

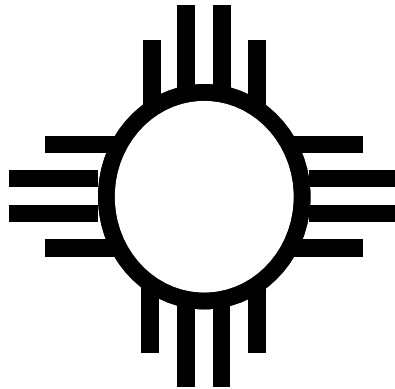
**NEW
MEXICO
REGISTER**



Volume XVI
Issue Number 22
November 30, 2005

New Mexico Register

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November 30, 2005**



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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2005

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

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Notices of Rulemaking and Proposed Rules

NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS ARTS DIVISION

NOTICE OF HEARING ON PROPOSED RULES GOVERNING THE NEW MEXICO ARTS DIVISION

Notice is hereby given that pursuant to the New Mexico Arts Commission and Division Act Section 18-5-7(F) NMSA 1978, the New Mexico Arts Division proposes to adopt regulations to update the New Mexico Arts Commission bylaws and regulations governing the New Mexico Arts Division and its funding application procedures, requirements, and programs.

The proposed regulations update the New Mexico Arts Commission bylaws and define who is eligible to receive funding from the Division and describes the New Mexico Arts' procedures for receiving and considering applications for funding, and terms, conditions, and requirements for funding assistance. The proposed regulations will be discussed, and comments taken at a public hearing to be held on January 5, 2006. New Mexico Arts Commission updates and funding application procedures will be heard between 9:00 am and 9:30 am. The hearing will be held at the New Mexico Arts offices, 4th Floor Solarium located at 228 E. Palace Avenue La Villa Rivera Building, Santa Fe, NM. Copies of the proposed regulations may be obtained before the meeting at the New Mexico Arts Division offices listed above or by contacting Virginia Castellano at 505/827-6490 or by e-mail virginia.castellano@state.nm.us. The notice of the public hearing will be posted on NMA website www.nmarts.org under "Breaking News" beginning November 30.

Interested persons may submit written comments to the New Mexico Arts Division at PO Box 1450, Santa Fe, NM 87504-1450 or e-mail comments regarding the funding programs to virginia.castellano@state.nm.us to be received by 8:00 am January 5. Written comments shall suggest specific reasons for any suggested amendments or comments and include any proposed amendatory language.

If any interested person has a disability and requires some accommodation in attending the public hearing or to have the rules communicated to them, please submit a written request identifying the disability and the type of accommodation needed to Virginia

Castellano before December 19th. If accommodation is not requested in advance we cannot guarantee the availability of accommodation on-site.

NEW MEXICO BOARD OF DENTAL HEALTH CARE

Legal Notice

Notice is hereby given that the New Mexico Board of Dental Health Care will convene a Rule Hearing to add a new part to the rules as follows:

Title 16, Chapter 5, Part 4 - Emergency Licensing Provision

New Mexico Board of Dental Health Care will also amend, replace and repeal Title 16, Chapter 5, Parts 1 through 40 to renumber and reformat the rules in accordance with current NMAC requirements. The following are the part numbers and titles Title 16, Chapter 5, Parts 1 - 40 for:

16.5.1 General Provisions; 16.5.2 Impaired Practitioner Program; 16.5.3 Mandatory Reporting Requirements; 16.5.5 Dentists Fees; 16.5.6 Dentist Licensure By Examination; 16.5.7 Dentists Temporary License; 16.5.8 Dentist Licensure by Credentials; 16.5.9 Non-Dentist Owners; 16.5.10 Dentist Continuing Education Requirements; 16.5.11 Dentist License Expiration and Renewal; 16.5.12 Dentist Retirement, Inactive and Reinstatement; 16.5.13 Dentists License Revocation for Non Renewal; 16.5.15 Dentists, Anesthesia Administration; 16.5.16 Dentist Disciplinary Procedures; 16.5.17 Dentists and Dental Hygienists, Collaborative Practice; 16.5.18 Dental Hygienist Fees; 16.5.19 Dental Hygienist Licensure By Examination; 16.5.20 Dental Hygienist Licensure by Credentials; 16.5.21 Dental Hygienist Temporary License; 16.5.23 Dental Hygienist Continuing Education Requirements; 16.5.24 Dental Hygienist License Expiration and Renewal; 16.5.25 DH Requirements Inactive & Reinstatement; 16.5.26 DH License Revocation for Non Renewal; 16.5.28 DH Local Anesthesia Certification; 16.5.29 Dental Hygienist Practice; 16.5.30 DH Disciplinary Proceedings; 16.5.32 Dental Assistants Fees; 16.5.33 Dental Assistants Requirements For Certification; 16.5.35 DA Certificate Expiration and Renewal; 16.5.36 DA Continuing Education Requirements; 16.5.37 DA Certificate Revocation for Non Renewal; 16.5.39 Dental Assistant Practice and Supervision; 16.5.40 Dental Assistants Disciplinary Proceedings

This Hearing will be held at the Toney

Anaya Building, 2550 Cerrillos Road, Santa Fe, NM, January 20, 2006 at 8:30 a.m.

Following the Rule Hearing the Dental Hygienists Committee will convene a regular meeting. The New Mexico Board of Dental Health Care will convene a regular meeting following the Dental Hygienists Committee Meeting on January 20, 2006, beginning with Executive Session. The public portion of the meeting is anticipated to begin about 10:00 a.m.

Copies of the proposed rules are available on request from the Board office, P. O. Box 25101, Santa Fe, New Mexico, 87504-5101, or phone (505) 476-4680.

Anyone wishing to present their views on the proposed rules may appear in person at the Hearing, or may send written comments to the Board office. Written comments must be received by January 5, 2006 to allow time for distribution to the Board and Committee members. Individuals planning on testifying at the hearing must provide 14 copies of their testimony.

Final action on the proposed rules will be taken during the Board meeting. Portions of the committee and Board meeting may be closed to the public while the Board and Committee are in Executive Session to discuss licensing matters. Copies of the agenda will be available 24 hours in advance of the meeting from the Board office.

Disabled members of the public who wish to attend the meeting or hearing and are in need of reasonable accommodations for their disabilities should contact the Board Administrator at least one week prior to the meeting.

NEW MEXICO OFFICE OF THE STATE ENGINEER

STATE ENGINEER RULES AND REGULATIONS AND NOTICE OF PUBLIC HEARING

OFFICE OF THE STATE ENGINEER
P.O. BOX 25102
SANTA FE, NEW MEXICO 87504-5102
(505) 827-6120
www.ose.state.nm.us

On September 23, 2005, the State Engineer declared six new underground water basins and extended the boundaries of nine existing underground water basins. The areas being declared and extended encompass approximately 11,500 square miles (about 9.5% of the state of New Mexico). The state engineer now has jurisdiction over the

appropriation and beneficial use of all of the underground waters of the state of New Mexico. The State Engineer has had jurisdiction over the appropriation and use of the surface waters of the state since 1907.

In the northeast part of the state, the State Engineer has declared the Clayton Underground Water Basin and extended the Canadian River Underground Water Basin. In the east central and southeast parts of the state, the State Engineer has declared the Casey Lingo Underground Water Basin and extended the Curry County, Fort Sumner, and Lea County Underground Water Basins. In the central part of the state, the State Engineer has extended the Tularosa Underground Water Basin. In the southwest part of the state, the State Engineer has declared the Mount Riley, Hatchita, Yaqui, and Cloverdale Underground Water Basins and extended the Animas, Lordsburg, Nutt-Hockett, and Playas Underground Water Basins.

The State Engineer has declared and extended the underground water basins for the following reasons:

- (1) Provide for the statewide administration of underground water to accurately account for and administer the resource, to prevent impairment to valid, existing rights to the use of surface water and underground water, to prevent actions that would be contrary to the conservation of water within the state, and to prevent actions that would be detrimental to the public welfare of the state; and
- (2) Apply the rules, regulations and state laws pertaining to the administration of underground water statewide; and
- (3) Additional reasons may be found in memorandum and other support material available at each district office and on the Office of the State Engineer web-site.

The rules and regulations may be obtained at any district office of the Office of the State Engineer which are located in Albuquerque, Las Cruces, Santa Fe, Roswell, Aztec, Deming, and Cimarron. The rules and regulations are also posted on the Office of the State Engineer web site and may be accessed as follows:

- a. Start from the OSE home page at www.ose.state.nm.us
- b. On the OSE home page click on "Hot Topics"
- c. On the "Hot Topics" page, click on "State Engineer Signs Six Special Orders on September 23, 2005, Declaring and Extending Underground Water Basins Throughout the State of New Mexico"

To request that a copy of the rules and reg-

ulations be sent to you in the mail, please contact Paul Wells at 505-827-6120 (Santa Fe).

A public hearing will be held on the above described rules and regulations at Mabry Hall in the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico, on December 9, 2005, beginning at 9:00 a.m. Any person who is or may be affected by these rules and regulations may appear and testify. If you are an individual with a disability who is in need of special assistance or accommodation to attend or participate in the hearing, please contact Paul Wells at (505) 827-6120. The Office of the State Engineer requests ten days advance notice to provide any special accommodation.

Written comments on the rules and regulations may be submitted to the Office of the State Engineer in Santa Fe or to any of the district offices. Written comments on the rules and regulations may also be mailed to:

Office of the State Engineer
Attn: Paul Wells
P.O. Box 25102
Santa Fe, NM 87504.

Please submit your written comments to the Office of the State Engineer no later than December 5, 2005. After December 5, comments should be submitted at the hearing in Santa Fe on December 9, 2005.

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On Friday, December 16, 2005, beginning at 9:00 a.m. at the New Mexico State University-Carlsbad, Lecture Hall, Room 153, 1500 University Drive, Carlsbad, NM 88220, the State Game Commission will meet in Public Session to consider action as appropriate on the following: Consent Agenda for Committee Reports; Quarterly Depredation Report; Revocations; Development of Hunting, Angling, GAIN and PLEASE Opportunities for 2006-2007; Recommendations for HSP Citizen Advisory Committee Nominees; Benefits of Using Spatial Analysis for Wildlife Conservation and Management; Summary of Department Management, Recovery, and Conservation Plans; Management and Maintenance of Game Commission Properties; Recommendations for Use of Land Conservation Funding; Mexican Wolf Update; Strategic Use of Video and Other Information Media; General Public Comments; and Closed Executive Session

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

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

* Private Land Entry and Sportsmen Enjoyment Regulation-Conservation Access Fee Amendment (19.34.7, NMAC);

* Once-in-a-Lifetime Exemptions (19.31.3, NMAC);

* Adoption of Fishing Rule 19.31.4, and Manner and Method Rule 19.31.10, NMAC, Changes; and

* Adoption of Commercial Fishing Rule 19.31.9, NMAC, Changes.

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 PUBLIC EDUCATION DEPARTMENT

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

The Public Education Department (“Department”) hereby gives notice that the Department will conduct public hearings as indicated to obtain input on the following rules:

The School and Family Support Bureau recommends the following rulemaking actions: amend 6.30.2 NMAC (STANDARDS FOR EXCELLENCE) to establish requirements for emergency drills for public and nonpublic schools; amend 6.30.2.19 NMAC(HEALTH EDUCATION) and 6.30 .2.20 NMAC (PHYSICAL EDUCATION) to add performance standards; adopt new rule 6.12.5 NMAC (NUTRITION – COMPETITIVE FOOD SALES); adopt new rule 6.12.6 NMAC (WELLNESS).

Public hearings will be held on January 4, 2006 in the Las Cruces Public Schools Board Room, 505 South Main, Suite 249, Loretto Towne Center, Las Cruces, New Mexico 88001 and on January 6, 2006 at the Toney Anaya Building, 2550 Cerrillos Road, Rio Grande Room, Santa Fe, New Mexico 87505. The times for the hearings on the listed rules is indicated below.

Interested individuals may testify at either public hearing or submit written comments regarding the proposed rulemaking to Dr. Kristine M. Meurer, Director, School and Family Support Bureau, Public Education Department, 120 S. Federal Place, Room 206; Santa Fe, New Mexico 87501 (Kristine.meurer@state.nm.us) (505) 222-4748 (telefax (505) 827 -1826). Written comments must be received no later than 5:00 pm on January 6, 2006.

The proposed rulemaking actions may be accessed on the Department’s website (<http://ped.state.nm.us/>) or obtained from Doris Sandoval, School and Family Support Bureau, Public Education Department, 120 S. Federal Place, Room 206; Santa Fe, NM 87501 (doris.sandoval@state.nm.us) (505) 827-1804(telefax (505) 827 -1826).

Rule Number	Rule Name	Proposed Action	Date, Time, and Location of Hearings
6.30.2 NMAC	STANDARDS FOR EXCELLENCE	Amend rule to add EMERGENCY DRILLS	January 4, 2006 (Las Cruces) January 6, 2006 (Santa Fe) 8 a.m. to 9 a.m.
6.12.5 NMAC (Proposed NMAC Part No.)	NUTRITON: COMPETITIVE FOOD SALES (Proposed Part Name)	Adopt new rule	January 4, 2006 (Las Cruces) January 6, 2006 (Santa Fe) 9:15 a.m. to 10:15 a.m.
6.12.6 NMAC (Proposed NMAC Part No.)	WELLNESS (Proposed Part Name)	Adopt new rule	January 4, 2006 (Las Cruces) January 6, 2006 (Santa Fe) 10:30 a.m. to 11:30 a.m.
6.30.2.19 NMAC	STANDARDS FOR EXCELLENCE	Amend rule to add HEALTH EDUCATION PERFORMANCE STANDARDS	January 4, 2006 (Las Cruces) January 6, 2006 (Santa Fe) 1 p.m. to 2 p.m.
6.30.2.20 NMAC	STANDARDS FOR EXCELLENCE	Amend rule to add PHYSICAL EDUCATION PERFORMANCE STANDARDS	January 4, 2006 (Las Cruces) January 6, 2006 (Santa Fe) 2:15 p.m. to 3:15 p.m..

The Instructional Material Bureau proposes to repeal 6.75.2 NMAC (RELATING TO THE PUBLIC EDUCATION DEPARTMENT INSTRUCTIONAL MATERIAL BUREAU) and adopt a new rule to meet the requirements of statutory changes.

A public hearing will be held on January 6, 2006 at the Toney Anaya Building, 2550 Cerrillos Road, Rio Grande Room, Santa Fe, New Mexico 87505. Interested individuals may testify at either public hearing or submit written comments regarding the proposed rulemaking to Betty Kee, Bureau Chief, Instructional Material Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501 -2786 (betty.kee@state.nm.us) (505) 476 -0315 (telefax (505) 827-6411). Written comments must be received no later than 5:00 pm on January 6, 2006.

The proposed rulemaking actions may be accessed on the Department’s website (<http://ped.state.nm.us/>) or obtained from Sharyn Perea, Instructional Material Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501 -2786 (505) 827 -6415 (telefax (505) 827 -6411).

Rule Number	Rule Name	Proposed Action	Date, Time, and Location of Hearing
6.75.2 NMAC	RELATING TO THE PUBLIC EDUCATION DEPARTMENT INSTRUCTIONAL MATERIAL BUREAU	Repeal rule	January 6, 2006 (Santa Fe) 3:30 p.m. to 4:30 p.m.
6.75.2 NMAC (Proposed NMAC No.)	RELATING TO THE PUBLIC EDUCATION DEPARTMENT INSTRUCTIONAL MATERIAL BUREAU (Proposed part name)	Adopt new rule	January 6, 2006 (Santa Fe) 3:30 p.m. to 4:30 p.m.

The Educator Quality Division Bureau proposes amending rules as listed below.

Interested individuals may testify at the public hearing on January 11, 2006 from 10:00 a.m. to 12:00 p.m. at the Educator Quality Division Offices at 444 Galisteo Street, Suite A, Santa Fe, New Mexico 87501 or submit written comments regarding the proposed rulemaking to Mr. James Ball, Assistant Secretary, Educator Quality Division, PED, 444 Galisteo Street, Suite A, Santa Fe, New Mexico, 87501, james.ball@state.nm.us, (Fax: 505-827-3525). Written comments must be received no later than 5:00 pm on January 11, 2006.

The proposed rules may be accessed on the Department's website (<http://ped.state.nm.us/>) or obtained from Mr. James Ball, Assistant Secretary, Educator Quality Division, PED, 444 Galisteo Street, Suite A, Santa Fe, New Mexico, 87501, james.ball@state.nm.us, (505-827-3582) (Fax: 505-827-3525).

6.60.5 NMAC	Competency Testing for Licensure	Amend rule	January 11, 2006 (Santa Fe) 10:00 a.m. to 12:00 p.m.
6.63.8 NMAC	Licensure in Athletic Coaching 7-12	Amend rule	January 11, 2006 (Santa Fe) 10:00 a.m. to 12:00 p.m.
6.64.6 NMAC	Competencies for Entry Level Social Studies Teachers	Amend rule	January 11, 2006 (Santa Fe) 10:00 a.m. to 12:00 p.m.
6.69.2 NMAC	Unsatisfactory Work Performance of Licensed School Personnel	Amend rule	January 11, 2006 (Santa Fe) 10:00 a.m. to 12:00 p.m.

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 Doris Sandoval, Administrative Assistant, School and Family Support Bureau, Public Education Department, 120 S. Federal Place, Room 206; Santa Fe, NM 87501 (doris.sandoval@state.nm.us) (505) 827-1804 (telefax (505) 827-1826) as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The NM Commission of Public Records has scheduled a regular meeting for Tuesday, December 6, 2005, at 9:00 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM 87507. Pursuant to the New Mexico Open Meetings Act, Section 10-15-1(H)(2) NMSA 1978, a portion of the meeting may be closed to discuss a limited personnel matter. 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, please contact Darlene A. Torres at 476-7902 by November 28, 2005. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

NOTICE OF RULEMAKING

The Commission of Public Records may consider the following items of rulemaking at the meeting:

Amendment

- | | |
|---------------|--|
| 1.15.2 NMAC | GRRDS, General Administrative Records |
| 1.18.333 NMAC | ERRDS, Taxation and Revenue Department |
| 1.18.780 NMAC | ERRDS, Crime Victims Reparation Commission |

Repeal

1.18.601 NMAC ERRDS, Commission on the Status of Women

New-Replacement

1.18.601 NMAC ERRDS, Commission on the Status of Women

**NEW MEXICO
PUBLIC REGULATION
COMMISSION
INSURANCE DIVISION**

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

**IN THE MATTER OF
AMENDING 13.8.2 NMAC,
RATE FILINGS BY INSURERS
AND RATE SERVICE
ORGANIZATIONS AND
13.8.3 NMAC, CASUALTY,
PROPERTY, TITLE AND
VEHICLE INSURANCE
POLICY FORMS**

DOCKET NO. 05-00444-IN

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

NOTICE IS HEREBY GIVEN that the New Mexico Superintendent of Insurance ("Superintendent") on his own motion proposes to amend 13.8.2 NMAC, Rate Filings By Insurers And Rate Service Organizations and 13.8.3 NMAC, Casualty, Property, Title And Vehicle Insurance Policy Forms. The Superintendent, being fully advised, **FINDS** and **CONCLUDES**:

1. The Insurance Rate Regulation Law, Chapter 59A, Article 17 NMSA 1978, authorizes the Superintendent to exempt any person or class of persons or any market segment from any or all of its provisions to the extent that the Superintendent finds such provision or provisions unnecessary to achieve the purposes set forth in 59A-17-3 NMSA 1978. Section 59A-18-12 (A) (2) NMSA 1978 further states that if the Superintendent has exempted a person or a class of persons or a market segment from a part or all of the provisions of the Insurance Rate Regulation Law, the Superintendent also may exempt by rule that person, class of persons or market segment from a part or all of the statutory requirements for filing policy forms for prior approval.

2. In light of this statutory authority, Insurance Division Staff has proposed amendments to 13.8.2 NMAC, Rate Filings By Insurers And Rate Service Organizations

and 13.8.3 NMAC, Casualty, Property, Title And Vehicle Insurance Policy Forms to exempt certain commercial lines insurance policy forms and rates from prior approval requirements, to promulgate file and use requirements for these policy forms and rates, to promulgate new rate and form filing transmittal documents for personal and commercial lines of insurance and to revise other provisions to make them consistent with current law and Insurance Division procedures.

3. Copies of the proposal are available as follows:

a. by downloading from the Public Regulation Commission's website, www.nmprc.state.nm.us, under "Insurance Division," then "News" and "Proposed Rules, 13.8.2 NMAC, Rate Filings By Insurers And Rate Service Organizations and 13.8.3 NMAC, Casualty, Property, Title And Vehicle Insurance Policy Forms:"

b. by sending a written request with the docket number, rule names, and rule numbers to the Public Regulation Commission's Docketing Office, P.O. Box 1269, Santa Fe, NM 87504-1269 along with a self-addressed envelope and a check for \$5.00 made payable to the Public Regulation Commission to cover the cost of copying; or

c. for inspection and copying during regular business hours in the Public Regulation Commission's Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

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

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

IT IS FURTHER ORDERED that an

informal public hearing pursuant to Section 59A-4-18 NMSA 1978 be held on **Wednesday, January 11, 2006** at 9:30 a.m. in the Public Regulation Commission, Fourth Floor Hearing Room, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico for the purpose of receiving oral public comments including data, views, or arguments on the proposal. All interested persons wishing to present oral comments may do so at the hearing. Interested persons should contact the Insurance Division ahead of time to confirm the hearing date, time, and place since hearings are occasionally rescheduled.

IT IS FURTHER ORDERED that all interested parties may file written comments on the proposal on or before **Friday, January 6, 2006**. An original and two copies of written comments must be filed with the Public Regulation Commission's Docketing Office, Room 406, P.O. Box 1269, Santa Fe, NM 87504-1269. The docket number must appear on each submittal. If possible, please also e-mail a copy of written comments in Microsoft Word format to alan.seeley@state.nm.us. Comments will be available for public inspection during regular business hours in the Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

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

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

PLEASE BE ADVISED THAT the New Mexico Lobbyist Regulation Act, Section 2-11-1 *et seq.*, NMSA 1978 regulates lobbying activities before state agencies, officers, boards and commissions in rulemaking and other policy-making proceedings. A person is a lobbyist and must register with the Secretary of State if the person is paid or employed to do lobbying or the person represents an interest group and attempts to influence a state agency, officer, board or commission while it is engaged in any for-

mal process to adopt a rule, regulation, standard or policy of general application. An individual who appears for himself or herself is not a lobbyist and does not need to register. The law provides penalties for violations of its provisions. For more information and registration forms, contact the Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM 87503, (505) 827-3600.

PLEASE BE ADVISED THAT individuals with a disability, who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, may contact Ann Echols, on or before January 6, 2006, at (505) 827-4559. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should also be addressed to Ms. Echols.

DONE, this 15th day of November 2005.

NEW MEXICO PUBLIC REGULATION COMMISSION

INSURANCE DIVISION

/s/

ERIC P. SERNA, Superintendent of Insurance

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Social Work Examiners Board will hold a Rule Hearing on January 13, 2006. Following the Rule Hearing the New Mexico Social Work Examiners Board will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Social Work Examiners Board Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held at the Regulation and Licensing Department, 5200 Oakland Ave NE, Albuquerque, NM.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.63 NMAC: Part 1

General Provisions, Part 3 Application for Licensure, Part 4 Examinations, Part 5 Emergency Licensure, Part 6 Licensure by Credentials, Part 7 Provisional License, Part 8 Fees, Part 9 Baccalaureate Social Worker, Part 10 Master Social Worker, Part 11 Independent Social Worker, Part 12 Continuing Education, Part 14 Inactive Status, Part 15 Retirement and Part 16 Code of Conduct.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, or call (505) 476-4890 after December 13, 2005. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than January 1, 2006. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4890 at least two weeks prior to the meeting or as soon as possible.

Vadra Baca, Administrator
PO Box 25101- Santa Fe, New Mexico
87504

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

This is an amendment to 21.17.50 NMAC, Section 25, effective 11/30/05. This amended rule is also renumbered to comply with the NMAC requirements.

21.17.50.25 FEES:

A. The annual registration fee for each pesticide or device registered shall be [~~thirty five dollars (\$35.00)~~] seventy five dollars (\$75.00).

B. The annual pesticide dealer license fee for each location or outlet within the state, or if there is no outlet within the state, for the principal out-of-state location or outlet, shall be [~~thirty five dollars (\$35.00)~~] fifty dollars (\$50.00).

C. The annual pest management consultant license fee shall be fifty dollars (\$50.00).

D. The annual commercial applicator license fee shall be fifty dollars (\$50.00).

E. The annual operator/agricultural pilot/serviceman license fee shall be twenty-five dollars (\$25.00).

F. The annual non-commercial applicator license fee shall be fifty dollars (\$50.00)

G. The private applicator certification fee, or renewal thereof, shall be [~~five dollars (\$5.00)~~] fifteen dollars (\$15.00).

H. The fee for each additional inspection required to certify a unit of aircraft, ground or manual equipment that fails to pass inspection shall be twenty-five dollars (\$25.00).

I. The examination fee for each examination needed to qualify the applicant as a pest management consultant, commercial applicator, non-commercial applicator or operator/agricultural pilot/serviceman shall be [~~five dollars (\$5.00)~~] ten dollars (\$10.00) per examination.

[7/1/97; 21.17.50.25 NMAC – Rn & A, 21 NMAC 17.50.25, 11/30/05]

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

TITLE 20 ENVIRONMENTAL
PROTECTION
CHAPTER 11 ALBUQUERQUE-
BERNALILLO COUNTY AIR QUALI-

TY CONTROL BOARD PART 71 MUNICIPAL SOLID WASTE LANDFILLS

20.11.71.1 ISSUING AGENCY:
Albuquerque-Bernalillo County Air Quality
Control Board.

[20.11.71.1 NMAC - N, 1/1/06]

20.11.71.2 SCOPE:

A. **Applicability:**
20.11.71 NMAC is applicable to the city of
Albuquerque and Bernalillo county.

(1) **Existing municipal solid waste landfills:** Each owner or operator of an existing municipal solid waste (MSW) landfill is subject to all provisions required by 40 CFR 60.30c through 60.36c (Subpart Cc, *Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills*) as promulgated by the US EPA on March 12, 1996, except as provided for in Subsection B of 20.11.71.14 NMAC. Physical or operational changes made to an existing MSW landfill solely to comply with an emission guideline (40 CFR 60 Subpart Cc) are not considered a modification or reconstruction and do not subject an existing MSW landfill to the requirements of 40 CFR 60 Subpart WWW.

(2) **New municipal solid waste landfills:** In addition to being subject to 20.11.71.13 NMAC new MSW landfills are subject to 40 CFR Part 60, Subpart WWW, *Standards of Performance for Municipal Solid Waste Landfills* as incorporated by reference in 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources*.

B. **Exempt:** 20.11.71 NMAC does not apply to sources within Bernalillo county, that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

[20.11.71.2 NMAC - N, 1/1/06]

20.11.71.3 S T A T U T O R Y

AUTHORITY: 20.11.71 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Sections 3 & 4; the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 & 9-5-1-4.

[20.11.71.3 NMAC - N, 1/1/06]

20.11.71.4 **D U R A T I O N :**
Permanent.

[20.11.71.4 NMAC - N, 1/1/06]

20.11.71.5 **EFFECTIVE DATE:**
January 1, 2006, unless a later date is cited
at the end of a section.

[20.11.71.5 NMAC - N, 1/1/06]

20.11.71.6 **OBJECTIVE:** To
establish requirements for municipal solid
waste landfills in order to control emissions
of non-methane organic compounds
(NMOC).

[20.11.71.6 NMAC - N, 1/1/06]

20.11.71.7 **DEFINITIONS:** In
addition to the definitions in 20.11.71.7
NMAC, the definitions in 20.11.1 NMAC
General Provisions apply unless there is a
conflict between definitions, in which case
the definition in 20.11.71 NMAC shall govern.

A. **“Commercial solid waste”** means all types of solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, excluding residential and industrial wastes.

B. **“Design capacity”**
means the maximum amount of solid waste
a landfill can accept, as indicated in terms of
volume or mass in the most recent permit
issued by the state, local, or tribal agency
responsible for regulating the landfill, plus
any in-place waste not accounted for in the
most recent permit. If the owner or opera-
tor chooses to convert the design capacity
from volume to mass or from mass to vol-
ume to demonstrate its design capacity is
less than 2.5 million megagrams or 2.5 mil-
lion cubic meters, the calculation must
include a site specific density, which must
be recalculated annually.

C. **“Division”** means the
air quality division of the city of
Albuquerque environmental health depart-
ment or its successor agency.

D. **“Existing municipal solid waste landfill”** means a MSW landfill meeting **all** of the following conditions:

(1) has commenced construction,
modification, or reconstruction *before* May
30, 1991;

(2) has not been modified or
reconstructed *since* May 30, 1991;

(3) has accepted waste at any time
since November 8, 1987, or has additional
design capacity available for future waste
deposition; and

(4) is active, or has additional
capacity, or is closed.

E. **“Household waste”**
means any solid waste (including garbage,
trash, and sanitary waste in septic tanks)
derived from households (including, but not
limited to, single and multiple residences,
hotels and motels, bunkhouses, ranger sta-

tions, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

F. "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of the Resource Conservation and Recovery Act, 40 CFR Parts 264 and 265. Industrial solid waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. Industrial solid waste does not include mining waste or oil and gas waste.

G. "Megagram" means 1,000,000 grams, or the equivalent of 1.102311 tons.

H. "Modification" means an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991. Modification does not occur until the owner or operator commences construction on the horizontal or vertical expansion.

I. "Municipal solid waste landfill" or "MSW landfill" means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A MSW landfill may also receive other types of Resource Conservation and Recovery Act (RCRA) Subtitle D wastes such as commercial solid waste, non-hazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a MSW landfill may be separated by access roads. A MSW landfill may be publicly or privately owned. A MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

J. "New municipal solid waste landfill" means a MSW landfill that commenced construction, reconstruction, modification, or began accepting waste on or after May 30, 1991.

K. "NMOC" means non-methane organic compounds, as measured according to the provisions of 40 CFR 60.754. NMOC may include many compounds commonly referred to as VOCs (volatile organic compounds) and HAPs (hazardous air pollutants).

L. "Reconstruction" shall have the same meaning as specified by 40 CFR 60.15.
[20.11.71.7 NMAC - N, 1/1/06]

20.2.71.8 VARIANCES: The variance provisions of 20.11.7 NMAC, Variance Procedure, Revised Ordinances of Albuquerque 1994 Section 9-5-1-8, Bernalillo County Ordinance 94-5 Section 4 and NMSA 1978 Section 74-2-8 shall *not* apply to 20.11.71 NMAC or the incorporated federal standards.
[20.11.71.8 NMAC - N, 1/1/06]

20.11.71.9 SAVINGS CLAUSE: Any amendment to 20.11.71 NMAC that is filed with the state records center shall not affect actions pending for violation of a city or county ordinance, the air quality regulations for Albuquerque and Bernalillo county or a permit issued by the department. Prosecution for a violation under a prior statute, ordinance, regulation or permit shall be governed and prosecuted under the statute, ordinance or regulation in effect at the time the violation was committed.
[20.11.71.9 NMAC - N, 1/1/06]

20.11.71.10 SEVERABILITY: If any section, paragraph, sentence, clause or word of 20.11.71 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of 20.11.71 NMAC.
[20.11.71.10 NMAC - N, 1/1/06]

20.11.71.11 DOCUMENTS: Documents incorporated and cited in 20.11.71 NMAC may be viewed at the Albuquerque environmental health department, one civic plaza, suite 3023, 400 Marquette NW, Albuquerque, NM 87102.
[20.11.71.11 NMAC - N, 1/1/06]

20.11.71.12 [Reserved]
[20.11.71.12 NMAC - N, 1/1/06]

20.11.71.13 PERMITTING REQUIREMENTS:

A. Operating permits: New and existing MSW landfills with design capacities greater than or equal to 2.5 million megagrams or 2.5 million cubic meters are subject to the permitting requirements of 20.11.42 NMAC *Operating Permits*. New and existing MSW landfills with design capacities less than 2.5 million megagrams or 2.5 million cubic meters are not subject to permitting requirements under 20.11.42 NMAC *Operating Permits* unless they are a major source as defined in 20.11.42 NMAC *Operating Permits*.

B. Authority to Construct Permits: Emissions of NMOC from MSW landfills subject to 20.11.71 NMAC shall not be included in applicability determinations that would otherwise be required by 20.11.41 NMAC *Authority to Construct* and shall not be subject to the

permit requirements of 20.11.41 NMAC.
[20.11.71.13 NMAC - N, 1/1/06]

20.2.71.14 REQUIREMENTS FOR EXISTING MUNICIPAL SOLID WASTE LANDFILLS:

A. Reporting and Compliance: Except as provided below, reporting and compliance requirements for existing MSW landfills shall be as required by 40 CFR 60 Subpart Cc.

(1) Within 90 days of final US EPA approval of 20.11.71 NMAC, each owner or operator of an existing MSW landfill, shall submit to the division an initial design capacity report as required by 40 CFR 60.757(a)(2) of Subpart WWW.

(2) Within 90 days of final US EPA approval of 20.11.71 NMAC, each owner or operator of an existing MSW landfill, with a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters, shall submit to the division an NMOC emission rate report in accordance with 40 CFR 60.757(b)(1) and (2) of Subpart WWW.

(3) Within 30 months of first reporting NMOC emissions of 50 megagrams per year or more, the owner or operator of an existing MSW landfill, with a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters, and with an NMOC emission rate greater than or equal to 50 megagrams per year, shall install a gas collection and control system and operate the system as required by 40 CFR 60.752(b) of Subpart WWW.

B. Exceptions: None.
[20.11.71.14 NMAC - N, 1/1/06]

HISTORY OF 20.11.71 NMAC:
Pre-NMAC History: None.

History of Repealed Material:
[Reserved]

Other History: [Reserved]

**ALBUQUERQUE-
BERNALILLO COUNTY
AIR QUALITY CONTROL
BOARD**

This is an amendment to 20.11.63 NMAC, Section 2, effective 1/1/06.

20.11.63.2 SCOPE: 20.11.63 NMAC is applicable to all stationary sources of air pollutants located within Bernalillo county, which are subject to the requirements of 40 CFR Part 60, as amended in the *Federal Register* through July 1, 2004.

A. Exempt: 20.11.63 NMAC does not apply to sources within

Bernalillo county that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

B. Exclusions:

(1) 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters.

(2) ~~[40 CFR 60, Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills.~~

(3) ~~40 CFR 60, Subpart Ce, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills] Reserved.~~

C. Variances: The variance provisions of 20.11.7 NMAC, Variance Procedure, Revised Ordinances of Albuquerque 1994 Section 9-5-1-8, Bernalillo County Ordinance 94-5, Section 8, and NMSA 1978 Section 74-2-8 shall not apply to 20.11.63 NMAC or the incorporated federal standards.

[1/1/2000; 20.11.63.2 NMAC - Rn, 20 NMAC 11.63.2, 10/1/02; A, 1/1/05; A, 1/1/06]

**ALBUQUERQUE-
BERNALILLO COUNTY
AIR QUALITY CONTROL
BOARD**

This is an amendment to 20.11.102 NMAC, Sections 2; 3; 7; 9; 10; 11; 12; 13 and 14, effective 12/11/05.

20.11.102.2 SCOPE: ~~[This Part]~~ 20.11.102 NMAC is applicable to gasoline motor fuel sold retail or wholesale or supplied for use in motor vehicles in Bernalillo County except Indian lands.

[12/1/95; 20.11.102.2 NMAC - Rn, 20 NMAC 11.102.I.2, 10/1/02; A 12/11/05]

20.11.102.3 STATUTORY AUTHORITY: ~~[This Part]~~ 20.11.102 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, ~~[74-2-5.C]~~ 74-2-5.B; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Sections ~~[3]~~4 and ~~[4]~~5; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections ~~[9-5-1-3]~~ 9-5-1-4 and ~~[9-5-1-4]~~ 9-5-1-5.

[11/1/89. . .12/1/95; 20.11.102.3 NMAC - Rn, 20 NMAC 11.102.I.3, 10/1/02; A, 9/1/04; A 12/11/05]

20.11.102.7 DEFINITIONS: In addition to the definitions in 20.11.102.7 NMAC the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in ~~this~~

~~Part~~ 20.11.102.7 NMAC shall govern.

A. "Department" means the Albuquerque environmental health department or its successor agency.

B. "Ethanol" means a colorless volatile flammable alcohol with the molecular composition of $[C_2H_6O]$ CH_3CH_2OH .

C. "Facility" or "facilities" means a place or places of business which sells or supplies for wholesale or retail purposes gasoline motor fuel, including fuel-transporting businesses.

D. "Gasoline motor fuels" means ~~[for purposes of this part,]~~ any flammable liquid used primarily as fuel for the propulsion of motor vehicles, but does not include diesel engine fuel, kerosene, liquefied petroleum gas, natural gas and products specially prepared and sold for use in the turbo-prop or jet-type engines.

E. "Manager" means the manager of the vehicle pollution management division (VPMD).

F. "MTBE" means methyl tertiary butyl ether.

G. "Methanol" means a light volatile flammable poisonous liquid alcohol CH_3OH formed by the destructive distillation of wood or manufactured from natural gas or coal, and used in combination with heavier co-solvent alcohols as an octane enhancer for addition to gasoline.

H. "Motor vehicle" means any vehicle propelled by a spark ignited internal combustion engine which is designed primarily for travel on public highways and which is generally and commonly used to transport persons and property over the public highways.

I. "Oxygen content by weight" means a measurement of the percentage of oxygen in an oxygenated fuel.

J. "Oxygenate" means any oxygen-containing ashless, organic compound which may be used as a fuel or as a gasoline blending component and which was approved as a blending agent under the provisions of a waiver issued by the U.S. environmental protection agency pursuant to the Clean Air Act, Section 211 (f) (4).

K. "Oxygenated fuel" means a motor vehicle fuel blend, whether leaded or unleaded, consisting primarily of gasoline and a substantial amount of one or more oxygenates, generally an alcohol or ether.

L. ~~["Oxygenated fuels procedures manual or procedures manual"]~~ means a compilation of procedures developed by the manager pursuant to ~~20.11.102.13 NMAC.~~ **"Vehicle pollution management division (VPMD)"** means the division within the department responsible for the administration of 20.11.102

NMAC.

M. "Winter pollution season" means the annual period beginning the first day of November and ending at the conclusion of the last day of February of the immediately following year.

[11/10/93; 20.11.102.7 NMAC - Rn, 20 NMAC 11.102.I.7, 10/1/02; A, 9/1/04; A 12/11/05]

20.11.102.9 SAVINGS CLAUSE: Any amendment of 20.11.102 NMAC that is filed with the state records center shall not affect actions pending for violation of a city or county ordinance ~~[, Air Quality Control Board Regulation 35], or prior versions of 20.11.102 NMAC [or the procedures manual].~~ Prosecution for a prior violation shall be governed and prosecuted under the statute, ordinance, regulation, part or ~~[procedures manual]~~ permit in effect at the time the violation was committed.

[11/10/93. . .12/1/95; 20.11.102.9 NMAC - Rn, 20 NMAC 11.102.I.9, 10/1/02; A, 9/1/04; A 12/11/05]

20.11.102.10 SEVERABILITY: If any section, ~~[paragraph]~~ subsection, sentence, phrase, clause, or word of ~~[this Part]~~ 20.11.102 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of the remaining provisions of ~~[this Part or the Procedures Manual]~~ 20.11.102 NMAC.

[11/10/93. . .12/1/95; 20.11.102.10 NMAC - Rn, 20 NMAC 11.102.I.10, 10/1/02; A 12/11/05]

20.11.102.11 DOCUMENTS: Documents incorporated and cited in ~~[this Part]~~ 20.11.102 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM, 87102.

[12/1/95; 20.11.102.11 NMAC - Rn, 20 NMAC 11.102.I.11 & A, 10/1/02; A, 9/1/04; A 12/11/05]

20.11.102.12 OXYGENATED FUELS: During the winter pollution season, oxygenated fuels shall be used in all gasoline powered motor vehicles as a wintertime air pollution control strategy for reduction of carbon monoxide emissions in Bernalillo county.

A. Annual program duration and minimum oxygen content:

(1) ~~[Beginning November 1 and ending the last day of February of 1991 and every year thereafter]~~ During the winter pollution season, no person shall supply or sell any gasoline motor fuel intended as a final product for fueling of motor vehicles within Bernalillo county, or sell at retail, or

sell to a private or government fleet for consumption; or introduce such fuels into a motor vehicle in Bernalillo county unless the fuel contains a minimum 2.7 percent oxygen content by weight, except as required pursuant to 20.11.102.14 NMAC.

(2) The department shall establish the blending tolerance for oxygenated fuels.

(3) The board, after considering EPA guidelines [~~all available~~] and other applicable information, reports, data, and testimony, [~~shall~~] may make a determination by July of each year whether the oxygenate levels should be modified or remain the same.

(4) Oxygenates approved for use in this program shall be blended per unit volume of gasoline motor fuel, and blended up to [~~10~~] 10 percent by volume for ethanol, [~~and up to 15 percent by volume MTBE~~] or at the volume for any other gasoline motor fuel additive which has been issued a waiver by the EPA pursuant to the Clean Air Act, Section 211 (f) (4).

(5) No gasoline motor fuel blended with methanol and intended as a final product for fueling of motor vehicles shall be sold at retail or to a private or government fleet within Bernalillo county.

B. Inventory: Any supplier who provides gasoline or oxygenate blends in bulk in Bernalillo county must register with VPMD and provide the names, addresses and telephone numbers of all jobbers, fleet fueling facilities and retail outlets supplied. The inventory shall be submitted to VPMD by November 30, 2005 and by October 31 each year thereafter.

C. Recordkeeping: During the winter pollution season, any supplier providing gasoline in Bernalillo county must document whether each batch is oxygenated, the oxygen content by weight and the oxygenate type and percent by volume. This documentation must accompany each shipment and be kept on file by the retailer or fleet facility for the duration of the winter pollution season.

[B]D. Labeling and notice to the public:

(1) All oxygenated motor fuel sold shall be clearly labeled at each dispensing pump identifying the type of oxygenate, [~~in accordance with labeling criteria and labels developed by the department. Each gasoline pump stand at retail dispensing facilities must have a label stating, "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."~~] with labels provided by the department.

(2) All retail gasoline [~~vending~~] facilities shall keep readily available all pamphlets, brochures, fact sheets, and other written information provided to them by the department for information and dissemination to the public.

~~[(3) The department shall develop a public education plan to inform the public of the commencement of the program, encourage compliance, and answer questions during the duration of the program. The board may review the plan and provide guidance and advice to the department on its implementation.]~~

E. Sampling: A minimum of 20 percent of all retail stations and 10 percent of all fleet fueling facilities will be sampled. The department, upon presentation of proper identification, shall be allowed to enter a facility during reasonable times. The department may collect those samples deemed appropriate after paying for or offering to pay for the samples at any facility. Samples will be collected through the filler of the underground gasoline storage tanks as outlined in 40 CFR Part 80, Appendix D. If a sample cannot be taken directly from the underground tank, the sample may be taken from the gas pump nozzle and labeled accordingly.

F. Analysis: The department shall make a good faith effort to analyze the samples as soon as possible. Samples shall be analyzed in the field or at the VPMD laboratory on the same day the samples are collected, circumstances permitting. Samples will be analyzed for ethanol, MTBE, or other oxygenates. Any sample results contested by a distributor or station will be sent by the department to the New Mexico department of agriculture (NMDA) petroleum standards bureau for analysis. Sample analysis shall be conducted in accordance with the American society for testing and materials (ASTM) standards or equivalent. Analysis shall comply with ASTM D-5845, ASTM D-4815, or equivalent standard.

[G] G. Enforcement:
(1) [~~To determine compliance with this regulation, the department shall develop sampling frequency and testing criteria for gasoline motor fuel. The department, upon presentation of proper identification shall be allowed to enter a facility during reasonable times. The department may collect those samples deemed appropriate after paying for or offering to pay for these samples at any facility.]~~

Samples containing at least 2.5 percent oxygen by weight shall be considered in compliance. Samples containing at least 2.0 percent but less than 2.5 percent oxygen by weight will result in a notice of warning and must be corrected at the time of the next fuel delivery. Samples containing at least 1.5 percent but less than 2.0 percent oxygen by weight will result in notice of violation (NOV) and must be corrected within 24 hours. The NOV will cite the reason(s) for non-compliance and will include the sample date and the results of the analysis in percent oxygen by weight. Samples containing

less than 1.5 percent oxygen by weight or repeat violations for samples below 2.5 percent oxygen by weight shall result in an immediate "stop sale" order which will remain in effect until the violation is corrected as determined by the department. Any fuel dispensed in violation of a "stop sale" order will result in the director of the department issuing a compliance order and imposing a penalty of not less than \$500 and not more than \$15,000 per day as authorized by the New Mexico Air Quality Act, NMSA 1978, 74-2-12.B.

(2) The department may enter into [~~any~~] an agreement, as appropriate, with any agency of the state or other local government [~~entities,~~] entity to assist in the monitoring, compliance, and enforcement of 20.11.102 NMAC [~~and the procedures manual.~~]

~~[(3) Any person selling or supplying, or offering to sell or supply gasoline motor fuels not meeting the provisions of 20.11.102 NMAC shall be subject to penalties and other civil, criminal, and equitable actions authorized by the Air Quality Control Act, NMSA 1978, 74-2-1 et seq]~~

[D] H. Suspension of program due to oxygenate shortage: Should extreme and unusual circumstances occur in the marketplace preventing the blending of oxygenates at the levels [~~designated by this part,~~] required by 20.11.102 NMAC, the manager may take the necessary steps as a temporary emergency measure to relax or suspend [~~this part~~] 20.11.102 NMAC. The manager shall inform the members of the board of such action taken within seven days of this occurrence. At its next regular meeting, or at a special meeting if so called, the board shall review the manager's action.

[E] I. Program review: By the regular meeting of the board in July of each program year, the department shall provide a report to the board reviewing the results of the program, which shall include an analysis of costs and benefits to the consumer, investigations of complaints, compliance and quality assurance activities, and other findings and recommendations.

[11/10/93, 12/1/95; 20.11.102.12 NMAC - Rn, 20 NMAC 11.102.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.102.II.1, 10/1/02; A, 9/1/04; A 12/11/05]

20.11.102.13 [OXYGENATED FUELS PROCEDURES MANUAL:

A. The manager shall develop an official document entitled oxygenated fuels procedures manual outlining in sufficient detail the procedures necessary for complying with this part. Upon approval by the board, the vehicle pollution management division manager shall publish the official oxygenated fuels procedures manual and within 10 days of publication provide general notice of its availability.

B. ~~The procedures, details, and specifications contained in the oxygenated fuels procedures manual are a part of and are incorporated into this part and are binding upon each person governed by this part.~~

C. ~~The procedures manual shall be reviewed and amended as required, and kept updated by the manager. Notice of manual amendments, shall be provided by the manager with copies made available to the users. It is the responsibility of the user to obtain and incorporate amendments as made available by the manager.] Reserved [11/10/93; 20.11.102.13 NMAC - Rn, 20 NMAC 11.102.II.2, 10/1/02; A, 9/1/04; Repealed, 12/11/05]~~

20.11.102.14 CONTINGENCY [MEASURES] MEASURE:

~~**A.** Beginning July 1, 1995, until the later of June 13, 2006, or when the SIP revision, "second half of the carbon monoxide maintenance plan for Bernalillo county" is effective following EPA approval, if Bernalillo county violates the national ambient air quality standard for carbon monoxide, the following additional carbon monoxide control measures will take effect:~~

~~(1) the minimum oxygen content by weight of 2.7 percent required in Paragraph (1), of Subsection A of 20.11.102.12 NMAC, will be increased to 3.0 percent for ethanol beginning November 1 of the immediately following winter pollution season and continuing through the last day of the immediately following February and resuming every winter pollution season (November through February) thereafter; and~~

~~(2) in addition to the blending requirements referenced in Paragraph (4), of Subsection A of 20.11.102.12 NMAC, oxygenated fuel shall be blended prior to removal by tank truck from primary supply points (refineries and terminals):~~

~~**B.** Beginning on the later of June 13, 2006, or when the SIP revision, "second half of the carbon monoxide maintenance plan for Bernalillo county" is effective following EPA approval,] If monitored carbon monoxide levels in Bernalillo county exceed 85 percent of the federal ambient carbon monoxide standards, then the minimum oxygen content by weight of 2.7 percent required in Paragraph (1), of Subsection A of 20.11.102.12 NMAC, will be increased to 3.0 percent [for ethanol] beginning November 1 of the immediately following winter pollution season and continuing through the last day of the immediately following February and resuming every winter pollution season (November through February) thereafter. [11/10/93. . .6/15/95; 20.11.102.14 NMAC -~~

Rn, 20 NMAC 11.102.II.3, 10/1/02; A, 9/1/04; A 12/11/05]

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

This is an emergency amendment to 16.34.2 NMAC, Sections 11 and 12, effective November 10, 2005.

16.34.2.11 PROVISIONS FOR EMERGENCY LICENSURE

A. Barbers, cosmetologists, manicurists/pedicurists, estheticians, electrologists, and instructors currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster upon satisfying the following requirements:

(1) receipt by the board of a completed application which has been signed and notarized and which is accompanied by proof of identity, which may include a copy of a drivers license, passport or other photo identification issued by a governmental entity;

(2) refer to 16.34.2.8 NMAC, general licensing procedures; 16.34.5.8 NMAC, general licensure requirements; and 16.34.6.8 NMAC, reciprocity;

(3) other required verification will be that the board office will contact the applicant's prior licensing board by email, mail, or telephone for confirmation of what is provided by the applicant.

B. The board may waive the following requirements for licensure:

(1) application fees;

(2) specific forms or documentation required, on an individual case by case basis, under 16.34.2.8, 16.34.5.8, and 16.34.6.8 NMAC if the applicant is unable to obtain documentation from the federal declared disaster areas.

C. Nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.34.2.8, 16.34.5.8, and 16.34.6.8 NMAC.

D. Licenses issued under (the emergency provision) shall be issued for a period of one year of less following the date of issuance, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made on or before one year following the date of issue to avoid late renewal fees. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving license renewal.

[16.34.2.11 NMAC - N/E, 11-10-05]

16.34.2.12 EMERGENCY LICENSE TERMINATION

A. The emergency license shall terminate upon the following circumstances:

(1) the issuance of a permanent license under section 16.34.2.8, 16.37.5.8, and 16.34.6.8 NMAC; or

(2) proof that the emergency license holder has engaged in fraud deceit, misrepresentation in procuring or attempting to procure a license under this section.

B. Termination of an emergency license shall not preclude application for permanent licensure.

[16.34.2.12 NMAC - N/E, 11-10-05]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.13 NMAC, Sections 3, 8, 9, 10, 11, 12 and 13 effective November 30, 2005.

