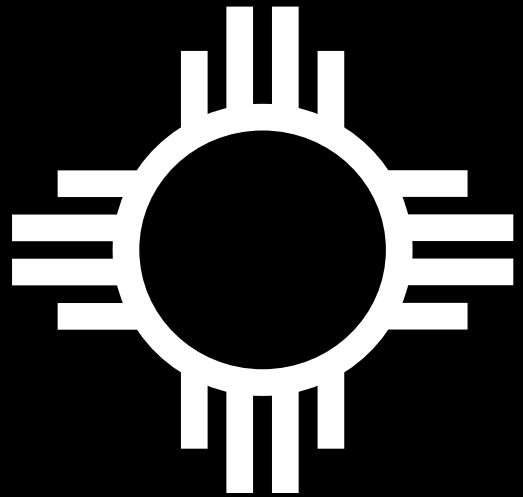


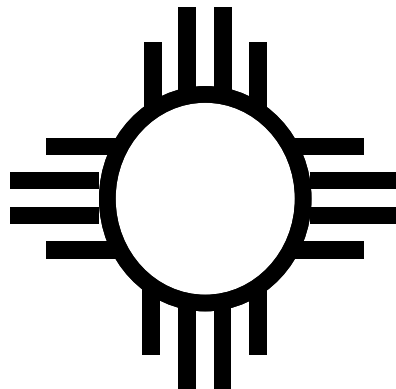
**NEW
MEXICO
REGISTER**



Volume XVI
Issue Number 17
September 15, 2005

New Mexico Register

Volume XVI, Issue Number 17
September 15, 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 17

September 15, 2005

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

Notices of Rulemaking and Proposed Rules

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

PUBLIC ACCOUNTANCY BOARD
NOTICE OF PROPOSED
RULEMAKING

The New Mexico Public Accountancy Board ("Board") will convene a public hearing and special Board meeting on Monday, October 24, 2005. The hearing and meeting will be held at 9:00 a.m. in the Conference Room of the Regulation and Licensing Department Building, 5200 Oakland NE, Albuquerque, New Mexico. Notice of the meeting is given in accordance with the Board's Open Meetings Policy. The hearing will be held for the purpose of affording members of the public the opportunity to offer comments on proposed amendments to existing Board rules.

The Board staff will recommend that the Board adopt amendments to the following rules:

NMAC NUMBER	RULE NAME
16.60.3 NMAC	Licensure and Continuing Professional Education Requirements
16.60.4 NMAC Licensure and Continuing Professional Education	Firm Permit, Peer Review Requirements, and Business Name Prohibitions

Notice of the hearing and Board meeting has been published in the New Mexico Register and in the Albuquerque Journal. Interested parties may access the proposed amendments on the Board's website at www.rld.state.nm.us/b&c/accountancy. Copies may also be obtained by contacting the Board office at (505) 222-9853. Written comments regarding the proposed amendments should be directed to Ms. Marie Aragon, Licensing Manager, Public Accountancy Board, 5200 Oakland NE, Suite D, Albuquerque, New Mexico 87113 or faxed to (505) 222-9855. Comments must be received by 5:00 p.m. on Thursday, October 20, 2005; however, the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting should contact the Board office at (505) 222-9852 by 5:00 p.m. on Monday, August 17, 2005.

NEW MEXICO OFFICE OF THE ATTORNEY GENERAL

OFFICE OF THE NEW MEXICO
ATTORNEY GENERAL
PROPOSED RULES AND NOTICE OF
PUBLIC HEARING

Office of the Attorney General
P.O. Drawer 1508
Santa Fe, NM 87504-1508
(505) 827-6000
www.ago@state.nm.us

The Attorney General is proposing new rules and regulations concerning the extension of credit for small loans in the amount of two thousand five hundred dollars (\$2,500.00) or less. These new rules and regulations are being promulgated by the authority vested in the Attorney General

your request in writing to:

**Office of the Attorney General
Consumer Protection Division
Attention: Extension of Credit Rules
P.O. Drawer 1508
Santa Fe, NM 87504-1508**

You may also request a copy of the proposed rules and regulations by calling the following telephone number:

1 (800) 678-1508

There is a \$.25 copying charge per page for written and telephone requests.

The proposed rules and regulations governing the extension of credit for small loans in the amount of two thousand five hundred dollars (\$2,500.00) or less contain the following sections: (1) Issuing Agency, (2) Scope, (3) Statutory Authority, (4) Duration, (5) Effective Date, (6) Objective, (7) Definitions, (8) Unfair or Deceptive Trade Practices, (9) Unconscionable Trade Practices, (10) Knowledge And Compliance Of All Statutes, Rules, Regulations, and Codes, (11) Severability, (12) Enforcement, (13) Substantial Deference In Interpretation, and (14) Retroactive Effect.

Public Hearings will be held on the above described proposed rules and regulations governing the extension of credit for small loans at the following locations, dates and times:

[Please see page 952]

pursuant to NMSA 1978, Section 57-12-13.

The proposed rules are available at the Office of the Attorney General located in the Bataan Memorial Building in Santa Fe located at 407 Galisteo Street, 2nd Floor, Room 236, or at the Attorney General's Office located in Albuquerque at 111 Lomas Blvd. NW, Suite 300. The proposed rules and regulations are also posted on the Office of the Attorney General's website and may be accessed, free of charge, in the following way:

1. Start from the Attorney General's home page at www.ago@state.nm.us
2. Click on "Small Loan Regulations" in the Quick Links Box in the center of the page.

To request that a copy of the rules and regulations be mailed to you, please submit

Location	Date	Time
Barelas Community Senior Center 714 7 th Street SW Albuquerque, NM 87102	September 29, 2005	3:00 PM - 7:00 PM
Thomas Branigan Memorial Library 200 East Picacho Las Cruces, NM 88001	October 5, 2005	5:00 PM - 8:00 PM
Clovis Carver Librar y North Annex 701 Main Street Clovis, NM 88101	October 12, 2005	5:30 PM - 8:30 PM
Rio Arriba County Complex Bldg. 1122 Industrial Road Española, NM 87532	October 18, 2005	5:00 PM - 8:00 PM
Gallup City Hall City Council Chambers 110 West Aztec Gallup, NM 87301	October 20, 2005	5:00 PM - 8:00 PM

Any person who is or may be affected by these proposed rules and regulations may appear, testify and/or submit written comments.

Written comments concerning the proposed rules and regulations may be submitted by mail to:

Office Of the Attorney General
Consumer Protection Division
Attention: Extension of Credit Rules
P.O. Drawer 1508
Santa Fe, NM 87504-1508

Written comments may also be submitted in person at:

Bataan Memorial Building
407 Galisteo St.
2nd Floor
Room 236
Santa Fe, New Mexico

The Office of the New Mexico Attorney General will accept written comments for consideration as provided above no later than November 21, 2005.

If you are an individual with a disability, who is in need of a reasonable accommodation to attend or participate at the hearing, please contact Theresa Martinez at (505) 222-9000. The Office of the Attorney General requests ten (10) business days advanced notice to provide any reasonable accommodations.

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On Wednesday, September 21, 2005, beginning at 9:00 a.m. at the New Mexico Farm & Ranch Museum, 4100 Dripping Springs Road, Las Cruces, NM 88011, the State Game Commission will meet in Public Session to consider action as appropriate on the following: Consent Agenda for Revocation of Hunting and Fishing License Privileges, and Committee Reports; Management Plan for the San Juan River; Discussion of Bear Harvest Management; Draft Comprehensive Wildlife Conservation Strategy; General Public Comments; Closed Executive Session to discuss litigation, personnel, and acquisi-

tion or disposal of real property or water rights, and pursuant to Section 10-15-1(H)(1), NMSA, 1978, to discuss matters related to the determination of sending "Notice of Commission Contemplated Action" for outfitter and/or guide registration to any unidentified individual(s) that may have violated their professional code of conduct as per 19.30.8, and 19.31.2, NMAC; and Approval of Shooting Preserve Application for Red Canyon Ranch Shooting Preserve.

The following rules are open for amendment or adoption by the Commission:

- * Amend 19.31.8, NMAC, specific portions of the Big Game and Turkey Rule, and 19.30.4, NMAC, Boundary Descriptions for Wildlife Management Units Rule; elk management in GMU 10;
- * Amend 19.30.5, NMAC, Proposed Amendments to the Private Land

Elk License Allocation Rule; establishing revised allocation procedures;

- * Amend 19.31.3.11, NMAC, Define Criteria for Refunds, Donations and Transfers of Hunting Licenses under Certain Conditions; and

- * Adopt new 19.34.7.1 through 19.34.7.11, NMAC, Private Land Entry and Sportsmen Enjoyment Program; establishment of procedures and a conservation and access fee.

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

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Shirley Baker at (505) 476-8030. Please contact Ms. Baker at least 3 working days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please contact Shirley Baker if a summary or other type of accessible form is needed.

NEW MEXICO 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 October 17, 2005 to obtain input on the following rules:

Rule Number	Rule Name	Proposed Action
1.4.4 NMAC	GOVERNMENTAL ADVERTISING RATES	Amend Existing Rule

The Department proposes to repeal and replace 1.4.4 NMAC, "Governmental Advertising Rates". 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 October 17, 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 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 on **October 13 and 14, 2005**, beginning at 9:00 a.m. each day, in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, concerning the adoption of new rules and the amendment of existing rules relating to the enforcement of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38. If addi-

tional time is needed, the hearing may continue at a later date announced by the Commission.

The hearing concerns the following: adoption of a new rule setting out procedures for compliance proceedings (to be codified as 19.15.14.1227 NMAC); amendment of 19.15.1.7 NMAC to define "knowingly and willfully;" adoption of a new rule clarifying the enforceability of permits and administrative orders (to be codified as 19.15.1.38 NMAC); amendment of 19.15.13.1115 NMAC to clarify monthly reporting requirements and their enforcement; adoption of a new rule creating a "good standing" requirement for well operators (to be codified as 19.15.1.37 NMAC); adoption of a new rule regarding operator registration, change of operator and change of name, and including a "good standing" requirement (to be codified as 19.15.3.100 NMAC); amendment of 19.15.3.102 NMAC and 19.15.3.1101 NMAC to clarify the issuance of permits to drill, deepen or plug back, and

include a "good standing" requirement; amendment of 19.15.9.701 NMAC to clarify injection permit requirements, and include a "good standing" requirement; amendment of 19.15.13.1104 NMAC to clarify the assignment of allowables and authorization to transport, and include a "good standing" requirement; amendment of 19.15.3.101 NMAC to clarify and expand financial assurance requirements and increase the amounts of one-well financial assurances; amending 19.15.4.203 NMAC, 19.15.1.7 NMAC, 19.15.4.201 NMAC and 19.15.13.1103 NMAC to distinguish between "temporary abandonment" and "approved temporary abandonment" and clarify the requirements for approved temporary abandonment.

Copies of the text of the proposed new rules and amendments are available from commission clerk Florene Davidson at (505) 476-3458 or from the Division's web site at <http://www.emnrd.state.nm.us/ocd/what-new.htm>. 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.

Written comments on the proposed amendments must be received no later than 5:00 p.m. on Wednesday, October 5, 2005. Any person may present non-technical testimony or make an un-sworn statement at the hearing. Any person who intends to present technical testimony or cross-examine witnesses at the hearing shall, no later than 5:00 p.m. on Wednesday, October 5, file six sets of a pre-hearing statement with Ms. Davidson. Any person recommending modifications to a proposed rule change shall, no later than Wednesday, September 28, file a notice of recommended modifications with Ms. Davidson including the text of the recommended modifications, an explanation of the modifications' impact, and the reasons for adopting the modifications. Written comments, pre-hearing statements and notices of recommended modifications 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 (505) 476-3462.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 31st day of August, 2005.

STATE OF NEW MEXICO OIL CONSERVATION DIVISION

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

**End of Notices and
Proposed Rules Section**

Adopted Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT FAMILY SERVICES DIVISION

Explanatory Paragraph: This is an amendment to 8.15.2 NMAC, Sections 7, 9 and 15, effective on September 15, 2005. The changes to Section 7, Subsection P, Paragraph (7) include allowing providers a 45 calendar day grace period to become registered or licensed, and deleting the 90 day requirement. In Section 9, Subsection B, deleting the requirements that as of July 1, 2005, income of families applying for child care assistance is at or below 175% of the federal poverty level. In Subsection D of Section 9, income exceeding 175% of the federal poverty level will be changed to 200%. In Subsection E of Section 9, requirements that were effective July 1, 2005 will be deleted, including language that relates to 175% of the federal poverty level. In Section 15, Subsection A, wording will be changed so that, beginning July 1, 2006, when licensed providers receiving subsidies renew their licensure they must have a 2-star level.

8.15.2.7 DEFINITIONS:

P. "Provider types" means the characteristics of child care providers, which determine their approved reimbursement rate, capacity, staffing levels etc. as follows:

(1) "In-home" care means care provided in the child's own home.

(2) "Registered home" means child care provided in the home of a provider who is registered with the department's child and adult care food program to care for up to four (4) children. All registered homes receiving child care assistance subsidies must be enrolled and participate in the child and adult care food program (CACFP), unless they are ineligible.

(3) "Licensed family child care home" means child care provided in the home of a provider who is licensed by the department to care for up to six (6) children.

(4) "Licensed group child care home" means child care provided in the home of a provider who is licensed by the department to care for up to twelve (12) children.

(5) "Licensed center" means child care provided in a non-residential setting, which is licensed by the department to provide such care.

(6) "Out of school time care" means child care provided to a school age child up to age thirteen immediately before and/or immediately after a regularly sched-

uled school day and/or when regular school is not in session.

(7) "Provisional provider" means a child care provider selected by the parent who is not already registered or licensed. The provider is allowed a [90] 45 calendar day grace period in which to become registered or licensed.

[8.15.2.7 NMAC - Rp, 8.15.2.7 NMAC, 02/14/05; A, 09/15/05]

8.15.2.9 PRIORITIES FOR

ASSISTANCE: Any funds received by the department under the child care development fund and other sources are expended for child care assistance pursuant to the following priorities:

B. Priority one B: Child care assistance for income eligible families whose income is at or below 100% of the federal poverty level. If the number of eligible clients in this priority exceeds budget availability, the department may maintain a waiting list. The department prioritizes child care services within priority one B for children with special needs and for teen parents. If budget availability permits, the department reserves the right to transfer priority one B families whose income exceeds 100% of the federal poverty level but is at or below 200% of the federal poverty level [~~effective July 1, 2005, is at or below 175% of the federal poverty level~~] to the priority four category.

D. Priority three: No new families will be enrolled in priority three. This category will be eliminated through attrition as priority three families become ineligible for any reason including but not limited to: income exceeding [475%] 200% of the federal poverty level; failure to recertify in a timely manner; and/or loss of employment which results in loss of benefits.

E. Priority four: Child care assistance for families whose income is above 100% of the federal poverty level but at or below 200% of the federal poverty level, adjusted annually in accordance with federal guidelines. [~~Effective July 1, 2005, priority four is child care assistance for families whose income is above 100% of the federal poverty level but at or below 175% of the federal poverty level, adjusted annually in accordance with federal guidelines.~~]

These families are certified for a six month block of time subject to the availability of funds and renewable subject to the availability of funds. The department reserves the right to expand the eligibility requirement up to 200% of the federal poverty level based on budget availability. [~~Effective July 1, 2005, the department reserves the right to expand the eligibility requirement up to 175% of the federal~~

~~poverty level based on budget availability.~~] Families in any priority may be transferred to priority four if budget availability permits. If the number of eligible clients in this priority exceeds budget availability, the department may maintain a waiting list. The department prioritizes child care services within priority four for children with special needs and for teen parents.

[8.15.2.9 NMAC - Rp, 8.15.2.9 NMAC, 02/14/05; A, 09/15/05]

8.15.2.15 PROVIDER REQUIREMENTS:

Child care providers must abide by all department regulations and provide child care paid for by the department to clients only while such clients are working, attending school or participating in a training program or participating in a TANF or food stamp E&T program approved activity/component. Child care provided for recreational or other purposes, or at times other than those outlined in the child care agreement, are paid for by the client. Knowingly accepting payment from the department for child care provided for recreational and other purposes is considered fraud and sanctions may be imposed.

A. All child care providers who receive child care assistance reimbursements are required to be licensed or registered by the department and meet and maintain compliance with the appropriate licensing and registration regulations in order to receive payment for child care services. All registered homes receiving child care assistance subsidies must be enrolled and participate in a CACFP, unless they are ineligible. All registered homes receiving child care assistance subsidies who register after July 1, 2006 must complete, within six months of registration, an 18-hour course or an equivalent approved by the department. The 18-hour course will count toward the 6-hour annual training requirement during the year in which the course was completed and the following year, exclusive of training required by CACFP. Beginning July 1, 2006, all licensed providers receiving child care assistance subsidies must have a 2-Star level [~~by July 1, 2006~~] at the time of their renewal. The department honors properly issued military child care licenses to providers located on military bases and tribal child care licenses properly issued to providers located on tribal lands. First time registered home providers have up to a 45 consecutive calendar day grace period in which to comply with the registration requirement. A 45 calendar day grace period is issued one time only. A child protective services screen will be conducted on all new registered providers and at their annual

registration renewal. Evidence of a substantiated referral for child abuse and/or neglect for a provider, a second caregiver, or any persons age 18 or over residing in the provider's home and/or working in a licensed child care center/home will result in the ineligibility of that provider to receive payments under the child care assistance program. The only exception is when a custodial parent has a substantiated referral but resides with the child care provider who does not have a substantiated referral.

[8.15.2.15 NMAC - Rp, 8.15.2.15 NMAC, 02/14/05; A, 09/15/05]

**NEW MEXICO CHILDREN,
YOUTH AND FAMILIES
DEPARTMENT
FAMILY SERVICES DIVISION**

Explanatory Paragraph: This is an amendment to 8.16.2 NMAC, Sections 11, 21, 31, and 41, effective on September 15, 2005. The changes that will occur in Section 11, Subsection A, Paragraph (1), Subparagraph (e), include removing the wording that refers to maintaining licensure at AIM HIGH levels 2, 3, and 4 at all times, and adding wording specifying that national accreditation status must be maintained and approved. In Section 21, Subsection D, Paragraph (2), Subparagraph (m), the requirement to provide copies of all forms in Subsection F is deleted. In Sections 31 and 41, Subsection C, Paragraph (2), Subparagraph (m), the requirement to provide copies of all forms in Section E is deleted.

**8.16.2.11 LICENSING:
A. TYPES OF LICENSING:**

(1) Annual license: An annual license is issued for a one-year period to a child care facility that has met all requirements of these regulations.

(a) 1-star level requires meeting minimum licensing requirements.

(b) 2-star level is voluntary and requires meeting and maintaining minimum licensing requirements and AIM HIGH level 2 criteria at all times.

