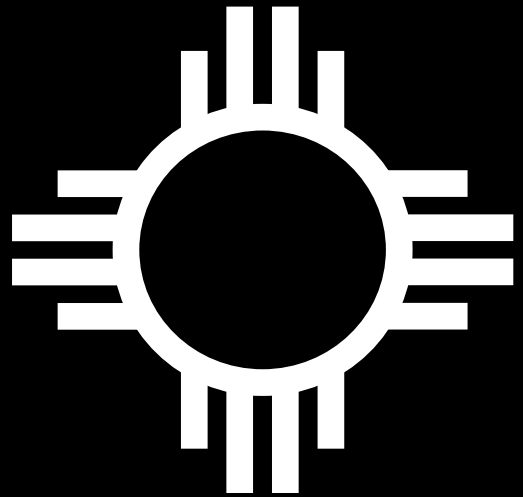


**NEW  
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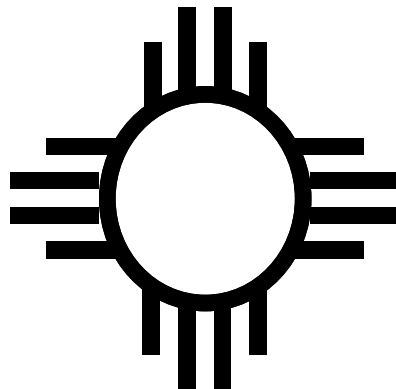


Volume XVI  
Issue Number 23  
December 15, 2005



# **New Mexico Register**

**Volume XVI, Issue Number 23  
December 15, 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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# New Mexico Register

Volume XVI, Number 23

December 15, 2005

## Table of Contents

### Notices of Rulemaking and Proposed Rules

<b>Attorney General, Office of the</b>	
Additions to the Proposed Rules and Notice Allowing Comments .....	1343
<b>Health, Department of</b>	
Division of Health Improvement	
Notice of Public Hearing on 7.1.7 NMAC: <i>Health Facility Licensure Fees and Procedures</i> .....	1343
Notice of Public Hearing on 7.7.2 NMAC: <i>Requirements for Acute Care, Limited Services and Special Hospitals</i> .....	1343
Notice of Public Hearing on 7.11.2 NMAC: <i>Requirements for Facilities Providing Outpatient Medical Services and Infirmaries</i> .....	1344
Public Health Division	
Notice of Public Hearing on 7.29.3 NMAC: <i>Rural Primary Health Care Act</i> .....	1344
<b>Oil Conservation Commission</b>	
Notice of Rulemaking .....	1344
<b>Podiatry, Board of</b>	
Legal Notice .....	1344

### Adopted Rules

#### Effective Date and Validity of Rule Filings

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

#### **A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered**

<b>Architects, Board of Examiners for</b>			
16.30.3 NMAC	A	Registration and Renewal, Duplicate Certificates, Seal Specifications and Document Identification .....	1347
<b>Energy, Minerals and Natural Resources Department</b>			
Oil Conservation Division			
19.15.1 NMAC	A	Oil and Gas: General Provisions and Definitions .....	1347
19.15.3 NMAC	A	Drilling .....	1348
19.15.4 NMAC	A	Plugging and Abandonment of Wells .....	1352
19.15.9 NMAC	A	Secondary or Other Enhanced Recovery, Pressure Maintenance, Salt Water Disposal, and Underground Storage .....	1353
19.15.13 NMAC	A	Reports .....	1354
19.15.14 NMAC	A	Procedure .....	1357
<b>Health, Department of</b>			
7.1.12 NMAC	N	Employee Abuse Registry .....	1358
<b>Human Services Department</b>			
Income Support Division			
8.102.611 NMAC	N	Education Works Program .....	1364
8.102.610 NMAC	A	Description of Program/Benefits - Benefit Delivery .....	1368
<b>Interstate Stream Commission</b>			
19.25.14 NMAC	N	Strategic Water Reserve .....	1369
<b>Landscape Architects, Board of</b>			
16.44.3 NMAC	A/E	Registration for Licensure .....	1371
<b>Medical Board</b>			
16.10.2 NMAC	A	Physicians: Licensure Requirement .....	1371
16.10.6 NMAC	A	Complaint Procedure and Institution of Disciplinary Action .....	1372
16.10.13 NMAC	A	Delegated Use of Devices and Procedures by Medical Assistants; Cosmetic Injections .....	1373
16.10.15 NMAC	A	Physician Assistants: Licensure and Practice Requirements .....	1374

<b>Nursing Home Administrators Board</b>		
16.13.5 NMAC	A/E	Application for Licensure by Reciprocity . . . . . 1375
<b>Nutrition and Dietetics Practice Board</b>		
16.14.3 NMAC	Rn & A/E	Requirements for Licensure . . . . . 1375
<b>Public Regulation Commission</b>		
Utility Division		
17.11.16 NMAC	R	Customer Protection . . . . . 1376
17.11.22 NMAC	R	Quality of Service Standards . . . . . 1376
17.11.16 NMAC	N	Consumer Protection. . . . . 1376
17.11.22 NMAC	N	Quality of Service. . . . . 1383
<b>Real Estate Commission</b>		
16.61.19 NMAC	A	Associate Broker and Qualifying Broker Duties, Disclosure, Brokerage Relationships and Dual Agency Relationships. . . . . 1390

## Notices of Rulemaking and Proposed Rules

### NEW MEXICO OFFICE OF THE ATTORNEY GENERAL

#### OFFICE OF THE NEW MEXICO ATTORNEY GENERAL ADDITIONS TO THE PROPOSED RULES AND NOTICE ALLOWING COMMENTS

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

The Attorney General is publishing additions to the proposed new rules and regulations concerning the extension of credit for small loans in the amount of two thousand five hundred dollars (\$2,500.00) or less. These additions are not to substitute the proposed rules and regulations. These additions to the proposed rules and regulations are being published by the authority vested in the Attorney General pursuant to NM ADC 12.2.1 and are being promulgated pursuant to NMSA 1978, Section 57-12-13.

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

1. Start from the Attorney General's home page at [www.ago@state.nm.us](http://www.ago@state.nm.us)
2. Click on "Additions to Proposed Small Loan Regulations" in the Quick Links Box in the center of the page.

To request that a copy of the additions of the proposed rules and regulations be mailed to you, please submit your request in writing to:

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

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

**1 (800) 678-1508**

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

The additions to the proposed rules and regulations governing the extension of credit for small loans add provisions to the following sections already contained in the proposed rules and regulations: (8) Unfair or Deceptive Trade Practices and (9) Unconscionable Trade Practices.

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

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

Written comments may also be submitted in person at:

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

Written comments may also be submitted via e-mail to:  
[additionregscomments@ago.state.nm.us](mailto:additionregscomments@ago.state.nm.us)

The Office of the New Mexico Attorney General will accept written comments for consideration as provided above no later than January 16, 2006.

### NEW MEXICO DEPARTMENT OF HEALTH DIVISION OF HEALTH IMPROVEMENT

#### NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.1.7 NMAC "Health Facility Licensure Fees and Procedures". The Hearing will be held on Thursday, January 19, 2006 at 3:00 P.M. in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico.

The public hearing will be conducted to set licensing fees for health facilities.

A copy of the proposed regulation can be obtained from:

Brian Royer  
Division of Health Improvement  
P.O. Box 26110

Santa Fe, NM 87502-6110  
(505) 827-2663

Please submit any written comments regarding the proposed regulation to:

Steve Dossey, Deputy Director  
Division of Health Improvement  
P.O. Box 26110  
Santa Fe, NM 87502-6110

The Department will accept public comment through the close of the hearing.

If you are an individual with a disability who is in need of special services to attend or participate in the hearing, please contact Brian Royer by telephone at 505-827-2663. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

### NEW MEXICO DEPARTMENT OF HEALTH DIVISION OF HEALTH IMPROVEMENT

#### NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.7.2 NMAC "Requirements for Acute Care, Limited Services and Special Hospitals". The Hearing will be held on Thursday, January 19, 2006 at 2:00 P.M. in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico.

The public hearing will be conducted to make certain clarifications and modifications to the existing regulation.