15.1.13.3 STATUTORY AUTHORITY:

Section 60-2E-7(B)(3) of the Gaming Control Act authorizes the board to develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act. Section 60-2E-8(C)(1) directs the board to adopt regulations prescribing the method and form of application to be filed by an applicant under the Gaming Control Act. Pursuant to Section 60-2E-14(F), all licenses issued to or for manufacturers, distributors, gaming operators, and gaming machines and all work permits [must] shall be renewed annually.

[12/31/98; 15.1.13.3 NMAC - Rn, 15 NMAC 1.13.3, 3/31/00; A, 11/30/05]

15.1.13.8 ANNUAL RENEWAL OF LICENSE OR WORK PERMIT:

A. Licenses issued under the act, other than [work permits and] gaming machine licenses and certifications of findings of suitability, expire [on December 31 each year] one year from the date of the issuance of the license, and are subject to annual renewal in accordance with the act and this rule.

B. A complete renewal application and payment of all applicable fees for renewal of a license [must] shall be filed with the board [on or before the date specified in the renewal application] not less than sixty (60) days prior to the date the license expires. The renewal application [must] shall be submitted on forms provided by the board. Gaming operator licensees shall submit compulsive gambling plans with the renewal application.

C. In addition to any other information required, the renewal application for a nonprofit organization gaming operator license ~~[must]~~ shall include a copy of its amended charter, if any, articles of incorporation, bylaws, or rules that establish regular or auxiliary membership requirements. The board may deny a license renewal application if it determines that any ~~[such]~~ amendment has opened, or may open, gaming activity to persons beyond those authorized under the act.

D. In addition to any other information required, the renewal application for a racetrack gaming operator license ~~[must]~~ shall include proof that the racetrack holds an active license to conduct parimutuel wagering. The application also ~~[must]~~ shall include a copy of the racetrack's schedule of live races on each race day during its licensed race meet for the renewal year. If the schedule of live races for the entire renewal year has not been approved by the date the renewal application is filed with the board, the racetrack gaming operator licensee ~~[may]~~ shall submit a schedule of live race days currently approved by the racing commission, and shall submit a proposed schedule of additional race days for the license year with the renewal application ~~[but]~~ and ~~[must]~~ shall submit a final schedule for the remainder of the license year within 15 days of approval by the racing commission. ~~[The board will not issue a renewed license before the final, approved schedule of live races has been submitted as required by this subsection unless the applicant applies for, and the board grants, a variance from this requirement for good cause shown.]~~

E. The board may deny a license renewal application if the applicant is delinquent in the payment of any installment of the gaming tax or the payment of any other fees, fines, costs, or penalties imposed by the state, the liability for which arises out of any previous or current application to conduct, or out of the conduct of, gaming activity in the state.

F. A work permit expires one year from the date of issuance. A complete renewal application and payment of all applicable fees for renewal of the work permit ~~[must]~~ shall be filed with the board ~~[on or before the date specified in the renewal application]~~ not less than ten (10) days prior to the date the work permit expires. The renewal application ~~[must]~~ shall be submitted on forms provided by the board. [12/31/98; 15.1.13.8 NMAC - Rn & A, 15 NMAC 1.13.8, 3/31/00; A, 1/31/02; A, 11/30/05]

15.1.13.9 RENEWAL FEES:

A. Renewal license fees are as follows:
(1) manufacturer's license,

- \$2,000;
- (2) distributor's license, \$400;
- (3) gaming operator's license for racetrack, \$4,000;
- (4) gaming operator's license for nonprofit organization, \$100;
- (5) gaming machine license, \$25 per machine; and
- (6) work permit, \$25

B. Any renewal application ~~[will]~~ shall be deemed incomplete, and ~~[may]~~ shall be subject to late fees and penalties, if the applicant does not include full payment for the license renewal fee with the application or if the applicant's check is returned due to insufficient funds.

C. The board or its designee may prorate the license fee in cases it deems appropriate. [12/31/98; 15.1.13.9 NMAC - Rn, 15 NMAC 1.13.9, 3/31/00; A, 11/30/05]

15.1.13.10 LATE RENEWAL OF LICENSE:

A. The board may, in its discretion, accept and process a renewal application filed after the deadline established in section 15.1.13.8 above. Any such application, however, ~~[will]~~ shall be subject to a late renewal fee of \$250 plus \$10 per day for each additional day the renewal application is late.

B. To allow sufficient processing time by the board, no renewal application ~~[will]~~ shall be accepted by the board ~~[within]~~ less than 45 days of the expiration date of the license, regardless of whether the licensee pays late fees. Any licensee who fails to submit a complete renewal application at least 45 days before the expiration date of his or her license ~~[will]~~ shall be required to file a full application for licensure and pay all applicable fees and investigation costs if that person desires to engage in the conduct of gaming activities. [12/31/98; 15.1.13.10 NMAC - Rn & A, 15 NMAC 1.13.10, 3/31/00; Repealed, 1/31/02; 15.1.13.10 NMAC - Rn, 15.1.13.11 NMAC, 1/31/02; A, 5/14/04; A, 11/30/05]

15.1.13.11 MANDATORY CESSATION OF GAMING ACTIVITY:

No licensee ~~[may]~~ shall engage in any gaming activity unless the licensee has received a renewed license from the board. Any licensee that fails to renew its license as required by the act and this rule ~~[must]~~ shall cease ~~[on December 31,]~~ the gaming activity authorized by the license on the date the license expires. Engaging in any gaming activity without a renewed license ~~[will]~~ shall subject the licensee to fines and penalties as determined by the board. [12/31/98; 15.1.13.11 NMAC - Rn & A, 15 NMAC 1.13.11, 3/31/00; 15.1.13.11 NMAC - Rn, 15.1.13.12 NMAC, 1/31/02;

A, 11/30/05]

15.1.13.12 [ORIGINAL]

RENEWAL LICENSE PERIOD: To provide for a transition between a calendar-year and an anniversary date renewal of all licenses issued under the act, ~~[other than work permits and certifications, each original]~~ all licensees seeking to renew their licenses for 2006 shall submit a renewal application together with all applicable fees on or before November 1, 2005.

A. If the anniversary date of a licensee's original license is during the first quarter of 2006, the board shall extend the licensee's 2005 license until the anniversary date, at which time a renewal license will be issued, provided the licensee meets all requirements for renewal.

B. If the anniversary date of the licensee's original license is in the second, third or fourth quarter of 2006, the board shall renew the license on January 1, 2006, provided the licensee meets all the requirements for renewal. A renewal license issued by the board on January 1, 2006 ~~[will]~~ shall be valid for the period beginning on the date of issuance and ending on ~~[December 31 of that year]~~ the anniversary of the date during the 2006 calendar year that the license originally was issued.

C. Thereafter, all renewed licenses will expire ~~[on December 31]~~ annually on the anniversary date of the original issuance and will be subject to renewal on ~~[a calendar year]~~ an anniversary date basis.

D. During the transition period the board will prorate the license fee in cases it deems appropriate according to the calendar quarter in which the application was received.

[12/31/98; 15.1.13.12 NMAC - Rn, 15 NMAC 1.13.12, 3/31/00; 15.1.13.12 NMAC - Rn, 15.1.13.13 NMAC, 1/31/02; A, 11/30/05]

15.1.13.13 RECERTIFICATION OF FINDING OF SUITABILITY:

A. A certification of finding of suitability expires three years from the date of issuance. A complete renewal application and payment of all applicable fees for renewal of the certification of finding of suitability shall be filed with the board not less than sixty (60) days prior to the date the certification of finding of suitability expires. The renewal application shall be submitted on forms provided by the board.

~~[A.]~~ B. The board may require any person previously certified as suitable by the board to apply for recertification of the finding of suitability at any time if the board believes that circumstances warrant such application. ~~[or if three or more years has elapsed since the date the board issued~~

~~the previous certification of finding of suitability.]~~

[B.] C. Any person required by the board to apply for recertification ~~[must]~~ shall apply within 30 days after the date of the board's request and provide such information as the board may direct. The board may find any person failing to apply for recertification as required in this rule unsuitable on that basis.

[12/31/98; 15.1.13.13 NMAC - Rn & A, 15 NMAC 1.13.13, 3/31/00; 15.1.13.13 NMAC - Rn, 15.1.13.14 NMAC, 1/31/02; A, 11/30/05]

**NEW MEXICO
DEPARTMENT OF HEALTH
BEHAVIORAL HEALTH SERVICES
DIVISION**

**TITLE 7 HEALTH
CHAPTER 32 ALCOHOL AND
DRUG ABUSE
PART 8 OPIOID TREAT-
MENT PROGRAMS**

7.32.8.1 ISSUING AGENCY:
Department of Health; Behavioral Health Services Division.
[7.32.8.1 NMAC - N, 11-30-05]

7.32.8.2 SCOPE: This rule is applicable to opioid treatment programs. These regulations are not intended to preempt county or municipal ordinances that supplement and do not conflict with these regulations. County and municipal ordinances are preempted when they conflict with these regulations.
[7.32.8.2 NMAC - N, 11-30-05]

**7.32.8.3 S T A T U T O R Y
AUTHORITY:** Department of Health Act, NMSA 1978 Section 9-7-6 (E).
[7.32.8.3 NMAC - N, 11-30-05]

7.32.8.4 D U R A T I O N :
Permanent.
[7.32.8.4 NMAC - N, 11-30-05]

7.32.8.5 EFFECTIVE DATE:
11-30-05, unless a later date is cited at the end of a section.
[7.32.8.5 NMAC - N, 11-30-05]

7.32.8.6 OBJECTIVE: This rule establishes standards for opioid treatment programs to be consistent with the SAMHSA/CSAT regulations and the OTP accreditation requirements of nationally recognized accreditation bodies approved by SAMSA/CSAT, such as CARF and JCAHO. The intent is to:

A. be consistent with, and complimentary to, the substance abuse and

mental health services administration/center for substance abuse treatment (SAMHSA/CSAT) regulations, and the OTP accreditation requirements of nationally recognized accreditation bodies approved by SAMHSA/CSAT, such as commission on accreditation of rehabilitation facilities (CARF) and the joint commission on accreditation of healthcare organizations (JCAHO);

B. reduce the stigma sometimes associated with opioid dependency treatment and ensure access to it comparable to treatment availability for other chronic medical conditions;

C. consider the possible adverse impact on communities in which OTP providers are located in making application approval decisions, and to provide measures to promote mutually satisfactory relationships between OTP providers and their communities.
[7.32.8.6 NMAC - N, 11-30-05]

7.32.8.7 DEFINITIONS:

A. "Accrediting bodies" means nationally recognized organizations, such as the joint commission on accreditation of healthcare organizations (JCAHO) and the commission on accreditation of rehabilitation facilities (CARF), which promulgate standards for OTPs that are approved by the substance abuse and mental health services administration/center for substance abuse treatment (SAMHSA/CSAT), and offer accreditation to programs that meet these standards.

B. "Administrative withdrawal" means the procedure for withdrawal of a patient's opioid treatment medication coinciding with the patient's involuntary discharge from opioid treatment, typically resulting from non-payment of fees, violent or disruptive behavior or incarceration or other confinement.

C. "Application form" means the form created by the department of health, which must be completed by a program sponsor who wishes to obtain approval to operate an opioid treatment program.

D. "Approval" and "approval to operate" means the written permission given by the department of health to a program sponsor to operate an opioid treatment program.

E. "Behavioral health services division" (BHSD) is the division of the New Mexico department of health that is the single state authority for mental health and substance use treatment and prevention programs and methadone authority.

F. "Comprehensive initial assessment" means the collection and analysis of a patient's social, medical, psychological and treatment history.

G. "Comprehensive maintenance treatment" means a program designed with the intention of lasting longer than six months, for the purpose of maintaining the patient such that he/she will be free of opioid withdrawal and cravings; such programs are typified by:

(1) dispensing or administering an opioid treatment medication at stable dosage levels for a period in excess of 21 days to an individual for opioid addiction; and

(2) providing medical, therapeutic and supportive services to the individual with opioid dependence.

H. "Department of health" (DOH) means the state of New Mexico department of health.

I. "Dispense" has the same meaning as in section 61-11-2(I) NMSA as amended or renumbered.

J. "Diversion" means the unauthorized transfer of an opioid agonist treatment medication, such as a street sale.

K. "Dosage" means the amount, frequency and number of doses of medication for an individual.

L. "Dose" means a single unit of opioid treatment medication.

M. "Illicit opioid drug" means an illegally obtained opioid drug, such as heroin, that causes dependence and reduces or destroys an individual's physical, social, occupational, or educational functioning, or misuse of legally prescribed medication.

N. "Intake screening" means determining whether an individual meets the initial criteria for receiving opioid treatment.

O. "Long-term opioid treatment withdrawal procedure" means a treatment program designed to disperse opioid treatment medication to a patient in decreasing doses, after first possibly achieving a stable dose, for a period of more than 30 days but less than 180 days as a method of bringing the individual to a drug-free state.

P. "Medical practitioner" means an individual who:

(1) has been accredited through appropriate national procedures as a health professional;

(2) fulfills the national requirements on training and experience for prescribing procedures ;

(3) is a registrant or a licensee, or a worker who has been designated by a registered or licensed employer for the purpose of prescribing procedures;

(4) may be a physician, physician's assistant, registered nurse, nurse practitioner, or licensed practical nurse.

Q. "Opioid treatment" means:

(1) opioid treatment withdrawal procedure/treatment; and

(2) comprehensive maintenance treatment.

R. "Opioid treatment medication" means a prescription medication that is approved by the U.S. food and drug administration under 21 U.S.C. section 355 and by the code of federal regulations title 42, part 8.12 for use in the treatment of opiate addiction.

S. "Opioid treatment program" (OTP) means a single location at which opioid dependence treatment medication, such as methadone and rehabilitative services, are provided to patients as a substantial part of the activity conducted on the premises.

T. Opioid treatment withdrawal procedure is dispensing or administering an opioid dependence treatment medication in decreasing medication levels to an individual to alleviate adverse physical or psychological effects of withdrawal from the continuous or sustained use of an opioid drug and as a method of bringing the individual to a drug-free state.

U. "Physiologically dependent" means physically addicted to an opioid drug, as manifested by the symptoms of withdrawal in the absence of the opioid drug.

V. "Program clinician" means a behavioral health clinician practicing at an opioid treatment program who is licensed to practice substance abuse treatment in New Mexico

W. "Program medical director" means a physician licensed to practice medicine in New Mexico, who assumes responsibility for administering all medical services, either by performing them directly or by delegating specific responsibility to authorized program medical practitioners functioning under the medical director's direct supervision.

X. "Program sponsor" means the person named in the application as responsible for the operation of the opioid treatment program and who assumes responsibility directly, by personal oversight, or through policy and procedure, or a combination of both, for the acts and omissions of staff members or employees of the opioid treatment program.

Y. "Short-term opioid treatment withdrawal procedure" means a treatment program designed to dispense opioid treatment medication to a patient in decreasing doses, over a continuous period of 30 days or less, as a method of bringing the individual to a drug-free state.

Z. "State methadone authority," (SMA) means the single state agency for substance abuse designated by the governor or another appropriate official designated by the governor to exercise

authority within the state for governing treatment of opiate addiction with an opioid drug. In New Mexico it is the department of health, behavioral health services division.

AA. "Take-home medication" means one or more doses of an opioid treatment medication dispensed to a patient for use off the premises.

[7.32.8.7 NMAC - N, 11-30-05]

7.32.8.8 APPROVAL TO OPERATE AN OPIOID TREATMENT PROGRAM REQUIRED: Providers who receive written approval by the department of health, shall be permitted to provide opioid dependency treatment services.

[7.32.8.8 NMAC - N, 11-30-05]

7.32.8.9 ELIGIBILITY FOR APPROVAL TO OPERATE AN OPIOID TREATMENT PROGRAM: Only applicants who possess all of the following shall be eligible to receive approval to operate from the department of health:

A. drug enforcement agency (DEA) approval to operate an OTP;

B. S A M H S A / C S A T approval to operate an OTP;

C. accreditation by a SAMHSA/CSAT-approved nationally recognized accreditation body, such as JCAHO or CARF, to operate an OTP:

(1) if the applicant is a start-up program unable to obtain such accreditation prior to beginning operation because the accreditation body requires a period of program operation, typically six (6) months, before it will grant accreditation:

(a) the department of health shall grant provisional approval to operate pending accreditation, provided that all other requirements of these regulations are met; and

(b) the program demonstrates in its application to the department of health that it is taking the steps necessary to become accredited as quickly as possible, and provides a timeline for the anticipated accreditation;

(2) during this interim period, the provisional approval to operate is contingent on the ongoing progress of the program, as determined by the department of health, to obtain accreditation within the timeline contained in the application; the program shall immediately inform the department of health of anything that will delay or prevent accreditation according to that timeline;

(3) the department of health shall withdraw its provisional approval if it concludes that accreditation will not be forthcoming; in any event, the program shall obtain accreditation within 12 months of beginning operation, or the provisional approval shall be withdrawn, unless the department of health elects to extend the

provisional approval period after consultation with the appropriate federal and accrediting entities.

D. a license from the New Mexico state board of pharmacy to operate an OTP;

E. other permits and licenses such as a business license from the applicant's local governmental entity, as required by local ordinances;

F. evidence of appropriate liability insurance coverage for the program and its employees.

[7.32.8.9 NMAC - N, 11-30-05]

7.32.8.10 APPLICATION FOR APPROVAL TO OPERATE AN OPIOID TREATMENT PROGRAM:

A. Each OTP sponsor applicant shall submit to the department of health an application for approval to operate an opioid treatment program application using the form provided by the department of health. This application shall be in addition to the application to drug enforcement agency, SAMHSA/CSAT, the NM board of pharmacy, local government, etc.

B. The department of health shall approve or deny the application within 45 working days of submission, unless the department of health and applicant mutually agree to extend the application review period.

C. The department of health may require the applicant to provide additional written or verbal information in order to reach its decision to grant or deny approval. Such further information shall be considered an integral part of the application.

D. Approval shall be for a duration of 3 years, except as otherwise provided below for initial grandfathered approvals.

E. The department of health shall not grant approval to operate an OTP to any program sponsor who has been convicted of any crime related to controlled substances laws or any felony within the last 5 years. No person who has been convicted of any felony in the last 5 years shall be employed by the OTP in any capacity that gives that person access to controlled medications.

F. The department of health shall not grant approval to any entity that poses a risk to the health and safety of the public based on a history of noncompliance with state and federal regulations as verified by the DEA, New Mexico state board of pharmacy, FDA, SAMSHA approved accreditation bodies, or the state licensure agency in any state in which the program sponsor currently operates.

G. The department of health may deny approval if there is a documented history of repeated and serious neg-

ative neighborhood impact with respect to other OTP programs currently operated by the program sponsor or by any corporation, LLC or partnership with whom the program sponsor has been associated in the past 5 years.

H. As a condition of approval to operate an OTP, the OTP must maintain or obtain accreditation with a SAMHSA/CSAT-approved nationally recognized accreditation body, (e.g. CARF or JCAHO.) In the event that such accreditation lapses, or approval of an application for accreditation becomes doubtful, or continued accreditation is subject to any formal or informal finding of need for improvement, the OTP program will notify the department of health within two business days of such event. The OTP program will furnish the department of health with all information related to its accreditation status, or the status of its application for accreditation, upon request.

I. The application for approval shall be accompanied by a needs assessment, specifying the proposed geographical area to be served, estimated number of patients anticipated, and such other information as may assist the department of health in review of the application. The department of health shall take into consideration in making its decision the need for an OTP in a given geographic area and the impact on the community.

J. The department of health shall perform on-site inspection of the proposed OTP facility as part of the review and approval process.

K. In the event of change of ownership of an approved opioid treatment program, the department of health approval is not transferable; the new ownership must institute an application for approval as a new program, in accordance with these regulations.

[7.32.8.10 NMAC - N, 11-30-05]

7.32.8.11 DENIAL OF DOH APPROVAL TO OPERATE; APPEAL OF DENIAL:

A. The department of health shall not deny approval to operate until the applicant has been notified in writing of the deficiency in the application resulting in the contemplated denial, and given opportunity to remedy the application deficiency within a specified time period.

B. The department of health shall provide a written explanation for any denied application. Denial may be appealed to the secretary of the department of health, whose decision shall be final.

C. An applicant who is denied approval may re-apply by submitting a new application 90 days or more after notification of denial.

D. Failure to complete the application form in its entirety, including requests for additional information as specified above, shall be grounds for denial of approval.

[7.32.8.11 NMAC - N, 11-30-05]

7.32.8.12 RENEWAL OF DOH APPROVAL TO OPERATE:

A. OTP providers who wish to renew their approval shall submit an application form and requested documentation no less than 90 calendar days, and no more than 180 calendar days, before its expiration date.

B. The department of health shall consider the operating history of the OTP provider in making its determination to grant or deny an application to a previously approved provider.

[7.32.8.12 NMAC - N, 11-30-05]

7.32.8.13 APPROVAL FOR OTPS IN EXISTENCE PRIOR TO THESE REGULATIONS: Opioid treatment programs operating in New Mexico prior to the effective date of these regulations shall be granted approval on the effective date of these regulations (“grandfathered in”).

A. The term of these initial grandfathered approvals shall be not less than 24 months nor more than 36 months, and may have staggered expiration dates to avoid simultaneous expiration.

B. “Grandfathered” opioid treatment programs shall provide the department of health with all written policies, procedures and other documentation required of new opioid treatment programs under these regulations within 45 days of the effective date of these regulations.

[7.32.8.13 NMAC - N, 11-30-05]

7.32.8.14 RENEWAL OF GRANDFATHERED OPERATING PERMITS: Renewal of grandfathered approvals shall follow the ordinary renewal process. Such approvals shall have a term of 36 months.

[7.32.8.14 NMAC - N, 11-30-05]

7.32.8.15 INSPECTION AUTHORITY: The department of health shall have the authority to conduct inspections of the records, policies, procedures, physical plant or any other aspect of an OTP for the purpose of determining its compliance with these regulations or the presence of any factor posing a danger to the health or welfare of its patients or the public. Failure of an OTP to cooperate with such inspection shall be grounds for immediate suspension of the approval.

[7.32.8.15 NMAC - N, 11-30-05]

7.32.8.16 NONCOMPLIANCE WITH REGULATIONS:

A. If an inspection conducted by the department of health shows that an OTP is not in compliance with these regulations, the department of health shall deliver to the program a written notice of the deficiencies identified.

B. The program shall respond to the notification of deficiencies within 30 days of the notification. The program response shall include a corrective action plan together with timeline for implementation, or an explanation, satisfactory to the department of health, of the reason for any deviations from the requirements of these regulations.

C. Failure of the OTP to respond within 30 days of receipt of the notification of deficiencies shall be grounds for immediate suspension of the approval.

[7.32.8.16 NMAC - N, 11-30-05]

7.32.8.17 IMMEDIATE SUSPENSION OF OTP OPERATING APPROVAL:

A. The department of health, at its discretion, may immediately suspend the approval of any OTP found to be in a substantial violation of this regulation that results in danger to the health and welfare of any patient or of the public, until such time as the violation (s) are corrected to the satisfaction of the department of health.

B. In the event of such suspension, the OPT shall immediately:

(1) cease accepting new patients;

(2) consult with the department of health regarding the orderly transfer of patients to other OTPs and implementation of the program closure action plan required under the “preparedness planning” section of these regulations in order to minimize adverse impact on its patients; notwithstanding the suspension of the approval, the department of health may allow the OTP to conduct limited operations of its program as the department of health finds necessary to minimize adverse impact on patients.

[7.32.8.17 NMAC - N, 11-30-05]

7.32.8.18 ADMINISTRATION: The program sponsor shall ensure that:

A. a physician licensed to practice in New Mexico is designated to serve as medical director and to have authority over all medical aspects of opioid treatment;

B. the medical director is responsible for ensuring that the OTP is in compliance with all applicable federal, state and local laws and regulations;

C. the OTP shall be open for patients every day of the week except

for federal and state holidays, and Sundays, and be closed only as allowed in advance in writing by CSAT and the state methadone authority;

D. written policies and procedures are developed, implemented, complied with and maintained at the OTP and include:

(1) procedures to prevent a patient from receiving opioid dependency treatment from more than one agency or physician concurrently;

(2) procedures to meet the unique needs of diverse populations, such as pregnant women, children, individuals with communicable diseases, (e.g. hepatitis C, tuberculosis, HIV or AIDS), or individuals involved in the criminal justice system;

(3) procedures for conducting a physical examination, assessment and laboratory tests;

(4) procedures for establishing substance abuse counselor caseloads, based on the intensity and duration of counseling required by each patient;

(5) criteria for when the patient's blood serum levels should be tested and procedures for having the test performed;

(6) procedures for performing laboratory tests, such as urine drug screens or toxicological tests, including procedures for collecting specimens for testing;

(7) procedures for addressing and managing a patient's concurrent use of alcohol or other drugs;

(8) procedures for providing take home medication to patients;

(9) procedures for conducting opioid treatment withdrawal;

(10) procedures for conducting an administrative withdrawal;

(11) procedures for voluntary discharge, including a requirement that a patient discharged voluntarily be provided or offered follow-up services, such as counseling or a referral for medical treatment;

(12) procedures for making temporary or permanent transfer of a patient from the OTP to another OTP;

(13) procedures for receiving the temporary or permanent transfer of a patient from another OTP to the OTP;

(14) procedures to minimize the following adverse events:

(a) a patient's loss of ability to function;

(b) a medication error;

(c) harm to a patient's family member or another individual resulting from ingesting a patient's medication;

(d) sales of illegal drugs on the premises;

(e) diversion of a patient's medication;

(f) harassment or abuse of a patient by a staff member or another patient; and

(g) violence on the premises;

(15) procedures to respond to an adverse event, including:

(a) a requirement that the program sponsor immediately investigate the adverse event and the surrounding circumstances;

(b) a requirement that the program sponsor develop and implement a plan of action to prevent a similar adverse event from occurring in the future; monitor the action taken; and take additional action, as necessary, to prevent a similar adverse event;

(c) a requirement that action taken under the plan of action be documented; and

(d) a requirement that the documentation be maintained at the agency for at least two years after the date of the adverse event;

(16) procedures for infection control;

(17) criteria for determining the amount and frequency of counseling that is provided to a patient;

procedures to ensure that the facility's physical appearance is clean and orderly;

(18) a process for resolution of patient complaints, including a provision that complaints which cannot be resolved through the clinic's process may be referred by either party to the department of health:

(a) the complaint process shall be explained to the patient at admission;

(b) the patient complaint process shall be posted prominently in its waiting area or other location where it will be easily seen by patients, and include the department of health contact information for use in the event that the complaint cannot be resolved through the clinic's process.

E. a written quality assurance plan is developed and implemented;

F. all information and instructions for the patient are provided in the patient's primary language, and, when provided in writing, are clear and easily understandable by the patient.

[7.32.8.18 NMAC - N, 11-30-05]

7.32.8.19 ADMISSION:

A. The program sponsor shall ensure through policy and procedure that an individual is only admitted for opioid dependency treatment after the program medical director determines and documents that:

(1) the individual meets the definition of opioid dependence using generally accepted medical criteria such as those contained in the diagnostic and statistical manual for mental disorders (DSM-IV or subsequent editions);

(2) the individual has received a physical examination as required by Subsection D of 7.32.8.19 NMAC below;

and

(3) if the individual is requesting maintenance treatment, the individual has been addicted for at least 12 months before the admission, unless the individual receives a waiver of this requirement from the program medical director because the individual:

(a) was released from a penal institution within the last six months;

(b) is pregnant, as confirmed by the agency physician;

(c) was treated for opioid dependence within the last 24 months; or

(d) is under the age of 18, has had two documented unsuccessful attempts at short term opioid treatment withdrawal procedures or drug-free treatment within a 12-month period, and has informed consent for treatment provided by a parent, guardian, custodian or responsible adult designated by the relevant state authority.

B. A program sponsor shall ensure that an individual requesting long-term or short-term opioid treatment withdrawal treatment who has had two or more unsuccessful opioid treatment withdrawal treatment episodes within a 12-month period is assessed by the program medical director for other forms of treatment.

C. The OTP shall ensure that each patient at the time of admission:

(1) provides written, voluntary, program-specific informed consent to treatment;

(2) is informed of all services that are available to the patient through the program and of all policies and procedures that impact the patient's treatment; and

(3) is informed of the following:

(a) the progression of opioid dependency and the patient's apparent stage of opioid dependence;

(b) the goal and benefits of opioid dependency treatment;

(c) the signs and symptoms of overdose and when to seek emergency assistance;

(d) the characteristics of opioid dependency treatment medication, such as its effects and common side effects, the dangers of exceeding the prescribed dose, and potential interaction effects with other drugs, such as other non-opioid agonist treatment medications, prescription medications, and illicit drugs;

(e) the requirement for a staff member to report suspected or alleged abuse or neglect of a child or an incapacitated or vulnerable adult according to state law;

(f) the requirement for a staff member to comply with the confidentiality requirements of title 42 CFR part 2 of the code of federal regulations, incorporated by reference;

(g) drug screening and toxicological testing procedures;

(h) requirements to receive take-home medication;

(i) testing and treatment available for HIV and other communicable diseases, the availability of immunization for hepatitis A and B, and the availability of harm reduction services;

(j) availability of counseling on preventing exposure to and transmission of human immunodeficiency virus (HIV), sexually transmitted diseases, and blood-borne pathogens;

(k) the patient's right to file a complaint with the program for any reason, including involuntary discharge, and to have the patient's complaint handled in a fair and timely manner.

D. A program sponsor shall ensure that the program medical director or medical practitioner designee conducts a complete, fully documented physical examination of an individual who requests admission to the program before the individual receives a dose of opioid dependency treatment medication, and that the physical examination includes:

(1) reviewing the individual's bodily systems;

(2) obtaining a medical and family history and documentation of current information to determine chronic or acute medical conditions such as diabetes, renal diseases, hepatitis, HIV infection, tuberculosis, sexually transmitted disease, pregnancy or cardiovascular disease;

(3) obtaining a history of behavioral health issues and treatment, including any diagnoses and medications;

(4) initiating the following laboratory tests:

(a) a mantoux skin test;

(b) a test for syphilis;

(c) a laboratory drug detection test for at least opioids, methadone, amphetamines, cocaine, barbiturates, benzodiazepines and other substances as may be appropriate, based upon patient history and prevailing patterns of availability and use in the local area;

(5) recommending additional tests based upon the individual's history and physical condition, such as:

(a) complete blood count;

(b) EKG, chest X-ray, pap smear or screening for sickle cell disease;

(c) a test for hepatitis B and C; or

(d) HIV testing.

(6) the full medical examination including test results must be completed within 14 days of admission to the program;

(7) a patient re-admitted within three months after discharge does not require a repeat physical examination unless requested by the program medical

director.

E. A program sponsor shall ensure that the results of a patient's physical examination are documented in the patient record.

F. A patient may not be enrolled in more than one OTP program except under exceptional circumstances, such as residence in one city and employment that requires extended absences from that city, which must be documented in the patient chart by the medical directors of both programs:

(1) an OTP shall make and document good faith efforts to determine that a patient seeking admission is not receiving opioid dependency treatment medication from any other source, within the bounds of all applicable patient confidentiality laws and regulations;

(2) the OTP shall confirm that the patient is not receiving treatment from any other OTP, except as provided in Subsection F of 7.32.8.19 NMAC, within a 50 mile radius of its location, by contacting any such other program, or by using the central registry described in Subsection G of 7.32.8.19 NMAC, when established.

G. The department of health may establish an internet-based central registry of all persons in New Mexico who are current patients of a New Mexico OTP program, for the purpose of creating a system that prevents patients from surreptitiously receiving medication from more than one OTP. Each OTP as a condition of approval to operate shall participate in the central registry as directed by the department of health.

[7.32.8.19 NMAC - N, 11-30-05]

7.32.8.20 ASSESSMENT AND TREATMENT PLANS: The program sponsor shall ensure that:

A. each patient receives a comprehensive intake assessment upon admission, conducted by a qualified professional, to determine the most appropriate combination of services and treatment, which results in an intake treatment plan based on the patient's goals; the results of the comprehensive intake assessment and the intake treatment plan are documented in the patient record within 24 hours of admission;

B. an individualized treatment plan shall replace the intake treatment plan within 30 days of admission or the third face-to-face contact with the client, and be documented in the patient record;

C. all updates or revisions to any treatment plan or assessment shall be documented in the patient record within 7 working days;

D. all assessments and/or treatment plans shall include, but not neces-

sarily be limited to:

(1) a description of the patient's presenting issue, identification of the patient's behavioral health symptoms and the behavioral health issue or issues that require treatment;

(2) a list of the medical services, including medication, needed by the patient, as identified in the physical examination;

(3) recommendations for further assessment or examination of the patient's needs if indicated;

(4) recommendations for treatment needed by the patient, such as psychosocial counseling or mental health treatment, if indicated;

(5) recommendations for ancillary services or other services needed by the patient, if indicated;

(6) the signature, professional credential, printed name, and date signed of the staff member conducting and developing the assessment, treatment plan, update or revision;

(7) in the case of updated or revised treatment plans, a summary of the patient's progress or lack of progress toward each goal on the previous plan and the program's response; and any new goals;

(8) the signature and date signed, or documentation of the refusal to sign, of the patient or the patient's guardian or agent or, if the patient is a child, the patient's parent, guardian, or custodian;

E. treatment plans shall be reviewed at least every 90 days for the first 2 years of continuous treatment, and at least every 6 months thereafter, in accordance with the program's established policy and procedure, and the treatment plan modified accordingly, except initial treatment plans must be replaced with individualized plans as provided for in Subsection B of 7.32.8.20 NMAC above;

F. adequate medical, psychosocial counseling, mental health, vocational, educational and other assessment and treatment services are fully and reasonably available to patients, either by the program directly, or through formal, documented referral agreements with other providers. [7.32.8.20 NMAC - N, 11-30-05]

7.32.8.21 DOSAGE: The program sponsor shall ensure that:

A. a dose of opioid dependency treatment medication is administered only after an order from the program medical director;

B. a patient's dosage of opioid dependency treatment medication is individually determined;

C. a dose of opioid dependency treatment medication is sufficient to produce the desired response in a

patient for the desired duration of time and with consideration for patient safety;

D. a dose of opioid dependency medication is prescribed to meet a patient's treatment needs by:

(1) preventing the onset of subjective or objective signs of withdrawal for 24 hours or more;

(2) reducing or eliminating the drug craving that is experienced by opioid dependent individuals who are not in opioid treatment;

(3) a patient receiving comprehensive maintenance treatment receives an initial dose of opioid dependency treatment medication based upon the program medical director or medical practitioner designee's physical examination and with consideration for local issues, such as the relative purity of available illicit opioid drugs;

(4) a patient receiving methadone in comprehensive maintenance treatment receives an initial dose of methadone that does not exceed 30 milligrams; and

(a) if the patient's withdrawal symptoms are not suppressed after the initial dose of 30 milligrams, a patient receives an additional dose that does not exceed 10 milligrams only if a program clinician documents in the patient record that 30 milligrams did not suppress the patient's withdrawal symptoms; and

(b) if the patient's withdrawal symptoms are not suppressed by a total dose of 40 milligrams, a patient receives an additional dose only if the program medical director or medical practitioner designee documents in the patient record that 40 milligrams did not suppress the patient's withdrawal symptoms;

(5) a patient receiving buprenorphine in opioid treatment withdrawal procedure or comprehensive maintenance treatment receive an initial dose according to the instructions on the opioid dependency treatment medication package insert, and any deviation from the instructions is documented by the program clinician in the patient record;

(6) a patient receives subsequent doses of opioid dependency treatment medication:

(a) based on the patient's individual needs and the results of the physical examination and assessment;

(b) sufficient to achieve the desired response for at least 24 hours, with consideration for day-to-day fluctuations and elimination patterns;

(c) that are not used to reinforce positive behavior or punish negative behavior;

(d) as long as the patient benefits from and desires comprehensive maintenance treatment; and

(e) that are adjusted if a provider

changes from one type of opioid dependency treatment medication to another.

[7.32.8.21 NMAC - N, 11-30-05]

7.32.8.22 DRUG SCREENING:

The program sponsor shall ensure that:

A. staff members have knowledge of the benefits and limitations of laboratory drug detection tests and other toxicological testing procedures;

B. a patient in comprehensive maintenance treatment receives at least eight random laboratory drug detection tests per year; short-term opioid treatment withdrawal procedure patients receive at least one initial drug abuse test; long-term opioid treatment withdrawal procedure patients receive an initial and monthly random tests; and other toxicological tests are performed according to written orders from the program medical director or medical practitioner designee;

C. laboratory drug detection tests and other toxicological testing specimens are collected in a manner that minimizes falsification;

D. laboratory drug detection tests for:

- (1) opioids;
- (2) methadone;
- (3) amphetamines;
- (4) cocaine;
- (5) barbiturates;
- (6) benzodiazepines; and

(7) other substances as may be appropriate, based upon patient history and prevailing patterns of drug availability and use in the local area;

E. the results of a patient's laboratory drug detection tests or other toxicological test and any action taken relating to the results are documented in the patient record.

[7.32.8.22 NMAC - N, 11-30-05]

7.32.8.23 TAKE-HOME MEDICATIONS:

A. The program sponsor shall ensure that policies and procedures are developed, implemented, and complied with for the use of take-home medication and include:

(1) criteria for determining when a patient is ready to receive take-home medication;

(2) criteria for when a patient's take-home medication is increased or decreased;

(3) a requirement that take-home medication be dispensed according to federal and state law;

(4) a requirement that the program medical director review a patient's take-home medication regimen at intervals of no less than 90 days and adjust the patient's dosage, as needed;

(5) procedures for safe handling

and secure storage of take-home medication in a patient's home; and

(6) criteria and duration of allowing a physician to prescribe a split medication regimen.

B. Treatment program decisions on dispensing OTP medications to patients for unsupervised use, beyond that set forth in Subsection C of 7.32.8.23 NMAC below, shall be made by the program medical director, based on the following criteria:

(1) absence of recent abuse of drugs, including alcohol;

(2) regularity of program attendance;

(3) length of time in comprehensive maintenance treatment;

(4) absence of known criminal activity;

(5) absence of serious behavioral problems at the program;

(6) special needs of the patient such as physical health needs;

(7) assurance that take-home medication can be safely stored in the patient's home;

(8) stability of the patient's home environment and social relationships;

(9) the patient's work, school, or other daily activity schedule;

(10) hardship experienced by the patient in traveling to and from the program; and

(11) whether the benefit the patient would receive by decreasing the frequency of program attendance outweighs the potential risk of diversion.

C. A patient in comprehensive maintenance treatment may receive a single dose of take-home medication for each day that a provider is closed for business, including Sundays and state and federal holidays.

D. A program sponsor shall ensure that take-home medication is only issued to a patient in compliance with the following restrictions:

(1) during the first 90 days of comprehensive maintenance treatment, take-home medication is limited to a single dose each week, in addition to any doses received as described in Subsection C of 7.32.8.23 NMAC above;

(2) during the second 90 days of comprehensive maintenance treatment, a patient may receive a maximum of two doses of take-home medication each week in addition to any doses received as described in Subsection C of 7.32.8.23 NMAC above;

(3) during the third 90 days of comprehensive maintenance treatment, a patient may receive a maximum of three doses of take-home medication each week in addition to any doses received as described in Subsection C of 7.32.8.23

NMAC above;

(4) in the remaining months of the patient's first year, a patient may receive a maximum of 6 days of take-home medication each week;

(5) after one year of continuous treatment, a patient may receive a maximum 2-week supply of take-home medication;

(6) after two years of continuous treatment, a patient may receive a maximum of one month's supply of take-home medication but must make monthly visits;

(7) exceptions to the above take-home medication restrictions shall be made only as provided for in center for substance abuse treatment (CSAT) regulations and as approved by the state methadone authority.

E. A program sponsor shall ensure that a patient receiving take-home medication receives:

(1) take-home medication in a child-proof container; and

(2) written and verbal information on the patient's responsibilities in protecting the security of take-home medication.

F. The program sponsor shall ensure that the program medical director's determination made under Subsection B of 7.32.8.23 NMAC and the reasons for the determination are documented in the patient record.

G. In accordance with DEA regulations, the program shall not use U. S. mail or express services such as fedex or united parcel service to transport, furnish or transfer opioid treatment medication to any patient, agency, facility or person.

H. The program shall establish policy and procedure to provide for the safe and secure transportation of opioid treatment medication from its facility to another agency where the program's patient temporarily resides, (e.g., from the university of New Mexico's addiction and substance abuse program (ASAP) to the turquoise lodge treatment program.).

[7.32.8.23 NMAC - N, 11-30-05]

7.32.8.24 WITHDRAWAL TREATMENT AND MEDICALLY SUPERVISED DOSE REDUCTION:

The program sponsor shall ensure that:

A. policies and procedures are developed, implemented, and complied with for withdrawal treatment and:

(1) are designed to promote successful withdrawal treatment;

(2) require that dose reduction occur at a rate deemed medically appropriate by the program medical director;

(3) require that a variety of ancillary services, such as self-help groups, be available to the patient through the program or through referral;

(4) require that the amount of

counseling available to the patient be increased before discharge; and

(5) require that a patient be re-admitted to the program or referred to another program if relapse occurs;

B. a patient's withdrawal treatment:

(1) for a patient involved in comprehensive maintenance treatment, is only initiated as administrative withdrawal, or when voluntarily requested by the patient and approved by a program medical director; and

(2) is planned and supervised by the program medical director;

C. before a patient begins withdrawal treatment, whether with or against the advice of the program medical director, the patient:

(1) is informed by the program medical director or a medical practitioner designee:

(a) that the patient has the right to leave opioid treatment at any time; and

(b) of the risks of withdrawal treatment; and

(2) upon request, receives a schedule for withdrawal treatment that is developed by the program medical director with input from the patient;

(3) receives a copy of the program policy regarding withdrawal of opioid medication against medical advice and a verbal explanation of that policy;

D. if a patient who is receiving withdrawal treatment, other than a patient experiencing administrative withdrawal, appears to a staff member to relapse, the patient is permitted to begin comprehensive maintenance treatment, if otherwise eligible;

E. if a patient who has completed withdrawal treatment within the past 30 days appears to a staff member to relapse, the patient may be re-admitted without a physical examination or assessment with the consent of the program medical director;

F. a patient experiencing administrative withdrawal is referred or transferred to any program that is capable of or more suitable for meeting the patient's needs, and the referral or transfer is documented in the patient record;

G. the following information is documented in the patient record:

(1) the reason that the patient sought withdrawal treatment or was placed on administrative withdrawal; and

(2) the information and assistance provided to the patient in medical withdrawal or administrative withdrawal.

[7.32.8.24 NMAC - N, 11-30-05]

7.32.8.25 COUNSELING AND MEDICAL SERVICES: The program

sponsor shall ensure that:

A. substance abuse counseling and behavioral health treatment planning is provided by a practitioner licensed in the state of New Mexico to provide behavioral health treatment services to each patient based upon the patient's individual needs, treatment plan and stage of readiness to change behavior;

B. the program has substance abuse counselors in a number sufficient:

(1) to ensure that patients have access to counselors;

(2) to provide the treatment in patients' treatment plans; and

(3) to provide unscheduled treatment or counseling to patients;

C. each patient seeking opioid treatment is screened for the presence of a co-occurring mental health disorder by means approved by the department of health, and if indicated, referred for assessment and possible treatment if the program is not able to provide mental health services; an OTP referring a patient to another provider for mental health assessment shall make and document its good faith efforts to follow up with that provider on the results of the referral, and to co-ordinate its treatment with any subsequent treatment by other providers, within the limits of all applicable laws and regulations pertaining to release of patient information and confidentiality;

D. a program sponsor shall ensure that a patient is offered medical, psychiatric and psychological services, if needed, either at its program or through referral:

(1) if a patient receives medical, psychiatric or psychological services, from provider(s) not affiliated with the program, program staff members shall make a good faith effort to communicate and coordinate its treatment services with such provider, including monitoring and evaluating interactions between the patient's opioid treatment medication and medications used to treat the patient's mental disorder, if any;

(2) the OTP shall have a procedure to ensure that such good faith coordination efforts are made, in accordance with all state and federal laws and regulations for the release of patient records or information;

E. a program sponsor shall make good faith efforts to establish effective working relationships with the relevant behavioral health treatment providers in its patient catchment area in order to facilitate patient access to the services available through those providers;

F. a program sponsor shall ensure that a patient has access to a self-help group or support group, such as narcotics anonymous, either at the agency or

through referral to a community group;

G. treatment services are provided by appropriately licensed staff. [7.32.8.25 NMAC - N, 11-30-05]

7.32.8.26 DIVERSE POPULATIONS:

A. The program sponsor shall ensure that:

(1) opioid treatment is provided regardless of race, ethnicity, gender, age, or sexual orientation;

(2) the program facility is compliant with the Americans with Disabilities Act (ADA);

(3) opioid treatment is provided with consideration for a patient's individual needs, cultural background, and values;

(4) provider staff members are culturally competent;

(5) unbiased language is used in the provider's print materials, electronic media, and other training or educational materials;

(6) HIV testing and education are available to patients either at the provider or through referral;

(7) a patient who is HIV-positive and who requests treatment for HIV or AIDS:

(a) is offered treatment for HIV or AIDS either at the provider or through referral; and

(b) has access to an HIV- or AIDS-related peer group or support group and to social services either at the provider or through referral to a community group; and

(8) for patients with a communicable disease such as HIV, AIDS, or hepatitis C, the provider has a procedure for transferring a patient's opioid treatment to a non-program medical practitioner treating the patient for the communicable disease when it becomes the patient's primary health concern;

(9) an individual who requires administration of opioid treatment medication only for relief of chronic pain is:

(a) identified during the physical examination or assessment;

(b) not admitted for opioid medication treatment; and

(c) referred for medical services; and

(d) for a patient with a chronic pain disorder who is also physically dependent the OTP makes a good faith effort to coordinate treatment and services with the medical practitioner treating the patient for pain management.

B. A program sponsor shall ensure that a policy and procedure is developed, implemented, and complied with for the treatment of female patients, to include requirements that:

(1) pregnancy tests shall be

administered and reviewed for all women of childbearing age prior to initiating a opioid treatment withdrawal procedure or medically supervised withdrawal;

(2) appropriate staff members be educated in the unique needs of female patients; and

(3) each female patient be informed about or referred to an appropriate support group, at the provider or in the community.

C. The program sponsor shall ensure that a policy and procedure is developed, implemented, and complied with for the treatment of pregnant patients, to include:

(1) a requirement that priority be given to pregnant individuals seeking opioid treatment;

(2) a requirement that the reasons for a pregnant individual's denial of admission to a provider be documented;

(3) a requirement that a pregnant patient be offered prenatal care to include fetal assessment either at the program or through referral to a non-program medical practitioner;

(4) a requirement that the program communicate with any non-program medical practitioners who are providing prenatal care to a pregnant patient, to coordinate opioid treatment and prenatal care, in accordance with all state and federal laws and regulations for the release of patient records or information; and document all such communications in the patient records;

(5) a requirement that a staff member make a good faith effort to educate a pregnant patient who refuses prenatal care services on the importance of prenatal care;

(6) a requirement that a staff member obtain a written refusal of prenatal care services that are offered either directly by the program or by referral, from a pregnant patient who refuses such services or referral to such services;

(7) a requirement that a pregnant patient receiving comprehensive maintenance treatment before pregnancy be maintained at the pre-pregnancy dose of opioid medication, if effective;

(8) a requirement that a pregnant patient be monitored by the program medical director to determine if pregnancy-induced changes in the elimination or metabolism of opioid treatment medication may necessitate an increased or split dose;

(9) a requirement that withdrawal treatment:

(a) is strongly advised against before 14 weeks or after 32 weeks of gestation;

(b) the program medical director reviews the case before initiating withdrawal and monitor it until withdrawal is complete;

(10) a requirement that a pregnant patient discharged from the program be referred to a non-program medical practitioner and that a staff member document the name, address, and telephone number of the medical practitioner in the patient record.

D. A program sponsor who is officially notified by a correctional facility that a patient is in their custody shall ensure that the program:

(1) makes efforts to obtain approval from the criminal justice system for the continued treatment of the patient by the program while the patient is incarcerated; and

(2) if approval is obtained the program continues to treat the patient while the patient is incarcerated, within the limits of the program's ability to provide such treatment to the incarcerated patient; and

(3) if approval is not obtained, the program's attempts to obtain approval are documented in the patient's record.

[7.32.8.26 NMAC - N, 11-30-05]

7.32.8.27 PREPAREDNESS PLANNING:

A. The program sponsor shall ensure that the program has:

(1) a written plan to ensure uninterrupted dispensing of medication in the event of dispensing staff turnover; and

(2) a written agreement with at least one other provider for the provision of opioid treatment medication to program patients in the event that the program is unable to provide services;

(3) 24-hour telephone answering service or other method to reach the program at all times; and

(4) a list of all patients and the patients' dosage requirements available and accessible to program on-call staff members.

B. A program sponsor shall ensure that a written plan is developed and implemented for continuity of patient services if the program is voluntarily or involuntarily closed. Such planning shall include a disaster plan that addresses unforeseeable circumstances such as natural disaster or involuntary closure from any cause, and:

(1) includes steps for the orderly transfer of patients to other programs, individuals, or entities that provide opioid treatment;

(2) includes procedures for securing, maintaining, and transferring patient records according to federal and state law; and

(3) the plan is reviewed and updated, as appropriate, at least once every 12 months.

[7.32.8.27 NMAC - N, 11-30-05]

7.32.8.28 PATIENT

RECORDS:

A. The OTP program shall establish and maintain a recordkeeping system that is adequate to document and monitor patient care. The system shall comply with all federal and state requirements relevant to OTPs and to confidentiality of patient records.

B. Each patient record shall include:

- (1) the results of the physical examination;
 - (2) the results of all assessments;
 - (3) the treatment plan and all updates or revisions;
 - (4) the results of laboratory tests and a description of any action taken based upon the results;
 - (5) documentation of the patient's current dose and dosage history;
 - (6) documentation of counseling provided to the patient;
 - (7) dates and results of meetings or conferences regarding the patient's treatment;
 - (8) documentation of the process used and factors considered in making decisions that impact a patient's treatment, such as whether to allow take-home medication and the frequency of laboratory drug detection tests; and
 - (9) documentation of the agency's efforts to learn of multiple opioid treatment program enrollment;
 - (10) documentation that the patient has received and understood information regarding the harmful effects of diversion of opioid treatment medication.
- [7.32.8.28 NMAC - N, 11-30-05]

7.32.8.29 COMMUNITY RELATIONS:

A. A program sponsor shall ensure that policies and procedures are developed, implemented, and complied with to educate and promote understanding in the community about opioid treatment and include:

- (1) a mechanism for eliciting input from the community about the provider's impact on the community;
- (2) a requirement that the program sponsor or designee interface with community leaders to foster positive relations;
- (3) a requirement that the program sponsor or designee establish a liaison with community representatives to share information about the program;
- (4) a requirement that the agency have information on substance abuse and related health and social issues available to the public;
- (5) a mechanism for addressing and resolving community concerns about opioid treatment or the program's presence

in the community; and

(6) a mechanism that addresses getting approval for continued treatment in treatment or care facilities and correctional facilities.