(c) 3-star level is voluntary and requires meeting and maintaining minimum licensing requirements and AIM HIGH levels 2 and 3 criteria at all times.

(d) 4-star level is voluntary and requires meeting and maintaining minimum licensing requirements and AIM HIGH levels 2, 3, and 4 criteria at all times.

(e) 5-star level is voluntary and requires meeting and maintaining minimum licensing requirements ~~[and AIM HIGH levels 2, 3, and 4 criteria at all times, and having]~~ and maintaining approved national accreditation status.

[8.16.2.11 NMAC - Rp, 8.16.2.11 NMAC, 02/14/05; A, 09/15/05]

8.16.2.21 ADMINISTRATIVE REQUIREMENTS:

D. PARENT HANDBOOK: All facilities using these regulations must have a parent handbook which includes the following:

(2) POLICIES AND PROCEDURES:

- (a) enrollment procedures;
- (b) disenrollment procedures;
- (c) fee payment procedures, including penalties for tardiness;
- (d) notification of absence;
- (e) fee credits, if any (e.g. for vacations, absences, etc.);
- (f) field trip policies;
- (g) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);

(h) emergency procedures and safety policies;

(i) snow days and school closure;

(j) confidentiality policy;

(k) child abuse/neglect reporting procedure;

(l) guidance policy; and

(m) copies of all forms identified in ~~[sections E and F]~~ Subsection E below.

8.16.2.21 ADMINISTRATIVE REQUIREMENTS:

C. PARENT HANDBOOK: All facilities using these regulations must have a parent handbook which includes the following:

(2) POLICIES AND PROCEDURES:

- (a) enrollment procedures;
- (b) disenrollment procedures;
- (c) fee payment procedures, including penalties for tardiness;
- (d) notification of absence;
- (e) fee credits, if any (e.g. for vacations, absences, etc.);
- (f) field trip policies;
- (g) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);

(h) emergency procedures and safety policies;

(i) snow days and school closure;

(j) confidentiality policy;

(k) child abuse/neglect reporting procedure;

(l) guidance policy; and

(m) copies of all forms identified in ~~[sections D and E]~~ Subsection D below.

02/14/05; A, 09/15/05]

8.16.2.41 ADMINISTRATIVE REQUIREMENTS:

C. PARENT HANDBOOK: All facilities using these regulations must have a parent handbook which includes the following.

(2) POLICIES AND PROCEDURES:

- (a) enrollment procedures;
- (b) disenrollment procedures;
- (c) fee payment procedures, including penalties for tardiness;
- (d) notification of absence;
- (e) fee credits, if any (e.g. for vacations, absences, etc.);
- (f) field trip policies;
- (g) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);

(h) emergency procedures and safety policies;

(i) snow days and school closure;

(j) confidentiality policy;

(k) child abuse/neglect reporting procedure;

(l) guidance policy; and

(m) copies of all forms identified in ~~[sections D and E]~~ Subsection D below.

8.16.2.41 ADMINISTRATIVE REQUIREMENTS:

[8.16.2.41 NMAC - Rp, 8.16.2.41 NMAC, 02/14/05; A, 09/15/05]

NEW MEXICO CULTURAL PROPERTIES REVIEW COMMITTEE

The Cultural Properties Review Committee repeals its rule 4 NMAC 10.8 entitled, Issuance of Permits to Conduct Archaeological Investigations (filed 11/03/1997), effective 10/01/05.

NEW MEXICO CULTURAL PROPERTIES REVIEW COMMITTEE

TITLE 4 C U L T U R A L RESOURCES

CHAPTER 10 CULTURAL PROPERTIES AND HISTORIC PRESERVATION

PART 8 PERMITS TO CONDUCT ARCHAEOLOGICAL INVESTIGATIONS ON STATE LAND

4.10.8.1 ISSUING AGENCY:

Cultural Properties Review Committee. Contact State Historic Preservation Division, Department of Cultural Affairs.

[4.10.8.1 NMAC - Rp, 4 NMAC 10.8.1, 10/01/05]

4.10.8.2 SCOPE: This rule applies to all public and private entities, including but not limited to, individuals, corporations, partnerships, trusts, associations, educational institutions, foundations, museums and any agency of the federal government conducting or proposing to conduct archaeological investigations on any lands owned, controlled or operated by the state of New Mexico.

[4.10.8.2 NMAC - Rp, 4 NMAC 10.8.2, 10/01/05]

4.10.8.3 STATUTORY AUTHORITY: Section 18-6-5 (NMSA 1978) of the Cultural Properties Act.

[4.10.8.3 NMAC - Rp, 4 NMAC 10.8.3, 10/01/05]

4.10.8.4 DURATION: Permanent.

[4.10.8.4 NMAC - Rp, 4 NMAC 10.8.4, 10/01/05]

4.10.8.5 EFFECTIVE DATE: October 1, 2005 unless a later date is cited at the end of a section.

[4.10.8.5 NMAC - Rp, 4 NMAC 10.8.5, 10/01/05]

4.10.8.6 OBJECTIVE: This rule describes the procedures used to review and issue a permit for archaeological investigations on lands owned, controlled or operated by a department, agency, institution or political subdivision of the state. Additionally, this rule establishes professional and quality standards for a permittee's performance and sets forth causes for non-renewal of permits.

[4.10.8.6 NMAC - Rp, 4 NMAC 10.8.6, 10/01/05]

4.10.8.7 DEFINITIONS:

A. "Archaeological investigation" means the study of archaeological sites, isolates and other cultural properties and areas of historic and scientific interest including without limitation survey and inventory, examination, collection, limited tests, test excavation, excavation and monitoring.

B. "Archaeological records management section" or **"ARMS"** means the entity within the historic preservation division that maintains, in cooperation with the museum of Indian arts and culture-laboratory of anthropology (MIAC), the statewide archaeological and cultural properties databases and associated records and documents pursuant to Section 18-6-7A of the Cultural Properties Act.

C. "Archaeological site" or **"site"** means a location where there exists material evidence of the past life and culture of human beings in the state. A sig-

nificant archaeological site typically is 50 or more years old. Examples of archaeological sites include without limitation campsites, pueblos, homesteads, artifact scatters, resource procurement or processing areas, agricultural fields, locales with one or more features in association with other cultural materials, and locales that have the potential for subsurface features or cultural deposits.

D. "Area of potential effect" or **"APE"** means the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of a cultural property. The APE is influenced by the scale and nature of an undertaking and is different for different kinds of effects caused by the undertaking. For archaeological sites the APE typically includes all areas involving ground disturbance but may also include areas adjacent to the disturbance that may be indirectly affected as a consequence of the undertaking. For aboveground historic buildings, structures and other cultural properties, the APE often extends beyond the limits of ground disturbance and includes visual, vibratory and noise impacts to a building, structure, site, district, or cultural landscape and its setting and viewshed. Variation in topography, vegetation, and contemporary land use influences the visual impact on cultural properties.

E. "Areas of historic and scientific interest" means areas lacking surface evidence of cultural properties but where there is a high probability of finding subsurface material remains and cultural deposits or areas suitable for geomorphological or paleoenvironmental study.

F. "Collection" means the removal of material remains from state land, whether or not the remains are located within an archaeological site or isolate as defined herein.

G. "Commissioner of public lands" or **"commissioner"** means the executive officer of the state land office, who shall have jurisdiction over all state trust lands and shall have the management, care, custody, control and disposition thereof in accordance with the provisions of state statutes and the law or laws under which such lands have been or may be acquired.

H. "Committee" or **"CPRC"** means the cultural properties review committee, created pursuant to Section 18-6-9 of the Cultural Properties Act.

I. "Cultural property" or **"cultural resource"** means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

J. "Easement" means a right or privilege granted by the commissioner of public lands for state trust lands or

by the state agency on lands under their jurisdiction to use a defined area for a prescribed purpose and time.

K. "Excavation" means displacing, disturbing or moving earth, soil, dirt, other deposits or material remains from their current contexts or significant orientation in, or on, the ground within the boundaries of an archaeological site, isolate or area of historic and scientific interest using hand tools or mechanical earth-moving equipment.

L. "Historic preservation division" or **"HPD"** means the division within the department of cultural affairs created pursuant to Section 18-6-8A of the Cultural Properties Act.

M. "Historic structures and buildings" means buildings or structures that are 50 or more years old or properties less than 50 years old that either meet the requirements of national register criteria consideration G (properties that have achieved significance within the past 50 years) or properties that are likely to meet the integrity and significance criteria in 30 CFR 60.4 within 5 years of the date of recording.

(1) A historic structure is an engineered construction created principally for the conveyance of water, natural resources, railroad stock or automobiles and trucks; or an engineered construction created principally for the extraction, refinement and distribution of natural resources; or an engineered construction created principally to support a function other than human shelter. Structures include but are not limited to vehicular bridges, railroad bridges, engineered roads and highway, tunnels, dams, canals, turbines, pipelines, refineries, stamp mills, smelters, dams, power plants, silos, grain elevators and locomotives.

(2) A historic building is a construction created principally to shelter any form of sustained or temporary human activity; or a functional construction created principally to provide shelter for goods, animals, machinery or instrumentation. Buildings include but are not limited to houses, barns, stables, sheds, garages, warehouses, courthouses, city halls, social halls, commercial buildings, libraries, factories, mills, train depots, motels, theaters, schools, stores and churches.

N. "Human burial" or **"unmarked human burial"** means a human body or human skeletal remains and includes any funerary object, material object or artifact buried, entombed or sepulchered with that human body or skeletal remains.

O. "Intensive survey" means a visual inspection conducted on foot that examines, identifies, records, evaluates and interprets all surface-visible cultural

properties 50 or more years old located in an APE or project area or located in an APE or project area.

P. "Isolate" means a single object or artifact or a few artifacts greater than 50 or more years old that lack clear association. Examples of isolates include a single flake, projectile point, potsherd, sherds from a single broken pottery vessel, pieces of glass from a single bottle or a single feature that lacks integrity.

Q. "Limited tests" means the systematic placement of probes, cores, shovel tests or similar tests using hand tools. Limited tests are conducted during survey to augment survey-level information on an archaeological site or isolate without substantially damaging or diminishing the integrity of the archaeological site. The total surface disturbance resulting from the limited tests shall not exceed five one-hundredths percent (.05%) of the area of the site surface.

R. "Material remains" means any tangible evidence of past human life or activities. Such evidence includes without limitation:

(1) naturally occurring objects or raw materials extracted for use in the production of human-made objects or for other uses by humans that can be found within an archaeological site, or another context from which intended or actual human use can be reasonably inferred;

(2) items manufactured or modified by humans, including whole or fragmentary tools, implements, containers, and other objects such as pottery, ceramics, basketry, cordage, weavings, textiles, glassware, flaked stone, ground stone, pecked stone, worked bone, metal, wood, hide, feathers and pigments;

(3) byproducts, waste products and debris resulting from the manufacture or use of human-made items or from the human use of natural materials;

(4) organic material deposited through human actions, organic material remaining from the decay of perishable objects manufactured or modified by humans, and organic material deposited through natural processes when found within an archaeological site including without limitation soil or sediment samples, botanical and animal remains and coprolites; or

(5) human remains including without limitation bone, mummified flesh, teeth, the remains of cremations, any associated artifacts and objects, and the soil, sediments, or other matrix in which the human skeletal or mummified remains and associated artifacts and objects were deposited or are now associated.

S. "Mechanical earth-moving equipment" means any motorized machine or device that is capable of displacing, disturbing or moving earth, soil,

dirt or other deposits or materials from their current contexts or significant orientation in, or on, the ground, including without limitation trenchers, backhoes, graders, scrapers, bulldozers and front-end loaders.

T. "Monitoring" means the presence of and visual inspection by a supervisory archaeologist on the ground immediately prior to and during ground-disturbing actions to ensure site protection, avoidance of site deposits or recovery of information from newly discovered cultural properties.

U. "Museum of Indian arts and culture-laboratory of anthropology" or "MIAC" means the museum division within the department of cultural affairs, museum of New Mexico, that serves as the repository for archaeological materials and associated records and documents taken or collected from state land.

V. "New Mexico cultural resource information system" or "NMCRIS" means the statewide database maintained by ARMS.

W. "Permit" means the written authorization required for all public and private entities to conduct archaeological investigations of a particular kind, within a defined geographic location and for a specified period of time, all of which are specified in the written authorization.

X. "Project area" means the geographic area or areas of study for an archaeological investigation conducted for research purposes.

Y. "Qualified institution" means public and private entities including without limitation individuals, corporations, partnerships, trusts, associations, educational institutions, foundations, museums and any agency of the federal government with staff that include individuals listed in the SHPO directory and who demonstrate capability to accomplish the type and scope of archaeological investigation proposed in the permit application.

Z. "Registered cultural property" means a cultural property that the CPRC placed in the state register individually or as a contributing property within a district on either a permanent or temporary basis.

AA. "Right of way" means a right or privilege granted by the commissioner of public lands for a prescribed purpose and time to pass over, upon, through, or across a defined area of state trust lands granted by the commissioner of public lands or by the head of another state agency for lands under its jurisdiction for a prescribed purpose and time.

BB. "Sample survey" means a pedestrian survey that identifies all surface-visible cultural properties within defined sample units of a larger whole.

CC. "Secretary" means the

individual appointed as secretary pursuant to Section 9-4A-5 of the Department of Cultural Affairs Act.

DD. "State agency" means a department, agency, institution or political subdivision of the state.

EE. "State archaeologist" means the archaeologist designated pursuant to Section 18-6-15 of the Cultural Properties Act.

FF. "State historian" means the historian designated pursuant to Section 18-6-14 of the Cultural Properties Act.

GG. "State historic preservation officer" or "SHPO" means the individual appointed pursuant to Section 18-6-8 of the Cultural Properties Act. The SHPO administers the Cultural Properties Act.

HH. "State land" means property owned, controlled, or operated by a department, agency, institution or political subdivision of the state. Examples of state land, include but are not limited to: state trust lands managed by the commissioner of public lands; New Mexico department of transportation rights of way and easements; state parks; state monuments; state game and fish lands; county and municipal property including open space areas, leased lands, and rights of way; and lands owned or managed by public schools and state colleges and universities.

II. "State register" or "official register" means the New Mexico register of cultural properties maintained by the CPRC for the purpose of recording cultural properties deemed worthy of preservation.

JJ. "State trust land" means lands, their natural products and all rights, privileges, or assets, which are derived from them, and which are under the care, custody, and control of the commissioner of public lands. State lands also include state trust lands.

KK. "Survey" means a visual inspection of land to examine, identify, record, evaluate and interpret cultural properties and may include limited tests but shall not include excavation or test excavation.

LL. "Test excavation" means the systematic placement of probes, cores, shovel tests or test pits using hand tools, and test trenches excavated by hand or with mechanical earth-moving equipment to expose geomorphological soils and buried cultural deposits to determine the research potential and nature and extent of cultural deposits at an archaeological site without substantially damaging or diminishing the integrity of the archaeological site. The total surface disturbance resulting from test excavation shall not exceed 5 percent of the surface area of the site area or 5 percent of the portion of the site that may be

affected by an undertaking or project, whichever is less.

MM. "Thematic survey" means a pedestrian survey that identifies selected types of cultural properties and may be performed with written concurrence of the state agency.

NN. "Written and photographic records" means original or legible duplicate site data, such as site forms, artifact forms, notes, drawings, tables, maps, plans, charts and other written materials, and prints, slides and other photographic records.

[4.10.8.7 NMAC - Rp, 4 NMAC 10.8.7, 10/01/05]

4.10.8.8 ARCHAEOLOGICAL INVESTIGATIONS UNDER A GENERAL PERMIT:

The CPRC with the concurrence of the state archaeologist and the SHPO issues a general permit to qualified institutions to conduct selected types of archaeological investigations on state land. The applicant indicates on the application form the types of archaeological investigations requested at the time of the application. Archaeological investigations conducted under a general permit on state trust land are limited to investigations conducted under contract to an individual, organization or company undertaking exploration, construction, development or other ground-disturbing activities authorized by rights of way, easements, leases or other written permission to enter state trust land issued by the commissioner of public lands.

A. Survey and inventory. Surveys may be conducted under a general permit when applicants propose to identify, record, evaluate and interpret cultural properties and relocate, update records and evaluate previously identified cultural properties in accordance with the standards for intensive survey in 4.10.15 NMAC.

B. Test excavation. Test excavation may be conducted under a general permit when the applicant proposes to implement the test excavations in accordance with an approved test excavation plan prepared in conformance with 4.10.16 NMAC.

C. Monitoring. Monitoring may be conducted under a general permit when applicants propose to:

(1) supervise implementation of site avoidance or protection measures pursuant to 4.10.17 NMAC; or

(2) oversee land-disturbing projects when a monitoring plan is prepared in conformance with 4.10.17 NMAC.

D. Unmarked human burial excavation. Applicants may excavate unmarked human burials on state or private land only in conformance with a permit issued under 4.10.11 NMAC.

[4.10.8.8 NMAC - Rp, 4 NMAC 10.8.8 & 4 NMAC 10.8.10, 10/01/05]

4.10.8.9 ARCHAEOLOGICAL INVESTIGATIONS UNDER A PROJECT-SPECIFIC PERMIT:

The CPRC, with the concurrence of the state archaeologist and the SHPO, the commissioner of public lands for archaeological investigations on state trust lands and the representative of the state agency with jurisdiction for other state lands, issues project-specific permits for different types of archaeological investigations.

A. Survey and inventory. The CPRC issues project-specific permits for applicants who propose to:

(1) conduct sample survey, thematic survey or other research surveys;

(2) substitute alternate field methods for the standards in 4.10.15 NMAC; or

(3) perform surveys of state trust land other than surveys performed pursuant to a general permit.

B. Test excavation. The CPRC issues project-specific permits for test excavation in accordance with an approved research design prepared pursuant to 4.10.16 NMAC when applicants:

(1) propose to substitute alternate test excavation methods for the standards in 4.10.16 NMAC; or

(2) do not have a general permit that includes authorization for test excavation.

C. Excavation. The CPRC issues project-specific permits for applicants who propose to conduct scientific investigation of an archaeological site or other areas of historic and scientific interest utilizing ground-disturbing techniques in accordance with an approved research design prepared pursuant to 4.10.16 NMAC. Excavation involves disturbance of the ground within an archaeological site in excess of limited tests and test excavation as defined herein. Excavation may be performed as part of a data recovery program designed to mitigate adverse effects of projects.

D. Monitoring. The CPRC issues project-specific permits for monitoring to applicants who:

(1) do not have a general permit that includes authorization for monitoring; or

(2) propose to substitute alternate methods for the standards in 4.10.17 NMAC.

E. Unmarked human burial excavation. The CPRC issues project-specific permits for applicants who propose to excavate unmarked human burials on state or private land. Permits for these investigations are issued under rule 4.10.11 NMAC.