A copy of the proposed regulation can be obtained from:

Brian Royer  
Division of Health Improvement  
P.O. Box 26110  
Santa Fe, NM 87502-6110  
(505) 827-2663

Please submit any written comments regarding the proposed regulation to:

Steve Dossey, Deputy Director  
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P.O. Box 26110  
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The Department will accept public comment through the close of the hearing.

If you are an individual with a disability who is in need of special services to attend or participate in the hearing, please contact

Brian Royer by telephone at 505-827-2663. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO  
DEPARTMENT OF HEALTH  
DIVISION OF HEALTH  
IMPROVEMENT**

**NOTICE OF PUBLIC HEARING**

The New Mexico Department of Health will hold a public hearing on 7.11.2 NMAC "Requirements for Facilities Providing Outpatient Medical Services and Infirmaries". The Hearing will be held on Thursday, January 19, 2006 at 1:00 P.M. in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico.

The public hearing will be conducted to make certain clarifications and modifications to the existing regulation.

A copy of the proposed regulation can be obtained from:

Brian Royer  
Division of Health Improvement  
P.O. Box 26110  
Santa Fe, NM 87502-6110  
(505) 827-2663

Please submit any written comments regarding the proposed regulation to

Steve Dossey, Deputy Director  
Division of Health Improvement  
P.O. Box 26110  
Santa Fe, NM 87502-6110

The Department will accept public comment through the close of the hearing.

If you are an individual with a disability who is in need of special services to attend or participate in the hearing, please contact Brian Royer by telephone at 505-827-2663. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO  
DEPARTMENT OF HEALTH  
PUBLIC HEALTH DIVISION**

**NOTICE OF PUBLIC HEARING**

The New Mexico Department of Health will hold a public hearing on 7.29.3 NMAC "Rural Primary Health Care Act". The Hearing will be held on Thursday, January 19, 2006 at 10:30 A.M. in the Harold

Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico.

The public hearing will be conducted to modify standards and procedures for regulating programs under the Rural Primary Health Care Act, which assists in the provision of primary health care services in underserved areas of the state in order to better serve the health care needs of the public.

A copy of the proposed regulation can be obtained from:

Leann Roberts, RPHCA Program Manager  
Office of Primary Care and Rural Health  
P.O. Box 26110  
Santa Fe, NM 87502-6110  
(505) 827-0604

Please submit any written comments regarding the proposed regulation to

Leann Roberts, RPHCA Program Manager  
Office of Primary Care and Rural Health  
P.O. Box 26110  
Santa Fe, NM 87502-6110

The Department will accept public comment through the close of the hearing.

If you are an individual with a disability who is in need of special services to attend or participate in the hearing, please contact Leann Roberts by telephone at 505-827-0604. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO OIL  
CONSERVATION  
COMMISSION**

**NOTICE OF RULE MAKING**

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

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the Commission will conduct a public hearing at 9:00 A.M. on **January 12, 2006**, in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, concerning adoption of amendments to 19.15.1, 19.15.2 and 19.15.9 NMAC. The proposed amendments will repeal Sections 709, 710 and 711 of 19.15.9 NMAC that presently govern transportation and disposal of produced water and surface waste management

facilities, and adopt new Sections 51,52 and 53 to 19.15.2 NMAC, which will govern transportation and disposal of produced water and other oilfield wastes and surface waste management facilities. Section 7 of 19.15.1 NMAC will be amended to add new and revise definitions. The proposed amendments will extend permitting requirements for carriers of produced water and rules concerning surface disposition of produced water so that they will apply to all oilfield wastes, change the procedures for permitting new surface waste management facilities or modifications of existing facilities, prohibit disposal of salt-contaminated wastes in landfills, and adopt other detailed regulations concerning surface waste management facilities. Copies of the text of the proposed amendments are available from Commission Secretary, Florene Davidson at (505)-476-3458 or from the Division's web site at <http://www.emnrd.state.nm.us/ocd/rules.htm>. Written comments on the proposed amendments must be received no later than 5:00 P.M. on Thursday, January 5, 2006. Proposals for alternative amendments to the existing rules must be submitted in writing no later than Thursday December 29, 2005. Written comments or proposals for alternative amendments may be hand-delivered or mailed to Ms. Davidson at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at 476-3462. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ms. Davidson at (505)-476-3458 or through the New Mexico Relay Network (1-800-659-1779) as soon as possible.

**Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 30<sup>th</sup> day of November, 2005.**

**STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION**

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

**NEW MEXICO BOARD OF  
PODIATRY**

**LEGAL NOTICE**

**Public Rule Hearing and Regular Board Meeting**

The New Mexico Board of Podiatry will hold a Rule Hearing on January 27, 2006. Following the Rule Hearing the New Mexico Board of Podiatry will convene a



regular meeting to adopt the rules and take care of regular business. The New Mexico Podiatry 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 New Mexico Medical Board, 2055 S. Pacheco, Suite 400, Santa Fe, NM.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.21 NMAC: Part 1 General Provisions, Part 2 Fees, Part 3 License by Exam, Part 4 License by Reciprocity, Part 5 Temporary License and Emergency License, Part 8 Continuing Education and Part 10 Lapse of License and Reinstatement.

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 27, 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

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**End of Notices and  
Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

This is an amendment to 16.30.3 NMAC, Section 10, effective December 23, 2005.

#### 16.30.3.10 REGISTRATION THROUGH RECIPROCIITY:

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

**B.** A person currently registered as an architect in another jurisdiction who is not certified by NCARB may apply for a New Mexico architectural license upon receiving an NCARB broadly experienced architect certificate or an NCARB broadly experienced foreign architect certificate.

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

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

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

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

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

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

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

tion.

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

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

**[H-] I.** Provisional registration:

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

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

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

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

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

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

(4) An applicant for registration through reciprocity or endorsement who has received provisional registration and who engages in the practice of architecture during the term of provisional registration shall do so under the regulatory authority of the Architectural Act, Sections 61-15-1 through -13 NMSA 1978 and these rules and regulations.

**[I-] J.** Upon approval of the board, a new registrant will receive a wall certificate within a reasonable period following the board's decision.

[16.30.3.10 NMAC - Rp 16 NMAC 30.3.10, 9/6/2001; A, 9/15/2003; A, 9/16/2004; A, 9/9/2005; A, 12/23/2005]

### NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

#### OIL CONSERVATION DIVISION

**Explanatory Paragraph: This is an amendment to 19.15.1 NMAC, Section 7. The amendment to Section 7 adds definitions for approved temporary abandon-**

**ment and knowingly and willfully. The definition for temporary abandonment was amended. Sections 40 and 41 are new sections to be added. Section 40 will be effective 60 days from the date of publication in the New Mexico Register which will be 02/13/06. This amendment is to be effective 12/15/05.**

#### 19.15.1.7 DEFINITIONS:

**A.** Definitions beginning with the letter "A".

(1) Abate or abatement shall mean the investigation, containment, removal or other mitigation of water pollution.

(2) Abatement plan shall mean a description of any operational, monitoring, contingency and closure requirements and conditions for the prevention, investigation and abatement of water pollution.

(3) Adjoining spacing units are those existing or prospective spacing units in the same pool[(+) ] that are touching at a point or line on the spacing unit that is the subject of the application.

(4) Adjusted allowable shall mean the allowable production a well or proration unit receives after all adjustments are made.

(5) Allocated pool is one in which the total oil or natural gas production is restricted and allocated to various wells therein in accordance with proration schedules.

(6) Allowable production shall mean that number of barrels of oil or standard cubic feet of natural gas authorized by the division to be produced from an allocated pool.

(7) Approved temporary abandonment shall be the status of a well that is inactive, has been approved in accordance with 19.15.4.203 NMAC and is in compliance with 19.15.4.203 NMAC.

**[F-] (8)** Aquifer shall mean a geological formation, group of formations[?] or a part of a formation that is capable of yielding a significant amount of water to a well or spring.