B. A program sponsor shall ensure that community relations efforts are documented and are evaluated at least once every 6 months.

C. A program sponsor shall comply with all valid county and municipal ordinances regarding community relations, and the department of health may consult with local governmental entities when enforcing this section.

[7.32.8.29 NMAC - N, 11-30-05]

7.32.8.30 DIVERSION CONTROL:

The program sponsor shall ensure that a written plan is developed, implemented, and complied with to prevent diversion of opioid treatment medication from its intended purpose to illicit purposes. This plan shall assign specific responsibility to licensed and administrative staff for carrying out the diversion control measures and functions described in the plan. The program shall develop and implement a policy and procedure providing for the reporting of theft or diversion of medication to the relevant regulatory agencies, and law enforcement authorities.

[7.32.8.30 NMAC - N, 11-30-05]

HISTORY OF 7.32.8 NMAC: [RESERVED]**BOARD OF EXAMINERS FOR OCCUPATIONAL THERAPY**

This is an amendment to 16.15.2 NMAC, *Occupational Therapists - Licensing Requirements*. 16.15.2 NMAC is being amended by the addition of new Sections 17 and 18. This is also an emergency rule filing with the sections effective 11-16-2005.

16.15.2.17 PROVISIONS FOR EMERGENCY LICENSURE:

A. Occupational therapist's and occupational therapist assistants currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster upon:

- (1) a completed application signed and notarized and accompanied by proof of identity, which may consist of a copy of a drivers license, passport or other photo identification issued by a governmental entity;
- (2) proof of successful completion of the national board for certification in

occupational therapy (NBCOT) and jurisprudence exam;

(3) verification of licenses held in other states and verification of employment if applicable. (verification may be obtained by mail, fax or email, through online verification from the state of licensure.

(4) proof or documentation of residency and or employment in the area of the federal disaster.

B. The board may waive the following requirements for licensure:

(1) application fee's prorated for four months;

(2) the specific forms required under 16.15.2.9 if the applicant is unable to obtain documentation from the federal declared disaster areas.

C. Nothing in this section shall constitute a waiver of the requirements for licensure contained in the board's rules and regulations.

D. Licenses issued under (this emergency provision) shall expire four months following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made on or before October 1, following the date of issue to avoid late renewal fees. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving license renewal.

16.15.2.18 EMERGENCY LICENSE TERMINATION:

A. The emergency license shall terminate upon the following circumstances:

- (1) the issuance of a permanent license under 16.15.2.9 NMAC; or
- (2) proof that the emergency license holder has engaged in fraud, deceit, misrepresentation in procuring or attempting to procure a license under this section.

B. Termination of an emergency license shall not preclude application for permanent licensure.

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.3 NMAC, *Physical Therapists - Issuance of Licenses*. 16.20.3 NMAC is being amended by the addition of new Sections 11 and 12. This is also an emergency rule filing with the sections effective 11-16-2005.

16.20.3.11 PROVISIONS FOR EMERGENCY LICENSURE:

A. Physical therapist's and physical therapist assistants currently licensed and in good standing, or otherwise meeting the requirements for New Mexico

licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster upon:

(1) a completed application signed and notarized and accompanied by proof of identity, which may consist of a copy of a drivers license, passport or other photo identification issued by a governmental entity;

(2) documentation of graduation from an accredited (CAPTE) educational program, proof of successful completion of the national physical therapy examination (NPTE) and jurisprudence exam as specified in 16.20.3.8 NMAC, of these rules. (verification may be obtained by email, online verification from the testing agency or university, mail or by fax.);

(3) verification of licenses held in other states and verification of employment if applicable. (verification may be obtained by mail, fax or email, through online verification from the state of licensure.

(4) proof or documentation of residency and or employment in the area of the federal disaster.

B. The board may waive the following requirements for licensure:

(1) application fee's prorated for four months;

(2) the specific forms required under 16.20.3.8 if the applicant is unable to obtain documentation from the federal declared disaster areas.

C. Nothing in this section shall constitute a waiver of the requirements for licensure contained in the board's rules and regulations.

D. Licenses issued under (this emergency provision) shall expire four months following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made on or before February 1, following the date of issue to avoid late renewal fees. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving license renewal.

16.20.3.12 EMERGENCY LICENSE TERMINATION:

A. The emergency license shall terminate upon the following circumstances:

(1) the issuance of a permanent license under 16.20.3.8 NMAC; or

(2) proof that the emergency license holder has engaged in fraud, deceit, misrepresentation in procuring or attempting to procure a license under this section.

B. Termination of an emergency license shall not preclude application for permanent licensure.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

6 NMAC 4.2.4.4, Denial of Applications for Licenses for School Personnel, filed 06/01/98 is repealed and replaced by 6.68.2 NMAC, Denial of Applications for Licenses for School Personnel effective 11/30/05.

6 NMAC 4.2.4.5, Suspension or Revocation of A License Held by a Licensed School Individual, filed 06/01/98 is hereby repealed and replaced by 6.68.3 NMAC, Suspension, Revocation or Other Disciplinary Action Regarding a License Held by a Licensed School Individual, effective 11/30/05

PUBLIC EDUCATION DEPARTMENT
JERRY APODACA EDUCATION
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The Public Education Department ("Department") has repealed 6.32.2 NMAC (GUIDELINES FOR IMPLEMENTING BILINGUAL MULTICULTURAL EDUCATION PROGRAMS), effective November 30, 2005 and has repromulgated the rule effective November 30, 2005. The Department's Notice of Proposed Rulemaking, published in Volume XVI, Number 10 (May 31, 2005) of the New Mexico Register, advised that proposed amendments to the rule were under consideration. Subsequent to the public hearing and public input process, it was determined that the extent of the amendments necessitated the repeal and repromulgating of the rule.

6.63.4 NMAC, Licensure in Educational Diagnosis, filed 12/17/02 was out for out for public hearing on 09-19-05 at the Public Education Department, Mabry Hall at 300 Galisteo in Santa Fe, is hereby repealed and replaced by 6.63.4 NMAC, Licensure in Educational Diagnosis, effective 11-30-05.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 32 EDUCATIONAL STANDARDS - BILINGUAL MULTICULTURAL EDUCATION
PART 2 GUIDELINES FOR IMPLEMENTING BILINGUAL MULTICULTURAL EDUCATION PROGRAMS**

6.32.2.1 ISSUING AGENCY:
Public Education Department
[6.32.2.1 NMAC - Rp, 6.32.2.1 NMAC, 11-30-05]

6.32.2.2 SCOPE: This regulation applies to public schools receiving bilingual state funding, K-12.
[6.32.2.2 NMAC - Rp, 6.32.2.2 NMAC, 11-30-05]

6.32.2.3 STATUTORY AUTHORITY: This regulation is adopted pursuant to Sections 22-2-1, 22-23-1 through 22-23-6, NMSA, 1978.
[6.32.2.3 NMAC - Rp, 6.32.2.3 NMAC, 11-30-05]

6.32.2.4 DURATION:
Permanent
[6.32.2.4 NMAC - Rp, 6.32.2.4 NMAC, 11-30-05]

6.32.2.5 EFFECTIVE DATE:
November 30, 2005, unless a later date is cited at the end of a section.
[6.32.2.5 NMAC - Rp, 6.32.2.5 NMAC, 11-30-05]

6.32.2.6 OBJECTIVE: This regulation provides requirements for developing and implementing Bilingual Multicultural and Language Revitalization programs (in accordance with Section 22-23-4, NMSA 1978 and Standards for Excellence, Subsection B of 6.30.2.11 NMAC and supports the state of New Mexico's long-standing policy in furthering bilingual multicultural education.
[6.32.2.6 NMAC - Rp, 6.32.2.6 NMAC, 11-30-05]

6.32.2.7 DEFINITIONS: As used in the Bilingual Multicultural Education Act [22-23-1, NMSA 1978]:

A. "bilingual multicultural education program" means a program using two languages, including English and the home or heritage language, as a medium of instruction in the teaching and learning process;

B. "culturally and linguistically different" means students who are of a different cultural background than mainstream United States culture and whose home or heritage language, inherited from the student's family, tribe or country of origin, is a language other than English;

C. "department" means the public education department;

D. "district" means a public school or any combination of public schools in a district;

E. "English language learner" means a student whose first or heritage language is not English and who is unable to read, write, speak or understand

English at a level comparable to grade-level English proficient peers and native English speakers;

F. "heritage language" means a language other than English that is inherited from a family, tribe, community or country of origin;

G. "home language" means a language other than English that is the primary or heritage language spoken at home or in the community;

H. "school board" means a local school board; and

I. "standardized curriculum" means a district curriculum that is aligned with the state academic content standards, benchmarks and performance standards.

[6.32.2.7 NMAC - Rp, 6.32.2.7 NMAC, 11-30-05]

6.32.2.8 DEPARTMENT

DUTIES: The department shall be responsible for carrying out the powers and duties as provided in the Bilingual Multicultural Education Act, Sections 22-23-1 through 22-23-6 NMSA 1978.

[6.32.2.8 NMAC - N, 11-30-05]

6.32.2.9 PROGRAM GOALS:

The state's bilingual multicultural education program goals are for all students, including English language learners, to:

A. Become bilingual and biliterate in English and a second language, including Spanish, a Native American language (with appropriate approval from tribal councils or from other appropriate tribal entities with authority to make educational decisions on behalf of Native American children) or another language. For Native American languages that are oral only, the literacy component shall be measured only in the skill areas/domains of listening, speaking, and comprehension; and

B. Meet state academic content standards and benchmarks in all subject areas.

[6.32.2.9 NMAC - N, 11-30-05]

6.32.2.10 PROGRAM ELIGIBILITY:

To be eligible for financial support, each program shall:

A. provide for the educational needs of linguistically and culturally different students, including Native American children and other students who may wish to participate, in grades kindergarten through twelve, with priority to be given to programs in grades kindergarten through three, in any public school or any combination of public schools in a district;

B. fund programs for culturally and linguistically different students in the state in grades kindergarten through three, for which there is an identifiable need

to improve the language capabilities of both English and the home language of these students, before funding programs at higher grade levels;

C. use two languages as mediums of instruction for any part or all of the curriculum of the grade levels within the program;

D. establish a parent advisory committee, representative of the language and culture of the students, to assist and advise in the development, implementation, and evaluation of the program;

E. provide procedures to ensure that parental notification is given annually prior to program placement; and

F. provide personnel endorsed in bilingual education, TESOL, or certified in Native American language and culture. The secretary of education may authorize other personnel to implement programs if qualified personnel are not available by the submission of an approved program design that addresses recruitment, professional development, and staffing patterns.

[6.32.2.10 NMAC - Rp, 6.32.2.8 NMAC, 11-30-05]

6.32.2.11 PROGRAM APPROVAL:

A. A public school district shall submit an initial application to the department by the date of the preceding school year as specified by the department for each school requesting program approval.

B. The initial application shall include:

(1) projected number of students to be served; and

(2) signatures of superintendent, bilingual education/title III coordinator, and school principal.

C. The department shall review initial applications for approval. Districts with initially- approved applications shall submit by the 20th day of the target school year the following:

(1) annual measurable achievement objectives (AMAOs) for English and home language;

(2) instructional plan; and

(3) actual number of students to be served.

[6.32.2.11 NMAC - Rp, 6.32.2.13 NMAC, 11-30-05]

6.32.2.12 PROGRAM ELEMENT - INSTRUCTION:

A. Public schools providing an approved bilingual multicultural education program shall include:

(1) instruction to attain language proficiency and literacy skills in two languages, one of which is English;

(2) sheltered content instruction;

(3) standardized curriculum that is aligned with the state academic content standards, benchmarks and performance standards; and

(4) instruction in the history and cultures of New Mexico.

B. Public schools providing an approved Native American heritage language revitalization program shall include:

(1) instruction to attain language proficiency and literacy skills in English and a Native American language (where tribal language is written); for Native American languages that are oral only, the literacy component shall be measured only in the skill areas/domains of listening, speaking and comprehension;

(2) sheltered content instruction;

(3) standardized curriculum that is aligned with the state academic content standards, benchmarks and performance standards;

(4) instruction in the history and cultures of New Mexico Native American tribes and

(5) public schools providing a Native American heritage language revitalization program (or other approved bilingual education model) shall obtain appropriate approval from tribal councils or from other appropriate tribal entities with authority to make educational decisions on behalf of Native American children.

C. The following content areas shall be included in all programs:

(1) language arts in the home or heritage language; for funding purposes, time allotted for instruction in the home language must be equivalent to the time provided for English language arts and must be consecutive in nature (that is, not fragmented throughout the day);

(2) modifications of instruction in the English language arts that address the developmental, linguistic and academic needs of students; and

(3) depending on the program model:

(a) content area instruction in two languages that utilizes the student's language, history, and/or culture; and/or

(b) fine arts instruction in two languages that utilizes the student's language, history, culture, and the arts traditions of his/her community.

D. All programs shall implement one or more of the following bilingual education models in the school program:

(1) dual language immersion: designed to develop:

(a) high academic achievement in two languages;

(b) additive bilingual and biliter-

ate proficiency; and

(c) cross-cultural skills development.

(2) enrichment: designed to further develop the home language of fully English proficient students and to teach the cultures of the state;

(3) heritage language: designed to support and revitalize a student's native language and culture through oral and/or written language instruction; Native American language programs require approval from tribal councils or from other appropriate tribal entities with authority to make educational decisions on behalf of Native American children;

(4) maintenance: designed to develop and maintain proficiency and literacy in the primary or home language while developing a student's literacy and oral skills in English;

(5) transitional: designed to transfer students from home language instruction with gradual transition to an all-English curriculum.

[6.32.2.12 NMAC - Rp, 6.32.2.10 NMAC, 11-30-05]

6.32.2.13 PROGRAM ELEMENT - PROFESSIONAL DEVELOPMENT:

A. Public school districts shall provide professional development to teachers, teacher assistants, principals, bilingual directors or coordinators, associate superintendents, superintendents, other instructional personnel, and financial officers in the areas of:

(1) research-based bilingual/multicultural and/or language revitalization programs and implications for instruction;

(2) best practices of English as a second language (ESL); English language development (ELD) and bilingual/multicultural and/or language revitalization programs; and

(3) principles of language acquisition.

B. Bilingual/multicultural education or language revitalization programs shall be part of the district's professional development plan as required in Subsection E of Section 22-23-5 NMSA 1978. Bilingual educators, including teachers, instructional support personnel, principals, and program administrators, will participate in professional development. Principals and program administrators shall participate in training that addresses program supervision.

[6.32.2.13 NMAC - Rp, 6.32.2.12 NMAC, 11-30-05]

6.32.2.14 PROGRAM ELEMENT - ASSESSMENT:

A. Trained personnel shall administer state-approved language profi-

ciency assessments in English and the home language annually until proficiency in each language is achieved.

B. Public school districts shall comply with federal assessment requirements, including Titles I and III of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) as amended and office for civil rights requirements.

C. Students enrolled in this program shall participate in the New Mexico standards-based assessment (NMSBA) program.

D. In those grades that students do not participate in the New Mexico standards-based assessment program, the public school district shall develop and implement an assessment and evaluation program.

[6.32.2.14 NMAC - Rp, 6.32.2.11 NMAC, 11-30-05]

6.32.2.15 EVALUATION:

A. To evaluate bilingual multicultural education program effectiveness and use of funds, each district shall maintain academic achievement and language proficiency data and update the data annually.

(1) Districts shall submit to the department an annual progress report.

(2) Reports shall be submitted by September 30th of the following year.

(3) The report shall include:

(a) verification that the program has identified and served students most in need (with priority given to K-3) based on language proficiency (English and home language) and academic achievement;

(b) a current analysis of assessment results by school and by model(s);

(c) data demonstrating that participating students have met the state targets for annual measurable achievement objectives (AMAOs); and

(d) an expenditure report from the general ledger on use of funds for the program.

B. The department shall compile and analyze the student data submitted by public school districts and shall report annually to the appropriate interim legislative committee.

[6.32.2.15 NMAC - Rp, 6.32.2.14 NMAC, 11-30-05]

6.32.2.16 PROGRAM

RENEWAL: The district annual report will be the indicator to determine the effectiveness of the program, and need for program renewal and/or modification. The following cycle will apply for evaluation of program effectiveness:

A. after the first year (SY 2005-06), districts will report baseline data;

B. after the second year,

districts shall submit a progress report, by school, indicating how schools met annual measurable achievement objectives from year one to year two; if data shows improvement, the public school district may continue the program as previously outlined in the initial or modified application;

C. after two consecutive years of the school's failing to make progress toward meeting AMAOs, the department shall:

(1) notify the public school district that the school has not demonstrated reasonable progress;

(2) assist the school in the development of an improvement plan; and

(3) provide technical assistance to the school and district.

D. after four consecutive years of the school's failure to make progress toward meeting AMAOs, the department shall:

(1) require the school to modify the curriculum, program, and method of instruction; or

(2) the program shall be redesigned, modified, or discontinued by the department.

[6.32.2.16 NMAC - Rp, 6.32.2.15 NMAC, 11-30-05]

HISTORY OF 6.32.2 NMAC:

PRE-NMAC HISTORY: The material in this regulation is derived from that previously filed with the State Records Center and Archives under: State Board of Education Regulation 73-21, Guidelines for Submitting Bilingual-Multicultural Education Proposals, filed June 18, 1973 and State Board of Education Regulation No. 75-19, Guidelines for Implementing Bilingual-Multicultural Programs, filed January 22, 1976.

HISTORY OF REPEALED MATERIAL:

6.32.2 NMAC, Guidelines for Implementing Bilingual Multicultural Programs, repealed effective 07-01-03; 6.32.2 NMAC, Guidelines for Implementing Bilingual Multicultural Education Programs, repealed effective 11-30-05.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND
SECONDARY EDUCATION
CHAPTER 63 SCHOOL PERSONNEL - LICENSURE REQUIREMENTS FOR ANCILLARY AND SUPPORT PERSONNEL
PART 4 LICENSURE IN
EDUCATIONAL DIAGNOSIS**

6.63.4.1 ISSUING AGENCY: Public Education Department
[6.63.4.1 NMAC - Rp, 6.63.4.1 NMAC, 11-30-05]

6.63.4.2 SCOPE: All persons seeking licensure in educational diagnosis.
[6.63.4.2 NMAC - Rp, 6.63.4.2 NMAC, 11-30-05]

6.63.4.3 STATUTORY AUTHORITY: Sections 22-2-1, NMSA 1978 and 22-2-2, NMSA 1978.
[6.63.4.3 NMAC - Rp, 6.63.4.3 NMAC, 11-30-05]

6.63.4.4 DURATION: Permanent
[6.63.4.4 NMAC - Rp, 6.63.4.4 NMAC, 11-30-05]

6.63.4.5 EFFECTIVE DATE: November 30, 2005, unless a later date is cited in the history note at the end of a section.
[6.63.4.5 NMAC - Rp, 6.63.4.5 NMAC, 11-30-05]

6.63.4.6 OBJECTIVE: This regulation establishes the licensure requirements for persons seeking licensure in educational diagnosis.
[6.63.4.6 NMAC - Rp, 6.63.4.6 NMAC, 11-30-05]

6.63.4.7 DEFINITIONS:
A. "Level one licensure" means a provisional license in educational diagnosis granted for five years. The license is nonrenewable unless the license holder verifies to the public education department (PED) that he/she has not worked using the license during its effective dates and provides evidence of current employment as an educational diagnostician.

B. "Level two licensure" means a renewable nine year license in educational diagnosis awarded after successful completion of at least three full school years at level I educational diagnostician licensure and including documentation of professional development requirements and verification by the superintendent or the governing authority of a private school or state institution that the individual is meeting level one competencies and is capable of demonstrating the competencies at level two.

C. "Level three licensure" means a renewable nine year license in educational diagnosis awarded after successful completion of at least three full school years at level two educational diagnostician licensure and including documentation of completion of supervised experience requirements and verification by the superinten-

dent or the governing authority of a private school or state institution that the individual is meeting level two competencies and is capable of demonstrating the competencies at level three.

D. "Supervision for an entry-level educational diagnostician" means a level one educational diagnostician will be required to have a minimum of one-hour per week individual supervision with a level three licensed educational diagnostician.

E. Satisfactory experience means the individual has:

(1) satisfactorily carried out the duties and responsibilities of the position as verified by the superintendent or the governing authority of a private school or state institution, and

(2) satisfactorily met the quality of the practice of educational diagnosis and professional responsibilities as reported by the supervising educational diagnostician.

F. "New Mexico diagnostician examination" means a comprehensive examination that evaluates the knowledge and competencies which must be passed no later than the end of the first year of level one licensure.

G. "Full school year" means a minimum of 160 days in a school year or 480 days over multiple school years or equivalent number of days in school districts on alternative schedules of full-time or part-time educational diagnostician work, including summer work in a variety of educational settings.
[6.63.4.7 NMAC - Rp, 6.63.4.7 NMAC, 11-30-05]

6.63.4.8 REQUIREMENTS FOR PERSONS SEEKING LEVEL ONE EDUCATIONAL DIAGNOSIS LICENSURE: All persons who perform services in educational diagnosis in public schools or in those special state-supported schools within state agencies, must hold a valid, educational diagnosis licensure issued by the PED. Persons seeking level one licensure in educational diagnosis pursuant to the provisions of this regulation shall meet the following requirements:

A. bachelor's degree and master's degree from a regionally accredited college or university; and

B. 30 graduate hours, which may be completed as a part of the master's degree program or in addition to the master's, meeting the applicable program requirements as follows:

(1) the 30 graduate hours, if awarded by a New Mexico college or university, must be from an educational diagnostic or school psychology program approved by the PED and include an internship as follows:

(a) 240 hours, if the applicant

began a program in education diagnosis prior to July 1, 2006;

(b) 300 hours, if the applicant began a program in education diagnosis on or after July 1, 2006; or

(2) the 30 graduate hours awarded by a college or university outside New Mexico must be from an educational diagnostic or school psychology program accepted by the PED and include an internship as provided in Paragraph (1) of Subsection B of 6.63.4.8 NMAC; and

(3) all persons previously licensed as educational diagnosticians or special education teachers may substitute two years of verified, successful employment as educational diagnosticians or special education teachers for these requirements if a diagnostic internship was not part of their educational program; and

C. background experience to be met by:

(1) holding a valid New Mexico teaching license, counseling license, or professional licensure in another area of instructional support; or

(2) demonstrating three (3) years of documented, verified satisfactory experience in one or a combination of the following areas: work in community-based programs serving children or adults with special needs or developmental disabilities; mental health work related to educational diagnosis; clinical practice related to educational diagnosis; vocational evaluation; or teaching; and

D. testing: on or after September 1, 2007, applicants for level one licensure in educational diagnosis must pass any licensure examination specified for the license required in 6.60.5 NMAC or hold national certification from the national association of school psychologists (NASP) or from the council for educational diagnostician services (CEDS).
[6.63.4.8 NMAC - Rp, 6.63.4.8 NMAC, 11-30-05]

6.63.4.9 REQUIREMENTS FOR PERSONS SEEKING LEVEL TWO EDUCATIONAL DIAGNOSIS LICENSURE: Persons seeking level two educational diagnosis licensure shall meet the following requirements:

A. hold a valid level one license in education diagnosis for at least three full school years; and

B. demonstrate the educational diagnostician competencies as verified by the superintendent or the governing authority of a private school or state institution; and

C. satisfactory completion of 1200 hours of supervised experience as an educational diagnostician (i.e., minimum of 400 internship hours and 800 post internship supervised hours in a school-related

setting).

[6.63.4.9 NMAC - Rp, 6.63.4.9 NMAC, 11-30-05]

6.63.4.10 REQUIREMENTS FOR PERSONS SEEKING LEVEL THREE EDUCATIONAL DIAGNOSIS LICENSURE:

Persons seeking level three educational diagnosis licensure shall meet the following requirements:

A. hold a valid level two license in education diagnosis for at least three full school years; and

B. demonstrate the educational diagnostician competencies as verified by the superintendent or the governing authority of a private school or state institution;

C. successfully complete 600 hours of mentorship in educational diagnosis in a school-related setting.

[6.63.4.10 NMAC - N, 11-30-05]

6.63.4.11 REFERENCED MATERIAL: Competencies for educational diagnosticians

A. Professional knowledge required for the preparation of educational diagnosticians for all licensure levels:

(1) Professional demeanor:

(a) demonstrate knowledge of models and strategies of consultation and collaboration;

(b) demonstrate knowledge of roles of individuals with exceptional learning needs, families, and school, community personnel in planning of an individualized program;

(c) describe issues and problems faced by parents of exceptional children;

(d) demonstrate knowledge of culturally responsive factors that promote effective communication and collaboration with individuals with exceptional learning needs, families, and school personnel, and community members;

(e) demonstrate knowledge of common service delivery models;

(f) demonstrate knowledge of state and federal regulations and ability to communicate these regulations and due process rights to parents, teachers, and other professionals (eg., IDEA, Individuals With Disabilities Education Act), Section 504 of the Rehabilitation Act; New Mexico Standards for Excellence, and the No Child Left Behind Act;

(g) demonstrate knowledge of community resources available to parents;

(h) demonstrate knowledge of and ability to describe rationale for least restrictive environment considerations;

(i) demonstrate knowledge of and need for related services and related service delivery options;

(j) demonstrate skill in making recommendations to facilitate integration

into the general education curriculum.

(2) Development and characteristic of learners:

(a) demonstrate knowledge of exceptionalities and ability to define/discuss them:

(i) exceptionalities and eligibility criteria as delineated in federal, state and local regulations;

(ii) general nature and etiology of disabilities and learning styles of students with various disabilities;

(b) demonstrate knowledge of the range of individual abilities within categories of exceptionalities and:

(i) typical and atypical human growth and development in the areas of motor, language, social-emotional, and cognitive development;

(ii) educational implications of characteristics of various exceptionalities;

(iii) describe current theories of learning;

(c) demonstrate awareness of the following medical variables:

(i) common medical syndromes (and their characteristics) that impact learning;

(ii) etiology of common medical syndromes;

(iii) effects of various medications on individuals with exceptional learning needs.

(3) Culturally and linguistically diverse populations:

(a) demonstrate knowledge and sensitivity to address linguistic, cultural, social and ethnic values and attitudes of diverse populations;

(b) identify characteristics and needs as related to cultural and linguistic differences;

(c) demonstrate skills in selecting and administering appropriate assessment instruments;

(d) demonstrate skill in utilizing language background, language dominance and language proficiency in the assessment process;

(e) demonstrate understanding of the impact of acculturation on learning and language acquisition;

(f) demonstrate knowledge of variations in beliefs, traditions, and values across and within cultures and their effects on relationships among individuals with exceptional learning needs, family, and schooling;

(g) demonstrate knowledge of teaching strategies addressing learning styles and learning needs of children from culturally and linguistically diverse backgrounds.

(4) Assessment/evaluation:

(a) demonstrate skills and knowledge in the screening, referral, and evalua-

tion process for preschool through post-secondary levels;

(b) demonstrate skills in selecting, administering, scoring and interpreting a variety of assessments in the following areas: cognitive, achievement, processing, creativity/divergent thinking, critical thinking/problem solving, language, social-emotional behavior, adaptive behavior, and vocational aptitude, ability and interests;

(c) demonstrate skills in formal and informal observational techniques of data collection.

(5) Demonstrate knowledge and application of psychometric theory and descriptive statistics necessary for interpretation of psycho-educational measures to include: reliability, validity, standardization, error of measurement, and test bias.

(6) Demonstrate ability to keep accurate and detailed records of assessment and related proceedings.

(7) Demonstrate ability to select or modify appropriate assessment procedures and instruments to ensure non-biased results:

(8) Demonstrate ability to use assessment results in making recommendations for eligibility, instruction, accommodations and transition as part of IEP development.

(9) Demonstrate skill in considering assessment information for exiting from special education services.

(10) Psycho-educational diagnostic report:

(a) demonstrate ability to prepare professional, understandable reports consistent with acceptable professional standards and official guidelines;

(b) demonstrate skill in preparing and presenting comprehensive report information keyed to the individual student's needs and parent's level of understanding including:

(i) background information which includes developmental history, educational/school history, language proficiency, and screening results;

(ii) assessment information including past evaluations, current test information, any variation from test administration and or standardization, and summaries of strengths and weaknesses;

(iii) related services evaluations, results, and recommendations;

(iv) individualized recommendations for eligibility, instruction, accommodations, and transition, based on assessment results;

(v) provision of explanation and copy of the psycho-educational diagnostic report to the parent/guardian;

(vi) use of multidisciplinary team processes in development of individual education plans.

B. professional and ethical

practice for levels one, two and three educational diagnosticians:

(1) maintain a professional demeanor as defined in local education agency policy;

(2) maintain professional codes of conduct and ethics;

(3) demonstrate knowledge of the scope and role of an educational diagnostician;

(4) demonstrate knowledge of organizations and publications relevant to the field of educational diagnosis;

(5) demonstrate knowledge of confidentiality issues and regulations.

C. Multicultural competencies for levels one, two and three educational diagnosticians:

(1) demonstrate knowledge of cultural and linguistic issues in evaluation, assessment, and intervention techniques;

(2) demonstrate skills in interpreting and communicating evaluation results within a cultural and linguistic context;

(3) exhibit knowledge of the techniques in multicultural assessment and interventions.

[6.63.4.11 NMAC - Rp, 6.63.4.11 NMAC, 11-30-05]

6.63.4.12 IMPLEMENTATION: All persons holding a valid New Mexico license in educational diagnosis on the filing date of this rule shall be entitled to licensure in educational diagnosis at the same level that they hold on that date. Such licensure may be further continued pursuant to this rule.
[6.63.4.12 NMAC - Rp, 6.63.4.10, NMAC, 11-30-05]

HISTORY OF 6.63.4 NMAC:

PRE-NMAC HISTORY: The material in this part was derived from that previously filed with the State Records Center and Archives under SBE Regulation No 76-25 Certification for Educational Diagnosticians, filed January 20, 1977; SBE Regulation No. 88-3 Licensure in Educational Diagnosis, filed April 13, 1988.

HISTORY OF REPEALED MATERIAL:

6.63.4 NMAC, Licensure in Educational Diagnosis, filed 3-14-01 - Repealed effective 12-30-02.

6.63.4 NMAC, Licensure in Educational Diagnosis, filed 12-17-02 - Repealed effective 11-30-05

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 68 SCHOOL PERSONNEL - DENIAL, SUSPENSION, AND REVOCATION OF LICENSE PART 2 DENIAL OF APPLICATIONS FOR LICENSES FOR SCHOOL PERSONNEL

6.68.2.1 ISSUING AGENCY: Public Education Department

[6.68.2.1 NMAC - Rp, 6 NMAC 4.2.4.4.1, 11-30-05]

6.68.2.2 SCOPE: This rule governs the denial of applications for licenses and certificates for school personnel enumerated in Section 22-10A-3A NMSA 1978.

[6.68.2.2 NMAC - Rp, 6 NMAC 4.2.4.4.2, 11-30-05]

6.68.2.3 STATUTORY AUTHORITY: Sections 22-2-1B, NMSA 1978; 22-2-2J, K, NMSA 1978; 22-10A-31, NMSA 1978; and 61-1-1 et seq., NMSA 1978.

[6.68.2.3 NMAC - Rp, 6 NMAC 4.2.4.4.3, 11-30-05]

6.68.2.4 DURATION: Permanent

[6.68.2.4 NMAC - Rp, 6 NMAC 4.2.4.4.4, 11-30-05]

6.68.2.5 EFFECTIVE DATE: November 30, 2005, unless a later date is cited at the end of a section.

[6.68.2.5 NMAC - Rp, 6 NMAC 4.2.4.4.5, 11-30-05]

6.68.2.6 OBJECTIVE: This regulation, adopted by the public education department (hereinafter the "department"), governs the application process for initial issuance or continuing licensure of all types of licenses and certificates issued by the department for school personnel in New Mexico, as well as the denial of such applications. Applicants must also meet all requirements prescribed in department regulations governing each type and level of license or certificate sought.

[6.68.2.6 NMAC - Rp, 6 NMAC 4.2.4.4.6, 11-30-05]

6.68.2.7 DEFINITIONS:

A. "Continuing education requirements" When used in regards to teachers means meeting the high objective uniform statewide standard of evaluation

for the type and level of licensure for which an applicant has applied as set forth in 6.69.4.11 NMAC and required under Subsection B of Section B 22-10A-10 and 22-10A-11 NMSA 1978.

B. "Criminal history" means convictions of any felonies or misdemeanors of moral turpitude, or other information concerning a person's arrests, indictments, other formal criminal charges and any dispositions arising therefrom, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the FBI, the national law enforcement telecommunications system, the New Mexico department of public safety or the repositories of criminal history information of other states.

C. "Denial of application" means the department's rejection of an individual's properly made application for initial or continuing licensure due to incompetency, immorality, failure to satisfy the department's licensure requirements, failure to demonstrate the competencies required for the level of licensure sought, or for any other good and just cause including, but not limited to, any of the grounds set forth in this rule.

D. "Ex parte communications" means any oral, written or electronic communications between one party (or their attorney) and the hearing officer, or as between one party (or their attorney) and the secretary of education (hereinafter, "the secretary") that occur out of the presence and/or without the consent of the opposing party (or their attorney). Communications included in this definition, in addition to direct communications, include indirect communications as where a party requests or suggests to a non-party to contact the hearing officer or the secretary on any matter and for any reason related to a pending licensure case where a notice of contemplated action has been served on an applicant for licensure pursuant to this regulation. Ex parte communications also occur when individuals sympathetic to one party make oral, written or electronic communications to the hearing officer or secretary that occur out of the presence and/or without the consent of the opposing party (or their attorney) in any matter and for any reason related to a pending licensure case where a notice has been served on an applicant for licensure pursuant to this regulation.

E. "Licensure" means a license issued by the department authorizing a person to teach, supervise an instructional program, counsel, provide special instructional services, coach, provide health care, administer medication, perform med-

ical procedures, or administer in the public schools of the state. A certificate and license issued by the department are one and the same.

F. "Properly made application" means an application for initial licensure or continuing licensure that has been filled out in full and for which all the required fees and documentation, including but not limited to background information and official transcripts, have been submitted. In addition, a properly made application means the applicant must have fulfilled all academic requirements for the type and level of licensure sought.

G. "Superintendent" means the chief licensed administrator of a public school district and in the case of a state agency or private school, the governing authority of that agency or private school.

H. "Transcript of the hearing" means a verbatim copy of the statements made by anyone during hearings held under 6.68.2.15 NMAC of this regulation and the Uniform Licensing Act, NMSA 1978, 6-1-1et seq. (hereinafter, "ULA"). A transcript may be either stenographically recorded or tape recorded. [6.68.2.7 NMAC - Rp, 6 NMAC 4.2.4.4.7, 11-30-05]

6.68.2.8 APPLICATIONS FOR LICENSURE-COMPLETION OF FILE AND REAPPLICATION:

A. The professional licensure bureau (hereinafter, the "licensure bureau") of the department shall prescribe the form(s) for applications for initial and continuing licensure of school personnel in New Mexico.

B. All applicants for initial or continuing licensure shall meet the requirements of department regulations governing the type(s) and level(s) of license(s) sought that are in effect on the date an application on the prescribed form is received by the licensure bureau regardless of the expiration date on any existing license they may hold.

C. Individuals requesting continuing licensure must submit a request in writing on the current form prescribed by the licensure bureau by the June 30th expiration date of such license(s). However, a licensed individual shall have a one-year grace period from the date of expiration to apply for continuing licensure. Notwithstanding the foregoing, an individual whose license has expired on June 30th and is employed for the coming school year must have submitted a properly made application within 90 days of commencing his/her school employment duties for that year in accordance with Subsection C of Section 22-10A-3 NMSA 1978. Moreover, in no event shall the application for contin-

uing licensure be submitted sooner than January 1 of the expiration year.

D. An application for initial or continuing licensure shall be valid for one year from receipt, during which time the applicant must ensure that the licensure bureau has a properly made application with all the information necessary to determine his or her qualifications for the license(s) and level(s) sought therein. When the licensure bureau reviews an application and determines that it is improperly made, it shall notify the applicant regarding what is required for the application to be properly made. If an application remains improperly made for one year from the date of receipt, the application shall expire without any further action required by the department.

E. Once an application for initial or continuing licensure expires, the applicant seeking licensure shall be required to file a new application for licensure for the license(s) and level(s) sought and to pay the initial application fee. Such individual must qualify under existing department regulations as of the date of the new application. However, this subsection does not affect individuals filing for continuing licensure during the one-year grace period granted in Subsection C of 6.68.2.8 NMAC.] [6.68.2.8 NMAC - Rp, 6 NMAC 4.2.4.4.8, 11-30-05]

6.68.2.9 FAILURE TO SATISFY LICENSURE REQUIREMENTS:

A. The licensure bureau shall deny any properly made application for initial or continuing licensure as defined in Subsection F of 6.68.2.7, where an applicant has failed to satisfy all testing or competency requirements specified in department regulations governing the type(s) and level(s) of licensure sought.

B. An aggrieved applicant may request that the secretary review the denial of a license or continuing licensure for failure to satisfy prescribed continuing education or academic requirements. The secretary shall have sixty (60) days from the date of the request to review the denial and render a decision. The secretary's decision on review shall be final.

C. An applicant for initial or continuing licensure who has taken all required examinations and whose properly made application has been denied shall be afforded all the procedural and substantive due process rights contained in this rule, 6.68.2 NMAC and the ULA, Section 61-1-1 NMSA 1978, except applications denied for the following reasons:

- (1) failure to pass a required examination;
- (2) failure to pay the required application fee;
- (3) failure to meet continuing

education requirements as defined in Subsection B of 6.68.2.7 NMAC; or

(4) issuance of a temporary license extension if authorized by the School Personnel Act, Section 22-10A-1, NMSA 1978.

[6.68.2.9 NMAC - Rp, 6 NMAC 4.2.4.4.9, 11-30-05]

6.68.2.10 DENIAL OF APPLICATIONS:

A. Other grounds for denial of applications: Subject to the procedures set forth below, the department through the licensure bureau or the educator ethics bureau (hereinafter, "ethics bureau") may deny an application for initial or continuing licensure for incompetency, immorality or for any other good and just cause. "Other good and just cause" may include but shall not be limited to any of the following:

(1) a material misstatement of fact by an applicant in connection with the initial licensure application process or the continuing licensure application process; or

(2) the denial of an application for licensure or the suspension or revocation of an applicant's educational or other relevant professional certificate(s) or license(s) by the certification or licensing authorities of this or any other state or by a national licensing board or bureau; or

(3) material noncompliance with any provision(s) of department regulations prescribing the terms and conditions of employment contracts for licensed school personnel in New Mexico at a time when the person charged was subject to those regulations; or

(4) a willful violation of any department regulation prescribing standards of conduct for licensed school personnel at a time when the person charged was subject to such requirement; or

(5) a conviction of any felony or a misdemeanor involving moral turpitude, subject to the provisions of the Criminal Offender Employment Act, Section 28-2-1, et seq., NMSA 1978; or

(6) a failure to comply with a judgment and order for support pursuant to the Parental Responsibility Act, Section 40-5A-1, NMSA 1978; or

(7) the intentional alteration of any college transcripts or any license issued by the department in connection with any private or public employment or in any dealings with the department; or

(8) the failure or refusal by an applicant for licensure with a criminal history to timely provide documents requested by the department evidencing applicant's rehabilitation, satisfaction of court orders or successful termination of probation; or

(9) failing to meet the continuing education requirements for level II compe-

tencies where a local superintendent recommends to the secretary that the teacher's level II license be suspended in accordance with 6.69.4 NMAC.

B. Reporting requirements: Every school superintendent or the person designated by the governing authorities of state agencies, private schools or charter schools shall provide written notification to the director of the ethics bureau or licensure bureau (hereinafter, the "director") of purported facts reasonably believed by a superintendent to constitute grounds under this regulation for denial of an educator license or continuing licensure. At a minimum, the written notification shall include the name and address of the individual, the personnel action taken by the school district, if any, and a statement of reasons for the action. The following are not justifications for failing to report this information to the director: whether or not the personnel action is final; whether or not the personnel action was taken by a different school district; whether or not the licensed person resigned from a different school district pending investigation for misconduct; whether or not a person has been licensed for three or more years; whether or not any adverse personnel action is/was reversed. Written notification shall be made to the director within 30 calendar days of the sooner of any adverse personnel action or discovering purported facts reasonably believed to constitute grounds for licensure denial. Failure of a superintendent to provide such written notification to assist the department's licensure process shall not bar the department from denying an application or serving notice on an applicant.

C. Recommendation for denial of application.

(1) If the director of the ethics bureau or licensure bureau concludes that sufficient grounds exist under Subsection A of 6.68.2.10 NMAC to serve a notice on the applicant, the procedures set forth in 6.68.2.12 NMAC shall be initiated subject to the approval of the assistant secretary for educator quality. In all other cases, the license(s) applied for shall be issued unless the applicant fails to qualify as provided in 6.68.2.9 NMAC or in Paragraph (2) of Subsection C below.

(2) If a statement from a local superintendent that an applicant has failed to satisfactorily demonstrate the competencies required by the department for the level of license sought or held is received by the director of the licensure bureau pursuant to Subsection A of 6.68.2.11 NMAC, the following procedures shall be followed unless the applicant otherwise fails to qualify pursuant to 6.68.2.9 or Subsection A of 6.68.2.10 NMAC:

(a) the director shall review the local superintendent's finding that the applicant has not satisfactorily demonstrated the required competencies for the level of license sought or held; and

(b) if the director finds substantial evidence that the superintendent or governing authority failed to comply with 6.68.2.11 NMAC, the director shall issue the license; or

(c) if the director finds that the local superintendent has complied with 6.68.2.11 NMAC and the applicant is either a level 1 licensee who is completing the fifth and final year of level 1 or a level 2 or 3 licensee who is subject to losing his/her level 2 or 3 licensure, then the director shall cause the notice, pre-hearing, hearing and secretary review procedures set forth in 6.68.2.12 NMAC and the ULA to be initiated. In all other cases where the director finds that the local superintendent has complied with 6.68.2.11 NMAC, the director shall notify the applicant of that finding within 14 days and the applicant shall then have 30 days to request that the secretary review the director's finding. In such case, the secretary shall have 30 days to review the director's finding and the secretary's decision shall be final.

[6.68.2.10 NMAC - Rp, 6 NMAC 4.2.4.4.10, 11-30-05]

6.68.2.11 PROCEDURES REQUIRED OF A LOCAL SCHOOL BOARD OR GOVERNING AUTHORITY BEFORE GIVING NOTICE TO THE DIRECTOR OF THE PROFESSIONAL LICENSURE BUREAU THAT AN APPLICANT HAS NOT SATISFACTORILY DEMONSTRATED THE COMPETENCIES REQUIRED FOR THE LEVEL OF LICENSURE SOUGHT:

A. Before notice is given to the director of the licensure bureau that an applicant has not satisfactorily demonstrated the competencies required for the level of licensure sought, the following procedures must be followed:

(1) two or more conferences shall have been held with the licensed school person prior to the serving of such notice, and

(2) at least one conference shall be held with the individual's most recent performance evaluator, or immediate supervisor if the most recent performance evaluator is unavailable to confer with the individual, and another conference shall be held with the superintendent of the local school district or with the superintendent's designee who shall be someone other than the first person with whom the licensed individual has conferred, and

(3) at least ninety school days shall have elapsed between the conferences

to allow the individual sufficient time to satisfactorily demonstrate the required competencies.

B. A written record of all conferences shall be made, specifying the competency or those competencies that have not been satisfactorily demonstrated, the action suggested by the school or agency or private school administration, which might lead to satisfactory demonstration of such competency or competencies, and the results attained. Each written record shall be signed by all parties to the conference. In the event of refusal to sign, a notation shall be made of the refusal. A copy of each record shall be given to the individual.

C. The superintendent or the person designated by the governing authority of a state agency or private school shall, in the event of notifying the educator of his/her failure to satisfactorily demonstrate the required competencies, supplement such notice with copies of the records required pursuant to Subsection B of 6.68.2.11 NMAC together with any policies described in Subsection D of 6.68.2.11 NMAC.

D. Local school boards or the governing authorities of state agencies or private schools may develop policies concerning procedures required before giving notice to the director of the licensure bureau that an applicant has not satisfactorily demonstrated the competencies required for the level of licensure sought; provided, however, that such procedures must include at a minimum those requirements set forth in Subsections A through C of 6.68.2.11 NMAC.

[6.68.2.11 NMAC - Rp, 6 NMAC 4.2.4.4.11, 11-30-05]

6.68.2.12 PROCEDURES FOR DENYING APPLICATIONS: The following procedures shall govern the denial of properly made applications for initial or continuing licensure on any ground specified in Subsection A of 6.68.2.10 NMAC except for those applications noted in Subsection B of 6.68.2.9 NMAC and Paragraphs (1) through (4) of Subsection C of 6.68.2.9 NMAC.

A. Notice: The director of the educator ethics bureau or the director of the professional licensure bureau, on behalf of the department, shall prepare and serve upon the applicant a written notice of contemplated action.

B. Service of notices: Any notice required to be served by this regulation, including notice of final decision, may be served either personally or by certified mail, return-receipt-requested, directed to the applicant at his or her last known address as shown by the records of the

licensure bureau or to the applicant's attorney of record. Service must be no later than two years after the discovery of the conduct that would be the basis of the contemplated action, except that the time limitation shall be tolled by any civil or criminal litigation in which the applicant is a party arising from substantially the same facts, conduct or transaction that would be the basis for the department's action. If the notice or decision is served personally, service shall be made in the same manner as is provided for service by the rules of civil procedure for the district courts. Where the notice or decision is served by certified mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery or the last attempted delivery of the notice or decision to the addressee or refusal of the addressee to accept delivery.

C. Contents: The notice shall contain:

(1) the grounds, including in what respects the applicant has failed to satisfy the department, believed to be sufficient for denying the application;

(2) instructions for requesting a hearing before the department in accordance with Subsection A of 6.68.2.13 below;

(3) a statement that the department's contemplated action will be taken and shall become final unless the charged individual requests a hearing according to the procedure and within the time specified, and that such action would not be subject to judicial review; and

(4) a statement calling the applicant's attention to his or her rights under this regulation and the ULA, Section 61-1-8, NMSA 1978 copies of which shall be provided with the written notice.

D. Copies of notice: If the applicant is employed by a local school district in New Mexico, a copy of the notice shall be sent by the department, to the local school superintendent of the district employing or seeking to employ the applicant if known, unless the applicant is the said superintendent, in which case the president of the local school board shall be sent a copy of the notice.

[6.68.2.12 NMAC - Rp, 6 NMAC 4.2.4.4.12, 11-30-05]

6.68.2.13 PRE - HEARING PROCEDURES:

A. Filing of request for hearing: An applicant shall initiate a request for hearing by filing a timely, written request for hearing with the department, by delivery of such request to the department's office of the secretary in Santa Fe, New Mexico. Such request must be sent by certified mail, return-receipt-requested within twenty days after service of the notice on the applicant.

B. If a hearing is requested, the department, within twenty (20) days of receipt of the request, shall notify the applicant of the time and place of the hearing, the name, address and telephone number of the person who shall conduct the hearing for the department and the statutes and regulations authorizing the department to take the contemplated action, which hearing shall be held not more than sixty (60) nor less than fifteen (15) days from the date of service of said notice.

C. Failure to request a hearing: If the applicant does not make a timely written request for a hearing, the department may take the action contemplated in the notice and such action shall be final.

D. Appointment of a hearing officer

(1) All hearings may be conducted by a hearing officer who shall be a duly licensed New Mexico attorney, but who shall not be any attorney then employed by the office of general counsel of the department. Upon receipt of the request for a hearing, the director of the ethics bureau or the licensure bureau shall appoint the hearing officer. Any hearing officer appointed to serve on a case shall at all times be held to the same ethical standards of impartiality that are set forth in Subsection B of Section 21-300 of the New Mexico code of judicial conduct. The hearing officer may issue a pre-hearing order limited to: setting deadlines for the exchange of documents intended to be introduced; setting deadlines for the exchange of a list of the name, address and telephone number of each witness a party intends to call during the hearing; ordering the applicant to have his/her attorney, if any, file within thirty days a written notice of appearance with the hearing officer with a copy to opposing party; and cautioning the parties of their need to comply with Subsection G of 6.68.2.13 NMAC below. If either party requests a pre-hearing conference with the hearing officer, such conference shall be scheduled by the hearing officer and be held telephonically unless both parties agree to meet in person.

(2) The hearing officer shall have the power:

(a) to have counsel to develop the case; to administer oaths or affirmations to witnesses called to testify; to take testimony; to examine witnesses; and to direct a continuance of any case; hearing officers may also hold conferences before or during the hearing for the settlement or simplification of the issues but such settlement or simplification shall only be with the consent of the applicant;

(b) to hear pre-hearing motions; the hearing officer shall issue a written order with a copy to both parties on any pre-hearing motion filed by a party;

(c) to subpoena, for purposes of discovery and of the hearing, witnesses and relevant books, papers, documents and other evidence in compliance with Rule 1-045A to D of the rules of civil procedure and New Mexico civil form 4-505. A party may also issue such subpoenas with the approval of the hearing officer;

(d) to impose any appropriate evidentiary sanction against a party who fails to provide discovery or to comply with a subpoena; such sanctions could include the striking of a witness or the striking of documentary evidence;

(e) to take notice of judicially cognizable facts as well as of general, technical or scientific facts within his/her specialized knowledge so long as the applicant is notified either before or during the hearing of the fact so noticed and its source, and is afforded an opportunity to contest said fact; and

(f) to impose costs on the applicant upon motion of the department.

E. Discovery:

(1) Rules of discovery provided in Rules 26 through 37 of the New Mexico rules of civil procedures shall apply, except that all deadlines for responding to requests for admissions, interrogatories, and requests for production of documents shall be within ten (10) days of the delivery of the request. No such request shall be made less than fifteen days before the hearing.

(2) Upon written request to another party, any party is entitled to:

(a) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(b) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

(3) Any opposition to any pre-hearing motion filed by a party shall be filed within ten (10) days of the service of that motion on the other party.

(4) This rule does not authorize either party to seek discovery sanctions or relief from a district court.

(5) Any party may take depositions after service of notice in accordance with the rules of civil procedure for the district courts. Depositions may be used as in proceedings governed by those rules.

F. Pleadings: Parties shall serve copies of all pleadings on each other and the hearing officer, shall sign and date each pleading and shall include a signed and dated certificate of service with their pleadings.

G. Ex parte communications: Neither party nor his/her attorney shall engage in ex parte communications with any hearing officer appointed to hear a case or with the secretary on any matter regarding a pending case. Likewise, a hear-

ing officer shall not engage in ex parte communications with either party or his/her attorney on any case to which that hearing officer has been appointed. However, there may be occasions when brief ex parte communications are warranted, for example, for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits. A summary of what was communicated shall be promptly disclosed to the individual who did not participate in the ex parte communication. The secretary shall not engage in any ex parte communication with any party, attorney or interested person on any matter or for any reason related to a pending licensure denial or other disciplinary action case where a notice of contemplated action has been served on an licensee pursuant to this regulation.