F. Mechanical excavation of archaeological sites. The CPRC issues project-specific permits for applicants who propose to excavate an archaeological site using mechanical earth-moving equipment on private land. Mechanical excavation permits are issued under rule 4.10.14 NMAC.

[4.10.8.9 NMAC - Rp, 4 NMAC 10.8.8 & 4 NMAC 10.8.9, 10/01/05]

4.10.8.10 QUALIFIED PERSONNEL:

Applicants for any permit issued by the CPRC shall employ qualified supervisory personnel who have the academic background and professional experience to apply the theories, methods and practices of the appropriate discipline to enable professional judgments to be made about the identification, evaluation, documentation, registration and treatment of cultural properties in New Mexico.

A. Archaeology.

(1) Archaeologists serving as principal investigators or project directors shall meet the following minimum qualifications:

(a) a graduate degree in archaeology or anthropology with a specialization in archaeology, or a graduate degree in a closely related field; and

(b) a minimum of 30 months of full-time professional experience in applying the theories, methods and practices of archaeology that enable professional judgments to be made about the identification, evaluation, documentation, registration, or treatment of archaeological sites as demonstrated by timely completion of acceptable technical reports, research reports, theses, dissertations, publications or professional meeting papers; the 30-month minimum experience shall be demonstrated by a showing of 12 months of experience in the study of cultural resources of New Mexico or experience relevant to understanding the cultural resources of New Mexico at the supervisory archaeologist or crew chief level and 18 months of experience under the supervision of a professional archaeologist in the performance of field and analytical activities; supervised field or analytical experience as a graduate student may be counted as part of the 30 months of professional experience; and

(c) for individuals without a graduate degree in anthropology or archaeology or a closely related field, who submit their qualifications as a principal investigator or project director prior to the year 2010, the CPRC shall consider equivalent training and experience in lieu of the academic requirement.

(2) Archaeologists serving as supervisory archaeologists or crew chiefs shall work under the direction of a principal

investigator; supervisory archaeologists or crew chiefs shall be in direct charge of archaeological field crews and shall have:

(a) a bachelors degree in anthropology or archaeology or a degree in a closely related field as determined by the CPRC;

(b) at least one archaeological field school or equivalent experience acceptable to the CPRC; and

(c) 12 months of professional experience in archaeological field research, laboratory research, administration or management of cultural resources in New Mexico or experience relevant to understanding the cultural resources of New Mexico; and

(d) for individuals without a bachelors degree in anthropology or archaeology or a closely related field, who apply as a supervisory archaeologist or crew chief prior to the year 2010, the CPRC shall consider equivalent training and experience in lieu of the academic requirement.

B. Architectural History.

The minimum professional qualifications in architectural history are:

(1) a graduate degree in architectural history, historic preservation, public history or a closely related field including a minimum of 12 hours of course work in architectural history, historic preservation, cultural landscapes, southwestern history or southwestern architecture and a minimum of 2 years of full-time professional experience applying the theories, methods and practices of architectural history that enable professional judgments to be made about the identification, evaluation, documentation, registration, or treatment of historic resources in New Mexico; the 2 years of minimum experience shall include 12 months of experience in documenting historic resources of New Mexico; or

(2) a bachelors degree in architectural history, historic preservation or a closely related field including a minimum of 12 hours of course work in architectural history, historic preservation, cultural landscapes, southwestern history or southwestern architecture and a minimum of 4 years of full-time professional experience applying the theories, methods and practices of architectural history that enable professional judgments to be made about the identification, evaluation, documentation, registration, or treatment of historic resources in New Mexico; the 4 years of minimum experience shall include 12 months of experience documenting historic resources of New Mexico; or

C. Historic Architecture.

The minimum professional qualifications in recording, researching, and working with the preservation of historic architecture are:

(1) a current New Mexico architectural license and a minimum of 2 years of

full-time professional experience applying the theories, methods and practices of architecture that enable professional judgments to be made about the identification, evaluation, documentation, registration, or treatment of historic properties in New Mexico with a minimum of 12 hours of course work in architectural preservation, architectural history, historic preservation and historic preservation planning; the 2 years of minimum experience shall include 12 months of experience in documenting historic resources of New Mexico;

(2) a masters of architecture with a minimum of 12 hours of course work in architectural preservation, architectural history, historic preservation and historic preservation planning and a minimum of 2 years of full-time professional experience applying the theories, methods and practices of historic architecture that enable professional judgments to be made about the evaluation, documentation or treatment of historic structures in New Mexico; the 2 years of minimum experience shall include 12 months of experience in documenting historic resources of New Mexico; or

(3) a bachelors of architecture degree with a minimum of 12 hours of course work in architectural preservation, architectural history, historic preservation and historic preservation planning and a minimum of 3 years of full-time professional experience applying the theories, methods and practices of historic architecture that enable professional judgments to be made about the evaluation, documentation or treatment of historic structures in New Mexico; the 3 years of minimum experience shall include 12 months of experience in documenting historic resources of New Mexico

D. History. The minimum professional qualifications in history are:

(1) a graduate degree in history, public history or a closely related field including a minimum of 12 hours of course work in architectural history, architectural history, historic preservation, cultural landscapes, southwestern history or southwestern architecture and a minimum of 2 years of full-time professional experience applying the theories, methods and practices of history that enable professional judgments to be made about the identification, evaluation, documentation, registration, or treatment of historic resources in New Mexico; the 2 years of minimum experience shall include 12 months of experience in documenting historic resources of New Mexico;

(2) a bachelors degree in history, public history or a closely related field including a minimum of 12 hours of course work in architectural history, historic preservation, cultural landscapes, southwestern history or southwestern architecture and a minimum of 4 years of full-time

professional experience applying the theories, methods and practices of history that enable professional judgments to be made about the identification, evaluation, documentation, registration, or treatment of historic resources in New Mexico; the 4 years of minimum experience shall include 12 months of experience in documenting historic resources of New Mexico; or

(3) for archaeologists listed in the SHPO directory of qualified supervisory personnel (4.10.8.11 NMAC) who submit their qualifications as a historian prior to the year 2010, the CPRC shall consider equivalent training and experience that demonstrate knowledge of the architectural styles of the southwest and southwestern history, familiarity with the historic cultural properties inventory manual and forms, national and state register eligibility criteria for historic structures and national park services guidance on documentation of historic structures; equivalent training and experience shall be demonstrated by:

(a) a minimum of 12 hours of course work in architectural history, historic preservation, cultural landscapes, southwestern history or southwestern architecture;

(b) a minimum of 12 months of full-time professional experience researching and documenting historic buildings and structures in the American southwest; and

(c) a sample of work which may include historic structures reports, built-environment national and state register nominations, historic cultural property inventory forms and cultural resources reports documenting historic buildings and structures.

E. Cultural Anthropology. The minimum professional qualifications in cultural anthropologists are:

(1) a graduate degree in anthropology with a specialization in cultural anthropology or a closely related field and a minimum of 2 years of full-time professional experience (including at least 6 months of field work supervised by a professional cultural anthropologist) applying the theories, methods and practices of cultural anthropology that enable professional judgments to be made about the identification, evaluation, documentation, registration, or treatment of historic and ethnographic resources in New Mexico; the 2 years of minimum experience shall include 12 months of experience relevant to the study of cultural resources of New Mexico; or

(2) a bachelors degree in anthropology with a specialization in cultural anthropology or a closely related field and a minimum of 4 years of full-time professional experience (including at least 12 months of field work supervised by a professional cultural anthropologist) applying the theo-

ries, methods and practices of cultural anthropology that enable professional judgments to be made about the identification, evaluation, documentation, registration, or treatment of historic and ethnographic resources in New Mexico or relevant to the cultural resources of New Mexico; the 4 years of minimum experience shall include 12 months of experience relevant to the study of cultural resources of New Mexico.

F. The CPRC, SHPO and state archaeologist reserve the right to consider the education, experience and training of any individual applying for permits that deviate from any of the standards in this section in exceptional situations and on a case-by-case basis.

[4.10.8.10 NMAC - N, 10/01/05]

4.10.8.11 SHPO DIRECTORY OF QUALIFIED SUPERVISORY PERSONNEL:

The SHPO shall maintain a directory of qualified supervisory personnel including but not limited to individuals who act in the capacity of principal investigator, project director, supervisory archaeologist, crew chief, architectural historian, historic architect, historian or cultural anthropologist.

A. In order to be listed in the SHPO directory, individuals shall submit a curriculum vitae, chart and transcript as specified below to the SHPO.

(1) Curriculum vitae. Curriculum vitae shall demonstrate the qualifications and professional experience for all supervisory personnel. Curriculum vitae shall contain, at a minimum, the following information:

(a) name, address and telephone number;

(b) education background (date of degree, degree held, institution issuing the degree, and major and minor field of study);

(c) professional experience by month and year with exact dates, if possible; list experience by employer and include position held and responsibilities, project name and location, types of resources documented and type of activity including but not limited to survey, testing, excavation, monitoring, excavation of burials, historic structure reports and register nominations;

(d) publications and unpublished reports;

(e) papers presented;

(f) training; and

(g) references.

(2) Chart of experience. Prepare charts of experience for principal investigators, project directors, supervisory archaeologists and crew chiefs. Charts demonstrating experience shall summarize experience and shall be on file with HPD. Charts shall only be submitted once, at the time of the initial application under this rule, unless the

individual is changing supervisory position. It shall be the responsibility of the individual to provide an updated chart if applying for advancement in supervisory position after the initial application is made under this rule. Experience shall be demonstrated in number of days, with one day equaling a minimum of 6 hours within a 24-hour work period until a minimum of 3 years full-time professional experience has been demonstrated. Individuals with more than 3 years of full-time professional experience may report additional experience in number of months where each month consists of 20 or more days with one day equaling a minimum of 6 hours within a 24-hour time period. Charts shall contain the following columns of information:

(a) project name;

(b) location by county and state;

(c) position held (crew member, crew chief, project director, etc.);

(d) survey experience for each project listed;

(e) site excavation experience for each project listed;

(f) human burial excavation experience for each project listed;

(g) laboratory analysis for each project listed;

(h) report preparation for each project listed;

(i) total survey, excavation, analysis and report preparation experience shall be listed in units (days, months, years, as applicable) at the bottom of the chart.

(3) Transcripts. An official university or college transcript or a notarized copy of all diplomas shall be on file with HPD. Transcripts shall be submitted only once and at the time of the initial application under this rule, unless an individual is updating their educational experience and degrees obtained. It shall be the responsibility of the individual to provide a transcript or notarized copy of the diploma if a higher degree is obtained after the initial application under this rule.

B. HPD shall review the documentation for sufficiency, accuracy and consistency with the minimum standards in this section and in 4.10.8.10 NMAC. A submission that does not contain the required documentation will be considered incomplete. HPD shall inform the applicant of omissions or clarifications necessary to complete the request.

C. If the documentation is sufficient, accurate and consistent with the minimum standards, HPD shall forward the request to the CPRC at the next meeting for approval or denial with the concurrence of the SHPO and state archaeologist. If approved the individual's name will be listed in the SHPO directory for the position or positions approved.

D. It shall be the responsibility of the individual listed as qualified supervisory personnel to update their curriculum vitae at least every 3 years on or before October 15. The updated curriculum vitae shall present a listing of professional experience, professional training and development, publications, unpublished reports and papers presented since the last submittal or a new, comprehensive curriculum vitae to replace the curriculum vitae on file with HPD.

E. Individuals listed in the SHPO directory shall continue to develop their educational, professional and technical skills. The individuals who are listed in the directory shall complete a minimum of 24 hours of professional development or training every 3 years in order to maintain their listing in the SHPO directory. Individuals may acquire professional training and development through courses and workshops offered by the CPRC, the SHPO, professional archaeological and historical societies or associations, museums and other entities including classes at universities and colleges. Professional development includes presentations at professional conferences. One presentation will fulfill the 24-hour requirement. Evidence of training or professional development shall be included in the documentation provided to HPD with the updated curriculum vitae.

F. Individuals shall continue to be listed in the SHPO directory for the position or positions approved as long as the individual provides an updated curriculum vitae every 3 years, meets the minimum 24-hours of professional training every 3 years, and has not been removed from the SHPO directory pursuant to 4.10.8.24 NMAC. Individuals may request that their name be removed from the SHPO directory. [4.10.8.11 NMAC - N, 10/01/05]

4.10.8.12 GENERAL PERMIT APPLICATION:

The applicant may obtain general permit application forms and instructions for filing the application and attachments from HPD's website or may request them from HPD.

A. A general permit application shall include the following information:

(1) applicant name, mailing address, telephone number and email address;

(2) the type(s) of archaeological investigations proposed to be performed under the permit (survey, test excavations, monitoring, excavation of unmarked human burials or any combination thereof);

(3) a staff roster indicating the following information:

(a) supervisory personnel who will be acting or expected to act in a super-

visory capacity during permitted archaeological investigations and who are in the SHPO directory (4.10.8.11 NMAC);

(b) a list of supervisory personnel who are not in the SHPO directory that the applicant proposes to use in a supervisory capacity during the permitted archaeological investigations and a request that these individuals be added to the SHPO directory along with supporting documentation of their qualifications consistent with 4.10.8.10 NMAC; and

(c) other staff, such as crew members and laboratory personnel; and

(4) applicant's signature, title and date, which may be submitted with original signature or signature transmitted by facsimile; if the forms are sent by electronic mail, the applicant's electronic mail address shall serve as the signature; by virtue of the submission of the application, the applicant certifies agreement to abide by all the rules, terms and conditions of the permit.

B. The applicant shall complete the application consistent with this rule and include the following attachments with the initial application or whenever a substantial change in the applicant's organization occurs.

(1) **A summary of organizational experience.** This summary shall demonstrate the applicant's capability to accomplish the type and scope of archaeological investigations proposed to be conducted under the permit and shall include but not be limited to: descriptions of organizational structure and staffing; the location(s) and descriptions of facilities and equipment; specifications of which and to what extent, facilities, equipment and staff listed in the application will be involved in the proposed work; demonstrated ability to complete similar projects as evidenced by the timely completion of reports or other documents; a list of projects, contract reports and publications resulting from similar past projects.

(2) **Forms.** Copies of field, laboratory and analysis forms to be used during the permitted work.

(3) **Test excavation standards.** For applications that request authorization to conduct test excavations, the applicant shall include discussion of standard field and laboratory procedures consistent with the standards in 4.10.16 NMAC that the applicant proposes to use on test excavation projects under the general permit. The applicant's standard test excavation procedures will be placed on file at HPD and may be referenced in test excavation plans submitted in activation of the permit for test excavation projects.

(4) **Current permits.** The applicant shall provide a list of permits for archaeological investigations currently held by the applicant including permit number and agency.

C. ARMS agreement.

The applicant shall have an account with ARMS for access to NMCRIS on or before submittal of the permit application.

D. Curation agreement.

The applicant shall provide a current curation agreement, if one is not already on file with MIAC.

E. An approved application may have special stipulations imposed by the CPRC.

F. An approved application shall have the signature of the chair of the CPRC indicating approval of the permit and signatures of the state archaeologist and the SHPO indicating their concurrence with the issuance of the permit.

G. The term on an approved permit shall be from the date of approval by the CPRC through December 31 of the year in which it is approved by the CPRC.

[4.10.8.12 NMAC - Rp, 4 NMAC 10.8.8 & 4 NMAC 10.8.10, 10/01/05]

4.10.8.13 PROJECT-SPECIFIC PERMIT APPLICATION:

The applicant may obtain project-specific permit application forms and instructions for filing the application and attachments from HPD's website or may request them from HPD. Each archaeological investigation conducted for a different firm or for a different research project requires a separate project-specific permit.

A. For project-specific archaeological investigations on state trust lands, an applicant shall apply simultaneously for a project-specific permit from the CPRC and an associated easement or other written permission from the commissioner of public lands to enter state trust land.

(1) The application for an easement or other permission to enter state trust lands and instructions is available on HPD's website, on the state land office website or from the state land office in person or by mail.

(2) Information regarding requirements for receiving an easement or other permission to enter state trust lands such as application fees, bonding fees and requirements and reclamation requirements shall appear on the state land office application or in accompanying instructions.

(3) Upon completion of the project-specific permit application and the application for an easement or other written permission to enter state trust lands, the applicant shall submit both applications to HPD and state land office so that HPD and the state land office may proceed to process the applications simultaneously.

(4) Applicants shall not submit to HPD any application fee, bonding, fee or other payments associated with obtaining an easement or other written permission to

enter state trust lands. Once the state land office has received its copy of the application package, it shall notify the applicant of the fees due and request payment to be submitted directly to the state land office.

B. For project-specific archaeological investigations on other state lands, an applicant shall obtain written approval of the work proposed from the state agency and include the approval with the permit application. Approval may be provided by the signature of the representative of the state agency on the permit or by a letter signed by the representative of the state agency indicating approval of the proposed work.

C. The project-specific permit application shall include the following information:

(1) applicant name, mailing address, telephone number and email address;

(2) the type(s) of permits for archaeological investigations requested (sample, thematic or other surveys, excavation including test excavation, monitoring, excavation of unmarked human burials or any combination thereof);

(3) a staff roster indicating the following information:

(a) supervisory personnel who will be acting or expected to act in a supervisory capacity during permitted archaeological investigations and who are in the (4.10.8.11 NMAC);

(b) a list of supervisory personnel who are not in the that the applicant proposes to use in a supervisory capacity during the permitted archaeological investigations and a request that these individuals be added to the SHPO directory along with supporting documentation of their qualifications consistent with 4.10.8.10 NMAC; and

(c) other staff, such as crew members and laboratory personnel; and

(4) the applicant's signature, title and date, which may be submitted with original signature, signature transmitted by facsimile, or if the forms are sent by electronic mail, the applicant's electronic mail address shall serve as the signature; by virtue of the submission of the application, the applicant certifies agreement to abide by all the rules, terms and conditions of the permit.

D. The applicant shall complete the application consistent with this rule and include the attachments required for the project-specific application as specified below.

(1) **Surveys and inventories.** Prepare a research design that adheres to 4.10.15 NMAC. The research design may adopt the survey standards detailed in 4.10.15 or may propose alternate standards that shall be fully detailed, discussed and

justified in the research design. For thematic, reconnaissance or other types of research surveys, the research design shall specify the purpose and rationale supporting the survey strategy and approach.

(2) Excavation projects including test excavation. Prepare a research design that adheres to 4.10.16 NMAC. The research design may adopt the excavation standards detailed in 4.10.16 NMAC or may propose alternate standards that shall be fully detailed, discussed and justified in the research design.

(3) Monitoring Prepare a monitoring plan that adheres to 4.10.17 NMAC.