**K.** ~~[Reserved.]~~ Definitions beginning with the letter "K". Knowingly and willfully, for the purpose of assessing civil penalties, shall mean the voluntary or conscious performance of an act that is prohibited or the voluntary or conscious failure to perform an act or duty that is required. It does not include performances or failures to perform that are honest mistakes or merely inadvertent. It includes, but does not require, performances or failures to perform that result from a criminal or evil intent or from a specific intent to violate the law. The conduct's knowing and willful nature may be established by plain indifference to

or reckless disregard of the requirements of the law, rules, orders or permits. A consistent pattern or performance or failure to perform also may be sufficient to establish the conduct's knowing and willful nature, where such consistent pattern is neither the result of honest mistakes nor mere inadvertency. Conduct that is otherwise regarded as being knowing and willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

T. Definitions beginning with the letter "T".

(1) Tank bottoms shall mean that accumulation of hydrocarbon material and other substances [which] that settles naturally below crude oil in tanks and receptacles that are used in handling and storing of crude oil, and which accumulation contains in excess of two [(2%) (29%)] percent of basic sediment and water; provided, however, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet thereto.

(2) Temporary abandonment shall be the status of a well [which] that is inactive [and has been approved for temporary abandonment in accordance with the provisions of these rules].

(3) Top unit allowable for gas shall mean the maximum number of cubic feet of natural gas, for the proration period, allocated to a gas producing unit in an allocated gas pool.

(4) Top unit allowable for oil shall mean the maximum number of barrels for oil daily for each calendar month allocated on a proration unit basis in a pool to non-marginal units. The top unit allowable for a pool shall be determined by multiplying the applicable depth bracket allowable by the market demand percentage factor in effect.

(5) Treating plant shall mean any plant constructed for the purpose of wholly or partially or being used wholly or partially for reclaiming, treating, processing[;] or in any manner making tank bottoms or any other waste oil marketable.

(6) Tubingless completion shall mean a well completion in which the production string of casing has an outside diameter of 2.875 inches or less.

[1-5-50...2-1-96; A, 7-15-96; Rn, 19 NMAC 15.A.7.1 through 7.84, 3-15-97; A, 7-15-99; 19.15.1.7 NMAC - Rn, 19 NMAC 15.A.7, 5-15-001; A, 3/31/04; A, 9/15/04; A, 09/30/05; A, 12/15/05]

19.15.1.37-39 [RESERVED]

19.15.1.40 COMPLIANCE:

A. A well operator is in compliance with Subsection A of 19.15.1.40 NMAC if the operator:

(1) currently meets the financial assurance requirements of 19.15.3.101 NMAC;

(2) is not subject to a division or commission order, issued after notice and hearing, finding the operator to be in violation of an order requiring corrective action;

(3) does not have a penalty assessment that is unpaid more than 70 days after issuance of the order assessing the penalty; and

(4) has no more than the following number of wells out of compliance with 19.15.4.201 NMAC that are not subject to an agreed compliance order setting a schedule for bringing the wells into compliance with 19.15.4.201 NMAC and imposing sanctions if the schedule is not met:

(a) two wells or 50 percent of the wells the operator operates, whichever is less, if the operator operates 100 wells or less;

(b) five wells if the operator operates between 101 and 500 wells;

(c) seven wells if the operator operates between 501 and 1000 wells; and

(d) 10 wells if the operator operates more than 1000 wells.

B. The division shall notify an operator on a monthly basis when, according to records on file with the division, a well on the inactive well list described in Subsection F of 19.15.1.40 NMAC shows no production or injection for the past 12 months by sending a letter by first class mail to the address the operator has provided the division pursuant to Subsection C of 19.15.3.100 NMAC.

C. Compliance with financial assurance requirements. The division shall make available on its website and update weekly the status of operators' financial assurance required by 19.15.3.101 NMAC, according to division records.

D. Orders requiring corrective action.

(1) The division shall make available on its website division or commission orders, issued after notice and hearing, finding an operator to be in violation of an order requiring corrective action.

(2) An operator who contests an order finding it to be in violation of an order requiring corrective action may appeal and may seek a stay of the order. An order that is stayed pending appeal does not affect an operator's compliance with Subsection A of 19.15.1.40 NMAC.

(3) An operator who completes the corrective action the order requires may file a motion with the order's issuer to declare the order satisfied. The division or commission, as applicable, may grant the motion without hearing, or may set the matter for hearing.

E. Penalty assessments.

(1) The division shall make avail-

able on its website penalty assessments and the date the operator paid them, according to division records.

(2) An operator who contests an order assessing penalties may appeal and may seek a stay of the order. An order that is stayed pending appeal does not affect an operator's compliance with Subsection A of 19.15.1.40 NMAC.

E. Inactive wells.

(1) The division shall make available on its website, and update daily, an "inactive well list" listing each well, by operator, that according to division records:

(a) does not have its wellbore plugged in accordance with 19.15.4.202 NMAC;

(b) is not in approved temporary abandonment in accordance with 19.15.4.203 NMAC; and

(c) is not subject to an agreed compliance order setting a schedule for bringing the well into compliance with 19.15.4.201 NMAC and imposing sanctions if the operator does not meet the schedule.

(2) For purposes of 19.15.1.40 NMAC, the listing of a well on the division's inactive well list as a well inactive for more than one year plus 90 days creates a rebuttable presumption that the well is out of compliance with 19.15.4.201 NMAC.

[19.15.1.40 NMAC - N, 02/13/06]

19.15.1.41 ENFORCEABILITY OF PERMITS AND ADMINISTRATIVE ORDERS:

Any person who conducts any activity pursuant to a permit, administrative order or other written authorization or approval from the division shall comply with every term, condition and provision of such permit, administrative order, authorization or approval.

[19.15.1.41 NMAC - N, 12/15/05]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION DIVISION

This is an amendment to 19.15.3 NMAC, with the addition of a new Section 100 and amending Sections 101 and 102. This amendment is to be effective 12/15/05.

19.15.3.8-99 [RESERVED]

19.15.3.100 OPERATOR REGISTRATION; CHANGE OF OPERATOR; CHANGE OF NAME:

A. Prior to commencing operations, every operator of a well or wells in New Mexico shall register with the division as an operator. Applicants shall pro-

vide the following to the financial assurance administrator in the division's Santa Fe office:

(1) an oil and gas registration identification (OGRID) number obtained from the division, the state land office or the taxation and revenue department;

(2) a current address of record to be used for notice, and a current emergency contact name and telephone number for each district in which the operator operates wells; and

(3) the financial assurance required by 19.15.3.101 NMAC.

**B.** The division may deny registration as a well operator if:

(1) the applicant is not in compliance with Subsection A of 19.15.1.40 NMAC;

(2) an officer, director, partner in the applicant or person with an interest in the applicant exceeding 25 percent, is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.1.40 NMAC;

(3) the applicant is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.1.40 NMAC;

(4) the applicant is a corporation or limited liability company, and is not registered with the public regulation commission to do business in New Mexico; or

(5) the applicant is a limited partnership, and is not registered with the New Mexico secretary of state to do business in New Mexico.

**C.** Operators shall keep the division informed of their current address of record and emergency contact names and telephone numbers by submitting changes in writing to the division's financial assurance administrator in the division's Santa Fe office within 30 days of the change.

**D.** The division may require an operator or applicant to identify its current and past officers, directors and partners, and its current and past ownership interest in other operators.

**E.** Change of operator.

(1) A change of operator occurs when the entity responsible for a well or a group of wells changes. A change of operator may result from a sale, assignment by a court, a change in operating agreement or other transaction. Under a change of operator, wells are moved from the OGRID number of the operator of record with the division to the new operator's OGRID number.

(2) The operator of record with

the division and the new operator shall apply for a change of operator by jointly filing a form C-145 using the division's web-based online application. If the operator of record with the division is unavailable, the new operator shall apply to the division for approval of change of operator without a joint application. The operator shall make such application in writing, and provide documentary evidence of the applicant's right to assume operations. The new operator may not commence operations until the division approves the application for change of operator.

(3) The division director or his designee may deny a change of operator if:

(a) the new operator is not in compliance with Subsection A of 19.15.1.40 NMAC; or

(b) the new operator is acquiring wells, facilities or sites subject to a compliance order requiring remediation or abatement of contamination, or compliance with 19.15.3.201 NMAC, and the new operator has not entered into an agreed compliance order setting a schedule for compliance with the existing order.