[6.68.2.13 NMAC - Rp, 6 NMAC 4.2.4.4.13, 11-30-05]

6.68.2.14 RIGHTS OF AN APPLICANT:

A. An applicant shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both at no expense to the department; to present all relevant evidence by means of witnesses and books papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefore to the hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the hearing officer.

B. An applicant shall have the right to excuse the hearing officer in accordance with ULA Section 61-1-7, NMSA 1978.

[6.68.2.14 NMAC - N, 11-30-05]

6.68.2.15 HEARING:

A. Purpose: The purpose of the hearing shall be to determine whether sufficient grounds exist for the denial of an initial license application or continuing licensure application by the department. The burden of proof shall be upon the department to establish by a preponderance of the evidence that sufficient grounds exist.

B. Venue of hearing: The hearing shall be conducted in the county where the department maintains its office. In any case, however, the applicant and the department may agree that the hearing is to be held in some other county.

C. Conduct of hearings

(1) The order of presentation of evidence shall be as follows: The department shall present evidence in an attempt to establish that sufficient grounds exist for the denial of the applicant's initial or continuing licensure. Thereafter, the applicant may present evidence in defense. The hearing officer may allow rebuttal evidence and/or closing arguments.

(2) The rules of civil procedure and the rules of evidence shall not apply to the hearing, except as specifically provided in this rule, but it shall be conducted so that both complaints and defenses are amply and fairly presented. To this end, the hearing officer shall permit each party to call and examine witnesses, cross-examine witnesses and introduce exhibits. Documentary evidence may be received in the form of copies or excerpts. Evidence will be admitted without regard to technical rules of evidence, but the hearing officer may exclude any evidence, which is not relevant to the issues and may require reasonable substantiation of statements or records where accuracy or truth is in reasonable doubt. Any evidence may be admitted that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The hearing officer may in his or her discretion exclude incompetent, irrelevant, immaterial or unduly repetitious evidence. Rules of privilege shall be applicable to the same extent as in proceedings before the courts of this state. Parties or their attorneys may make timely objections to the introduction of any evidence they view as inadmissible under this paragraph.

(3) A complete record shall be made of all evidence received during the course of the hearing. The record shall be preserved by any stenographic method in use in the district courts of this state, or in the discretion of the department, by tape recording. The department shall observe any standards pertaining to tape recordings established for the district courts. In any event, the department shall have one copy of the transcript or tape recording of the hearing for the secretary's review in rendering a final decision. Where judicial review is sought, the costs of required transcripts or tape recordings shall be paid by the party seeking review.

(4) All witnesses shall swear or affirm that their testimony will be truthful. A person authorized to administer oaths shall swear each witness. The hearing officer may determine the capacity of a witness to testify and may consider capacity in determining the weight of the evidence. The hearing officer may refuse to admit testimony from a proposed witness who is found lacking capacity.

(5) The hearing officer may require post-hearing briefs to be submitted

by the parties. Such briefs shall not exceed 20 pages in length, double-spaced, exclusive of attachments, and shall be on paper eight and one-half by eleven inches in length.

D. If an applicant fails to appear at a hearing and no continuance has been granted, the hearing officer may hear the evidence of such witnesses as may have appeared and proceed to consider and dispose of the case on the basis of the evidence before him/her in the manner required under this rule. Where an applicant fails to appear for a hearing or fails to request a hearing due to sickness, accident or other good cause, such licensee may apply to the hearing officer where he failed to appear, or to the department where he failed to request a hearing, to reopen the proceeding, and upon finding such cause sufficient, the hearing officer or the department, as the case may be, shall schedule a hearing and give the applicant notice of such as required by this regulation. The hearing officer may require evidence to prove licensee's good cause in such cases.

E. Continuing jurisdiction

(1) Despite the expiration of an applicant's licensure, the department shall continue to have jurisdiction to hear a case under this regulation where the individual whose licensure expired was served a notice of contemplated action prior to the expiration of the licensure.

(2) The service of such notice upon an applicant shall act to stay the expiration of licensure where that individual's licensure was scheduled to expire and would expire during a proceeding to deny continuing licensure under this regulation but for the stay of the expiration.

(3) Where the secretary issues a final order in which the applicant's licensure is not outright denied, then the individual shall be permitted to renew his/her licensure as though it expired on the original expiration date as long as he/she satisfies all other licensure requirements for the level and type of license sought.

[6.68.2.15 NMAC - Rp, 6 NMAC 4.2.4.4.14, 11-30-05]

6.68.2.16 THE HEARING OFFICER'S REPORT TO THE SECRETARY:

A. The parties' proposals: The hearing officer shall afford the applicant and the department an opportunity to file proposed findings of fact and conclusions of law by a deadline specified by the hearing officer not to exceed thirty days from the closing of the hearing. The hearing officer may include in or exclude from his or her report to the secretary any portions of the parties' proposed findings, conclusions or order as the hearing officer

deems are supported or not supported by the evidence presented at the hearing. Moreover, the hearing officer may revise the submitted proposed findings and conclusions and/or make other findings and conclusions as he or she deems are supported by the evidence at the hearing. No party shall submit post-hearing briefs or proposed findings of fact and conclusions of law after the deadline imposed unless leave to file late is granted by the hearing officer for good cause shown.

B. Contents: After the hearing officer's deadline has elapsed, the hearing officer shall submit a formal written report to the secretary consisting of the following labeled paragraphs: statement of the case, legal issues, proposed findings of fact, proposed conclusions of law, and order proposed by the hearing officer. The hearing officer shall limit his/her proposed order to: denial of the application, acceptance of the application with a condition other than the payment of money, or acceptance of the application.

C. In any denial action of an individual's application for licensure brought under authority of the Parental Responsibility Act where the hearing officer recommends a denial of that individual's license, the hearing officer shall limit his or her proposed findings, conclusions or order to the issues of whether a certified list of obligors from the human services department has been submitted indicating that individual as being in non-compliance of a district court child support order, and whether the human services department has provided to the department a certified statement that the charged individual is presently in compliance with that order. The hearing officer and the secretary shall defer to any district court child support order directed to the department relative to an applicant's educator license(s).

D. Time limits: The hearing officer's report along with the parties' briefs and proposed findings of fact and conclusions of law and order, if any, shall be received by the secretary through the office of general counsel, within thirty days after the deadline specified by the hearing officer for the parties' submission of proposed findings of fact and conclusions of law. The secretary may extend this time upon request of the hearing officer through the office of general counsel so long as the decision of the secretary is rendered and signed within ninety days after the conclusion of the hearing. The hearing officer shall serve a copy of the report directly on the parties to the hearing, or upon their attorneys, if any, on the same day the hearing officer serves the secretary.

E. The hearing officer's report shall be considered a privileged communication between the department's hear-

ing officer and the secretary not subject to public inspection until the secretary has reviewed the report and rendered a final decision.

[6.68.2.16 NMAC - N, 11-30-05]

6.68.2.17 DECISION OF THE SECRETARY:

A. The secretary shall review the report of the hearing officer together with any briefs or proposed findings/conclusions/orders timely submitted by the parties. The secretary shall render a final decision and order based on a preponderance of the evidence. The secretary's decision must include a statement informing the applicant of his/her right to judicial review and the time within which such review must be sought. The secretary shall either:

(1) adopt the hearing officer's proposed findings of fact, conclusions of law and order;

(2) modify said findings of fact and conclusions of law and order and render a decision;

(3) reopen the case to receive additional evidence or for other cause on request from the applicant or on the secretary's own motion; and where a request to reopen the case comes from the applicant, the secretary shall serve upon the applicant within fifteen days after receipt of said request, a decision to grant or refuse said request; and where the case is reopened, notice of the hearing shall be served on the applicant within fifteen days after service of the decision to reopen with the hearing being held within forty-five days after the service of said notice and the decision from the hearing being served on the applicant within thirty days after the hearing; or

(4) reject any action against the applicant's licensure application on the grounds alleged and order the individual's application review to go forward to determine if he/she is otherwise qualified for licensure or continuing licensure; if the secretary decides to hear additional evidence, a transcript of the proceedings shall be made by a qualified court reporter or a tape recording.

B. The secretary is not an appellate reviewer of the hearing officer's proposed findings/conclusions/order. Rather, the secretary is ultimately responsible for issuing a final decision and order relative to possible disciplinary action against an applicant's educator licensure. If the hearing officer recommends denial of an individual's license(s), the secretary is at liberty to order any action provided in Subsection A of 6.68.2.17 NMAC above, provided that any deviation from the hearing officer's proposed findings/conclusions is supported by a preponderance of the evidence after conducting an independent

review of the transcript of the hearing. The same transcript review process would apply to any other proposed findings/conclusions of the hearing officer from which the secretary seeks to deviate.

C. At the request of the parties, the secretary may adopt and incorporate into his or her decision and order all or any part of a written settlement proposed by the parties, whether or not a case has gone to a hearing. Any such settlement proposal shall be duly signed and notarized and contain the detailed agreements of the respective parties. Upon adoption and incorporation by the secretary of all or any part of a written settlement, that settlement or the incorporated portions shall become merged into the secretary's decision and order as a final agency decision.

D. Time: The written decision of the secretary must be rendered and signed within sixty days after the completion of the preparation of the record or submission of the hearing officer's report, whichever is later. In any case, the decision must be rendered and signed within ninety days after the hearing.

E. Service: A written copy of the decision of the secretary shall be served on the applicant personally in accordance with the rules of civil procedure for the district courts or by certified mail, return-receipt-requested, directed to the applicant at his or her last known address, or to his or her attorney, as shown by the records of the department, within fifteen days after the decision is rendered and signed.

F. The decision of the secretary is a public record and may be reported to the national association of state directors of teacher education and certification's clearinghouse and other organizations that request it.

[6.68.2.17 NMAC - Rp, 6 NMAC 4.2.4.4.15, 11-30-05]

6.68.2.18 WAIVER:

A. Time limits: The time limits specified in this rule may be waived by the applicant if done in writing.

B. Hearing: No hearing need be held by the department if the applicant waives in writing his or her right to the hearing.

C. Voluntary denial: Prior to service of notice on an individual applying for initial or continuing licensure, that individual may voluntarily agree to a denial of his/her application, provided that any such voluntary denial is accomplished by a writing where the individual has an opportunity to consult with and retain an attorney. A voluntary denial is not a voluntary withdrawal of an application but is an actual denial of a licensure application. A voluntary denial may be achieved only with the

approval of the secretary, so long as the individual knowingly submits to the jurisdiction of the department and waives in writing his or her right to a hearing and the other procedures set forth in this rule. A voluntary denial is not subject to judicial review and its effect is binding on the parties to the agreement accomplishing the denial.

[6.68.2.18 NMAC - Rp, 6 NMAC 4.2.4.4.16, 11-30-05]

6.68.2.19 APPEAL:

A. A final decision by the secretary after the hearing officer has made his or her recommendations may be appealed to the district court by an applicant within thirty days of the date of filing of the decision in accordance with Section 39-3-1.1, NMSA 1978. ("Appeal of final decisions by agencies to district court—application—scope of review—review of district court decisions")

B. The applicant may apply to the secretary for a stay of his or her decision pending the outcome of the review of the decision in district court.

[6.68.2.19 NMAC - Rp, 6 NMAC 4.2.4.4.18, 11-30-05]

6.68.2.20 SEVERABILITY:

Any part of this rule found by adjudication before a competent tribunal to be contrary to law shall be stricken without effect to the remainder.

[6.68.2.20 NMAC - Rp, 6 NMAC 4.2.4.4.17, 11-30-05]

History of 6.68.2 NMAC:

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

SBE Regulation No. 84-1, Governing Denial of Applications for Certification for School Personnel in New Mexico, filed January 24, 1984;

SBE Regulation 87-1, Governing Denial of Applications for Licenses For School Personnel in New Mexico, filed August 17, 1989.

History of Repealed Material:

6 NMAC 4.2.4.4, Denial of Applications for Licenses for School Personnel, filed 06/01/98 - Repealed effective 11-30-05.

**NEW MEXICO PUBLIC
EDUCATION
DEPARTMENT**

**TITLE 6 PRIMARY AND
SECONDARY EDUCATION
CHAPTER 68 SCHOOL PERSON-
NEL - DENIAL, SUSPENSION, AND
REVOCAION OF LICENSE
PART 3 S U S P E N S I O N ,
REVOCAION OR OTHER DISCIPLI-
NARY ACTION REGARDING A
LICENSE HELD BY A LICENSED
SCHOOL INDIVIDUAL**

6.68.3.1 ISSUING AGENCY:

Public Education Department
[6.68.3.1 NMAC - Rp, 6 NMAC 4.2.4.5.1,
11-30-05]

6.68.3.2 SCOPE: This rule gov-
erns suspension, revocation or other discipli-
nary action regarding a license held by a
licensed school instructor, administrator or
any other of the individuals enumerated in
Section 22-10A-3A NMSA 1978.

[6.68.3.2 NMAC - Rp, 6 NMAC 4.2.4.5.2,
11-30-05]

6.68.3.3 S T A T U T O R Y

AUTHORITY: Sections 22-2-1; 22-2-2;
22-10A-5, 31; and 61-1-1 et seq. NMSA
1978.

[6.68.3.3 NMAC - Rp, 6 NMAC 4.2.4.5.3,
11-30-05]

6.68.3.4 D U R A T I O N :

Permanent
[6.68.3.4 NMAC - Rp, 6 NMAC 4.2.4.5.4,
11-30-05]

6.68.3.5 EFFECTIVE DATE:

November 30, 2005, unless a later date is
specified at the end of a section.

[6.68.3.5 NMAC - Rp, 6 NMAC 4.2.4.5.5,
11-30-05]

6.68.3.6 OBJECTIVE:

This regulation is adopted by the public educa-
tion department (hereinafter the "depart-
ment") for the purpose of establishing hear-
ing procedures for suspension, revocation
or other disciplinary actions regarding a
license or certificate issued by the depart-
ment to a school instructor, administrator or
any other of the individuals enumerated in
Section 22-10A-3A, NMSA 1978.

[6.68.3.6 NMAC - Rp, 6 NMAC 4.2.4.5.6,
11-30-05]

6.68.3.7 DEFINITIONS:

A. "Continuing education
requirements" When used in regards to
teachers means meeting the high objective
uniform statewide standard of evaluation

for the type and level of licensure for which
an applicant has applied as set forth in
6.69.4.11 NMAC and required under
Subsection B of Section 22-10A-10 and
Section 22-10A-11 NMSA 1978.

B. "Ex parte communica-
tions" means any oral, written or electronic
communications between one party (or
his/her attorney) and the hearing officer, or
as between one party (or his/her attorney)
and the secretary of education (hereinafter,
the "secretary") that occur out of the pres-
ence and/or without the consent of the
opposing party (or his/her attorney).
Communications included in this definition,
in addition to direct communications,
include indirect communications as where a
party requests or suggests to a non-party to
contact the hearing officer or secretary on
any matter and for any reason related to a
pending licensure case where charges have
been served on a licensed individual pur-
suant to this regulation. Ex parte communi-
cations also occur when individuals symp-
athetic to one party make oral, written or
electronic communications to the hearing
officer or the secretary that occur out of the
presence and/or without the consent of the
opposing party (or his/her attorney) on any
matter and for any reason related to a pend-
ing licensure case where charges have been
served on a licensed individual pursuant to
this rule.

C. "Licensee" means any
of the individuals enumerated in Section 22-
10A-3A, NMSA 1978, who are required to
hold a valid license or certificate issued by
the department in order to carry out their
duties in a public school in New Mexico,
and to whom the department did issue a cer-
tificate. A certificate and license issued by
the department are one and the same.

D. "Other disciplinary
action" means any action other than a sus-
pension or revocation that the department
may take against a licensee's license to
practice the conduct authorized by that
license as enumerated in Subsections G
through N of Section 61-1-3, NMSA 1978.

E. "Revocation of a
license" means the indefinite prohibition of
the conduct authorized by the license.

F. "Suspension of a
license" means the prohibition, for a stated
period of time, of the conduct authorized by
the license, which may or may not be sub-
ject to conditions that are reasonably related
to the grounds for suspension. Suspension
also means the allowance, for a stated peri-
od of time, of the conduct authorized by the
license subject to conditions that are reason-
ably related to the grounds for suspension.

G. "Transcript of the hear-
ing" means a verbatim copy of the state-
ments made by anyone during a hearing
held under 6.68.3.11 NMAC and the

Uniform Licensing Act, Section 61-1-1 et seq. NMSA 1978. A transcript may be either stenographically recorded or tape recorded.

[6.68.3.7 NMAC - Rp, 6 NMAC 4.2.4.5.7, 11-30-05]

6.68.3.8 COMMENCEMENT OF PROCEEDINGS:

A. Director's inquiry: The director of the educator ethics bureau or the director of the professional licensure bureau (hereinafter the "ethics bureau" or the "licensure bureau") shall initiate appropriate inquiries whenever it appears that ground(s) may exist as specified in Subsection B of 6.68.3.8 NMAC for suspension, revocation or other disciplinary action against a license or certificate held by a licensed school instructor, administrator or any other of the individuals enumerated in Section 22-10A-3A, NMSA 1978. If an inquiry leads either director to conclude that such ground(s) exist(s), said director shall recommend to the assistant secretary for educator quality that grounds exist for disciplinary action and that a notice should be served on the licensee in accordance with Subsection D of 6.68.3.8 NMAC.

B. Grounds for suspension, revocation or other disciplinary action against a license: subject to the procedures set forth below, the department may suspend, revoke or take other disciplinary action against a license or certificate held by a licensed school instructor, administrator or any other of the individuals enumerated in Section 22-10A-3A, NMSA 1978, for incompetency, immorality or any other good and just cause. "Other good and just cause" may include, but shall not be limited to, any of the following:

(1) a material misstatement of fact by an applicant for licensure in connection with the initial licensure application process or the continuing licensure application process; or

(2) the denial of an application for licensure or the suspension or revocation of an applicant's educational or other relevant professional certificate(s) or license(s) by the certification or licensing authorities of this or any other state or by a national licensing board or bureau; or

(3) material noncompliance with any provision(s) of department regulations prescribing the terms and conditions of employment contracts for licensed school personnel in New Mexico at a time when the licensee was subject to those regulations; or

(4) a willful violation of any department regulation prescribing standards of conduct for licensed school personnel at a time when the licensee was subject to such requirement; or

(5) a conviction of any felony or a

misdemeanor involving moral turpitude, subject to the further provisions of the Criminal Offender Employment Act, Section 28-2-1, et seq., NMSA 1978; or

(6) a failure to comply with a judgment and order for support pursuant to the Parental Responsibility Act, Section 40-5A-1, et seq., NMSA 1978; or

(7) the intentional alteration of any college transcripts or any license issued by the department in connection with any private or public employment or in any dealings with the department;

(8) knowingly permitting the continued employment of an individual without a valid license or waiver from the department for a public school position requiring a license by the School Personnel Act, Section 22-10A-3, NMSA 1978; or

(9) failing to meet level III-A competencies where a local superintendent recommends to the secretary that the teacher's level III-A license be suspended in accordance with 6.69.4 NMAC.

C. Reporting requirements

(1) Every local school superintendent or the person designated by the governing authorities of state agencies, private schools or charter schools shall provide written notification to the director of the ethics bureau upon acquiring knowledge of purported facts reasonably believed by such notifying person to constitute grounds for suspension, revocation or other disciplinary action against an educator or administrator license. At a minimum, the written notification shall include the name and address of the licensed individual, the personnel action taken by a school district, if any, and a statement of reason for the action. The following are not justifications for failing to report this information to the director: whether or not the personnel action is final; whether or not the personnel action was taken by a different school district; whether or not the licensed person resigned from a different school district pending investigation for misconduct; whether or not a person has been licensed for three or more years; whether or not any adverse personnel action is/was reversed. Written notification shall be made to the director within 30 calendar days of the sooner of any adverse personnel action or discovering purported facts reasonably believed to constitute grounds for licensure revocation, suspension or other disciplinary action. Failure of a superintendent to provide such written notification under this subsection or Paragraph (2) of Subsection C of 6.68.3.8 NMAC below shall not bar the department from serving notice on a licensee, or revoking, suspending or taking other disciplinary action against his or her license.

(2) A school district superintendent or the person designated by the governing authorities of state agencies, private

schools or charter schools shall report to the department any conviction of any felony or a misdemeanor involving moral turpitude of a licensed school employee that results in any type of action against the school employee in accordance with Section 22-10A-5D, NMSA 1978.

D. Notice of contemplated action

(1) Service of notice: Upon approval by the assistant secretary for educator quality the director of the ethics bureau or the licensure bureau shall prepare and serve a written notice of contemplated action on the licensed school instructor, administrator or any other of the individuals enumerated in Section 22-10A-3A, NMSA 1978, no later than two years after the discovery of the conduct that would be the basis of the contemplated action, except that the time limitation shall be tolled by any civil or criminal litigation in which the licensee is a party arising from substantially the same facts, conduct or transaction that would be the basis for the department's action. All notices or decisions required by this rule may be served either personally or by certified mail, return receipt requested, directed to the licensee at his/her last known address as shown by the department's records. If the notice or decision is served personally, service shall be made in the same manner as is provided for service by the rules of civil procedure for the district courts. Where the notice or decision is served by certified mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery or the last attempted delivery of the notice or decision to the addressee or refusal of the addressee to accept delivery.

(2) Contents: The notice shall contain:

(a) the grounds believed to be sufficient for the suspension, revocation or other disciplinary action against the licensee's license;

(b) instructions for requesting a hearing before the department in accordance with 6.68.3.9 NMAC below.

(c) a statement that the department's contemplated action will be taken and shall become final unless the licensee requests a hearing according to the procedure and within the time specified, and that such action is not subject to judicial review;

(d) a statement calling the licensee's attention to his or her rights under this rule and the ULA, Section 61-1-8, NMSA 1978, copies of which shall be provided with the written notice.

(3) Copies of notice: A copy of the notice shall be sent by the department to the local superintendent of the district employing or seeking to employ the licensee, if known, unless the licensee is the said superintendent, in which case the president

of the local school board shall be sent a copy of the notice
[6.68.3.8 NMAC - Rp, 6 NMAC 4.2.4.5.8, 11-30-05]

6.68.3.9 PREHEARING PROCEDURES:

A. Filing of request for hearing: A licensee shall initiate a request for hearing by filing a timely, written request for hearing with the department, by delivery of such request to the office of the secretary of the department in Santa Fe, New Mexico. Such request must be sent by certified mail, return-receipt-requested within twenty (20) days after service of the notice on the licensee.

B. If a hearing is requested, the department, within twenty (20) days of receipt of the request, shall notify the licensee of the time and place of the hearing, the name, address and telephone number of the person who shall conduct the hearing for the department and the statutes and regulations authorizing the department to take the contemplated action, which hearing shall be held not more than sixty (60) nor less than fifteen (15) days from the date of service of said notice.

C. Failure to request a hearing: If the licensee does not make a timely written request for a hearing, the department may take the action contemplated in the notice and such action shall be final.

D. Appointment of a hearing officer

(1) All hearings may be conducted by a hearing officer who shall be a duly licensed New Mexico attorney, excluding any attorney then employed by the office of general counsel of the department. Upon receipt of the request for a hearing, the director of the ethics bureau or the licensure bureau shall appoint the hearing officer. Any hearing officer appointed to serve on a case shall at all times be held to the same ethical standards of impartiality that are set forth in Section 21-300(B) of the New Mexico code of judicial conduct. The hearing officer may issue a pre-hearing order limited to: setting deadlines for the exchange of documents intended to be introduced; setting deadlines for the exchange of a list of the name, address and telephone number of each witness a party intends to call during the hearing; ordering the licensee to have his/her attorney, if any, file within thirty (30) days a written notice of appearance with the hearing officer with a copy to opposing party; and cautioning the parties of their need to comply with Subsection G of 6.68.3.9 NMAC below. If either party requests a pre-hearing conference with the hearing officer, such conference shall be scheduled by the hearing offi-

cer and be held telephonically unless both parties agree to meet in person.

(2) The hearing officer shall have the power:

(a) to have counsel to develop the case; to administer oaths or affirmations to witnesses called to testify; to take testimony; to examine witnesses; and to direct a continuance of any case; hearing officers may also hold conferences before or during the hearing for the settlement or simplification of the issues but such settlement or simplification shall only be with the consent of the licensee;

(b) to hear pre-hearing motions: the hearing officer shall issue a written order with a copy to both parties on any pre-hearing motion filed by a party;

(c) to subpoena, for purposes of discovery and of the hearing, witnesses and relevant books, papers, documents and other evidence in compliance with Rule 1-045A to D of the rules of civil procedure and New Mexico civil form 4-505; a party may also issue such subpoenas with the approval of the hearing officer;

(d) to impose any appropriate evidentiary sanction against a party who fails to provide discovery or to comply with a subpoena; such sanctions could include the striking of a witness or the striking of documentary evidence;

(e) to take notice of judicially cognizable facts as well as of general, technical or scientific facts within his/her specialized knowledge so long as the licensee is notified either before or during the hearing of the fact so noticed and its source, and is afforded an opportunity to contest said fact; and

(f) to impose costs on the licensee upon motion of the department.

E. Discovery:

(1) Rules of discovery provided in Rules 26 through 37 of the New Mexico rules of civil procedures shall apply, except that all deadlines for responding to requests for admissions, interrogatories, and requests for production of documents shall be within ten (10) days of the delivery of the request. No such request shall be made less than fifteen days before the hearing.

(2) Upon written request to another party, any party is entitled to:

(a) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(b) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

(3) Any opposition to any pre-hearing motion filed by a party shall be filed within ten (10) days of the service of that motion on the other party.

(4) This rule does not authorize

either party to seek discovery sanctions or relief from a district court.

(5) Any party may take depositions after service of notice in accordance with the rules of civil procedure for the district courts. Depositions may be used as in proceedings governed by those rules.

F. Pleadings: Parties shall serve copies of all pleadings on each other and the hearing officer, shall sign and date each pleading and shall include a signed and dated certificate of service with their pleadings.

G. Ex parte communications: Neither party nor his/her attorney shall engage in ex parte communications with any hearing officer appointed to hear a case or with the secretary on any matter regarding a pending case. Likewise, a hearing officer shall not engage in ex parte communications with either party or his/her attorney on any case to which that hearing officer has been appointed. However, there may be occasions when brief ex parte communications are warranted, for example, for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits. A summary of what was communicated shall be promptly disclosed to the individual who did not participate in the ex parte communication. The secretary shall not engage in any ex parte communication with any party, attorney or interested person on any matter or for any reason related to a pending licensure suspension, revocation or other disciplinary action case where a notice of contemplated action has been served on a licensee pursuant to this regulation.

[6.68.3.9 NMAC - Rp, 6 NMAC 4.2.4.5.9, 11-30-05]

6.68.3.10 RIGHTS OF A LICENSEE:

A. A licensee shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both at no expense to the department; to present all relevant evidence by means of witnesses and books papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefore to the hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the hearing officer.

B. A licensee shall have the right to excuse the hearing officer in accordance with ULA Section 61-1-7,

NMSA 1978.

[6.68.3.10 NMAC - N, 11-30-05]

6.68.3.11 HEARING:

A. Purpose: The purpose of the hearing shall be to determine whether sufficient grounds exist for the suspension, revocation or other disciplinary action against the license or certificate held by a licensed school instructor, administrator or any other of the individuals enumerated in Section 22-10A-3A, NMSA 1978. The burden of proof shall be upon the department to establish by a preponderance of the evidence that sufficient grounds exist.

B. Venue of hearing: The hearing shall be conducted in the county in which the licensee resides, or at the election of the department, in any county in which the act or acts complained of occurred. In any case, however, the licensee and the department may agree that the hearing is to be held in some other county.

C. Conduct of hearings

(1) The order of presentation of evidence shall be as follows: The department shall present evidence in an attempt to establish that sufficient grounds exist for the suspension, revocation or other disciplinary action against the licensee's license. Thereafter, the licensee may present evidence in defense. The hearing officer may allow rebuttal evidence and/or closing arguments.

(2) The rules of civil procedure and the rules of evidence shall not apply to the hearing, except as specifically provided in this regulation, but it shall be conducted so that both complaints and defenses are amply and fairly presented. To this end, the hearing officer shall permit each party to call and examine witnesses, cross-examine witnesses and introduce exhibits. Documentary evidence may be received in the form of copies or excerpts. Evidence will be admitted without regard to technical rules of evidence, but the hearing officer may exclude any evidence, which is not relevant to the issues and may require reasonable substantiation of statements or records where accuracy or truth is in reasonable doubt. Any evidence may be admitted that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The hearing officer may in his or her discretion exclude incompetent, irrelevant, immaterial or unduly repetitious evidence. Rules of privilege shall be applicable to the same extent as in proceedings before the courts of this state. Parties or their attorneys may make timely objections to the introduction of any evidence they view as inadmissible under this paragraph.

(3) A complete record shall be made of all evidence received during the course of the hearing. The record shall be preserved by any stenographic method in

use in the district courts of this state, or in the discretion of the department, by tape recording. The department shall observe any standards pertaining to tape recordings established for the district courts. In any event, the department shall have one copy of the transcript or tape recording of the hearing for the secretary's review in rendering a final decision. Where judicial review is sought, the costs of required transcripts or tape recordings shall be paid by the party seeking review.

(4) All witnesses shall swear or affirm that their testimony will be truthful. A person authorized to administer oaths shall swear each witness. The hearing officer may determine the capacity of a witness to testify and may consider capacity in determining the weight of the evidence. The hearing officer may refuse to admit testimony from a proposed witness who is found lacking capacity.

(5) The hearing officer may require post-hearing briefs to be submitted by the parties. Such briefs shall not exceed twenty (20) pages in length, double-spaced, exclusive of attachments, and shall be on paper eight and one-half by eleven inches in length.

D. If a licensee fails to appear at a hearing and no continuance has been granted, the hearing officer may hear the evidence of such witnesses as may have appeared and proceed to consider and dispose of the case on the basis of the evidence before him/her in the manner required under this regulation. Where a licensee fails to appear for a hearing or fails to request a hearing due to sickness, accident or other good cause, such licensee may apply to the hearing officer where he failed to appear, or to the department where he failed to request a hearing, to reopen the proceeding, and upon finding such cause sufficient, the hearing officer or the department, as the case may be, shall schedule a hearing and give the licensee notice of such as required by this regulation. The hearing officer may require evidence to prove licensee's good cause in such cases.

E. Continuing jurisdiction

(1) Despite the expiration of a licensee's licensure, the department shall continue to have jurisdiction to hear a case under this regulation where the individual whose licensure expired was served a notice of contemplated action prior to the expiration of the licensure.

(2) The service of such notice upon a licensee shall act to stay the expiration of licensure where that individual's licensure was scheduled to expire and would expire during a proceeding under this regulation but for the stay of the expiration.

(3) Where the secretary issues a final order in which the licensee's licensure is neither revoked nor outright suspended,

then the individual shall be permitted to renew his/her licensure as though it expired on the original expiration date as long as he/she satisfies all other licensure requirements for the level and type of licensure sought. The licensure bureau shall allow the individual 60 days from the secretary's final decision to file a renewal application. [6.68.3.11 NMAC - Rp, 6 NMAC 4.2.4.5.10, 11-30-05]

6.68.3.12 THE HEARING OFFICER'S REPORT TO THE SECRETARY:

A. The parties' proposals: The hearing officer shall afford the licensee and the department an opportunity to file proposed findings of fact and conclusions of law by a deadline specified by the hearing officer not to exceed thirty days from the closing of the hearing. The hearing officer may include in or exclude from his or her report to the secretary any portions of the parties' proposed findings, conclusions or order as the hearing officer deems are supported or not supported by the evidence presented at the hearing. Moreover, the hearing officer may revise the submitted proposed findings and conclusions and/or make other findings and conclusions as he or she deems are supported by the evidence at the hearing. No party shall submit post-hearing briefs or proposed findings of fact and conclusions of law after the deadline imposed unless leave to file late is granted by the hearing officer for good cause shown.

B. Contents: After the hearing officer's deadline has elapsed, the hearing officer shall submit a formal written report to the secretary consisting of the following labeled paragraphs: statement of the case, legal issues, proposed findings of fact, proposed conclusions of law, and order proposed by the hearing officer. The hearing officer shall limit his/her proposed order to: denial of the application, acceptance of the application with a condition other than the payment of money, or acceptance of the application.

C. In any disciplinary action of an individual's license(s) brought under authority of the Parental Responsibility Act where the hearing officer recommends disciplinary action against the licensee's license, the hearing officer shall limit his or her proposed findings, conclusions or order to the issues of whether a certified list of obligors from the human services department has been submitted indicating that individual as being in non-compliance of a district court child support order, and whether the human services department has provided to the department a certified statement that the licensee is presently in compliance with that order. The hearing officer and the secretary shall defer to any

district court child support order directed to the department relative to a licensee's educator license(s).

D. Time limits: The hearing officer's report along with the parties' briefs and proposed findings of fact and conclusions of law and order, if any, shall be received by the secretary through the office of general counsel, within thirty (30) days after the deadline specified by the hearing officer for the parties' submission of proposed findings of fact and conclusions of law. The secretary may extend this time upon request of the hearing officer through the office of general counsel so long as the decision of the secretary is rendered and signed within ninety (90) days after the conclusion of the hearing. The hearing officer shall serve a copy of the report directly on the parties to the hearing, or upon their attorneys, if any, on the same day the hearing officer serves the secretary.

E. The hearing officer's report shall be considered a privileged communication between the department's hearing officer and the secretary not subject to public inspection until the secretary has reviewed the report and rendered a final decision.

[6.68.3.12 NMAC - N, 11-30-05]

6.68.3.13 DECISION OF THE SECRETARY:

A. The secretary shall review the report of the hearing officer together with any briefs or proposed findings/conclusions/orders timely submitted by the parties. The secretary shall render a final decision and order based on a preponderance of the evidence. The secretary's decision must include a statement informing the licensee of his/her right to judicial review and the time within which such review must be sought. The secretary shall either:

(1) adopt the hearing officer's proposed findings of fact, conclusions of law and order; or

(2) modify said findings of fact and conclusions of law and order and render a decision; or

(3) reopen the case to receive additional evidence or for other cause on request from the licensee or on the secretary's own motion; and where a request to reopen the case comes from the licensee, the secretary shall serve upon the licensee within fifteen days after receipt of said request, a decision to grant or refuse said request; and where the case is reopened, notice of the hearing shall be served on the licensee within fifteen days after service of the decision to reopen with the hearing being held within forty-five days after the service of said notice and the decision from the hearing being served on the licensee within thirty days after the hearing; or

(4) reject any action against the licensee's licensure on the grounds alleged and order the said license(s) to remain in full force and effect. If the secretary decides to hear additional evidence a transcript of the proceedings shall be made by a qualified court reporter or a tape recording.

B. The secretary is not an appellate reviewer of the hearing officer's proposed findings/conclusions/order. Rather, the secretary is ultimately responsible for issuing a final decision and order relative to possible disciplinary action against a licensee's educator licensure. If the hearing officer recommends suspension of an individual's license(s), the secretary is at liberty to order any action provided in Section 6.68.3.13A above, provided that any deviation from the hearing officer's proposed findings/conclusions is supported by a preponderance of the evidence after conducting an independent review of the transcript of the hearing. The same transcript review process would apply to any other proposed findings/conclusions of the hearing officer from which the secretary seeks to deviate.

C. At the request of the parties, the secretary may adopt and incorporate into his or her decision and order all or any part of a written settlement proposed by the parties, whether or not a case has gone to a hearing. Any such settlement proposal shall be duly signed and notarized and contain the detailed agreements of the respective parties. Upon adoption and incorporation by the secretary of all or any part of a written settlement, that settlement or the incorporated portions shall become merged into the secretary's decision and order as a final agency decision.

D. Time: The written decision of the secretary must be rendered and signed within sixty (60) days after the completion of the preparation of the record or submission of the hearing officer's report, whichever is later. In any case, the decision must be rendered and signed within ninety (90) days after the hearing.

E. Service: A written copy of the decision of the secretary shall be served on the licensee personally in accordance with the rules of civil procedure for the district courts or by certified mail, return-receipt-requested, directed to the licensee at his or her last known address, or to his or her attorney, as shown by the records of the department, within fifteen (15) days after the decision is rendered and signed.

F. The decision of the secretary is a public record and may be reported to the national association of state directors of teacher education and certification's clearinghouse and other organizations that request it.

[6.68.3.13 NMAC - Rp, 6 NMAC 4.2.4.5.11, 11-30-05]

6.68.3.14 WAIVER:

A. Time limits: The time limits specified in this rule may be waived by the licensee if done in writing.

B. Hearing: No hearing need be held by the department if the licensee waives in writing his or her right to the hearing.

C. Voluntary surrender: Prior to service of notice on a licensed individual, that individual may voluntarily surrender his/her license(s) in a manner tantamount to revocation or suspension of his/her license, provided that any such voluntary surrender is accomplished by a writing where the individual has an opportunity to consult with and retain an attorney. A voluntary surrender may be achieved only with the approval of the secretary, so long as the licensed individual knowingly submits to the jurisdiction of the department and waives in writing his or her right to a hearing and the other procedures set forth in this rule. A voluntary surrender is not subject to judicial review and its effect is binding on the parties to the agreement accomplishing the surrender.

[6.68.3.14 NMAC - Rp, 6 NMAC 4.2.4.5.12, 11-30-05]

6.68.3.15 APPEAL:

A. A final decision by the secretary after the hearing officer has made his or her recommendations may be appealed to the district court by an applicant within thirty days of the date of filing of the decision in accordance with Section 39-3-1.1, NMSA 1978. ("Appeal of final decisions by agencies to district court—application—scope of review—review of district court decisions")

B. The applicant may apply to the secretary for a stay of his or her decision pending the outcome of the review of the decision in district court.

[6.68.3.15 NMAC - Rp, 6 NMAC 4.2.4.5.13, 11-30-05]

6.68.3.16 SEVERABILITY:

Any part of this rule found by adjudication before a competent tribunal to be contrary to law shall be stricken without effect to the remainder.

[6.68.3.16 NMAC - Rp, 6 NMAC 4.2.4.5.14, 11-30-05]

History of 6.68.3 NMAC:

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

SBE Regulation 78-6 amendment number 1, Governing Suspension or Revocation of a License Held by a Licensed School

Instructor or Administrator, filed June 29, 1988.

History of Repealed Material:

6.NMAC 4.2.4.5, Suspension or Revocation of A License Held By A Licensed School Individual, Filed 06-01-98 - Repealed effective 11-30-05

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.60.10 NMAC, Sections 1, 2, 7, 8, 10 and 11 effective 11-30-05

6.60.10.1 ISSUING AGENCY:
~~[State Board of Education]~~ Public Education Department
[6.60.10.1 NMAC - N, 07-01-02; A, 11-30-05]

6.60.10.2 SCOPE: All beginning teachers holding a waiver, internship license, or level 1 New Mexico teaching license and employed in a New Mexico public school district, charter school, or state agency shall successfully complete a one to three year beginning teacher mentorship program provided by the public school district, charter school or state agency.
[6.60.10.2 NMAC - N, 07-01-02; A, 11-30-05]

6.60.10.7 DEFINITIONS:

A. **“Beginning teacher”** means a teacher holding a New Mexico waiver, internship license, or level 1 teaching license who has less than three complete years, full-or part-time, of classroom teaching experience. For the purpose of this rule, teachers with more than three complete years, full-or part-time, of classroom teaching experience but who hold a waiver, internship license, or level 1 licensure are not beginning teachers.

B. **“Teaching license”** means a ~~[state board of education]~~ public education department (PED) license issued in early childhood, birth-grade 3; elementary education, grades K-8; middle level, grades 5-9; secondary education, grades 7-12; special education, grades K-12; licensure for K-12 in specialty areas; blind and visually impaired, birth-grade 12; and secondary vocational-technical education.
[6.60.10.7 NMAC - N, 07-01-02; A, 11-30-05]

6.60.10.8 REQUIREMENTS FOR MENTORSHIP PROGRAMS: All mentorship programs must receive initial approval from the director of professional

~~[licensure for the state department of public education]~~ development for the PED (hereinafter the “director”). To receive approval, public school districts, charter schools, or state agencies must submit a proposed mentorship program that aligns with and supports the public school district’s, charter school’s, or state agency’s long range plan for student success and aligns with the ~~[state board’s]~~ PED’s nine essential teacher competencies and indicators contained in ~~[6.60.3 NMAC]~~ 6.69.4 NMAC, or any successor competencies adopted by the ~~[state board]~~ PED for level 1, waiver, or internship licensed teachers. The proposal must describe how the mentorship program addresses the following:

A. provides individual support for beginning teachers from designated mentors or support providers; the support activities must include collaborative curriculum alignment, design, and planning; they must also include classroom observations, student assessment, individual instructional conferences, and instructional resource development;

B. is mandatory for all beginning teachers ~~[holding level 1 licensure whether standard, alternative, or sub-standard];~~

C. includes structured and research-based training activities for mentors; the training must include the development and needs of beginning teachers, the process of developing mentorship relationships, the process of documenting teacher growth, and best practices in working with novice teachers;

D. uses a structured process for selection of mentors that includes selection and evaluation criteria and details the person or persons responsible for implementing the selection and evaluation process;

E. provides compensation for mentors;

F. uses an ongoing, formative evaluation of beginning teachers for the improvement of teaching practice;

G. uses an ongoing summative evaluation of beginning teacher performance during the first 1 to 3 years of teaching, including an annual assessment of competence for continuing licensure and a final assessment of competence for teachers seeking level 2 licensure; evaluation of beginning teacher performance shall include annual review and progress reports during the mentorship program, collection of documented evidence of teacher growth and development, and summative assessment of level I teacher competencies;

H. has a process for addressing disputes or grievances between mentors and beginning teachers and for replacing mentors for good cause shown;

I. establishes a program

that is at least one year in length but includes provisions whereby support for an additional 2 or 3 years can be provided to teachers who do not successfully complete the first year and continue to be employed in the public school district, charter school, or state agency; and

J. has documentation that describes how support was sought and obtained from the local school board, administrators, and other district and school personnel.

[6.60.10.8 NMAC - N, 07-01-02; A, 11-30-05]

6.60.10.10 PROGRAM EVALUATION AND [APPROVAL] FUNDING:

~~[All mentorship programs shall be evaluated annually to determine the effectiveness of the program. Mentorship programs must be renewed every 12 months. To accomplish this, public school districts, charter schools, or state agencies shall, within 60 days of the anniversary of the date of the approval of their current mentorship program, submit an annual self evaluation to the director with evaluation criteria and procedures indicating how teacher retention has improved and student performance has increased].~~ All mentorship programs shall be evaluated locally every three years to determine the effectiveness of the program based on teacher retention. Annually the PED shall review and make public teacher retention rates statewide and by district. Annual state funding of local district mentorship programs shall be based primarily on the number of beginning teachers who received mentorship services in the previous school year, if funds are appropriated for that purpose by the legislature.

[6.60.10.10 NMAC - N, 07-01-02; A, 11-30-05]

6.60.10.11 SAVINGS CLAUSE:

All mentorship programs submitted by a public school district, charter school, or state agency to comply with ~~[state board Rule 6 NMAC 4.2.2.1;]~~ 6.60.3 NMAC, Alternative Licensure, and approved by the ~~[state board]~~ PED shall be deemed to be in compliance with Sections 1 through 9 of this rule. The director reserves the right to impose additional requirements to comply with Section 10 of 6.60.10 NMAC.

[6.60.10.11 NMAC - N, 07-01-02; A, 11-30-05]

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
UTILITY DIVISION**

17 NMAC 13.10, State Universal Service Fund (filed December 15, 1999) is hereby repealed effective November 30, 2005 and being replaced by 17.11.10 NMAC, State Rural Universal Service Fund, effective November 30, 2005.

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
UTILITY DIVISION**

**TITLE 17 PUBLIC UTILITIES
AND UTILITY SERVICES
CHAPTER 11 TELECOMMUNI-
CATIONS
PART 10 STATE RURAL UNI-
VERSAL SERVICE FUND**

17.11.10.1 ISSUING AGENCY:
New Mexico Public Regulation
Commission, Utility Division.
[17.11.10.1 NMAC - Rp, 17 NMAC
13.10.1, 11/30/05]

17.11.10.2 SCOPE: This rule
applies to all entities that provide intrastate
retail public telecommunication services
and comparable retail alternative services in
New Mexico.
[17.11.10.2 NMAC - Rp, 17 NMAC
13.10.2, 11/30/05]

**17.11.10.3 S T A T U T O R Y
AUTHORITY:** Sections 8-8-4 and 63-9H-
6 NMSA 1978.
[17.11.10.3 NMAC - Rp, 17 NMAC
13.10.3, 11/30/05]

17.11.10.4 D U R A T I O N :
Permanent.
[17.11.10.4 NMAC - Rp, 17 NMAC
13.10.4, 11/30/05]

17.11.10.5 EFFECTIVE DATE:
November 30, 2005, except where a later
date is cited within a section.
[17.11.10.5 NMAC - Rp, 17 NMAC
13.10.5, 11/30/05]

17.11.10.6 OBJECTIVE: The
purpose of this rule is to provide procedures
for administering and implementing the
New Mexico state rural universal service
fund (fund), including the implementation
of a specific, predictable and sufficient sup-
port mechanism that reduces intrastate
switched access charges to interstate
switched access charge levels in a revenue-
neutral manner and ensures universal serv-

ice in the state.

[17.11.10.6 NMAC - Rp, 17 NMAC
13.10.6, 11/30/05]

17.11.10.7 DEFINITIONS: In
addition to the definitions contained in
Section 63-9H-3 NMSA 1978, as used in
this rule:

A. "access line" means
the connection of the end-user customer to
the public switched network, and is not lim-
ited to wireline or any other technology;

B. "administrator"
means the person designated by the com-
mission to administer the fund;

**C. "basic local exchange
rate"** means an incumbent local exchange
carrier's tariffed, monthly, flat single-line
rate charged to its retail customers for the
provision of local exchange service;

D. "carrier" means an
entity that provides intrastate retail public
telecommunications services or comparable
retail alternative services in New Mexico;

**E. "commercial mobile
radio service (CMRS)"** means a designa-
tion by the federal communications com-
mission for any carrier or licensee whose
wireless network is connected to the public
switched telephone network or is operated
for profit;

F. "commission" means
the New Mexico public regulation commis-
sion;

**G. "contributing compa-
ny"** means any carrier that provides
intrastate retail public telecommunications
services or comparable retail alternative
services in New Mexico;

**H. "eligible telecommu-
nications carrier (ETC)"** means an entity
with New Mexico operations that provides
retail telecommunications services that
has been designated by the commission as
eligible to receive disbursements from the
fund or from the federal universal service
fund;

I. "exempt customer"
means an end-user of telecommunications
service that is the state of New Mexico,
a county, a municipality or other governmen-
tal entity; a public school district; a public
institution of higher education; an Indian
nation, tribe, or pueblo; a private telecom-
munications network; or a person eligible to
receive reduced rates under a low-income
telephone assistance plan created by the
federal government or the state of New
Mexico;

J. "fund" means the state
of New Mexico universal service fund
established pursuant to, Section 63-9H-6
NMSA 1978 and this rule;

**K. "historical access
rate"** means the composite per-minute
intrastate switched access charge in effect
for a carrier as of July 1, 2005;

**L. "historical collection
factor"** means the ratio, for calendar year
2004, of intrastate switched access charge
revenue collected by a carrier to its gross
charges for intrastate switched access,
except that the historical collection factor
may not exceed 1.0;

**M. "imputed benchmark
revenue"** means the difference between the
affordability benchmark rates established
by the commission pursuant to this rule and
the carrier's basic residential and business
rates in effect as of July 1, 2005, multiplied
by the number of residential and business
lines served by the carrier as of December
31, 2004, with the number of business lines
to include each line providing the customer
with a New Mexico telephone number,
including lines delivered through tariffs
other than the basic business local exchange
service tariff; imputed benchmark revenue
shall not be less than zero;

**N. "interexchange carri-
er (IXC)"** means an entity that provides
intrastate toll services in New Mexico;

**O. "intrastate retail
telecommunications revenue"** means the
revenue collected from the sale of intrastate
telecommunications services to end users;
for voice over internet protocol (VOIP) and
similar services, the portion of total retail
revenues attributable to intrastate retail
telecommunications shall be equal to the
proportion of calls originating and terminat-
ing in New Mexico to all calls originating in
New Mexico;

**P. "intrastate retail
telecommunications services"** means serv-
ices including, but not limited to, all types
of local exchange service; non-basic, verti-
cal or discretionary services, also known as
advanced features, or premium services,
such as, but not limited to, call waiting, call
forwarding, and caller ID; listing services;
directory assistance services; cellular tele-
phone and paging services; commercial
mobile radio services; personal communi-
cations services (PCS); both optional and
non-optional operator services; wide area
telecommunications services (WATS) and
WATS-like services; toll-free services; 900
services and other informational services;
message telephone services (MTS or toll;
CENTREX, Centron and centron-like serv-
ices; video conferencing and teleconferenc-
ing services; the resale of intrastate
telecommunications services; payphone
services; services that provide telecommu-
nications through a New Mexico telephone
number using voice over internet protocol
(VOIP) or comparable technologies; any
services regulated by the commission; and
such other services as the commission may
by order designate from time to time as
equivalent or similar to the services listed
above, without regard to the technology

used to deliver such services;

Q. "intrastate switched access charge" means a charge levied by a carrier for the availability and use of its facilities for origination and termination of intrastate interexchange calls as contained in tariffs approved by the commission;

R. "local exchange carrier (LEC)" means an entity that provides local exchange service in New Mexico;

S. "New Mexico operations" means intrastate retail public telecommunications services and comparable retail alternative services provided in New Mexico;

T. "New Mexico telephone number" means a North American numbering plan (NANP) number that provides the ability to receive calls from the public switched telephone network; and is within an area code designated to New Mexico or is a non-geographic numbering plan area (NPA) (e.g. 900) number associated with a New Mexico physical address;

U. "rural area" means a local exchange carrier's study area that (1) does not include either: (a) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the bureau of the census; or (b) any territory, incorporated or unincorporated, included in an urbanized area as defined by the bureau of census; (2) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (3) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (4) has less than 15 percent of its access lines in communities of more than 50,000;

V. "service area" means a geographic area established by the commission in accordance with Section 214(e)(5) of the federal act (47 U.S.C. Section 214(e)(5)).

[17.11.10.7 NMAC - Rp, 17 NMAC 13.10.7, 11/30/05]

17.11.10.8 REDUCTION OF INTRASTATE SWITCHED ACCESS CHARGES:

A. Effective April 1, 2006, a local exchange carrier's intrastate switched access charges may not exceed its historical access rate, less one-third of the difference between its historical access rate and the composite interstate switched access rate based on rates approved by the federal communications commission as of January 1, 2006.

B. Effective January 1, 2007, a local exchange carrier's intrastate switched access charges may not exceed its historical access rate, less two-thirds of the difference between its historical access rate and the composite interstate switched

access rate based on rates approved by the federal communications commission as of January 1, 2006.