(4) A summary of organizational experience. If this summary is not already on file at HPD, the applicant shall provide a discussion that demonstrates the applicant's capability to accomplish the type and scope of archaeological investigations proposed to be completed under the permit and shall include but not be limited to: descriptions of organizational structure and staffing; the location(s) and descriptions of facilities and equipment; specifications of which and to what extent, facilities, equipment and staff listed in the application will be involved in the proposed work; demonstrated ability to complete similar projects as evidenced by the timely completion of reports or other documents; a list of projects, contract reports and publications resulting from similar past projects; and a list of permits currently held by the applicant including permit number and agency.

(5) Forms. Copies of field, laboratory and analysis forms expected to be used during the permitted work.

E. ARMS agreement. The applicant shall have an account with ARMS for access to NMCRIS on or before submittal of the permit application.

F. Curation agreement. The applicant shall provide a current curation agreement along with the project-specific permit application if a current agreement is not on file with MIAC.

G. An approved application may have special stipulations imposed by the CPRC, the commissioner of public lands for state trust lands or the representative of the state agency with jurisdiction.

H. An approved application shall have the signature of the chair of the CPRC indicating approval of the permit and signatures of the state archaeologist and the SHPO indicating concurrence with the issuance of the permit, signature of the commissioner of public lands if state trust lands are involved, and signature of the state land-holding agency representative or written approval as provided in 4.10.8.13B NMAC, if other state lands are involved, to indicate approval of issuance of the permit.

I. The term on an

approved application shall be one year from the date of approval by the CPRC unless state trust lands are involved, in which case the term of the permit shall be one year from the date of approval from the commissioner of public lands.

[4.10.8.13 NMAC - Rp, 4 NMAC 10.8.8 & 4 NMAC 10.8.9, 10/01/05]

4.10.8.14 PERMIT STIPULATIONS:

A. Permittees shall abide by all stipulations contained in this rule and any special stipulations imposed by the CPRC, the state archaeologist, the SHPO and the commissioner of public lands or the state agency as appropriate. These additional stipulations shall be set out in writing on the permit, or as an attachment to it.

B. Stipulations for all permits issued by the CPRC are described below.

(1) Permittees shall determine the land status of the archaeological investigation to ensure the work will not be in trespass and that they are in compliance with local, state or federal laws. The permittee is responsible for obtaining an easement or other written permission from the commissioner of public lands for archaeological investigations on state trust land and complying with all rules and regulations of the state land office relating to such easement or other permission.

(2) Permits are not exclusive in character. The state land office or the state agency reserves the right to use the subject tracts of land, or any part thereof, for any purpose within the administrative and legal jurisdiction of the state agency or state land office. The CPRC, in cooperation with the state agency and state land office, reserves the right to permit other archaeological investigations within the permit or easement area.

(3) All costs incurred in the execution of the activities conducted under a permit shall be borne by the permittee or the permittee's client or sponsor.

(4) The permittee shall comply with all laws, rules, ordinances and requirements in all matters and things affecting the premises and operations therein pertaining to the permit, archaeological site and the land where the site is located.

(5) All activities conducted under the permit shall be carried out so as to prevent erosion of the land, pollution of water resources and any other damage to the natural environment. Any sites or locations that are disturbed in the course of the archaeological investigations conducted under the permit shall be restored to their original condition insofar as possible. The areas of limited tests, test excavations and excavation shall be backfilled. All areas examined

under the permit shall be left in a state, which will not create hazard to life nor endanger livestock or other property, nor contribute to the deterioration of the site or location or adjacent lands by natural forces, unless other provisions are specifically approved in the permit.

(6) If unmarked human burials are discovered during the archaeological investigations, local law enforcement shall be notified pursuant to 4.10.11 NMAC. If the unmarked human burial cannot be left in place, excavations shall be carried out in conformance with 4.10.11 NMAC.

(7) Title to any mined or processed precious metals or treasure trove found on state trust land and in the area covered by the permit or easement is held by the commissioner of public lands and such materials shall not be disturbed or removed without specific written permission from the CPRC and the state land office. Such authorized removal shall be recorded and undertaken in the presence of the state archaeologist, the state historian or their designates.

C. Failure by a permittee to comply with the standard or special stipulations set forth in this rule and on the permit shall be cause for the CPRC's denial of future permits to the permittee in conformance with 4.10.8.24 NMAC.

[4.10.8.14 NMAC - Rp, 4 NMAC 10.8.8, 4 NMAC 10.8.9 & 4 NMAC.10.8.10, 10/01/05]

4.10.8.15 REVIEW AND APPROVAL OF PERMIT APPLICATIONS:

A. HPD shall receive permit applications including attachments and maintain current files for each permittee.

B. HPD shall review all information submitted in support of the permit application for completeness, accuracy and conformance with all requirements. The applicant shall remedy any inaccuracies or inadequacies specified by HPD before further review or processing of the permit application. HPD shall submit all completed applications for consideration by the CPRC at the next scheduled CPRC meeting. HPD may recommend to the CPRC that an application be tabled or rejected if the application fails to meet minimum qualifying criteria either upon initial receipt or through failure to respond adequately to a request for information or correction of inaccuracies.

C. The CPRC shall review and consider all completed permit applications for approval, approval with special stipulations or denial, with the concurrence of the state archaeologist and the SHPO. The CPRC may table applications to be discussed at a future meeting pending receipt

of additional information necessary to make a decision on the permit.

D. Any special stipulations attached to a permit by the CPRC, the state archaeologist or the SHPO shall be specified in writing on or in an attachment to the permit. The CPRC may include additional special stipulations at the written request of a state agency or commissioner of public lands if received prior to the CPRC's decision to approve the permit.

E. Signature of the chair of the CPRC indicates approval of the permit by the CPRC. Signatures of the state archaeologist and the SHPO indicate concurrence with the approval of the permit. Signature of the state land holding agency representative or signature of the commissioner of public lands, if state trust lands are involved, indicates approval of the permit. The permit is not valid without all signatures.

F. If the application for a project-specific permit involves state trust lands and the permit application has been signed by the CPRC, the state archaeologist and the SHPO, HPD shall forward the permit and easement application package to the commissioner of public lands for approval or denial along with the applicant's application for an easement or other permission to enter state trust lands. The applicant shall be required to obtain an easement or other written permission from the state land office as a condition of the commissioner of public lands approving the permit. The state land office shall forward to HPD a copy of the permit with any additional stipulations, along with the easement or other written permission of the commissioner of public lands to enter the state trust lands, once both have been approved by the commissioner of public lands. If either the permit or the application for an easement or other written permission to enter state trust lands has been denied by the commissioner of public lands, he shall inform HPD of this fact in writing.

G. For general permits HPD shall notify the applicant in writing of the approval, approval with stipulations, or denial by the CPRC with the concurrence of the state archaeologist and SHPO.

H. For project-specific permits HPD shall notify the applicant in writing of the approval, approval with stipulations, or denial of a project-specific permit by the CPRC with the concurrence of the state archaeologist, the SHPO, the commissioner of public lands or the representative of the state agency with jurisdiction for other state lands.

I. Any applicant who has been denied a permit by the CPRC, the state archaeologist or the SHPO shall have the right to appeal the decision pursuant to 4.10.8.25 NMAC.

[4.10.8.15 NMAC - Rp, 4 NMAC 10.8.8, 4 NMAC 10.8.9 & 4 NMAC.10.8.10, 10/01/05]

4.10.8.16 MODIFICATION OF PERMITS:

A. A permittee may request, in writing to HPD, a modification to a permit at any time. The permittee shall request a permit modification whenever a change in any essential condition of the permit is anticipated. Changes in essential condition require a permit modification approved by the CPRC, with the concurrence of the state archaeologist and the SHPO, the commissioner of public lands for permit activities on state trust lands or the representative of the state agency with jurisdiction for a permit for other state land. The CPRC shall review all requests for modification at the next scheduled meeting. Changes in any essential condition without an approved permit modification shall constitute cause for suspension of the permit. Essential conditions include but are not limited to:

- (1) individuals named in the permit, with the exception of 4.10.8.16.B NMAC;
- (2) type, scope or location of work;
- (3) change in term of the permit;
- (4) location and facilities of the permittee;
- (5) repository; and
- (6) other terms or conditions made part of the permit.

B. If the modification to the permit involves adding individuals who are listed in the SHPO directory in the same position as proposed, HPD shall review and approve the request within 5 working days of receipt of the request.

C. If the archaeological investigation is delayed as a result of unforeseen circumstances and cannot be completed within the permit period specified on the permit or easement, if state trust land is involved, the permittee shall contact HPD in writing to request an extension of the term of the permit. This request shall be received by HPD within ten (10) working days prior to the expiration date of the permit in order to be considered or if state trust lands are involved, ten (10) working days prior to the expiration date of the written permission to enter state trust lands issued by the commissioner of public lands, whichever is earlier.

D. If the archaeological investigation is discontinued and cannot be completed as a result of unforeseen circumstances, the permittee shall notify HPD in writing to request a cancellation of the permit. Disposition of material remains collected under the permit and copies of all written and photographic records resulting

from a discontinued investigation shall be in accordance with 4.10.8.19 NMAC and the provisions of this section.

E. If fieldwork has not been initiated within the permit period or an extension has not been requested, the permit shall become void at the end of the permit period.

F. The CPRC may modify a permit at any time to address performance issues. The SHPO shall provide written notice of permit modification to the permittee, in person or by mail with a copy to the state agency or the commissioner of public lands if state trust land is involved, setting out the reasons for the modification pursuant to 4.10.8.22 NMAC. When possible, oral notice and discussion will precede written notice from the SHPO.

[4.10.8.16 NMAC - N, 10/01/05]

4.10.8.17 INITIATING WORK UNDER GENERAL PERMITS:

A. Prior to initiating any activity authorized under a general permit, the permittee shall activate the permit in accordance with the requirements of this section.

B. Archaeological investigations authorized by a general permit on state trust lands shall be limited to investigations conducted under contract to an individual, organization or company undertaking exploration, construction, development or other land-disturbing activities authorized by rights of way, easements, leases or other written authorization to enter state trust land. In order to activate a general permit, the permittee shall submit as part of its notification to the commissioner of public lands for investigations on state trust lands, a copy of its contract with the individual, organization or company undertaking exploration, construction, development or other land-disturbing activities on state trust lands and a copy of the applicable right of way, easement, lease or other written authorization to enter state trust land. It is the responsibility of the permittee to determine the ownership of any land on which archeological investigations are to take place and to ensure that any such investigations on state trust lands are undertaken in conjunction with authorized activities.

C. Survey and Inventory.

(1) The permittee shall follow all standards set forth in 4.10.15 NMAC.

(2) The permittee shall notify the state agency in writing of the proposed project. If the agency has an archaeologist on staff, the permittee shall notify the agency archaeologist. If the state agency is the project sponsor or has directed the permittee to conduct the work, no notification of the agency is required.

(3) The notification shall state for whom the survey is being conducted, why

the survey is necessary, the legal description and a map of the APE or project area and the dates on which the survey is expected to begin and to be completed. For surveys on state trust land, the legal description shall be to the nearest 40-acre parcel.

D. Test excavation.

(1) The permittee shall prepare and submit a test excavation plan to the state agency consistent with the standards in 4.10.16 NMAC. If the state agency does not have an archaeologist on staff, the permittee shall submit the plan to HPD with a letter from the state agency approving the work.

(2) The state agency shall review the test excavation plan and when approved submit the plan to HPD.

(3) HPD will review the plan for conformance with the standards within 30 calendar days of receipt of a complete plan. If HPD's review finds that that test excavation plan conforms to the standards outlined in 4.10.16 NMAC, HPD shall notify the permittee in writing, with a copy to the state agency, that the general permit has been activated for the project and the permittee may conduct test excavations in conformance with the approved plan for the project.

(4) If HPD's review finds that the test excavation plan does not conform to the standards, if there are any questions or concerns that cannot be resolved through written or oral discussions with the permittee, or if HPD requests CPRC review, HPD shall notify the state agency and permittee in writing and forward the plan to the CPRC for review at the next scheduled meeting.

(5) If the permittee does not have a general permit for test excavation, or the test excavations are not being undertaken in conjunction with authorized activities on state trust land in conformance with 4.10.8.16B NMAC, the permittee shall apply for a project-specific permit in conformance with 4.10.8.13 NMAC.

E. Monitoring.

(1) When the purpose of the monitoring is to ensure site avoidance or protection, the permittee shall implement avoidance and protection measures at the direction of the state agency consistent with 4.10.17.9 NMAC.

(2) When the purpose of the monitoring is to observe ground-disturbing activities through an archaeological site or other cultural property or in an area of historic and scientific interest, the permittee shall develop a monitoring plan consistent with 4.10.17 NMAC and shall submit the plan to the state agency for review and approval. If the state agency does not have an archaeologist on staff, the permittee shall submit the plan to HPD with a letter from the state agency approving the work.

(a) The state agency shall review the monitoring plan and when approved notify HPD in writing.

(b) HPD will review and provide comments on the plan for conformance with 4.10.17 NMAC within 10 working days of receipt of the plan. If HPD finds that the plan conforms to 4.10.17 NMAC, HPD shall notify the permittee in writing, with a copy to the state agency, that the general permit has been activated for the project and the permittee may conduct monitoring as described in the plan.

(c) If HPD finds that the monitoring plan does not conform to the standards, or if there are any questions or concerns that cannot be resolved through written and oral discussions with the permittee, HPD shall notify the state agency and permittee in writing and forward the plan to the CPRC for review at the next regularly scheduled meeting.

(3) If the permittee does not have a general permit for monitoring, the permittee shall apply for a project-specific monitoring permit in conformance with 4.10.8.13 NMAC.

[4.10.8.17 NMAC - N, 10/01/05]

4.10.8.18 REVIEW OF REPORTS.

All permittees are required to submit a final written report following the conclusion of the fieldwork. The CPRC, state archaeologist and the SHPO may review these reports. In all cases the reports shall first be submitted to the state agency or agencies for review and approval. For archaeological investigations conducted on state trust lands, the commissioner of public lands may condition release of the permittee's bond upon the commissioner's approval of the final report.

A. Reports on the archaeological investigations shall be prepared and submitted consistent with the standards set forth as appropriate in 4.10.15 NMAC, 4.10.16 NMAC and 4.10.14.17 NMAC. The state agency may establish additional reporting requirements.

(1) Reports on survey.

(a) The permittee shall prepare and submit at least one copy of the final report including site forms, appendices and attachments to the state agency. If collections were made during the survey, the permittee shall curate the collections in accordance with their current curation agreement for the repository approved in their permit application pursuant to 4.10.8 NMAC. The permittee shall obtain a receipt showing that the collections have been submitted to the repository and shall provide a copy of the receipt along with the final report to the state agency.

(b) The state agency will review the report. When the report is approved, the

state agency will submit one copy of the final report, including all site forms, appendices and attachments to HPD for purposes of discussion, review and comment. Action on a final report by a state agency does not signify approval or disapproval by HPD or the CPRC.

(c) If HPD has not received a copy of the final report within 6 months of the permittee obtaining the NMCRIS investigation number, HPD shall contact the permittee to determine the status of the report and project. HPD may request the permittee to submit one copy of the final report to HPD, or if the final report cannot be submitted within this time period, the permittee shall submit one copy of the NMCRIS investigation abstract to HPD with a request to extend the completion date for the final report and a proposed completion date for the final report. The CPRC, in consultation with the state agency, shall establish a new deadline for submittal at the next scheduled meeting.

(d) If the report has been submitted to the state agency, HPD will make arrangements with the agency to obtain a copy of the report.

(e) Additional copies of the report and attachments may be requested by the state agency.

(2) Reports on test excavations or excavations.

(a) The permittee may prepare a preliminary report and submit one copy of the report to the state agency pursuant to 4.10.16 NMAC within 60 days of completing the field studies.

(b) The permittee shall prepare and submit one copy of a draft final report to the state agency for review. When the report is approved, the state agency will notify the permittee and direct the permittee to submit the collections to the repository within a specified timeframe. The repository will provide the permittee with a receipt showing that the collections have been submitted and the permittee shall submit a copy of the receipt along with at least one copy of a final report, including all site forms, appendices and attachments to the state agency.

(c) The state agency will review the report. When the report is approved, the state agency will submit one copy of the final report, including all site forms, appendices and attachments to HPD for purposes of discussion, review and comment. Action on a final report by a state agency does not signify approval or disapproval by HPD or the CPRC.

(d) If HPD has not received a copy of the final report within one year of the permittee obtaining the NMCRIS investigation number, HPD shall notify the permittee. HPD may request the permittee to

submit one copy of the final report to HPD, or if the final report cannot be submitted within this time period, the permittee shall submit a draft NMCRIS investigation abstract to HPD with a request to extend the completion date for the final report and a proposed completion date for the final report. The CPRC, in consultation with the state agency, shall establish a new deadline for submittal at the next scheduled meeting.

(e) Additional copies of the report and attachments may be requested by the state agency.

(3) Reports on monitoring activities.

(a) The permittee shall prepare and submit one copy of the monitoring report including all site forms and attachments pursuant to 4.10.17 NMAC to the state agency. The state agency will review the report and shall approve, request changes to or disapprove the report for the agency's purposes. Action on a final report by a state agency does not signify approval or disapproval by HPD or the CPRC. When the report is reviewed and approved by the state agency, the state agency will submit one copy of the final monitoring report, including all site forms, appendices and attachments to HPD for purposes of discussion, review and comment.

(b) If collections were made during monitoring, the permittee shall prepare and submit one copy of a draft final report to the state agency for review. When the report is approved, the state agency will notify the permittee and direct the permittee to submit the collections to the repository within a specified timeframe. The repository will provide the permittee with a receipt showing that the collections have been submitted and the permittee shall submit a copy of the receipt along with at least one copy of a final report, including all site forms, appendices and attachments to the state agency.

(c) If HPD has not received a copy of the report within 6 months of the permittee obtaining the NMCRIS investigation number, HPD shall contact the permittee.

(d) Additional copies of the report and attachments may be requested by the state agency.

B. All reports shall be reviewed by HPD for technical accuracy and completeness.

(1) If HPD review identifies that the proposed investigations were not completed according to the standards contained in 4.10.15 NMAC, 4.10.16 NMAC and 4.10.17 NMAC or not completed consistent with the stipulations contained on the approved permit, HPD will notify the state agency and permittee of the deficiencies and request that the permittee amend the report to correct the deficiencies and resub-

mit the report to the state agency.

(2) The state agency will review the resubmitted report and work with the permittee to resolve any problems. Once accepted by the state agency, the report shall be resubmitted to HPD.

(3) Failure by the permittee to conduct the permitted investigation according to standards or stipulations shall be documented as unacceptable performance pursuant to 4.10.8.21 NMAC.