(4) In determining whether to grant or deny a change of operator when the new operator is not in compliance with Subsection A of 19.15.1.40 NMAC, the division director or his designee shall consider such factors as whether the non-compliance with Subsection A of 19.15.1.40 NMAC is caused by the operator not meeting the financial assurance requirements of 19.15.3.101 NMAC, being subject to a division or commission order finding the operator to be in violation of an order requiring corrective action, having a penalty assessment that has been unpaid for more than 70 days since the issuance of the order assessing the penalty or having more than the allowed number of wells out of compliance with 19.15.4.201 NMAC. If the non-compliance is caused by the operator having more than the allowed number of wells not in compliance with 19.15.4.201 NMAC, the division director or his designee shall consider the number of wells not in compliance, the length of time the wells have been out of compliance and the operator's efforts to bring the wells into compliance.

**E.** Change of name.

(1) A change of operator name occurs when the name of the entity responsible for a well or wells changes but the entity does not change. For a change of name, the OGRID number remains the same but division records are changed to reflect the new operator name.

(2) An operator shall apply for a change of name by filing a form C-146 using the division's web-based online application and supplying documentary proof that the change is a name change and not a

change of operator. If the operator is a corporation, limited liability company or limited partnership, the name must be registered with the public regulation commission or the New Mexico secretary of state, as applicable. The division shall not approve a change of name until the state land office and the taxation and revenue department have cleared the change of name on the OGRID.

**G.** Examples of change of operator and change of name.

(1) Mr. Smith, a sole proprietor, operates five wells under the name "Smith oil company". Mr. Smith changes the name of his company to "Smith production company". The name of the entity operating the wells has changed, but the entity has not changed. Mr. Smith should apply for a change of name.

(2) Mr. Smith incorporates his business, changing from the sole proprietorship, "Smith production company", to a corporation: "Smith production company, inc.". The entity responsible for the wells has changed, and Mr. Smith and "Smith production company, inc." should apply for a change of operator.

(3) Smith production company, inc., a New Mexico operator, merges with XYZ, inc., which does not operate in New Mexico. At the surviving entity's election, this transaction may be treated as a change of name from Smith production company, to XYZ, inc., maintaining the existing OGRID, or as a change of operator, with a new OGRID.

(4) Two New Mexico operators, Smith production company, inc. and Jones production company, inc., merge. The surviving corporation is Jones production company, inc. A different entity now operates the wells Smith production company, formerly operated, and the wells must be placed under that entity's OGRID. Jones production company, inc. and Smith production company, inc. should apply for a change of operator as to the wells Smith production company, inc. operated, [19.15.3.100 NMAC – N, 12/15/05]

#### 19.15.3.101 [ ~~P L U G G I N G~~ FINANCIAL ASSURANCE FOR WELL PLUGGING:

**A.** Any person, firm, corporation[;] or association who has drilled or acquired, is drilling[;] or proposes to drill or acquire any oil, gas[;] or injection or other service well on privately owned or state owned lands within this state shall furnish [to the division, and obtain approval thereof, a surety bond] a financial assurance acceptable to the division in the form of an irrevocable letter of credit or cash or surety bond running to the [State] state of New Mexico[; in a form prescribed by the divi-

tion, and]conditioned that the well be plugged and abandoned and the location restored and remediated in compliance with [the rules and regulations of the] division rules. [Such bond may be a one-well plugging bond or a blanket plugging bond. All bonds shall be executed by a responsible surety company authorized to do business in the State of New Mexico.]

**B.** The division accepts two forms of financial assurance: a one-well financial assurance that covers a single well and a blanket financial assurance that covers multiple wells. Any well that has been in temporary abandonment for more than two years must be covered by a one-well financial assurance, except that the division may waive the requirement of a one-well financial assurance for a well that is shut-in because of the lack of a pipeline connection. The division may release the one-well financial assurance upon the operator's or surety's written request after the well is returned to production if a blanket financial assurance covers the well.

~~[B]~~**C.** Amounts.

~~(1)~~ **[Blanket plugging bonds]** A blanket financial assurance shall be in the amount of [fifty thousand dollars (-) \$50,000 (-) conditioned as above provided,] covering all oil, gas[;] or service wells drilled, acquired or operated in this state by the principal on the bond.

~~[ (-) One-well plugging bonds]~~ **(2)** A one-well financial assurance shall be in the amounts stated below in accordance with the well's depth and location [of the well].

~~[(4)]~~**(a)** Chaves, Eddy, Lea, McKinley, Rio Arriba, Roosevelt, Sandoval[;] and San Juan counties, New Mexico: \$5000 plus \$1 per foot of projected depth of proposed well or measured depth of existing well.

<del>[Projected Depth of Proposed Well</del>	<del>— Amount of Bond</del>
<del>— or Actual Depth of Existing Well</del>	
<del>— Less than 5,000 feet</del>	<del>— \$ 5,000</del>
<del>— 5,000 feet to 10,000 feet</del>	<del>— \$ 7,500</del>
<del>— More than 10,000 feet</del>	<del>— \$ 10,000]</del>

~~[(2)]~~**(b)** All other counties in the state: \$10,000 plus \$1 per foot of projected depth of proposed well or measured depth of existing well.

<del>[Projected Depth of Proposed Well</del>	<del>— Amount of Bond</del>
<del>— or Actual Depth of Existing Well</del>	
<del>— Less than 5,000 feet</del>	<del>— \$ 7,500</del>
<del>— 5,000 feet to 10,000 feet</del>	<del>— \$ 10,000</del>
<del>— More than 10,000 feet</del>	<del>— \$ 12,500]</del>

~~[ (D)]~~ **(3)** The appropriate division district office may approve revised plans for an actively drilling well [may be approved by the appropriate District Office of the division] for drilling as much as 500 feet deeper than the [normal maximum] depth [allowed] stated on the well's [bond] financial assurance. Any well to be drilled more than 500 feet deeper than the [normal depth bracket must] depth stated on the well's financial assurance shall be covered by a new [bond] financial assurance in the amount prescribed for the [deeper depth bracket] new projected depth.

~~[ (E)]~~ **(4)** The [bond requirement] amount of the one-well financial assurance required for any intentionally deviated well shall be determined by the well's measured depth, and not its true vertical depth.

~~[ (F)]~~ A cash bond may be accepted by the division pursuant to the conditions set forth hereinafter. Cash representing the full amount of the bond shall be deposited by the operator in an account in a federally insured financial institution located within the State of New Mexico, such account to be held in trust for the division. Both one well and blanket cash bonds shall be in the amount specified for surety bonds. A document, approved by the division, evidencing the terms and conditions of the cash bond shall be executed by an authorized representative of the operator and the depository institution and filed with the division prior to the effective date of the bond. No cash bond will be authorized by the Director and no wells may be drilled or acquired under a blanket cash bond unless the operator/applicant is in good standing with the division. If the financial status or reliability of the applicant is unknown to the Director he may require the filing of a financial statement or such other information as may be necessary to evaluate the ability of the applicant/operator to fulfill the conditions of the bond.

**G** From time to time any accrued interest over and above the face amount of the bond may be paid to the operator. Upon satisfactory plugging by the operator of any well(s) covered by a cash bond, the Director shall issue an order authorizing the release of said bond.

**H.** Any bond required by Section 101 of 19.15.3 NMAC is a plugging bond, not a drilling bond, and shall endure until any well drilled or acquired under such bond has been plugged and abandoned and such plugging and abandonment has been approved by the division, or has been covered by another bond approved by the division.

**I.** Transfer of a property does not of itself release a bond. In the event of transfer of ownership of a well, the appropriate form, C-103 or C-104, properly executed, shall be filed with the District Office of the division in accordance with Rule 1103 or Rule

1104 by the new owner of the well. The District Office may approve the transfer providing that a new one-well bond covering the well or a blanket bond in the name of the new owner has been approved by the Santa Fe office of the division.

**J.** Upon approval of the bond and the Form C-103 or C-104, the transferor is released of plugging responsibility for the well, and upon request, the original bond will be released. No blanket bond will be released, however, until all wells covered by the bond have been plugged and abandoned or transferred in accordance with the provisions of Section 101 of 19.15.3 NMAC.

**K.** All bonds shall be filed with the Santa Fe office of the division, and approval of such bonds, as well as releases thereof, obtained from said office.

**L.** All bonds required by these rules shall be conditioned for well plugging and location cleanup only, and not to secure payment for damages to livestock, range, water, crops, tangible improvements, nor any other purpose.

