife management areas shall be open for hunting species listed herein during established seasons.
- B. The Sandia ranger district of the Cibola national forest shall be open to archery only hunting of species listed herein during established seasons.
- C. The Lesser prairie-chicken management areas shall be open to hunt quail and dove during established seasons.
- D. The Big Hatchet mountain wildlife management area shall be open for quail hunting.

[19.31.5.10 NMAC - Rp, 19.31.5.10 NMAC, 8-31-2005]

**19.31.5.11 REQUIREMENTS AND PERMITS FOR THE SPECIAL MIDDLE RIO GRANDE, SOUTHWEST NEW MEXICO AND ESTANCIA SANDHILL CRANE SEASONS:**

- A. Six separate Sandhill crane seasons are scheduled with up to a total of 360 permits available. The permits will be allocated by season as follows:

(1) 2005-2006 season:

Season Dates	Hunt Code	Hunt Location	No. of permits
November 5-6	SCR-0-101	MRGV	75
November 5-6	SCR-0-102	EV	40
November 19-20	SCR-0-103	MRGV	65
December 10-11	SCR-0-104	MRGV	60
November 12-13 and January 7-8, 2006	SCR-0-105	southwest	60
January 14-15, 2006	SCR-0-106	MRGV	60

- (2) [RESERVED]
- B. [RESERVED]
- C. Only non-toxic shot may be in possession of hunters using shotguns.
- D. While hunting Sandhill cranes, hunters participating in these seasons must have in their possession a special permit issued by the department. This permit will include tags that must be properly notched and attached to the leg of a harvested bird before removing it from the field.
- E. Hunters who participate in the MRGV and EV seasons shall be required to check-out at designated check stations when they harvest any Sandhill cranes. Those hunters participating in the southwest seasons will be requested to check-out only at designated check stations at the end of each hunt date.
- F. Hunters participating in the MRGV and EV seasons who do not submit a questionnaire within five days of the close of their hunt will be considered ineligible to receive a permit the following year. Hunters participating in the southwest seasons who do not submit a questionnaire within five days of the close of their November and January hunts will be considered ineligible to receive a permit the following year.
- G. Applications for Sandhill crane permits shall be submitted on the appropriate application form. A six-dollar application fee shall be required by each applicant. Applicants may apply for a first and second choice of seasons. A maximum of one season will be awarded to successful applicants. The deadline date for application shall be the second Saturday in September. All applications must be mailed to the Santa Fe office. Applications that have been mailed and postmarked but not delivered by the deadline date will be accepted by the Santa Fe office up to 5 working days after that deadline.
- H. No more than four persons may apply per application.
- I. Applications for permits may be returned to the sender if such applications are not on the proper form or do not supply adequate information.
- J. It shall be unlawful to submit more than one application for a special MRGV, Southwest or EV sandhill crane season permit. If any permits remain after the original deadline, the director may authorize a new deadline. A person who is not awarded a permit for which he applied may submit a new application for a permit if such permits remain available.
- K. If applications for permits exceed the number of available permits, as herein established, the available permits shall be allotted by means of a random public drawing in the Santa Fe office of the department of game and fish.

[19.31.5.11 NMAC - Rp, 19.31.5.11 NMAC, 8-31-2005]

- 19.31.5.12 REQUIREMENTS AND PERMITS FOR THE EASTERN SANDHILL CRANE HUNT:** Hunters shall have in their possession a federal Sandhill crane hunting permit. A person desiring a permit shall apply in person to the department in Santa Fe, Albuquerque, Raton, Las Cruces, or Roswell, or by mail only to the Santa Fe office. Applicants shall submit their name, address, and the number of their general hunting license, or general hunting and fishing license, or small game license, or senior general hunting license, or

handicapped general hunting license. There shall be no limit on the number of federal permits available for issue.

[19.31.5.12 NMAC - Rp, 19.31.5.12 NMAC, 8-31-2005]

#### 19.31.5.13 REQUIREMENTS AND PERMITS FOR BAND-TAILED PIGEON:

Hunters shall have in their possession a Band-tailed pigeon hunting permit. A person desiring a permit shall apply in person to the department in Santa Fe, Albuquerque, Raton, Las Cruces, or Roswell, or by mail to the Santa Fe office only. Applicants shall submit their name, address, and the number of their general hunting license, or general hunting and fishing license, or small game license, or senior general hunting license, or handicapped general hunting license. Permits shall be free of charge and there shall be no limit on the number of permits available for issue.

[19.31.5.13 NMAC - Rp, 19.31.5.13 NMAC, 8-31-2005]

#### 19.31.5.14 REQUIREMENTS AND PERMITS FOR CASA COLORADA AND SEVEN RIVERS YOUTH-ONLY PHEASANT HUNTS AND THE SEVEN RIVERS WMA AND W.S. HUEY WMA PHEASANT HUNTS:

**A.** Up to 40 permits will be available for a youth-only pheasant hunt on the Seven Rivers WMA and up to 15 permits on Casa Colorado WMA scheduled for the Saturday prior to the opening of the regular season. Up to 65 permits will be available on the Seven Rivers WMA hunt. Up to 40 permits will be available on the W.S. Huey WMA hunt.

**B.** Refer to the Hunting and Fishing License Application Rule (19.31.3 NMAC, Section 11-Restrictions) for criteria qualifying for this youth hunt license.

**C.** Applications for the PHE-0-001 Youth-only Seven Rivers WMA, PHE-0-002 Seven Rivers WMA, PHE -0-003 W.S. Huey WMA and PHE -0-004 Youth-only Casa Colorado WMA permits shall be submitted on the appropriate application form. A six-dollar application fee shall be required by each applicant. The deadline date for application shall be the first Saturday in November. All applications must be mailed to the Santa Fe office. Applications that have been mailed and postmarked but not delivered by the deadline date will be accepted by the Santa Fe office up to 5 working days after that deadline.

**D.** No more than four persons may apply per application.

**E.** Applications for permits may be returned to the sender if such applications are not on the proper form or do not supply adequate information.

**F.** It shall be unlawful to submit more than one application for a permit for the Seven Rivers WMA youth-only pheasant, Casa Colorado WMA youth-only pheasant or the special permit Seven Rivers WMA and W.S. Huey WMA pheasant hunts. If any permits remain after the original deadline, the director may authorize a new deadline. A person who is not awarded a permit for which he applied may submit a new application for a permit if such permits remain available.

**G.** If applications for permits exceed the number of available permits, as herein established, the available permits shall be allotted by means of a random public drawing in the Santa Fe office of the department of game and fish.

**H.** Youth hunters participating in this hunt must be accompanied by a non-hunting adult.

[19.31.5.14 NMAC - Rp, 19.31.5.14 NMAC, 8-31-2005]

#### 19.31.5.15 REQUIREMENTS AND PERMITS FOR LESSER PRAIRIE-CHICKEN:

**A.** [RESERVED]

**B.** [RESERVED]

**C.** The season for the Lesser prairie-chicken is closed for the 2005-2006 season.

[19.31.5.15 NMAC - Rp, 19.31.5.15 NMAC, 8-31-2005]

#### 19.31.5.16 FALCONRY SEASONS:

**A.** Open areas and season dates.

**(1)** 2005-2006 season, all dates are 2005 unless otherwise specified.

**(a)** The season for pheasants, Blue grouse, quail, Abert's squirrel, and red squirrel shall be statewide and shall be open September 1 through February 28, 2006.

**(b)** The season for dove shall be statewide and shall be open September 1 through November 12 and November 27 through December 30.

**(c)** The season for Band-tailed pigeon shall be September 1 through December 16 for the regular hunting area and October 1 through January 15, 2006 for the southwest hunting area.

**(d)** The season for Sandhill crane shall be in the eastern New Mexico Sandhill crane hunt area and shall be open from October 17 through January 31, 2006.

**(e)** The season for any duck species and American coot during the September teal season within the central flyway portion of the state shall be open from September 17-25.

**(2)** [RESERVED]

**B.** Daily bag and possession limits.

**(1)** Daily bag limits shall be 3

birds (in the aggregate) and 3 squirrels (in the aggregate) and possession limits shall be: pheasant-6; Blue grouse-6; quail 30 (singly or in the aggregate); tree squirrel-16 (singly or in the aggregate) as listed herein.

**(2)** Daily bag limit for dove, ducks, Band-tailed pigeon, and Sandhill crane shall be 3 birds (in the aggregate) and possession limits shall be 6 birds (in the aggregate) as listed herein.

**C.** Provisions for possession: The falconry hunter shall not retain nor possess any protected mammal taken by a raptor except Abert's squirrels and red squirrels legally taken during open falconry season. The falconry hunter shall not retain nor possess any protected birds taken by a raptor except those species listed herein that were legally taken during the open falconry season.

[19.31.5.16 NMAC - Rp, 19.31.5.16 NMAC, 8-31-2005]

#### 19.31.5.17 LEGAL HUNTING HOURS:

Hunting hours, as used herein, shall mean from one-half hour before sunrise to sunset except where listed otherwise.

**A.** [RESERVED]

**B.** On state game commission owned or managed waterfowl management areas (WMA)s, as listed herein, hunting hours shall mean from one-half hour before sunrise to 1:00 p.m. except for hunting September teal on Bernardo and La Joya WMAs where hunting hours are from one-half hour before sunrise to sunset; and for the special permit pheasant hunts on the Seven Rivers WMA, W.S. Huey WMA and the youth-only pheasant hunt, hunting hours shall be from one-half hour before sunrise to 4pm.

[19.31.5.17 NMAC - Rp, 19.31.5.17 NMAC, 8-31-2005]

#### 19.31.5.18 PARTS TO REMAIN WITH EACH BIRD UNTIL STORAGE AT PERSONAL ABODE OR IN STORAGE FACILITY:

One foot shall remain attached to each quail taken until the bird has arrived at the personal abode of the possessor or storage facility.

[19.31.5.18 NMAC - Rp, 19.31.5.18 NMAC, 8-31-2005]

#### 19.31.5.19 REQUIREMENTS AND PERMITS FOR VALENCIA COUNTY PHEASANT HUNT:

**A.** Pheasant hunting in Valencia county will be open by permit only. The Valencia county pheasant hunt is scheduled for one day in December with the date to be determined. Up to 25 permits will be available on the north hunt area. Up to 25 permits will be available on the south hunt area.

**B.** Refer to the Hunting and Fishing License Application Rule

(19.31.3 NMAC, Section 11-Restrictions) for criteria qualifying for this hunt license.

**C.** Applications for the PHE-0-005 north hunt area and PHE-0-006 south hunt area draw permits shall be submitted on the appropriate application form. A six-dollar application fee shall be required by each applicant. The deadline date for application shall be the first Saturday in November. All applications must be mailed to the Santa Fe office. Applications that have been mailed and postmarked but not delivered by the deadline date will be accepted by the Santa Fe office up to 5 working days after that deadline.

**D.** No more than four persons may apply per application.

**E.** Applications for permits may be returned to the sender if such applications are not on the proper form or do not supply adequate information.

**F.** It shall be unlawful to submit more than one application for a permit for the Valencia county pheasant hunts. If any permits remain after the original deadline, the director may authorize a new deadline. A person who is not awarded a permit for which he applied may submit a new application for a permit if such permits remain available.

**G.** If applications for permits exceed the number of available permits, as herein established, the available permits shall be allotted by means of a random public drawing in the Santa Fe office of the department of game and fish.

**H.** Youth hunters participating in this hunt must be accompanied by an adult.

**I.** Landowners in Valencia county will maintain the ability to hunt and allow hunters on their private property. Landowners will be required to provide proof of ownership and sufficient acreage to accommodate a safe hunt at the northwest (Albuquerque) area office prior to the hunt date. Once sufficient proof has been established, the landowner will be issued unlimited application forms to distribute to hunters they choose. All applications must be obtained from the landowner. Applications for the private land Valencia county pheasant hunt (PHE-0-007) will be unlimited, must be obtained from the landowner and submitted only to the northwest (Albuquerque) area office. A six-dollar application fee shall be required by each applicant.

[19.31.5.19 NMAC - Rp, 19.31.5.19 NMAC, 8-31-2005]

**19.31.5.20 EURASIAN-COLLARED DOVE BAG LIMIT:**

**A.** There shall be no daily bag or possession limit for Eurasian-col-

lared dove except that, when the daily aggregate bag limit on mourning and white-winged doves is obtained, all dove hunting shall cease.

**B.** All Eurasian-collared dove in possession are fully feathered and identifiable until the bird has arrived at the personal abode of the possessor or storage facility.

[19.31.5.20 NMAC - N, 8-31-2005]

**NEW MEXICO  
DEPARTMENT OF GAME  
AND FISH**

**TITLE 19 N A T U R A L  
RESOURCES AND WILDLIFE  
CHAPTER 31 HUNTING AND  
FISHING REGULATIONS  
PART 6 WATERFOWL**

**19.31.6.1 ISSUING AGENCY:** New Mexico Department of Game and Fish.

[19.31.6.1 NMAC - Rp, 19.31.6.1 NMAC, 8-31-2005]

**19.31.6.2 SCOPE:** Hunters of Waterfowl. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30 and 32 through 36 of Title 19. [19.31.6.2 NMAC - Rp, 19.31.6.2 NMAC, 8-31-2005]

**19.31.6.3 S T A T U T O R Y AUTHORITY:** 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.

[19.31.6.3 NMAC - Rp, 19.31.6.3 NMAC, 8-31-2005]

**19.31.6.4 DURATION:** August 31, 2005 - March 31, 2006. [19.31.6.4 NMAC - Rp, 19.31.6.4 NMAC, 8-31-2005]

**19.31.6.5 EFFECTIVE DATE:** August 31, 2005 unless later date is cited at end of individual sections. [19.31.6.5 NMAC - Rp, 19.31.6.5 NMAC, 8-31-2005]

**19.31.6.6 O B J E C T I V E :** Establishing seasons on ducks, geese, Virginia Rail, Sora, common moorhen, American coot, common snipe, and setting falconry seasons.

[19.31.6.6 NMAC - Rp, 19.31.6.6 NMAC, 8-31-2005]

**19.31.6.7 DEFINITIONS:**

Areas, species, non-toxic shot, and possession limit defined.

**A.** "Central flyway" as used herein, shall mean that portion of New Mexico east of the Continental Divide, with the exception of the Jicarilla Apache Indian reservation.

**B.** "Pacific flyway" as used herein, shall mean that portion of New Mexico west of the Continental Divide including the Jicarilla Apache Indian reservation.

**C.** "North zone" as used herein, shall mean that portion of the Pacific flyway north of I-40 from the Arizona-New Mexico border to the Continental Divide; and that portion of the central flyway north of I-40 from the Continental Divide to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

**D.** "South zone" as used herein, shall mean that portion of the Pacific flyway south of I-40 from the Arizona-New Mexico border to the Continental Divide; and that portion of the central flyway south of I-40 from the Continental Divide to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

**E.** "Nontoxic shot" as used herein, shall mean that non-toxic shot approved for use by the U. S. fish and wildlife service.