C. Repeated failure by a permittee to submit required reports in a timely manner or in conformance with 4.10.15 NMAC, 4.10.16 NMAC or 4.10.14.17 NMAC shall be documented as unacceptable performance pursuant to 4.10.8.21 NMAC. [4.10.8.18 NMAC - N, 10/01/05]

4.10.8.19 CURATION OF COLLECTIONS AND RECORDS: All material remains collected during archaeological investigations conducted under a permit and written and photographic records resulting from an archaeological investigation, regardless of whether or not all of the work specified in the permit was completed, shall be curated consistent with this section.

A. Collection of material remains. Title to all material remains recovered from state land is held by the state of New Mexico unless the material remains are recovered from state trust land. The commissioner of public lands holds title in trust to all material remains located on state trust lands for the designated beneficiaries of the land. The commissioner has designated the museum of New Mexico as the custodian of all material remains found on lands under the jurisdiction of the state land office.

(1) The museum of New Mexico is the custodian of material remains and associated records and documents recovered as a result of archaeological investigations on state land and state trust land unless the CPRC and the commissioner of public lands, for material remains removed from state trust lands, approves another institution as a repository.

(2) The MIAC serves as the repository for the museum of New Mexico. If the applicant proposes another repository, the applicant shall append a copy of the curation agreement with that facility to the application along with an explanation of the purpose of using a facility other than the museum of New Mexico as a repository. This request shall be reviewed by the CPRC and if approved by the CPRC and the commissioner of public lands if state trust lands are involved, shall be specified in writing on the permit as a stipulation.

(3) In order to qualify to be a custodian of material remains and associated

records and documents, the repository shall meet the U.S. secretary of interior standards in 36 CFR 79.

(4) If the institution that has been designated the appropriate repository for material remains and associated records from state land ceases to exist, the material remains and associated records shall be delivered to the MIAC for permanent curation.

(5) All material remains and records pertaining to the collections to be received by the MIAC or the approved repository shall be submitted in accordance with the conditions stipulated by the permittee's current curation agreement with that facility. The permittee shall submit collections to the repository prior to submitting a final report to the state agency pursuant to 4.10.8.18 NMAC. If the collections are not submitted in accordance with the curation agreement or an account is in arrears with the repository, the repository may notify the CPRC. This failure shall be documented as unacceptable performance pursuant to 4.10.8.21 NMAC.

B. Written and photographic records. ARMS is the custodian of all investigation records, LA archaeological site records, including site updates resulting from survey, excavation, test excavation or monitoring and associated reporting and photographic materials.

[4.10.8.19 NMAC - Rp, 4 NMAC 10.8.8, 10/01/05]

4.10.8.20 POST-REVIEW DISCOVERIES: If cultural properties are discovered after the permitted field investigations have concluded or unanticipated effects on cultural properties occur during construction or other ground-disturbing activities, all construction or other ground-disturbing activities in the vicinity of the discovery shall immediately cease and a buffer of at least 50 feet shall be established around the discovery. The state agency shall notify HPD within 24 hours of the discovery.

A. The agency shall evaluate the property's significance and determine appropriate actions to avoid the cultural property or recover significant information.

(1) If the discovery is in an area covered under a current permit that authorizes excavation of similar types of cultural properties, the discovery may be treated in accordance with the standards and methods outlined in the research design for the permit and the results shall either be included in the report for the permitted activity as an addendum or as a separate report.

(2) If the discovery is in an area covered by a permit that has expired or in an area that was not subject to an archaeological investigation prior to the commence-

ment of construction, the state agency may request that a permittee with a valid general permit that authorizes test excavation develop a plan to protect or minimize damage to the discoveries or to excavate the features or cultural deposits that will be affected by the construction.

B. The state agency will review the plan and when approved shall forward it to HPD. HPD shall review the plan within 48 hours of receipt of the plan. If there are any questions or concerns, HPD will work closely with the state agency and permittee to develop a plan acceptable to the state agency and HPD. HPD shall notify the state agency and the permittee in writing when it has approved the plan.

C. If human burials are discovered, the permittee shall notify local law enforcement pursuant to 4.10.11 NMAC. If the unmarked human burial cannot be left in place, excavations shall be carried out in conformance with 4.10.11 NMAC.

[4.10.8.20 NMAC - N, 10/01/05]

4.10.8.21 DOCUMENTATION OF PERMITTEE PERFORMANCE:

A. The CPRC, the state archaeologist, the SHPO and the state agency may assess the quality of archaeological or research work conducted or completed by a permittee.

B. The CPRC, the state archaeologist, the SHPO and the archaeologist with the state agency may conduct field visits to evaluate permittee performance at any time.

C. In addition to maintaining permit files pursuant to 4.10.8 NMAC, HPD shall maintain records that document a permittee's technical performance and compliance with permit terms and conditions. HPD shall notify the permittee and document unacceptable permittee performance by maintaining case files containing, but not limited to the following kinds of documentation:

(1) correspondence between HPD, the permittee and the state agency documenting deficiencies;

(2) documentation of report reviews conducted by HPD and the state agency;

(3) documentation of field visits conducted by the CPRC, the state archaeologist, the SHPO or the state agency; and

(4) copies of reports, site records and other site documentation, such as maps and photographs, that contain significant errors.

D. Documentation of unacceptable or substandard performance shall become part of a permittee's file. Unacceptable or substandard performance shall be documented as either a minor or

major deficiency.

(1) Minor deficiencies. Minor deficiencies in the report or site documentation are errors that do not cause the basic findings of the report or site documentation to be questioned but indicate that the permittee was careless in assembling the report and site documentation. Minor deficiencies include, but are not limited to minor or typographical mistakes in legal descriptions, inconsequential mistakes regarding land ownership status, improperly labeled maps, poor quality control in report preparation, failure to submit required reports in a timely manner or in conformance with this rule and mistakes in the pre-field check resulting in sites or registered cultural properties not being reported within the one-mile buffer.

(a) HPD or state agency may request revisions to the report and other documentation. The permittee shall provide the requested revisions. If the permittee does not provide the requested revisions, the failure shall be documented in the permittee file.

(b) If the permittee's reports continue to contain inaccuracies or if the permittee fails to provide revisions, HPD shall provide assistance to the permittee to help the permittee correct the deficiencies.

(c) If the permittee continues to make the same errors even after assistance provided by HPD, the failure to improve shall be documented in the permittee's file and may result in a warning letter pursuant to 4.10.8.22 NMAC.

(2) Major deficiencies. Major deficiencies in reporting or fieldwork may result in a warning letter pursuant to 4.10.8.22 NMAC. Major deficiencies include but are not limited to:

(a) failure to identify registered cultural properties and previously recorded archaeological sites, historic structures and buildings and other cultural properties in the APE or project area during the pre-field records check;

(b) a pattern of failure to identify or recognize site(s) and registered cultural properties during survey;

(c) a pattern of recording a site as an isolate;

(d) a pattern of incompletely recording a site or drawing inaccurate site boundaries;

(e) actual on-the-ground survey coverage varying from what is reported;

(f) use of unauthorized personnel to perform fieldwork;

(g) providing false information;

(h) conducting fieldwork without obtaining the appropriate permit;

(i) a pattern of failures to submit required reports in a timely manner or in conformance with 4.10.8 NMAC;

(j) failure to make scheduled payments to ARMS for access to NMCRIIS and survey registration fees; the registrar at ARMS shall notify HPD of accounts in arrears;

(k) failure to make payments to the curatorial facility for collections that were accepted by the repository or for a pattern of submitting collections that are not accepted owing to insufficient preparation or for causing undue problems for the repository in processing the collections for curation;

(l) failure to notify the state agency of the archaeological investigation, or not obtaining an easement or other written permission to enter state land trust lands; and

(m) substantial or material mistakes in legal descriptions or regarding land ownership status.

E. The permittee may write to the CPRC or request a meeting with the CPRC to discuss concerns relating to HPD's documentation of the permittee's performance at any time.

[4.10.8.21 NMAC - N, 10/01/05]

4.10.8.22 WARNING LETTERS:

Major deficiencies in reporting or fieldwork shall be documented in a warning letter from the SHPO to the permittee with a copy to the client or project sponsor, the state agency, the CPRC and the state archaeologist. Up to three warning letters for similar deficiencies may be issued to a permittee per 3-year cycle. The issuance of three warning letters for similar deficiencies per 3-year cycle shall be a factor in the CPRC's decision to issue a permit in the future.

A. Upon receipt of a warning letter, the permittee shall take immediate steps to correct the deficiencies noted in the letter.

(1) Warning letters may include, without limitation:

(a) a statement that clearly identifies how the permittee's work fails to meet current rules and standards;

(b) clear direction regarding the actions needed to rectify the situation, such as re-recording sites or other remedial actions;

(c) a statement that sets forth the action the CPRC will take to address the deficiencies; and

(d) a request that the supervisory personnel and other personnel that conducted the work for the permittee confer with HPD and the state agency, so that the nature of the deficiencies and required remedial actions are clearly understood; HPD shall attend such meetings or participate in conference calls and shall prepare a follow-up letter to the permittee that documents what was discussed and the actions the parties

agreed appropriate to correct the performance problem.

(2) Technical assistance shall be available from HPD to help resolve the permittee's unacceptable performance.

B. First warning letter.

The first warning letter may result in the permittee being placed on probation for 3 consecutive months. A permittee who is placed on probation may continue to work on state land.

(1) The permittee shall take immediate steps to correct the deficiencies noted in the warning letter.

(2) During this period, the permittee's performance may be evaluated by the CPRC, the state archaeologist, the SHPO or the state agency.

(3) Documentation of performance evaluation shall be entered into the permittee's case file and may be taken into account by the CPRC when considering whether to issue permits to that permittee in the future.

C. Second warning letter.

The second warning letter may result in the CPRC placing the permittee on probation for 6 consecutive months, or if the permittee is already on probation, extending the probationary period an additional 6 consecutive months.

(1) The permittee may continue to work on state land but the permittee's name shall be removed from the list of permittees maintained by HPD and provided to entities seeking qualified institutions.

(2) The permittee shall take immediate steps to correct the deficiencies noted in the warning letter.

(3) During this period, the CPRC, the state archaeologist, the SHPO or the state agency may evaluate the permittee's performance.

(4) Documentation of performance monitoring shall be entered into the permittee's permanent file and may be taken into account by the CPRC when considering whether to issue permits to that permittee in the future.

(5) Upon successful completion of probation, the permittee shall be added to the list of permittees maintained by HPD.

D. Third warning letter.

The third warning letter may result in suspension of the permittee's permit by the CPRC.

(1) The permittee shall be notified of the permit suspension and that it is not authorized to continue or to conduct archaeological investigations on state land.

(2) If the permittee is engaged in ongoing projects, HPD shall notify the client or project sponsor and the state agency of the permit suspension.

(3) A suspension shall not exceed 12 consecutive months.

(4) A new permit may be applied

for after the suspension period has expired.

E. Modification of permits to correct performance problems. The CPRC may modify a permit at any time when needed to address performance issues and will notify the state agency or agencies. The SHPO shall provide written notice of permit modification to the permittee, in person or by mail, setting out in full the reasons for the modification. Whenever possible, oral notice and discussion will precede written notice.

[4.10.8.22 NMAC - N, 10/01/05]

4.10.8.23 PROBATIONARY PERMITS:

Permits may be issued for one year or less on a probationary basis when the CPRC determines that a permittee's performance requires evaluation based on documented performance problems.

A. The CPRC, state archaeologist and the SHPO shall evaluate the performance of the permittee closely during the time the permit is in effect and document performance accurately through site recording, mapping, photography and written reports of observations.

B. The state agency archaeologist may assist in evaluating the performance of the permittee and provide documentation to the CPRC for consideration.

C. Following expiration of the probationary period and based upon performance during that period, a new permit may be issued or a new probationary permit may be issued.

[4.10.8.23 NMAC - N, 10/01/05]

4.10.8.24 DENIAL OF A PERMIT:

The CPRC may deny an application for a permit.

A. The decision to deny a permit application may be based upon factors such as:

(1) a pattern of unacceptable performance by the applicant;

(2) failure of the applicant to improve performance while on probation or suspension;

(3) failure of the applicant to obtain the necessary permits for archaeological investigations on state land;

(4) documentation of the applicant's work on state land with a suspended permit;

(5) failure of the applicant to comply with applicable rules or additional stipulations set forth on the permit, or

(6) falsification by the applicant of information pertaining to qualifications or performance.

B. The CPRC shall inform the applicant, in writing, that a permit application has been denied and shall specify the reason for the denial and shall invite the applicant to attend the next scheduled

CPRC meeting to discuss the reasons for denial. If the permit denied is a project specific permit, the CPRC shall notify the state agency of its decision.

C. Supervisory personnel whose performance directly led to a firm's deficient performance and subsequent loss of a permit shall be removed from the SHPO directory of qualified supervisory personnel.

(1) An individual who has been removed from the SHPO directory may resubmit the documentation specified in 4.10.8.11 NMAC to HPD with a request to be added to the SHPO directory. The documentation shall demonstrate that the individual has remedied performance deficiencies through additional training or experience or through a minimum of three months of fieldwork under direct supervision of an individual listed in the SHPO directory.

(2) HPD will review the documentation for sufficiency and if it is complete forward the request to be considered at the next regularly scheduled CPRC meeting.

D. Any applicant who has been denied a permit by the CPRC shall have the right to appeal the decision pursuant to 4.10.8.25 NMAC.

[4.10.8.24 NMAC - N, 10/01/05]

4.10.8.25 PROCEDURES FOR APPEALING A DECISION:

Any applicant who has been denied a permit by the CPRC, the state archaeologist, or the SHPO shall have the right to appeal the decision.

A. All requests for an appeal shall include a statement of the applicant's reason for requesting an appeal and contain any additional information that the applicant believes will support the appeal.

B. Upon receipt of a written request for a hearing, the chairman of the CPRC shall notify the secretary of the department of cultural affairs, who shall convene a hearing panel consisting of three individuals.

C. Within two weeks of receipt of a written request for a hearing, the secretary of the department of cultural affairs shall inform the applicant in writing of the date, time and place of the hearing at which the appeal will be heard. The notice of public hearing shall be published pursuant to Section 9-4A-6 of the Department of Cultural Affairs Act.

(1) The secretary of the department of cultural affairs or his designee shall serve as the chair of the hearing panel.

(2) The secretary shall appoint an agency archaeologist or other professional archaeologist deemed qualified by the secretary. The applicant may designate an individual to sit on the hearing panel. If the applicant chooses not to designate an indi-

vidual, the secretary shall designate another agency archaeologist.

(3) The chairman of the CPRC, the state archaeologist and the SHPO shall provide testimony at the hearing. A written record shall be kept of the proceedings.

D. Decisions of the hearing panel shall be based on a simple majority vote of the members of the panel.

E. The chair of the hearing panel shall inform the applicant in writing of the decision of the hearing panel. Decisions of the hearing panel shall be final.

[4.10.8.25 NMAC - N, 10/01/05]

4.10.8.26 DEVIATIONS: The CPRC, SHPO and state archaeologist reserve the right to waive or deviate from this rule or any parts of this rule under circumstances deemed necessary by the CPRC, SHPO and state archaeologist. Any waiver or deviance from this rule shall occur while maintaining the spirit, intent and objective of this rule and the Cultural Properties Act.

[4.10.8.26 NMAC - N, 10/01/05]

HISTORY OF 4.10.8 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives under:

CPRC 82-R1, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations, filed 5-28-82.

CPRC Rule 87-8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations, filed 3-26-87.

History of Repealed Material: 4 NMAC 10.8, Issuance of Permits to Conduct Archaeological Investigations (filed 11/03/97), repealed 10/01/05.

Other History:

CPRC Rule 87-8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations (filed 3-26-87) was renumbered and reformatted to 4 NMAC 10.8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations, effective 11/15/97.

4 NMAC 10.8, Issuance of Permits to Conduct Archaeological Investigations (filed 11/03/97) was renumbered, reformatted and replaced by 4.10.8 NMAC, Permits to Conduct Archaeological Investigations on State Land, effective 10/01/05.

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

The Department of Finance and Administration is amending 2.40.2.2 NMAC and 2.40.2.11 NMAC effective September 15, 2005 as follows.

2.40.2.2 SCOPE:

A. The contracts review bureau of the department of finance and administration shall review and approve all professional services contracts which result in expenditures equal to or greater than ~~fourteen hundred dollars (\$1500)~~ five thousand dollars (\$5,000), excluding gross receipts tax, and all amendments to those contracts for all state agencies except as provided in Subsections B and C of Section 2.40.2.2 NMAC of this rule. Contracts expending public funds in accordance with the Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978 as amended are included within the scope of this rule.

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

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

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

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

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

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

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

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

(8) other state agencies exempt by statute.

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

requires. A state agency seeking an exemption must:

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

(2) meet all of the following requirements:

(a) issue its own warrants;

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

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

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

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

(f) provide administrative control and review of professional services contracts through its own administrative unit; and

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

[7-1-76, 8-15-77, 7-1-78, 7-1-84, 7-10-85, 7-1-87, 12-20-89, 5-15-97, 7-1-01; 2.40.2.2 NMAC - Rn & A, 2 NMAC 40.2.2, 1-14-2005; A, 9-15-2005]

2.40.2.11 SMALL PURCHASES:

A contract for professional services having a value over ~~[\$1500]~~ five thousand dollars (\$5000) but not exceeding ~~[\$20,000]~~ (thirty thousand dollars \$30,000) excluding applicable gross receipts taxes, except for the services of architects, landscape architects engineers, or surveyors for state public works projects, may be procured in accordance with the Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978 ~~[and Procurement Code Regulations, GSD Rule 1.4.1 NMAC or subsequent GSD regulations].~~

[7-10-85, 7-1-87, 5-15-97, 6-15-98, 7-1-01; 2.40.2.11 NMAC - Rn & A, 2 NMAC 40.2.11, 1-14-2005; A, 9-15-2005]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

This is an amendment to 19.31.4 NMAC, Section 11, effective September 15, 2005

19.31.4.11 DAILY BAG AND POSSESSION LIMITS:

A. Trout

(1) Waters with reduced bag limit: No person shall fish waters regulated for reduced limits while having in excess of that limit in possession.

(2) Brown, rainbow, cutthroat, lake, Brook trout and Kokanee salmon:

(a) The daily bag limit shall be 5 trout and no more than 10 trout shall be in possession.

(b) The daily bag limit for cutthroat trout shall be 2 trout and no more than 2 cutthroat trout may in possession. Cutthroat trout are included in the bag and possession limits for trout explained in 19.31.4.11(A. 2.a) NMAC (above).

(3) Special Kokanee salmon season: During the special Kokanee salmon season, the daily bag limit shall be 12 Kokanee salmon in addition to the daily bag limit for trout, and no more than 24 Kokanee salmon may be possessed in addition to the possession limit for trout. It shall be unlawful to possess Kokanee salmon at Heron lake and Pine river during the closed Kokanee salmon season (October 1 through November 14).