C. Effective January 1, 2008, a local exchange carrier's intrastate switched access charges may not exceed the interstate switched access rates approved by the federal communications commission as of January 1, 2006, and its intrastate switched access elements and structure shall conform to the interstate switched access elements and structure approved by the federal communications commission.

D. A local exchange carrier may reduce its intrastate switched access charges to interstate levels and may adjust its intrastate elements and structure to conform to interstate elements and structure more rapidly than the minimum adjustments required by this section.

E. Prior to January 6, 2006, each local exchange carrier shall submit to the administrator and the commission the schedule of its intrastate access charge rate reductions in conformity with this rule and shall submit to the commission proposed tariff revisions reflecting the schedule of rate reductions and other changes necessary to assure that, upon completion of the reductions, all tariffed intrastate switched access charge elements and structure will match the tariffed interstate switched access charge elements and structure for that carrier as of January 1, 2006.

F. With respect to any local exchange carrier that opts to phase in its intrastate access charge rate reductions in conformity with the requirements of this section, any increase in its local residential and local business exchange rates toward the affordability benchmark rates and the carrier's imputed benchmark revenue shall be phased in on the same schedule as, and proportionately to, its intrastate access charge reductions, except as provided for in Subsection E 17.11.10.9 NMAC of this rule.

G. The commission, on its own motion or on the motion of a party or the administrator, may order the revision of a local exchange carrier's intrastate access charge rate reduction schedule.

H. Each local exchange carrier must advise the commission in writing of the method or combination of methods that it elects and the timing of its revenue neutral recovery on or before January 6, 2006 and shall also so advise the administrator within a reasonable time following commencement of the administrator's duties; each carrier adjusting a local exchange rate pursuant to this rule shall timely file a revised tariff with the commission.

I. On or after May 1, 2008, the commission may, upon motion of a carrier or the administrator, or upon the

commission's own motion, authorize further intrastate switched access charge reductions for a carrier to correspond to any changes in that carrier's tariffed interstate switched access service charge rates, elements or structure subsequent to January 1, 2006.

[17.11.10.8 NMAC - N, 11/30/05]

17.11.10.9 AFFORDABILITY BENCHMARK RATES:

A. The following residential and business rates are established as initial affordability benchmark rates to be utilized in determining the level of support available from the fund:

(1) the initial residential benchmark rate shall be equal to Qwest's basic residential exchange rate after Qwest's basic residential and business local exchange rates have been increased to compensate Qwest for its revenue loss resulting from the intrastate switched access charge reductions required by this rule and the increases applied to Qwest's residential and business rates in an equal per line amount; the rate used to determine the residential benchmark shall be the flat rated residential basic local exchange rate, excluding any extended area service (EAS) rates, vertical services, toll or other additional features or services;

(2) the initial business benchmark rate shall be equal to Qwest's basic business exchange rate increased to compensate Qwest for that portion of its revenue loss resulting from the intrastate switched access charge reductions required by this rule and the increases applied to Qwest's residential and business rates in an equal per line amount; the rate used to determine the business benchmark rate shall be the flat rated local one-party business exchange rate, excluding EAS rates, vertical services, toll or other additional features or services;

(3) each Qwest residential and business line that provides the customer with a New Mexico telephone number, including lines delivered through tariffs other than the basic local exchange service tariffs, shall be counted for the purposes of calculating the per line amount of revenue required to offset Qwest's loss of switched access charge revenue.

B. The commission may conduct a proceeding to establish new affordability benchmark rates not less than every three years.

C. With respect to any local exchange carrier that chooses to phase in its decrease of intrastate access charges incrementally as permitted by 17.11.10.8 NMAC, rather than implementing the full reduction of intrastate access charges to interstate levels immediately on April 1, 2006, the imputed benchmark revenue attributable to that carrier shall be phased in

at the same times, and proportionately to, the reductions in intrastate access charges, except as provided for in Subsection E of 17.11.10.9 NMAC of this rule.

D. Each local exchange carrier that is an ETC reducing intrastate switched access charges pursuant to this rule may offset such reductions on a revenue neutral basis, if it is in compliance with its contribution requirements under this rule, by (1) adjusting its residential and business basic exchange rates up to levels not exceeding the affordability benchmark rates determined by the commission, or (2) obtaining support from the fund for the difference between the affordability benchmark rates and the residential and business basic exchange rates that would be needed to accomplish revenue neutral offsets, or (3) a combination of the two methods stated herein.

E. A local exchange carrier may elect to phase in the increase in its business basic local exchange rate to reach the business affordability benchmark two years after it fully phases in its switched access charge reductions, and receive support from the fund equal to the reduction in imputed benchmark revenue resulting from the extended phase-in schedule, under the following conditions:

(1) the carrier's basic business local exchange rate on July 1, 2005 was more than \$10 below the benchmark rate established in (A)(2) of this section;

(2) the carrier phases in not more than 50% of its switched access charge reductions prior to January 1, 2007;

(3) the carrier's net income divided by its number of total access lines, as stated in its 2004 annual report, was less than \$17.50;

(4) the additional two years of phase in for the business affordability benchmark shall be taken in even increments.

[17.11.10.9 NMAC - N, 11/30/05]

17.11.10.10 SELECTION OF ADMINISTRATOR: The commission will designate a third-party administrator who will be subject to the supervision and control of the commission for a four-year term. The administrator shall perform services under the terms of a written contract to be entered into between the commission and the administrator. The commission shall procure the services of a subsequent administrator before the expiration of the term of each such contract, or in the event of early termination of such contract, as soon as practicable before or after the early termination.

A. Criteria for selection: the commission will issue a request for proposals to select the administrator; the com-

mission shall consider whether the bidder has demonstrated the competence needed to administer the fund and the rate of compensation proposed; the commission shall also consider at a minimum whether the bidder:

(1) is able to be neutral and impartial;

(2) is a member of a trade association that advocates positions before this commission or other state commissions in administrative proceedings related to telecommunications issues;

(3) is an affiliate of any contributing company;

(4) has a substantial financial interest in any entity or affiliate that provides telecommunications services or comparable retail alternative services; and

(5) has a board of directors that includes any member with direct financial interests in entities that contribute to or receive support from the fund in this state or any other state.

B. Termination of administrator's contract: the commission may terminate the administrator's contract with the commission before the expiration of the term of the contract upon such notice, and under such conditions, as are set forth in the contract.

[17.11.10.10 NMAC - Rp, 17 NMAC 13.10.8, 11/30/05]

17.11.10.11 EXPENDITURE AUTHORIZATION: The commission shall approve an annual budget for administration of the fund. The reasonable expenses incurred in the administration of the fund, in accordance with the terms of the contract between the commission and the administrator, shall be a cost of the fund and shall be recovered from contributions to the fund.

[17.11.10.11 NMAC - Rp, 17 NMAC 13.10.9, 11/30/05]

17.11.10.12 RESPONSIBILITIES OF ADMINISTRATOR: The administrator shall manage the day-to-day operation of the fund in accordance with this rule, applicable law, and the overall supervision and direction of the commission. The administrator shall:

A. fairly, consistently, and efficiently administer fund collections and disbursements in accordance with commission rules and subject to commission oversight;

B. establish an account or accounts in one or more independent financial institutions and ensuring that the monies deposited in the fund are insured to the maximum extent permitted by law and that they earn a return commensurate with that of state funds held on deposit in banks or other financial institutions;

C. ensure that the fund complies with all necessary requirements for exemption from federal, state and local taxes;

D. establish procedures, consistent with the commission's procedural rules and law, and with the commission's approval, for protecting the confidentiality of information submitted pursuant to this rule;

E. report to the commission on fund activities at least once each year; the report shall include fund collections and disbursements, administrative expenditure information, budget projections and such other information as the commission may require;

F. prepare an annual proposed budget for administration of the fund and submit it to the commission for review, revision, rejection or approval at such time in advance of the need for commission approval as the commission may direct, or absent such direction, at a reasonable time;

G. propose to the commission uniform procedures, and develop forms, to identify exempt customers, in consultation with contributing companies;

H. create and maintain the databases necessary to administer the program and account for the funds;

I. develop appropriate forms for use in collecting information from contributing companies and ETCs;

J. pay administrative expenses out of the fund in accordance with the budget approved by the commission;

K. petition the commission to institute an enforcement or other action when the administrator finds that it is otherwise unable to collect amounts properly due from a contributing company under these rules, or when it appears to the administrator that any contributing company or ETC carrier is otherwise out of compliance with these rules or applicable law;

L. conduct, not less than once every year, such reviews as are necessary to ensure that each contributing company is making its required contributions to the fund and that support from the fund is used for the purpose of the fund.

[17.11.10.12 NMAC - Rp, 17 NMAC 13.10.11, 11/30/05]

17.11.10.13 DISPUTE RESOLUTION: The commission may refer any disputed case between the administrator and a contributing company or between contributing companies to alternative dispute resolution if it finds that doing so would encourage the settlement of the dispute.

A. Mediation:

(1) if any of the parties or staff makes a request for mediation, the commission may, in its discretion, designate a medi-

ator consistent with Subsection B of 17.1.2.20 NMAC;

(2) the mediator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties and staff; if the parties request a mediator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator's services; the mediator shall not be the hearing examiner who is assigned to the case; the mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and staff at the time the mediator is assigned by the commission and unless all parties agree that the mediator may serve; the mediator shall not subsequently to serving as a mediator participate in the proceeding as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding;

(3) the mediator may be assigned by the commission at the same time as the commission assigns the case to a hearing examiner; the mediator shall not discuss the mediation conference with any commissioner or hearing examiner hearing the case;

(4) the mediator shall notify the parties and staff by telephone or mail of the time and place of the mediation conference, which will be held at commission offices unless otherwise directed by the mediator; the notice may direct the parties and staff to send the mediator, but not other parties or staff, their settlement positions and other necessary information that could facilitate the mediation conference, including the results of staff's investigation of the complaint;

(5) if the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect that resolution; if the parties are unable to reach a complete settlement of their dispute, the mediator shall advise the parties that they may request arbitration or file a formal complaint with the commission;

(6) nothing shall preclude the commission from using different mediation procedures.

B. Arbitration:

(1) a party may request arbitration of any dispute; the party's request shall be in writing to the commission and shall include a concise statement of the grounds for the complaint, the remedy sought, and an acknowledgment that the party has read 17.1.2.22 NMAC and agrees to be bound by its terms;

(2) the commission or its authorized representative shall forward the request

for arbitration to the other party together with a copy of Subsection A of 17.1.2.16 NMAC and 1.2.18 NMAC and require that the other party submit a written response within ten (10) days of the date of the commission's letter forwarding the request;

(3) if the responding party agrees to arbitration of the dispute, he shall include in his response to the complainant's request a concise statement of his position with regard to the merits of the complaint and an acknowledgment that he has read 17.1.2.22 NMAC and agrees to be bound by its terms; if the responding party will not agree to arbitration, he shall so state in the response;

(4) if the responding party either fails to respond to a request for arbitration or does not agree to arbitration, the initiating party retains the right to proceed with a formal complaint;

(5) if both the initiating party and the responding party agree to arbitration, the commission shall designate an arbitrator; the arbitrator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties to the complaint; the designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the commission's designation and all parties agree that the arbitrator may serve; the parties shall be required to indicate their consent in writing to the designated arbitrator within ten (10) days of the date of the commission's letter of designation; if the parties request an arbitrator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear the costs as their own pursuant to Sections 8-8-4 and 62-13-3 NMSA 1978;

(6) any employee of the commission designated to arbitrate the matter under these provisions shall not participate in a subsequent proceeding on the complaint as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding;

(7) the commission may assign docket numbers to arbitration proceedings for purposes of record management but the proceeding remains an informal proceeding;

(8) nothing shall preclude the commission from using different arbitration procedures.

C. Arbitration Procedures:

(1) once designated and approved by the parties, the arbitrator shall proceed to render a decision in the arbitration proceeding within sixty (60) days of the date the responding party agreed to arbitration except for good cause; if the arbitrator at

any time determines that it is unlikely that the dispute can be resolved without substantially affecting the interests of other ratepayers or the public, he may so inform the parties and staff and terminate the proceeding without prejudice to the initiating party's right to file a formal complaint;

(2) the arbitrator shall fix a time and place for an informal hearing and shall serve notice of the hearing on both parties and on staff at least ten (10) days in advance of the hearing; he may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths; the parties and staff may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute; the arbitrator shall decide the relevancy and materiality of the evidence offered, and conformity to the New Mexico rules of evidence or to rules of evidence contained in the commission's rules, is not necessary; no stenographic or electronic record will be made of the testimony at hearing unless requested by a party, who shall bear the cost of the record, or by staff;

(3) discovery will be permitted but only with leave of the arbitrator who shall not allow discovery which unduly complicates, burdens, or impedes the expeditious and informal nature of the proceeding;

(4) whenever the arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, he shall so advise the parties and staff, who may be present at the inspection or investigation; in the event that one or both of the parties or the staff are not present, the arbitrator shall make an oral or written report to the parties and staff and afford them an opportunity to comment;

(5) at the close of or soon after the hearing, the arbitrator will issue a brief written decision; findings of fact and conclusions of law are not necessary; the arbitrator's decision will be binding on the parties and can be implemented by the commission to the extent such implementation is necessary; however, the decision will not be a decision of the commission and shall have no precedential effect;

(6) unless agreed to by all the parties and staff, no statements, admissions, or offers of settlement made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the arbitrator disclose the same voluntarily or through discovery or compulsory process; nothing in this section, however, shall preclude the arbitrator from issuing a brief written decision describing his conclusions and the bases for them;

(7) nothing in this rule shall be

construed to mean that the commission has waived its review of any decision or that the commission consents to be bound by arbitration.

[17.11.10.13 NMAC - Rp, 17 NMAC 13.10.12, 11/30/05]

17.11.10.14 VARIANCES AND WAIVERS: Any person may petition the commission for variance or waiver of any provision of this rule for good cause shown.

A. General requirements:

(1) a contributing company or ETC may petition for an exemption or a variance from any of the requirements of this rule;

(2) such petition may include a motion that the commission stay the affected portion of this rule for the transaction specified in the motion;

(3) petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by an officer of the contributing company or ETC or someone with authority to sign for the contributing company or ETC;

(4) the commission may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

B. Contents of the petition.

A petition for an exemption or variance shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation which necessitates the exemption or variance;

(3) describe the effect of complying with this rule on the contributing company or ETC and its customers, or on its competitive affiliates and their customers, if the exemption or variance is not granted;

(4) describe the result the request will have if granted;

(5) state how the exemption or variance will achieve the purposes of this rule and the Rural Telecommunications Act of New Mexico;

(6) state why the proposed alternative is in the public interest and is a better alternative than that provided by this rule;

(7) state why the exemption or variance would have no anticompetitive effect; and

(8) state why the requested exemption or variance would not place an undue burden on the fund.

[17.11.10.14 NMAC - Rp, 17 NMAC 13.10.13, 11/30/05]

17.11.10.15 GENERAL REPORTING REQUIREMENTS:

A. Reports require declaration: all reports filed with the commission or the administrator must be filed with a

declaration from the chief financial officer of the entity or the person who prepared the reports on behalf of the entity that the information is correct and the filing is made subject to the penalty of perjury provided for in Section 30-25-1 NMSA 1978.

B. Time for reporting:

where no date is specified for a report, or when a request is made by the administrator for information necessary for the administration of the fund, the administrator shall specify when the report must be filed.

C. Reporting forms: contributing companies and ETCs shall report information in the manner prescribed by the administrator. The administrator shall not require reporting that will be unduly burdensome.

D. Electronic filing: the administrator shall accept electronic reporting when practicable.

E. Confidentiality: the commission shall have access to all information reported to the administrator. Contributing companies may request that company-specific information required by the reporting requirements of this rule be treated as confidential by so indicating at the time the information is submitted. The commission shall make all decisions regarding disclosure of company-specific information and may request further information or justification from the contributing company to ensure uniformity of confidential treatment of all information submitted by contributing companies. Nothing in this rule shall preclude commission issuance of an umbrella protective order identifying what reported data shall be, or shall not be, deemed confidential. The administrator shall keep confidential all company-specific information obtained from contributing companies for which confidential treatment is requested, shall not use such information except for purposes of administering the fund, and shall not disclose such information in company-specific form unless directed to do so by the commission.

F. The commission may require the administrator to modify any of its report formats to solicit additional information necessary for the administration of the state universal service program, or to delete information that is not necessary.

[17.11.10.15 NMAC - Rp, 17 NMAC 13.10.14, 11/30/05]

17.11.10.16 REVENUE REPORTS: Each ETC and contributing company shall submit on or before April 1 of each year a revenue report on the form prescribed by the administrator detailing its intrastate retail public telecommunications revenues for the prior calendar year.

[17.11.10.15 NMAC - Rp, 17 NMAC 13.10.15, 11/30/05]

17.11.10.17 OTHER REPORTS:

On or before April 1 of each year, carriers shall report the following information to the administrator in a form prescribed by the administrator, regarding facilities and activities during the preceding calendar year:

A. contributing companies, including ETCs, shall report the number and type of access lines or New Mexico telephone numbers subscribed to in total and within rural areas;

B. ETCs that are local exchange carriers shall report their number of intrastate switched access minutes;

C. contributing companies shall report the cost of collecting universal service fund (USF) surcharges, fulfilling reporting requirements, and other administrative costs of complying with this rule;

D. ETCs shall report:

(1) all revenues, compensation, payments, or subsidies received from all sources, including, but not limited to end-user customers, the state, and the federal government;

(2) all dividends or equivalents paid to shareholders, cooperative members, or others holding an ownership interest in the ETC;

(3) compensation, including value of benefits, paid to the five highest-compensated employees of the carrier;

(4) information sufficient to establish that payments from the fund were used to reduce intrastate switched access charges or to further universal service.

[17.11.10.17 NMAC - Rp, 17 NMAC 13.10.16 and 17 NMAC 13.10.17, 11/30/05]

17.11.10.18 CONTACT PERSONS:

All contributing companies and ETCs shall file with the administrator the name, address, phone number and e-mail address of a contact person and shall keep the information current.

[17.11.10.18 NMAC - Rp, 17 NMAC 13.10.18, 11/30/05]

17.11.10.19 ANNUAL DETERMINATION OF FUND:

A. The administrator, or the commission, shall determine the amount of the fund for the nine-month period beginning April 1, 2006 and ending December 31, 2006 in sufficient time for contributions to be paid into and disbursements to be made from the fund. Thereafter, the administrator shall determine the amount of the fund annually, subject to commission approval, on or before October 1.

B. In the event the commission orders a change in fund support, pursuant to 17.11.10.14 or 17.11.10.25 NMAC of this rule or otherwise, that necessitates a fund size greater than that which

the commission has previously established, the commission may order an adjustment to the size of the fund.

C. The amount of the fund shall be equal to the sum of each ETC's revenue requirements, calculated pursuant to this section, plus projected administrative expenses and a prudent fund balance.

D. Only carriers holding state ETC status as of October 1 shall be included in the calculation of funding requirements for the subsequent calendar year.

E. Except where the commission has established an alternative or an additional amount pursuant to 17.11.10.25 NMAC, the revenue requirement for each ETC that was eligible as of July 1, 2005 and is a local exchange carrier shall be equal to the carrier's 2004 intrastate access minutes multiplied by the difference between the allowable intrastate access rate and the carrier's historical intrastate access rate, with the product of this computation multiplied by the carrier's historical collection factor, and then reduced by the carrier's imputed benchmark revenue. The formula stated arithmetically is as follows:

((Historical Rate Minus Allowable Rate) Times minutes Times Collection Factor) Minus Imputed Benchmark Revenue

(1) for a local exchange carrier that is an ETC in the process of incrementally phasing in its reduction of intrastate switched access charges to interstate levels as permitted by 17.11.10.8 NMAC, the "allowable rate" in the foregoing formula shall equal the composite rate or rates called for in the relevant phase or phases of that carrier's transition to interstate access charge levels;

(2) once a local exchange carrier that is an ETC has reduced its intrastate switched access charges to interstate levels, the "allowable rate" equals the interstate switched access rate;

(3) where more than one allowable rate is applicable to a given carrier in a given year, the calculation shall be done in such a way as to apply each allowable rate to the portion of the year to which it applies;

(4) in determining revenue neutrality the administrator may consider appropriate out-of-period adjustments.

F. The revenue requirement for an ETC that became an ETC after July 1, 2005 or that became an ETC prior to July 1, 2005, but is not a local exchange carrier, shall be determined annually by the administrator in conjunction with the administrator's determination of fund size, and shall be in accordance with the support rate determined by the commission pursuant to 17.11.10.23 NMAC.

[17.11.10.19 NMAC - Rp, 17 NMAC 13.10.23, 11/30/05]

17.11.10.20 DETERMINATION OF STATE USF SURCHARGE RATE AND CONTRIBUTION:

A. The administrator, or the commission, shall determine the state USF surcharge rate for the nine-month period beginning April 1, 2006 and ending December 31, 2006 is sufficient time for contributions to be paid into and disbursements to be made from the fund. Thereafter, the administrator shall determine the amount of the state USF surcharge rate annually, on or before October 1, based upon monthly and annual reports filed by ETCs and contributing companies and any other pertinent and reliable information available to the administrator or the commission.

B. Upon its determination of a USF surcharge rate, the administrator shall notify all contributing companies, ETCs, and the commission. The rate determined by the administrator shall go into effect unless modified or disapproved by the commission.

C. The surcharge rate shall be equal to the annual fund requirement divided by the sum of intrastate retail telecommunications revenue for all contributing carriers in New Mexico, and may be adjusted to account for any material deficit or surplus projected to exist at the start of the fund year.

D. Each contributing company's monthly contribution shall equal the state USF surcharge rate multiplied by its intrastate retail telecommunications revenues in New Mexico for the month.

E. If, for any month the administrator finds that the fund balance is insufficient to cover required disbursements plus administrative expenses, the administrator may, with the commission's approval, increase contribution requirements to make up the shortfall. If the fund accumulates a surplus beyond what the administrator and the commission believe is prudent under the circumstances, the administrator may, with the commission's approval, decrease contribution requirements so as to lower the fund balance to an appropriate level.

F. Each contributing company shall remit its monthly contribution to the administrator on a schedule to be determined by the administrator. Initial contributions to the fund shall be due as soon as practical, but in any event no later than May 31, 2006. The administrator may consider utilizing a portion of the balance transferred into the fund from the prior New Mexico universal service fund to support initial disbursements from the fund. The administrator shall inform the commission of its proposed schedule and any proposed use of the transferred fund balance by March 1, 2006.

[17.11.10.20 NMAC - Rp, 17 NMAC 13.10.20, 11/30/05]

17.11.10.21 RECOVERY OF CONTRIBUTIONS:

A. A contributing company shall recover the amount of its contributions to the fund from its end-user customers in a manner that is not, either by act or omission, deceptive or misleading. Such recovery shall be made in a fair, equitable and nondiscriminatory manner, and no over-recovery of contributions shall be permitted.

B. A contributing company required to provide service in accordance with commission approved tariffs shall not recover contributions from its end-user customers except as permitted under commission approved modifications to those tariffs.

C. The commission may, after notice and hearing, order modifications to a contributor's method of recovering contributions from its end-user customers.

[17.11.10.21 NMAC - Rp, 17 NMAC 13.10.21, 11/30/05]

17.11.10.22 FUND DISBURSEMENTS:

A. The administrator shall make a monthly disbursement to each ETC eligible to receive such a payment from collected revenues in the fund, on a schedule to be determined by the administrator. The administrator shall inform the commission of its proposed schedule by March 1, 2006.

B. The amount of each ETC's monthly disbursement shall be one-twelfth of its revenue requirements computed in accordance with 17.11.10.19 NMAC.

C. Only carriers holding ETC status as of October 1 shall be eligible to receive disbursements from the fund during the year that begins the following January 1.

D. The administrator shall not pay, and shall hold in escrow, any disbursements otherwise due to an ETC that is also a contributing company, if that company shall not be in compliance with its contribution requirements.

E. If, for any month, the fund balance is insufficient to meet the sum of all ETCs' revenue requirements plus administrative expenses and maintain a prudent fund balance, the administrator shall prorate payments to each ETC, and, if indicated, shall propose an increase in the surcharge rate in accordance with Subsection E of 17.11.10.20 NMAC. Any reductions in payments to ETCs resulting from prorated disbursements shall be paid out at such time as sufficient monies have been paid into the fund.

[17.11.10.22 NMAC - N, 11/30/05]

17.11.10.23 DESIGNATION OF ETCS:

A. Any carrier operating in New Mexico and designated as a state ETC as of July 1, 2005 and which has not lost that designation is automatically designated as an ETC for the purposes of this rule. If at any subsequent time a carrier loses ETC designation status, it shall no longer be eligible to receive support from the fund.

B. Other carriers may file a petition for designation as an ETC in accordance with 17.11.10.24 NMAC.

C. On its own motion or in response to a petition, the commission may, after notice and hearing and for good cause shown, modify, suspend, or revoke an ETC designation.

D. Upon approval of a carrier for ETC status under these rules, the commission shall establish the carrier's support rate. In determining a just and reasonable support rate for an ETC, the commission shall:

(1) consider the cost of efficiently providing services to the proposed service area, including a rate of return determined by the commission to be reasonable, using the most cost-effective technologies, but also taking into consideration existing infrastructure;

(2) consider the amount of support available to the ETC through the federal universal service funds;

(3) ensure that the support rate for a competitive carrier not exceed the equivalent support received through these rules by the incumbent carrier or carriers serving the proposed service area.

E. On its own motion or in response to a petition, the commission may modify an ETC's support rate to reflect more current cost information or changes in service volumes.

[17.11.10.23 NMAC - Rp, 17 NMAC 13.10.25, 11/30/05]

17.11.10.24 PETITIONS FOR ETC DESIGNATION AND SUPPORT RATES:

A. Any entity seeking designation as a state or federal ETC, or an existing ETC that is not an incumbent local exchange carrier which may receive support from the fund to achieve revenue neutrality in connection with its reductions in intrastate switched access rates and seeks support from the fund must file a petition with the commission. In the case of a petition for ETC designation and support rate, the petition shall:

(1) include a description of the proposed service area for which it seeks designation that is consistent with the federal requirements relating to service areas set forth in, 47 C.F.R. Section 54.207;

(2) demonstrate that the entity meets the requirements in Section 214(e) of

the federal act (47 U.S.C. Section 214(e)) to be designated as a federal ETC;

(3) demonstrate that the proposed designation is in the public interest;

(4) include financial and statistical information sufficient for the commission to establish an initial support rate;

(5) provide a five-year plan demonstrating how support from the fund will be used to improve the petitioner's coverage, service quality or capacity throughout the service area for which it seeks designation;

(6) demonstrate the petitioner's ability to remain functional in emergency situations;

(7) demonstrate that the petitioner will satisfy consumer protection and service quality standards;

(8) offer local usage plans comparable to those offered by incumbent local exchange carriers in the areas for which the petitioner seeks designation;

(9) acknowledge that the petitioner may be required to provide equal access if all other ETCs in the designated area relinquish their designations;

(10) demonstrate that granting ETC status to the petitioner in the designated area is likely to result in more customer choice;

(11) address the impact of designation of the petitioner on the size of the fund;

(12) address the unique advantages and disadvantages of the petitioner's service offering;

(13) demonstrate the petitioner's willingness and ability to offer service throughout the designated service area within a reasonable time frame; and

(14) provide such other information as the commission or the administrator may find appropriate.

B. A petition by an existing ETC for a support rate shall demonstrate that granting the proposed support rate is in the public interest and shall include financial and statistical information sufficient for the commission to establish a support rate; a precise description of how the petitioner intends to use support it receives from the fund; and such other information as the commission or the administrator may find appropriate.

C. Consideration of the public interest will apply in all ETC designation and support rate proceedings. The commission is not required to designate additional ETCs in any service area, if not in the public interest.

D. The commission shall, after such notice and hearing as the commission shall prescribe, enter its written order approving or denying a company's petition. An order approving a petition for

ETC designation shall specify the service area for which designation is made and an order approving either a petition for ETC designation or a petition for a support rate shall state the approved support rate.

E. The commission may approve a petition for designation as a federal ETC in conjunction with a petition for designation as a state ETC.

F. The commission shall require annual verification from each ETC that it continues to meet the requirements herein for designation as an ETC and for provision of support from the fund.

[17.11.10.24 NMAC - Rp, 17 NMAC 13.10.27, 11/30/05]

17.11.10.25 PETITION FOR ADDITIONAL SUPPORT:

A. An ETC may petition the commission for support from the fund at a level greater than that provided for by Subsection C of 17.11.10.19 NMAC, when such an adjustment is necessary to ensure the availability of local telecommunications services at affordable rates in the state.

B. In a rate proceeding filed pursuant to Subsection F of Section 63-9H-7 NMSA 1978, an incumbent rural local exchange carrier may obtain additional support if the commission determines that payments should be authorized from the fund in order to ensure the widespread availability and affordability of rural residential local exchange services.

C. An ETC or incumbent carrier petitioning for support from the fund under this section shall submit historic and prospective information on its costs of providing services and shall demonstrate that it is providing services in the most prudent manner possible.

[17.11.10.25 NMAC - N, 11/30/05]

17.11.10.26 COMPLIANCE WITH CONTRIBUTION REQUIREMENTS:

A. If the administrator finds that a contributing company has not contributed the amount required by this rule, the administrator shall notify the contributing company in writing. The administrator shall request the company to pay the deficiency in its contribution.

B. The contributing company shall pay the requested amount within twenty-one (21) days of the date of the notice or seek dispute resolution as provided in this rule.

C. If attempts by the administrator to collect the total requested amount from a contributing company or to resolve a dispute are unsuccessful, the administrator shall notify the commission in writing.

D. Upon request by the

administrator, a complaint filed by an interested party, or its own motion, the commission, after providing notice and an opportunity for a hearing in accordance with 17.1.2 NMAC, may issue an order requiring a contributing company to pay any arrearage in contributions that the commission finds to exist and may also impose interest, a fine or other appropriate administrative penalties or requirements or bonding to assure future compliance with contribution requirements. In the event that a contributing company fails or refuses to comply with a commission order issued pursuant to this provision, the commission may petition the appropriate district court for appropriate injunctive relief and for enforcement of the commission's order.

E. The commission may take the same types of action set forth in Subsection D of 17.11.10.26 NMAC in the event that it finds, after a proceeding of the type specified in Subsection D of 17.11.10.26 NMAC, that a contributing company or an ETC has, in any other way, violated any provision of this rule or of the rural telecommunications act of New Mexico, Sections 63-9H-1 et seq. NMSA 1978.

[17.11.10.26 NMAC - Rp, 17 NMAC 13.10.31, 11/30/05]

17.11.10.27 USE OF FUND SUPPORT:

A. An ETC shall use fund support in a manner consistent with the rural telecommunications act, Sections 63-9H-1 et seq. NMSA 1978, Section 254 of the federal telecommunications act (47 U.S.C. 254), and commission rules and orders. Fund support must be used to preserve and advance universal service, that is, to provide, at reasonable and affordable rates, access by consumers in all regions, including low-income consumers and those in rural, insular and high cost areas, to quality telecommunications and information services, including interexchange services and advanced telecommunications and information services that are reasonably comparable to services provided in other areas.

B. If the commission finds, in a proceeding on its own motion or on the motion of the administrator or an interested party, that an ETC has used fund support for purposes other than to preserve and advance universal service, the commission may impose an appropriate administrative remedy, which may include, but need not be limited to, ordering the ETC to refund amounts paid to it from the fund.

[17.11.10.27 NMAC - Rp, 17 NMAC 13.10.32, 11/30/05]

17.11.10.28 ACCESS TO BOOKS, RECORDS AND PROPERTY:

A. The administrator or the commission shall have access to the books of account, records and property of all contributing companies and ETCs to the extent necessary to verify information reported or required to be reported pursuant to this rule. The administrator or commission may direct a contributing company or ETC to send copies of records to the administrator or commission or may inspect records at the offices of the contributing company or ETC, at the administrator's or commission's discretion.

B. In the normal course of business, the administrator will give at least three (3) days notice of its plans to inspect records in the offices of a contributing companies or ETC. The administrator may apply to the commission to procure a subpoena in order to inspect records without notice.

[17.11.10.28 NMAC - Rp, 17 NMAC 13.10.33, 11/30/05]

17.11.10.29 REVIEW AND AUDIT OF ADMINISTRATOR AND FUND:

For each year beginning with 2006, the administrator shall provide the commission with a financial statement of the fund and the administration of the fund by February 15. The commission shall engage a qualified independent auditor to audit each such financial statement and to submit a written opinion to the commission.

[17.11.10.29 NMAC - Rp, 17 NMAC 13.10.34, 11/30/05]

17.11.10.30 ADVISORY BOARD:

A. The commission shall establish and appoint an advisory board composed of representatives from participating contributing companies and ETCs, the attorney general, the commission staff, and any representative(s) of one or more consumer groups or organizations that the commission may choose to appoint. The members shall include no more than one representative from each of the following types of telecommunications carriers and entities providing comparable intrastate retail services: rural incumbent telecommunications carriers; incumbent local exchange carriers other than incumbent rural telecommunications carriers; interexchange carriers; competitive local exchange carriers not ETC-designated; ETC-designated competitive local exchange carriers; commercial mobile radio service providers not-ETC-designated; and ETC-designated commercial mobile radio service providers. Any other type of telecommunications carriers or providers of comparable intrastate retail service may petition the commission for representation by no more than one member of that type of carrier or service provider on the advisory board, which the commission may grant by order. The com-

mission shall resolve any dispute among the carriers or service providers of each type as to who shall be the member of the advisory board. The members representing participating contributors shall each be appointed for a term of three (3) years. Expenses incurred by a member in connection with participation on the advisory board shall not be reimbursed from the fund.

B. The advisory board shall meet periodically with the administrator and shall provide advice and consultation to the administrator as provided under this rule. Where deemed necessary by the advisory board, it shall make recommendations to the commission or the administrator, or both, relating to potential matters related to administration of the fund. Should the members of the advisory board not agree on a recommendation to the commission or administrator on any particular matter, the advisory board may provide a majority recommendation as well as a minority recommendation as to the resolution of any such identified issue. In addition, any member of the advisory board may, with advance written notice to the other members of the advisory board, provide individual recommendations or other information to the commission and the administrator that it deems appropriate. The advisory board is intended to be a forum within which to build consensus on matters relating to the administration of the fund, while not deterring any interested party from communicating its concerns relating to the administration of the fund to the advisory board, or, subject to advance written notice to the other members of the advisory board, directly to the commission.

[17.11.10.30 NMAC - Rp, 17 NMAC 13.10.10, 11/30/05]

HISTORY OF 17.11.10 NMAC:
[RESERVED]

Pre-NMAC History: None.

History of Repealed Material:

17 NMAC 13.10, State Rural Universal Service Fund (filed 12/15/1999) repealed 11/30/05.

Other History:

17 NMAC 13.10, State Rural Universal Service Fund (filed 12/15/1999) was replaced by 17.11.10 NMAC, State Rural Universal Service Fund, effective 11/30/05.

**NEW MEXICO
DEPARTMENT OF PUBLIC
SAFETY**

This is an amendment to 10.8.2 NMAC, Sections 7, 11 through 19, 21 through 25 and 29 through 31, effective November 30, 2005.

10.8.2.7 DEFINITIONS: In addition to the definitions in NMSA 1978 Section 29-19-2, unless the context clearly indicates otherwise, as used in this rule:

A. act means the Concealed Handgun Carry Act, NMSA 1978 Sections 29-19-1 et seq.;

B. approved instructor means a person to whom the department has issued a permit to provide all or any part of classroom and/or firing range instruction;

C. controlled substance has the meaning given in the New Mexico Controlled Substances Act or a similar act of any other jurisdiction;

D. conviction, when used in connection with a misdemeanor offense involving driving under the influence of intoxicating liquor or drugs, has the meaning given in NMSA 1978 Section 66-8-102;

E. court means any federal, state, county, municipal, or tribal court;

F. instructor applicant means a person seeking a permit as an approved instructor;

G. peace officer has the meaning given in NMSA 1978 Section 30-1-12;

H. person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any legal or commercial entity;

I. respondent means, in the context of 10.8.2.26 NMAC, an applicant, instructor applicant, approved instructor, or licensee;

J. retired peace officer means a New Mexico resident who has retired in good standing from any law enforcement agency with at least fifteen years as a certified police officer or by work related disability;

[J-] K. revocation or revoked means the involuntary permanent termination of a license or permit by the department for cause;

[K-] L. secretary means the secretary of the department of public safety or his designee;

[L-] M. suspended or suspension means the involuntary termination of a license or permit by the department for cause for a specified period of time.

[10.8.2.7 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.11 APPLICATION REQUIREMENTS FOR A LICENSE:

A. Filing. An applicant must file an application for a license with the department in person or by mail.

B. Fees. All fees required by the act or this rule to be paid to the department shall be in the form of a personal check, cashier's check, certified check, or money order made payable to the New Mexico Department of Public Safety. The department will not accept cash.

C. Completeness. All applications must be complete and legible.

(1) If an application is incomplete, the department will return the application and a letter outlining the deficiencies in the application to the applicant by regular mail. The applicant will have 45 calendar days from the date the letter is postmarked to cure the deficiencies. If the applicant fails to return the application to the department within 45 calendar days from the date the letter was postmarked, the application will be deemed abandoned, the application file will be closed, and all fees paid will be forfeited to the state. The department will send a letter notifying the applicant that the application has been deemed abandoned, the file has been closed, and all fees paid have been forfeited to the state.

(2) If the applicant returns the application to the department within 45 calendar days from the date the initial letter was postmarked but the application is still deficient, the department will return the application and a second letter outlining the deficiencies in the application to the applicant by regular mail. The applicant will have 30 calendar days from the date the second letter is postmarked to cure the deficiencies. If the applicant fails to return the application to the department within 30 calendar days from the date the second letter was postmarked, or returns the application but it is still deficient, the application will be deemed abandoned, the application file will be closed, and all fees paid will be forfeited to the state. The department will send a letter notifying the applicant that the application has been deemed abandoned, the file has been closed, and all fees paid have been forfeited to the state.

(3) An applicant may contact the concealed carry unit by telephone to inquire on the status of their application. Agents may provide the information to the applicant after the applicant has supplied sufficient identifiers such as address, social security number, DOB, etc.

[10.8.2.11 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.12 OTHER REQUIRED DOCUMENTS FOR A LICENSE: In

addition to the application form, each applicant shall file copies of other documents required by ~~[Subsection B of NMSA 1978 Section 29-19-5]~~ the act or this rule with the department. The copies must clearly show the name of the applicant and all signatures and pertinent information. The department will not accept copies that are too dark, too light, blurry, or otherwise unreadable. An applicant ~~[should not file original documents, and the department will not return them.]~~ may request the return of original documents by stating so and enclosing a self addressed stamped envelope.

A. Proof of citizenship. In accordance with Paragraph 6 of Subsection B of NMSA 1978 Section 29-19-5, an applicant may prove United States citizenship by filing a certified copy of a birth certificate or proof of United States citizenship, if the applicant was not born in the United States.

B. Proof of residency.
(1) An applicant may prove residency in New Mexico by filing a copy of a valid New Mexico driver's license or personal identification card issued by the motor vehicle division of the taxation and revenue department and one of the following:

- (a)** proof that the applicant is registered to vote in New Mexico;
- (b)** a New Mexico income tax return filed within the last year;
- (c)** a United States armed forces identification card and orders of permanent duty station in New Mexico; or
- (d)** other proof acceptable to the department.

(2) Possession by an applicant of a driver's license issued by another state shall create a rebuttable presumption of residency in such other state.

C. Proof of age. An applicant may prove that he or she is ~~[25]~~ 21 or more years of age by filing:

- (1)** a copy of a valid government-issued identification card stating the person's age, ~~[or]~~ and
- (2)** a certified copy of his or her birth certificate.

D. Proof of handgun competency. Pursuant to Paragraph (4) of Subsection B of NMSA 1978 Section 29-19-5, an applicant shall prove that he or she can competently and safely fire a handgun by filing a certified copy of a certificate of completion for a firearms training course approved by the department issued by an approved instructor not more than 90 calendar days prior to the date the application is filed.

(1) Current certified law enforcement officers employed by a law enforcement agency and residing in New Mexico are not required to attend a civil

ian firearms training course.

(2) Law enforcement officers who are residents of New Mexico and have retired in good standing within the previous ten years prior to applying for a license are not required to attend a firearms training course.

(3) Law enforcement officers who have been retired longer than ten years at time of application are required to attend a firearms course pursuant to the act.

(4) A department approved concealed handgun carry instructor shall indicate on the application the category and highest caliber they wish to carry.

E. Photographs. To streamline the application process, the department may obtain digital color photographs of an applicant from the motor vehicle division of the taxation and revenue department or another government agency. If the department requests an applicant to provide photographs pursuant to Paragraph (5) of Subsection B of NMSA 1978 Section 29-19-5, the photographs shall be in color, be a minimum of 3 inches by 3 inches, and be a full frontal view of the applicant without a hat, sunglasses, or any other item that would obstruct or alter the features of the applicant. The department will not accept photographs that are too dark, too bright, fuzzy, out of focus, or unclear.

F. Fingerprints. ~~An applicant~~ **All applicants** shall submit 2 full sets of fingerprints that comply with the requirements in NMSA 1978 Section 29-19-5 and 10.8.2.14 NMAC.

G. Application fee. An applicant shall ~~file~~ **submit** a non-refundable application fee of \$100.00. **Current and retired law enforcement officers are exempt from this fee.** [10.8.2.12 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.13 LICENSE APPLICATION REVIEW AND ISSUANCE:

A. Time period for review. In accordance with Subsection A of NMSA 1978 Section 29-19-6, the department shall review the application, conduct a national criminal background check of each applicant, and make a determination within 30 days of the date the department receives a complete application and background check.

B. Determination by department.

(1) Approval. If the department finds that the applicant meets the requirements in the act and this rule for issuance of a license, the department shall issue a license.

(2) Denial. If the department finds that the applicant does not meet the requirements for issuance of a license, the

department shall issue an order of denial in accordance with 10.8.2.26 NMAC. The order of denial shall cite the particular requirements of the act or this rule that the applicant has failed to meet.

C. Information on license. In addition to the information required by Subsection C of NMSA 1978 Section 29-19-6, a license to carry a concealed handgun may include:

(1) a physical description of the licensee, including his or her race or national origin, sex, hair color, eye color, height, and weight;

(2) the state seal; ~~and~~

(3) instructions to the licensee; **and**

(4) other information as determined by the department.

D. Effective date and term of license. Original and renewed licenses are effective for ~~two~~ **four** years from the date of issuance by the department. Replacement licenses and licenses that have been endorsed to add another category or **highest** caliber of handgun shall expire on the date the replaced license would have expired.

E. Dual licenses prohibited. A licensee may not own or possess more than one New Mexico license to carry a concealed handgun. A license to carry a concealed handgun shall indicate all categories and **highest** calibers of handguns the licensee is authorized to carry concealed in New Mexico.

[10.8.2.13 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.14 FINGERPRINTING OF APPLICANTS: In accordance with Paragraph (3) of Subsection B of NMSA 1978 Section 29-19-5, ~~an applicant~~ **all applicants** shall submit two full sets of fingerprints. The department may refuse to accept fingerprints it determines are not legible and classifiable.

A. Responsibilities of applicant. The applicant must present the following documents to the person recording his or her fingerprints:

(1) a valid government-issued photographic identification card; and

(2) the two blank fingerprint cards and instruction page supplied by the department.

B. Responsibilities of person recording the fingerprints. The person who records the applicant's fingerprints shall:

(1) verify that the government-issued photographic identification card is of the person being fingerprinted;

(2) either complete or verify the accuracy of the non-fingerprint data being filed on the card;

(3) record the applicant's finger-

prints on the card, in a manner consistent with that normally required for an arrest fingerprint card, including the simultaneous impressions;

(4) obtain the signature of the applicant on both fingerprint cards;

(5) sign the fingerprint card; and

(6) return all documents to the applicant who shall forward them to the department.

[10.8.2.14 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.15 FIREARMS TRAINING FOR APPLICANTS AND LICENSEES:

A. Department approved firearms training course.

(1) An applicant seeking a license shall satisfactorily complete an initial firearms training course approved by the department that includes at least 15 hours of classroom and firing range instruction on the subjects specified in Subsection A of NMSA 1978 Section 29-19-7 **except:**

(a) a department approved instructor; or

(b) a current law enforcement officer; or

(c) a retired law enforcement officer who has been retired 10 years or less at time of application; and

(d) a retired law enforcement officer who has been retired longer than 10 years is required to attend a firearms training course as per the act.

(2) A licensee shall complete a two (2) hour refresher course two years after the issuance of an initial or renewed license which shall be range qualification of their approved caliber of handgun and the instructor shall notify the department within thirty (30) days on a form prescribed by the department.

~~(2)~~ **(3)** A licensee seeking renewal of a license shall satisfactorily complete a refresher firearms training course approved by the department that includes at least 4 hours of classroom and firing range instruction on the subjects specified in Subsection A of NMSA 1978 Section 29-19-7.

(4) The department may suspend a license if the licensee does not comply with the refresher requirements. Upon complying, the licensee shall submit a \$5.00 reinstatement fee.

B. Competency demonstration.

(1) An applicant or licensee shall demonstrate competency in the safe use of each category and **highest** caliber of handgun for which he or she seeks certification by firing the handgun with live ammunition at a target no larger than 12 inches wide and 18 inches high.

(2) An applicant or licensee shall

fire 15 rounds from three yards and 10 rounds from seven yards.

(3) An applicant or licensee shall score 4 points for each shot that hits within the scoring line and zero points for each shot that hits outside the scoring line. An applicant must obtain a score of 72% to pass the competency demonstration.

C. Determination of competency. An approved instructor shall determine whether or not to issue a certificate of completion based on the applicant or licensee's score on the competency demonstration and the applicant or licensee's knowledge and understanding of the subjects specified in Subsection A of NMSA 1978 Section 29-19-7.

D. Certificates of completion. An approved instructor shall issue a certificate of completion to each applicant who demonstrates competency in the safe use of the categories and calibers of handguns for which he or she seeks licensure as prescribed in Subsections B and C of this section. The certificate of completion shall include the name and date of birth of the applicant, the printed name and signature of the approved instructor who scored the competency demonstration, the date the applicant completed the firearms training course, all categories and calibers of handguns for which the applicant demonstrated competency, and a unique number consisting of the instructor number assigned by the department and a sequential number. [10.8.2.15 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.16 TERMS AND CONDITIONS OF LICENSE:

A. Carrying only handguns listed on license. No person shall carry a concealed handgun of a different category or higher caliber than is indicated on the license issued to that person by the department. A licensee shall only carry one (1) concealed handgun at any given time.

B. Carrying while impaired. Pursuant to NMSA 1978 Section 30-7-4, no person shall carry a concealed handgun while impaired by the use of alcohol, controlled substances, or over-the-counter or prescribed medications.

C. Display of license on demand. A licensee carrying a concealed handgun on or about his person in public shall, upon demand by a peace officer, display his license to carry a concealed handgun.

D. Prohibited acts. A licensee shall not deface, alter, mutilate, reproduce, lend, transfer, or sell a license. A licensee shall adhere to NMSA 1978 Section 30-7-4 as it pertains to negligent use of a deadly weapon.

E. Carrying prohibited on private property. In addition to other limitations stated in the act, a licensee may not carry a concealed handgun on or about his person on private property that has signs posted prohibiting the carrying of concealed weapons or when verbally told so by a person lawfully in possession of the property.

F. Carrying prohibited in preschools. As used in Subsection C of NMSA 1978 Section 29-19-8, preschool means a child care facility, whether home-based or center-based, whether or not the facility is licensed, registered, or regulated, that provides care to infants, toddlers, and children aged 5 and younger.

G. Indicia of licensure. No person who is not a law enforcement officer, may carry a badge, patch, card, or any other indication of authority to carry a concealed handgun in New Mexico other than the license issued by the department or a license issued by a state that has been accepted by transfer, recognition or reciprocity by New Mexico pursuant to the act.

H. Notice of change in circumstances. A licensee shall, within 10 calendar days, notify the department in writing of any of the following:

(1) adjudication of mental incompetence;

(2) commitment to a facility for the treatment of mental illness;

(3) commitment to a facility for treatment of addiction to alcohol, controlled substances, or other drugs;

(4) issuance of an order of protection by a court; ~~(5)~~

(5) indictment for or charge with a felony or one of the misdemeanor offenses described in Subsection B of NMSA 1978 Section 29-19-4;

(6) is no longer a full time salaried law enforcement officer; and

(7) is required to turn in the license within 10 calendar days of the change.

[10.8.2.16 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.17 LICENSE RENEWAL AND TRANSFER:

A. To renew a New Mexico license. A licensee may file an application for a renewed license on the form prescribed by the department.

(1) The licensee may file the application anytime from 60 calendar days before the license expires until 60 calendar days after the license expires. If the license has expired, a licensee shall not carry a concealed handgun until he receives his renewed license.

(2) The licensee shall complete a refresher firearms training course prior to

filing the application.

(3) The licensee shall file with the department:

(a) 2 full sets of fingerprints as required by NMSA 1978 Section 29-19-5 and 10.8.2.14 NMAC;

(b) a certified copy of a certificate of completion for a refresher firearms training course approved by the department issued by an approved instructor not more than 90 days prior to the date the application is filed; and

(c) a nonrefundable [~~\$50.00~~] \$75.00 renewal fee;

(d) a copy of New Mexico drivers license or other government issued identification which contains a picture.

B. To transfer a license from another state. A person seeking to transfer a license from another state may file an application for a New Mexico renewed license on the form prescribed by the department. An applicant for transfer shall not carry a concealed handgun in New Mexico until the applicant receives a New Mexico license unless they have a license from a state that has been accepted by transfer, recognition or reciprocity by New Mexico.

(1) In addition to the filings required by Paragraph 3 of Subsection A of this section, the applicant for transfer shall file:

(a) proof of citizenship as provided in Subsection A of 10.8.2.12 NMAC;

(b) proof of residency as provided in Subsection B of 10.8.2.12 NMAC;

(c) proof of age as provided in Subsection C of 10.8.2.12 NMAC; and

(d) a photocopy of the license being transferred.

(2) The applicant for transfer shall complete:

(a) a refresher firearms training course if the firearms training required by the other state meets or exceeds New Mexico firearms training requirements and the licensee completed firearms training not more than 1 year prior to filing the application; or

(b) an initial firearms training course if the firearms training required by the other state does not meet New Mexico firearms training requirements or the licensee completed firearms training more than 1 year prior to filing the application.

(3) The applicant for transfer must meet all other requirements for obtaining a license in New Mexico by showing either that:

(a) the requirements for licensure in the other state meet or exceed the requirements for issuance of a license in New Mexico; or

(b) the applicant has satisfactorily completed the requirements for issuance of

a license in New Mexico that were not applicable in the other state.

C. Time period for review. As prescribed in Subsection A of NMSA 1978 Section 29-19-6, the department shall review the application for a renewed license, conduct a national criminal background check of each applicant for a renewed license or transfer of a license from another state, and make a determination within 30 days of the date the department receives a complete application and background check.