**F.** "Possession limit" as used herein, shall mean twice the daily bag limit except where otherwise defined.

**G.** "Dark goose" as used herein, shall mean Canada goose or Greater White-fronted goose.

**H.** "Bernardo north duck hunt area (BND)" as used herein, shall mean that area north of U.S. 60 on Bernardo WMA.

**I.** "Adult/youth (A/Y)" as used herein, shall mean that hunt designation where the adult and youth are permitted to hunt together. [19.31.6.7 NMAC - Rp, 19.31.6.7 NMAC, 8-31-2005]

**19.31.6.8 SPECIES, OPEN AREAS, SEASON DATES, AND DAILY BAG LIMITS:**

**A.** 2005-2006 season; all dates are 2005 unless otherwise specified:

*[Continued on page 920]*

**CENTRAL FLYWAY**

<b><u>SPECIES</u></b>	<b>SEASON DATES</b>		<b><u>DAILY BAG LIMIT</u></b>
	<b><u>OPEN</u></b>	<b><u>CLOSED</u></b>	
Ducks: <u>North zone:</u>	Oct. 8	Jan. 11, 2006	6-- which consists of no more than 5 Mallard (of which only 2 may be female Mallard); 2 Scaup; 2 Redhead; 2 Wood duck; 1 Hooded Merganser.
Pintail and Canvasback	Oct. 8	Nov. 15	1 Pintail; 1 Canvasback may be in the bag
<u>South zone:</u>	Oct. 26	Jan. 29, 2006	
Pintail and Canvasback	Dec. 22	Jan. 29, 2006	1 Pintail; 1 Canvasback may be in the bag
American coot:	Same as above Zone dates		15
-----			
Common moorhen:	Oct. 8	Dec. 16	1
Common snipe	Oct. 8	Jan. 22, 2006	8
Virginia Rail & Sora	Sept. 17	Nov. 25	10 daily (singly or in the aggregate)
Dark goose: (Regular season closed in Bernalillo, Sandoval, Sierra, Socorro, and Valencia counties)	Oct. 17	Jan. 31, 2006	4
Special MRGV season *Special permit required; See information in Section 14	Jan. 16	Jan. 22, 2006	2 (2 per season)
Light goose:	Oct. 17	Jan. 31, 2006	20/80 possession

**PACIFIC FLYWAY**

<b><u>SPECIES</u></b>	<b>SEASON DATES</b>		<b><u>DAILY BAG LIMIT</u></b>
	<b><u>OPEN</u></b>	<b><u>CLOSED</u></b>	
Ducks:	Oct. 17	Jan. 29, 2006	7-- which consists of no more than 2 female Mallard; 2 Redhead; 2 Scaup; 1 Pintail.
Canvasback	Oct. 17	Dec. 15	1 Canvasback may be in the bag
American coot and Common moorhen:	Oct. 17	Jan. 29, 2006	12 daily (singly or in the aggregate)
Common snipe:	Oct. 8	Jan. 22, 2006	8

Virginia Rail & Sora:	Sept. 17 - Nov. 25	10 daily (singly or in the aggregate)
Goose: <u>North zone</u> :	Sept. 24 - Oct. 9 and Oct. 31 - Jan. 29, 2006	3 Dark geese, 1 Light goose
<u>South zone</u> :	Oct. 15 - Jan. 29, 2006	2 Dark geese, 1 Light goose

**B. Light goose conservation measures:** Under the Director's discretion the department may implement the light goose conservation measures approved by the U.S. fish and wildlife service (USFWS). Methods, bag and possession limits, and dates allowed shall be those as approved by the USFWS.

**CENTRAL FLYWAY**

**SEASON DATES**

<b><u>SPECIES</u></b>	<b><u>OPEN</u></b>	<b><u>CLOSE</u></b>	<b><u>DAILY BAG LIMIT</u></b>
Light geese [19.31.6.8 NMAC - Rp, 19.31.6.8 NMAC, 8-31-2005]	Feb. 01, 2005 - Mar. 10, 2006		No bag or possession limit

**19.31.6.9 FALCONRY SEASONS:**

**A.** Species that can be taken, open areas, and hunting seasons:

(1) 2005-2006 season, all dates are 2005 unless otherwise specified:

(a) Duck: Central flyway seasons shall be open in the North zone - September 17 through September 25, October 1 - 2 (youth waterfowl days), and October 8 through January 11, 2006; South zone - September 17 through September 25, October 15-16 (youth waterfowl days), and October 26 through January 29, 2006. Pacific flyway seasons shall be as follows: October 8-9 (youth waterfowl days), and October 17 through January 29, 2006.

(b) Light goose: Central flyway seasons shall be open October 17 through January 31, 2006. Pacific flyway season shall be North zone - September 24 through October 9, and October 31 through January 29, 2006; South Zone - October 15 through January 29, 2006.

(c) Dark goose: Central flyway seasons shall be open October 17 through January 31, 2006. Pacific flyway season shall be North zone - September 24 through October 9, and October 31 through January 29, 2006; South Zone - October 15 through January 29, 2006.

(d) Common snipe: Central and Pacific flyways seasons shall be: October 8 through January 22, 2006.

(e) Common Moorhen: Central flyway season shall be: October 8 through January 22, 2006. Pacific Flyway season shall be: October 17 through January 29, 2006.

(f) Sora and Virginia rails: Central and Pacific flyways seasons shall be: September 17 through January 1, 2006.

(2) [RESERVED]

(3) [RESERVED]

(4) [RESERVED]

**B.** Falconry on managed waterfowl areas (WMAs).

(1) Falconry hunting for waterfowl shall be permitted on those portions of the WMAs open to hunting during the seasons in paragraph A in this section, except for Jackson lake WMA.

(2) Falconry hunting for waterfowl shall be permitted on those portions of Jackson lake WMA open to hunting during the seasons in paragraph A in this section, including that portion east of N.M. 170.

**C.** Daily bag limits: shall be three birds (in the aggregate) and possession limits shall be six birds (in the aggregate) as established herein.

**D.** Provisions for possession: the falconry hunter shall not retain nor possess any protected species of bird taken by a rap-tor except those species of protected birds taken during open falconry season.

[19.31.6.9 NMAC - Rp, 19.31.6.9 NMAC, 8-31-2005]

**19.31.6.10 PARTS TO REMAIN WITH EACH BIRD UNTIL STORAGE AT PERSONAL ABODE OR IN STORAGE FACILITY:**

One fully-feathered wing or the head shall remain attached to each goose, duck, Common moorhen, and American coot taken until the bird has arrived at the personal abode of the possessor or storage facility.

[19.31.6.10 NMAC - Rp, 19.31.6.10 NMAC, 8-31-2005]

**19.31.6.11 STATE WATERFOWL AREAS OPEN TO HUNTING, SPECIES THAT CAN BE HUNTED, AND DAYS HUNTING OPEN:**

**A.** State waterfowl areas open, species that can be hunted, and days hunting open:

**DAYS OF WEEK OPEN FOR HUNTING**

<u>AREA</u>	<u>SPECIES</u>	<u>SUN</u>	<u>MON</u>	<u>TUE</u>	<u>WED</u>	<u>THU</u>	<u>FRI</u>	<u>SAT</u>
Bernardo WMA (See note below) (600 feet S of US -60 and portions N of US -60; W of unit 7 drain)	Group 1*	X				X		
(600 feet S of US -60 and portions N of US -60; E of unit 7 drain)	Group 1		X		X			X
La Joya WMA (south portion of refuge)	Group 1	X				X		
La Joya WMA (north portion of refuge)	Group 1		X		X			X
Jackson lake WMA (W of NM-170)	Group 2**		X		X			X
William S. Huey WMA	Group 2		X		X			X
Seven Rivers WMA (portion of Brantley WMA -- see specific closure in 19.31.6.15.A.3)	Group 2		X		X			X
Tucumcari WMA	Group 2	X			X			X
Salt lake and Charette lake WMAs	Group 2		X		X			X
McAllister lake WMA	Group 3***		X		X			X

\*Group 1 Ducks, light geese, dark geese if in possession of a MRGV dark goose permit, Virginia Rail, Sora, Common moorhen, American coot, and Common snipe.

\*\*Group 2 Ducks, geese, Virginia Rail, Sora, Common moorhen, American coot, and Common snipe.

\*\*\*Group 3 Ducks, light geese, Virginia Rail, Sora, Common moorhen, American coot, and Common snipe.

**Note:** Bernardo WMA will be open for light goose hunting by permit only, on the following dates: December 29, 31 and January 21 and 23. On these dates all of Bernardo will be closed to waterfowl hunting. For the remaining dates of the waterfowl seasons, hunting at Bernardo WMA, shall follow the schedule described in the table above. During the Light goose conservation order, designated areas north of U.S. highway 60 are open and shall follow the schedule described in the table above.

**B.** The wildlife management areas open during the youth waterfowl days shall be Bernardo WMA, all portions of La Joya WMA, Seven Rivers WMA, William S. Huey WMA, Salt lake WMA, Charette lake WMA, McAllister lake WMA and Tucumcari WMA.

**C.** Portions of the Bernardo WMA ponds north of highway U.S. 60 will be open for waterfowl hunting to groups consisting of at least one youth hunter and a supervising adult hunter; see section 19.31.6.18.

[19.31.6.11 NMAC - Rp, 19.31.6.11NMAC, 8-31-2005]

**19.31.6.12 REQUIREMENTS AND PERMITS FOR BERNARDO LIGHT GOOSE HUNT:**

**A.** Bernardo WMA will be open for light goose hunting by permit only on December 29, 31, and January 21 and 23.

**B.** Up to 32 permits at Bernardo WMA, per hunting day, will be available (except on December 29; see Section 19.31.6.13 below).

**C.** Applications for Bernardo/Casa Colorada light goose hunts shall be submitted on the appropriate application form. A six-dollar (\$6.00) application fee shall be required of each applicant. Up to four persons may apply per application. Applications for the LTG-0-102 hunt code must have a minimum of one adult and one youth hunter. Refer to the Hunting and Fishing License Application Rule (19.31.3 NMAC, Section 11-Restrictions) for criteria qualifying an applicant for a youth hunt license. Applicants may designate up to three hunt choices. Only one choice may be awarded. The deadline date for application shall be on the first Saturday in November. All applications must be mailed to the Santa Fe office. Applications that have been mailed and postmarked by the deadline, but not delivered, will be accepted by the Santa Fe office up to five working days after that deadline.

Hunt packages for the Bernardo light goose hunts.

LTG-O-101 B 12/31

LTG-O-102 B 1/21

LTG-O-103 B 1/23

**D.** [RESERVED]



**E.** While hunting light geese, hunters participating in this season must have in their possession a valid hunting license and a special permit issued by the department.

**F.** While hunting, hunters shall have in their possession only nontoxic shot. Only 25 rounds per hunter will be allowed at the blinds.

**G.** Designated areas open for light goose hunting on Bernardo WMA by permit only are all open.  
[19.31.6.12 NMAC - Rp, 19.31.6.12 NMAC 8-31-2005]

**19.31.6.13 REQUIREMENTS AND PERMITS FOR BERNARDO YOUTH-ONLY LIGHT GOOSE HUNT:**

**A.** Up to 16 permits will be available for the youth-only light goose hunt at Bernardo WMA. A six-dollar fee shall be required by each applicant for each permit purchased.

**B.** Refer to the Hunting and Fishing License Application Rule (19.31.3 NMAC, Section 11-Restrictions) for criteria qualifying an applicant for this youth hunt license.

**C.** Applications for the December 29 (YLG-O-101) Bernardo youth-only light goose hunt shall be submitted on the appropriate application form. A six-dollar (\$6.00) application fee shall be required of each applicant. Up to three youth hunters may apply per application. The deadline date for application shall be on the first Saturday in November. All applications must be mailed to the Santa Fe office. Applications that have been mailed and postmarked by the deadline, but not delivered, will be accepted by the Santa Fe office up to 5 working days after that deadline.

**D.** [RESERVED]

**E.** While hunting light geese, hunters participating in this season must have in their possession a valid hunting license and a special permit issued by the department.

**F.** While hunting, hunters shall have in their possession only nontoxic shot. Only 25 rounds per hunter will be allowed at the blinds.

**G.** Designated areas open for light goose hunting on Bernardo WMA by permit only are—all areas.  
[19.31.6.13 NMAC - Rp, 19.31.6.13 NMAC, 8-31-2005]

**19.31.6.14 REQUIREMENTS AND PERMITS FOR THE SPECIAL MIDDLE RIO GRANDE VALLEY DARK GOOSE SEASON:**

**A.** Unlimited permits obtained at department offices will be available to hunt dark geese in a selected portion

of the middle Rio Grande valley with a daily bag limit of two dark geese and a season limit of two dark geese.

**B.** While hunting, hunters participating in this hunt must have in their possession a special permit issued by the department. This permit will include tags that must be properly notched and attached to the leg of a harvested bird before removing it from the field.

**C.** The area open for the special dark goose season shall be Sierra, Socorro and Valencia counties.

**D.** [RESERVED]

**E.** [RESERVED]

**F.** [RESERVED]

**G.** [RESERVED]

**H.** [RESERVED]

[19.31.6.14 NMAC - Rp, 19.31.6.14 NMAC, 8-31-2005]

**19.31.6.15 ADDITIONAL CLOSED AREAS:** No hunting of migratory game birds shall be permitted in the following areas:

**A.** That portion of the Canadian river arm of Ute reservoir lying between lines running parallel to and 100 feet above the high-water marks on each side of the Canadian arm and extending from the San Miguel and Quay county line to a posted buoy line across Horseshoe Bend.

**B.** That portion of the stilling basin below Navajo dam lying within a line starting from N. M. 511 at the crest of the bluff west of the Navajo dam spillway and running west along the fence approximately 1/4 mile downstream, southwest along the fence to N. M. 511 to the Navajo dam spillway, across the spillway, and to the crest of the bluff.

**C.** The Old McMillan lake spillway arm of Brantley lake extending from the mouth of South Seven Rivers draw north to the railroad trestle shall be closed to all hunting from January 1 through February 28.

[19.31.6.15 NMAC - Rp, 19.31.6.15 NMAC, 8-31-2005]

**19.31.6.16 LEGAL HUNTING HOURS:**

**A.** Hunting hours, as used herein, shall mean from one-half hour before sunrise to sunset except where listed otherwise. Hunting hours for light geese during the light goose conservation order are one-half hour before sunrise to one-half hour after sunset.

**B.** On state game commissioned owned or managed waterfowl management areas (WMA)s, as listed herein, hunting hours shall mean from one-half hour before sunrise to 1:00 p.m.

[19.31.6.16 NMAC - Rp, 19.31.6.16

NMAC, 8-31-2005]

**19.31.6.17 YOUTH WATERFOWL HUNTING DAYS:**

**A.** Requirements for youth hunters to participate in this hunt are as follows:

(1) Youth hunters must be under 16 years old.

(2) Youth hunters must be fully licensed as required to hunt waterfowl (hunters under 16 are not required to have the federal duck stamp).

(3) An adult, at least 18 years old, must accompany the youth hunter in the field (the adult may not hunt ducks; but may participate in other seasons that are open on the special youth day).

(4) Only ducks and coots may be taken by the youth hunter (Sandhill cranes, geese or any other waterfowl species may not be taken).

**B.** Season dates for youth waterfowl days:

Central Flyway: North Zone:  
October 1 -2

South Zone:  
October 15-16

Pacific Flyway: October 8-9

**C.** The bag limit for youth waterfowl days shall be the same as the regular season in the respective flyways.

[19.31.6.17 NMAC - Rp, 19.31.6.17 NMAC, 8-31-2005]

**19.31.6.18 REQUIREMENTS FOR THE SPECIAL BERNARDO YOUTH/ADULT WATERFOWL HUNT AREA:**

**A.** The Bernardo WMA ponds north of highway U.S. 60 will be open for waterfowl hunting to groups consisting of a minimum of a youth hunter, under 18 years of age, and a supervising adult hunter.

**B.** Up to four persons may occupy a blind with no more than two adults per blind.

**C.** Blind selection is on a first come basis. Once all blinds are selected, no other hunters may enter the area.

**D.** Bernardo WMA will be closed to waterfowl hunting during the special permit Bernardo light goose hunts on December 29, 31 and January 21, 23.

**E.** Designated areas open for Bernardo youth/adult waterfowl hunts are: north of highway U.S. 60, between U.S. 60 and the posted closure areas (See Section 19.31.6.11 above).

**F.** Use of motorized motion decoys is prohibited.

**G.** [RESERVED]

**H.** [RESERVED]

[19.31.6.18 NMAC - Rp, 19.31.6.18 NMAC, 8-31-2005]

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

This is an amendment to 8.302.5 NMAC, Section 10, which will be effective on September 1, 2005. The Medical Assistance Division amended the section to clarify who may perform utilization review services.