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

(a) On those sections of the following waters the daily bag limit shall be 2 trout and no more than 2 trout shall be in possession. Anglers must stop fishing in those waters when the daily bag limit is reached: In Rio Arriba county: all waters lying within or adjacent to the Little Chama valley ranch (Edward Sargent wildlife area) including the Rio Chamito, Sexton creek, and Rio Chama, excluding Nabor creek and Nabor lake; In Colfax county: the Shuree lakes on the Valle Vidal; In Taos county: a posted portion of the Rio Pueblo between the bridge at mile marker 55 on state hwy. 518 upstream approximately 1 mile to the Canon Tio Maes trailhead; In San Miguel county: an approximately 1-1/2 mile posted portion of the Pecos river beginning approximately 1/2 mile above the confluence of the Mora river (Mora-Pecos) upstream to approximately 1/4 mile above the bridge crossing at Cowles; In Rio Arriba county: a posted portion of the Chama river approximately 2.9 miles within the boundaries of the Rio Chama wildlife and fishing area; In Catron county: a posted portion of Gilita

creek from the Gila wilderness boundary downstream approximately 5 miles to its confluence with Snow creek; In Rio Arriba county: a posted portion of the Rio de los Pinos from USFS Boundary 24 at the junction of forest road 284 and 87A, 2.5 miles upstream to the private property boundary; In Taos county: a posted portion of Red River from the confluence of Goose creek 1 mile upstream.

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

(c) On those sections of the following waters no fish may be kept or held in possession while fishing in the posted portions of the following waters: In San Juan county: a posted portion of the San Juan river from Navajo dam downstream approximately 1/4 mile; In Sandoval county: a posted portion of the Rio Cebolla from the Seven Springs day use area upstream to its headwaters; In Sandoval County: a posted portion of the San Antonio River from the Baca location boundary downstream approximately 2.0 miles (T. 19 N., R. 03 E., S 16 and 20); In Sandoval county: a posted portion of the Rio Guadalupe from the Porter landing bridge downstream approximately 1.3 miles to Llano Loco Spring; In Taos county: a posted portion of the Rio Costilla from the Valle Vidal tract of the Carson national forest downstream for approximately 2.4 miles to the confluence of Latir creek; In Sierra county: the Rio las Animas within the Gila national forest, Black range ranger district; In Mora county: the Pecos river in the Pecos wilderness, above Pecos falls; In Rio Arriba county: Nabor creek and Nabor lake on the Edward Sargent wildlife area; In San Miguel and Santa Fe counties: Doctor creek from 1/4 mile above its confluence with Holy Ghost creek upstream to its headwaters; In Mora county: Rio Valdez in the Pecos wilderness from 1/4 mile below Smith cabin upstream to its headwaters; In San Miguel and Mora counties: Jack's creek from the water falls located 1/4 mile downstream of NM Highway 63 crossing upstream to its headwaters; In Taos and Colfax counties: any stream on the Valle Vidal (Vermejo tract - Carson national forest) ~~except that portion of Comanche creek from its confluence with Vidal creek downstream to its confluence with Costilla creek at Comanche point~~.

(d) In Colfax county: on a posted section of the Cimarron river from the lower

end of Tolby campground downstream approximately 1.4 miles to the first bridge of N.M. 64 the daily bag limit shall be 1 fish and no more than one fish may be in possession.

(5) On the following waters, the daily bag limit shall be 3 trout and no more than 3 trout may be in possession, although there are no special restrictions regarding the use of legal gear.

(a) In Taos county: a posted portion of the Rio Grande beginning at the New Mexico/Colorado state line downstream to the Taos junction bridge.

(b) In Taos county: a posted portion of the Red River beginning approximately 1/2 mile downstream of the walking bridge at Red River state fish hatchery downstream to its confluence with the Rio Grande.

(c) In Taos county: the designated fishing pond at Red River state fish hatchery.

(d) In Rio Arriba county: on a posted portion of the Rio Chama from the base of Abiquiu dam downstream approximately 7 miles to the river crossing bridge on U.S. 84 at Abiquiu.

(e) In Sierra county: the Rio Grande from Elephant Butte dam downstream to and including Caballo lake.

(f) In Lincoln county: The Rio Ruidoso from the boundary between the Mescalero Apache reservation and the city of Ruidoso downstream to Fridenbloom drive.

(g) In Rio Arriba county: Burns canyon lake at Parkview hatchery.

(6) Gila trout: It shall be unlawful for any person to possess Gila trout (*Oncorhynchus gilae*).

B. Warm-water fishes:

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

(1) striped bass 2 fish;

(2) largemouth, smallmouth, and spotted bass 5 fish;

(3) walleye 5 fish;

(4) crappie 20 fish;

(5) white bass and white bass x striped bass hybrid 25 fish;

(6) northern pike 10 fish;

(7) catfish (all species, except bullheads) 15 fish;

(8) all other warm-water game species 20 fish.

C. The following exception shall apply:

(1) At Tingley beach in Albuquerque; lake Van (Chaves county); Oasis state park; Greene Acres lake (Curry county); Burn lake (Dona Ana county); Escondida lake (Socorro county); Aztec pond (San Juan county); McGaffey lake (McKinley county); Bataan lake (Eddy

county); Chaparral lake (Lea county); Bosque Redondo (De Baca county); Carrizozo lake (Lincoln county); Green Meadow lake; Eunice lake; and Jal lake (Lea county): the daily bag limit for channel catfish will be 2 fish and the possession limit shall be twice the daily bag limit.

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

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

[19.31.4.11 NMAC - Rp 19.31.4.11 NMAC, 4-15-02; A, 10-31-02; A, 6-25-03; A, 8-13-04; A, 5-13-05; A, 9-15-05]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is a Emergency amendment to 19.31.8 NMAC, Section 32, effective 8-26-2005.

19.31.8.32 CHRONIC WASTING DISEASE CONTROL: It shall be unlawful to transport dead deer or elk taken from any game management unit **or area identified by the director** in which the presence of **or possibility of exposure to** chronic wasting disease has been [~~confirmed~~] **identified** to any location outside that game management unit except the following portions of the carcass:

A. meat that is cut and wrapped (either commercially or privately);

B. quarters or other portions of meat with no part of the spinal column or head attached;

C. meat that has been boned out;

D. hides with no heads attached;

E. clean skull plates with antlers attached; clean is defined as having been immersed in a bath of at least 1 part chorine bleach and 2 parts water with no meat or tissue attached;

F. antlers with no meat or tissue attached;

G. upper canine teeth, also known as "buglers," "whistlers," or "ivories;"

H. finished taxidermied heads.

[19.31.8.32 NMAC - Rp, 19.31.8.32 NMAC, 4-1-2005; A/E, 8-26-2005]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.33.6 NMAC, Sections 8 and 9, effective September 15, 2005.

19.33.6.8 THREATENED AND ENDANGERED SPECIES OF NEW MEXICO:

A. MAMMALS

(1) Endangered:

(a) Arizona shrew, *Sorex arizonae*
(b) Mexican long-nosed bat,

Leptonycteris nivalis

(c) (Penasco) least chipmunk,

Tamias minimus atristriatus

(d) (Arizona) montane vole,

Microtus montanus arizonensis

(e) gray wolf, *Canis lupus*

(f) (desert) bighorn sheep, *Ovis canadensis mexicana*

(2) Threatened:

(a) least shrew, *Cryptotis parva*

(b) southern long-nosed bat,

Leptonycteris curasoae

(c) spotted bat, *Euderma maculatum*

(d) western yellow bat, *Lasiurus*

xanthius

(e) white-sided jackrabbit, *Lepus*

callotis

(f) (Organ mountains) Colorado chipmunk, *quadrivittatus australis*

(g) southern pocket gopher,

Thomomys umbrinus

(h) meadow jumping mouse,

Zapus hudsonius

(i) American marten, *Martes*

americana

(3) Listing excepts individuals and populations of the desert bighorn sheep in the Peloncillo mountains in Hidalgo county and all stock in captivity.

B. BIRDS

(1) Endangered:

(a) brown pelican, *Pelecanus occidentalis*

(b) aplomado falcon, *Falco femoralis*

(c) white-tailed ptarmigan, *Lagopus leucurus*

(d) whooping crane, *Grus americana*

(e) piping plover, *Charadrius melodus*

(f) least tern, *Sterna antillarum*

(g) common ground-dove,

Columbina passerina

(h) buff-collared nightjar,

Caprimulgus ridgwayi

(i) elegant trogon, *Trogon elegans*

(j) northern beardless-tyrannulet,

Camptostoma imberbe

(k) (southwestern) willow flycatcher, *Empidonax traillii extimus*

(l) thick-billed kingbird, *Tyrannus crassirostris*

(2) Threatened:

(a) neotropic cormorant, *Phalacrocorax brasilianus*

(b) bald eagle, *Haliaeetus leucocephalus*

(c) common black-hawk, *Buteogallus anthracinus*

(d) peregrine falcon, *Falco peregrinus*

(e) (Gould's) wild turkey, *Meleagris gallopavo mexicana*

(f) whiskered screech-owl, *Megascops trichopsis*

(g) boreal owl, *Aegolius funereus*

(h) broad-billed hummingbird,

Cynanthus latirostris

(i) white-eared hummingbird,

Hylocharis leucotis

(j) violet-crowned hummingbird,

Amazilia violiceps

(k) lucifer hummingbird,

Calothorax lucifer

(l) Costa's hummingbird, *Calypte*

costae

(m) Gila woodpecker,

Melanerpes uropygialis

(n) Bell's vireo, *Vireo bellii*

(o) gray vireo, *vireo vicinior*

(p) Abert's towhee, *Pipilo aberti*

(q) (Arizona) grasshopper sparrow, *Ammodramus savannarum ammolegus*

(r) Baird's sparrow, *Ammodramus*

bairdii

(s) yellow-eyed junco, *Junco*

phaeonotus

(t) varied bunting, *Passerina versicolor*

versicolor

C. REPTILES

(1) Endangered:

(a) Gila monster, *Heloderma suspectum*

(b) Sand dune lizard, *Sceloporus arenicolus*

[~~(b)~~](c) gray-checked whiptail *Aspidoscelis dixonii*

[~~(c)~~](d) gray-banded kingsnake, *Lampropeltis alterna*

[~~(d)~~](e) Mexican gartersnake, *Thamnophis eques*

[~~(e)~~](f) plain-bellied water snake, *Nerodia erythrogaster*

[~~(f)~~](g) (New Mexico) ridgenose rattlesnake, *Crotalus willardi obscurus*

[~~(g)~~](h) (New Mexico) ridgenose rattlesnake, *Crotalus willardi obscurus*

(2) Threatened:

(a) western river cooter, *Pseudemys gorzugi*

[~~(b)~~](c) sand dune lizard, *Sceloporus arenicolus*

[~~(c)~~](b) Slevin's bunch grass lizard, *Sceloporus [slevini] slevini*

(+) (c) canyon spotted whiptail, *Aspidoscelis burti*
 (+) (d) mountain skink, *Eumeces callicephalus*
 (+) (e) green ratsnake, *Senticolis triaspis*
 (+) (f) narrow-headed garter-snake, *Thamnophis rufipunctatus*
 (+) (g) western ribbonsnake, *Thamnophis proximus*
 (+) (h) (mottled) rock rattlesnake, *Crotalus lepidus lepidus*

D. AMPHIBIANS
(1) Endangered:
 (a) Jemez mountains salamander, *Plethodon neomexicanus*
 (b) lowland leopard frog, *Rana yavapaiensis*
 (c) mountain toad, *Bufo boreas*
 (d) Great Plains narrow-mouthed toad, *Gastrophryne olivacea*

(2) Threatened:
 (a) Sacramento mountain salamander, *Aneides hardii*
 (b) Sonoran desert toad, *Bufo alvarius*

E. FISHES
(1) Endangered:
 (a) Gila chub, *Gila intermedia*
 (b) Chihuahua chub, *Gila nigrescens*
 (c) roundtail chub, *Gila robusta*
 (d) Rio Grande silvery minnow, *Hybognathus amarus*
 (e) Arkansas river shiner, *Notropis girardi*
 (f) southern redbelly dace, *Phoxinus erythrogaster*
 (g) Colorado pikeminnow, *Ptychocheilus lucius*
 (h) (Zuni) bluehead sucker, *Catostomus discobolus yarrowi*
 (i) blue sucker, *Cycleptus elongatus*
 (j) Pecos gambusia, *Gambusia nobilis*

(2) Threatened:
 (a) Gila trout, *Oncorhynchus gilae*
 (b) Mexican tetra, *Astyanax mexicanus*
 (c) Arkansas river speckled chub, *Macrhybopsis tetranema*
 (d) spikedace, *Meda fulgida*
 (e) (Pecos) bluntnose shiner, *Notropis simus pecosensis*
 (f) suckermouth minnow, *Phenacobius mirabilis*
 (g) loach minnow, *Tiaroga cobitis*
 (h) gray redbhorse, *Scartomyzon congestum*
 (i) Pecos pupfish, *Cyprinodon pecosensis*
 (j) White Sands pupfish, *Cyprinodon tularosa*
 (k) Gila topminnow, *Poeciliopsis occidentalis*

(l) greenthroat darter, *Etheostoma lepidum*
 (m) bigscale logperch, *Percina macrolepida*

(3) Listing exceptions: Gila trout-excludes the population in McKnight creek, Grant county; Arkansas river shiner-excludes the population in the Pecos river drainage; bigscale logperch-excludes the population in the Canadian river drainage

F. CRUSTACEANS
(1) Endangered:
 (a) Noel's amphipod, *Gammarus desperatus*
 (b) Socorro isopod, *Thermosphaeroma thermophilum*

G. MOLLUSKS
(1) Endangered:
 (a) paper pondshell, [~~Utterbackia~~ *Utterbackia imbecillis*]
 (b) Texas hornshell, *Popenaias popeii*
 (c) Koster's springsnail, *Juturnia kosteri*
 (d) Alamosa springsnail, *Pseudotryonia alamosae*
 (e) Chupadera springsnail, *Pyrgulopsis chupaderae*
 (f) Socorro springsnail, *Pyrgulopsis neomexicana*
 (g) Roswell springsnail, [~~Pyrgulopsis~~ *Pyrgulopsis roswellensis*]
 (h) Pecos assiminea, *Assiminea pecos*,
 (i) wrinkled marshsnail, *Stagnicola caperata*
 (j) shortneck snaggletooth, *Gastrocopta dalliana dalliana*
 (k) Florida mountainsnail, *Oreohelix florida*

(2) Threatened:
 (a) lake fingernailclam, *Musculium lacustre*
 (b) swamp fingernailclam, *Musculium partumeium*
 (c) long fingernailclam, *Musculium transversum*
 (d) Lilljeborg's peaclam, *Pisidium lilljeborgi*
 (e) Sangre de Cristo peaclam, *Pisidium sanguinichristi*
 (f) Gila springsnail, *Pyrgulopsis gilae*
 (g) Pecos springsnail, *Pyrgulopsis pecosensis*
 (h) New Mexico hot springsnail, *Pyrgulopsis thermalis*
 (i) star gyro, *Gyraulus crista*
 (j) ovate vertigo, *Vertigo ovata*
 (k) Hacheta Grande woodland snail, *Ashmunella hebaridi*
 (l) Cooke's peak woodlandsnail, *Ashmunella macromphala*
 (m) Mineral creek mountainsnail, *Oreohelix pilsbryi*
 (n) Doña Ana talussnail, *Sonorella todseni*

[1-11-91, 11-15-95, 12-31-96, 8-15-98; 19.33.1.8 NMAC - Rn & A, 19 NMAC 33.1.8, 4/14/00; 19.33.6.8 NMAC - Rn, 19.33.1.8 NMAC & A, 11/30/00; A, 11/14/02; A, 1/31/05; A, 9/15/05]

19.33.6.9 RESTRICTED SPECIES OF NEW MEXICO:

A. leopard, *Panthera pardus*
B. clouded leopard, *Neofelis nebulosa*
C. snow leopard, *Panthera uncia*
D. jaguar, *Panthera onca*
E. Florida panther, *Felis concolor coryi*
F. tiger, *Panthera tigris*
G. ocelot, [~~Felis pardalis~~ *Felis pardalis*]

Felis pardalis

[8-6-91, 8-15-98; 19.33.1.8 NMAC - Rn, 19 NMAC 33.1.9, 4/14/00; 19.33.6.9 NMAC - Rn, 19.33.1.9 NMAC, 11/30/00; A, 9/15/05]

NEW MEXICO MASSAGE THERAPY BOARD

This is an amendment to Sections 5, 7, 8, 9 and 10 of 16.7.10 NMAC, effective September 30, 2005.

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

16.7.10.5 EFFECTIVE DATE: July 28, 1996, unless a [~~different~~] later date is cited at the end of a section [~~or paragraph~~].

16.7.10.7 DEFINITIONS:
A. "Jurisprudence" means an examination covering the Massage Therapy Practice Act and the board's rules and regulations, 16.7 NMAC.

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

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

D. "Official examination results" means official pass/fail reports the examining agency sends directly to the board pursuant to the applicant's instructions.

16.7.10.8 [GENERAL PROVISIONS:

A. Examinations will be offered at least two times each year.

B. Applicants requiring special accommodations, either for language or disability, must notify the examining agency at the time of application.

C. Repealed.

D. Applicants will be required to pass the Jurisprudence examination, as defined in 16.7.10.7 NMAC, above, with a minimum score of 70%.

(1) The examination shall not be reproduced or shared in any manner.

(2) The completed examination must be postmarked or hand delivered by the 30th day following the mailing of the examination by the Board Office, otherwise the applicant will be considered to have failed the examination and the applicant will be required to meet the requirements in Subsection B of 16.7.10.10 NMAC, below.

(3) Applicants will be notified in writing of the jurisprudence examination results.]

JURISPRUDENCE EXAMINATION:

A. All massage therapy licensure applicants must successfully pass the board's open-book jurisprudence examination.

(1) The applicant will receive the jurisprudence examination with instructions from the board office after the board office receives both the application and application fee.

(2) To complete the jurisprudence examination, the applicant will use the statute and regulations received either from the board or which the applicant downloaded from the board's website at www.rld.state.nm.us/b&c/massage.

(3) The applicant must pass the jurisprudence examination with a minimum score of 70%.

(4) The applicant must return the completed jurisprudence examination to the board office as required.

B. Applicants may retake the examination as many times as necessary to achieve a passing grade.

C. The jurisprudence examination shall not be reproduced or shared in any manner.

16.7.10.9 [LICENSURE BY EXAMINATION:

In addition to the required examination in, Subsection D of 16.7.10.8 NMAC, above, applicants for Licensure by Examination will be required to pass the National Certification Examination for Therapeutic Massage and Bodywork.