**M.** Upon failure of the operator to properly plug and abandon the well(s) covered by a bond, the division shall give notice to the operator and surety, if applicable, and hold a hearing as to whether the well(s) should be plugged in accordance with a division approved plugging program. If, at the hearing, it is determined that the operator has failed to plug the well as provided for in the bond conditions and division rules, the Division director shall issue an order directing the well(s) to be plugged in a time certain. Such an order may also direct the forfeiture of the bond upon the failure or refusal of the operator, surety, or other responsible party to properly plug the well(s). If the proceeds of the bond(s) are not sufficient to cover all of the costs incurred by the division in plugging the well(s) covered by the bond, the division shall take such legal action as is necessary to recover such additional costs. Any monies recovered through bond forfeiture or legal actions shall be placed in the Oil & Gas Reclamation Fund.]

**D.** General requirements for financial assurance.

**(1)** The operator shall file financial assurance documents with the division's Santa Fe office, and obtain approvals and releases of financial assurance from that office.

**(2)** All financial assurance documents shall be on forms prescribed by or otherwise acceptable to the division.

**(3)** A financial assurance shall be conditioned for well plugging and abandonment and location restoration and remediation only, and not to secure payment for damages to livestock, range, crops or tangible improvements or any other purpose.

(4) The division may require proof that the individual signing for an entity on a financial assurance document or an amendment to a financial assurance document has the authority to obligate that entity.

E. Additional requirements for cash and surety bonds.

(1) Surety bonds shall be issued by a reputable corporate surety authorized to do business in the state of New Mexico.

(2) The operator shall deposit cash representing the full amount of the bond in an account in a federally-insured financial institution located within the state of New Mexico, such account to be held in trust for the division. Authorized representatives of the operator and the depository institution shall execute a document evidencing the cash bond's terms and conditions. The operator shall file the document with the division prior to the bond's effective date. If the operator's financial status or reliability is unknown to the division director he or she may require the filing of a financial statement or such other information as may be necessary to evaluate the operator's ability to fulfill the bond's conditions. From time to time any accrued interest over and above the bond's face amount may be paid to the operator.

F. Additional requirements for letters of credit.

(1) The division may accept irrevocable letters of credit issued by national or state-chartered banking associations.

(2) Letters of credit shall be irrevocable for a term of not less than five years, unless the applicant shows good cause for a shorter time period.

(3) Letters of credit shall provide for automatic renewal for successive, like terms upon expiration, unless the issuer has notified the division in writing of non-renewal at least 30 days prior to expiration.

(4) The division may forfeit and collect a letter of credit if not replaced by an approved financial assurance at least 30 days before the expiration date.

G. Release of financial assurance.

(1) The division shall release a financial assurance document upon the operator's or surety's written request if all wells drilled or acquired under that financial assurance have been plugged and abandoned and the location restored and remediated and released pursuant to 19.15.4.202 NMAC, or have been covered by another financial assurance the division has approved.

(2) Transfer of a property or a change of operator does not of itself release a financial assurance. The division shall not approve a request for change of operator for a well until the new operator has the

required financial assurance in place.

H. Forfeiture of financial assurance.

(1) Upon the operator's failure to properly plug and abandon and restore and remediate the location of any well or wells a financial assurance covers, the division shall give notice to the operator and surety, if applicable, and hold a hearing as to whether the well or wells should be plugged and abandoned and the location restored and remediated in accordance with a division-approved plugging program. If it is determined at the hearing that the operator has failed to plug and abandon the well and restore and remediate the location as provided for in the financial assurance or division rules, the division director shall issue an order directing the well to be plugged or abandoned and the location restored and remediated in a time certain. Such an order may also direct the forfeiture of the financial assurance upon the failure or refusal of the operator, surety or other responsible party to properly plug and abandon the well and restore and remediate the location.

(2) If the financial assurance's proceeds exceed the costs the division incurred plugging and abandoning the well and restoring and remediating the location the financial assurance covers, the division shall return the excess to the surety or the operator, as appropriate.

(3) If the financial assurance's proceeds are not sufficient to cover all the costs the division incurred in plugging and abandoning the well and restoring and remediating the location, the division may seek indemnification from the operator as provided in NMSA 1978, Section 70-2-14(E).

(4) The division shall deposit all forfeitures and all funds collected pursuant to a judgment in a suit for indemnification in the oil and gas reclamation fund.

I. Effective dates.

(1) 19.15.3.101 NMAC is effective immediately as to all wells drilled or acquired after its effective date.

(2) As to all other wells, 19.15.3.101 NMAC is effective January 1, 2008.

[1-1-50, 6-17-77, 6-5-86, 2-1-96; 19.15.3.101 NMAC - Rn, 19 NMAC 15.C.101, 11-15-01; A, 12/15/05]

**19.15.3.102 [NOTICE OF INTENTION TO DRILL] PERMIT TO DRILL, DEEPEN OR PLUG BACK:**

[ A. Prior to the commencement of operations, notice shall be delivered to the division of intention to drill any well for oil or gas or for injection purposes and approval obtained on Form C-101. A copy of the approved Form C-101 must be kept at the well site during drilling operations.

B. No permit shall be approved for the drilling of any well within the corporate limits of any city, town, or village of this state unless notice of intention to drill such well has been given to the duly constituted governing body of such city, town or village or its duly authorized agent. Evidence of such notification shall accompany the application for a permit to drill (Form C-101).

C. When filing a permit to drill in any quarter-quarter section containing an existing well or wells, the applicant shall concurrently file a plat or other acceptable document locating and identifying such well(s) and a statement that the operator(s) of such well(s) have been furnished a copy of the permit.]

A. The operator shall obtain a permit prior to commencing drilling, deepening or re-entry operations, or before plugging a well back to a different pool or completing or re-completing a well in an additional pool.

B. Applicants shall file a complete form C-101, application for permit to drill, deepen or plug back, and complete form C-102, well location and acreage dedication plat, and meet the following requirements, if applicable:

(1) an applicant for a permit to drill any well within the corporate limits of any city, town or village of this state shall give notice to the duly constituted governing body of such city, town or village or its duly authorized agent and certify on form C-101 that it gave such notice;

(2) an applicant for a permit to drill in any quarter-quarter section containing an existing well or wells operated by another operator shall concurrently file a plat or other acceptable document locating and identifying such well or wells, furnish a copy of the application to the other operator or operators in the quarter-quarter section and certify on form C-101 that it furnished such copies;

(3) an applicant for a permit to operate a well in a spacing or proration unit containing an existing well or wells operated by another operator shall also comply with Paragraph (2) of Subsection E of 19.15.3.104 NMAC.

C. The division director or his designee may deny a permit to drill, deepen or plug back if the applicant is not in compliance with Subsection A of 19.15.1.40 NMAC. In determining whether to grant or deny the permit, the division director or his designee shall consider such factors as whether the non-compliance with Subsection A of 19.15.1.40 NMAC is caused by the operator not meeting the financial assurance requirements of 19.15.3.101 NMAC, being subject to a division or commission order finding the opera-

tor to be in violation of an order requiring corrective action, having a penalty assessment that has been unpaid for more than 70 days since the issuance of the order assessing the penalty or having more than the allowed number of wells out of compliance with 19.15.4.201 NMAC. If the non-compliance is caused by the operator having more than the allowed number of wells not in compliance with 19.15.4.201 NMAC, the division director or his designee shall consider the number of wells not in compliance, the length of time the wells have been out of compliance and the operator's efforts to bring the wells into compliance.

**D.** The division may impose conditions on an approved permit to drill, deepen or plug back.

**E.** The operator shall keep a copy of the approved form C-101 at the well site during drilling operations.

[1-1-50, 5-22-73...2-1-96; 19.15.3.102 NMAC - Rn, 19 NMAC 15.C.102, 11-15-01; A, 12/15/05]

**NEW MEXICO ENERGY,  
MINERALS AND NATURAL  
RESOURCES  
DEPARTMENT  
OIL CONSERVATION DIVISION**

**This is an amendment to 19.15.4 NMAC, Sections 201 and 203. This amendment is to be effective 12/15/05.**

**19.15.4.201 WELLS TO BE PROPERLY ABANDONED:**

**A.** The operator of any [well drilled for oil, gas or injection; for seismic, core or other exploration, or for a service well;] of the following wells, whether cased or uncased, shall be responsible for the plugging thereof[-]; wells drilled for oil or gas; or service wells including but not limited to seismic, core, exploration or injection wells.