**8.302.5.10 MEDICAL NECESSITY REQUIREMENTS:** The New Mexico medicaid program (medicaid) reimburses providers for furnishing covered services to medicaid recipients only when the services are medically necessary. Medical necessity is required for the specific service, level of care, and service setting, if relevant to the service. Providers must verify that medicaid covers a specific service and that the services are medically necessary prior to furnishing services. Medical necessity determinations are made by professional peers based on established criteria, appropriate to the service(s) that are reviewed and approved by MAD. Medicaid denies payment for services that are not medically necessary and for services that are not covered by medicaid. The process for determining medical necessity is called utilization review. Utilization review (UR) of medicaid services may be performed directly by MAD, another state agency designated by MAD, or ~~a UR contractor under contract with MAD~~ as contracted by MAD. [2/1/95, 11/1/96; 8.302.5.10 NMAC - Rn, 8 NMAC 4.MAD.705.1 & A, 1/1/04; A, 9/1/05]

**NEW MEXICO BOARD OF  
PHARMACY**

This is an amendment to 16.19.21 NMAC, Section 23, effective September 30, 2005.

**16.19.21.23 DISTRIBUTION RECORDS:**

A. All wholesaler, manufacturer, or distributor registrants shall include the following in distribution records for drug precursors under this part:

(1) purchaser's name, address and telephone number, and drug precursor registration number or other license number issued by the board in lieu of a drug precursor registration number;

(2) quantity purchased;

(3) date supplied;

(4) suppliers name, address, telephone number, and drug precursor registration number ~~[of the supplier]~~ **or other license number issued by the board in lieu of a drug precursor registration number;**

(5) distribution records must be retained for three (3) years.

B. All retail distributor registrants, pharmacies, hospitals and clinics shall adhere to the following record keeping and distribution requirements concerning pseudoephedrine or pseudoephedrine containing products regulated by the board:

(1) that a retail distributor registrant, pharmacies, hospitals and clinics shall transfer (sell) no more than 2 blister packages not to exceed 6 grams of pseudoephedrine to any one individual in a single transaction and may not knowingly or intentionally transfer cumulative total exceeding 2 blister packages or 6 grams of pseudoephedrine during any seven day period to that one individual;

(2) that a retail distributor registrant, pharmacies, hospitals and clinics must place all products regulated by the board in direct sight of an employee of the facility and no more than 20 feet from a checkout or ~~[other security measures as approved by the board]~~ **in a locked case accessible only by employee or by adhering to the following alternative security measures:**

**(a) all packages of any drug having a single active ingredient of pseudoephedrine or any of its salts, optical isomers, or salts of optical isomers, shall be displayed behind a store counter, in an area not accessible to customers, or shall display those products in a locked case so that customers wanting access to the product must receive seller assistance;**

**(b) except as provided in subparagraph (a) all packages of any drug having pseudoephedrine as an active ingredient of or any of its salts, optical isomers, or salts of optical isomers, can be displayed so that customers wanting access to the product can do so under the following circumstances:**

**(i) a reliable anti-theft device that uses special package tags and detection alarms designed to prevent theft of product from the place of business is employed; at a minimum, one (1) of every four (4) packages must be tagged in this manner:**

**(ii) packages are kept under constant video surveillance in a manner that satisfies the following conditions: a video camera must be positioned so that the area where the products are displayed are visible; any recording must have the capability to allow video image playback in real time format; these images must be preserved for a minimum of twenty-one (21) days; these images must be available to law enforcement authorities within 72 hours upon request; and a sign must be posted in a prominent manner stating the following, "For your**

**protection, New Mexico Board of Pharmacy Regulations require that certain products containing pseudoephedrine be displayed in an area under constant video surveillance"; lettering on the sign must measure at least 1 inch in height;**

**(c) nothing in this section shall prevent board staff from requiring additional security requirements, as prescribed in subparagraph (a), of any pseudoephedrine preparation product that is found in an illegal laboratory; the board shall give the retail distributor registrants, pharmacies, hospitals and clinics adequate notice of such a requirement and twenty-one (21) days from the time of notification to comply with change.**

(3) that ~~the~~ **a** retail distributor registrant, pharmacies, hospitals and clinics owner or manager must develop a written or electronic training program, to be read and signed (written or electronic) by all employees involved in the sale of regulated products that makes the employee aware of all statutes and regulations concerning the sale of regulated products;

(4) that ~~the~~ **a** retail distributor registrant, pharmacies, hospitals and clinics will retain all invoices of purchases of regulated products in a readily retrievable manner for a period of three (3) years;

(5) that ~~the~~ **a** retail distributor registrant, pharmacies, hospitals and clinics will purchase regulated products only from wholesalers, manufacturers, or distributors registered to distribute drug precursors or otherwise licensed with the board.

[03-07-80...08-27-90; 16.19.21.23 NMAC - Rn, 16 NMAC 19.21.23, 03-30-02; A, 01-15-2005; A, 09-30-2005]

**NEW MEXICO BOARD OF  
PHARMACY**

This is an amendment to 16.19.27 NMAC, Section 7, effective September 30, 2005.

**16.19.27.7 DEFINITIONS:** Dishonorable conduct by a pharmacist intern licensed pursuant to NMSA 61-11-6, or pharmacy technician registered pursuant to NMSA 61-11-6.

A. Dishonorable conduct by a pharmacist intern or pharmacy technician shall mean, among other things, but not to be limited to:

(1) violation of any provision of the Pharmacy Act as determined by the board;

(2) violation of the board of pharmacy regulations as determined by the board;

(3) violation of the Drug and Cosmetic Act as determined by the board;

(4) violation of the Controlled

Substances Act as determined by the board;

(5) failure of the licensee to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public and other health professionals;

(6) acquiring prescription stock from unlicensed sources;

(7) failure to hold on the strictest confidence all knowledge patrons, their prescriptions and other confidence entrusted or acquired of by him; divulging in the interest of the patron only by proper forms or where required for proper compliance with legal authorities;

(8) participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare;

(9) the solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon;

(10) failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.9.4.12 NMAC;

(11) conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substances Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States;

(12) suspension, revocation, denial, or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States.

**B.** Dishonorable conduct by a facility (business) shall mean, among other things, but not to be limited to:

(1) violation of any provision of the Pharmacy Act as determined by the board;

(2) violation of the board of pharmacy regulations as determined by the board;

(3) violation of the Drug and Cosmetic Act as determined by the board;

(4) violation of the Controlled Substances Act as determined by the board;

(5) failure of the licensee to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public and other health professionals;

(6) acquiring prescription stock from unlicensed sources;

(7) failure to hold on the strictest confidence all knowledge concerning patrons, their prescriptions and other confi-

dence entrusted or acquired of by him; divulging in the interest of the patron only by proper forms, or where required for proper compliance with legal authorities;

(8) participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare;

(9) the solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon;

(10) failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.9.4.12 NMAC;

(11) conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substance Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States;

(12) suspension, revocation, denial or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States;

(13) failure to correct written deficiencies, documented by drug inspectors during routine inspections;

(14) failure of the business owner or authorized representative to sign the annual self-assessment conducted by the pharmacist-in-charge (see 16.19.6.9.8 NMAC);

(15) when an error occurs and a patient is harmed, failure of the business owner or authorized representative to provide an appropriate environment (staffing and physical environment) that can provide pharmaceutical care in a way that does not endanger the public;

**(16) having a policy or procedure which hinders the apprehension and/or prosecution of individuals who the pharmacist or pharmacist intern after reasonable inquiry suspect of prescription forgery, alteration, fraud, misrepresentation or a prescription transaction which is not otherwise in accordance with the law.**

**C.** "Pharmaceutical care" means the provision of drug therapy and other patient care services related to drug therapy intended to achieve definite outcomes that improve a patient's quality of life, including identifying potential and actual drug-related problems, resolving actual drug-related problems and preventing potential drug-related problems. [Subsection V of Section 61-11-2 NMSA 1978]

**D.** "Dispensing error"

means a prescription that was dispensed from the pharmacy differently from what was prescribed.

**E.** "Harm" means temporary or permanent impairment of the physical, emotional or psychological function or structure of the body and/or pain resulting there from requiring intervention.

**F.** "Patient counseling" means the oral communication by the pharmacist of information to a patient or his agent or caregiver regarding proper use of a drug or a device. [Subsection T of Section 61-11-2 NMSA 1978].

**G.** "Physical environment" means the facility layout design, fixtures, and surroundings that affect lighting levels, sound levels, temperature, interruptions, and distractions.

[16.19.27.7 NMAC - N, 12-01-2003; A, 04-01-2004; A, 09-30-05]

## NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL

**This is an amendment to 6.27.1 NMAC (PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL - GENERAL PROVISIONS). Paragraph (1) of Subsection B of Section 8 (NOTICE OF OPEN MEETINGS) is amended to strike the provision that meetings of the public school capital outlay council are held at 10:00 a.m. Words and punctuation have also been changed to conform to the state records center and archives' requirements with respect to use of the upper case and lower case and punctuation.**

### 6.27.1.8 NOTICE OF OPEN MEETINGS

**A.** All meetings will be conducted pursuant to the provisions of the Open Meetings Act, Sections 10-15-1 to 10-15-4 NMSA 1978. At its first meeting of each fiscal year, the council will determine what notice to the public of its meetings is reasonable and will establish the schedule of its regular meetings.

**B.** Notice of open meetings will be consistent with the open meetings resolution adopted by the council as follows.

(1) All meetings will be held in Santa Fe, New Mexico [~~at 10:00 a.m.~~] or as otherwise indicated on the meeting notice.

(2) At least ten (10) days notice will be given in advance of the meeting date. Notice requirements are met if notice of the date, time and place of the meeting and an agenda for the meeting, or information on how the public may obtain a copy of such an agenda, is placed in one newspaper of general circulation in the state. The council will also disseminate copies of the

written notice to those broadcast stations licensed by the federal communications commission, newspapers of general circulation, local school district superintendents, and all others who have made a written request for notice of public meetings.

(3) Special meetings may be called by the chair or a majority of the members upon three (3) days notice. The council will disseminate copies of the written notice to those broadcast stations licensed by the federal communications commission and newspapers of general circulation that have made a written request for notice of public meetings by expedited mail, e-mail, FAX, or other expedited manner. The council will further disseminate by e-mail or fax copies of the written notice to local school district superintendents and to others who have made a request for notice of public meetings.

(4) Emergency meetings will be called only under unforeseen circumstances that, if not addressed, will likely result in injury or damage to persons or property or substantial financial loss. Emergency meetings may be called by the chair or a majority of the members upon twenty-four (24) hours notice, unless threat of personal injury or property damage require less notice. The notice for all emergency meetings will include an agenda for the meeting or information on how the public may obtain a copy of the agenda. The council will disseminate copies of the written notice to those broadcast stations licensed by the federal communications commission and newspapers of general circulation that have made a written request for notice of public meetings by expedited mail, e-mail, FAX, or other expedited manner. The council will further disseminate by e-mail or fax copies of the written notice to local school district superintendents and to others who have made a request for notice of public meetings.

C. All notices will include the following language: If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the meeting, please contact \_\_\_\_\_ at \_\_\_\_\_ at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact \_\_\_\_\_ at \_\_\_\_\_ if a summary or other type of accessible format is needed.

D. The council may close a meeting to the public only if the subject matter of such discussion or action is excepted from the open meeting requirement under Subsection H of Section 10-15-1 NMSA 1978 of the Open Meetings Act. If any meeting is closed pursuant to the exclu-

sions contained in Subsection H of Section 10-15-1 NMSA 1978 of the Open Meetings Act, the following requirements will be adhered to:

(1) if made in an open meeting, closure shall be approved by a majority vote of a quorum of the council; the authority for the closure and the subject to be discussed shall be stated with reasonable specificity in the motion calling for the vote on a closed meeting, the vote shall be taken in an open meeting, and the vote of each individual member shall be recorded in the minutes; only those subjects announced or voted upon prior to closure by the policymaking body may be discussed in a closed meeting; and

(2) if called for when the council is not in an open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of the law authorizing the closed meeting and stating with reasonable specificity the subject to be discussed is given to the members and to the general public[-] ; and

(3) following completion of any closed meeting, the minutes of the open meeting that was closed or the minutes of the next open meeting if the closed meeting was separately scheduled shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting; this statement shall be approved by the council as part of the minutes.

[6.27.1.8 NMAC - N, 11/14/2000; A, 08/31/05]

**NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL**

**This is an amendment to Sections 9 and 12 of 6.27.2 NMAC (PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL: PUBLIC SCHOOL FACILITIES AUTHORITY). Section 9 (AUTHORITY: DUTIES) is amended to reflect current statutory language and to clarify the authority to make emergency allocations. Section 12 (OTHER SCHOOL CONSTRUCTION PROJECTS; REQUIRED APPROVALS UNDER SECTION 22-20-1 NMSA 1978) is amended to reflect current statutory language. Section 2 (SCOPE) of the rule has also been changed to conform to the state records center and archives' requirements with respect to use of the upper case and lower case.**

**6.27.2.9 AUTHORITY: DUTIES**

A. The authority shall per-

form duties as provided by law and as directed by the council.

B. ~~[As]~~ As required by law and rule, or in addition to such duties as set forth in law and rule, the authority shall:

(1) consult with the secretary of public education or the secretary's designee prior to recommending building standards for public school facilities to the council; ~~[and]~~

(2) maintain the statewide database that reflects the condition of each public school facility;

(3) recommend to the council a schedule for the authority to develop a uniform web-based facility information management system;

(4) implement and maintain the uniform web-based facility information management system; and

(5) account for all distributions of grant assistance from the fund for which the initial award was made after July 1, 2004, and make annual reports to the department, the governor, the legislative education study committee, the legislative finance committee, the public school capital outlay oversight task force, and the legislature.

C. Advise the council of the need to make allocations for emergencies that require immediate action by the authority to safeguard life, health, or property. If the emergency necessitates immediate action prior to the next council meeting, the director shall immediately inform the chair. Emergency allocations shall not exceed \$100,000 per occurrence and shall be ratified by the council at its next meeting.

[6.27.2.9 NMAC - N, 06/15/04; A, 08/31/05]

**6.27.2.12 OTHER SCHOOL CONSTRUCTION PROJECTS[+]; REQUIRED APPROVALS UNDER SECTION 22-20-1 NMSA 1978**

A. Each local school board must secure the approval of the director or the director's designee prior to the construction or letting of contracts for construction of any school building or related school structure or before reopening an existing structure that was formerly used as a school building but that has not been used for that purpose during the previous year. As used in this subsection, "construction" means any project for which the construction industries division of the regulation and licensing department requires permitting. A "related school structure" means a project involving any structure or part of a structure under the control of the local school district for which the construction industries division requires permitting.

B. A written request for approval meeting the requirements of Subsection A of Section 22-20-1 NMSA 1978 must be submitted to the director on a

form prescribed by the director. The form shall include an assurance that any contract for the construction of a public school facility, including contracts funded in whole or in part with insurance proceeds, shall contain provisions requiring the construction to be in compliance with the statewide adequacy standards.

C. The director or the director's designee shall approve the request if the director reasonably determines that the conditions set forth in Subsection B of Section 22-20-1 NMSA 1978 have been met, including:

(1) certification by the secretary that the construction shall support the educational program of the school district; and

(2) determination that the construction project is in compliance with the statewide adequacy standards.

D. Within thirty (30) days of receipt of the request for approval, the director or the director's designee shall notify the local school board and the department of the approval or disapproval of the request.

E. No local school board may construct, or cause the construction of, any public school building within four hundred feet of any main artery of travel without the prior written approval of the department or its designee.

F. The authority will coordinate all required reviews and approvals. [6.27.2.12 NMAC - N, 06/15/04; A, 08/31/05]

## NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL

**This is an amendment to 6.27.3 NMAC. The part name is amended to APPLICATION AND GRANT ASSISTANCE PROCEDURES AND REQUIREMENTS RELATING TO PREVENTIVE MAINTENANCE PLANS, reflecting the content of the amended rule, which in turn incorporates statutory changes enacted by Laws 2005, Chapter 274. Section 8 (GENERAL PROCEDURES), Section 9 (STATE/LOCAL MATCH DETERMINATION), Section 10 (SPECIAL APPROPRIATION REJECTION: OFFSET), Section 11 (PREVENTIVE MAINTENANCE PLANS), Section 12 (APPLICATIONS: MINIMUM REQUIREMENTS), Section 13 (GRANT ASSISTANCE DETERMINATIONS), Section 14 (CALCULATION OF GRANT ASSISTANCE), and Section 16 (ASSISTANCE FOR PUBLIC SCHOOL LEASE PAYMENTS) are amended and a new Section 17 (CHARTER SCHOOL FACILITIES; REQUIREMENTS AND GRANT ASSISTANCE) is adopted. The**

**amendments reflect and incorporate statutory language enacted by Laws 2005, Chapters 221, 274 and 291 and make certain technical corrections and clarifications. The new section reflects statutory language enacted by Laws 2005, Chapters 221 and 274.**

### TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 27 PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL PART 3 APPLICATION AND GRANT ASSISTANCE PROCEDURES AND REQUIREMENTS RELATING TO PREVENTIVE MAINTENANCE PLANS

#### 6.27.3.8 GENERAL PROCEDURES:

A. The authority shall present a proposed calendar and proposed application to the council prior to the beginning of the allocation cycle for a given year.