A. The applicant will be responsible for:

(1) obtaining the candidates' handbook directly from the examining

agency; and

(2) completing and returning to the examining agency the application packet, with the proper fee as outlined in the candidates' handbook; however

B. Previous passage of the National Certification Examination for Therapeutic Massage and Bodywork will be accepted by the Board, provided that verification of current status is received from the National Certification Board.

C. The applicant is responsible for requesting from the examining agency that results of the examination be sent to the Board Office.]

NATIONAL CERTIFICATION EXAMINATION:

A. Applicants for massage therapy licensure must successfully pass either the national certification examination for therapeutic massage and bodywork (NCETMB) or the national certification examination for therapeutic massage (NCETM) administered by the national certification board for therapeutic massage and bodywork (NCBTMB).

B. The candidate must apply to take the national certification examination and meet the examining agency's requirements.

C. The applicant must ensure that the examining agency sends the official examination results directly to the board office.

16.7.10.10 PROCEDURES TO RETAKE [EXAMINATIONS] THE NATIONAL EXAMINATION:

A. Applicants who fail to pass the [National Certification Examination for Therapeutic Massage and Bodywork] national examination must apply directly to the examining agency to retake the examination [with the examining agency].

B. Applicants who fail to pass the jurisprudence examination must apply to retake the examination with the Board Office and provide a written request to retake the Jurisprudence examination.]

NEW MEXICO MASSAGE THERAPY BOARD

This is an amendment to Sections 7 and 8 of 16.7.11 NMAC, effective September 30, 2005.

16.7.11.7 DEFINITIONS:

A. "Class hour" or "contact hour" means no less than fifty (50) minutes of any one-clock hour during which the student/massage therapist participates in a learning activity in the physical presence and under the tutelage of an instructor.

B. {"Semester hour" or

"Academic hour" means one (1) semester credit hour that is equivalent to fifteen (15) class or contact hours." "Academic hour" means continuing education taken in an academic setting that is equivalent to fifteen (15) class or contact hours."

16.7.11.8 GENERAL PROVISIONS:

The board does not maintain a list of continuing education providers. [It is the responsibility of the licensee/registrant to] The licensee or registrant must determine where to obtain the required continuing education. [Local massage therapy schools and local or national massage therapy associations might be able to provide information regarding availability of continuing education offerings.]

A. Massage therapy licensees: [Every] As a condition for license renewal, each massage therapist licensed pursuant to the Massage Therapy Practice Act will be required to complete [46] sixteen (16) contact hours of continuing education [as a condition for license renewal].

(1) [Such] Continuing education must be completed within the twenty-four (24) months immediately preceding the renewal date[.] of October [31st] 31.

(2) Excess hours [of the total number required may not] cannot be carried over to future renewals.

[4](3) Continuing education taken prior to the twenty-four month period will not be accepted.

[2](4) An automatic late renewal penalty fee, as provided in 16.7.3.8 NMAC, will be incurred if the continuing education submitted was taken after the twenty-four month period.

(5) Each licensee will maintain documentation of all completed continuing education, including contact information for the continuing education providers.

B. Instructor registrants: [Registered massage therapy instructors will be required to complete an additional 16 contact hours over and above the 16 hours required to maintain their massage therapy license as a condition of renewing their instructor registration] As a condition for registration renewal, each registered massage therapy instructor will be required to complete sixteen (16) contact hours of continuing education, in addition to the sixteen (16) contact hours required to maintain the massage therapy license, for a total of thirty-two (32) contact hours.

(1) [Such] Continuing education must be completed within the twenty-four (24) months immediately preceding the renewal date [.] of October [31st] 31.

(2) Excess hours cannot be carried over to future renewals.

[4](3) Continuing education

taken prior to the twenty-four month period will not be accepted.

~~(2)~~(4) An automatic late renewal penalty fee, as provided in 16.7.3.8 NMAC, will be incurred if the continuing education submitted was taken after the twenty-four month period.

(5) Each registrant will maintain documentation of all continuing education completed, including contact information for the continuing education providers.

~~C. Audit authority:~~ The board may randomly select license renewal applications for an audit of continuing education. Each licensee/registrant will maintain, in his/her personal files, documentation of all continuing education completed with the names, addresses and phone number of the continuing education provider(s).

~~D. Audit process:~~ The board will send a notice of audit to each licensee/registrant selected for an audit. The licensee/registrant must provide the board with documentation of the continuing education completed within the twenty-four (24) months preceding the renewal date, October 31st.

(1) If, after audit, it is determined that a licensee failed to meet the continuing education requirement for renewal, he/she will be sent a letter by certified mail return receipt requested requiring the following:

(a) that the licensee obtain and submit the required continuing education to the board within thirty days of the receipt of the board's letter;

(b) that the licensee pay a penalty fee of \$150 within thirty days of the receipt of the board's letter.

(2) Failure to comply with these requirements will result in the licensee being automatically referred to the attorney general's office for issuance of a notice of contemplated action signaling the beginning of formal disciplinary action.

~~E. Academic hours:~~ One (1) hour of continuing education taken in an academic setting converts to fifteen (15) clock hours.]

~~C. Audit process:~~ The board will audit continuing education to verify compliance.

(1) A minimum of 10% of renewing licensees and registrants will be randomly selected for audit.

(2) Audit requests may be included in the renewal notice.

(3) Licensees and registrants not selected for audit are only required to list the continuing education they completed on their renewal applications.

(4) The board may audit any licensee or registrant's continuing education records at any time before the next scheduled license/registration renewal.

(5) Audited licensees or registrants who fail to provide the requested con-

tinuing education documentation are not eligible for license/registration renewal.

NEW MEXICO MASSAGE THERAPY BOARD

This is an amendment to Sections 7, 8, 9, 10, 11 and 12 of 16.7.12 NMAC effective September 30, 2005

16.7.12.7 DEFINITIONS:

A. "Active status" means a license that is current and authorizes the licensee or registrant to perform the practice or service authorized by the license or registration.

B. "Renew" means to begin again after an interval of time; to make valid again for a further period.

C. "Renewal date" means the deadline date upon which the license or registration must be made valid again for another period of time.

D. "Grace period" refers to the sixty (60) [days after the renewal date that are allowed a massage therapist licensee, massage therapy instructor or massage school registrant who did not renew the license or registration by the renewal date, to renew with a penalty fee; and during which the licensee or registrant may still practice or provide the services authorized by the license or registration.] day period following the renewal date when a massage therapist licensee, massage therapy instructor or massage school registrant may renew a license or registration (that was not renewed timely) with a penalty fee. A licensee or registrant may still practice or provide the services authorized by the license or registration during those sixty (60) days.

E. "Grace period status" [means] refers to the license or registration that has not been renewed by the renewal date assigned to [the license or registration; is still within the grace period allowed and under which the licensee or registrant may still practice or provide the services authorized by the license or registration; but which now must be renewed with the addition of a late penalty fee in addition to the renewal fee as set forth in 16.7.3 NMAC.] it, but has not yet been placed on inactive status.

F. "Inactive status" occurs when a massage therapist's license or massage therapist instructor's registration is not renewed by the end of the grace period allowed [for] in the licensee's or registrant's renewal cycle. [A license or registration can also be placed on inactive status for a period of two years.] If the inactive license or registration is not reactivated within [those] two years, it automatically expires, lapses and becomes null and void.

G. "Inactive status pro-

od" refers to a period not to exceed two years and only applies to massage therapists and massage therapy instructors[;], NOT to massage therapy schools.

H. "Expired status" means a license that has not been reactivated from inactive status [~~and which has lapsed, become null and void,~~] and can no longer be reactivated.

I. "Null and void status" means the license or registration is no longer valid and cannot be reactivated.

J. "Lapsed status" means the license or registration is null and void, is no longer valid and cannot be reactivated.

K. "Massage therapist" means a person licensed to practice in accordance with the Massage Therapy Practice Act.

L. "Massage therapy instructor" refers to a school-based instructor or to an independent instructor who is registered by the board.

M. "Massage therapy school" means a facility providing an educational program in massage therapy that is registered by the board.

N. "Uniform Licensing Act" refers to NMSA 1978, Sections 61-1-1 *et seq.* (as amended through 2003).

16.7.12.8 GENERAL PROVISIONS FOR ALL LICENSEES AND REGISTRANTS:

A. Administrative provisions relative to the renewal process:

(1) Licenses and registrations [shall be scheduled to expire either annually or biennially on October 31st of the year. The specific annual or biennial schedule for each license or registration type is further explained under the applicable section for each type in this regulation, 16.7.12 NMAC.] expire on an annual or biennial basis on October 31. The specific annual or biennial schedule for each license or registration type is further detailed in 16.7.4.20 NMAC, with the understanding that an instructor's registration renewal date must coincide with his/her massage therapy license renewal date (see Paragraph (1) of Subsection A of 16.7.6.8 NMAC).

(2) [Renewal application forms] A current license or registration renewal form shall be mailed to the last known address on file with the board [for each current licensee or registrant].

(3) [It is the responsibility of the licensee or registrant to keep the board informed of any changes in home, employment, business, or school address, as may be applicable, and to update other contact information, such as phone numbers, as become necessary.] Each licensee and registrant must inform the board of any change in contact information, such as address or

telephone number.

(4) Failure to receive the renewal [application] notice shall not relieve the licensee or registrant from the responsibility of renewing the license or registration by the renewal date.

(5) The licensee or registrant shall complete the renewal application form in the manner stated on the form. The form must be submitted with the requested documentation and required fee(s) as set forth in 16.7.3 NMAC.

(6) Incomplete renewal applications will be returned to the licensee or registrant for completion, which [could] might result in the assessment of late penalty fees.

B. Grace period provisions:

(1) [~~Licenses or registration renewal application not submitted with a postmark date or hand delivered on or before the renewal deadline of October 31st, or the next business day if the October 31st falls on a weekend or holiday, are late and must also be accompanied by a late renewal penalty fee established in 16.7.3 NMAC~~] Renewal applications for licenses or registrations postmarked or hand-delivered after October 31 must also be accompanied by the late renewal penalty fee established in 16.7.3 NMAC. If October 31 falls on a weekend, a renewal postmarked or hand-delivered on the next business day will be considered timely.

(2) After the renewal date of October [~~31st~~] 31, there is a sixty-day grace period ending December [~~30th~~] 30 of the same year during which the license or registration may still be renewed, and during which the licensee or registrant may still practice or provide the services authorized by the license or registration.

(3) Massage therapists and massage therapy instructors who have not renewed their licenses or registrations with a postmark date of December [~~30th~~] 30, or the next business day if December [~~30th~~] 30 falls on a weekend [~~or holiday~~] in the same year as their renewal cycle, will automatically be placed on inactive status as of December [~~30th~~] 31 of that year.

(4) Massage therapy schools that have not renewed their registrations with a postmark date of December [~~3rd~~] 30, or the next business day if December [~~30th~~] 30 falls on a weekend, will automatically expire [~~immediately~~] and become null and void immediately.

16.7.12.9 GENERAL PROVISIONS ONLY FOR MASSAGE THERAPISTS AND INSTRUCTORS:

A. Inactive status issues for massage therapists and massage therapy instructors:

(1) Massage therapists [~~or~~] and

massage therapy instructors whose licenses or registrations have been placed on inactive status may not provide the services authorized by the license or registration.

(2) [~~Continuation of the practice of massage therapy by massage therapists; or massage therapy training and instruction by massage therapy instructors while on inactive status is~~] Massage therapists and massage therapy instructors who practice with an inactive license or registration are subject to disciplinary action by the board.

(3) [~~The inactive status period shall end two years from the December 30th on which the massage therapist license and instructor registration should have been renewed~~] The inactive status period shall last two years, beginning on the December 30 that the license or registration is placed on inactive status.

(4) [~~It is the responsibility of the licensee or registrant to~~] The licensee or registrant must monitor the period of inactive status.

(5) The board will NOT send any notices of the upcoming expiration of inactive status to the licensees or registrants.

B. Reactivation from inactive status - therapists and instructors only:

(1) Massage therapy licenses [~~or~~] and massage therapy instructor registrations will expire if not reactivated [~~by the deadline of the inactive status period, which will fall two years after December 30 of the year in which~~] within two years from the date the license or registration was placed on inactive status.

(2) The required reactivation form must be requested from the board office a minimum of one month prior to the expiration of the inactive status period.

(3) The licensee or registrant shall complete and return the completed reactivation form with the required proof of completion of continuing education as set forth in 16.7.11 NMAC, along with the reactivation fee and late renewal penalty fee as set forth in 16.7.3 NMAC.

(4) The reactivation application and required enclosures must be postmarked or hand-delivered to the board office no later than [~~October 31st~~] two years [~~following~~] from the December 30 of the year in which the license or registration was placed on inactive status. [~~or~~] Failure to do so will cause the license or registration [~~will~~] to expire, lapse, and become null and void.

(5) Reactivation applications received with a postmark date or hand-delivered after December [~~30th~~] 30 will be returned to the expired licensee or registrant because the license may no longer be reactivated.

16.7.12.10 MASSAGE THERAPISTS:

A. Massage [~~therapist~~] therapists will renew their licenses on or before the renewal date of October [~~31st of the year stated on their current licenses in a~~] 31 of the biennial renewal cycle first established when [~~the initial license was~~] their initial licenses were issued.

B. Some massage therapists will renew on the odd-numbered year, while others will renew on the even-numbered year.

C. The general provisions in 16.7.12.8, 16.7.12.9, and 16.7.12.10 NMAC explain the policy and procedure for massage therapist license renewal.

D. Massage therapists [~~shall be responsible for meeting~~] must meet the continuing education requirements [~~in accordance with 16.7.11 NMAC and for maintaining~~] and must maintain documentation of continuing education [~~for submission to the board upon request and~~] as set forth in 16.7.11 NMAC.

16.7.12.11 MASSAGE THERAPY INSTRUCTORS:

A. Prerequisite requirements: The registrant must hold a current active New Mexico massage therapy license.

B. Instructor registration renewal: The general provisions in 16.7.12.8, 16.7.12.9, and 16.7.12.10 NMAC explain the policy and procedure for massage therapy instructor registration renewal.

(1) [~~Instructor registrations come~~] Each instructor's registration comes up for renewal at the same time the registrant's massage therapy license comes up for renewal.

(2) Registrants will renew their registration on or before October [~~31st or the next business day if the October 31st falls on a weekend or holiday, of the biennial renewal year in which the registrant's registration is scheduled for renewal~~] 31 of the registrant's biennial renewal year. If October 31 falls on a weekend, a renewal postmarked or hand-delivered on the next business day will be considered timely.

(3) Registrants [~~will be responsible for meeting~~] must meet the continuing education requirements [~~in accordance with 16.7.11 NMAC and for maintaining~~] and must maintain documentation of continuing education [~~for submission to the board upon request and~~] as set forth in 16.7.11 NMAC.

(4) Independent instructor registrants will be responsible for submitting their massage therapy training curriculum with their renewal.

(5) School based instructor registrants who teach at a registered massage therapy school are not required to submit a

curriculum with their renewal.

16.7.12.12 MASSAGE THERAPY SCHOOLS:

A. Massage therapy school registrations shall be renewed annually by ~~[the renewal date, October 31st or the next business day if the October 31st falls on a weekend or holiday]~~ October 31 or by the next business day if the October 31 falls on a weekend.

B. The general provisions in 16.7.12.8 NMAC explain the general policy and procedure for massage therapy school renewal.

C. Registrants will ~~[be responsible for annually submitting]~~ submit a curriculum of the massage therapy training program annually to the board to document compliance with the course requirements set forth in 16.7.5 NMAC.

D. After the grace period, which ends on December ~~[30th]~~ 30, an owner/operator of a massage therapy school who has not ~~[had its renewed the schools]~~ renewed the school's registration shall no longer maintain, manage or operate the "massage therapy school" as defined in 16.7.12.7 NMAC or in Section 61-12C-3.F of the Massage Therapy Practice Act, or offer education, instruction, or training in "massage therapy" as defined in Section 61-12C-3.E of the Massage Therapy Practice Act ~~[because the registration has expired and has lapsed and become null and void].~~

E. The registration shall expire, lapse and become null and void if not timely renewed.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to Section 6.11.2.11 NMAC (RIGHTS AND RESPONSIBILITIES OF THE PUBLIC SCHOOLS AND PUBLIC SCHOOL STUDENTS), effective September 15, 2005. The amendment deletes Section 6.11.2.11 NMAC in its entirety and replaces it with a temporary rule that incorporates by reference 20 U.S.C. 1415(k) of the Individuals with Disabilities Education Improvement Act of 2004. The temporary rule explains that 20 U.S.C. 1415(k) and the federal regulations implementing that provision, which address disciplinary removals for students with disabilities from their current educational placements, shall govern until Section 6.11.2.11 NMAC is further revised. The temporary rule also clarifies that all other federal and state laws and rules governing student discipline, including 6.11.2.12 NMAC, remain in effect.

6.11.2.11 ~~PROCEDURES FOR LONG TERM SUSPENSION OR EXPULSION OF STUDENTS WITH DISABILITIES:~~

A. Initial determination(s)
(1) The following rules shall apply when a student with a disability violates a rule of conduct as set forth in this regulation which may result in:

(a) long term suspension or expulsion; or

(b) any other disciplinary change of the student's current educational placement as specified in the federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 CFR Secs. 300.519 through 300.529.

(2) The following rules shall also apply when a disciplinary change of placement is contemplated for a child as to whom the school district had knowledge, as provided in 34 CFR Sec. 300.527, that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(3) The administrative authority shall conduct an informal administrative conference to determine if disciplinary action is warranted. The purpose of the conference shall be to:

(a) conduct interviews;
(b) afford the child an opportunity to explain the alleged misconduct;

(c) determine whether the child has an individualized education program (IEP) in accordance with the IDEA or a plan in accordance with Section 504 of the Rehabilitation Act of 1973 (hereinafter "504") in effect, and if so whether the IEP or 504 plan contains alternative disciplinary strategies; and

(d) determine whether a referral for formal evaluation should be made if an IEP or 504 plan is not in effect and a disability is suspected.

(4) The administrative authority shall make a determination as to whether the conduct warrants long term suspension or expulsion.

(5) Nothing herein shall preclude the administrative authority from imposing a short term suspension subject to the further provisions of 34 CFR Secs. 300.519-300.520 and/or seeking an injunction from a court of competent jurisdiction or an order from an IDEA hearing officer pursuant to 34 CFR Sec. 300.521 and Paragraph 4 of Subsection I of 6.31.2.13 NMAC to exclude or change the placement of a student when the administrative authority believes that maintaining the current placement is substantially likely to result in injury to the child or others.

B. Parent notification

(1) Upon a determination by the administrative authority that long term suspension or expulsion will not be pursued;

the administrative authority shall notify the parent(s) of the incident.

(2) Upon a determination by the administrative authority that the student's IEP or 504 plan sets forth alternative discipline strategies for the behavior, the administrative authority shall implement the alternative strategies and notify the parent(s) accordingly.