**B.** A well shall be either properly plugged and abandoned or [~~temporarily abandoned~~] placed in approved temporary abandonment in accordance with these rules within [~~ninety (90)~~] 90 days after:

(1) a [~~sixty (60)~~] 60 day period following suspension of drilling operations[,-];

(2) a determination that a well is no longer usable for beneficial purposes[-]; or

(3) a period of one [~~(4)~~] year in which a well has been continuously inactive.

[7-12-90...2-1-96; 19.15.4.201 NMAC - Rn, 19 NMAC 15.D.201, 12-14-01; A, 12/15/05]

**19.15.4.203 APPROVED TEMPORARY ABANDONMENT:**

**A.** [~~Wells Which May Be Temporarily Abandoned~~] Approved temporary abandonment. [~~(4)~~] The division may [~~permit any well which is required to be properly abandoned under these rules but which has potential for future beneficial use for enhanced recovery or injection, and any other well for which an operator requests temporary abandonment, to be temporarily abandoned~~] place any well in approved temporary abandonment for a period of up to five [~~(5)~~] years. Prior to the expiration of any approved temporary abandonment the operator shall return the well to beneficial use under a plan [~~approved by~~] the division approves, permanently plug and abandon said well and restore and remediate the location or apply for a new approval to temporarily abandon the well.

**B.** Request for approval and permit.

(1) Any operator seeking approval for approved temporary abandonment shall submit on form C-103, sundry notices and reports on wells, and a notice of intent to [~~temporarily abandon~~] seek approved temporary abandonment for the well describing the proposed temporary abandonment procedure to be used. [~~No~~] The operator shall not commence any work [~~shall be commenced~~] until approved by the division, [~~and the~~] The operator shall give 24 hours notice to the appropriate district office of the division before [~~work actually begins~~] beginning work.

(2) [~~No temporary abandonment shall be approved~~] The division shall not approve temporary abandonment until the operator furnishes evidence demonstrating [~~unless evidence is furnished to show~~] that [~~the casing of such well is~~] such well's casing and cementing are mechanically and physically sound and in such condition as to prevent:

(a) damage to the producing zone;

(b) migration of hydrocarbons or water;

(c) the contamination of fresh water or other natural resources; and

(d) the leakage of any substance at the surface.

(3) [~~If the well fails the mechanical integrity test required herein, the well shall be plugged and abandoned in accordance with these rules or the casing problem corrected and the casing retested within ninety (90) days.~~] The operator shall demonstrate both internal and external mechanical integrity pursuant to Paragraphs (1), (2) and (3) of Subsection C of 19.15.4.203 NMAC.

(4) Upon successful completion of the work on the temporarily abandoned well, the operator [~~will~~] shall submit a

request for [~~Temporary Abandonment~~] approved temporary abandonment to the appropriate district office on form C-103 together with such other information as is required by [~~Rule 1103-E.(4)~~] Subsection E of 19.15.13.1103 NMAC.

(5) [~~The division may require the operator to post with the division a one well plugging bond for the well in an amount to be determined by the division to be satisfactory to meet the particular requirements of the well.~~

(6) The division shall specify the permit's expiration date [~~of the permit~~], which shall be not more than five [~~(5)~~] years from the date of approval.

**C.** [~~Tests Required~~] Demonstrating mechanical integrity.

(1) The division may approve the following methods of demonstrating internal casing integrity [~~may be approved for temporarily abandoning a well~~] for wells to be placed in approved temporary abandonment:

(a) the operator may set a cast iron bridge plug [~~will be set within one hundred (100)~~] within 100 feet of uppermost perforations or production casing shoe, load [~~and~~] the casing [~~loaded~~] with inert fluid and pressure [~~tested~~] test to 500 pounds per square inch surface pressure with a pressure drop of not more than 10[%] percent [~~for thirty (30) minutes~~] over a 30 minute period; [~~or~~]

(b) the operator may run a retrievable bridge plug or packer [~~will be run~~] to within [~~one hundred (100)~~] 100 feet of uppermost perforations or production casing shoe, and test the well [~~tested~~] to 500 pounds per square inch surface pressure for [~~thirty~~] 30 minutes with a pressure drop of not greater than 10[%] percent [~~for thirty (30) minutes~~] over a 30 minute period; or

(c) for a gas well in southeast New Mexico completed above the San Andres formation, if the operator can demonstrate that the fluid level is below the base of the salt and that a Bradenhead test shows no casing leaks, the division may exempt the well from the requirement for a bridge plug or packer; or

(d) a casing inspection log confirming the mechanical integrity of the production casing may be submitted.]

(e) the operator may demonstrate that the well has been completed for less than five years and has not been connected to a pipeline.

(2) [Any such test which is submitted must have been conducted within the previous twelve (12) months.] During the testing described in Subparagraphs (a) and (b) of Paragraph (1) of Subsection C of 19.15.4.203 NMAC the operator shall:

(a) open all casing valves during the internal pressure tests and report any flow or pressure change occurring immedi-



ately before, during or immediately after the 30 minute pressure test;

(b) top off the casing with inert fluid prior to leaving the location;

(c) report any flow during the test in Subparagraph (b) of Paragraph (1) of Subsection C of 19.15.4.203 NMAC to the division district office prior to completion of the temporary abandonment operations; the division may require remediation of the flow prior to approving temporary abandonment of the well.

(3) An operator may use any method approved by the United States environmental protection agency in 40 C.F.R. 146.8(c) to demonstrate external casing and cement integrity for wells to be placed in approved temporary abandonment.

(4) The division shall not accept mechanical integrity tests or logs conducted more than 12 months prior to submittal.

(5) The operator shall record mechanical integrity tests on a chart recorder with a maximum two hour clock and maximum 1000 pound spring, which has been calibrated within the six months prior to conducting the test. All witnesses to the test shall sign the chart. The operator shall submit the chart with form C-103 requesting approved temporary abandonment.

(6) The division may approve other [easing tests submitted on Form C 103 on an individual basis] testing methods the operator proposes if the operator demonstrates that the test will satisfy the requirements of Paragraph (2) of Subsection B of 19.15.14.203 NMAC. [7-12-90...7-12-90, 2-1-96; 19.15.4.203 NMAC - Rn, 19 NMAC 15.D.203, 12-14-01; A, 12/15/05]

**NEW MEXICO ENERGY,  
MINERALS AND NATURAL  
RESOURCES  
DEPARTMENT  
OIL CONSERVATION DIVISION**

**This is an amendment to 19.15.9 NMAC, Section 701. This amendment is to be effective 12/15/05.**

**19.15.9.701 INJECTION OF  
FLUIDS INTO RESERVOIRS:**

A. Permit for injection required. The injection of gas, liquefied petroleum gas, air, water[;] or any other medium into any reservoir for the purpose of maintaining reservoir pressure or for the purpose of secondary or other enhanced recovery or for storage or the injection of water into any formation for the purpose of water disposal shall be permitted only by order of the division after notice and hear-

ing, unless otherwise provided herein. The division shall grant a permit for injection under 19.15.9.701 NMAC only to an operator who is in compliance with Subsection A of 19.15.1.40 NMAC. The division may revoke a permit for injection issued under 19.15.9.701 NMAC after notice and hearing if the operator is not in compliance with Subsection A of 19.15.1.40 NMAC.

B. Method of making application.

(1) [Application] The operator shall apply for authority [for the injection of] to inject gas, liquefied petroleum gas, air, water or any other medium into any formation for any reason, including but not necessarily limited to the establishment of or the expansion of water flood projects, enhanced recovery projects, pressure maintenance projects[;] and salt water disposal, [shall be by submittal of division Form] by submitting form C-108 complete with all attachments.

(2) The applicant shall furnish, by certified or registered mail, a copy of the application to [the] each owner of the surface of the land on which each injection or disposal well is to be located and to each leasehold operator or other "affected person" within any tract wholly or partially contained within one-half mile of the well. Affected person shall mean the (a) division designated operator; (b) in the absence of an operator, any lessee whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date he files the application; and (c) in the absence of an operator or lessee, any mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date he filed the application.