B. The council shall determine the estimated available funding for the allocation cycle for a given year.

(1) For funding cycles established for fiscal years FY 2005[;] and FY 2006[; and FY 2007], the council shall review the estimated allocations necessary for projects that were partially funded by the council in September 2003 but are not completed. The estimated allocations identified for these projects shall be deemed priority allocations by the council.

(2) The authority, at the direction of the council, shall advise school districts of the funding available for each allocation cycle and the resultant potential applicant pool. In making the determination, the council shall consider prior awards for phased projects, contingencies, and phasing requirements as they pertain to current rankings and estimated funding.

C. Condition index ranking:

(1) In accordance with the calendar established by the council for the application cycle for FY 2006, the authority shall report to the council regarding the methodology used to determine the condition index ranking, including any recommendations for affirming or refining the methodology.

(2) The authority, in cooperation with school districts, shall regularly review and update the statewide data used to determine the condition index ranking. In accordance with the timelines established by the council, the authority shall transmit the application, the calendar, the condition index rankings, and such other information as the council deems relevant to all school districts.

(3) A school district aggrieved by a determination of the authority regarding

the condition index ranking of a public school under the authority of the district may appeal the matter to the council in accordance with the procedures established in 6.27.1.10 NMAC. The appeal must specify the data that the school district believes to be erroneous.

D. The authority shall provide assistance to school districts with respect to the application process and requirements, and preparation of the application, if necessary.

E. The authority shall provide on-going analyses and technical assistance to school districts with regard to:

(1) adequacy standards;

(2) master plans;

(3) maintenance plans and implementation of such plans;

(4) assessments used to determine whether a school building is renovated or replaced;

(5) space utilization; and

(6) phasing, financing and cost benefit analyses.

F. The authority shall establish procedures to ensure consultation with the secretary in the event of any potential or perceived conflict between a proposed action of the authority and an educational program.

[6.27.3.8 NMAC - N, 06/15/04; A, 08/31/05]

**6.27.3.9 STATE / LOCAL MATCH DETERMINATION.** The department shall notify the council and each school district of the state/local match for each school district for every allocation cycle in accordance with the calendar established by the council.

A. The match shall be calculated annually in accordance with the requirements of Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978. In calculating the match:

(1) the final prior year net taxable value for the school district means the net taxable value for the calendar year immediately preceding the calendar year in which the allocation is made;

(2) the MEM for the school district is the ~~total~~ average full-time-equivalent enrollment of students attending public schools, including charter schools, in a school district ~~[in the final funded MEM for the prior school year as reported by the department]~~ on the fortieth, eightieth and one hundred twentieth days of the prior school year; the state MEM is the total final funded MEM for the prior school year as reported by the department.

B. The notification shall include the net taxable value, the sum of the property tax mill levies, and the MEM used to determine the state/local match.

C. If a school district believes that either the prior year net taxable value for the school district or the MEM used to calculate the state/local match is incorrect, the school district shall notify the department within thirty (30) days of receiving the notification and shall provide documentation as to the data the school district believes to be correct. The department shall review the information provided by the school district and notify the school district and the council of its determination within thirty (30) days of receiving the school district's objections.

[6.27.3.9 NMAC - N, 06/15/04; A, 08/31/05]

### 6.27.3.10 SPECIAL APPROPRIATION REJECTION: OFFSET.

A. The school district must determine whether to accept or reject any legislative appropriation made ~~[directly to the school district]~~ after January 1, 2003 for non-operating purposes ~~[and]~~ either directly to the subject school district or to another governmental entity for the purpose of passing the money through directly to the subject school district, but excluding educational technology appropriations made prior to January 1, 2005 and reauthorizations of appropriations previously made to the school district. This includes determinations with regard to direct appropriations for charter schools within the school district.

(1) The school district must notify the department of finance and administration and the public education department in writing that it is rejecting an appropriation prior to ~~[July 15 of the fiscal year following the appropriation]~~ June 1 of the fiscal year during which the appropriation is made.

(2) The rejection of the direct appropriation must be supported by the affirmative action of the local school board.

(3) Submission of the completed questionnaire for a project funded by a direct legislative appropriation and the corresponding sale of the bonds will be deemed to constitute the school district's acceptance of the project.

B. Any direct appropriation not otherwise excepted from this requirement and not rejected by the school district shall result in the application of the offset as calculated pursuant to Paragraph (6) of Subsection B of Section 22-24-5 NMSA 1978. The total of direct appropriations shall include an amount, certified to the council by the department, equal to the educational technology appropriations made to the subject school district on or after January 1, 2003 and prior to January 1, 2005 and not previously used to offset distributions pursuant to the Technology for Education Act.

[6.27.3.10 NMAC - N, 06/15/04; A, 08/31/05]

### 6.27.3.11 PREVENTIVE MAINTENANCE PLANS

A. ~~[The school district must have a current preventive maintenance plan approved by the council pursuant to Section 22-24-5.3 NMSA 1978.]~~ Each school district, including those school districts not applying for grant assistance pursuant to the Public School Capital Outlay Act, shall develop and implement a preventive maintenance plan meeting the requirements of this section.

B. For project allocation cycles beginning after September 1, 2003, a school district shall not be eligible for funding pursuant to Section 22-24-5 NMSA 1978 unless:

(1) the school district has a preventive maintenance plan that has been approved by the council; and

(2) ~~if applicable, the school district is participating in the implementation of the facility information management system.~~

~~[B.]~~ C. The preventive maintenance plan for each public school building under the authority of the school district must:

(1) address the regularly scheduled repair and maintenance needed to keep a building component operating at peak efficiency and to extend its useful life; and

(2) identify the budget, personnel, and staff support dedicated to implementation of the plans, must identify necessary licenses or certifications and associated training requirements and must provide for school district's monitoring and evaluation of the implementation of the plan.

~~[C.]~~ D. Preventive maintenance includes scheduled activities intended to prevent breakdowns and premature failures, including periodic inspections, lubrications, calibration and replacement of expendable components of equipment and addressing each of the following systems and functions:

(1) school site: adequate water source and appropriate means of effluent disposal;

(2) access areas and parking: maintained surface areas that are stable, firm and slip resistant;

(3) drainage;

(4) security, including fences, walls and site lighting;

(5) area, space and fixtures used for site recreation and outdoor physical education;

(6) electrical systems;

(7) plumbing and septic systems;

(8) heating, ventilations and air conditioning systems;

(9) windows and doors;

(10) exterior finishes; and

(11) interior finishes.

E. Each school district,

including those school districts not applying for grant assistance pursuant to the Public School Capital Outlay Act, shall participate in the facility information management system in accordance with the schedule adopted by the council. The facility information management system shall:

(1) provide a centralized database of maintenance activities to allow for monitoring, supporting and evaluating school-level and districtwide maintenance efforts;

(2) provide comprehensive maintenance request and expenditure information to the school districts and the council; and

(3) facilitate training of facilities maintenance and management personnel.

[6.27.2.11 NMAC - N, 06/15/04; A, 08/31/05]

### 6.27.3.12 APPLICATIONS: MINIMUM REQUIREMENTS

A. The application must verify that the school district has submitted a five-year facilities plan. The facilities plan must include:

(1) enrollment projections, which are updated at the beginning of each fiscal year and reflect the final funded membership for the prior school year;

(2) projections for facilities needed to maintain a full-day kindergarten program;

(3) the school district's mission statement, facility goals and objectives, and the steps taken by the school district to address the priority of needs. The goals and objectives should address how the master plan supports the educational programs and needs of the district;

(4) description of community involvement in the development of the master plan;

(5) if the application or master plan establish ranked priorities for public school capital outlay projects within the district that do not conform with the condition index rankings of public school buildings within the school district, the school district must provide a detailed explanation as to the rationale for the difference;

(6) a map of the school district addressing, at a minimum, the following factors: location of all current sites, land owned by the school district, location of any planned expansion (indicating whether the site is owned by the school district), school district growth areas and other school district facilities; and

(7) addressing of the facilities needs of charter schools located within the school district.

B. The application must assure that the school district is willing and able to pay any portion of the public school capital outlay project that is not funded with grant assistance from the fund and must

provide information on the anticipated source of the local share, the timelines for ensuring the local share and any known contingencies in ensuring the local share.

C. The application must address the needs of any charter ~~[schools]~~ school located in the school district or provide documentation that the facilities of ~~[such charter schools meet the statewide adequacy standards not specifically waived by the council]~~ the charter school has a smaller deviation from the statewide adequacy standards than other district facilities included in the application.

D. The application must include a preventive maintenance plan meeting the requirements of 6.27.3.11 NMAC.

E. The application must assure that the school district agrees to comply with any reporting requirements or conditions imposed by the council pursuant to Section 22-24-5.1 NMSA 1978.

F. If the proposed project exceeds the statewide adequacy standards, the application must provide a detailed explanation of the variance and a cost analysis of the cost of meeting the statewide adequacy standards and the excess costs associated with exceeding the statewide adequacy standards.

G. If the application is for a charter school, the district must include documentation sufficient to ensure that the provisions of Article IX, Section 14 of the Constitution of New Mexico (the "anti-donation clause") are not violated.

H. Special provision: roof repair and replacement initiative

(1) A school district desiring a grant award for roof repair or replacement shall submit an application on a form approved by the council. The application shall include an assessment of roofs on school district buildings that create a threat of significant property damage.

(2) The authority shall verify the assessment. The council shall prioritize applications for assistance pursuant to the roof repair and replacement initiative using a special condition ranking index for roofs.

(3) The council shall approve applications on the established priority basis to the extent of available funds. No project shall be approved unless the council determines that the school district is willing and able to pay the portion of the total project cost not funded with grant assistance from the fund. The state share of the cost of an approved project is calculated pursuant to the methodology in Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978.

(4) Grants made pursuant to this subsection shall be expended by the school district prior to September 1, 2008.

I. Notwithstanding the provisions of Paragraph (3) of this subsection, those serious deficiencies in the roofs identified pursuant to Section 22-24-4.1 NMSA 1978 as adversely affecting the health or safety of students and school personnel shall be corrected under this subsection, regardless of the local effort or percentage of indebtedness of the school district, subject to the following provisions:

(1) if the council determines that the school district has excess capital improvement funds received pursuant to the Public School Capital Improvements Act, the cost of correcting the roof deficiencies shall first come from the school district's excess funds, and if the excess funds are insufficient to correct the deficiencies, the difference shall be paid from the public school capital outlay fund; and

(2) if the school district refuses to pay its share of the cost of correcting deficiencies as determined pursuant to Paragraph (1) of this subsection, future distributions from the public school capital improvements fund pursuant to Section 22-25-9 NMSA 1978 shall not be made to the school district but shall be made to the public school capital outlay fund until the public school capital outlay fund is reimbursed in full for the school district's share.

(3) The council shall allocate funds pursuant to this subsection no later than September 30, 2005. Funds made available pursuant to this subsection must be expended by the school district no later than September 30, 2007.

[6.27.3.12 NMAC - N, 06/15/04; A, 08/31/05]

### **6.27.3.13 GRANT ASSISTANCE DETERMINATIONS**

A. The council shall consider all applications meeting the requirements of this rule and, after public hearing and consideration of recommendations by the authority and by any subcommittee that may be appointed by the chair for this purpose, approve those applications selected for grant assistance during the allocation cycle.

B. The council shall prioritize all applications using the statewide adequacy standards. The amount of outstanding deviation from the standards as shown in the New Mexico condition index rankings shall be used by the council in evaluating and prioritizing public school capital outlay projects; provided however, that the council may fashion such solutions to the needs established by the rankings as appropriate and also, in making its awards based on the priorities, the council may consider:

(1) the timeliness of a district's ability to provide its match;

(2) phasing possibilities or the ability to totally fund and complete a project;

(3) the need for additional planning time;

(4) the inability of a district to be able to effectuate multiple awards in terms of actual construction;

(5) the impact on its educational program; and

(6) such other factors as the council may deem relevant or appropriate

C. Notwithstanding the provisions of subsection B of this section:

(1) For fiscal years FY 2005[;] and FY 2006, [~~and FY 2007;~~] the council shall review the estimated allocations for projects that were partially funded by the council in September 2003 but are not completed. The estimated allocations identified for these projects shall be given priority for grant assistance by the council in a three-year phased process, subject to completion of an application for continuation projects developed by the authority and approved by the council.

(2) In an emergency in which the council determines that the health or safety of students or school personnel is at immediate risk or in which the council determines there is a threat of significant property damage, the council may award grant assistance for a project using criteria other than the statewide adequacy standards.

D. The council shall make its allocations for grant assistance in a manner that the council determines will maximize the utilization of the available funding for any given allocation cycle. This determination may include allocations for grant assistance for one or more phases of a project upon the recommendation of the authority and any subcommittee of the council appointed by the chair for this purpose.

E. An application for grant assistance shall not be approved unless the council makes a determination that:

(1) the public school capital outlay project is needed and is included in the school district's top priorities;

(2) the school district has used its resources in a prudent manner as demonstrated by the school district's adherence to the priorities established in its master plan, its implementation of a preventive maintenance plan and such other information as the council finds relevant;

(3) the school district has provided insurance for buildings of the local school district in accordance with the provisions of Section 13-5-3 NMSA 1978;

(4) the school district has submitted a five-year facilities plan that meets the requirements of Subsection A of Section [~~6.27.3.11~~] 6.27.3.12 of this rule;

(5) the school district is willing

and able to pay any portion of the total cost of the public school capital outlay project not funded with grant assistance from the fund;

(6) the school district has addressed the capital needs of any charter schools located in the district by including the needs in the application or demonstrating that the facilities of the charter ~~[schools meet the statewide adequacy standards]~~ school has a smaller deviation from the statewide adequacy standards than other district facilities included in the application; and

(7) the school district has agreed in writing to comply with any reporting requirements or conditions established by the council pursuant to Section 22-24-5.1 NMSA 1978. The school district must acknowledge that the council may direct that the authority manage and provide direct administration of the project, either as a condition of approval of the project or upon a finding by the council that the project is repeatedly in substantial noncompliance with any reporting requirement or condition.

F. Upon recommendation of the authority, the council shall determine whether direct or indirect project management by the authority shall apply to the project. In making its recommendation, the authority shall consider:

(1) the district's preference and financial capabilities, including a determination by the council authorizing direct payment to the contractor;

(2) the district's capacity, including training and certification in procurement and contract requirements; and

(3) the authority's staffing capacity.

G. Approval of a project by the council may include such necessary and reasonable conditions or contingencies imposed by the council to ensure that the project meets the requirements of law and rule and is effectively and prudently administered and managed.

[6.27.3.13 NMAC - N, 06/15/04; A, 08/31/05]

#### **6.27.3.14 CALCULATION OF GRANT ASSISTANCE**

A. The amount of an award for grant assistance for a project shall be determined as follows:

(1) Total project cost means the total amount necessary to complete the public school capital outlay project less:

(a) any insurance reimbursement received by the school district for the project; and

(b) any amount attributable to costs associated with aspects of a project that exceed the statewide adequacy standards.

(2) The final state share amount of the total project cost is determined by:

(a) applying the ratio calculated pursuant to Subsection A of 6.27.3.9 NMAC in accordance with the requirements of Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978 to the total project cost to produce the state share amount; and

(b) subtracting from the state share amount the amount calculated pursuant to Paragraph (6) of Subsection B of Section 22-24-5 NMSA 1978.