D. Determination by department.

(1) Approval. If the department finds that the applicant for a renewed license or transfer of a license from another state meets the requirements in the act and this rule for a renewed license, the department shall issue a license.

(2) Denial. If the department finds that the applicant does not meet the requirements for a renewed license or transfer of a license from another state, the department shall issue an order of denial in accordance with 10.8.2.26 NMAC. The order of denial shall cite the particular requirements of the act or this rule that the applicant has failed to meet.

[10.8.2.17 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.18 ADDITIONAL HANDGUN ENDORSEMENT:

If a licensee wishes to add another category or additional **higher** calibers of handguns to his license, the licensee shall file with the department an application for a renewed license. The licensee shall also submit a certified copy of a certificate of completion from an approved instructor stating that the licensee has demonstrated competency on a firing range for each additional category and caliber of handgun, his current license, and a \$5.00 processing fee. The licensee need not retake the classroom portion of the firearms training course. The department shall issue a renewed license within 10 days of receipt of the application. The renewed license shall expire on the same date as the original license would have expired. In accordance with NMSA 1978 Section 29-19-9, a licensee shall not carry a concealed handgun until he receives the renewed license.

[10.8.2.18 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.19 REPLACEMENT LICENSE:

A. Change of name [~~or~~ address] address, or status:

(1) A licensee who changes his or her name [~~or~~], address **or law enforcement status** shall file **within 30 days:**

(a) an application for a replace-

ment license on the form prescribed by the department;

(b) if applicable, a certified copy of a legal document proving the change of name; and

(c) a nonrefundable \$5.00 processing fee; **and**

(d) if applicable, proof of reemployment with a law enforcement agency.

(2) The department will issue a replacement license within 10 days of receipt of the application.

B. Loss, theft, or destruction of license: A licensee who loses his license or whose license is stolen or destroyed shall file a police report within [7] **10** working days of the date the licensee discovers the loss, theft, or destruction of the license. The licensee shall not carry a concealed handgun until he obtains a replacement license. A licensee who seeks to replace a license that is lost, stolen, or destroyed shall file with the department:

(1) an application for a replacement license on the form prescribed by the department;

(2) [~~a copy~~] **the case number** of the police report;

(3) a notarized statement made under oath that the license was lost, stolen or destroyed; and

(4) a nonrefundable \$5.00 processing fee.

[10.8.2.19 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.21 SUSPENSION AND REVOCATION OF A LICENSE:

A. Grounds. The department may suspend or revoke a license if the licensee:

(1) is found to have violated any provision of the act or this rule;

(2) is a fugitive from justice, in accordance with Paragraph (4) of Subsection A of NMSA 1978 Section 29-19-4;

(3) is convicted of a felony, in accordance with Paragraph (5) of Subsection A of NMSA 1978 Section 29-19-4;

(4) is under indictment for a felony criminal offense, in accordance with Paragraph (6) of Subsection A of NMSA 1978 Section 29-19-4;

(5) is prohibited by law from purchasing or possessing a firearm, in accordance with Paragraph (7) of Subsection A of NMSA 1978 Section 29-19-4;

(6) is adjudicated mentally incompetent or committed to a mental institution, in accordance with Paragraph (8) of Subsection A of NMSA 1978 Section 29-19-4;

(7) is addicted to alcohol or controlled substances, in accordance with Paragraph (9) of Subsection A of NMSA

1978 Section 29-19-4;

(8) receives a conditional discharge, a diversion or a deferment or is convicted of, pleads guilty to or enters a plea of nolo contendere to a misdemeanor offense involving a crime of violence **within ten years immediately preceding the application**, in accordance with Paragraph (1) of Subsection B of NMSA 1978 Section 29-19-4;

(9) is convicted of a misdemeanor offense involving driving while under the influence of intoxicating liquor or drugs, in accordance with Paragraph (2) of Subsection B of NMSA 1978 Section 29-19-4;

(10) is convicted of a misdemeanor offense involving the possession or abuse of a controlled substance **within ten years immediately preceding the application**, in accordance with Paragraph (3) of Subsection B of NMSA 1978 Section 29-19-4;

(11) is convicted of a misdemeanor offense involving assault, battery or battery against a household member, in accordance with Paragraph (4) of Subsection B of NMSA 1978 Section 29-19-4; or

(12) is subject to a valid protective order issued by a court.

B. Affidavit of violation by a licensee. If a peace officer believes there is probable cause to suspend or revoke a license, the peace officer shall prepare an affidavit on a form prescribed by the department. The affidavit shall cite the provision of law that was violated. The peace officer shall file the affidavit and any other reports or information relating to the licensee available to the officer with the department within 10 working days of the date the peace officer learns of the violation.

C. Notice of suspension or revocation and surrender of license. The department shall review the affidavit and attachments, and, if the department finds probable cause to suspend or revoke the license, may issue an order of suspension or revocation to the licensee advising the licensee of his right to a hearing in accordance with 10.8.2.26 NMAC. If the licensee elects not to request a hearing, the licensee shall surrender his license to the department within 15 calendar days of the expiration of the period for requesting a hearing.

D. Term of suspension or revocation and reapplication.

(1) The department may suspend a license for up to one year. The licensee may file an application to renew the license upon expiration of the term of suspension.

(2) The department may revoke a license. The person whose license was revoked may file an application for another license no earlier than one year from the

date the license was revoked.

(3) The license of a current law enforcement officer shall expire on the date the officer leaves employment unless the officer has been hired by another law enforcement agency in New Mexico with written proof provided by the licensee.

[10.8.2.21 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.22 DEPARTMENT APPROVAL OF INSTRUCTORS AND FIREARMS TRAINING COURSES:

A. Application required.

Any person seeking to instruct firearms training courses pursuant to this rule shall file an application with the department to become an approved instructor. Application shall be made on the form prescribed by the department, and shall be typewritten or legibly handwritten in ink. A person who is not an approved instructor may not instruct a firearms training course pursuant to this rule.

B. Requirements for approval. In order to be approved as an instructor, an instructor applicant must:

(1) agree to be subject to New Mexico jurisdiction for the limited purpose of enforcing the act and this rule;

(2) submit 2 full sets of fingerprints that comply with the requirements in NMSA 1978 Section 29-19-5 and 10.8.2.14 NMAC for positive identification purposes;

(3) submit an authorization for release of information form provided by the department;

(4) submit to the department the curriculum and course materials for a firearms training course that has been certified or sponsored by a federal or state law enforcement agency, a college, a firearms training school, or a nationally recognized organization, approved by the department, that customarily offers firearms training and a copy of the letter or other document approving the course from the certifying or sponsoring entity; an instructor applicant may develop his own curriculum and materials but must have them certified or sponsored by one of the entities identified in Subsection A of NMSA 1978 Section 29-19-7;

(5) provide a description of the instructor applicant's experience in offering firearms training; an instructor-applicant who wishes to conduct firing range instruction must possess a certificate of completion of a firearms instructor-training program approved by the department that was issued or renewed not more than 5 years prior to the date the application is filed;

(6) submit a list of all persons the instructor applicant proposes to engage as instructors and the subject each will be engaged to teach;

(7) agree to be responsible for the actions and omissions of all persons engaged by the approved instructor for the purpose of conducting firearms training courses pursuant to this rule; **or**

(8) be a currently certified law enforcement instructor employed by a law enforcement agency.

C. Time period for review. As prescribed in Subsection A of NMSA 1978 Section 29-19-6, the department shall review the application of each instructor applicant and make a determination within 30 days of the date the department receives a complete application and background check.

D. Determination by the department.

(1) Approval.

(a) Instructor. If the department finds that the instructor applicant meets the requirements specified in Subsection B of this section, the department shall issue a permit that shall be valid for 4 years. The permit shall include the approved instructor's name, business address, and date of birth, the expiration date of the permit, and the instructor number assigned by the department.

(b) Curriculum. If the department finds that the proposed curriculum and course materials for the firearms training course meet the requirements of NMSA 1978 Section 29-19-7 and this rule, the department shall approve the proposed firearms training course in writing. The department's approval shall remain in effect for the shortest of:

(i) one year;

(ii) until the approved instructor significantly changes the curriculum or course materials; **or**

(iii) the requirements in the act or this rule are changed.

(2) Denial. If the department finds either that the instructor applicant or the proposed firearms training course do not meet the requirements of NMSA 1978 Section 29-19-7 or this rule, the department shall issue an order of denial in accordance with 10.8.2.26 NMAC. The order of denial shall cite the particular requirements of the act or this rule that the instructor applicant or proposed firearm training course has failed to meet.

E. Renewal. An approved instructor seeking to renew his permit shall file with the department at least 60 calendar days before the date his permit expires:

(1) an application for renewal on the form prescribed by the department;

(2) the curriculum and course materials for a firearms training course that is certified or sponsored by a federal or state law enforcement agency, a college, a firearms training school, or a nationally rec-

ognized organization, approved by the department, that customarily offers firearms training and a copy of the letter or other document approving the course from the certifying or sponsoring entity; **and**

(3) a list of all persons the instructor applicant proposes to engage as instructors and the subject each will be engaged to teach.

F. No authority to carry.

An approved instructor is not authorized to carry a concealed handgun unless the approved instructor obtains a license from the department pursuant to 29-19-4 of the act and this rule. If an instructor applicant wishes to apply for a license at the same time he applies for a permit, he may do so by checking the appropriate boxes on the instructor application form, complying with all requirements for a license in the act and this rule, and enclosing the license application fee and all documents required by 10.8.2.12 NMAC with the application for a permit.

G. List of approved instructors. The department shall maintain and make available to the public a list of approved instructors. An approved instructor may request to be removed from the list, but shall remain subject to a request for inspection of public records pursuant to NMSA 1978, Chapter 14, Article, 2.

[10.8.2.22 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.23 BACKGROUND INVESTIGATIONS OF APPLICANTS AND INSTRUCTOR APPLICANTS:

A. Central office. The department shall conduct a state and national criminal background check, and a court records check for protective orders, of each applicant for an original, **transferred** or renewed license. The department shall conduct a state criminal background check, and a court records check for protective orders, of each instructor applicant for an original or renewed permit. The department may require certain applicants to provide information or execute documents to enable the department to obtain criminal history records of disposition of charges. The department may conduct such other investigation of an applicant as the department deems necessary to determine an applicant's suitability for a license or permit.

B. In the field. The department may assign an agent or police officer to conduct a field background investigation of an applicant or instructor applicant. Upon completion of the investigation, the agent or police officer shall prepare a report of the results of the investigation.

[10.8.2.23 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.24 RESPONSIBILITIES OF APPROVED INSTRUCTORS:

A. Minimum standards for instruction. An approved instructor shall:

(1) engage as instructors only those persons who have been issued a permit by the department, except as provided in Subsection C of this section;

(2) have no more students in the classroom or on an indoor firing range than the maximum occupancy allowed by the state or local fire code;

(3) use classroom facilities that comply with all federal, state, and local laws relating to persons with disabilities, public health, safety, and sanitation, including restroom facilities;

(4) use only the curriculum, course materials, handouts, and videos approved by the department;

(5) display the permit issued by the department in an appropriate and visible location;

(6) not permit a student to begin a firearms training course until the student has received written information stating all fees, including incidental costs, charged for the course, policies for passing and failing, refund and reschedule policies, and attendance requirements.

B. Minimum standards for firing range instruction. An approved instructor shall:

(1) not permit a student to participate in firing range instruction until the student has completed the classroom portion of the firearms training course;

(2) conduct firing range instruction under various light conditions when possible;

(3) have no more students firing a handgun on the firing range than the instructor can effectively and safely instruct and monitor.

C. Guest instructors.

(1) An approved instructor may use guest instructors who are not approved instructors to teach various parts of a firearms training course, but only with the prior written approval of the department. An approved instructor must file a request for approval to use a guest instructor at least 30 days prior to the date the guest instructor will teach for the first time. The department will not conduct background investigations of guest instructors.

(2) A guest instructor may teach a maximum of 3 times in a calendar year. No guest instructor may teach all of a firearms training course. Any person wishing to instruct firearms training courses more than 3 times in a calendar year must apply for and obtain a permit from the department.

(3) An approved instructor shall maintain a file on each guest instructor who teaches a portion of the firearms training

course. The file shall include a list of the dates and portions of the course each guest instructor has taught, and appropriate documents showing the education, experience, licenses or certifications that qualify the guest instructor to teach the portions of the course he has taught.

D. Monitoring by the department. The department may monitor all aspects of firearms training courses. Approved instructors shall cooperate with **agents of** the department in its efforts to monitor the training of applicants.

(1) Should a department agent determine that an instructor is not following the act or these rules or is placing their students in danger, the agent shall have the authority to end the class. The agent shall obtain the instructors permit, make a written report and submit both to the secretary. The instructor may then file an appeal pursuant to the act and these rules.

(2) The agents of the department are certified law enforcement officers and required by the department to be armed while on duty. No instructor has the authority to require the agents to be disarmed while they are performing their duties.

(3) Failure to adhere to any provisions of Subsection D, these rules or the act will be grounds for temporary or permanent loss of their instructors permit.

E. Reports. An approved instructor shall file the following information with the department within 5 working days after the end of each firearms training course on the form prescribed by the department:

(1) the name, address, and date of birth of each applicant who attended the course;

(2) for each applicant, the score the applicant achieved in the handgun competency demonstration;

(3) for each applicant, the category and **highest** caliber of each handgun for which the applicant demonstrated competency; and

(4) for each applicant, whether or not the approved instructor issued a certificate of completion and each category and caliber for which the certificate was issued.

F. Records. An approved instructor shall maintain the records required by this subsection for a period of three years from the date of completion of each firearms training course. The records shall be stored in a safe and secure place and shall be available for inspection by the department upon request. An approved instructor shall maintain:

(1) a record of each handgun competency certificate issued;

(2) a record of the following information for each course:

(a) name, address, and date of birth of each applicant who attended the course;

(b) for each applicant, the score the applicant achieved in the handgun competency demonstration;

(c) for each applicant, the category and caliber, of each handgun for which the applicant demonstrated competency; and

(d) an indication of whether or not the approved instructor issued a certificate of completion to that applicant;

(3) a record of the dates and number of hours of each firearms training course;

(4) a record of the curriculum and course materials used in each course; and

(5) copies of documents and correspondence filed with the department.

[10.8.2.24 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.25 SUSPENSION AND REVOCATION OF AN INSTRUCTOR PERMIT:

A. Grounds. The department may suspend or revoke a permit if:

(1) the approved instructor is the subject of valid complaints from applicants, licensees, or other approved instructors; or

(2) for any of the grounds stated in Subsection A of 10.8.2.21 NMAC with respect to a license ; or

(3) for violation of any provision of the act or these rules.

B. Notice of suspension or revocation and surrender of permit.

The department shall investigate all allegations concerning grounds for suspension or revocations of permits. If the department finds probable cause to suspend or revoke the permit, the department may issue an order of suspension or revocation to the approved instructor advising the approved instructor of his right to a hearing in accordance with 10.8.2.26 NMAC. If the approved instructor elects not to request a hearing, the approved instructor shall surrender his permit to the department within 15 calendar days of the expiration of the period for requesting a hearing and shall cease offering firearms training courses pursuant to this rule.

C. Immediate suspension of firearms training course and refund of tuition.

(1) The department may immediately suspend, without notice or a prior hearing, a firearms training course whenever the department finds that the person teaching the course:

(a) is not an approved instructor;

(b) is impaired by the use of alcohol, controlled substances, or over-the-counter or prescribed medications; or

(c) is teaching something that is

contrary to law or accepted safety practices.

(2) The approved instructor shall be given the opportunity to request a hearing before the department pursuant to 10.8.2.26 NMAC.

(3) If the department finds, after notice and a public hearing, that the person teaching the course was not an approved instructor, was impaired, or was teaching something contrary to law or accepted safety practices, the department may order the person to refund to every student in the class the person was teaching any fees paid by the student to take the class. If the department finds that all or any portion of the firearms training course was deficient because the instructor was not an approved instructor, was impaired, or was teaching something contrary to law or safety, the department may require the students in that class to retake the portions that were deficient. The department may also initiate proceedings to suspend or revoke the approved instructor's permit.

D. Term of suspension or revocation and reapplication.

(1) The department may suspend a permit for up to one year. The approved instructor may file an application to renew the permit upon expiration of the term of suspension.

(2) The department may revoke a permit. The instructor whose permit was revoked may file an application for a new permit no earlier than one year from the date the permit was revoked.

[10.8.2.25 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.29 RECIPROCITY: The secretary or his designee shall have discretionary authority to afford transfer, recognition or reciprocity to a concealed handgun license issued by another state, transfer, recognition or reciprocity.

A. Transfer, recognition or reciprocity may be granted if the other state:

(1) issues a license or permit with an expiration date printed on the license or permit;

(2) is available to verify the license or permit status for law enforcement purposes within three business days of request;

(3) has disqualification, suspension and revocation requirements for a concealed handgun license or permit;

(4) requires that an applicant for a concealed handgun license or permit submit to a national criminal history records check;

(5) requires that an applicant not be prohibited from possessing firearms pursuant to federal or state law; and

(6) requires that an applicant satisfactorily complete a firearms safety program that covers deadly force issues, weapons care and maintenance, safe handling and storage of firearms and marksmanship.

B. Each state which the department has afforded transfer, recognition or reciprocity shall be listed on the department's web page.

[10.8.2.29 NMAC - N, 11-30-05]

10.8.2.30 CURRENT LAW ENFORCEMENT OFFICERS:

A. Any current law enforcement officer residing in New Mexico shall be allowed to obtain a five year concealed handgun carry license by submitting:

(1) required in section 10.8.2.11 of these rules; and

(2) a letter from their agency head verifying that the applicant is employed in good standing and is qualified under 29-19-4 of the Act; and

(3) a copy of their law enforcement certification and number; and

(4) a copy of their latest firearms qualification score with category and caliber designated, signed and dated by the authorized firearms instructor conducting the course.

B. An application may be denied if:

(1) the head of the law enforcement agency employing the officer requests in writing that a license not be issued and supplies sufficient information to enable the department to determine if the denial should be granted; or

(2) if the applicant is pending criminal charges or serious administrative allegations involving their conduct as a law enforcement officer.

C. The agency and applicant will be notified in writing of the departments' decision. If denied, the applicant may follow the appeal process.

D. The applicants' agency will be notified of any disqualifying information that may become known during the background check.

E. A license issued under this section must be turned in when the officer is no longer employed by a law enforcement agency.

[10.8.2.30 NMAC - N, 11-30-05]

10.8.2.31 RETIRED LAW ENFORCEMENT OFFICERS: Any retired law enforcement officer shall be allowed to obtain a five year concealed handgun carry license under the following requirements:

A. by submitting all forms as required in section 10.8.2.11 of

these rules; and

B. is a resident of the state of New Mexico; and

C. has retired from a law enforcement agency after a minimum of 15 years employment, unless the retirement was due to a job related disability; if the 15 years is with more than one agency, the applicant must obtain a letter from each agency verifying such employment; and

D. submits a letter from the agency they retired from which indicates they retired in good standing with the effective date of retirement; and

E. submits a copy of their last firearms qualification score indicating category and caliber designation and is dated and signed by the departments firearms instructor; if the officer has been retired longer than ten years at the time of the application, the officer must take a firearms course as per the act; and

F. submits a copy of their law enforcement certification and number; and

G. qualifies and adheres to the provisions of the act and these rules.

[10.8.2.31 NMAC - N, 11-30-05]

NEW MEXICO RACING COMMISSION

Explanatory paragraph: This is an amendment to Subsection G of 15.2.7.12 NMAC, amending the calculation of payouts and distribution of the Pick (n) Pools and adjusting the numbering accordingly. Effective 11/30/2005.

15.2.7.12 CALCULATION OF PAYOUTS AND DISTRIBUTION OF POOLS:

G. PICK (n) POOLS:

(1) The pick (n) requires selection of the first-place finisher in each of a designated number of contests. The association must obtain written approval from the commission concerning the scheduling of pick (n) contests, the designation of one of the methods prescribed in Subsection G, Paragraph (2) of 15.2.7 NMAC, and the amount of any cap to be set on the carryover. Any changes to the approved pick (n) format require prior approval from the commission.

(2) The pick (n) pool shall be apportioned under one of the following methods:

(a) method 1, pick (n) with carryover: the net pick (n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick (n) contests, based upon the official order of finish; if there are no such wagers, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests; and the remainder shall be added to the carryover;

(b) method 2, pick (n) with minor pool and carryover: the major share of the net pick (n) pool and the carryover, if any, shall be distributed to those who selected the first-place finisher in each of the pick (n) contests, based upon the official order of finish; the minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of pick (n) contests, based upon the official order of finish; if there are no wagers selecting the first-place finisher of all pick (n) contests, the minor share of the net pick (n) pool shall be distributed as a single price pool to those who selected the first place finisher in the greatest number of pick (n) contests; and the major share shall be added to the carryover;

(c) method 3, pick (n) with no minor pool and no carryover: the net pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests, based upon the official order of finish; if there are no winning wagers, the

pool is refunded;

(d) method 4, pick (n) with minor pool and no carryover: the major share of the net pick (n) pool shall be distributed to those who selected the first place finisher in the greatest number of pick (n) contests, based upon the official order of finish; the minor share of the net pick (n) pool shall be distributed to those who selected the first place finisher in the second greatest number of pick (n) contests, based upon the official order of finish; if there are no wagers selecting the first-place finisher in a second greatest number of pick (n) contests, the minor share of the net pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests; if the greatest number of first-place finishers selected is one (1), the major and minor shares are combined for distribution as a single price pool; if there are no winning wagers, the pool is refunded;

(e) method 5, pick (n) with minor pool and no carryover: the major share of net pick (n) pool shall be distributed to those who selected the first-place finisher in each of the pick (n) contests, based upon the official order of finish; the minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of pick (n) contests, based upon the official order of finish; if there are no wagers selecting the first-place finisher in all pick (n) contests, the entire net pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests; if there are no wagers selecting the first-place finisher in a second greatest number of pick (n) contests, the minor share of the net pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in each of the pick (n) contests; if there are no winning wagers, the pool is refunded.

(3) If there is a dead heat for first in any of the pick (n) contests involving:

(a) contestants representing the same betting interest, the pick (n) pool shall be distributed as if no dead heat occurred;

(b) contestants representing two or more betting interests, the pick (n) pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

~~(4) Where late scratches occur before the first leg is declared official, refund all monies for the combinations that include the scratched horse(s).~~

~~(5) Where late scratches occur after the running of the first leg, provide consolation payoffs to the bettors that have combined the scratched horse(s) with the winners in the other legs, similar to tradi-~~

~~tional procedures applied to late scratches in daily doubles.]~~

(4) Should a betting interest in any of the pick (n) contest be scratched, the actual favorite, as evidenced by total amounts wagered in the win pool at the close of wagering on that contest, shall be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number. The totalisator shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combinations.

~~(6)~~ (5) The pick (n) pool shall be cancelled and all pick (n) wagers for the individual performance shall be refunded if:

(a) at least two contests included as part of a pick 3 are cancelled or declared "no contest";

(b) at least three contests included as part of a pick 4, pick 5 or pick 6 are cancelled or declared "no contest";

(c) at least four contests included as part of a pick 7, pick 8 or pick 9 are cancelled or declared "no contest";

(d) at least five contests included as part of a pick 10 are cancelled or declared "no contest".

(7) (6) If at least one contest included as part of a pick (n) is cancelled or declared "no contest", but not more than the number specified in Subsection G Paragraph (5) of 15.2.7 NMAC, the net pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) contests for that performance. Such distribution shall include the portion ordinarily retained for the pick (n) carryover but not the carryover from previous performances.

~~(8)~~ (7) The pick (n) carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the pick (n) carryover equals or exceeds the designated cap, the pick (n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the pick (n) carryover is frozen, 100 percent of the net pool, part of which ordinarily would be added to the pick (n) carryover, shall be distributed to those whose selection finished first in the greatest number of pick (n) contests for that performance.

(9) (8) A written request for permission to distribute the pick (n) carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the

distribution.

~~(40)~~ (9) Should the pick (n) carryover be designated for distribution on a specified date and performance in which there are no wagers selecting the first-place finisher in each of the pick (n) contests, the entire pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) contests. The pick (n) carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(a) upon written approval from the commission as provided in Subsection G Paragraph (8) of 15.2.7 NMAC of this section;

(b) upon written approval from the commission when there is a change in the carryover cap, a change from one type of pick (n) wagering to another, or when the pick (n) is discontinued;

(c) on the closing performance of the meet or split meet.

~~(44)~~ (10) If, for any reason, the pick (n) carryover must be held over to the corresponding pick (n) pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The pick (n) carryover plus accrued interest shall then be added to the net pick (n) pool of the following meet on a date and performance so designated by the commission.

~~(42)~~ (11) With the written approval of the commission, the association may contribute to the pick (n) carryover a sum of money up to the amount of any designated cap.

~~(43)~~ (12) Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is strictly prohibited. This shall not prohibit necessary communication between totalisator and parimutuel department employees for processing of pool data.

~~(44)~~ (13) The association may suspend previously approved pick (n) wagering with the prior approval of the commission. Any carryover shall be held until the suspended pick (n) wagering is reinstated. An association may request approval of a pick (n) wager or separate wagering pool for specific performances.

NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.10 NMAC. The New Mexico Real Estate Appraisers Board in agreement with and by approval of the governor hereby promulgates the following emergency provisions to assist those individuals who are licensed as real estate appraisers in another state of the United States of America who have been affected by a federal disaster the Board has decided to place these provisions in 16.62.10 NMAC in new Sections 9 and 10, effective 11/10/05.

16.62.10.9 PROVISIONS FOR EMERGENCY LICENSURE:

A. Licensed real estate appraisers currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster with the same level of licensure they currently hold at no cost upon satisfying the following requirements:

(1) receipt by the board of a completed application which has been signed and notarized and which is accompanied by proof of identity, which may include a copy of a drivers license, passport or other photo identification issued by a governmental entity;

(2) refer to 16.62.2.8 NMAC, apprentice; 16.62.3.8 NMAC, licensed; 16.62.4.8 NMAC, residential; and 16.62.5.8 NMAC, general;

(3) other required verification will be to contact the applicants prior licensing board by email, mail or telephone.

B. The board may waive the following requirements for licensure:

(1) application fees;

(2) taking and passing the NM state exam; the applicant will be required to take and pass the NM state exam within 60 days from the date the emergency license is issued.

C. The board may waive the specific forms required under 16.62.2.8, 16.62.3.8, 16.62.4.8 and 16.62.5.8 NMAC if the applicant is unable to obtain documentation from the federal declared disaster areas.

D. Nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.62.2.8, 16.62.3.8, 16.62.4.8 and 16.62.5.8 NMAC.

E. Licenses issued under (the emergency provision) shall expire on April 30, 2006 following the date of issue,

unless the board or an agent of the board approves a renewal application. Application for renewal shall be made on or before April 30, 2006 following the date of issue to avoid late renewal fees. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving license renewal.

[16.62.10.9 NMAC - N/E, 11/10/05]

16.62.10.10 EMERGENCY LICENSE TERMINATION:

A. The emergency license shall terminate upon the following circumstances:

(1) the issuance of a permanent license under Sections 16.62.2.8, 16.62.3.8, 16.62.4.8 and 16.62.5.8 NMAC; or

(2) proof that the emergency license holder has engaged in fraud deceit, misrepresentation in procuring or attempting to procure a license under this section.

B. Termination of an emergency license shall not preclude application for permanent licensure.

[16.62.10.10 NMAC - N/E, 11/10/05]

NEW MEXICO REAL ESTATE COMMISSION

16.61.1 NMAC, General Provisions (filed 11-30-2001) repealed effective 1-1-2006.

16.61.3 NMAC, Broker's License: Examination and Licensing Application Requirements (filed 11-30-2001) repealed effective 1-1-2006.

16.61.4 NMAC, Salesperson's License: Examination and Licensing Application Requirements (filed 11-30-2001) repealed effective 1-1-2006.

16.61.15 NMAC, Continuing Education: Approval of Sponsors, Courses, and Instructors (filed 11-30-01) repealed effective 1-1-2006.

16.61.30 NMAC, Branch Office/Temporary Office (filed 11-30-2001) repealed effective 1-1-2006.

NEW MEXICO REAL ESTATE COMMISSION

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 1 GENERAL PROVISIONS**

16.61.1.1 ISSUING AGENCY:

New Mexico Real Estate Commission.

[16.61.1.1 NMAC - Rp, 16.61.1.1 NMAC, 1-1-2006]

16.61.1.2 SCOPE: The provisions in Part 1 apply to all parts of Title 16, Chapter 61 and provide relevant information to brokers, applicants, other agencies, professional associations, and any member of the general public affected by or interested in Chapter 61 of Title 16.

[16.61.1.2 NMAC - Rp, 16.61.1.2 NMAC, 1-1-2006]

16.61.1.3 STATUTORY AUTHORITY: Part 1 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[16.61.1.3 NMAC - Rp, 16.61.1.3 NMAC, 1-1-2006]

16.61.1.4 DURATION: Permanent.

[16.61.1.4 NMAC - Rp, 16.61.1.4 NMAC, 1-1-2006]

16.61.1.5 EFFECTIVE DATE: 1-1-2006, unless a later date is cited at the end of a section.

[16.61.1.5 NMAC - Rp, 16.61.1.5 NMAC, 1-1-2006]

16.61.1.6 OBJECTIVE: The objective of Part 1 of Chapter 61 is to set forth the provision, which apply to all of Chapter 61, and to all persons and entities affected by Chapter 61 of Title 16, and to define the terms and terminology related to real estate qualifying brokers and associate brokers used throughout Chapter 61 of Title 16.

[16.61.1.6 NMAC - Rp, 16.61.1.6 NMAC, 1-1-2006]

16.61.1.7 DEFINITIONS:

A. Agency: the fiduciary relationship created solely by the express written agency agreement between a person and a brokerage, authorizing the brokerage to act as agent for the person according to the scope of authority granted in that express written agreement for real estate services subject to the jurisdiction of the commission.

B. Agent: the brokerage authorized to act as a fiduciary for a person and to provide real estate services solely by means of an express written agreement.

C. Approved education course: a continuing education course approved by the real estate commission dealing with selling, leasing, or managing residential, commercial and industrial property, as well as courses in basic real estate law and practice.

D. Approved training

course: all other continuing education courses approved by the commission with the exception of approved education courses and the mandatory course.

E. Associate broker: a person holding an associate broker's license who is affiliated with a qualifying broker.

F. Broker: any person holding a valid New Mexico associate broker's or qualifying broker's real estate license.

G. Brokerage: a licensed qualifying broker, the licensed real estate business represented by the qualifying broker and its affiliated associate brokers.

H. Brokerage relationship: the legal or contractual relationship between a person and a brokerage in a real estate transaction subject to the jurisdiction of the commission.

I. Broker duties: those duties established by the commission that are owed by all brokers to all clients and customers.

J. Broker in charge: a New Mexico licensed real estate broker who is eligible to be a qualifying broker designated by the qualifying broker to be responsible for real estate related activity within the brokerage during the temporary absence of the qualifying broker.

K. Client: a person who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission.

L. Consumer: prospective sellers and buyers, lessors and lessees, landlords and tenants.

M. Credit hours(s): credits toward continuing education requirements as assigned by the real estate commission for each commission-approved course. May vary from actual classroom hours.

N. Criminal background check: a criminal background check of a first-time or renewal applicant for a New Mexico real estate broker's license on or after January 1, 2006 conducted by an entity or source approved by the commission.

O. Custodial account: an account in the owner's name of which the qualifying broker is a trustee. Established for the purpose of holding monies received by the qualifying broker on behalf of the owner, and may be interest bearing.

P. Customer: a person who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission.

Q. Designated broker: a qualifying broker or associate broker who is designated in writing by a qualifying broker to serve as exclusive agent or exclusive transaction broker for a seller, landlord, buyer or tenant in a real estate transaction.

R. Designated brokerage: the brokerage relationship established between the seller, landlord, buyer or tenant and a designated broker, including the duties, obligations and responsibilities of this relationship which shall not extend to the qualifying broker nor to any other associate broker employed or engaged by that qualifying broker.

S. Dual agency: an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in real estate transaction rather than as an exclusive agent for either party to the transaction.

T. Dual agent: the brokerage in a dual agency relationship working as a facilitator in a single transaction for both a buyer client and a seller client who have existing exclusive agency agreements with the brokerage.

U. Employee: for the purposes of Section 61-29-2 C (1) of the real estate license law, a person employed by an owner or lessor of real property, or a person employed by the brokerage acting on behalf of the owner or lessor of real property. In determining whether a person is an employee, as opposed to an independent contractor, the commission shall consider the following indicia:

(1) does the employer withhold income tax from the person's wages, salary, or commission;

(2) does the employer pay a portion of the person's FICA tax;

(3) is the person covered by workers' compensation insurance;

(4) does the employer make unemployment insurance contributions on behalf of the person;

(5) does the employer consider the person an employee.

V. Errors and omissions insurance: a type of professional liability insurance that provides insurance coverage to holders of active New Mexico real estate brokers licenses for errors and omissions made during the course of real estate transactions, subject to the coverages, limitations, and exclusions of the specific insurance policy or policies in place.

W. Exclusive agency: an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, and subagency agreements.

X. Express written agreement: a listing agreement, a written agency or brokerage relationship agreement, an exclusive transaction broker agreement or purchase or lease agreement, or any written agreement signed by all parties to a real

estate transaction.

Y. Facilitator: the role of a brokerage in either a dual agency relationship or a transaction brokerage relationship in which the exclusive relationships between a seller or landlord client or buyer or tenant client are modified so that the brokerage impartially facilitates the transaction.

Z. Foreign broker: a real estate brokerage licensed by a jurisdiction other than New Mexico engaged in real estate-related activities in New Mexico.

AA. Inactive broker: a New Mexico licensed qualifying broker or associate broker who has returned their license to the real estate commission because they are not currently affiliated with a real estate brokerage in New Mexico.

BB. In house transaction: a transaction that occurs under the supervision of one qualifying broker in the same brokerage.

CC. Licensee: any person holding a New Mexico real estate license.

DD. Land title trust account: a pooled interest-bearing account subject to the land title trust fund act.

EE. Mandatory course: the course the commission requires brokers, except for those brokers exempted from continuing education requirements pursuant to Section 61-29-4.1 of the real estate license law, to take during each license renewal cycle.

FF. Party to the transaction: a client or customer or any other person who utilizes real estate related services subject to jurisdiction of the commission, not including a person who acquires an interest as security for an obligation.

GG. Person: any natural person, corporation, business trust, estate, trust, partnership, association, joint venture, governmental entity or other legal entity.

HH. Principal: any person who authorizes or employs another to do certain acts on behalf of that person.

II. Property management: includes the showing, renting and leasing of real property, the collection and disbursement of funds on behalf of other persons, the supervision of employees as specified in the management agreement, the supervision of maintenance and repair work, handling of tenant relations, and/or preparation of financial reports. In the course of listing and marketing properties for sale, repairs and maintenance incident to the sale and authorized by the owner, shall not be considered property management.

JJ. Property management trust account: a trust account containing money of others derived from the management of leased or rental properties.

KK. Property manager: a

broker (with the exception of those mentioned in Section 61-29-2(C), NMSA 1978) who, for a fee, salary, commission or other valuable consideration, is engaged in managing property for others.

LL. Qualifying broker: a broker who has qualified an individual proprietorship, corporation, partnership or association to do business as a real estate brokerage in the state of New Mexico.

MM. Referral: the communication by one broker or brokerage to another broker or brokerage of the identity of a potential buyer/tenant or seller/lessor of real property available for sale, lease, rent or exchange.

NN. Responsible person: the qualifying broker or associate broker for whom an unlicensed assistant works. If an unlicensed assistant works for more than one broker, each broker for whom the unlicensed assistant works is a responsible person. Each responsible person will be subject to the provisions of Section 61-29-12A(7) NMSA 1978.

OO. Scope of authority: the range of authority granted by the principal to act on behalf of that principal.

PP. Short-term rental: with the exception of hotels and motels, the rental of real property for a period of less than thirty (30) days.

QQ. Special trust account: a trust account bearing interest payable to a named party to the transaction.

RR. Subagent: an agent of the agent, authorized to act for the agent in performing functions undertaken by the agent for his principal.

SS. Transaction: any brokerage relationship, sale, lease, rental, option or exchange subject to the jurisdiction of the commission.

TT. Transaction broker: any broker or brokerage that provides real estate services without entering into an agency relationship.

UU. Trust account: an account established by the qualifying broker for the purpose of holding money of others received by the qualifying broker in a transaction.

VV. Unlicensed assistant: a person who:

(1) does not hold a New Mexico real estate license;

(2) works under the supervision of a qualifying broker, associate broker or associate broker;

(3) performs only those routine clerical, secretarial, administrative or book-keeping activities defined in Part 21 of the real estate commission rules which do not require a New Mexico real estate license.

[16.61.1.7 NMAC - Rp, 16.61.1.7 NMAC, 1-1-2006]

16.61.1.8 OFFICES: The offices of the New Mexico real estate commission will be located in Albuquerque, New Mexico.

[16.61.1.8 NMAC - Rp, 16.61.1.8 NMAC, 1-1-2006]

16.61.1.9 TELEPHONIC MEETING ATTENDANCE:

Commission members may participate in a meeting of the commission by means of a conference telephone or similar communications equipment and participation by telephone may only occur when it is difficult or impossible for commission members to attend a meeting of the commission, i.e. when circumstances beyond the member's control would make attendance in person extremely burdensome.

[16.61.1.9 NMAC - Rp, 16.61.1.9 NMAC, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS

PART 3 REAL ESTATE BROKER'S LICENSE: EXAMINATION AND LICENSING APPLICATION REQUIREMENTS

16.61.3.1 ISSUING AGENCY: New Mexico Real Estate Commission.

[16.61.3.1 NMAC - Rp, 16.61.3.1 NMAC, 1-1-2006]

16.61.3.2 SCOPE: The provisions in Part 3 of Chapter 61 apply to all applicants for real estate broker licensure in New Mexico.

[16.61.3.2 NMAC - Rp, 16.61.3.2 NMAC, 1-1-2006]

16.61.3.3 STATUTORY AUTHORITY: Part 3 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[16.61.3.3 NMAC - Rp, 16.61.3.3 NMAC, 1-1-2006]

16.61.3.4 DURATION: Permanent.

[16.61.3.4 NMAC - Rp, 16.61.3.4 NMAC, 1-1-2006]

16.61.3.5 EFFECTIVE DATE: 1-1-2006, unless a later date is cited at the end of a section.

[16.61.3.5 NMAC - Rp, 16.61.3.5 NMAC, 1-1-2006]

16.61.3.6 OBJECTIVE: The

objective of Part 3 of Chapter 61 is to set forth the examination and application requirements for candidates desiring to obtain a New Mexico real estate broker's license.

[16.61.3.6 NMAC - Rp, 16.61.3.6 NMAC, 1-1-2006]

16.61.3.7 DEFINITIONS:

Refer to 16.61.1.7 NMAC.

[16.61.3.7 NMAC - Rp, 16.61.3.7 NMAC, 1-1-2006]

16.61.3.8 EXAMINATION AND LICENSING REQUIREMENTS:

Prior to being issued a license, each applicant for a real estate broker's license shall be a legal resident of the United States and have reached the age of majority in New Mexico or in the state in which the applicant resides.

A. License recognition: an applicant for a real estate broker's license who holds a real estate license in another jurisdiction that administers a real estate broker's examination may be issued a New Mexico real estate broker's license if the applicant establishes that he or she possesses credentials and qualifications that are substantively equivalent to the requirements in New Mexico for licensure. The applicant shall provide a written history from the jurisdiction's real estate regulatory agency documenting the applicant's license history and disciplinary action, if any. A real estate broker's license may be issued under this paragraph only if the jurisdiction from which the applicant holds a real estate license allows the issuance of a real estate broker's license to applicants from the state of New Mexico in substantially the same manner as set forth in this paragraph.

B. Broker's examinations: candidates for the real estate broker's examination must document completion of ninety (90) credit hours of commission approved real estate pre-licensing courses consisting of one thirty (30) credit hour course each in real estate principles and practices, real estate law, and broker basics prior to taking the examination. Individuals wishing to take the real estate broker's examination must pre-register for the examination with the commission or its examination contractor. An applicant failing to apply for a license within six (6) months following notice of having passed the examination shall be required to re-examine unless the applicant provides the commission with a written affidavit setting out good cause for failing to meet the deadline. The commission shall administer at least two (2) real estate broker's examinations annually at locations and on dates determined by the commission and its examination contractor. The examination is in two sections, state and national, with a required minimum

passing grade of 75 on each section. Both sections must be taken at the original sitting. If an examination candidate fails either portion of the examination, the candidate shall retake only the failed portion upon payment of the prescribed fee and completion of an examination application form. Candidates must pass both sections of the examination within ninety (90) days of the original sitting or the previous passing score will be invalidated. A candidate who fails to take the examination at the place, time, and date scheduled may reschedule the examination for a later date, but shall be required to file a new application and pay the prescribed fee in order to reschedule.

C. Pre-licensing education waivers: candidates seeking a waiver of the real estate pre-licensing education requirements described in paragraph B based on current licensure in another state or licensing jurisdiction shall furnish the commission with a written history from the jurisdiction's real estate regulatory agency which verifies that the candidate is a duly licensed real estate associate broker, or its equivalent, or qualifying broker, in good standing in the jurisdiction, and documentation of having successfully completed at least one thirty (30) credit hour course each in real estate principles and practices, real estate law, and broker basics, or their equivalent. All applicants attempting to qualify for a pre-licensing education waiver under this section shall be required to receive written approval for such a waiver from the commission education administrator before making application for the examination. A copy of such written approval must accompany the examination application.

D. Individuals holding a salesperson's license on January 1, 2006: any licensee holding a current New Mexico real estate salesperson's license on the January 1, 2006 effective date of the 2005 amendments to the real estate license law shall automatically qualify for an associate broker's license without any additional requirements.

E. Qualifying broker requirements:

(1) individuals who did not hold a New Mexico real estate broker's license on or before December 31, 2005 shall have been actively engaged in real estate business as an associate broker or salesperson for at least two of the last five years immediately prior to making application for a New Mexico qualifying broker's license, shall document completion of one hundred twenty (120) hours of commission approved pre-licensing courses, including one thirty (30) credit hour course each in real estate principles and practices, real estate law, broker basics, and a qualifying broker or brokerage office administration

course, and shall have passed the broker's examination;

(2) individuals who held a valid New Mexico real estate broker's license on or before December 31, 2005 shall have been actively engaged in the real estate business as an associate broker or salesperson for at least two of the last five years immediately prior to making application for a New Mexico qualifying broker's license, and shall document completion of a thirty (30) hour qualifying broker or brokerage office administration course designated by the commission;

(3) individuals who automatically became associate brokers on January 1, 2006 pursuant to 16.61.31.8 (D) shall have been actively engaged in the real estate business as an associate broker or salesperson for at least two of the last five years immediately prior to making application for a New Mexico qualifying broker's license, shall document completion of a thirty (30) hour qualifying broker or brokerage office administration course designated by the commission, and shall pass a real estate broker's examination approved by the commission.

[16.61.3.8 NMAC - Rp, 16.61.3.8 NMAC, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS**

PART 15 CONTINUING EDUCATION: APPROVAL OF SPONSORS, COURSES, AND INSTRUCTORS

16.61.15.1 ISSUING AGENCY:

New Mexico Real Estate Commission.

[16.61.15.1 NMAC - Rp, 16.61.15.1 NMAC, 1-1-2006]

16.61.15.2 SCOPE: The provisions in Part 15 of Chapter 61 apply to all sponsors and instructors wishing to obtain accreditation to offer and teach real estate continuing education and pre-licensing courses to New Mexico real estate brokers.

[16.61.15.2 NMAC - Rp, 16.61.15.2 NMAC, 1-1-2006]

16.61.15.3 STATUTORY AUTHORITY: Part 15 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[16.61.15.3 NMAC - Rp, 16.61.15.3 NMAC, 1-1-2006]

16.61.15.4 DURATION: Permanent.

[16.61.15.4 NMAC - Rp, 16.61.15.4 NMAC, 1-1-2006]

16.61.15.5 EFFECTIVE DATE: 1-1-2006, unless a later date is cited at the end of a section.

[16.61.15.5 NMAC - Rp, 16.61.15.5 NMAC, 1-1-2006]

16.61.15.6 OBJECTIVE: The objective of Part 15 of Chapter 61 is to set forth the procedures and requirements for the accreditation of real estate continuing education and pre-licensing sponsors, courses, and instructors.

[16.61.15.6 NMAC - Rp, 16.61.15.6 NMAC, 1-1-2006]

16.61.15.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.

[16.61.15.7 NMAC - Rp, 16.61.15.7 NMAC, 1-1-2006]

16.61.15.8 EDUCATION STEERING COMMITTEE: The commission shall appoint an education steering committee. The committee shall meet monthly or as required for the purpose of certification reviews of real estate sponsors, courses, and instructors and shall make recommendations to the commission as to findings. Applications for sponsor, instructor, and course approvals shall be accompanied by the fee(s), if assessed by the commission, specified in 16.61.2.8 NMAC of the commission rules.

[16.61.15.8 NMAC - Rp, 16.61.15.8 NMAC, 1-1-2006]

16.61.15.9 APPROVAL OF SPONSORS:

A. All sponsors wishing to offer commission approved courses for credit must be approved by the commission prior to accepting students.

B. Educational institutions, proprietary schools, professional organizations or businesses wishing to become commission approved sponsors must submit an application for commission approval.

C. The commission will maintain a list of approved sponsors.

D. An approved sponsor shall comply with the following requirements:

(1) conduct all courses in accordance with commission rules and education policies;

(2) permit the commission or its representative access to classes being conducted, and make available to the commission, upon request, all information pertaining to the activities of the sponsor;

(3) advertise at all times in a manner free from misrepresentation, deception

or fraud;

(4) prominently display the current certificate of sponsorship in the main office of the sponsor as registered with the commission;

(5) in the event a sponsor ceases operations while students are enrolled who have not completed their program of study, submit within thirty (30) days a list of students enrolled at the time of closure, the amount of tuition paid, the status of course work in progress, and all other student records;

(6) maintain current, complete, and accurate student records and instructor critiques or summaries, which shall be accessible at all times to the commission or its authorized representatives. These records shall include, but not be limited to, a record of payments made, a record of attendance, and a record of course work completed;

(7) conduct all courses in accordance with course content requirements approved by the commission;

(8) certify no candidate as successfully completing a pre-licensing real estate course unless the student has attended at least 75% of the classroom instruction and has passed a written examination at the conclusion of the course;

(9) certify no broker as successfully completing the mandatory course unless the broker has attended at least 90% of the classroom instruction and, on or before January 1, 2007, passed a written examination at the conclusion of the course;

(10) certify no broker as successfully completing an approved continuing education course unless the broker has attended at least 90% of the classroom instruction;

(11) advise the commission of change of address and telephone number;

(12) reapply for sponsorship in the event of change of majority ownership;

(13) notify the commission in writing of change of directorship;

(14) renew sponsorship approval every three (3) years.

E. Failure to comply with this rule may result in the loss of sponsor approval.

[16.61.15.9 NMAC - Rp, 16.61.15.9 NMAC, 1-1-2006]

16.61.15.10 APPROVAL OF COURSES:

A. All pre-licensing and continuing education courses must be approved by the commission.

B. All courses shall be offered in accordance with established commission course content requirements.

C. All approved courses are subject to periodic review by the com-

mission.

[16.61.15.10 NMAC - Rp, 16.61.15.10 NMAC, 1-1-2006]

16.61.15.11 APPROVAL OF INSTRUCTORS:

A. All instructors shall complete a commission approved instructor training course within one year of being approved as an instructor and every three years thereafter. Instructors who fail to submit documentation of completion of the instructor training course will be de-certified.

B. All instructor candidates must complete an application for commission review.

C. Instructor candidates seeking approval to teach the commission prescribed courses for associate brokers in their first licensing cycle shall be prepared to appear before the commission to make a presentation and answer questions about the course(s) they are seeking approval to teach. The commission shall grant or deny instructor approval based on this presentation. Instructor candidates seeking approval to teach courses for associate brokers in their first licensing cycle shall have previous teaching experience and be able to provide student or sponsor evaluations indicating a superior level of teaching skills.

D. Instructor candidates seeking approval to teach real estate law, real estate principles and practices, and broker basics, must have passed the New Mexico brokers examination within six (6) months of having made application to the commission. Candidates must pass the broker's examination with a minimum score of eighty-four (84) on each section of the exam.

E. Instructor candidates must be prepared to make a minimum fifteen (15) minute presentation to the education steering committee. Candidates seeking approval to instruct the mandatory course must be prepared to make a presentation to the committee of up to one (1) hour.

F. An approved instructor shall comply with the following requirements:

(1) complete a commission approved instructor training program within one year of being approved as an instructor and every three years thereafter;

(2) conduct all classes in accordance with commission rules and education policies;

(3) ensure that all instruction is free from misrepresentation;

(4) instruct in accordance with commission approved course content requirements;

(5) allow access to any class to any duly appointed representative of the

commission;

(6) renew approval annually as prescribed by the commission; instructor approval expires on December 31 of each year;

(7) certify to the sponsor a true and correct record of student attendance.

G. Approval of mandatory course instructors. An individual seeking commission approval as a mandatory course instructor on or after January 1, 2006, must be a current approved instructor in real estate law and real estate principles and practices, must have passed both sections of the New Mexico broker's examination with a minimum score of eighty-four (84) within six (6) months of making application to be an approved instructor, and must attend a periodic mandatory course update offered by the commission or its mandatory course contractor.

H. Failure to comply with this part may result in the loss of instructor approval.

[16.61.15.11 NMAC - Rp, 16.61.15.11 NMAC, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.2 NMAC, Sections 2, 8 and 9, effective 1-1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers.

16.61.2.2 SCOPE: The provisions in Part 2 of Chapter 61 apply to all licensed ~~[salespersons and]~~ brokers; applicants for ~~[salesperson and]~~ broker licensure in New Mexico; anyone wishing to purchase ~~[licensee]~~ broker mailing lists, mailing labels, or license law and rules [and regulation] booklets; [or] anyone who requests a written verification of licensure to be completed by the commission; or anyone seeking commission approval as a sponsor or instructor to offer courses for real estate pre-licensing or continuing education credit.

[16.61.2.2 NMAC - Rp, 16 NMAC 61.2.2, 1-1-2002; A, 1-1-2006]

16.61.2.8 FEES:

A. For each examination, a fee not to exceed ninety-five dollars (\$95.00).

B. For each broker's license issued, and for each renewal thereof, a fee not to exceed two hundred seventy dollars (\$270.00).

~~[C. For each salesperson's license issued, and for each renewal thereof, a fee not to exceed two hundred seventy dollars (\$270.00).]~~

~~[D] C.~~ For each license trans-

ferred, a fee not to exceed twenty dollars (\$20.00). If there are eleven or more affected licenses in the brokerage, the total transfer fee paid shall not exceed two hundred dollars (\$200.00).