C. Administrative approval.

(1) If the application is for administrative approval rather than for a hearing, it [must] shall also be accompanied by a copy of a legal publication the applicant published [by the applicant] in a newspaper of general circulation in the county in which the proposed injection well is located. [(The details required in such legal notice are listed on Side 2 of Form C-108)] The legal publication's contents shall include the (a) name, address, phone number and contact party for the applicant; (b) the injection well's intended purpose, with the exact location of single wells or the section, township and range location of multiple wells; (c) the formation name and depth with expected maximum injection rates and pressures; and (d) a notation that interested parties must file objections or requests for hearing with the division within 15 days.

(2) [No] The division shall not approve an application for administrative

approval [may be approved] until 15 days following the division's receipt [by the division] of form C-108 complete with all attachments including evidence of mailing as required under [Subsection B, Paragraph (2) above] Paragraph (2) of Subsection B of 19.15.9.701 NMAC and proof of publication as required by [Subsection C, Paragraph (1) above] Paragraph (1) of Subsection C of 19.15.9.701 NMAC.

(3) If [no] the division does not receive an objection [is received] within said 15-day period, and a hearing is not otherwise required, the division may approve the application [may be approved] administratively.

D. Hearings[-]. If a written objection to any application for administrative approval of an injection well is filed within 15 days after receipt of a complete application, or if a hearing is required [by these rules] pursuant to 19.15.9.701 NMAC or deemed advisable by the division director, the division shall set the application [shall be set] for hearing and give notice [thereof given by the division] of the hearing.

E. Salt water disposal wells.

(1) The division director shall have authority to grant an exception to the hearing requirements of Subsection A of 19.15.9.701 NMAC for water disposal wells only [without hearing,] when the waters to be disposed of are mineralized to such a degree as to be unfit for domestic, stock, irrigation[;] or other general use, and when said waters are to be disposed of into a formation older than Triassic (Lea county only) and provided the division receives no objections [are received] pursuant to Subsection C of 19.15.9.701 NMAC.

(2) [Disposal will not be permitted] The division shall not permit disposal into zones containing waters having total dissolved solids concentrations of 10,000 mg/l or less except after notice and hearing, provided however, that the division may establish exempted aquifers for such zones wherein the division may administratively approve such injection [may be approved administratively].

(3) Notwithstanding the provisions of [Subsection E, Paragraph (2) above] Paragraph (2) of Subsection E of 19.15.9.701 NMAC, the division director may authorize disposal into such zones if the waters to be disposed of are of higher quality than the native water in the disposal zone.

F. Pressure maintenance projects.

(1) Pressure maintenance projects are defined as those projects in which fluids are injected into the producing horizon in an effort to build up [and/or] or maintain the

reservoir pressure in an area ~~[which]~~ that has not reached the advanced or "stripper" state of depletion.

(2) ~~[AH]~~ The division shall set all applications for establishment of pressure maintenance projects [shall be set] for hearing. The division shall fix the project area and the allowable formula for any pressure maintenance project [shall be fixed by the division] on an individual basis after notice and hearing.

(3) ~~[Pressure]~~ The division may authorize an operator to expand a pressure maintenance projects [may be expanded] and place additional wells [placed] on injection only [upon authority from the division] after notice and hearing or by administrative approval.

(4) The division director shall have authority to grant an exception to the hearing requirements of Subsection A of 19.15.9.701 NMAC for the conversion to injection of additional wells within a project area provided that any such well is necessary to develop or maintain efficient pressure maintenance within such project and provided that the division receives no objections ~~[are received]~~ pursuant to Subsection C of 19.15.9.701 NMAC.

(5) An established pressure maintenance project shall have only one designated operator. Any application for exception must be set for hearing.

**G. Water flood projects.**

(1) Water flood projects are defined as those projects in which water is injected into a producing horizon in sufficient quantities and under sufficient pressure to stimulate the production of oil from other wells in the area, and shall be limited to those areas in which the wells have reached an advanced state of depletion and are regarded as what is commonly referred to as "stripper" wells.

(2) ~~[AH]~~ The division shall set all applications for establishment of water flood projects [shall be set] for hearing.

(3) The project area of a water flood project shall comprise the proration units ~~[owned or operated by]~~ a given operator owns or operates upon which injection wells are located plus all proration units ~~[owned or operated by]~~ the same operator ~~[which]~~ owns or operates that directly or diagonally offset the injection tracts and have producing wells completed on them in the same formation; provided however, that the division may include in the project area additional proration units not directly ~~[nor]~~ or diagonally offsetting an injection tract ~~[may be included in the project area]~~ if, after notice and hearing, ~~[#]~~ the operator has ~~[been]~~ established that such additional units have wells completed thereon ~~[which]~~ that have experienced a substantial response to water injection.

(4) The allowable ~~[assigned]~~ the

division assigns to wells in a water flood project area shall be equal to the wells' ability ~~[of the wells]~~ to produce and shall not be subject to the depth bracket allowable for the pool nor to the market demand percentage factor.

(5) Nothing herein contained shall be construed as prohibiting the assignment of special allowables to wells in buffer zones after notice and hearing. ~~[Special]~~ The division may assign special allowables [may also be assigned] in the limited instances where it is established at a hearing that it is imperative for the protection of correlative rights to do so.

(6) ~~[Water]~~ The division shall authorize the expansion of water flood projects [may be expanded] and the placement of additional wells [placed] on injection only [upon authority from the division] after notice and hearing or by administrative approval.

(7) The division director shall have authority to grant an exception to the hearing requirements of Subsection A of 19.15.9.701 NMAC for conversion to injection of additional wells provided that any such well is necessary to develop or maintain thorough and efficient water flood injection for any authorized project and provided that the division receives no objections ~~[are received]~~ pursuant to Subsection C of 19.15.9.701 NMAC.

(8) An established water flood project shall have only one designated operator. ~~[Any]~~ The division shall set for hearing any application for exception [must be set for hearing].

**H. Storage wells.**

(1) The division director shall have authority to grant an exception to the hearing requirements of Subsection A of 19.15.9.701 NMAC for the underground storage of liquefied petroleum gas or liquid hydrocarbons in secure caverns within massive salt beds, and provided the division receives no objections ~~[are received]~~ pursuant to Subsection C of 19.15.9.701 NMAC.

(2) In addition to the filing requirements of Subsection B of 19.15.9.701 NMAC, the applicant for approval of a storage well under ~~[this rule]~~ 19.15.9.701 NMAC shall file the following:

(a) with the division director, a ~~[plugging bond]~~ financial assurance in accordance with the provisions of ~~[Rule 404]~~ 19.5.3.101 NMAC;

(b) with the appropriate district office of the division ~~[in triplicate]:~~

(i) form C-101, application for permit to drill, deepen or plug back;

(ii) form C-102, well location and acreage dedication plat; and

(iii) form C-105, well completion or recompletion report and log. [1-1-50...2-1-96; 19.15.9.701 NMAC - Rn,

19 NMAC 15.I.701, 11-30-00; A, 5-31-05; A, 12/15/05]

**NEW MEXICO ENERGY,  
MINERALS AND NATURAL  
RESOURCES  
DEPARTMENT  
OIL CONSERVATION DIVISION**

**This is an amendment to 19.15.13 NMAC, Sections 1101, 1103, 1104 and 1115. This amendment is to be effective 12/15/05.**

**19.15.13.1101 APPLICATION FOR PERMIT TO DRILL, DEEPEN OR PLUG BACK (Form C-101):**

~~[ A. Before commencing drilling or deepening operations, or before plugging a well back to another zone, the operator of the well must obtain a permit to do so. To obtain such permit, the operator shall submit to the division five copies of form C-101, application for permit to drill, deepen or plug back, completely filled out. If the operator has an approved bond in accordance with 19.15.3.101 NMAC, one copy of the drilling permit will be returned to him on which will be noted the division's approval, with any modification deemed advisable. If the proposal cannot be approved for any reason, the forms C-101 will be returned with the cause for rejection stated thereon.~~

~~B. Form C-101 must be accompanied by three copies of form C-102, well location and acreage dedication plat. (See 19.15.13.1102 NMAC.)~~

~~C. If the well is to be drilled on state land, submit six copies of form C-101 and four copies of form C-102, the extra copy of each form being for the state land office.]~~

~~A. An operator applying for a permit to drill, deepen, re-enter or plug a well back to a different pool or complete or re-complete a well in an additional pool shall file a complete form C-101 and a complete form C-102, well location and acreage dedication plat.~~

~~(1) An applicant for a permit to drill any well within the corporate limits of any city, town or village of this state shall give notice to the duly constituted governing body of such city, town or village or its duly authorized agent and certify on form C-101 that it gave such notice.~~

~~(2) An applicant for a permit to drill in any quarter-quarter section containing an existing well or wells operated by another operator shall concurrently file a plat or other acceptable document locating and identifying such well or wells, furnish a copy of the application to any other operator in the quarter-quarter section and certify~~

on form C-101 that it furnished such copies.