B. Notwithstanding the requirements of Subsection A of this section:

(1) If the council determines that a district has used all of its local resources and that the district is not expected to have any available local resources ~~[in the foreseeable future, the council may fund up to the full amount of the total project cost; and]~~ by a date determined annually by the council, the council may adjust the amount of local share otherwise required. Before making any adjustment to the local share, the council shall consider whether:

(a) the school district has insufficient bonding capacity over the next four years to provide the local match necessary to complete the project and, for all educational purposes, has a residential property tax rate of at least ten dollars (\$10.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds; or

(b) the school district

(i) has fewer than an average of eight hundred full-time-equivalent students on the fortieth, eightieth and one hundred twentieth days of the prior school year;

(ii) has at least seventy percent of its students eligible for free or reduced fee lunch;

(iii) has a share of the total project cost, as calculated pursuant to provisions of this section, that would be greater than fifty percent; and

(iv) for all educational purposes, has a residential property tax rate of at least seven dollars (\$7.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds; or

(c) the school district has:

(i) an enrollment growth rate over the previous school year of at least two and one-half percent;

(ii) pursuant to its five-year facilities plan, will be building a new

school within the next two years; and

(iii) for all educational purposes, has a residential property tax rate of at least ten dollars (\$10.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds.

(2) The offsets calculated pursuant to Paragraph (6) of Subsection B of Section 22-24-5 NMSA 1978 do not apply to the following projects:

(a) appropriations to school districts for facilities for full-day kindergarten programs through the 2004 Capital Projects General Obligation Bond Act; or

(b) projects partially funded by the council in September 2003 but that are not completed, subject to the district's maintaining continued local support; or

(c) continuation projects funded by appropriations to subject school districts in Section 150 of Laws 2004, Chapter 126. [6.27.3.14 NMAC - N, 06/15/04; A, 08/31/05]

#### **6.27.3.16 ASSISTANCE FOR PUBLIC SCHOOL LEASE PAYMENTS**

A. For fiscal years 2005 through 2009, the authority shall consult with the department and recommend a proposed calendar and proposed application to the council for assistance to school districts for the purpose of making lease payments for classroom facilities, including charter schools.

B. Applications for assistance to school districts for the purpose of making lease payments for classroom facilities shall be made to the authority by the school district. Applications for lease assistance on behalf of charter schools shall be made through the school district; provided, however, that if the school district fails to make an application on behalf of a charter school, the charter school may submit its application directly to the authority. The application must contain all supporting documentation, including:

(1) a copy of the lease;

(2) the annualized cost of the lease for the fiscal year for which the school seeks assistance; and

(3) the MEM using leased classroom facilities, as determined by calculating ~~[the final funded prior year MEM using leased classroom space];~~

(a) the average full-time-equivalent enrollment using leased classroom facilities on the fortieth, eightieth and one hundred twentieth days of the prior school year; or

(b) in the case of an approved charter school that has not commenced classroom instruction, the estimated full-



time-equivalent enrollment that will use leased classroom facilities in the first year of instruction, as shown in the approved charter school application, provided that, after the fortieth day of the school year, the MEM shall be adjusted to reflect the full-time-equivalent enrollment on that date.

C. The authority shall determine, on a facility-by-facility basis, the cost per MEM by dividing the annualized cost of the lease by the MEM calculated in Paragraph (3) of Subsection B of this section.

(1) If the cost per MEM for a facility is less than three hundred dollars (\$300) for fiscal year 2005 and six hundred dollars (\$600) for fiscal years 2006 through 2009, the assistance for the leased facility will be the actual annualized cost of the lease payments for the fiscal year for which assistance is granted.

(2) If the cost per MEM for a facility is greater than three hundred dollars (\$300) for fiscal year 2005 and six hundred dollars (\$600) for fiscal years 2006 through 2009, the assistance for the leased facility for the fiscal year for which assistance is granted is calculated at three hundred dollars (\$300) per MEM for fiscal year 2005 and six hundred dollars (\$600) for fiscal years 2006 through 2009.

(3) If the total statewide assistance for any fiscal year as calculated pursuant to Paragraphs (1) and (2) of this subsection produces a sum greater than four million dollars (\$4,000,000), the rate of three hundred dollars (\$300) per MEM for fiscal year 2005 and six hundred dollars (\$600) for fiscal years 2006 through 2009 shall be reduced proportionally and the assistance for each facility entitled to assistance shall be recalculated accordingly.

D. A charter school receiving assistance in an amount less than the actual annualized costs may be entitled to further assistance from grant funds that may be made available to the department under Subsection (b) of 20 United States Code Section 7221d. The federal share of the cost for any eligible fiscal share may not exceed the allowable federal share as follows:

(1) 90 percent of the cost, for the first fiscal year for which the program receives the federal assistance;

(2) 80 percent in the second such year;

(3) 60 percent in the third such year;

(4) 40 percent in the fourth such year; and

(5) 20 percent in the fifth such year.

E. The authority shall consult with the department regarding applications for charter school lease assistance and provide recommendations to the council

regarding the applications.

[6.27.3.16 NMAC - N, 06/15/04; A, 08/31/05]

#### **6.27.3.17 CHARTER SCHOOL FACILITIES; REQUIREMENTS AND GRANT ASSISTANCE**

A. The facilities of a charter school that is approved on or after July 1, 2005 and before July 1, 2010 shall meet educational occupancy standards required by applicable New Mexico construction codes. The facilities of a charter school that is in existence, or has been approved, prior to July 1, 2005 shall be evaluated, prioritized and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools; provided that for charter schools in leased facilities, grants may only be used as additional lease payments for leasehold improvements.

B. On or after July 1, 2010, an application for a charter shall not be approved and an existing charter shall not be renewed unless the charter school:

(1) is housed in a public facility that is:

(a) owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or one of its agencies or a tribal government; and

(b) subject to evaluation and prioritization and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state; or

(2) if it is not housed in a public building described in Subparagraph (a) of Paragraph (1) of this subsection, demonstrates that:

(a) the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state; and

(b) either:

(i) public buildings are not available or adequate for the educational program of the charter school; or

(ii) the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

C. When a charter school proposes to use a public facility, prior to the occupancy of the public facility by the charter school the charter school shall notify the council of the intended use, together with such other information as requested by the authority.

(1) Within sixty days of the noti-

fication to the council, the authority shall assess the public facility in order to determine the extent of compliance with the statewide adequacy standards and the amount of outstanding deviation from those standards. The results of the assessment shall be submitted to the charter school, the school district in which the charter school is located and the council.

(2) Once assessed pursuant to Paragraph (1) of this subsection, the public facility shall be prioritized and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state.

[6.27.3.17 NMAC - N, 08/31/05]

### **NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL**

**This is an amendment to 6.27.30 NMAC (PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL - STATEWIDE ADEQUACY STANDARDS). Section 2 (SCOPE), Section 5 (EFFECTIVE DATE), Section 6 (OBJECTIVES), Section 7 (DEFINITIONS), Section 8 (GENERAL REQUIREMENTS), Section 9 (CLASSIFICATION OF PUBLIC SCHOOLS), Section 12 (ACADEMIC CLASSROOM SPACE), Section 13 (GENERAL USE CLASSROOMS (LANGUAGE ARTS, MATHEMATICS AND SOCIAL STUDIES)), Section 14 (SPECIALTY CLASSROOMS), Section 15 (PHYSICAL EDUCATION), Section 16 (LIBRARIES AND MEDIA CENTERS/RESEARCH AREA - GENERAL REQUIREMENTS), Section 17 (FOOD SERVICE STANDARDS), Section 18 (OTHER FACILITY AREAS), Section 19 (GENERAL STORAGE (EXCLUDES LOCKERS, JANITORIAL, KITCHEN OR SPECIALTY CLASSROOMS)) and Section 20 (MAINTENANCE OR JANITORIAL SPACE) are amended. Numerous words and punctuation throughout the rule have also been changed to conform to the state records center and archives' requirements with respect to use of the upper case and lower case and punctuation.**

**6.27.30.2 SCOPE.** The purpose of this rule is to provide statewide adequacy standards for public school buildings and grounds, including buildings and grounds of charter schools. These standards ~~with~~ shall serve to establish the acceptable level of standards necessary to provide ~~and sustain~~ the environment to meet the ~~educational and technology~~ needs of public schools and to assist their staff in developing their buildings and grounds. The appli-

cations of these standards shall be limited to educational space needed to support educational and technology programs and curricula, defined and justified as required by public education department standards and benchmarks, and that is sustainable within the operational budget for staffing, maintenance, and full utilizations of the facilities. The New Mexico public school [facility] statewide adequacy standards are dynamic and the council plans to review them regularly and change them as time and circumstances require.

[6.27.30.2 NMAC - N, 9/1/2002; A, 08/31/05]

#### 6.27.30.5 EFFECTIVE DATE.

September 1, 2002 [~~unless a later date is cited at the end of a section.~~]

[6.27.30.5 NMAC - N, 9/1/2002; A, 08/31/05]

#### 6.27.30.6 OBJECTIVES. [~~A. APPLICATION:~~]

The New Mexico public school [facility] statewide adequacy standards establish the acceptable levels for the physical condition and capacity of school buildings, the educational suitability of those facilities and the need for technological infrastructure at those facilities. The standards are not intended to restrict a facility's size.

~~[B. CRITICAL HEALTH OR SAFETY ISSUES - NOTICE OF INTERIM HEALTH OR SAFETY ISSUES DURING ASSESSMENT PERIOD: Until the completion of an initial statewide assessment of school facilities in accordance with the New Mexico public school facility adequacy standards, a school district may notify the public school capital outlay council of any outstanding serious code deficiencies in public school buildings and grounds, including buildings and grounds of charter schools, that may adversely affect the health or safety of students and school personnel. Correction of a critical health or safety deficiency issue is subject to council review and action pursuant to Section 22-24-4.1 NMSA 1978.]~~

[6.27.30.6 NMAC - N, 9/1/2002; A, 08/31/05]

#### 6.27.30.7 DEFINITIONS.

Unless otherwise specified, the following definitions apply:

A. "art education program" includes visual (jewelry, photography, painting, etc.) and performing (orchestra, chorus, band, etc.) arts;

B. "combination school" means a school that contains the elementary, middle school/junior high school and high school or any combination thereof;

C. "council" means the public school capital outlay council;

D. "design capacity"

means the maximum student capacity of the facility when all phases of construction are fully completed;

E. "equipment" means a specified item not affixed to the real property of a school facility;

F. "exterior envelope" means the exterior walls, floor and roof of a building;

G. "fixture" means a specified item that is affixed to the real property of a school facility;

H. "general use classroom" means a classroom space that is or can be appropriately configured for instruction in at least the areas of language arts, mathematics and social studies;

I. "qualified student or MEM" means those terms as defined in Section 22-8-2 NMSA 1978;

J. "school-aged persons" means that term as defined in Section 22-1-2 NMSA 1978;

K. "school facility" means a building or group of buildings and outdoor area that are administered together to comprise a school;

L. "school site or school campus" means one or more parcels of land where a school facility is located; more than one school facility may be located on a school site or school campus;

M. "space" means the net square footage located within the interior of a building;

N. "specialty classroom" means a classroom space that is or can be appropriately configured for instruction in a specific subject such as science, physical education, special education or art; [~~and~~]

O. "teacherage" means a residence that houses a teacher or administrator on site; and

P. "net sf" means a measurement from interior wall to interior wall to obtain net square feet of a space.

[6.27.30.7 NMAC - N, 9/1/2002; A, 08/31/05]

#### 6.27.30.8 GENERAL REQUIREMENTS.

These standards are intended to supplement, but not to supersede or omit, compliance with applicable building [~~s~~] and fire [~~life safety, health or accessibility~~] code or any other code, regulation, law or standard that has been adopted by [~~a governmental agency having jurisdiction at the site of the school~~] state agencies. Existing school buildings are not required to comply with current [~~requirements~~] adopted state building codes which are required for new buildings unless this compliance is specifically mandated by law or by the code [~~regulation or standard of the jurisdiction where the building is located~~]. Design of a facility shall include: ease of maintenance; centralized common use

areas; natural light; ease of supervision and security; and site-specific covered (protected) circulation if needed.

A. Building condition. A school facility must be safe and capable of being maintained.

(1) Structural. A school facility must be structurally sound. A school facility shall be considered structurally sound and safe if the building presents no imminent danger or major visible signs of decay or distress.

(2) Exterior envelope. An exterior envelope is safe and capable of being maintained if:

(a) walls and roof are weather tight under normal conditions with routine upkeep; and

(b) doors and windows are weather tight under normal conditions with routine upkeep, and the building structural systems support the loads imposed on them.

(3) Interior surfaces. An interior surface is safe and capable of being maintained if it is:

(a) structurally sound;

(b) capable of supporting a finish;

and

(c) capable of continuing in its intended use, with normal maintenance and repair.

(4) Interior finishes. An interior finish is safe and capable of being maintained if it is:

(a) free of exposed lead paint;

(b) free of friable asbestos; and

(c) capable of continuing in its intended use, with normal maintenance and repair.

B. Building systems. Building systems in a school facility must be in working order and capable of being properly maintained. Building systems include roof, plumbing, telephone, electrical and heating and cooling systems as well as fire alarm, 2-way internal communication, appropriate technological infrastructure and security systems.

(1) General. A building system shall be considered to be in working order and capable of being maintained if all of the following apply.

(a) The system is capable of being operated as intended and maintained.

(b) Newly manufactured or refurbished replacement parts are available.

(c) The system is capable of supporting the adequacy standards established in this rule.

(d) Components of the system present no imminent danger of personal injury.

(2) Plumbing fixtures. A school facility shall be equipped with sanitary facilities in accordance with the New Mexico building code. Fixtures shall include, but are not limited to, water closets,

urinals, lavatories and drinking fountains. In all new construction, restrooms shall be available so students will not have to exit the building. In existing facilities, restrooms shall be available for classrooms for grades 5 and below, and special needs classrooms, without having to exit the building, wherever possible within reasonable cost constraints.

(3) Fire alarm. A school facility shall have a fire alarm system as required by applicable state fire codes.

(4) 2-way communication system. A school facility shall have a 2-way internal communication system between a central location and each classroom, library, physical education space and the cafeteria.

[6.27.30.8 NMAC - N, 9/1/2002; A, 08/31/05]

**6.27.30.9 CLASSIFICATION OF PUBLIC SCHOOLS.** ~~Public schools shall be classified as defined in Section 22-1-3 NMSA 1978. The typical size of each classification is] The classifications for public schools under these standards are:~~

A. Elementary school [~~Generally 200 students and generally ranges from 25 - 1,000]~~

B. Middle school/junior high school [~~Generally 400 students and generally ranges from 50 - 1,000]~~

C. High school [~~Generally 1,200 students and generally ranges from 50 - 2,000]~~

D. Combination school  
[6.27.30.9 NMAC - N, 9/1/2002; A, 08/31/05]

**6.27.30.12 ACADEMIC CLASSROOM SPACE.** Classroom space is measured from interior wall to interior wall.

A. Classroom space - Classroom space shall be sufficient for appropriate educational programs for the class level needs.

B. Classroom fixtures and equipment

(1) Each general and specialty classroom shall contain a work surface and seat for each student in the classroom. The work surface and seat shall be appropriate for the normal activity of the class conducted in the room.

(2) Each general and specialty classroom shall have an erasable surface and a surface suitable for projection purposes, appropriate for group classroom instruction, and a display surface. A single surface may meet one or more of these purposes.

(3) Each general and specialty classroom shall have storage for classroom materials or access to conveniently located storage.

(4) Each general and specialty

classroom shall have a work surface and seat for the teacher and for the aide assigned to the classroom, and it shall have secure storage for student records that is located in the classroom or is convenient to access from the classroom.

C. Classroom lighting

(1) Each general, science and arts classroom shall have a light system capable of maintaining at least 50 foot-candles of light.

(2) The light level shall be measured at a work surface located in the approximate center of the classroom, between clean light fixtures.