~~[E] D.~~ For each duplicate license, where the license is lost or destroyed and affidavit is made thereof, a fee not to exceed twenty dollars (\$20.00).

~~[F] E.~~ For each license history, a fee not to exceed twenty-five dollars (\$25.00).

~~[G] F.~~ For copying of documents by the commission a fee not to exceed one dollar (\$1.00) per copy.

~~[H] G.~~ For each state of New Mexico real estate license law and rules ~~[and regulations]~~ manual a fee not to exceed ten dollars (\$10.00).

~~[I] H.~~ For each hard copy or electronic list of licensed real estate brokers ~~[and salespersons]~~, a fee not to exceed twenty dollars (\$20.00).

~~[J] I.~~ For each initial ~~[salesperson's and]~~ broker's license, and for the renewal thereof, a fee not to exceed ten dollars (\$10.00) shall be credited to the real estate recovery fund pursuant to NMSA 1978 Section 61-29-22 if in the commission's judgment the assessment of such fee is necessary to maintain the fund at its statutory minimum level.

~~[K] J.~~ For each application to the commission to become an approved sponsor of real estate pre-licensing and continuing education courses, a fee not to exceed five hundred dollars (\$500.00) and for each renewal thereof a fee not to exceed five hundred dollars (\$500.00).

~~[L] K.~~ For each application to the commission to become an approved instructor of real estate pre-licensing and continuing education courses, a fee not to exceed seventy dollars (\$70.00) per course.

~~[M] L.~~ For each application to the commission to renew certification as a commission approved instructor of real estate pre-licensing and continuing education courses, a fee not to exceed one hundred dollars (\$100.00).

[16.61.2.8 NMAC - Rp, 16 NMAC 61.2.8, 1-1-2002; A, 01-01-2004; A, 1-1-2006]

16.61.2.9 FEES NON-REFUNDABLE: Fees paid to the commission pursuant to 16.61.2.8 NMAC of the commission rules ~~[and regulations]~~ are non-refundable.

[16.61.2.9 NMAC - Rp, 16 NMAC 61.2.9, 1-1-2002; A, 01-01-2004; A, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.5 NMAC, Sections 2, 6, 8, 9, 10, 11, 12 and 13, effective 1-1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS~~[AND SALESPERSONS]~~ PART 5 ERRORS AND OMISSIONS INSURANCE

16.61.5.2 SCOPE: The provisions in Part 5 of Chapter 61 apply to all applicants for and holders of active New Mexico real estate ~~[Salespersons and]~~ broker's licenses.

[16.61.5.2 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.5.6 OBJECTIVE: The objective of Part 5 of Chapter 61 is to set forth the errors and omissions insurance coverage requirements for all applicants for and holders of active New Mexico real estate ~~[Salespersons and]~~ broker's licenses. [16.61.5.6 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.5.8 GROUP ERRORS AND OMISSIONS INSURANCE POLICY:

Effective January 1, 2002 every active New Mexico real estate ~~[Salesperson and]~~ broker shall have in effect a policy of errors and omissions insurance. The commission shall enter into a contract with a qualified insurance carrier or its agent or broker to make available to all ~~[Salespersons and Salesperson applicants and to all]~~ New Mexico real estate brokers and broker applicants a group policy of insurance under the following terms and conditions:

A. the insurance carrier is licensed and authorized by the New Mexico department of insurance to write policies of errors and omissions insurance in New Mexico;

B. the insurance carrier maintains an A.M. Best rating of "B" or better;

C. the insurance carrier will collect premiums, maintain records and report names of those insured and a record of claims to the commission on a timely basis and at no expense to the state;

D. the insurance carrier has been selected through a competitive bidding process;

E. the contract and policy are in conformance with Part 5 and all relevant New Mexico statutory requirements.

[16.61.5.8 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.5.9 TERMS OF COVERAGE: The group policy shall provide, at a minimum, the following terms of coverage:

A. coverage of all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage;

B. an annual premium not to exceed ~~[\$150]~~ \$200;

C. that the coverage cannot be cancelled by the insurance carrier except for non-payment of the premium or in the event a ~~[Licensee]~~ broker becomes inactive or has their license revoked or an applicant is denied a license;

D. pro-ration of premiums for coverage which is purchased during the course of the calendar year but with no provision for refunds of unused premiums;

E. not less than \$100,000 coverage for each licensed individual and entity per covered claim regardless of the number of ~~[Licensees]~~ brokers or entities to which a settlement or claim may apply;

F. an aggregate limit of \$500,000 per licensed individual or entity;

G. a deductible amount for each occurrence of not more than \$1,000 per claim and no deductible for legal expenses and defense;

H. the obligation of the insurance carrier to defend all covered claims;

I. coverage of a ~~[Licensee's]~~ broker's use of lock boxes;

J. the ability of a ~~[Licensee]~~ broker, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverage from the insurance provider as may be determined by the provider;

K. that coverage is individual and license specific and will cover the ~~[Licensee]~~ associate broker regardless of changes in qualifying broker;

L. an extended reporting period of not less than 365 days;

M. a conformity endorsement allowing a New Mexico resident ~~[Licensee]~~ broker to meet errors and omissions insurance requirements for an active license in another group mandated state without the need to purchase separate coverage in that state.

[16.61.5.9 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.5.10 EQUIVALENT ERRORS AND OMISSIONS INSURANCE POLICIES: ~~[Salespersons or Salesperson applicants and broker or broker]~~ New Mexico real estate associate broker or qualifying broker applicants may

obtain errors and omissions coverage equivalent to the group plan from any insurance carrier subject to the following terms and conditions.

A. The insurance carrier is licensed and authorized by the New Mexico department of insurance to write policies of errors and omissions insurance in this state and is in conformance with all New Mexico statutes.

B. The insurance provider maintains an A.M. Best rating of "B" or better.

C. The policy, at a minimum, complies with all relevant conditions set forth in this rule and the insurance carrier so certifies in a certificate issued to the insured ~~[Salesperson or Salesperson applicant or]~~ real estate broker or broker applicant in a form acceptable to the commission and agrees to immediately notify the commission of any cancellation or lapse in coverage. The commission will make no independent determination of whether equivalent policies meet the requirements of Part 5.

D. Coverage includes all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.

E. Coverage cannot be cancelled by the insurance provider except for nonpayment of premium or in the event a ~~[Licensee]~~ broker becomes inactive or ~~[has their]~~ the license is revoked, or in the event an applicant is denied a license.

F. Coverage is for not less than \$100,000 for each licensed individual and entity per covered claim and not less than a \$500,000 aggregate limit per licensed individual or entity.

G. A deductible amount for each occurrence of not more than \$1,000.

H. Payment of claims by the provider shall be on a first dollar basis and the provider shall look to the insured for payment of any deductible.

I. An extended reporting period of not less than 365 days.

J. Coverage of a ~~[Licensee's]~~ broker's use of lock boxes.

K. ~~[Salespersons or Salesperson applicants or]~~ Real estate brokers or broker applicants who obtain equivalent coverage and wish to be on active status must present to the commission the certificate referred to in 16.61.5.10 NMAC:

(1) when renewing an active license, no later than at the time of renewal; or

(2) upon any request for reinstatement or activation of a license; or

(3) upon application for an active license.

[16.61.5.10 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.5.11 [LICENSEE] BROKER COMPLIANCE: Applicants for licensure, transfer, and renewal shall certify compliance with this rule ~~[in a manner prescribed by the Commission]~~ by submitting along with the license, transfer, or renewal application a copy of a certificate from their insurance company certifying current coverage. The commission will not issue an active license to a first time applicant who fails to provide proof of current coverage, and ~~[F]~~ the license of any active ~~[Salesperson or]~~ New Mexico broker who ~~[so certifies and]~~ fails to provide a certificate certifying current ~~[obtain]~~ errors and omissions coverage ~~[or to provide proof of continuous coverage, either through the group carrier or directly to the Commission, shall be placed on inactive status;]~~ will not be renewed or transferred until such certificate is received in the commission office.

~~[A. Immediately, if certification of current insurance coverage is not provided to the Commission; or~~

~~B. Immediately upon the expiration of any current insurance when certification of continuous coverage is not provided.]~~

[16.61.5.11 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.5.12 INSURANCE REQUIREMENTS SUSPENDED: The requirements of 16.61.5 NMAC shall be suspended if the commission through a competitive bidding and contract award process is not able to enter into a contract with a qualified insurance carrier to make available to all applicants for or holders of active New Mexico real estate ~~[Salespersons or]~~ broker's licenses a group policy of insurance under the terms and conditions described in Part 5.

[16.61.5.12 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.5.13 PENALTIES FOR VIOLATION: Brokers who fail to obtain and maintain an errors and omissions insurance policy as specified herein are guilty of violating NMSA 1978 Section 61-29-4.2 of the Real Estate License Law and are subject to license suspension and revocation as provided in Section 61-29-12 A (10).

[16.61.5.13 NMAC - N, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.6 NMAC, Sections 2, 6, and 8, effective 1-1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers. In addition, the Part name to 16.61.6 NMAC has been renamed.

PART 6 [CORPORATE, PARTNERSHIP, OR ASSOCIATION LICENSURE] QUALIFICATION OF A CORPORATION, PARTNERSHIP, OR ASSOCIATION AS A REAL ESTATE BROKERAGE

16.61.6.2 SCOPE: The provisions in Part 6 of Chapter 61 apply to all ~~[applicants for corporate, partnership or association licensure]~~ persons wishing to qualify a corporation, partnership, or association as a real estate brokerage. [8-15-97; 16.61.6.2 NMAC - Rn, 16 NMAC 61.6.2, 1-1-2002; A, 1-1-2006]

16.61.6.6 OBJECTIVE: The objective of Part 6 of Chapter 61 is to set forth policies for ~~[a corporate, partnership or association licensure]~~ qualifying a corporation, partnership, or association as a real estate brokerage. [8-15-97; 16.61.6.6 NMAC - Rn, 16 NMAC 61.6.6, 1-1-2002; A, 1-1-2006]

16.61.6.8 REQUIREMENTS: Upon compliance with all requirements ~~[of this act by a partnership, association or corporation, as well as by the qualifying broker or brokers,]~~ set out in the real estate license law and the real estate commission rules for licensure as a New Mexico qualifying broker, the commission shall issue a New Mexico qualifying broker's license to the ~~[qualifying]~~ broker ~~[or brokers]~~ applicant(s). Such license shall bear the name of the qualifying broker or brokers who ~~[has]~~ have qualified the corporation, partnership, or association as a real estate brokerage and the trade name ~~[of the partnership, association or corporation as it is registered with the commission]~~ under which the corporation, partnership, or association will conduct real estate brokerage activity. Thereupon, the qualifying broker shall ~~[, without payment of any other fee,]~~ be entitled to perform all the acts of a real estate ~~[licensee]~~ broker under the trade name of the real estate brokerage as registered with the commission. The license shall entitle the qualifying broker to act as an officer or agent of the ~~[partnership, association or corporation and not on their own behalf,]~~ corporation, partnership, or association. If the ~~[qualifying]~~ broker applicant(s)

is refused a qualifying broker's license by the commission (or the person ceases to be connected with the ~~[partnership, association or corporation]~~ corporation, partnership or association), the ~~[partnership, association or corporation]~~ corporation, partnership, or association shall have the right to designate another ~~[qualifying]~~ broker who shall make application for a qualifying broker's license ~~[and]~~ to qualify the corporation, partnership or association as a real estate brokerage as in the first instance. Prior to acting as a real estate broker ~~[or salesperson]~~, any member or officer of the ~~[partnership, corporation or association]~~ corporation, partnership, or association, shall first obtain a real estate license as provided by law. [8-15-97, A, 1-1-2000; 16.61.6.8 NMAC - Rn & A, 16 NMAC 61.6.8, 1-1-2002; A, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.8 NMAC, Sections 2, 6 and 8, effective 1-1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS[AND SALESPERSONS] PART 8 LICENSE TRANSFER

16.61.8.2 SCOPE: The provisions in Part 8 of Chapter 61 apply to all licensed ~~[salespersons and]~~ New Mexico real estate brokers. [8-15-97; 16.61.8.2 NMAC - Rn, 16 NMAC 61.8.2, 1-1-2002; A, 1-1-2006]

16.61.8.6 OBJECTIVE: The objective of Part 8 of Chapter 61 is to set forth the requirements and procedures for the transfer of a ~~[salesperson or]~~ broker's license whenever a ~~[licensee]~~ broker is no longer transacting business at the office designated on that ~~[licensee's]~~ broker's license. [8-15-97; 16.61.8.6 NMAC - Rn, 16 NMAC 61.8.6, 1-1-2002; A, 1-1-2006]

16.61.8.8 REQUIREMENTS: A real estate license may be transferred to a new address and be placed under a new qualifying broker at the request of the ~~[licensee]~~ associate broker, ~~[and]~~ upon payment of a transfer fee, ~~[and]~~ completion of a transfer form, and return to the commission office of the current license. When ~~[a licensee]~~ an associate broker requests that their license be transferred the qualifying broker or the broker in charge shall within forty-eight (48) hours return the license to the commission. All real estate activity on the

part of the ~~[licensee]~~ associate broker shall cease until ~~[notification by the commission that]~~ the transfer has been completed. If a license transfer form is not accompanied by a certificate certifying that the associate broker or qualifying broker has current errors and omissions insurance coverage, the license will not be transferred until the certificate is received in the commission office.

A. A ~~[licensee moving to another state]~~ broker changing address must notify the commission of ~~[their]~~ his or her new address within ten (10) days of address change ~~[and comply with Section 61-29-14 B-NMSA 1978].~~

B. When a qualifying broker returns ~~[their]~~ his or her own license to the commission for transfer they shall within forty-eight (48) hours either mail or deliver to the commission all licenses issued under that license. If the brokerage is to continue operation, an application ~~[for]~~ from a new qualifying broker, along with transfer ~~[applications]~~ forms and appropriate fees for each license, shall also be included.

C. RESERVED [8-15-97; 1-1-2000; 16.61.8.8 NMAC - Rn, 16 NMAC 61.8.8, 1-1-2002; A, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.11 NMAC, Sections 2, 6 and 8, effective 1-1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers

16.61.11.2 SCOPE: The provisions in Part 11 of Chapter 61 apply to all currently licensed New Mexico ~~[salespersons and]~~ real estate brokers. [8-15-97; 16.61.11.2 NMAC - Rn, 16 NMAC 61.11.2, 1-1-2002; A, 1-1-2006]

16.61.11.6 OBJECTIVE: The objective of Part 11 of Chapter 61 is to set forth the requirements and procedures for the renewal of a ~~[salesperson or]~~ real estate broker's license. [8-15-97; 16.61.11.6 NMAC - Rn, 16 NMAC 61.11.6, 1-1-2002; A, 1-1-2006]

16.61.11.8 REQUIREMENTS: Every real estate license shall expire every three years on the last day of the month following the ~~[licensee's]~~ broker's birth month, and shall be renewed on or before that date. Renewal of a license is the sole responsibility of the ~~[licensee]~~ broker. A ~~[licensee]~~ broker whose license has expired may reinstate ~~[their]~~ the license without reexamination up to one year after expiration by paying a reinstatement fee three

times the regular license renewal fee. In addition to paying a reinstatement fee, the ~~[licensee]~~ broker will be required as a condition of reinstatement to provide documentation of the completion of 30 hours of commission-approved continuing education courses. Application for renewal shall be on the renewal form prescribed by the commission. Renewal forms will be mailed to ~~[licensees]~~ brokers at the last mailing address on file at the commission. The commission assumes no responsibility for renewal applications not received by the ~~[licensee]~~ broker for any reason. It shall be the ~~[licensee's]~~ broker's responsibility to make a request for a renewal form in the event the form has not been received by the ~~[licensee]~~ broker thirty (30) days prior to the renewal deadline. The license(s) of any active broker ~~[or salesperson]~~ who fails to ~~[obtain]~~ submit with the license renewal application a certificate certifying current errors and omissions insurance coverage as provided by commission rule ~~[or to provide proof of continuous coverage, either through the group carrier or in the case of equivalent coverage directly to the commission,]~~ shall not be ~~[eligible to renew their license and the license will be placed on inactive status]~~ renewed until documentation of such insurance coverage is received in the commission office.

[8-15-97; R 1-1-2000; 16.61.11.8 NMAC - Rn & A, 16 NMAC 61.11.8, 1-1-2002; A, 01-01-2004; A, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.12 NMAC, Sections 2, 6, 8 and 9, effective 1-1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers

16.61.12.2 SCOPE: The provisions of Part 12 of Chapter 61 apply to ~~[licensees]~~ brokers whose licenses have been suspended or revoked by the commission.

[16.61.12.2 NMAC - Rp, 16 NMAC 61.12.2, 1-1-2002; A, 1-1-2006]

16.61.12.6 OBJECTIVE: The objective of Part 12 of Chapter 61 is to set forth the procedures for license suspension and revocation for violation of the real estate license law or the commission rules ~~[and regulations]~~.

[16.61.12.6 NMAC - Rp, 16 NMAC 61.12.6, 1-1-2002; A, 1-1-2006]

16.61.12.8 DISCIPLINARY ACTIONS: Violation of any provision of the real estate license law or commission rules ~~[and regulations]~~ may be cause for dis-

ciplinary action against any person who engages in the business or acts in the capacity of a real estate broker ~~[or real estate salesperson]~~ in New Mexico with or without a New Mexico real estate license, up to and including license suspension or revocation if the person is licensed in New Mexico, and other penalties as provided by law, commission rules, ~~[regulations,]~~ or policies, in the case of an unlicensed person. Such person has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the New Mexico real estate commission and is subject to all penalties and remedies available for a violation of any provision of Chapter 61, Article 29 NMSA 1978. Nothing herein contained shall be deemed to be a restriction on any other penalty or provision provided by law. [16.61.12.8 NMAC - Rp, 16 NMAC 61.12.8, 1-1-2002; A, 1-1-2006]

16.61.12.9 LICENSE SURRENDER: Upon delivery of a final order of suspension or revocation of a license(s), the qualifying broker or broker in charge shall surrender the license(s) of the associate broker(s) whose license has been suspended or revoked to the commission in person or by certified mail, and the ~~[Licensee]~~ associate broker whose license has been suspended or revoked shall cease all activities requiring a license.

[16.61.12.9 NMAC - Rp, 16 NMAC 61.12.9, 1-1-2002; A, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.13 NMAC, Sections 2, 6, 8 and 9. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers. In addition, the part name for 16.61.13 NMAC has also been renamed, all effective 1-1-2006.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS ~~[AND SALESPERSONS]~~ PART 13 CONTINUING EDUCATION ~~[+LICENSEE-]~~ REQUIREMENTS

16.61.13.2 SCOPE: The provisions in Part 13 of Chapter 61 apply to all licensees intending to renew or reactivate their New Mexico ~~[salesperson or]~~ broker license.

[1-1-2000; 16.61.13.2 NMAC - Rn, 16 NMAC 61.13.2, 1-1-2002; A, 1-1-2006]

16.61.13.6 OBJECTIVE: The objective of Part 13 of Chapter 61 is to set forth continuing education requirements for

~~[salesperson and]~~ New Mexico real estate brokers ~~[licensees]~~.

[1-1-2000; 16.61.13.6 NMAC - Rn, 16 NMAC 61.13.6, 1-1-2002; A, 1-1-2006]

16.61.13.8 REQUIREMENTS: The only exception to this part is that specified in Section 61-29-4.1, NMSA 1978.

A. All active and inactive ~~[licensees]~~ associate brokers and qualifying brokers shall successfully complete thirty (30) credit hours of continuing education in courses approved by the commission during each licensing cycle.

B. Associate brokers in their first licensing cycle who were licensed as associate brokers for the first time on or after January 1, 2006, as a result of having passed the broker's examination, shall successfully complete 30 hours of courses prescribed by the commission for new brokers, including the approved eight (8) hour real estate commission mandatory course. At least 10 hours must be completed by the end of year one (1), a total of 20 hours must be completed by the end of year two (2), and a total of 30 hours must be completed by the end of year three (3). Associate brokers in their first licensing cycle shall submit course sponsors' verification of successful completion of course work. Associate brokers in their first licensing cycle will be required to take courses as prescribed by the commission during their first year of licensure, pass examinations administered in those first-year classes, and pass an examination as prescribed by the commission as a condition of license renewal at the end of their third year of licensure.

~~[B]~~ C. All ~~[licensees]~~ associate brokers and qualifying brokers shall successfully complete the approved eight (8) credit hour real estate commission mandatory course during each licensing cycle. Of the remaining twenty-two (22) credit hours, ten (10) credit hours may be credited toward the continuing education requirement from approved training courses. At least twelve (12) credit hours must be taken from approved education courses; however, all twenty-two (22) credit hours may be taken from the list of commission-approved education courses.

D. Commission approved pre-licensing courses may count for up to ten (10) credit hours toward continuing education.

E. No commission approved continuing education course will be granted more than ten (10) credit hours of continuing education credit.

F. Continuing education credit hours cannot be carried forward to the next licensing cycle.

G. Licensees may receive four (4) approved education course credit hours during each licensing cycle for

attending commission meetings, rules hearings, and disciplinary hearings.

H. Approved instructors may apply up to ten (10) credit hours during each three-year licensing cycle toward fulfillment of their own continuing education requirements for teaching commission approved courses.

[1-1-2000; 16.61.13.8 NMAC - Rn & A, 16 NMAC 61.13.8, 1-1-2002; A, 1-1-2006]

16.61.13.9 VERIFICATION OF COMPLETION OF COURSE WORK:

~~[Licensees shall submit sponsors' verification of completion of continuing education course work on commission approved forms]~~ At the time of license renewal, associate brokers and qualifying brokers shall submit to the real estate commission on commission approved forms, sponsors' verification of completion of continuing education course work. The exception is for those associate brokers in their first licensing cycle, as defined in Subsection B of 16.61.31.8 NMAC, who shall submit verification of courses to the real estate commission at the three annual intervals prescribed by the commission.

[1-1-2000; 16.61.13.9 NMAC - Rn, 16 NMAC 61.13.9, 1-1-2002; A, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.16 NMAC, Sections 2, 8 and 9, effective 1-1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS ~~[AND SALESPERSONS]~~

PART 16 QUALIFYING BROKER: AFFILIATION AND RESPONSIBILITIES

16.61.16.2 SCOPE: The provisions in Part 16 of Chapter 61 apply to all New Mexico qualifying brokers ~~[licensees]~~.
[16.61.16.2 NMAC - Rp, 16 NMAC 61.16.2, 1-1-2002; A, 1-1-2006]

16.61.16.8 AFFILIATION: A New Mexico qualifying broker may by written agreement engage the services of ~~[another broker or salesperson]~~ an associate broker or brokers.

[16.61.16.8 NMAC - Rp, 16 NMAC 61.16.8, 1-1-2002; A, 1-1-2006]

16.61.16.9 RESPONSIBILITIES: The qualifying broker shall, in addition to all other requirements imposed by law, comply with the following:

A. conduct ~~[their] the~~ real estate brokerage business under the trade name and from the brokerage address or addresses registered with the commission;

B. prominently display ~~[their] the~~ qualifying broker's own license and the licenses of all other [licensees] affiliated [with that qualifying broker in the] associate brokers conducting real estate brokerage business from the brokerage office at the address as registered with the commission;

C. have in the ~~[place of business]~~ brokerage office and available to all [licensees] affiliated associate brokers and co-qualifying brokers a current copy of the state of the New Mexico real estate license law and rules ~~[and regulations]~~ manual;

D. supervise all real estate related activities conducted on behalf of others by associate brokers ~~[and salespersons]~~ affiliated with the brokerage and execute and maintain current written employment or independent contractor agreements with them; such agreements should specify the relationship and mutual responsibilities of the associate broker to the qualifying broker and the brokerage, and the scope of authority of the associate broker to act on behalf of the brokerage;

E. maintain full and complete records wherein the qualifying broker and affiliated associate broker(s) ~~[or salesperson(s)]~~ are engaged on behalf of others, or on their own behalf, in real estate related matters processed through the brokerage;

(1) such records shall include but are not limited to purchases, offers to purchase, counter offers, sales, lead-based paint disclosures and other disclosures required by law, seller's disclosure statements if provided by the seller, options, leases, rentals, letters of intent, brokerage relationship agreements and disclosures, and current, expired, and cancelled listings;

(2) the names of all principals or parties to the transaction;

(3) clear and correct dates of transactions;

(4) the names of persons to whom compensation was paid;

(5) the required records shall be available to the commission or any duly authorized commission representative [thereof] at the place of business of the qualifying broker or at the ~~[real estate]~~ commission office; all such records whether in paper or electronic format shall be retained for a period not less than three (3) years;

F. deposit all money received on behalf of others in the proper trust account as soon after receipt as practically possible after securing signatures of all parties to the transaction;

G. receive and disburse all commissions, referral fees, and/or other

considerations to all ~~[licensees associated]~~ associate brokers affiliated with the qualifying broker or any other entity entitled by law to receive same, including to partnerships, corporations, or limited liability companies (llc's) wholly owned by [salespersons or] associate brokers and their spouses, or authorize and direct the disbursement thereof, and maintain complete records thereof; such partnerships, corporations, or llc's are not required to have a qualifying broker for purposes of this sub-part;

H. not permit the use of ~~[their] the~~ qualifying broker's license to enable an affiliated [licensee] associate broker to establish and carry on transactions outside [the supervision of the qualifying broker] the knowledge and supervision of the qualifying broker;

I. in the event actual supervision by the qualifying broker is not possible for a time exceeding seven (7) consecutive days, including in circumstances in which supervision of affiliated associate brokers is not possible because the qualifying broker either resides in another state, or is consistently and regularly absent from the office designate a broker in charge and inform the commission in writing of the designation; during this period of time the broker in charge shall assume all of the responsibilities of the qualifying broker for the brokerage;

J. upon termination or discharge of an associate broker ~~[or salesperson, within forty eight (48) hours mail or deliver the]~~ return the associate broker's license to the commission within forty-eight (48) hours; although the license may be delivered to the commission by an associate broker ~~[or salesperson],~~ the responsibility for the delivery of the license to the commission remains that of the qualifying broker;

K. if employed as qualifying broker for others, have a written agreement of such employment;

L. ensure that each qualifying broker and associate broker affiliated with the brokerage obtain and maintain a current errors and omissions insurance policy as provided in NMSA 1978 Section 61-29-4.2 of the real estate license law and 16.61.5 NMAC of the commission rules;

M. successfully complete a commission-approved four (4) hour qualifying broker refresher course every three years;

[16.61.16.9 NMAC - Rp, 16 NMAC 61.16.9, 1-1-2002; A, 01-01-2004; A, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.17 NMAC, Sections 2, 6, 8 and 9, effective 1-

1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers and the Part name for Part 17 has been revised from Associate Broker/Salesperson: Affiliation and Responsibilities to Associate Broker: Affiliation and Responsibilities.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS [AND SALESPERSONS] PART 17 ASSOCIATE BROKER [—SALESPERSON]: AFFILIATION AND RESPONSIBILITIES

16.61.17.2 SCOPE: The provisions in Part 17 of Chapter 61 apply to all New Mexico associate brokers. [~~and salesperson licensees.~~]

[1-1-2000; 16.61.17.2 NMAC - Rn, 16 NMAC 61.17.2, 1-1-2002; A, 1-1-2006]

16.61.17.6 OBJECTIVE: The objective of Part 17 of Chapter 61 is to set forth the responsibilities, in addition to all other requirements imposed by law, of associate brokers [~~and salespersons~~].

[1-1-2000; 16.61.17.6 NMAC - Rn, 16 NMAC 61.17.6, 1-1-2002; A, 1-1-2006]

16.61.17.8 AFFILIATION: A qualifying broker may by written employment or independent contractor agreement engage the services of [~~another~~] associate brokers or [~~salesperson~~] co-qualifying brokers.

[1-1-2000; 16.61.17.8 NMAC - Rn, 16 NMAC 61.17.8, 1-1-2002; A, 1-1-2006]

16.61.17.9 RESPONSIBILITIES: The associate broker [~~salesperson~~], in addition to all other requirements imposed by law, shall:

A. not engage in any real estate activities for others for which a real estate license is required outside the knowledge and supervision of their qualifying broker or broker in charge;

B. not receive any commission or fees related to real estate activities for which a license is required from anyone other than their qualifying broker or broker in charge;

C. conduct all real estate related business for others in the trade name of the brokerage as registered with the commission;

D. remit all monies of others, including checks and promissory notes, related to transactions to the qualifying broker or broker in charge as soon after receipt as is practicably possible after securing signatures of all parties to the transaction;

E. maintain files on all transactions in the office of the brokerage.

[1-1-2000, A, 2-14-2000; 16.61.17.9 NMAC - Rn, 16 NMAC 61.17.9, 1-1-2002; A, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.19 NMAC, Sections 2, 6, 8 and 10, effective 1-1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers and the Part name for Part 19 has been revised from "Basic Licensee Duties, Disclosure, Brokerage Relationships and Dual Agency Relationships" to "Associate Broker and Qualifying Broker Duties, Disclosure, Brokerage Relationships and Dual Agency Relationships".

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS [AND SALESPERSONS] PART 19 [BASIC LICENSEE] ASSOCIATE BROKER AND QUALIFYING BROKER DUTIES, DISCLOSURE, BROKERAGE RELATIONSHIPS AND DUAL AGENCY RELATIONSHIPS

16.61.19.2 SCOPE: The provisions in Part 19 of Chapter 61 apply to all licensed [~~salespersons and brokers~~] associate brokers and qualifying brokers in New Mexico.

[16.61.19.2 NMAC - Rp 16.61.19.2 NMAC, 1-1-2004; A, 1-1-2006]

16.61.19.6 OBJECTIVE: The objective of Part 19 of Chapter 61 is to define the duties of real estate [~~licensees~~] associate brokers and qualifying brokers, to define the various potential brokerage relationships [~~available between consumers and licensees,~~] and to define the disclosures [~~licensees~~] associate brokers and qualifying brokers are required to make when working with consumers.

[16.61.19.6 NMAC - Rp 16.61.19.6 NMAC, 1-1-2004; A, 1-1-2006]

16.61.19.8 [BASIC LICENSEE] BROKER DUTIES; DISCLOSURE: Prior to the time [~~a licensee~~] an associate broker or qualifying broker generates or presents any written document that has the potential to become an express written agreement, the [~~licensee~~] associate broker or qualifying broker shall disclose in writing to a prospective, buyer, seller, landlord or tenant, the following list of [~~basic licensee~~] broker duties that are owed to all customers and clients by all [~~licensees~~] brokers:

A. honesty and reasonable care as set forth in the provisions of this section;

B. compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the real estate commission rules [~~and regulations~~], and other applicable local, state, and federal laws and regulations;

C. performance of any and all oral or written agreements made with the [~~licensee's~~] customer or client;

D. assistance to the [~~licensee's~~] customer or client in completing the transaction [~~unless otherwise agreed to in writing by the customer or client,~~] including:

(1) [~~presentation of all offers or counter offers in a timely manner~~] accepting delivery of and presenting to the client/customer all offers and counteroffers to buy, sell, or lease the client's/customer's property or the property the client seeks to purchase or lease in a timely manner unless the seller/lessor has already accepted an offer or counteroffer and has requested not to receive any further offers or counteroffers; and;

(2) [~~assistance in complying with the terms and conditions of the contract and with the closing of the transaction; if the licensee in the transaction is not providing the service, advice or assistance described in Paragraphs (1) and (2) of Subsection D of 16.61.19.8 NMAC, the customer or client must agree in writing that the licensee is not expected to provide such service, advice or assistance, and the licensee shall disclose such agreement in writing to the other licensees involved in the transaction~~] assistance to the client in developing, communicating, negotiating, and presenting offers, counteroffers and notices that relate to the offers and counteroffers until a lease or purchase agreement is signed and all contingencies are satisfied or waived;

E. acknowledgement by the [~~licensee~~] broker that there may be matters related to the transaction that are outside the [~~licensee's~~] associate broker's or qualifying broker's knowledge or expertise and that the [~~licensee~~] associate broker or qualifying broker will suggest that the customer or client seek expert advice on these matters;

F. prompt accounting for all monies or property received by the [~~licensee~~] broker;

G. prior to the time the [~~licensee~~] associate broker or qualifying broker generates or presents any written document that has the potential to become an express written agreement, written disclosure of:

(1) any written brokerage rela-

tionship the [licensee] broker has with any other parties to the transaction and/or;

(2) any material interest or relationship of a business, personal, or family nature that the [licensee] broker has in the transaction;

H. disclosure of any adverse material facts actually known by the [licensee] associate broker or qualifying broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts do not include data from a sex offender registry or the existence of group homes;

I. maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former client's consent or is required by law;

J. unless otherwise authorized in writing, [a licensee] an associate broker or qualifying broker shall not disclose to their customer or client during the transaction that their seller client or customer has previously indicated they will accept a sales price less than the asking or listed price of a property; that their buyer client or customer has previously indicated they will pay a price greater than the price submitted in a written offer; the motivation of their client or customer for selling or buying property; that their seller client or customer or their buyer client or customer will agree to financing terms other than those offered; or any other information requested in writing by the [licensee's] associate broker's or the qualifying broker's customer or client to remain confidential, unless disclosure is required by law.

[16.61.19.8 NMAC - Rp 16.61.19.8 NMAC, 1-1-2004; A, 1-30-2004; A, 3-27-2004; A, 1-1-2006]

16.61.19.10 DUAL AGENCY RELATIONSHIP:

A. Dual agency occurs when:

(1) [a licensee] an associate broker or qualifying broker is agent for both a seller client and a buyer client in the same transaction;

(2) [a licensee] an associate broker is agent for either a seller client or a buyer client, and the agent's qualifying broker is agent for the other client in the transaction; and,

(3) in a transaction where a buyer client and a seller client are each served by different [licensees] associate brokers in an agency relationship supervised by the same qualifying broker, and the qualifying broker does not choose the designated agency option, both the [licensees] associate brokers and the qualifying broker are dual agents in the transaction.

B. In all situations, a dual

agent shall act in the capacity of a facilitator rather than as an exclusive agent of either party to the transaction.

C. Prior to writing or presenting offers, a dual agent shall obtain written authority from the buyer client and the seller client in the form of a separate dual agency agreement.

D. Information obtained by [a licensee] an associate broker or qualifying broker prior to the time that written authority for dual agency was granted shall not be disclosed to the other party unless required by law or [regulations] rules or permitted by the client who originally disclosed the confidential information.

[16.61.19.10 NMAC - Rp 16.61.19.11 NMAC, 1-1-2004; A, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.21 NMAC, Sections 8, 9 and 10, effective 1-1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS [AND SALESPERSONS] PART 21 UNLICENSED ASSISTANTS

16.61.21.8 PERMITTED ACTIVITIES: An unlicensed assistant is permitted to engage in the following activities:

A. obtaining information pursuant to written instructions from the responsible person from public records, a multiple listing service, listing exchange or from third party sources including, but not limited to, surveyors, banks, appraisers and title companies;

B. hosting and/or distributing literature at an open house under the following conditions:

(1) an unlicensed assistant does not discuss, negotiate or solicit offers for the property or provide any information other than printed material prepared and approved by the responsible person; and

(2) the responsible person is present at the open house where the unlicensed assistant is located;

(3) all inquiries are referred to the responsible person or other [licensee] associate brokers or qualifying brokers;

C. disseminating and distributing information prepared and approved by the responsible person;

D. picking up and delivering paperwork to [licensees] associate brokers or qualifying brokers other than the

responsible person;

E. picking up and delivering paperwork to sellers or purchasers after a contract has been executed if the paperwork has already been reviewed and approved by the responsible person, without answering any questions or providing any opinions or advice to the recipient of the paperwork; all substantive questions must be referred to the responsible person;

F. writing advertisements, flyers, brochures, and other promotional materials for the approval of the responsible person, and placing classified advertisements approved by the responsible person;

G. placing or removing signs on real property as directed by the responsible person;

H. ordering repairs as directed by the responsible person;

I. receiving and depositing funds, maintaining books and records, while under the supervision of the responsible person;

J. typing or word processing documents, including purchase and listing agreements, prepared by the responsible person.

[Rn, 16.61.21.8.9, 1-1-2000, A, 1-1-2000; 16.61.21.8 NMAC - Rn, 16 NMAC 61.21.8, 1-1-2002; A, 1-1-2006]

16.61.21.9 PROHIBITED ACTIVITIES: An unlicensed assistant is not permitted to engage in the following activities in connection with the purchase, sale or exchange of real property:

A. preparing legal documents such as listing and sales contracts;

B. interpreting documents, offering opinions or advice;

C. disseminating and distributing information, unless the information is in writing and is prepared and approved by the responsible person;

D. obtaining personal or property information from a client or customer of the responsible person except when acting as a coordinator directed by the responsible person by gathering and following up on information and the status of matters pertaining to the transaction after a contract has been executed;

E. picking up from or delivering to customers or clients financial documents prepared by title companies, lenders or other third persons for the purpose of obtaining signatures;

F. attending a closing without the responsible person present;

G. representing himself or herself as being [a licensee] an associate broker or a qualifying broker or as being engaged in the business of buying, selling, exchanging, renting, leasing, managing, auctioning or dealing with options on any real estate or the improvements thereon for

others;

H. telephone solicitation of any kind designed to procure transactions requiring licensure under Section 61-29-1 et. Seq. NMSA 1978, including, but not limited to, procuring buyers, sellers, listings or appointments for listing presentations. [8-15-97; 16.61.21.9 NMAC - Rn & A, 16 NMAC 61.21.9, 1-1-2002; A, 1-1-2006]

16.61.21.10 DISABILITY: Notwithstanding the foregoing, if ~~[a licensee]~~ an associate broker or qualifying broker is a qualified person with a disability as defined in the Americans with Disabilities Act or regulations promulgated hereunder, an unlicensed assistant may provide such additional services normally requiring a license to or on behalf of the ~~[licensee]~~ associate broker or qualifying broker as would constitute a reasonable accommodation ~~[to the limitations of the licensee]~~ so long as the unlicensed assistant is under the direct control of the ~~[licensee]~~ associate broker or qualifying broker, the ~~[licensee]~~ associate broker or qualifying broker is as close as is practical to the activity, and the unlicensed assistant is not represented as being or having the authority to act as ~~[a licensee]~~ an associate broker or qualifying broker. The ~~[licensee]~~ associate broker or qualifying broker shall notify the commission of the identity of all unlicensed assistants who perform services normally requiring a license for the ~~[licensee]~~ associate broker or qualifying broker pursuant to this rule prior to performance of these services. [8-15-97, A, 1-1-2000; 16.61.21.10 NMAC - Rn, 16 NMAC 61.21.10, 1-1-2002; A, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.23 NMAC, Sections 8, 9 and 10, effective 1-1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers and the Part name for Part 23 has been revised from Trust Accounts to Special Trust Accounts, Custodial Accounts, and Other Accounts Containing Funds of Third Parties.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS ~~[AND SALESPERSONS]~~ PART 23 SPECIAL TRUST ACCOUNTS, CUSTODIAL ACCOUNTS, AND OTHER ACCOUNTS CONTAINING FUNDS OF THIRD PARTIES

16.61.23.8 DESCRIPTION AND ESTABLISHMENT OF ACCOUNTS:

A. A qualifying broker who receives money belonging to others related to a real estate transaction wherein ~~[he]~~ the qualifying broker is involved shall deposit same only in a bank, savings and loan institution, or title company authorized to do business in the state of New Mexico or with a cooperating New Mexico licensed broker also involved in the transaction.

B. All trust accounts in banks and savings and loan institutions must be designated on the institution's records as "trust account." At a minimum, the words "trust account" and the trade name of the brokerage as registered with the commission shall appear on all checks and deposit slips related to the trust account.

C. A qualifying broker shall have only the following types of accounts and they shall be used only for the purposes stated.

(1) Trust account. Property management funds may be placed in the trust account only if a qualifying broker manages no more than five (5) individual rental units in this account. Should the qualifying broker manage six (6) or more individual rental units all management related monies shall be removed from the trust account and placed in the property management trust account (see Property Management Part 24). This type of trust account shall not be interest bearing.

(2) Special trust account. In the event the principals agree in writing that an interest bearing special trust account is to be established, it shall be done as follows: A written trust agreement shall be prepared stating as a minimum the following:

(a) the qualifying broker shall be named as sole trustee;

(b) name of the bank or savings and loan wherein the funds are to be deposited;

(c) the amount of interest to be paid on the funds and to whom the interest shall accrue;

(d) the final disposition of principal and interest upon closing, termination or default by either party to the transaction; and

(e) the signatures of all parties to the transaction and the qualifying broker as trustee.

(3) Custodial account. Monies designated to be deposited in a custodial account shall first be placed in a trust account of the qualifying broker and then may be transferred to the custodial account of the owner. Custodial accounts shall not contain any monies other than those belonging to the owner of the custodial account. Custodial accounts may be interest bearing; however, the interest shall be paid only to the owner or his designee. The qualifying broker shall have on file a written agree-

ment signed by all principals as to the establishment and operational details of each custodial account.

[8-15-97; Rn, 16.61.23.8.3.3, 1-1-2000, A, 1-1-2000; 16.61.23.8 NMAC - Rn & A, 16 NMAC 61.23.8, 1-1-2002; A, 1-1-2006]

16.61.23.9 RECORD MAINTENANCE: Every qualifying broker shall keep bank and office records of all funds related to all trust accounts of the ~~[broker]~~ brokerage. All such records shall be maintained and retained in the New Mexico office of the qualifying broker at the location as registered with the commission, or at the bank, savings and loan institution, or title company where the trust account is maintained. In a multi-office company, or in a circumstance in which the trust account is maintained at a bank, savings and loan institution, or title company, trust account records may be maintained and retained at the main/corporate office, or at the main or branch office of the bank, savings and loan institution or title company where the trust account is maintained, provided that the commission is notified in writing of the location of the trust account records and the qualifying broker who is responsible for ~~[all]~~ the trust account records ~~[and duplicate transaction files]~~. All such records ~~[and funds]~~ shall be subject to inspection by the commission or ~~[any]~~ its duly authorized representative ~~[thereof]~~ at the designated ~~[New Mexico office]~~ location of ~~[the qualifying broker]~~ such records or at the offices of the commission. The records shall include, as a minimum, clear indication of all funds received and disbursed on behalf of others in all real estate transactions wherein the qualifying broker is involved. ~~[All records shall be under the direct control and supervision of the qualifying broker]~~ The qualifying broker shall be ultimately responsible for the maintenance and safe-keeping of trust account records.

A. Trust account control. A check numbering system with a check register shall be used for control purposes. Voided checks shall be retained. All trust account bank records and office records shall be reconciled monthly.

B. Trust account receipts and disbursements.

(1) Timeliness. All funds of others that come into the possession of the qualifying broker shall be deposited into the proper trust account as soon as practicably possible after securing signatures of all parties to the transaction.

(2) All funds held in any trust account for each transaction shall be disbursed as soon as practicably possible upon complete closing of the transaction; or, according to written agreement signed by all parties to the transaction; or, upon court

order.

(3) Receipt records. A detailed record of all funds received, including copies of receipts, shall be maintained by the qualifying broker and shall clearly indicate the following:

- (a) date received;
- (b) date deposited;
- (c) from whom received;
- (d) the related property transaction;

and,

(e) the nature of the funds, i.e., earnest money deposit, rents, security deposit, owner's funds, etc.

- (f) amount of deposit.

(4) Disbursement records. A detailed record of all funds disbursed shall be maintained by the qualifying broker and shall clearly indicate the following:

- (a) check number;
- (b) date of payment;
- (c) payee;
- (d) purpose of payment;
- (e) amount of payment;
- (f) the related property transaction.

C. Retention of records. The qualifying broker shall retain all ~~[bank and office records on all]~~ trust account~~[s]~~ records for a minimum ~~[period]~~ of three (3) years.

D. Commingling. Commingling shall include, but is not limited to, the following actions involving a trust account on the part of a qualifying broker or ~~[his]~~ the qualifying broker's designee:

(1) placing funds of others directly into any account that is not a properly designated trust account;

(2) placing non-trust account funds into a trust account; the qualifying broker may deposit nontrust funds in an amount not to exceed the required minimum balance in each trust account so as to meet the minimum balance requirements of ~~[the]~~ a bank or savings and loan institution necessary to maintain the account and avoid charges;

(3) allowing an owner's fund within a trust account to be in deficit. (see Part 24, property management);

(4) placing funds derived from the management of the qualifying broker's own properties in a trust account containing funds of others;

(5) failing to withdraw from the trust account within a reasonable time funds to which the qualifying broker is entitled;

(6) allowing money designated to one property to be used for the benefit of another property; however, if a written agreement exists between the qualifying broker and the property owner, allowing the commingling of funds of more than one property owned by that property owner, ~~[then]~~ the commingling of funds for those designated properties is allowed.

[8-15-97; 16.61.23.9 NMAC - Rn & A, 16 NMAC 61.23.9, 1-1-2002; A, 1-1-2006]

16.61.23.10 DEPOSITS AND DISBURSEMENTS:

A. Wrongful deposits. The following deposit actions by the qualifying broker or ~~[their]~~ the qualifying broker's designee involving any trust account shall be improper.

(1) Depositing ~~[their]~~ a qualifying broker's own funds into a trust account without specific prior approval of the commission except the minimum balance required by a bank or savings and loan.

(2) Depositing any funds in any trust account which are not directly related to a real estate transaction wherein the qualifying broker is involved.

(3) Depositing funds of others in an account other than a trust account.

(4) Depositing funds received on behalf of others directly into a custodial account without first depositing the funds in a trust account.

B. Wrongful disbursements. The following actions by the qualifying broker or ~~[their]~~ the qualifying broker's designee shall be improper:

(1) disbursing trust funds for the personal use of the qualifying broker or ~~[their]~~ the qualifying broker's designee;

(2) disbursing commissions from any trust account to any entity other than the qualifying broker; commission splits shall not be made directly from any trust account;

(3) disbursing trust funds from any trust account prior to the complete closing of the related transaction without written consent and signatures of all parties to the transaction, except upon court order; ~~[NOTE:]~~ this does not prevent the qualifying broker from transferring trust account funds to another commission approved trust account or title company;

(4) disbursing funds from any trust account in excess of the amount in the trust account;

(5) disbursement of trust account overages can be made only in accordance with the Unclaimed Property Act and after written notification to the commission.

[N, 1-1-2000; 16.61.23.10 NMAC - Rn, 16 NMAC 61.23.10, 1-1-2002; A, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.24 NMAC, Sections 2 and 6, effective 1-1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 61 REAL ESTATE BROKERS ~~[AND SALESPERSONS]~~ PART 24 PROPERTY MANAGEMENT

16.61.24.2 SCOPE: The provisions in Part 24 of Chapter 61 apply to all licensed ~~[salespersons and brokers]~~ New Mexico associate brokers and qualifying brokers engaged in property management. [8-15-97, A, 2-14-2000; 16.61.24.2 NMAC - Rn, 16 NMAC 61.24.2, 1-1-2002; A, 1-1-2006]

16.61.24.6 OBJECTIVE: The objective of Part 24 of Chapter 61 is to establish the requirements, policies and procedures that must be met ~~[for]~~ by a New Mexico real estate ~~[broker or salesperson]~~ associate broker or qualifying broker engaged in property management for others. [8-15-97, A, 2-14-2000; 16.61.24.6 NMAC - Rn, 16 NMAC 61.24.6, 1-1-2002; A, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.25 NMAC, Sections 12, 13 and 14, effective 1-1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS ~~[AND SALESPERSONS]~~ PART 25 TIME SHARE

16.61.25.12 LICENSE REQUIREMENTS: Any individual, including a tour guide, who shows time share units or facilities to prospective purchasers, shall hold a New Mexico real estate associate broker's or qualifying broker's license. No person except the developer may participate in any part of a time share sales presentation unless that person holds a New Mexico real estate associate broker or qualifying broker license.

[8-15-97, A, 2-14-2000; 16.61.25.12 NMAC - Rn, 16 NMAC 61.25.12, 1-1-2002; A, 1-1-2006]

16.61.25.13 DEVELOPERS: Every developer of a time share project registered in this state shall, in addition to any other requirements by law:

A. Maintain a full and complete record of all transactions wherein that developer or any real estate ~~[broker or salesperson]~~ associate broker or qualifying broker representing said developer are engaged. All records shall contain, but are not limited to:

(1) record of all purchases, sales, leases or exchanges of time share interests in the registered time share project;

(2) the name or names of the buyer and seller, or in the case of exchanges, the names of the parties thereto;

(3) the date or dates of such transactions;

(4) the amount, if any, of the commission earned in such transaction; and,

(5) the amount, if any, of the commission or commissions paid by the qualifying broker or the developer to an associate broker ~~[or salesperson]~~ and the amount, if any, of the commission or commissions retained by the qualifying broker or developer.

B. All sales of time share interests by associate brokers ~~[or salesperson]~~ must be through the qualifying broker of the time share project, and all commissions to such associate brokers ~~[and salespersons]~~ must be disbursed by the qualifying broker. If a qualifying broker transfers his license from a time share project and all commissions earned by associate brokers ~~[and salespersons]~~ have not been disbursed, those commissions must be accounted for and remitted within a reasonable time by the time share developer.

C. The records required to be maintained by these regulations will be available to the commission or ~~[any]~~ its duly authorized representative ~~[thereof]~~ at the location of the registered time share project in New Mexico ~~[or]~~ at the location of the time share sales office in New Mexico, or at the commission offices. [8-15-97, A, 2-14-2000; 16.61.25.13 NMAC - Rn & A, 16 NMAC 61.25.13, 1-1-2002; A, 1-1-2006]

16.61.25.14 TRUST ACCOUNTS: Records to be maintained. Every developer of a time share project registered in New Mexico shall, within a reasonable time, account for and remit any money coming into his possession which belongs to others during the sale of a time share interest. Such developer shall keep such funds of others in an escrow or trust account maintained by him in a bank or savings and loan institution or title company authorized to do business in this state. Such developer shall not commingle funds of others with his own. Every developer of a time share project registered in this state shall maintain full and complete records of all funds deposited in his trust account. Such records shall clearly indicate the date and from whom the money was received, date deposited, date of withdrawal, and any other pertinent information concerning the transaction. The records shall clearly show for whose account the money is deposited and to whom the money belongs. All such records and funds shall be subject to inspection by the commission or

~~[any]~~its duly authorized representative ~~[thereof]~~ at the location in New Mexico of the registered time share project, ~~[or]~~ the location in New Mexico of the time share sales office, or at the commission offices. [8-15-97, A, 2-14-2000; 16.61.25.14 NMAC - Rn, 16 NMAC 61.25.14, 1-1-2002; A, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.26 NMAC, Sections 2 and 8, effective 1-1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS ~~[AND SALESPERSONS]~~ PART 26 LAND TITLE TRUST FUND ACT

16.61.26.2 SCOPE: The provisions in Part 26 of Chapter 61 apply to all New Mexico ~~[licensees]~~ associate brokers or qualifying brokers as defined herein. [16.61.26.2 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.26.8 TRUST ACCOUNTS, ESCROW ACCOUNTS, SPECIAL ACCOUNTS, POOLED INTEREST-BEARING ACCOUNTS, AND DISPOSITION OF EARNED INTEREST ON CERTAIN ACCOUNTS:

A. Every real estate qualifying broker who maintains a trust or escrow account as required pursuant to the provisions of Subsection H of 61-29-12 NMSA 1978 may maintain a pooled interest-bearing escrow account and may deposit all customer funds into that account except for:

(1) funds required to be deposited into a property management trust account under an express property management agreement; or

(2) funds required to be deposited into an interest-bearing account under an express agreement between the parties to a transaction and under which agreement provisions are made for the payment of interest to be earned on the funds deposited.