(3) Upon a determination by the administrative authority that an IEP or 504 plan is not in effect for the student and that a referral for formal evaluation should be made, the administrative authority shall refer the student for formal evaluation and shall notify the parent(s) in accordance with applicable requirements.

(4) Upon a determination by the administrative authority that long term suspension or expulsion will be pursued and that an IEP or 504 plan is in effect for the student, the administrative authority shall notify the parent(s) as follows:

(a) Scheduling of the IEP meeting in accordance with the requirements of the IDEA Part B and 34 CFR Part 300, or Section 504, and 34 CFR Part 104, as applicable; and

(b) Contemplated disciplinary action.

C. Manifestation inquiry

(1) The administrative authority shall convene the IEP or 504 meeting to determine if the student's behavior is a manifestation of the disability and whether the student's IEP or 504 plan is appropriate.

(2) An IDEA manifestation inquiry shall be conducted by the IEP team and other qualified personnel pursuant to all applicable requirements of 34 CFR Sec. 300.523.

(3) If the determination is made that the behavior is a manifestation of the disability, the IEP Team or 504 Committee shall revise the IEP or 504 plan as needed to address the needs of the student. The student may not be suspended or expelled from school for more than ten (10) school days in a school year unless such action is allowable under 34 CFR Sec. 300.519 without establishing a pattern of exclusion or the school district obtains an order from a court of competent jurisdiction to remove the student from school or to change the student's placement.

(4) If the determination is made that the behavior is not a manifestation of the disability but that the student's program is inappropriate, the IEP team or 504 committee shall revise the IEP/504 plan. The student may not be suspended or expelled from school for more than ten (10) school days in a school year unless such action is allowable under 34 CFR Sec. 300.519 without establishing a pattern of exclusion or the school district obtains an order from a court of competent jurisdiction to remove

the student from school or to change the student's placement.

(5) If the determination is made that the misbehavior is not a manifestation of the disability and the child's program is appropriate, the administrative authority may proceed to initiate long term suspension or expulsion proceedings in accordance with Subsection G of 6.11.2.12 NMAC.

D. Special rule

(1) This rule shall apply, pursuant to 34 CFR Sec. 300.520(a)(2), when a child with a disability is determined to have:

(a) brought a weapon to school or a school function; or

(b) knowingly possessed or used illegal drugs or sold or solicited the sale of a controlled substance while at school or a school function.

(2) A student who has a disability in accordance with Part B of the IDEA and who is determined to have engaged in any conduct described in Paragraph 1 above may be immediately placed in an interim alternative educational setting for not more than forty five (45) calendar days during the manifestation inquiry. The interim alternative educational setting shall be determined by the IEP Team, which includes the student's parent(s), in compliance with all applicable requirements of 34 CFR Sec. 300.522. Parental consent to the alternative placement is not required.

(3) If the parent(s) of a student placed in an alternative educational setting pursuant to this special rule request(s) a due process hearing pursuant to Part B of the IDEA, the hearing shall be expedited pursuant to 34 CFR Sec. 300.528 and Paragraph 11 of Subsection I of 6.31.2.13 NMAC and the student shall remain in the alternative educational setting during the pendency of any proceedings, unless the parent(s) and administrative authority agree otherwise or the IDEA hearing officer orders otherwise pursuant to 34 CFR Sec. 300.526 and Paragraph 20 of Subsection I of 6.31.2.13 NMAC.

(4) If, upon final determination, it is decided that the offense involving the weapon or drug was not a manifestation of the student's disability, the administrative authority may proceed to initiate long term suspension or expulsion proceedings.

E. Functional behavioral assessments and behavioral intervention plans. The administrative authority shall ensure that a functional behavioral assessment is conducted and a behavioral intervention plan for each student with a disability under the IDEA is developed or reviewed and revised by the IEP team in compliance with 34 CFR Sec. 300.520(b) and (c) not later than 10 business days after first removing the child from his or her cur-

rent educational placement for more than 10 school days in a school year or commencing a removal that constitutes a change of placement under 34 CFR Sec. 300.519, including an action described in Subsection D of 6.11.2.11 NMAC.

F. Alternative educational services during the period of long term suspension or expulsion

(1) Alternative educational services for a student with a disability upon whom a long term suspension or expulsion has been imposed for behavior that was not a manifestation of the disability shall be provided as follows:

(a) During the period of disciplinary exclusion from school, each student who is disabled pursuant to the IDEA must continue to be offered a program of appropriate educational services that is individually designed to meet his or her unique learning needs and provides a free appropriate public education (FAPE) pursuant to 34 CFR Sec. 300.121(d). Such services may be provided in the home, in an alternative school, or in another setting.

(b) School districts may cease educational services to students who are disabled pursuant to Section 504 during periods of disciplinary exclusion from school that exceed ten (10) school days if students who are not disabled do not continue to receive educational services in similar circumstances.

(2) Provision of alternative educational services

(a) The parent(s) shall be notified of the IEP/504 meeting.

(b) An IEP is developed to reflect the alternative educational services and placement to be provided to the student during the period of the long term suspension or expulsion, pursuant to 34 CFR Sec. 300.121.(d).

(c) If the parent(s) of an IDEA student request a due process hearing, the hearing shall be expedited pursuant to 34 CFR Sec. 300.528 and Paragraph 11 of Subsection I of 6.31.2.13 NMAC and the student shall remain in the alternative educational setting during the pendency of any proceedings, unless the parent(s) and administrative authority agree otherwise or the IDEA hearing officer orders otherwise pursuant to 34 CFR Sec. 300.526 and Paragraph 20 of Subsection I of 6.31.2.13 NMAC.

(3) Local school boards shall adopt policies stating whether a student will receive grades and/or credit during the period of long term suspension or expulsion, subject to the requirement of 34 CFR Sec. 300.121 that an IDEA student must receive services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately

advance toward achieving the goals set out in the child's IEP.]

DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

Temporary rule. Until this Section 6.11.2.11 NMAC is further revised, the provisions of the Individuals with Disabilities Education Improvement Act of 2004 at 20 U.S.C. Section 1415(k) and the federal regulations implementing those provisions shall govern disciplinary removals of students with disabilities from their current educational placements. All other federal and state laws and rules governing student discipline, including 6.11.2.12 NMAC governing detention, suspension or expulsion of any student, remain in effect.

[08-15-97; 6.11.2.11 NMAC - Rn, 6 NMAC 1.4.11 & A, 11-30-00; A, 9-15-05]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to Section 6.31.2.14 NMAC (CHILDREN WITH DISABILITIES/GIFTED CHILDREN), effective September 15, 2005. The amendment adds Subsection D, a temporary rule which clarifies that, until Subsection D is deleted or amended, all provisions of the federal Individuals with Disabilities Education Improvement Act (IDEA) of 2004 shall govern where they conflict with existing state laws and rules. The only exceptions are the state rule provisions enumerated in Subsection D, which supplement the minimum requirements of the federal IDEA 2004 and remain in effect. The amendment also adds Subsection E, a temporary rule that clarifies that, until Subsection E is deleted or amended, 20 U.S.C. Section 1415(k) of the IDEA 2004 shall supersede Paragraphs (2) and (3) of Subsection F of 6.31.2.11 NMAC and 6.11.2.11 NMAC in their entirety. 20 U.S.C. Section 1415(k) governs disciplinary removals of students with disabilities from their educational placements.

6.31.2.14 RULES OF CONSTRUCTION:

A. U.S. department of education interpretations. The U.S. department of education's interpretations of the provisions of 34 CFR Part 300 as set forth in Appendix A to 34 CFR Part 300, its Analysis of Comments and Changes to Part 300 at 64 Federal Register 12537-12656 (March 12, 1999), and other interpretations that are published or announced by the USDE in the federal register are recognized as the federal government's official positions regarding the requirements of the IDEA. Such interpretations shall be fol-

lowed by the state board and department to the extent that they do not conflict with express provisions of the IDEA or case law from the federal courts.

B. Uniform Statute and Rule Construction Act. The Uniform Statute and Rule Construction Act, Secs. 12-2A-1 through -20 NMSA 1978, applies to the interpretation of 6.31.2 NMAC except to the extent that these rules incorporate permissible variations under the New Mexico version of the Uniform Statute and Rule Construction Act. References in 6.31.2 NMAC to state or federal laws, rules or regulations are intended to incorporate future amendments unless a provision in these rules is irreconcilable with a future amendment under the standards of the Uniform Statute and Rule Construction Act.

C. Conflicts with state or federal laws or regulations. If any state law, a state rule or regulation adopted by the PED or a federal law or regulation grants greater rights to an individual or agency than these rules provide, the other provision shall control to the extent necessary to avoid a conflict.

D. Temporary rule regarding IDEA 2004 provisions. The intent of 6.31.2 NMAC and other existing state rules governing publicly funded programs for children with disabilities was to incorporate the requirements of the 1997 version of the IDEA. The IDEA 2004 changed the federal requirements in many respects. Accordingly, until this Subsection D is deleted or amended, this temporary rule clarifies that all provisions of the federal IDEA 2004 shall govern where they conflict with corresponding state laws and rules, except that the following provisions of 6.30.2 and 6.31.2 NMAC, which supplement the federal minimum requirements of the IDEA 2004, shall remain in effect.

(1) Item (iv) of Subparagraph (b) of Paragraph (9) of Subsection J of 6.30.2.10 NMAC - Standards for Excellence. This provision sets forth the state requirement that, beginning at the end of eighth grade, the IEP for each student with a disability must contain a proposed individual program of study for grades 9-12, which must identify course options for the student and reflect the student's long-term goals.

(2) Paragraph (12) of Subsection C of 6.31.2.7 NMAC - definitions. This provision sets forth the state requirements governing when a "foster parent" may act as a "parent," including the requirement that the foster parent must have a "long-term, ongoing parental relationship with the child."

(3) Subsection D of 6.31.2.11 NMAC—performance goals and indicators. This provision sets forth the state requirements for performance goals and indicators, which indicate that a student's IEP goals

must be directly tied to the New Mexico content standards and benchmarks, including the expanded performance standards for students with significant cognitive disabilities.

(4) Subsection E of 6.31.2.11 NMAC - participation in statewide and district-wide assessments. This provision sets forth the state requirements regarding the criteria for participation in alternate assessments that an IEP team must consider and document in a student's IEP.

(5) Subsection G of 6.31.2.13 NMAC - conflict management and resolution; Subsection H of 6.31.2.13 NMAC - state complaint procedures; and Subsection I of 6.31.2.13 - due process hearings. These provisions set forth the state requirements for dispute resolution procedures and were amended effective July 29, 2005, to align with and supplement the IDEA 2004 provisions.

E. Temporary rule regarding student discipline procedures. Until this Subsection E is deleted or amended, 20 U.S.C. Sec. 1415(k) as amended by IDEA 2004 shall supersede Paragraphs (2) and (3) of Subsection F of 6.31.2.11 NMAC - behavioral management and discipline in its entirety, as well as 6.11.2.11 NMAC - procedures for long-term suspension or expulsion of students with disabilities in its entirety.

[6.31.2.14 NMAC - N, 8/14/2000; A, 9-15-05]

NEW MEXICO DEPARTMENT OF TRANSPORTATION

18 NMAC 27.2, Division 100 - General Provisions Standard Specifications for Highway and Bridge Construction (filed 04/13/2005) is hereby repealed effective 09/15/2005. This rule is replaced by 18.27.2 NMAC, Division 100 - General Provisions Standard Specification for Highway and Bridge Construction effective 09/15/2005.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

**TITLE 18 TRANSPORTATION
AND HIGHWAYS
CHAPTER 27 HIGHWAY CON-
STRUCTION GENERAL PROVISIONS
PART 2 DIVISION 100 -
GENERAL PROVISIONS STANDARD
SPECIFICATIONS FOR HIGHWAY
AND BRIDGE CONSTRUCTION**

18.27.2.1 ISSUING AGENCY:
New Mexico Department of Transportation,
P.O. Box 1149, Santa Fe, New Mexico
87504-1149
[18.27.2.1 NMAC - Rp, 18.27.2.1 NMAC,
9/15/05]

18.27.2.2 SCOPE: All agencies,
the general public and highway construc-
tion contractors.
[18.27.2.2 NMAC - Rp, 18.27.2.2 NMAC,
9/15/05]

**18.27.2.3 STATUTORY
AUTHORITY:** NMSA 1978, Sections 67-
3-43, 13-1-99, 13-1-170 and 13-1-174.
[18.27.2.3 NMAC - Rp, 18.27.2.3 NMAC,
9/15/05]

18.27.2.4 DURATION:
Permanent.
[18.27.2.4 NMAC - Rp, 18.27.2.4 NMAC,
9/15/05]

18.27.2.5 EFFECTIVE DATE:
September 15, 2005, unless a later date is
cited at the end of a section.
[18.27.2.5 NMAC - Rp, 18.27.2.5 NMAC,
9/15/05]

18.27.2.6 OBJECTIVE: The
purpose of this regulation, Division 100 -
General Provisions Standard Specifications
for Highway and Bridge Construction, is to
implement and enforce Division 100 of the
*New Mexico department of transportation
2005 interim specifications as replacement
to the 2000 edition of the standard specifi-
cations for highway and bridge construc-
tion* book, and shall be controlling for all
projects advertised and all contracts execut-
ed after the date this rule is promulgated by
the New Mexico department of transporta-
tion and duly filed in the state records cen-
ter.
[18.27.2.6 NMAC - Rp, 18.27.2.6 NMAC,
9/15/05]

18.27.2.7 DEFINITIONS:
[RESERVED]
[18.27.2.7 NMAC - Rp, 18.27.2.7 NMAC,
9/15/05]

[See Section 101, Abbreviations, Symbols
and Definitions of Division 100 - General
Provisions of the *New Mexico department
of transportation 2005 interim specifica-
tions as replacement to the 2000 edition of
the standard specifications for highway and
bridge construction* for applicable defini-
tions.]

**18.27.2.8 ADOPTION OF THE
NEW MEXICO DEPARTMENT OF
TRANSPORTATION 2005 INTERIM
SPECIFICATIONS:** This rule adopts by
reference Division 100 - General Provisions
of the *New Mexico department of trans-*

portation 2005 interim specifications as replacement to the 2000 edition of the standard specifications for highway and bridge construction.

[18.27.2.8 NMAC - Rp, 18.27.2.8 - 18.27.2.15 NMAC, 9/15/05]

History of Repealed Material: 18 NMAC 27.2, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction, filed January 2, 1998 and 18 NMAC 27.2, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction, filed May 1, 1998, with the State Records Center and Archives are repealed effective February 14, 2000.

18 NMAC 27.2, Division 100 - General Provisions Standard Specifications for Highway and Bridge Construction (filed 02/02/2000) repealed 04/29/05.

18.27.2 NMAC, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction (filed 4/13/05) repealed 9/15/05.

Other History:

SHTD Rule 94-1, Division 100- General Provisions Standard Specifications for Highway and Bridge Construction (filed 09/27/97) replaced by 18 NMAC 27.2, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction, effective 05/15/98.

18 NMAC 27.2, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction (filed 05/01/98) replaced by 18 NMAC 27.2, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction, effective 02/14/00.

18 NMAC 27.2, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction (filed 02/02/00) replaced by 18.27.2 NMAC, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction, effective 04/29/05.

18.27.2 NMAC, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction (filed 4/13/05) replaced by 18.27.2 NMAC, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction, effective 09/15/05.

End of Adopted Rules Section

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Other Material Related to Administrative Law

**NEW MEXICO
ENVIRONMENT
DEPARTMENT
CONSTRUCTION PROGRAMS
BUREAU**

**NEW MEXICO
ENVIRONMENT DEPARTMENT
NOTICE OF COMMENTS FOR
INTENDED USE PLAN**

The New Mexico Environment Department is accepting public comment regarding:

1) Placement of projects to priority list for Federal Fiscal years 2004-2009 for the Clean Water State Revolving Loan Fund Program also known as the Wastewater Facility Construction Loan Program.

2) Adoption of the New Mexico Clean Water State Revolving Loan Fund Program Intended Use Plan for Federal Fiscal year 2005 & 2006, October 2004 through September 2006. The New Mexico Wastewater Facility Construction Loan Act, as amended, provides low interest loan funds for the planning, design and construction of wastewater facilities to prevent or abate water pollution. Any municipality, county, Indian Tribe or sanitation district may apply for a loan to the New Mexico Environment Department, Construction Programs Bureau, as agent for the Water Quality Control Commission, which is the designated water pollution control agency within New Mexico.

In order to receive a CWSRF loan, an applicant's project must be on the approved priority list. The purpose of the Intended Use Plan is to identify proposed annual intended uses of the funding amounts available to the wastewater loan program. Approximately \$27 million in federal and state funds are currently available for loans. The New Mexico Environment Department Construction Programs Bureau will be accepting comments until September 30, 2005.

Richard P. Rose
State of New Mexico
Environment Department
Construction Programs Bureau
P.O. Box 26110
Santa Fe, NM 87502

Questions regarding the Intended Use Plan or Priority List may be directed to Ms. Ramona Rael, Financial Manager at (505) 827-2808 or Ms. Jennifer Prada, Program Administrator at (505) 827-2807. A copy of

the priority list may also be obtained by calling the above referenced number.

NEW MEXICO LIVESTOCK BOARD

NEW MEXICO LIVESTOCK BOARD

NOTICE OF REGULAR BOARD MEETING

NOTICE IS HEREBY GIVEN that a regular board meeting will be held on Friday, September 16, 2005, at the New Mexico Racing Commission Board Room, 300 San Mateo NE, Albuquerque, New Mexico, at 9:00 a.m. The Board will discuss matters of general business.

Copies of the agenda can be obtained by contacting Daniel Manzanares, Executive Director, New Mexico Livestock Board, 300 San Mateo NE Suite 1000, Albuquerque, NM 87108-1500, (505) 841-6161.

Anyone who requires special accommodations is requested to notify the New Mexico Livestock Board office at (505) 841-6161 of such needs prior to the meeting.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

HISTORICAL RECORDS ADVISORY BOARD

NOTICE OF REGULAR MEETING

A regular meeting of the New Mexico Historical Records Advisory Board has been scheduled for Friday, September 23, 2005 at 9:00 A.M. The meeting will be held at the Geronimo Springs Museum Community Room, which is an accessible facility, at 211 Main Street, Truth or Consequences, NM 87901. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Gail Packard at the State Records Center and Archives 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 Gail Packard at 505-476-7948 at the State Records Center and Archives if a summary or other type of

accessible format is needed.

A copy of the proposed agenda may be obtained at the State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505.

End of Other Related Material Section

2005

SUBMITTAL DEADLINES AND PUBLICATION DATES

Volume XVI	Submittal Deadline	Publication Date
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.