D. Classroom temperature

(1) Each general, science and arts classroom shall have a heating, ventilation and air conditioning (HVAC) system capable of maintaining a temperature between 68 and 82 degrees fahrenheit with full occupancy.

(2) The temperature shall be measured at a work surface in the approximate center of the classroom.

E. Classroom acoustics

(1) Each general, science and arts classroom shall be maintainable at a sustained background sound level of less than 55 decibels.

(2) The sound level shall be measured at a work surface in the approximate center of the classroom.

F. Classroom air quality

(1) Each general, science and arts classroom shall have an HVAC system that continually moves air and is capable of maintaining a CO<sub>2</sub> level of not more than 1,200 parts per million.

(2) The air quality shall be measured at a work surface in the approximate center of the classroom.

G. Technology. Each classroom at a school facility shall have internet access. Each school facility shall have at least one network multimedia computer, available for student use, for every 15 students or an appropriate alternate delivery method. Computer equipment is subject to assessment under the building systems category.

[6.27.30.12 NMAC - N, 9/1/2002; A, 08/31/05]

**6.27.30.13 GENERAL USE CLASSROOMS (LANGUAGE ARTS, MATHEMATICS AND SOCIAL STUDIES).** Cumulative classroom net square foot (sf) requirements, excluding locker space and general storage space, shall be at least:

A.	Kindergarten		
[60] 50	net sf/student		
B.	Grades 1 - 5	3	2
net sf/student			
C.	Grades 6 - 8	2	8

net sf/student  
D. Grades 9 - 12 2 5  
net sf/student  
[6.27.30.13 NMAC - N, 9/1/2002; A, 08/31/05]

**6.27.30.14 SPECIALTY CLASSROOMS.**

A. Science:

(1) For grades K through [5] 6 , no additional space is required beyond the classroom requirement.

(2) For grades [6] 7 through 12, 4 net sf/student of the grade-level appropriate school population of practical and instructional science space is required. The space shall not be smaller than the average classroom at the facility. This space is included in the academic classroom requirement and may be used for other instruction. The space shall have science fixtures and equipment, in accordance with the standard equipment necessary to meet the educational requirements of the state board of education. If an alternate science delivery method is used by a school district, the district shall verify the appropriate alternate fixtures and equipment to the council.

~~B. [Technology. Each classroom at a school facility shall have Internet access. Each school facility shall have at least one network multimedia computer, available for student use, for every 15 students or an appropriate alternate delivery method. Computer equipment is subject to assessment under the building systems category.]~~ Special education classroom. If a special education space is provided and the space is required to support educational programs and curricula, the space shall not be smaller than 450 net sf or greater than 900 net sf. When the need is demonstrated, the space shall include or have an accessible route to; an accessible unisex restroom with one toilet, sink, and shower stall/tub, a kitchenette 80 net sf max, and 15 net sf of storage.

C. Art education programs. A school facility shall have space to deliver art education programs, including visual, music and performing arts programs, or have access to an alternate delivery method. The space shall not be smaller than the average classroom at the facility. This space may be included in the academic classroom requirement and may be used for other instruction.

(1) Elementary school. A music/drama or art classroom may be the same room as the classroom or may also be used as a general use classroom, plus storage of 60 net sf.

(2) Middle school/junior high school. A band/orchestra/drama classroom shall have a minimum of 2.5 net sf/student of the grade-level appropriate school popu-

lation up to a maximum of 1,500 net sf for band/orchestra/drama, including group practice, music storage and storage rooms, two individual practice rooms and an office. A chorus room shall have a minimum of 2.5 net sf/student of the grade-level appropriate school population up to a maximum of 800 net sf, including group practice rooms, an office and library. An art room shall have a minimum of 2.5 net sf/student of the grade-level appropriate school population up to a maximum of 800 net sf, including storage and an office.

(3) High school. A band/orchestra/drama classroom shall have a minimum of 2.5 net sf/student of the grade level appropriate school population up to a maximum of 2,000 net sf, including group practice, music storage and storage rooms, two individual practice rooms and an office. A chorus room shall have a minimum of 2.5 net sf/student of the grade-level appropriate school population up to a maximum of 1,200 net sf with a practice area and an office. An art room shall have a minimum of 2.5 net sf/student of the grade-level appropriate school population up to a maximum of 1,200 net sf, including storage and an office.

(4) Combination school. A combination school shall provide the elements of the grades served by paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards.

#### D. Career education

(1) Elementary school. No requirement.

(2) Middle school/junior high school. Career education programs (Cooking, sewing, wood shop classrooms, etc.), shall ~~have~~ provide a minimum of ~~[15] 3~~ net sf/student ~~[aggregate, with a minimum of 3,000 net sf]~~ of the grade-level appropriate school population. Each program space shall not be smaller than 650 net sf.

(3) High school. An office education, marketing, shorthand, accounting, food, nutrition, sewing, drawing, graphics, wood tech, metal tech, auto tech, transportation tech, coop training, etc., space shall have a minimum of ~~[15] 4~~ net sf/student ~~[aggregate, with a minimum of 5,000 net sf]~~ of the grade-level appropriate school population. If a school has a child development program, the space shall have a minimum of 1,100-1,500 net sf, including a lab, an observation area, a kitchen, an office, restrooms for children and adults and an outside play area of 75 net sf/child with a minimum of 1,000 net sf.

(4) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards.

#### E. Computer and key-

boarding labs. A school facility shall have space to deliver computer and keyboarding lab programs or have access to an alternate delivery method.

(1) Elementary school. Lab classrooms shall have a minimum of ~~[15] 3~~ net sf/student ~~[aggregate]~~ of the grade-level appropriate school population, with a minimum of ~~[1,000] 700~~ net sf.

(2) Middle school/junior high school. Lab classrooms shall have a minimum of ~~[15] 3~~ net sf/student ~~[aggregate]~~ of the grade-level appropriate school population, with a minimum of ~~[1,500] 800~~ net sf.

(3) High school. Lab classrooms shall have a minimum of ~~[15] 3~~ net sf/student ~~[aggregate]~~ of the grade-level appropriate school population, with a minimum of ~~[2,000] 900~~ net sf.

(4) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards.

F. Alternate delivery method. If an alternate delivery method is used by a school district to deliver instruction in science, technology, art, career education or computer and keyboarding technology, G.R.A.D.S programs and special needs classroom(s), the alternate method may be approved following review by the council.

[6.27.30.14 NMAC - N, 9/1/2002; A, 08/31/05]

### 6.27.30.15 P H Y S I C A L EDUCATION.

A. General requirements. A school facility shall have an area, space and fixtures for physical education activity. This space may have more than one function and may fulfill more than one standard requirement.

(1) Elementary school. For an elementary school facility, an indoor physical education teaching facility that shall ~~[be the greater of 2,400 net sf or the square footage equal to 7 net sf multiplied by one-half of the design capacity]~~ have a minimum of 3.5 net sf/student of the grade-level appropriate school population with a minimum of 2,400 net sf.

(2) Middle school/junior high school. For a middle school/junior high school facility, an indoor physical education teaching facility that shall have a minimum of 5,200 net sf plus bleachers for 1.5 design capacity.

(3) High school. A physical education complex shall have a minimum of 6,500 net sf plus bleachers for 1.5 design capacity.

(4) Combination school. Shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher net

sf standards with bleacher capacity for 2.0-maximum design capacity. If the school includes an elementary, then it shall ~~[contain the requirements]~~ provide in addition the separate space required for an elementary school. This space may have more than one function and may fulfill more than one standard requirement.

B. Additional physical education requirements. In addition to space requirements in Subsection A:

(1) Elementary school. One office shall be provided, with physical education equipment storage with a minimum of 150 net sf. This space may have more than one function and may fulfill more than one standard requirement.

(2) Middle school/junior high school. Two dressing rooms shall be provided, with lockers, showers and restroom fixtures. Two offices shall be provided, each with a minimum of 150 net sf. Each shall be provided with a telephone. Physical education equipment storage space shall be provided.

(3) High school. Two dressing rooms shall be provided, with lockers, showers and restroom fixtures. Two offices shall be provided, each with a minimum of 150 net sf. Each shall be provided with a telephone. Physical education equipment storage space shall be provided. ~~[Additionally, a fixed or temporary platform shall be provided, which may have more than one function and may fulfill more than one standard.]~~

(4) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards.

[6.27.30.15 NMAC - N, 9/1/2002; A, 08/31/05]

### 6.27.30.16 LIBRARIES AND MEDIA CENTERS/RESEARCH AREA - GENERAL REQUIREMENTS.

A. A school facility shall have space for students to access research materials, literature, non-text reading materials, books and technology. This shall include space for reading, listening and viewing materials.

(1) Elementary school. For an elementary school facility, ~~[this]~~ the area for stacks and seating space shall be the greater of 1,000 net sf or the square footage equal to ~~[30] 3~~ net sf/student ~~[for 10 percent of the design capacity]~~ of the grade-level appropriate school population.

(2) Middle school/junior high school or high school. For a middle school/junior high school or high school facility, ~~[this]~~ the area for stacks and seating space shall be the greater of 2,000 net sf or the square footage equal to ~~[30] 3~~ net sf/student ~~[for 10 percent of the design capacity]~~

of the grade-level appropriate school population.

(3) Combination school. A combination school shall provide the elements of the grades set out in Subsections A and B above without duplication, but meeting the higher standards.

B. A school facility shall have library fixtures, equipment and resources in accordance with the standard equipment necessary to meet the educational requirements of the state board of education.

[6.27.30.16 NMAC - N, 9/1/2002; A, 08/31/05]

#### **6.27.30.17 FOOD SERVICE STANDARDS.**

A. Cafeterias - general requirements

(1) Serving and dining. A school facility shall have a covered area or space, or combination, to permit students to eat within the school site, outside of general classrooms. This space may have more than one function and may fulfill more than one adequacy standards requirement [~~for example, auditorium and/or indoor physical education~~].

(2) Serving area shall be [~~.5~~] no less than .8 net sf/capacity of dining room[?] and dining area shall be [~~40~~] no less than 15 net sf/seated student.

(a) Elementary school: should seat up to 200 students per sitting.

(b) Middle school/junior high school: should seat up to 250 students per sitting.

(c) High school: should seat up to 250 students per sitting.

(d) Combination school: shall provide the elements of the grades served by Subparagraphs (a), (b) and (c) above without duplication, but meeting the higher standards.

(3) Fixtures and equipment. A school facility shall have space, fixtures and equipment accessible to the serving area, in accordance with the standard equipment required, for the preparation, receipt, storage or service of food to students.

(a) The space, fixtures and equipment shall be appropriate for the food service program of the school facility. Food service facilities and equipment shall comply with the food service and food processing regulations of the New Mexico department of environment.

(b) Fixtures and equipment should include: food prep area, including sink, oven, range and serving area (unless separate buffet), dishwashing area, hot storage, cold storage, dry storage (can be shared with office space) and other related appropriate staff space.

B. Kitchen. Kitchen and

equipment shall comply with either the food preparation kitchen or the serving kitchen standards defined as follows:

(1) Food preparation kitchen - 2 net sf/meal served:

(a) Elementary school: 1,000 net sf minimum

(b) Middle school/junior high school: 1,600 net sf minimum

(c) High school: 1,700 sf minimum

(d) Combination school: shall provide the elements of the grades served by Subparagraphs (a), (b) and (c) above without duplication, but meeting the higher standards.

(2) Serving kitchen. Where food is not prepared, there shall be a minimum of 200 net sf with a hand wash sink and a phone.

[6.27.30.17 NMAC - N, 9/1/2002; A, 08/31/05]

#### **6.27.30.18 OTHER FACILITY AREAS.**

A. Parent workspace. If parents are invited to assist with school activities, a school facility shall include a workspace for use by parents. If this space is provided, it shall consist of 1 net sf/student of the grade-level appropriate school population with a minimum of 150 net sf and a maximum of 800 net sf. The space may consist of more than one room and may have more than one function.

B. Administrative space. A school facility shall have space to be used for the administration of the school. The space shall consist of a minimum of 150 net sf, plus 1.5 net sf/student of the grade-level appropriate school population, up to a maximum of 2,500 net sf.

C. Student health, counseling and ancillary space. A school facility shall have space to isolate a sick student from the other students and may include space for the delivery of other health, counseling, testing and ancillary programs. This space shall be a designated space that is accessible to a restroom, and shall consist of 1 net sf/student of the grade-level appropriate school population with a minimum of 150 net sf and a maximum of [~~800~~] 1,000 net sf. The space may consist of more than one room and may have more than one function. This space shall include a telephone.

D. Faculty workspace or teacher lounge. A school facility shall have workspace available to the faculty. This space is in addition to any workspace available to a teacher, in or near a classroom. The space shall consist of 1 net sf/student of the grade-level appropriate school population, with a minimum of 150 net sf and a maximum of 800 net sf. The space may

consist of more than one room and may have more than one function. This space shall include a break area with a sink.

[6.27.30.18 NMAC - N, 9/1/2002; A, 08/31/05]

#### **6.27.30.19 GENERAL STORAGE (EXCLUDES LOCKERS, JANITORIAL, KITCHEN OR SPECIALTY CLASSROOMS).**

For storage, 3 net sf/K-5 grade student of the grade-level appropriate school population, and 2 net sf/6-12 grade student of the grade-level appropriate school population may be distributed in or throughout any type of room or space, including classrooms, but may not count toward required minimum room square footages. General storage must include some secured storage.

[6.27.30.19 NMAC - N, 9/1/2002; A, 08/31/05]

**6.27.30.20 MAINTENANCE OR JANITORIAL SPACE.** Each school shall designate .5 net sf /student [~~aggregate~~] of the grade-level appropriate school population for maintenance or janitorial space. Janitorial space shall include a janitorial sink.

[6.27.30.20 NMAC - N, 9/1/2002; A, 08/31/05]

NEW MEXICO
WORKERS' COMPENSATION ADMINISTRATION

Workers' Compensation Administration is amending the mandatory forms attached to 11.4.4 NMAC, effective August 31, 2005.

STATE OF NEW MEXICO

WORKERS' COMPENSATION ADMINISTRATION

Worker,
[vs.] v.
Employer/Insurer.
WCA No.:

WORKERS' COMPENSATION COMPLAINT

- 1. Type of injury: Occupational Injury Occupational Disease
2. Worker's Full Name:
Mailing Address:
City/State/Zip:
Telephone No.:
3. Worker's date of birth: Age: Sex: M F
4. Worker's Social Security Number:
5. Full Name of Employer:
Employer's Address:
City/State/Zip:
Telephone No.:
6. Insurance Carrier:
Address:
City/State/Zip:
Telephone No.:
7. Date of Accident:
a. City and County of accident:
b. Worker's job at time of accident:
c. Worker's wages at time of accident: \$ hour \$ bi-weekly \$ month \$ year
d. How did the accident occur:
e. Part(s) of the body injured:
f. Type of injury/diagnosis:
g. Name and address of treating Doctor(s):
h. First date Worker was unable to perform job duties:
i. Date of maximum medical improvement:
j. Impairment rating: Doctor's Name:
k. Has Worker been released to work by a Doctor? Yes No
If yes, please indicate the date Worker was released to work:
l. Has Worker returned to work since the accident? Yes No
If yes, please indicate the date Worker returned to work:
m. Name and address of current Employer:
n. Highest level of school completed by Worker:
8. a. What benefit or relief is being sought?
1. Complaints by Worker:
Temporary Total Disability Death Benefits
Permanent Total Disability Attorney Fees
Permanent Partial Disability Disfigurement
Safety Device Increase (name device):
Mental Impairment: Primary Secondary
Medical Benefits (list here or attach unpaid bills:
Determination of: Bad Faith/Unfair Claims Processing Fraud or Retaliation
Other (specify):
2. Complaints by Employer:
Determination of Compensability/Benefits
Safety Device Decrease (name device):
Reimbursement Right

Credit for Overpayment  
 Suspension or Reduction of Benefits (state grounds): \_\_\_\_\_  
 \_\_\_\_\_  
 [Claim Against Subsequent Injury Fund (state basis for claim): \_\_\_\_\_]  
 Other (specify): \_\_\_\_\_

b. State all reasons supporting this complaint (be specific; use additional pages, if necessary): \_\_\_\_\_

9. Is an interpreter needed for the hearings on this complaint?  Yes  No.  
 If yes, what language? \_\_\_\_\_ If yes, Employer must furnish.  
 If you have questions, call 1-800-255-7965, Mediation Bureau.