B. The following procedures and forms should be used in establishing and operating pooled interest-bearing escrow accounts.

(1) Form 5828-1 instructions for financial institutions regarding processing land title trust fund act and low income housing trust fund act accounts.

(2) Form 5828-2 account enrollment and agreement between company and

financial institution.

(3) Form 5828-3 financial institution report of interest remittance. [16.61.26.8 NMAC - N, 1-1-2002; A, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.27 NMAC, Sections 2, 6, 8 and 9 effective 1-1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS ~~[AND SALESPERSONS]~~ PART 27 FOREIGN BROKERS

16.61.27.2 SCOPE: The provisions in Part 27 of Chapter 61 apply to all New Mexico ~~[licensees]~~ brokers and foreign brokers as defined herein. [8-15-97; 16.61.27.2 NMAC - Rn, 16 NMAC 61.27.2, 1-1-2002; A, 1-1-2006]

16.61.27.6 OBJECTIVE: The objective of Part 27 of Chapter 61 is to establish the requirements and policies governing transactions between a New Mexico qualifying broker and a foreign broker with regard to real property inside and outside the state of New Mexico. [8-15-97, A, 2-14-2000; 16.61.27.6 NMAC - Rn, 16 NMAC 61.27.6, 1-1-2002; A, 1-1-2006]

16.61.27.8 REQUIREMENTS: When a New Mexico ~~[licensee]~~ associate broker or qualifying broker cooperates with or makes a referral to or receives a referral from a foreign broker, for a fee, salary, commission or any other consideration, the following requirements shall be complied with by the New Mexico brokerage:

A. a specific written co-brokerage or referral agreement ~~[between]~~ signed by the qualifying broker of the New Mexico brokerage and the foreign broker shall be executed prior to the closing of any transaction;

B. all negotiations in New Mexico must be done through the New Mexico brokerage, with the New Mexico qualifying broker assuming responsibility for all activities conducted relating to properties within the state of New Mexico;

C. all funds handled for others in transactions on New Mexico real property shall be placed by the New Mexico qualifying broker in a bank, savings and loan or title company authorized to do business in New Mexico.

[8-15-97, A, 1-1-2000; 16.61.27.8 NMAC - Rn & A, 16 NMAC 61.27.9, 1-1-2002; A, 1-1-2006]

16.61.27.9 TRANSACTIONS IN OTHER STATES: A New Mexico ~~Licensee~~ associate broker or qualifying broker cooperating with a foreign broker on transactions dealing with real property outside the state of New Mexico ~~may be~~ is subject to the laws of the jurisdiction where in the property is located. A New Mexico ~~Licensee~~ associate broker or qualifying broker found guilty of ~~violation of~~ violating another jurisdiction's real estate licensing laws may be subject to disciplinary action ~~against the Licensee~~ by the New Mexico real estate commission.

[8-15-97, A, 1-1-2000, A, 2-14-2000; 16.61.27.9 NMAC - Rn & A, 16 NMAC 61.27.8, 1-1-2002; A, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.29 NMAC, Sections 2, 6 and 8 effective 1-1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers.

TITLE 16 OCCUPATIONAL AND ~~PROFESSIONAL~~ PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS ~~AND SALESPERSONS~~ PART 29 TRADE NAME

16.61.29.2 SCOPE: The provisions in Part 29 of Chapter 61 apply to all New Mexico ~~Salesperson and~~ real estate brokers ~~Licensees~~.

[16.61.29.2 NMAC - Rp, 16 NMAC 61.29.2, 1-1-2002; A, 1-1-2006]

16.61.29.6 OBJECTIVE: The objective of Part 29 of Chapter 61 is to establish the requirements for obtaining and ~~use thereof of~~ using a trade name for the operation of a real estate brokerage office in New Mexico.

[16.61.29.6 NMAC - Rp, 16 NMAC 61.29.6, 1-1-2002; A, 1-1-2006]

16.61.29.8 REGISTRATION AND USE OF TRADE NAME:

A. Prior to the use of any trade name for the operation of a brokerage, the qualifying broker shall register such trade name with the commission. A qualifying broker must conduct their real estate brokerage business under a trade name registered with the commission. A qualifying broker wishing to conduct ~~their~~ real estate brokerage business under a different trade name must execute a new trade name registration form with the commission.

tration form with the commission.

B. When a brokerage ceases using a trade name, the qualifying broker shall, within thirty (30) days, advise the commission in writing that the trade name is no longer being used, and remove all signs using the trade name.

C. Use of a trade name in such a fashion as to mislead the public may be grounds for disciplinary action by the commission.

[16.61.29.8 NMAC - Rp, 16 NMAC 61.29.8, 1-1-2002; A, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.31 NMAC, Sections 2 and 6 effective 1-1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS ~~AND SALESPERSONS~~ PART 31 SIGNAGE

16.61.31.2 SCOPE: The provisions in Part 31 of Chapter 61 apply to all ~~Salesperson and~~ real estate brokers ~~Licensees~~.

[1-1-2000; 16.61.31.2 NMAC - Rn, 16 NMAC 61.31.2, 1-1-2002; A, 1-1-2006]

16.61.31.6 OBJECTIVE: The objective of Part 31 of Chapter 61 is to establish the requirements for placement and maintenance of licensed real estate brokers' ~~and Salespersons'~~ signs.

[1-1-2000; 16.61.31.6 NMAC - Rn, 16 NMAC 61.31.6, 1-1-2002; A, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.32 NMAC, Sections 2 and 8 effective 1-1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS ~~AND SALESPERSONS~~ PART 32 ADVERTISING/DISCLOSURE

16.61.32.2 SCOPE: The provisions in Part 32 of Chapter 61 apply to all ~~Licensees~~ real estate brokers in New Mexico.

[8-15-97, A, 2-14-2000; 16.61.32.2 NMAC

- Rn, 16 NMAC 61.32.2, 1-1-2002; A, 1-1-2006]

16.61.32.8 ADVERTISEMENTS:

A. Every qualifying broker advertising real property for others for sale, purchase, lease, exchange, or rent, including short-term rentals or advertising real estate services, shall at a minimum, use in such advertising the trade name and New Mexico brokerage office telephone number as registered with the commission. Additional telephone numbers may be used in such advertising.

B. Associate brokers ~~or Salespersons~~, when advertising real property for others for sale, purchase, lease, exchange or rent, or when advertising real estate services shall include in the advertisement the trade name and the telephone number as registered with the commission of the brokerage ~~as registered with the commission~~ with which they are affiliated.

C. Every ~~Licensee~~ broker advertising to buy, sell or exchange real property which is owned or partially owned by that ~~Licensee~~ broker shall indicate within the advertisement (including signs), listing contract, purchase agreement or exchange agreement that one of the parties is a ~~Licensee~~ broker. Disclosures using initials or symbols are not permitted.

D. When advertising real property owned by a ~~Licensee~~ broker and the telephone number of the brokerage is used in the advertisement, the advertisement must also include the trade name of the brokerage as registered with the commission.

E. All real estate advertising shall be ~~conducted in such a manner that will not confuse or mislead the public and be~~ a true and factual representation of the property and/or real estate services being advertised. If the qualifications, credentials, staffing or sales history of the brokerage are included in the brokerage's advertising, such information shall be presented in such a manner that will not confuse or mislead the public.

F. All advertising must be in compliance with all local, state and federal laws and regulations.

G. All real estate advertising of real property for others or advertising of real estate services shall be under the direct supervision of the qualifying broker or the broker in charge.

H. These requirements apply to all forms of advertising, including but not limited to print, audio, video, including audio and video recordings, computer presentations, and electronic ~~transmissions~~ media such as the internet and e-mail.

[N, 1-1-2000; 16.61.32.8 NMAC - Rn, 16

NMAC 61.32.8, 1-1-2002; A, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.33 NMAC, Sections 2 and 9 effective 1-1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS ~~[AND SALESPERSONS]~~ PART 33 DOCUMENT EXECUTION AND DELIVERY

16.61.33.2 SCOPE: The provisions of Part 33 of Chapter 61 apply to all licensed ~~[Salespersons and]~~ real estate brokers in New Mexico.
[16.61.33.2 NMAC - Rp, 16 NMAC 61.33.2, 1-1-2002; A, 1-1-2006]

16.61.33.9 DELIVERY OF DOCUMENTS: Except as otherwise provided by law, in all circumstances it shall be the responsibility of each ~~[Licensee]~~ broker engaged in a transaction to assure that all parties to the transaction receive legible copies of any and all documents they have signed and any documents that pertain to their respective interest in the transaction as soon as practicably possible, and copies of all fully executed documents thereafter.
[16.61.33.9 NMAC - Rp, 16 NMAC 61.33.9, 1-1-2002; A, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.35 NMAC, Sections 6, 7, 8, 9, 10, 11, 12 and 13, effective 1-1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS ~~[AND SALESPERSONS]~~ PART 35 CHILD SUPPORT ENFORCEMENT

16.61.35.6 OBJECTIVE: The objective of Part 35 of Chapter 61 is to implement the requirements of the Parental Responsibility Act as they apply to the issuance, renewal, suspension or revocation of any license required to engage in the profession ~~[or license]~~ by this agency under

this part.

[8-15-97; 16.61.35.6 NMAC - Rn, 16 NMAC 61.35.6, 1-1-2002; A, 1-1-2006]

16.61.35.7 DEFINITIONS: All terms defined in the Parental Responsibility Act shall have the same meanings in Part 35 of Chapter 61 as used in Part 35:

A. "HSD" means the New Mexico human services department;

B. "license" means a license issued by the commission that a person is required to have to engage in the profession or occupation of real estate in New Mexico;

C. "statement of compliance" means a certified statement from HSD stating that an applicant or ~~[licensee]~~ broker is in compliance with a judgment and order for support; and

D. "statement of non-compliance" means a certified statement from HSD stating that an applicant or ~~[licensee]~~ broker is not in compliance with a judgment and order for support.

[8-15-97, A, 2-14-2000; 16.61.35.7 NMAC - Rn, 16 NMAC 61.35.7, 1-1-2002; A, 1-1-2006]

16.61.35.8 DISCIPLINARY ACTION: If a license applicant or ~~[Licensee]~~ licensed broker is not in compliance with a judgment and order for support, the commission:

A. shall deny an application for a license;

B. shall deny the renewal of the license; and

C. has grounds for suspension or revocation of the license.

[8-15-97; 16.61.35.8 NMAC - Rn & A, 16 NMAC 61.35.8, 1-1-2002; A, 1-1-2006]

16.61.35.9 CERTIFIED LIST: Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the commission shall match the certified list against the current list of commission ~~[licensees and license]~~ brokers or broker applicants. Upon the later receipt of an application for license or renewal, the commission shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the commission shall report to HSD the names of commission ~~[license applicants and licensees]~~ brokers or broker applicants who are on the certified list and the action the commission has taken in connection with such ~~[applicants and licensees]~~ brokers or broker applicants.

[8-15-97, A, 2-14-2000; 16.61.35.9 NMAC - Rn & A, 16 NMAC 61.35.9, 1-1-2002; A, 1-1-2006]

16.61.35.10 INITIAL ACTION: Upon determination that ~~[an applicant or~~

~~licensee]~~ a broker or broker applicant appears on the certified list, the commission shall:

A. commence a formal proceeding as set forth in Section 11 of Part 35 to take the appropriate action under Section 8 of Part 35; or

B. for current ~~[Licensees]~~ brokers only, informally notify the ~~[licensee]~~ broker that the ~~[licensee's]~~ broker's name is on the certified list, and that the ~~[licensee]~~ broker must provide the commission with a subsequent statement of compliance from HSD by the earlier of the application for license renewal or a specified date not to exceed thirty (30) days. If the ~~[licensee]~~ broker fails to provide this statement, the commission shall commence a formal proceeding as set forth in Section 11 of Part 35.

[8-15-97, A, 2-14-2000; 16.61.35.10 NMAC - Rn, 16 NMAC 61.35.10, 1-1-2002; A, 1-1-2006]

16.61.35.11 NOTICE OF CONTEMPLATED ACTION: Prior to taking any action specified in Section 8 of Part 35, the commission shall serve upon the ~~[license applicant or Licensee]~~ broker or broker applicant a written notice stating that:

A. the commission has grounds to take such action, and that the commission shall take such action unless the ~~[Licensee or license applicant]~~ broker or broker applicant:

(1) mails a letter (certified, return receipt requested) within twenty (20) days after service of the notice requesting a hearing; or

(2) provides the commission, within thirty (30) days of the date of the notice, with a statement of compliance from HSD; and

B. if the ~~[license applicant or Licensee]~~ broker or broker applicant disagrees with the determination of non-compliance, or wishes to come into compliance, the ~~[license applicant or Licensee]~~ broker or broker applicant should contact the HSD child support enforcement division.

[8-15-97, A, 1-1-2000; 16.61.35.11 NMAC - Rn & A, 16 NMAC 61.35.11, 1-1-2002; A, 1-1-2006]

16.61.35.12 EVIDENCE AND PROOF: In any hearing under Part 35 of Chapter 61, relevant evidence is limited to the following:

A. A statement of non-compliance is conclusive evidence that requires the commission to take the appropriate action under Section 8 of Part 35 of Chapter 61 unless;

B. The ~~[license applicant or licensee]~~ broker or broker applicant pro-

vides the commission a subsequent statement of compliance which shall preclude the commission from taking any action based solely on the prior statement of non-compliance.

[8-15-97; 16.61.35.12 NMAC - Rn & A, 16 NMAC 61.35.11, 1-1-2002; A, 1-1-2006]

16.61.35.13 ORDER: When an action is taken under Part 35 of Chapter 61 solely because the [~~license applicant or Licensee~~] broker or broker applicant is not in compliance with a judgment and order for support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance. The commission may also include any other conditions necessary to comply with commission requirements for reapplication or reinstatement of lapsed licenses.

[8-15-97, A, 1-1-2000; 16.61.35.13 NMAC - Rn & A, 16 NMAC 61.35.13, 1-1-2002; A, 1-1-2006]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.36 NMAC, Sections 2, 6, 8 and 9 effective 1-1-2006. The Chapter name of Chapter 61 has also been changed from Real Estate Brokers and Salespersons to Real Estate Brokers.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS [~~AND SALESPERSONS~~] PART 36 COMPLAINTS AND INVESTIGATIONS

16.61.36.2 SCOPE: The provisions in Part 36 of Chapter 61 apply to anyone violating the Real Estate [~~Licensing~~] License Law, NMSA 1978 Section 61-29-12. The provisions in Part 36 of Chapter 61 may be of interest to anyone who may wish to file a complaint against a [~~Salesperson or~~] broker licensed by the commission, or against any person who acts as a real estate [~~Salesperson or~~] broker in this state with or without a New Mexico real estate license. [16.61.36.2 NMAC - Rp, 16 NMAC 61.36.2, 1-1-2002; A, 1-1-2006]

16.61.36.6 OBJECTIVE: The objective of Part 36 of Chapter 61 is to set forth the procedure by which the real estate commission receives and investigates complaints against [~~Licensees~~] associate brokers or qualifying brokers or any other person who performs the acts of a real estate [~~Salesperson or~~] broker in this state with or without a New Mexico real estate license.

[16.61.36.6 NMAC - Rp, 16 NMAC 61.36.6, 1-1-2002; A, 1-1-2006]

16.61.36.8 COMPLAINTS: The commission may file a complaint against any person who engages in the business or acts in the capacity of a real estate [~~Salesperson or~~] broker in this state with or without a New Mexico real estate license based on information indicating that there may have been a violation of the Real Estate License Law or the commission rules [~~and Regulations~~]. The commission may also act on a complaint made by a member of the commission, a member of the public, or another real estate [~~Licensee~~] broker. Upon receipt of a complaint the commission will determine if the complaint is within its jurisdiction. If the commission determines the complaint is within its jurisdiction, the complaint will be assigned for investigation.

[16.61.36.8 NMAC - Rp, 16 NMAC 61.36.8, 1-1-2002; A, 1-1-2006]

16.61.36.9 INVESTIGATIONS: In conducting an investigation, the commission shall give the person under investigation the opportunity to answer the complaint made against them in writing and to produce relevant documentary evidence, in accordance with the Uniform Licensing Act. If the person under investigation fails to respond within ten (10) working days of having been provided with a copy of the complaint and having been informed by the commission in writing that a complaint has been filed against [~~them~~] him or her, the investigation may proceed without benefit of that person's response.

A. If the investigation reveals that the complaint does not involve a violation of the Real Estate License Law or the commission rules [~~and Regulations~~], the complaint will be dismissed by the commission, and the parties to the complaint will be so advised.

B. Withdrawal of a complaint by a member of the commission, a member of the public, or another [~~Licensee~~] broker does not bind the commission to dismiss the complaint.

[16.61.36.9 NMAC - Rp, 16 NMAC 61.36.9, 1-1-2002; A, 1-1-2006]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 63 SOCIAL WORKERS PART 5 E M E R G E N C Y LICENSURE

16.63.5.1 ISSUING AGENCY: Regulation and Licensing Department - Board of Social Work Examiners, P.O. Box 25101, Santa Fe, NM 87504 [16.63.5.1 NMAC - N/E, 11/9/05]

16.63.5.2 SCOPE: An individual desiring to practice either as a baccalaureate social workers, or a master social workers, and independent social workers following a federally declared disaster. [16.63.5.2 NMAC - N/E, 11/9/05]

16.63.5.3 S T A T U T O R Y AUTHORITY: These parts are promulgated pursuant to the Social Work Practice Act, Section 61-31-8A, 14-2-1, 61-31-19 NMSA 1978. [16.63.5.3 NMAC - N/E, 11/9/05]

16.63.5.4 D U R A T I O N : Permanent. [16.63.5.4 NMAC - N/E, 11/9/05]

16.63.5.5 EFFECTIVE DATE: November 9, 2005, unless a later date is cited at the end of a section. [16.63.5.5 NMAC - N/E, 11/9/05]

16.63.5.6 OBJECTIVE: The objective of Part 5 is to outline requirements, procedures, and criteria for issuance of an emergency license. [16.63.5.6 NMAC - N/E, 11/9/05]

16.63.5.7 D E F I N I T I O N S : [RESERVED]

16.63.5.8 PROVISIONS FOR EMERGENCY LICENSURE:

A. Licensed social workers currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure may be licensed in New Mexico during the six months following the declared disaster at no cost upon satisfying the following requirements:

(1) receipt by the board of a completed application which has been signed and notarized and which is accompanied by proof of identity, which may include a copy of a drivers license, passport or other photo identification issued by a governmental entity;

(2) refer to 16.63.9.8, 16.63.10.8,

and 16.63.11.8 NMAC, Qualification of Licensure for licensure requirements;

(3) verification of licensure from the state in which the federal disaster has been declared; the verification of licensure must include the following information:

(a) copy of transcripts verifying a bachelors or masters degree from a program of social work accredited by the council on social work education;

(b) copy of supervision records;

(c) verification the applicant has passed the association of social work board (ASWB) exam at the appropriate level for which the applicant is applying; and

(d) verification that the license is in good standing with no pending disciplinary action.

(4) sworn affidavit that the applicant was personally or professionally effected by the disaster.

B. The board may waive the following requirements for licensure:

(1) application fees;

(2) taking and passing the NM cultural awareness exam prior to licensure; the applicant will be required to take and pass the NM cultural awareness exam within three months from the date the emergency license is issued; the emergency license will automatically expire if the applicant fails to take or fails to pass the NM cultural awareness exam within three months; and

(3) fee for the cultural awareness examination.

C. The board may waive the specific forms required under 16.63.9.8, 16.63.10.8, and 16.63.11.8 NMAC if the applicant is unable to obtain documentation from the federal declared disaster areas.

(1) If the applicant is unable to obtain official transcripts, from a school located in a declared disaster area, the applicant may submit a sworn affidavit from the applicant verifying he has a bachelors or masters degree in social work.

(2) For LISW applicants who are unable to obtain verification of supervision from a supervisor located in a declared disaster area the applicant may submit a sworn affidavit from the applicant verifying he has 3600 hours of experience and a minimum of 90 hours of supervision.

D. Nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.63.9.8, 16.63.10.8, and 16.63.11.8 NMAC.

E. Licenses issued under (the emergency provision) shall expire on July 1, following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made on or before July 1, following the date of issue to avoid late renewal fees. The board reserves the right

to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving license renewal.

[16.63.5.8 NMAC - N/E, 11/9/05]

16.63.5.9 EMERGENCY LICENSE TERMINATION:

A. The emergency license shall terminate upon the following circumstances:

(1) the issuance of a permanent license under sections 16.63.9.8, 16.63.10.8, and 16.63.11.8 NMAC;

(2) proof that the emergency license holder has engaged in fraud, deceit, or misrepresentation in procuring or attempting to procure a license under this section, or failure to take and pass or failure to take the NM cultural awareness exam within three months; or

(3) violation of the Social Work Practice Act or the social work rules and regulations.

B. Termination of an emergency license shall not preclude application for permanent licensure under sections 16.63.9.8, 16.63.10.8, and 16.63.11.8 NMAC. The board may withhold or deny an application for licensure. In accordance with the procedures established by the Uniform Licensing Act [61-1-1 to 61-11-31 NMSA 1978], the board may deny, suspend or revoke a license held or applied for under the Social Work Practice Act, may fine or reprimand a license or take any other action provided for in the Uniform Licensing Act. [16.63.5.9 NMAC - N/E, 11/9/05]

HISTORY OF 16.63.5 NMAC: [RESERVED]

NEW MEXICO SPEECH LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING PRACTICES BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 26 HEARING, SPEECH AND AUDIOLOGY PRACTITIONERS PART 10 EMERGENCY LICENSURE

16.26.10.1 ISSUING AGENCY: New Mexico Speech Language Pathology, Audiology and Hearing Aid Practices Board.

[16.26.10.1 NMAC - N/E, 11/9/05]

16.26.10.2 SCOPE: An individual wishing to practice as a speech language pathologist, audiologist or hearing aid dis-

penser following a federally declared disaster.

[16.26.10.2 NMAC - N/E, 11/9/05]

16.26.10.3 STATUTORY AUTHORITY:

These rules are promulgated pursuant to the speech language pathology, audiology and hearing aid dispensing practices Act NMSA 1978, Sections 61-14B-1 to 61-14B-25 and the Uniform Licensing Act NMSA 1978, Sections 61-1-1 to 61-1-33.

[16.26.10.3 NMAC - N/E, 11/9/05]

16.26.10.4 DURATION: Permanent.

[16.26.10.4 NMAC - N/E, 11/9/05]

16.26.10.5 EFFECTIVE DATE:

November 9, 2005, unless a later date is cited at the end of a section.

[16.26.10.5 NMAC - N/E, 11/9/05]

16.26.10.6 OBJECTIVE: The objective of Part 10 is to outline requirements, procedures, and criteria for issuance of an emergency license.

[16.26.10.6 NMAC - N/E, 11/9/05]

16.26.10.7 DEFINITIONS: [RESERVED]

16.26.10.8 PROVISIONS FOR EMERGENCY LICENSURE:

A. Speech language pathologist, audiologist and hearing aid dispensers currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster at no cost upon satisfying the following requirements:

(1) receipt by the board of a completed application which has been signed and notarized and which is accompanied by proof of identity, which may include a copy of a drivers license, passport or other photo identification issued by a governmental entity;

(2) refer to 16.26.3.9, 16.26.3.10 and 16.26.3.11 NMAC and Section 61-14B-12.1 NMSA 1978;

(3) sworn affidavit that the applicant was personally or professionally affected by the disaster; their qualifications may state that the board will perform the verification.

B. The board may waive the following requirements for licensure:

(1) application and initial license fee;

(2) practical examination for hearing aid dispensers (the applicant will be required to take and pass the practical exam

within six months from the date the emergency license is issued); and

(3) jurisprudence exam (the applicant will be required to take and pass the jurisprudence exam within 60 days from the date the emergency license is issued).

C. The board may waive the specific forms required under 16.26.3.9, 16.26.3.10 and 16.26.3.11 NMAC and Section 61-14B-12.1 NMSA 1978, if the applicant is unable to obtain documentation from the federal declared disaster areas.

(1) An applicant for licensure as a speech language pathology may submit a sworn affidavit if they are unable to produce the following documentation:

(a) transcripts verifying a master's degree in speech language pathology or communication disorders;

(b) certificate of clinical competence issued by the American speech language hearing association (ASHA).

(2) An applicant for licensure as an audiologist may submit a sworn affidavit if they are unable to produce the following documentation:

(a) holds a master's degree in audiology or communication disorders; or an equivalent degree in audiology or communication disorders; or an equivalent degree awarded prior to January 1, 2007; meets the academic requirements for certification of clinical competence from a nationally recognized speech language or hearing association in the area that the applicant is seeking licensure; or

(b) holds a doctoral degree in audiology or equivalent degree regardless of degree name and meets academic requirements for certification by a nationally recognized hearing association; and

(c) has completed the current academic, practicum and employment requirements of a nationally recognized speech language or hearing association; and has passed a nationally recognized standard examination in audiology.

(3) If an applicant for hearing aid dispenser or an endorsement to dispense may submit a sworn affidavit if they are unable to produce the following documentation:

(a) proof the applicant has a high school education or equivalent;

(b) a business location in New Mexico;

(c) proof of passing the HIS, or the NBC-HIS hearing aid written examination or a nationally recognized hearing aid dispensers examination approved by the board or other exams approved by the board with an overall score of 70%;

(d) proof of passing a practical examination with an overall score of 70%; if the applicant has not taken the practical exam he must take it within 6 months from

the date the emergency license is issued; failure to pass the required practical exam will result in termination of the emergency license.

D. Nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.26.3.9, 16.26.3.10 and 16.26.3.11 NMAC.

E. Licenses issued under 16.26.10 NMAC shall expire six (6) months following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made on or before the expiration date, following the date of issue to avoid late renewal fees. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving license renewal. [16.26.10.8 NMAC - N/E, 11/9/05]

16.26.10.9 E M E R G E N C Y LICENSE TERMINATION:

A. The emergency license shall terminate upon the following circumstances:

(1) the issuance of a permanent license under sections 16.26.3.9, 16.26.3.10 and 16.26.3.11 NMAC; or

(2) proof that the emergency license holder has engaged in fraud, deceit, or misrepresentation in procuring or attempting to procure a license under this section.

B. Termination of an emergency license shall not preclude application for permanent licensure. [16.26.10.9 NMAC - N/E, 11/9/05]

HISTORY OF 16.26.10 NMAC: [RESERVED]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.1.11 NMAC, Section 19, effective 11/30/05.

3.1.11.19 PENALTY FOR FAILURE TO CORRECTLY REPORT DEDUCTION AMOUNT:

A. A taxpayer who takes the benefit of the deduction provided by either Section 7-9-92 or 7-9-93 NMSA 1978 and fails to correctly report an amount deductible under those sections is subject to the penalty provided by Section 7-1-71.2 NMSA 1972.

B. A taxpayer fails to correctly report the amount of a deduction provided by Section 7-9-92 or 7-9-93 NMSA 1978 when the taxpayer:

(1) excludes from both reported gross receipts and reported deductions an

amount deductible under those sections and not otherwise exempt;

(2) example 1: a "big box" store has sales of \$200,000. \$10,000 is from sales of food in exchange for food stamps and \$20,000 is from other sales of food; the taxpayer reports gross receipts of \$170,000 and zero deductions and pays the appropriate tax on the \$170,000; although the \$10,000 in food stamp sales is exempt under Section 7-9-18.1 NMSA 1978, the other \$20,000 in food sales is not; those sales are deductible under Section 7-9-92 NMSA 1978 and must be reported as gross receipts and then deducted properly; the penalty under Section 7-1-71.2 NMSA 1978 applies to the under-reported \$20,000;

(3) does not report an amount deductible under those sections separately from other deductions in accordance with instructions of the secretary;

(4) example 2: an osteopath has \$25,000 in receipts; the osteopath sold under contract \$5,000 worth of services to a hospital for re-sale to a patient and has accepted a type 5 nontaxable transaction certificate in connection with those services; the \$5,000 is deductible under Section 7-9-48 NMSA 1978; the remaining \$20,000 in services are also deductible, but under Section 7-9-93 NMSA 1978; the osteopath reports, contrary to the instructions of the secretary, on a single line \$25,000 in gross receipts and \$25,000 in deductions; the penalty under Section 7-1-71.2 NMSA 1978 applies to this \$20,000 under-reporting of the deductions subject to Section 7-9-93 NMSA 1978;

(5) reports an amount as a deduction under those sections when the amount should be reported as an exemption or deduction under another section of the Gross Receipts and Compensating Tax Act;

(a) example 3: a grocer sells qualifying food items to a food stamp recipient in exchange for food stamps; the grocer deducts the value of the food stamps received under Section 7-9-92 NMSA 1978; the sale of food items purchased with food stamps is exempt under Section 7-9-18.1 NMSA 1978; the taxpayer has over-reported deductions under Section 7-9-92 NMSA 1978 and the penalty under Section 7-1-71.2 NMSA 1978 applies to the amount of the over-reporting;

(b) example 4: a physician receives payment from a medicare administrator for health care services provided to a medicare enrollee; the physician deducts the payment from gross receipts under Section 7-9-93 NMSA 1978; medicare payments to physicians are deductible under Section 7-9-77.1 NMSA 1978; the physician has over-reported the deduction under Section 7-9-93 NMSA 1978 and the penalty under Section 7-1-71.2 NMSA 1978 applies to the over-

reporting;

(6) reports as a deduction under those sections an amount in excess of that permitted by those sections.

C. The penalty provided by Section 7-1-71.2 NMSA 1978 is in addition to other penalties provided by the Tax Administration Act.

D. Because not claiming a deduction is not a failure to correctly report the amount of a deduction, the penalty will not apply if the taxpayer is entitled to, but does not claim, a deduction under Section 7-9-92 or 7-9-93 NMSA 1978.

E. If a return subject to the penalty provided by Section 7-1-71.2 NMSA 1978 is amended one or more times on or before the due date of the return, and the food and/or medical deductions provided under 7-9-92 and/or 7-9-93 NMSA 1978 are reported correctly on the last timely amended return, no local option penalty shall be assessed.

E. Example: Grocery store B has total gross receipts of \$160,000. B files a timely CRS-1 return reporting regular gross receipts of \$60,000 and deductions allowed under other sections of the Gross Receipts and Compensating Tax Act of \$10,000 on line one and gross receipts and food deductions pursuant to Section 7-9-92 NMSA 1978, of \$100,000 using the special code "F" on line two. Before the due date of the return, B discovers that food stamp sales of \$40,000 were included on line 2 as a food deduction and files an amended report changing line two to reflect the correct gross receipts and food deductions of \$60,000. B is assessed no penalty.

G. If a return subject to the penalty provided by Section 7-1-71.2 NMSA 1978 is amended more than once, and all subsequently filed amended returns for that reporting period are received after the due date of the return, the maximum local option penalty shall be the penalty that would result from comparing the food and/or medical deductions reported pursuant to Sections 7-9-92 and/or 7-9-93 NMSA 1978 on the timely filed return to the food and/or medical deductions reported on the most recent amended return for that reporting period.

(1) Example: Grocery store G has total gross receipts of \$100,000. G submits a timely CRS-1 return showing \$100,000 in gross receipts and \$40,000 in deductions on line one. Line two is left blank.

(2) After the due date of the return, G amends the return to report \$70,000 in gross receipts and \$10,000 in deductions on line one, and \$30,000 in gross receipts and deductions on line two. An "F" in column B of line two identifies line two as food sales deductible under 7-9-92 NMSA 1978.

(3) G submits a second amended report in which line two is adjusted to report \$20,000 in deductible food sales. G will be assessed the local option penalty on the difference between the food deduction on the most recent amended return (\$20,000) and the first timely filed return (\$0). Since no food deduction was reported on the first filed-timely return, the penalty is calculated on the difference of \$20,000 multiplied by twice the applicable local option gross receipts tax rate.

H. If a return subject to the penalty provided by Section 7-1-71.2 NMSA 1978 is amended both before and after the due date of the return, the maximum local option penalty for that reporting period shall be the penalty that would result from a comparing the last timely filed amended return for that reporting period postmarked on or before the due date of the return and the most recent amended return for that reporting period.

I. Example: C is a medical practitioner. C files a timely CRS-1 return showing \$100,000 in total gross receipts and \$60,000 in deductions on line 1. Line 2 is blank. Before the due date of the return, C files an amended return showing \$100,000 in gross receipts and no deductions on line 1. Sixty thousand dollars in gross receipts deductible under 7-9-93, identified by an "M" in column B, are reported on line 2. After the due date of the return, C amends a second time. On the second amended return, C reports \$70,000 in gross receipts and \$30,000 in deductions on line 1 and \$30,000 in gross receipts deductible under 7-9-93 on line 2. C's penalty for misreporting will be calculated on the \$30,000 difference between the "M" deduction reported on the most recent amended report received before the due date of the return (\$60,000) and the "M" deduction reported on the last amended report received after the due date of the return (\$30,000) multiplied by twice the applicable local option gross receipts tax rate.

J. If an extension pursuant to Section 7-1-13 NMSA 1978 has been granted, for purposes of calculating the local option penalty under Section 7-9-71.1 NMSA 1978, the due date of the return is the last date of the extension period. No extension shall prevent the accrual of interest as otherwise provided by law. [3.1.11.19 NMAC - N, 1/31/05; A, 11/30/05]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.201 NMAC, Section 11, effective 11/30/05.

3.2.201.11 CONSTRUCTION CONTRACTORS:

A. Any person applying to execute nontaxable transaction certificates (nttc) related to construction as defined in Section 7-9-3 NMSA 1978 must indicate the applicant's New Mexico contractor's license number or furnish proof that no contractor's license is required by the construction industries division. Failure to comply with Section 3.2.201.11 NMAC will result in denial of the requested certificates.

B. A person performing construction services who makes any false or misleading representations in any material respect in an application for nttcs may become subject to the penalties imposed by Section 7-1-73 NMSA 1978 as well as other penalties, civil or criminal, prescribed in the Tax Administration Act. False or misleading representations include, but are not confined to:

(1) indicating a contractor's license number on the application which is not issued to the applicant or which cannot lawfully be used by the applicant;

(2) applying for nttcs which someone other than the applicant will execute; or

(3) furnishing false or misleading documentation that a contractor's license is not required of the applicant by the construction industries division.

C. Any person who has previously applied for and been issued nttcs related to construction as defined in Section 7-9-3 NMSA 1978, under circumstances wherein the person would not have been entitled to obtain such certificates pursuant to Section 3.2.201.11 NMAC, will be assessed gross receipts or compensating tax, as appropriate, based on the representations actually made in the application for nttcs.

D. Any person engaged in the business of construction, as defined by Section 7-9-3.4 NMSA 1978, is presumed to be engaged solely in the business of construction and not to be engaged in reselling services other than construction services in the ordinary course of business. Except as provided in Subsection E of this section, this person will not be issued nontaxable transaction certificates (NTTCs) other than those appropriate for the deductions under Sections 7-9-51 and 7-9-52 NMSA 1978.

E. A person who can demonstrate to the department's satisfaction that the person is engaged in the business of

construction and in the business of selling property other than construction materials or performing or selling one or more services, such as engineering or architectural design, that are not construction services may qualify for and be issued NTTCs in addition to those appropriate for the deductions under Sections 7-9-51 and 7-9-52 NMSA 1978. The additional types of NTTC may be executed by the person only when the person is acquiring tangible personal property other than construction material or a service other than a construction service in a manner meeting the conditions for execution of the additional type of NTTC. In determining whether the person engaged in the construction business is engaged in a business in addition to the construction business, the department will consider these factors:

(1) whether the person possesses, when possession is required, a current license to sell or lease the nonconstruction property or to perform or sell the nonconstruction service;

(2) whether the person has entered into a contract requiring the sale or lease of the nonconstruction property or the performance or sale of the nonconstruction service;

(3) whether the person holds himself out to be in the business; and

(4) other factors deemed appropriate by the secretary.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 9/20/93, 11/15/96, 4/30/99; 3.2.201.11 NMAC - Rn, 3 NMAC 2.43.1.11 & A, 5/31/01; A, 11/30/05]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.206 NMAC, Section 12, effective 11/30/05.

3.2.206.12 NONCONSTRUCTION SERVICES NOT RESOLD BY CONSTRUCTION CONTRACTORS:

Any person engaged solely in the business of construction, as defined by Section 7-9-3.4 NMSA 1978, is not engaged in reselling services other than construction services in the ordinary course of business and [cannot] may not issue a nontaxable transaction certificate to purchase services for resale in connection with the construction business under the provisions of Section 7-9-48 NMSA 1978.

[3/11/88, 11/26/90, 11/15/96; 3.2.206.12 NMAC - Rn, 3 NMAC 2.48.12 & A; 5/31/01; A, 11/30/05]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.207 NMAC, Section 8, effective 11/30/05.

3.2.207.8 GENERAL QUALIFICATIONS - EXAMPLES:

A. To qualify to issue a nontaxable transaction certificate (nttc) under the provisions of Section 7-9-49 NMSA 1978, the business issuing the nttc must derive a substantial portion of its income from the sale or lease of the same type of property which is being purchased under the nttc. The property purchased under the nttc must subsequently be sold or leased in the ordinary course of business. If the seller accepts an nttc in good faith and if either of these requirements is not met the value of the tangible property purchased under such nttc will be subject to the compensating tax.

B. Example 1: X derives a substantial portion of its receipts from leasing or selling air compressors. When X buys air compressors from M, the manufacturer, X gives M an nttc. M's receipts from the sales are deductible.

C. Example 2: X, an office machine company, buys a typewriter from the manufacturer, M. X has given M an nttc. X leases the typewriter for six months after which X uses it in its office. M may deduct the receipts from the sale of the typewriter from its gross receipts. X must pay gross receipts tax on its receipts from leasing the typewriter. As a result of converting the typewriter to its own use, X must pay compensating tax on the market value of the typewriter at the time of its conversion to use under Section 7-9-7 NMSA 1978.

D. Example 3: A substantial portion of L's business is from leasing or selling lawnmowers. L has given an nttc to D, the dealer from whom L buys its lawnmowers. L buys five lawnmowers from D to lease to its customers. L sells one of the lawnmowers to Y and leases the others to X. D may deduct receipts from the sale of all five of the lawnmowers to L. L must pay the gross receipts tax on the receipts from leasing to X and the sale to Y.

E. Example 4: C, a flying service, sells new and used airplanes, rents airplanes, provides in-state charter service, and provides flying instruction. C purchases five airplanes from X, a New Mexico airplane manufacturer, for use in its charter service. "Chartering" is here defined as hiring a plane and a pilot to fly the customer, not freight. Receipts from in-state charter flights are not subject to gross receipts tax. A charter is not a lease. The receipts from

leasing airplanes and flight instructions are subject to the gross receipts tax. X's receipts from the sale of planes to C are subject to the gross receipts tax. If C bought the planes under nttc it issued X, C would be liable for compensating tax on the value of the charter planes. Later, when C sells these planes, the receipts from the sales of the used planes also are taxable. Sale of used planes is in the normal course of C's business. If C converts a plane it purchased for leasing to charter flights, even if the conversion is for a single flight, compensating tax becomes due on the market value of the plane at the time of conversion.

~~[F. Example 5: B holds bulldozers out for lease to construction companies. B purchases its bulldozers under an nttc. C, a construction company, hires B's bulldozers, with operators, to use for two weeks on a roadbed under the direction of C's construction supervisor. This is not a construction service by B (as used in Section 7-9-52 NMSA 1978) because this is not a service performed by B as an independent construction contractor, since C exercises control over the means of accomplishing the result. B is not leasing as that term is used in Section 7-9-49 NMSA 1978. The use of the tangible personal property by B is in a manner other than holding it for lease or sale. At the time of that conversion from the use for leasing, compensating tax is due from B on the market value of the bulldozers furnished with operators to C.]~~

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.207.8 NMAC - Rn, 3 NMAC 2.49.8 & A, 5/31/01; A, 11/30/05]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.210 NMAC, Sections 7, 10, 19 and 22 and a repeal of Section 11, effective 11/30/05.

3.2.210.7 HAULING AND SPREADING DEFINED:

For purposes of Subsection C of Section 3.2.210.10 NMAC, hauling and spreading means the transporting of material from a location on or in proximity to a construction site and applying the material to the point of usage required as a step in completing the construction project.

[11/15/96; 3.2.210.7 NMAC - Rn, 3 NMAC 2.52.7, 5/31/01; A, 11/30/05]

3.2.210.10 TRANSPORTATION SERVICES

A. **HAULING:** Receipts from hauling materials and supplies to and from a building site for a person engaged in the construction business are not deductible

from the hauler's gross receipts pursuant to Section 7-9-52 NMSA 1978 because hauling materials and supplies to and from a construction site is not a construction service pursuant to Subsection A of Section 7-9-3.4 NMSA 1978.

B. HAULING PREFABRICATED BUILDINGS: A builder of prefabricated buildings may not issue a type 7 nontaxable transaction certificate to a company hired to move completed buildings from the builder's lot to the permanent site. Haulers are not engaged in construction as defined under Section 7-9-3 NMSA 1978. A deduction may be available under Section 7-9-48 NMSA 1978 if all the criteria of that section are met.

C. HAULING AND SPREADING MATERIALS WITHIN CONSTRUCTION PROJECT: Receipts of a person from hauling and spreading dirt, sand, gravel and rock, treated or untreated, for the purpose of furnishing materials to a construction project when such materials have been obtained from a source which is on or in the proximity of that construction project are receipts from performing a construction service. Such receipts may be deducted from the seller's gross receipts if the buyer delivers a nontaxable transaction certificate to the seller. [12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 3/16/79, 6/18/79, 11/8/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.10 NMAC - Rn, 3 NMAC 2.52.10 & A, 5/31/01; A, 11/30/05]

3.2.210.11 ~~["FORCE ACCOUNT WORK"]:~~

~~A. Receipts from selling construction services which are termed in the construction business "force account work" may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate to the seller and who uses that construction service on a construction project, the sale of which is subject to the gross receipts tax.~~

~~B. Receipts from the rental of the equipment alone or with operators, even though termed "force account work", are not receipts from selling construction services and may not be deducted from gross receipts.] [RESERVED]~~

[3/9/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.11 NMAC - Rn, 3 NMAC 2.52.11, 5/31/01; Repealed, 11/30/05]

3.2.210.19 BLUEPRINTS - PHOTOSTATS: Receipts from the sale of blueprints or photostats to a person engaged in the construction business are subject to the gross receipts tax. These receipts may not be deducted pursuant to Section 7-9-52

NMSA 1978 because they are not construction services [~~performed directly upon a construction project~~].

[3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.19 NMAC - Rn, 3 NMAC 2.52.19 & A, 5/31/01; A, 11/30/05]

3.2.210.22 LEASE OF CONSTRUCTION EQUIPMENT:

A. Receipts from leasing construction equipment, with or without operators, to a person engaged in the construction business may not be deducted from the lessor's gross receipts pursuant to Section 7-9-52 NMSA 1978. Leasing of construction equipment is not a construction service as defined in [~~Section 7-9-3 NMSA 1978~~] Subsection A of Section 7-9-3.4 NMSA 1978.

B. In contrast, when a person who is regularly engaged in the selling of construction services, such as a subcontractor, uses the subcontractor's own construction equipment to perform construction services for a person engaged in the construction business, the subcontractor may deduct the receipts for the services and equipment under Section 7-9-52 NMSA 1978 if:

(1) the subcontractor is an independent contractor and not an employee of the person engaged in the construction business; and

(2) the subcontractor exercises control over the use of the property in performing the services; the controlling factor is whether the equipment owner has control over the performance of the construction service which involves using the equipment or is simply operating the equipment at the direction of some other person engaged in the construction business.

C. Example 1: A is regularly engaged in the lease and rental of construction equipment. A enters into an agreement to lease a crane with an operator to a contractor engaged in the construction business to be used on a construction project. The contractor will direct all of the activity of the crane and operator on the construction site. A's receipts from the lease of the crane with an operator are not receipts from performing construction services. A cannot deduct such receipts.

D. Example 2: X is a heating and air conditioning subcontractor on a construction project. X owns a crane which X regularly uses to lift equipment onto the roof of buildings on which X works. X's receipts for construction services includes payment for using the crane. X may deduct those receipts under Section 7-9-52 NMSA 1978. If, however, X agrees to lease the crane with an operator to the prime contractor for work unrelated to the subcontract,

which work is performed at the direction of the prime contractor, X would not be able to deduct the receipts for the leasing of the crane.

[11/8/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.22 NMAC - Rn, 3 NMAC 2.52.22 & A, 5/31/01; A, 11/30/05]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.211 NMAC, Section 9, effective 11/30/05.

3.2.211.9 AMOUNT ATTRIBUTABLE TO IMPROVEMENTS AND THE COST OF LAND:

A. The proportion of the receipts from the sale of real property which is attributable to improvements constructed on the real property is determined by:

(1) subtracting from the sales price the cost of the land to the seller; or

(2) if there is substantial evidence that the value of the land is not the cost of the land to the seller, by subtracting from the sales price the value of the land as determined by an independent appraisal acceptable to the department, but in no case may the appraised value of the land exceed the difference between the sale price of the real property and the total cost of the improvements constructed on the real property.

B. The cost of the land to the seller is determined by the original cost of the land to the seller plus any amounts attributable to the land being sold, paid by the seller for offsite improvements such as paving.

~~[C. Example 1: Q, a developer, purchased a quarter section (160 acres) of land for \$16,000. Q then subdivides this parcel into 160 lots and installs streets, utility lines and sidewalks at a cost of \$64,000. Q deeds all these offsite improvements to the city and begins to build houses. Q sells a house to H for \$30,000. Q can deduct the cost of the land, \$100 per lot in initial cost plus \$400 per lot in offsite improvements, or \$500, from the sale price of the house to determine the gross receipts. The value of the land deeded to the city may be added pro rata to the cost of the lots. In this case, Q would have gross receipts of \$29,500. However, since the offsite improvements are deeded to the city and not resold, Q cannot purchase materials or construction services (Sections 7-9-51 and 7-9-52 NMSA 1978) for these offsite improvements under a nontaxable transaction certificate (ntte). If Q makes such a purchase and delivers an ntte, Q will be liable for the compensating tax.]~~

~~[D. Example 2] C. Example 1: X, a construction company,~~

purchases a lot in 1969 for \$1,000. X builds a house on this lot in 1971. X then sells this real property to Y for \$20,000. On the basis of an F.H.A. appraisal the value of the land is \$5,000; however, the total cost of the improvements constructed on the lot is \$18,000. X would be liable for gross receipts tax on \$18,000. The F.H.A. appraisal, assuming acceptance by the department, is substantial evidence of an increase in the value of the land, but the appraisal value of the land cannot exceed the difference between the sale price of the real property and the total cost of the improvements constructed on the real property.

[E. ~~Example 3~~] D.

Example 2: X, a construction company, purchases a lot. In order to prepare the lot as a building site, X levels and excavates a portion of the real property. The receipts of X from the sale of real property which are attributable to improvements such as leveling and excavating the lot in preparation of a building site may not be deducted from gross receipts pursuant to Section 7-9-53 NMSA 1978.

[F. ~~Example 4~~] E.

Example 3: X, a construction company, purchases a lot, makes certain improvements, and then sells the lot in the ordinary course of business. The receipts of X from improvements on real property owned and sold by it in the ordinary course of business do not include amounts retained by financial institutions which loaned the purchase price directly to the purchaser as prepaid finance charges or discounts, if these amounts are not received by the real estate vendor. It is immaterial whether or not such amounts are included in the quoted real estate price. The receipts of X do include all amounts actually paid over to it which are attributable to improvements constructed on real property sold by X in the ordinary course of business. The receipts of such a business also include any amounts deducted by title insurance companies to cover title insurance, legal fees, escrow fees, real estate brokerage commissions, real estate taxes, principal and interest on construction loans, liens and the like.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.211.9 NMAC - Rn, 3 NMAC 2.53.9 & A, 5/31/01; A, 11/30/05]

NEW MEXICO BOARD OF THANATOPRACTICE

This is an emergency amendment to 16.64.3 NMAC, Sections 10 and 11, effective November 10, 2005.

16.64.3.10 PROVISIONS FOR EMERGENCY LICENSURE:

A. Funeral service practi-

tioners currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster at no cost upon satisfying the following requirements:

(1) receipt by the thanatopractice board of a completed application which has been signed and notarized and which is accompanied by proof of identity, which may include a copy of a drivers license, passport or other photo identification issued by a governmental entity;

(2) requirements have been met as set forth in 16.643.3.8, 16.64.3.9, 16.64.5.9, 16.64.6.8, 16.64.6.9 and 16.64.6.10 NMAC.

(3) applicant shall provide a sworn affidavit that provides the name, address, years of employment and supervisors name;

(4) sworn affidavit that the applicant was personally and/or professionally affected by the disaster;

(5) verification of previous employment will be accepted from co-worker when it is impossible to obtain it from the employer;

(6) nothing in this section shall constitute a waiver of qualifications of the requirements for licensure contained in 16.64.3 NMAC.

B. The board may waive the application fee of \$50.00, licensure fee of \$150.00 only, but not the \$50.00 examination fee.

C. The board may waive the specific forms required under Subsection A of 16.64.3.8 NMAC only if the applicant is unable to obtain documentation from the federal declared disaster areas.

D. Emergency provisional license shall expire four (4) months from date of issue. Application for initial license shall be made on or before June 30, 2007 following the date of issue of the emergency provisional license.

E. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving the initial license. [16.64.3.10 NMAC - N/E, 11-10-05]

16.64.3.11 TERMINATION OF EMERGENCY LICENSURE:

A. The emergency license shall terminate upon the following circumstances:

(1) the issuance of an initial license under section 16.64.3 NMAC; or

(2) proof that the emergency license holder has engaged in fraud, deceit, or misrepresentation in procuring or

attempting to procure a license under this section.

B. Termination of an emergency license shall not preclude application for permanent licensure.

[16.64.3.11 NMAC - N/E, 11-10-05]

End of Adopted Rules Section

Other Material Related to Administrative Law

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 Thursday, December 1, 2005, in the Texas room of the Albuquerque Hilton, 1901 University Blvd, 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.

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES**2005**

Volume XVI	Submittal Deadline	Publication Date
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 3	October 17
Issue Number 20	October 18	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

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Volume XVII	Submittal Deadline	Publication Date
Issue Number 1	January 3	January 17
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 3	April 14
Issue Number 8	April 17	April 28
Issue Number 9	May 1	May 15
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 3	July 17
Issue Number 14	July 18	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
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Issue Number 19	October 2	October 16
Issue Number 20	October 17	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 14
Issue Number 24	December 15	December 29

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