\_\_\_\_\_  
 Filing Party's Name  
 \_\_\_\_\_  
 Signature Date

\_\_\_\_\_  
 Attorney/Representative's Name & Address  
 \_\_\_\_\_  
 Attorney/Representative's Telephone & Fax Number]

\_\_\_\_\_  
 Worker's Signature

\_\_\_\_\_  
 Attorney's Signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Worker/Attorney's Name

\_\_\_\_\_  
 Worker/Attorney's Address

\_\_\_\_\_  
 Worker/Attorney's City, State, Zip

\_\_\_\_\_  
 Worker/Attorney's Telephone & Fax Number

A Summons for each adverse party and insurer shall be filed with the Complaint. If the Worker is filing this Complaint, an Authorization to Release Medical Information form shall be filed with the Complaint.

**STATE OF NEW MEXICO**

**WORKERS' COMPENSATION ADMINISTRATION**

\_\_\_\_\_, WCA No.: \_\_\_\_\_  
 Worker,  
 [vs.] v. \_\_\_\_\_, and  
 \_\_\_\_\_  
 Employer/Insurer.

**SUMMONS FOR WORKERS' COMPENSATION COMPLAINT**

TO: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

GREETINGS:

You are directed to serve a written Response to the Workers' Compensation Complaint **not less than five (5) days prior to the mediation conference**, and file the same, as provided by law.

You are notified that, unless you serve and file a responsive pleading or motion, [~~that~~] the filing party may apply to the Workers' Compensation Administration for the relief demanded in the Workers' Compensation Complaint.

[Representative for Filing Party: \_\_\_\_\_]  
 [Address of Filing Party: \_\_\_\_\_]  
 Worker or filing party's representative: \_\_\_\_\_  
 Address of Worker or filing party's representative: \_\_\_\_\_

WITNESSED AND SEALED BY THE CLERK OF THE WCA

(SEAL)

By: \_\_\_\_\_

Date: \_\_\_\_\_

(EACH ADVERSE PARTY MUST BE NAMED IN THE SUMMONS)

**WORKERS' AUTHORIZATION FOR DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR WORKERS' COMPENSATION PURPOSES (HIPAA COMPLIANT)**

**I, (Print Worker's Name) \_\_\_\_\_, hereby authorize the use or disclosure of my health information as described in this authorization.**

**I, (Print Worker's Name) \_\_\_\_\_, hereby authorize the health care provider (HCP) – (the name of HCP is optional and not required for release of medical information) (Print Health Care Provider's Name) \_\_\_\_\_ the use or disclosure of my health information as described in this authorization.**

**1. INFORMATION**

WCA No. \_\_\_\_\_

Date of Birth \_\_\_\_\_ Date of Injury \_\_\_\_\_ SSN \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

Worker's representative, if any: \_\_\_\_\_ Phone \_\_\_\_\_

Address: \_\_\_\_\_

**2. RELEASE**

I authorize the Health Care Provider (HCP) or any member or employee of its office or association who has examined or treated me, as well as any hospital or treatment facility in which I have been a patient, to disclose and release complete and legible copies of any and all information concerning my physical or psychiatric condition, care and treatment, to my employer, \_\_\_\_\_, and/or its insurance carrier, \_\_\_\_\_, and/or their attorneys, and/or duly authorized representatives of the New Mexico Workers' Compensation Administration and its current medical cost containment contractor or their duly authorized agents. Copies of all documentation released pursuant to this authorization shall be sent to the agency requesting the information and to me or my representative as listed above.

3. I understand the following information will be released pursuant to a work-related/occupational injury or illness/workers' compensation claim: medical reports; clinical notes; nurses' notes; patient's history of injury; subjective and objective complaints; x-rays; test results; interpretation of x-rays or other tests (including a copy of the report); diagnosis and prognosis; hospital bills; bills for services the HCP has rendered; payments received; and any other relevant and material information in the HCP's possession. This Authorization also includes, if applicable, any hospital operational logs, emergency logs, tissues committee reports, psychiatric reports and records, physical therapy records, and all outpatient records. This release may also be used to request a Form Letter to HCP as approved by the Workers' Compensation Administration. I understand that I have the right to restrict the information that may be provided by signing this authorization to the extent provided by law.

**CONDITIONS**

4. I understand the purpose of this request is to determine the proper level of workers' compensation benefits and may include information regarding any of the following: to determine my occupational injury or illness status; to determine my eligibility for workers' compensation benefits; to determine my current and future medical status after occupational injury; to determine my current medical status and/or return-to-work capability.

5. Right to revoke: I understand I have the right to revoke this authorization at any time by notifying the company named in Paragraphs 1 and 2. I understand that the revocation is only effective after it is received and logged by that company and that any use or disclosure made prior to the revocation under this authorization will not be affected by the revocation. I further understand that my revocation of this authorization may affect my ability to receive occupational injury or workers' compensation benefits governed by this revocation.

6. I understand that after this information is disclosed, the recipient may continue to use it pursuant to my prior authorization, regardless of my subsequent revocation of this authorization. I further understand that different protections may be available pursuant to state and federal law.



7. I understand that information to be released pursuant to a work-related/occupational injury or illness/workers' compensation claim may also be released to WCA and its current medical cost containment contractor or their duly authorized agents.

8. I hereby expressly waive any regulations and/or rules of ethics that might otherwise prevent any hospital, health care provider or other person who has treated me or examined me in a professional capacity from releasing such records.

9. A photostatic or other copy of this Release, which contains my signature, shall be considered as effective and valid as the original, and shall be honored by those to whom it is sent or provided for a period of six (6) months from the date it was signed.

10. This Release does not authorize any personal or telephonic conferences or correspondence directly between any health care provider and a representative of my employer, its attorney or insurance carrier to discuss my case and is solely for the release of medical documentation as set forth herein. Brief communication for the limited purpose of obtaining medical records is permitted.

11. I understand I am entitled to a copy of this authorization and to any records provided hereunder. I am requesting a copy of this authorization  Yes  No - If Yes, I have received a copy \_\_\_\_\_ (initial)  
I understand this authorization will expire within six (6) months of the date I signed it, unless I revoke it earlier, pursuant to Paragraph 5.

Signature of Employee \_\_\_\_\_ Date \_\_\_\_\_

~~[Witness Signature (REQUIRED) \_\_\_\_\_  
This form cannot be accepted without a witness signature.~~

Witness Name (Print or type) \_\_\_\_\_ Date \_\_\_\_\_]

**Personal Representative Section:**

If a personal representative executes this form, that representative warrants that he or she has authorization to sign this form on the basis of (print detailed basis for representation): \_\_\_\_\_

Signature of Personal Representative \_\_\_\_\_ Date \_\_\_\_\_

**STATE OF NEW MEXICO**

**WORKERS' COMPENSATION ADMINISTRATION**

**FORM LETTER TO HEALTH CARE PROVIDER**

TO: HEALTH CARE PROVIDER  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Worker: \_\_\_\_\_ WCA No.: \_\_\_\_\_  
DOB: \_\_\_ / \_\_\_ / \_\_\_ SSN: \_\_\_ / \_\_\_ / \_\_\_

Attached is a release of medical information by the Worker/Patient. The information requested in this letter is necessary to evaluate the Worker's legal claims. By promptly completing these forms, you speed the process of evaluation, including whether medical bills should be paid by the insurance carrier. Please answer all questions which you believe to be pertinent. Your answers must be based upon reasonable medical probability.

- 1. Who referred Worker to you for treatment? \_\_\_\_\_
- 2. Date of Worker's most recent visit or treatment: \_\_\_\_\_
- 3. What is your diagnosis of the condition(s) for which you have treated the Worker?  
\_\_\_\_\_  
\_\_\_\_\_

4. In your opinion, are the conditions or complaints for which you have treated the Worker causally related to an on-the-job injury? Yes \_\_\_ No \_\_\_  
Date of Injury: \_\_\_\_\_

5. Is the Worker suffering from a disease that, in your opinion, is related to employment? Yes \_\_\_ No \_\_\_  
Date of occurrence: \_\_\_\_\_

6. Indicate the period of time the Worker has been unable to work: \_\_\_\_\_

[7. Is Worker able to return to work? Yes \_\_\_ No \_\_\_  
Any restrictions? \_\_\_\_\_  
If no, when do you anticipate a return to work? \_\_\_\_\_]

7. Is Worker able to return to work?  
 Yes \_\_\_\_\_ If yes, same job? \_\_\_\_\_ Different job? \_\_\_\_\_  
Any restrictions?  
 No \_\_\_\_\_ If no, when do you anticipate a return to work? \_\_\_\_\_
8. Has the Worker reached the date after which further recovery from, or lasting improvement to, an injury can no longer be reasonably anticipated (MMI)?  
 [Yes \_\_\_\_\_ No \_\_\_\_\_ Date of MMI: \_\_\_\_\_]  
 Yes \_\_\_\_\_ Date of MMI: \_\_\_\_\_  
 No \_\_\_\_\_ Anticipated date of MMI \_\_\_\_\_
9. If the Worker has reached MMI, please indicate your opinion as to the percentage of the Worker's anatomical or functional abnormality existing after the date of MMI:  
 a) Percentage of impairment, if any: \_\_\_\_\_  
 b) Whole body or body part: \_\_\_\_\_  
 c) Indicate which edition of AMA Guides used: \_\_\_\_\_  
 d) AMA page number(s): \_\_\_\_\_
10. Has a Physical Capacities Assessment or Functional Capacity Evaluation been performed?  
 Yes \_\_\_ No \_\_\_  
 Was the evaluation performed by a licensed physical therapist or occupational therapist? Yes \_\_\_ No \_\_\_
11. Can the Worker:  
 a) Lift over 50 pounds occasionally or up to 50 pounds frequently? Yes \_\_\_ No \_\_\_  
 b) Lift up to 50 pounds occasionally or up to 25 pounds frequently? Yes \_\_\_ No \_\_\_  
 c) Lift up to 20 pounds occasionally or up to ten pounds frequently, and either walk or stand to a significant degree, or sit most of the time with a degree of pushing and pulling arm or leg controls or both? Yes \_\_\_ No \_\_\_  
 d) Lift up to ten pounds occasionally or up to five pounds frequently, and occasionally walk or stand to carry out job duties? Yes \_\_\_ No \_\_\_  
 Comments: \_\_\_\_\_
12. Please describe any other restrictions on Worker's activities not covered above:  
 \_\_\_\_\_  
 \_\_\_\_\_
13. Other remarks: \_\_\_\_\_  
 \_\_\_\_\_
14. Have you made any referrals to other health care providers, hospitals or institutions? Yes \_\_\_ No \_\_\_  
 If yes, provide the name: \_\_\_\_\_
15. Please attach a copy of any unpaid bills.  
 The maximum allowable fee for this form is \$45.00. The fee for copying of medical records and reports for the first ten (10) pages is \$10.00, and \$.20 cents for each additional page.

I hereby swear and affirm that the foregoing responses or opinions are true and correct, to a reasonable medical probability, on pain and penalty of perjury.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Physician

\_\_\_\_\_  
Printed Name of Physician

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

( ) \_\_\_\_\_  
Telephone Number

**SEND COMPLETED FORM TO:**  
**Workers' Compensation Administration, P.O. Box 27198, Albuquerque, NM 87125-7198**

STATE OF NEW MEXICO

WORKERS' COMPENSATION ADMINISTRATION

\_\_\_\_\_, WCA No.: \_\_\_\_\_  
Worker,  
v. \_\_\_\_\_, and  
\_\_\_\_\_,  
Employer/Insurer.

WORKER'S RESPONSE TO COMPLAINT

Worker, \_\_\_\_\_, responds to Employer/Insurer's Complaint as indicated (check all that apply):

- 1. \_\_\_\_\_ I was hurt on the job.
- 2. \_\_\_\_\_ I am disabled.
- 3. \_\_\_\_\_ I have not returned to work.
- 4. \_\_\_\_\_ My doctor has not released me to return to work
- 5. \_\_\_\_\_ Employer has not provided work within my restrictions.
- 6. \_\_\_\_\_ I gave notice of the accident to my employer within 15 days of the accident.
- 7. \_\_\_\_\_ Employer has not provided adequate medical care.
- 8. \_\_\_\_\_ The statute of limitations does not bar my entitlement to weekly benefits.
- 9. \_\_\_\_\_ A causal link between my disability and accident has been shown to a reasonable degree of medical probability.
- 10. \_\_\_\_\_ (Other): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I certify a copy has been [ ] mailed [ ] faxed  
to opposing party on (date): \_\_\_\_/\_\_\_\_/\_\_\_\_

\_\_\_\_\_  
(Signature of party mailing response)

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Name  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
City/State/Zip  
( ) ( )  
\_\_\_\_\_  
Telephone & Fax Number

STATE OF NEW MEXICO

WORKERS' COMPENSATION ADMINISTRATION

\_\_\_\_\_, WCA No.: \_\_\_\_\_  
Worker,  
v. \_\_\_\_\_, and  
\_\_\_\_\_,  
Employer/Insurer.

WORKER'S RESPONSE TO APPLICATION  
TO WORKERS' COMPENSATION JUDGE

Worker, \_\_\_\_\_, responds to Employer/Insurer's Application to Workers' Compensation Judge as indicated (check all that apply):

- 1. \_\_\_\_\_ I was hurt on the job.
- 2. \_\_\_\_\_ I am disabled.
- 3. \_\_\_\_\_ I have not returned to work.
- 4. \_\_\_\_\_ My doctor has not released me to return to work
- 5. \_\_\_\_\_ Employer has not provided work within my restrictions.
- 6. \_\_\_\_\_ I gave notice of the accident to my employer within 15 days of the accident.
- 7. \_\_\_\_\_ Employer has not provided adequate medical care.
- 8. \_\_\_\_\_ The statute of limitations does not bar my entitlement to weekly benefits.
- 9. \_\_\_\_\_ A causal link between my disability and accident has been shown to a reasonable degree of medical probability.
- 10. \_\_\_\_\_ (Other): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I certify a copy has been [ ] mailed [ ] faxed to opposing party on (date): \_\_\_\_/\_\_\_\_/\_\_\_\_

\_\_\_\_\_  
 Signature  
 \_\_\_\_\_  
 Print Name  
 \_\_\_\_\_  
 Address  
 \_\_\_\_\_  
 City/State/Zip  
 ( ) ( )  
 Telephone & Fax Number

(Signature of party mailing response)

STATE OF NEW MEXICO

WORKERS' COMPENSATION ADMINISTRATION

\_\_\_\_\_, WCA No.: \_\_\_\_\_  
 Worker,  
 [~~vs.~~] v. \_\_\_\_\_, and  
 \_\_\_\_\_,  
 Employer/Insurer.

NOTICE OF ACCEPTANCE OR REJECTION OF RECOMMENDED RESOLUTION

FAILURE TO FILE THIS NOTICE WITHIN THIRTY (30) DAYS FROM THE DATE YOU RECEIVED THE RECOMMENDED RESOLUTION WILL RESULT IN YOUR BEING BOUND BY THE RECOMMENDED RESOLUTION.

1. (Name of the party filing this notice:) \_\_\_\_\_ gives notice the Recommended Resolution of the Mediator is:

\_\_\_\_\_ *Accepted* \_\_\_\_\_ *Rejected*

YOU MUST STATE YOUR SPECIFIC REASONS FOR REJECTION OF THE RECOMMENDED RESOLUTION.

2. The Recommended Resolution is rejected because: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
Name of Worker/Attorney/Representative  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
City/State/Zip  
( ) ( )  
\_\_\_\_\_  
Telephone & Fax Number

I certify a copy of this Notice of Acceptance or Rejection of Recommended Resolution was mailed to all parties this date \_\_\_\_\_.

\_\_\_\_\_  
(Signature of party mailing notice.)

**NEW MEXICO**

**WORKERS' COMPENSATION ADMINISTRATION**

\_\_\_\_\_, WCA No.: \_\_\_\_\_  
Worker,  
[vs.] v. \_\_\_\_\_, and  
\_\_\_\_\_,  
Employer/Insurer.

**APPLICATION TO WORKERS' COMPENSATION JUDGE**

1. Type of injury: \_\_\_\_\_ Occupational Injury \_\_\_\_\_ Occupational Disease
2. Worker's Full Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone No.: ( ) \_\_\_\_\_
3. Worker's date of birth: / / Age: \_\_\_\_\_ Sex: \_\_\_\_\_ M \_\_\_\_\_ F \_\_\_\_\_
4. Worker's Social Security No.: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_
5. Full Name of Employer: \_\_\_\_\_  
Employer's Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone No.: ( ) \_\_\_\_\_
6. Insurance Carrier: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone No.: ( ) \_\_\_\_\_
7. Date of Accident: \_\_\_\_\_
  - a. City and County of accident: \_\_\_\_\_
  - b. Worker's job at time of accident: \_\_\_\_\_
  - c. Worker's wages at time of accident: \$ \_\_\_\_\_/hour \$ \_\_\_\_\_/bi-weekly \$ \_\_\_\_\_/month \$ \_\_\_\_\_/year
  - d. How did the accident occur: \_\_\_\_\_
  - e. Nature of the injury: \_\_\_\_\_  
Type of injury/diagnosis: \_\_\_\_\_
  - f. Part(s) of the body injured: \_\_\_\_\_
  - g. Name and address of treating Doctor: \_\_\_\_\_
  - h. First date Worker was unable to perform job duties: \_\_\_\_\_
  - i. Date of maximum medical improvement: \_\_\_\_\_
  - j. Impairment rating: \_\_\_\_\_ Doctor's Name: \_\_\_\_\_
  - k. Has Worker been released to work by a Doctor? \_\_\_\_\_ Yes \_\_\_\_\_ No  
If yes, please indicate the date Worker was released to work: \_\_\_\_\_
  - l. Has Worker returned to work since the accident? \_\_\_\_\_ Yes \_\_\_\_\_ No  
If yes, please indicate the date Worker returned to work: \_\_\_\_\_
  - m. Name and address of current Employer: \_\_\_\_\_
  - n. Highest level of school completed by Worker: \_\_\_\_\_
8. a. This application seeks the following relief: \_\_\_\_\_

- Physical Examination of Worker
- Independent Medical Examination
- Approval of Stipulated Reimbursement Agreement under Section 52-5-17
- Supplemental Compensation Order
- Determination of:  Bad Faith/Unfair Claims Processing  Fraud or  Retaliation
- Attorney Fees, Amount: \$ \_\_\_\_\_

b. Why is this application being filed? (Be specific, use additional pages, if necessary.)  
 \_\_\_\_\_  
 \_\_\_\_\_

9. Is an interpreter needed for the hearings on this application?  Yes  No.  
 If yes, what language? \_\_\_\_\_ If yes, Employer must furnish.  
 If you have questions, call 1-800-255-7965, Adjudication Bureau.

\_\_\_\_\_  
 Filing Party's Name

\_\_\_\_\_  
 Attorney/Representative's Name & Address

\_\_\_\_\_  
 Signature Date

( ) \_\_\_\_\_ ( ) \_\_\_\_\_  
 Attorney/Representative's Telephone & Fax Number]

\_\_\_\_\_  
 Worker's Signature

\_\_\_\_\_  
 Attorney's Signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Worker/Attorney's Name

\_\_\_\_\_  
 Worker/Attorney's Address

\_\_\_\_\_  
 Worker/Attorney's City, State, Zip

\_\_\_\_\_  
 Worker/Attorney's Telephone & Fax Number

A Summons for each adverse party shall be filed with the application if one has not been previously filed. If Worker is filing this application, an Authorization to Release Medical Information form shall be filed with the application for Physical Examination of Worker or Independent Medical Examination only.

**STATE OF NEW MEXICO**

**WORKERS' COMPENSATION ADMINISTRATION**

\_\_\_\_\_, WCA No.: \_\_\_\_\_  
 Worker,

[vs.] v. \_\_\_\_\_, and

\_\_\_\_\_,  
 Employer/Insurer.

**SUMMONS FOR APPLICATION TO WORKERS' COMPENSATION JUDGE**

TO: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

GREETINGS:

You are directed to file a written response with the Clerk of the Workers' Compensation Administration **within 10 days of receipt of this Application**, and to mail a copy of the response to the filing party within the same time period.

You are notified that, unless you serve and file a responsive pleading or motion, the Workers' Compensation Administration may enter a judgment against you for the relief demanded in the [~~Complaint~~] Application.

[~~Representative for Filing Party:~~ \_\_\_\_\_

Address of Filing Party \_\_\_\_\_ ]  
**Worker or filing party's representative:** \_\_\_\_\_  
 Address of Worker or filing party's representative: \_\_\_\_\_

WITNESSED AND SEALED BY CLERK OF THE WCA

(SEAL)

By: \_\_\_\_\_

Date: \_\_\_\_\_

(EACH RESPONDING PARTY MUST BE NAMED IN THE SUMMONS)

STATE OF NEW MEXICO

WORKERS' COMPENSATION ADMINISTRATION

\_\_\_\_\_, WCA No.: \_\_\_\_\_  
 Worker,  
 [vs.] v. \_\_\_\_\_, and  
 \_\_\_\_\_,  
 Employer/Insurer.

REQUEST FOR SETTING

1. WCA Judge assigned: \_\_\_\_\_
2. Are any other hearings currently set? \_\_\_ Yes \_\_\_ No  
If yes, please indicate the date of the hearing: \_\_\_\_\_
3. Specific matter to be heard: \_\_\_\_\_
4. Time required for hearing: \_\_\_\_\_
5. Names/addresses/phone & fax of all counsel/parties pro se entitled to notice:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

NOTICE OF HEARING

This matter will be heard before Judge \_\_\_\_\_ on \_\_\_\_\_,  
 [19] 20\_\_\_\_\_, at \_\_\_\_\_ a.m./p.m. with \_\_\_\_\_ hours/minutes allocated for hearing

at: (\_\_\_\_) WCA Office or (\_\_\_\_) \_\_\_\_\_  
 1820 Randolph SE \_\_\_\_\_  
 Albuquerque, NM 87106 \_\_\_\_\_  
 (505) 841-6000 \_\_\_\_\_

By: Calendar Clerk

Notice Mailed \_\_\_\_\_, [19] 20\_\_\_\_\_, by \_\_\_\_\_  
 Counsel are expected to appear:

(\_\_\_\_) in person (\_\_\_\_) by telephone conference call.

STAMPED ENVELOPES FOR ALL PARTIES MUST BE SUBMITTED WITH REQUEST

STATE OF NEW MEXICO

WORKERS' COMPENSATION ADMINISTRATION

\_\_\_\_\_, WCA No.: \_\_\_\_\_
Worker,
v. \_\_\_\_\_, and
\_\_\_\_\_,
Employer/Insurer.

HEALTH CARE PROVIDER DISAGREEMENT FORM

OBJECTION TO NOTICE OF CHANGE

The Notice of Change was completed by: \_\_\_\_\_ Worker \_\_\_\_\_ Employer on the \_\_\_\_\_, [19\_\_] 20\_\_\_. The Notice of Change is objected to by the \_\_\_\_\_ Worker \_\_\_\_\_ Employer. A health care provider hearing is requested on this Objection to Notice of Change because: \_\_\_\_\_

[REQUEST FOR CHANGE OF HEALTH CARE PROVIDER

A disagreement has arisen over the selection of a health care provider. The \_\_\_\_\_ Worker \_\_\_\_\_ Employer is requesting a change to \_\_\_\_\_.

(Name of proposed health care provider)

The current health care provider's provision of medical care is unreasonable because: \_\_\_\_\_]

Signature of filing party

1. Worker's Name: \_\_\_\_\_
SSN: \_\_\_\_\_
Date of Accident: \_\_\_\_\_
Mailing Address: \_\_\_\_\_
City/State/Zip: \_\_\_\_\_
Phone Number:( ) \_\_\_\_\_

2. Worker's Rep: \_\_\_\_\_
Address: \_\_\_\_\_
City/State/Zip: \_\_\_\_\_
Phone Number:( ) \_\_\_\_\_
Fax Number:( ) \_\_\_\_\_

3. Employer: \_\_\_\_\_
Address: \_\_\_\_\_
City/State/Zip: \_\_\_\_\_
Phone Number:( ) \_\_\_\_\_
Fax Number:( ) \_\_\_\_\_

4. Insurer: \_\_\_\_\_
Address: \_\_\_\_\_
City/State/Zip: \_\_\_\_\_
Phone Number:( ) \_\_\_\_\_
Fax Number:( ) \_\_\_\_\_

5. Employer's Rep.: \_\_\_\_\_
Address: \_\_\_\_\_
City/State/Zip: \_\_\_\_\_
Phone Number:( ) \_\_\_\_\_
Fax Number:( ) \_\_\_\_\_

[This form must be filed with the Clerk of the Workers' Compensation Administration]

STATE OF NEW MEXICO

WORKERS' COMPENSATION ADMINISTRATION

\_\_\_\_\_, WCA No.: \_\_\_\_\_
Worker,
v. \_\_\_\_\_, and
\_\_\_\_\_,
Employer/Insurer.

HEALTH CARE PROVIDER DISAGREEMENT FORM

REQUEST FOR CHANGE OF HEALTH CARE PROVIDER



A disagreement has arisen over the selection of a health care provider. The \_\_\_\_\_ Worker \_\_\_\_\_ Employer is requesting a change to \_\_\_\_\_.

(Name of proposed health care provider)

The current health care provider's provision of medical care is unreasonable because:

\_\_\_\_\_  
 \_\_\_\_\_

**Signature of filing party**

1. Worker's Name: _____ SSN: _____ Date of Accident: _____ Mailing Address: _____ City/State/Zip: _____ Phone Number:( ) _____	2. Worker's Rep: _____ Address: _____ City/State/Zip: _____ Phone Number:( ) _____ Fax Number:( ) _____
---	---

3. Employer: _____ Address: _____ City/State/Zip: _____ Phone Number:( ) _____ Fax Number:( ) _____	4. Insurer: _____ Address: _____ City/State/Zip: _____ Phone Number:( ) _____ Fax Number:( ) _____
---	--

5. Employer's Rep.: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_  
 Phone Number:( ) \_\_\_\_\_  
 Fax Number:( ) \_\_\_\_\_

[This form must be filed with the Clerk of the Workers' Compensation Administration]

**STATE OF NEW MEXICO**

**WORKERS' COMPENSATION ADMINISTRATION**

\_\_\_\_\_, WCA No.: \_\_\_\_\_  
 Worker,  
 [vs.] v. \_\_\_\_\_, and  
 \_\_\_\_\_,  
 Employer/Insurer.

**PETITION FOR LUMP SUM PAYMENT**

**PRE-1991 INJURY**

1. The lump sum being requested is by agreement: \_\_\_ Yes \_\_\_ No

**POST-1991 INJURY**

2. \_\_\_ A lump sum after a return to work for six months, while earning at least 80% of the pre-injury wage.  
 \_\_\_ A partial lump sum for payment of debts accumulated during the course of the disability.  
 \_\_\_ Request to consolidate payment into quarterly payments.

3. Type of injury: \_\_\_\_\_ Occupational Injury \_\_\_\_\_ Occupational Disease

4. Worker's Full Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_  
 Telephone No.: ( ) \_\_\_\_\_

5. Worker's date of birth: \_\_\_/\_\_\_/\_\_\_ Age: \_\_\_ Sex: \_\_\_ M \_\_\_ F

6. Worker's Social Security Number: \_\_\_ - \_\_\_ - \_\_\_

7. Full Name of Employer: \_\_\_\_\_  
 Employer's Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_  
 Telephone No.: ( ) \_\_\_\_\_

8. Insurance Carrier: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_  
 Telephone No.: ( ) \_\_\_\_\_

9. Date of Accident: \_\_\_\_\_

- a. City and County of accident: \_\_\_\_\_
- b. Worker's job at time of accident: \_\_\_\_\_
- c. Average weekly wage: \_\_\_\_\_
- d. Weekly compensation rate: \_\_\_\_\_
- e. How did the accident occur: \_\_\_\_\_
- f. ~~Nature of the injury~~ Type of injury/diagnosis: \_\_\_\_\_
- g. Part(s) of the body injured: \_\_\_\_\_
- h. Name and address of treating Doctor: \_\_\_\_\_  
\_\_\_\_\_
- i. First date Worker was unable to perform job duties: \_\_\_\_\_
- j. Date of maximum medical improvement: \_\_\_\_\_
- k. Impairment rating: \_\_\_\_\_ Date assessed: \_\_\_\_\_  
Doctor's Name: \_\_\_\_\_
- l. Has Worker been released to work by a Doctor? \_\_\_ Yes \_\_\_ No  
If yes, please indicate the date Worker was released to work: \_\_\_\_\_
- m. Has Worker returned to work since the accident? \_\_\_ Yes \_\_\_ No  
If yes, please indicate the date Worker returned to work: \_\_\_\_\_
- n. Name and address of current Employer: \_\_\_\_\_  
\_\_\_\_\_
- o. Highest level of school completed by Worker: \_\_\_\_\_

**RETURN TO WORK**

- 10. a. The Worker returned to work on \_\_\_\_\_, [19\_\_\_\_\_] 20\_\_\_\_\_.  
The Worker returned to \_\_\_\_\_ the same job; \_\_\_\_\_ modified job duties; or \_\_\_\_\_ other job duties.
- b. Worker's income \_\_\_\_\_ is; \_\_\_\_\_ is not at least 80% of the pre-injury wage.

**ACCUMULATED DEBTS OF WORKER**

- 11. \_\_\_\_\_ Debts have accumulated during the Workers' disability. Attach documentation indicating the date debt was incurred, name, address and phone number of the creditor, payment amount currently due and total balance.
- 12. A request is made for approval of a lump-sum settlement as follows:
  - a. A lump sum payment of weekly compensation benefits in the amount of: \_\_\_\_\_.
  - b. The lump sum payment of weekly compensation benefits is a lump sum of: \_\_\_\_\_ all remaining weekly payments; or \_\_\_\_\_ a portion of remaining weekly payments. If a partial lump sum is approved, as of the \_\_\_\_ day of \_\_\_\_, [19\_\_\_\_\_] 20\_\_\_\_, the Worker will have \_\_\_\_\_ of weekly compensation benefits remaining. [number of weeks]
  - c. Future medical benefits will remain \_\_\_\_\_ open; \_\_\_\_\_ closed. If closed, the Worker is receiving \$\_\_\_\_\_ in lieu of future medical benefits.
  - d. The payment requested \_\_\_\_\_ does; \_\_\_\_\_ does not include a lump sum for a mental impairment.
  - e. The payment request \_\_\_\_\_ does; \_\_\_\_\_ does not include a lump sum for the payment of vocational rehabilitation benefits.
  - f. The Worker is seeking an award of attorney fees in the amount of \$\_\_\_\_\_, including gross receipts tax.
- 13. Is an interpreter needed for the hearings on this petition? \_\_\_ Yes \_\_\_ No.  
If yes, what language? \_\_\_\_\_ If yes, Employer must furnish.  
If you have questions, call 1-800-255-7965, Adjudication Bureau.

**VERIFICATION OF WORKER**

I, \_\_\_\_\_, verify I have read this petition for lump-sum settlement  
(Worker's Name)

approval and verified I understand the terms and conditions of the lump-sum settlement agreement. I understand approval of this agreement will affect my future entitlement to workers' compensation benefits.

\_\_\_\_\_  
Worker's Signature Date

\_\_\_\_\_  
Attorney for Worker (Print) Signature Date  
( ) ( )

\_\_\_\_\_  
Attorney for Worker's Address Telephone & Fax Number

\_\_\_\_\_  
Attorney/Representative for Employer (Print) Signature Date  
( ) ( )

\_\_\_\_\_  
Attorney/Representative for Employer's Address Telephone & Fax Number

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**End of Adopted Rules 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

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