(3) An applicant for a permit to operate a well in a spacing or proration unit containing an existing well or wells operated by another operator shall also comply with Paragraph (2) of Subsection E of 19.15.3.104 NMAC.

**B.** If the division approves the permit, it may impose conditions of approval.

**C.** If the division denies the permit, it shall return the form C-101 to the applicant with the cause for rejection stated thereon.

[1-1-64...2-1-96; 19.15.13.1101 NMAC - Rn, 19 NMAC 15.M.1101, 06/30/04; A, 12/15/05]

**19.15.13.1103 SUNDRY NOTICES AND REPORTS ON WELLS (Form C-103):** Form C-103 is a dual purpose form [to be filed] the operator shall file with the appropriate district office of the division to obtain division approval prior to commencing certain operations and also to report various completed operations.

**A.** Form C-103 as a notice of intention.

(1) The operator shall file form C-103 [shall be filed in triplicate by the operator] and obtain the division's approval [obtain from the division] prior to:

(a) effecting a change of plans from those previously approved on form C-101 or form C-103[-];

(b) altering a drilling well's casing program or pulling casing or otherwise altering an existing well's casing installation[-];

(c) [Temporarily abandoning a well] placing a well in approved temporary abandonment;

(d) plugging and abandoning a well[-]; or

(e) performing remedial work on a well [which] that, when completed, will affect the well's original status [of the well]; (this shall include making new perforations in existing wells or squeezing old perforations in existing wells, but is not applicable to new wells in the process of being completed nor to old wells being deepened or plugged back to another zone when such recompletion has been authorized by an approved form C-101, application for permit to drill, re-enter, deepen [or] plug back or add a zone, nor to acidizing, fracturing or cleaning out previously completed wells, nor to installing artificial lift equipment.)

(2) In the case of well plugging operations, the notice of intention shall include a detailed statement of the proposed work[-] including plans for shooting and pulling casing[-]; plans for mudding, including the mud's weight [of mud]; plans for cementing, including number of sacks of

cement and depths of plugs[-]; restoration and remediation of the location; and the time and date of the proposed plugging operations. [If not previously filed,] The operator shall file a complete log of the well on form C-105 with the notice of intention to plug the well, if the operator has not previously filed the log ([See] see 19.15.13.1105 NMAC[-]) [shall accompany the notice of intention to plug the well]; the division shall not release the financial assurance until the operator complies with this requirement [bond will not be released until this is complied with].

**B.** Form C-103 as a subsequent report.

(1) [Form] The operator shall file form C-103 as a subsequent report of operations [shall be filed] in accordance with the [section of this rule] 19.15.13.1103 NMAC applicable to the particular operation being reported.

(2) Form C-103 is to be used in reporting such completed operations as:

(a) commencement of drilling operations;

(b) casing and cement test;

(c) altering a well's casing installation;

(d) work to secure approved temporary abandonment;

(e) [plug and abandon] plugging and abandonment;

(f) plugging back or deepening within the same pool;

(g) remedial work;

(h) installation of artificial lifting equipment; or

(i) [change of operator of a drilling well];

(j) such other operations [which] that affect the well's original status [of the well] but [which] that are not specifically covered herein.

**C.** Information to be entered on form C-103, subsequent report, for a particular operation is as follows: [Report] report of commencement of drilling operations. Within [ten] 10 days following the commencement of drilling operations, the well's operator [of the well] shall file a report thereof on form C-103 [in triplicate]. Such report shall indicate the hour and the date the well was spudded.

**D.** Report of results of test of casing and cement job; report of casing alteration[-]. [A] The well's operator shall file a report of casing and cement test [shall be filed by the operator of the well] within [ten] 10 days following the setting of each string of casing or liner. Said report shall be filed [in triplicate] on form C-103 and shall present a detailed description of the test method employed and the results obtained by such test and any other pertinent information required by 19.15.1.107 NMAC.

The report shall also indicate the top of the cement and the means by which such top was determined. It shall also indicate any changes from the casing program previously authorized for the well.

**E.** Report of temporary abandonment[-]. [A report of temporary abandonment of a well shall be filed by the operator of the well] The operator shall file a notice of work to secure approved temporary abandonment within [thirty] 30 days following the work's completion [of the work]. The report shall [be filed in triplicate and shall] present a detailed account of the work done on the well, including location and type of plugs used, if any, and status of surface and downhole equipment and any other pertinent information relative to the well's overall status [of the well].

**F.** Report on plugging of well.

(1) The operator shall file a report of plugging operations [shall be filed by the operator of the well] within 30 days following completion of plugging operations on any well. Said report shall be filed [in triplicate] on form C-103 and shall include the date the plugging operations were begun and the date the work was completed, a detailed account of the manner in which the work was performed including the depths and lengths of the various plugs set, the nature and quantities of materials employed in the plugging operations including the weight of the mud used, the size and depth of all casing left in the hole and any other pertinent information. (See 19.15.4.201 NMAC - 19.15.4.204 NMAC regarding plugging operations.)

(2) [No] The division shall not approve a plugging report [will be approved by the division] until the pits have been [filled] closed and the location leveled and cleared of junk. It shall be the operator's responsibility [of the operator] to contact the appropriate district office of the division when the location has been so restored in order to arrange for an inspection of the plugged well and the location by a division representative.

**G.** Report of remedial work[-]. The operator shall file a report of remedial work performed on a well [shall be filed by the operator of the well] within 30 days following completion of such work. Said report shall be filed [in quadruplicate] on form C-103 and shall present a detailed account of the work done and the manner in which such work was performed; the daily production of oil, gas and water both prior to and after the remedial operation; the size and depth of shots; the quantity of and, crude, chemical or other materials employed in the operation, and any other pertinent information. Among the remedial work to be reported on form C-103 are the

following:

(1) report on shooting, fluid fracturing or chemical treatment of a previously completed well;

(2) report of squeeze job;

(3) report on setting of liner or packer;

(4) report of installation of pumping equipment or gas lift facilities; or

(5) report of any other remedial operations ~~which~~ that are not specifically covered herein.

**H.** Report on deepening or plugging back within the same pool [—]. ~~[A.] The operator shall file a report of deepening or plugging back [shall be filed by the operator of the well]~~ within 30 days following completion of such operations on any well. ~~[Said report shall be filed in quadruplicate]~~ The operator shall file said report on form C-103 and shall present a detailed account of work done and the manner in which such work was performed. If the well is recompleted in the same pool, [H] the operator shall also report the daily production of oil, gas[;] and water both prior to and after recompletion. If the well is recompleted in another pool, the operator shall file forms C-101, C-102, C-104 and C-105 [must be filed] in accordance with [Sections 1101, 1102, 1104 and 1105 of 19.15.13] 19.15.13.1101, 19.15.13.1102, 19.15.13.1104 and 19.15.13.1105 NMAC.

**I.** Report of change of operator of a drilling well—A report of change of ownership shall be filed by the new operator of any drilling well within ten days following actual transfer of ownership or responsibility. Said report shall be filed in triplicate on form C-103 and shall include the name and address of both the new operator and the previous operator, the effective date of the change of ownership or responsibility and any other pertinent information. No change in the operator of a drilling well will be approved by the division unless the new operator has an approved bond in accordance with 19.15.3.101 NMAC. (Form C-104 shall be used to report transfer of operator of a completed well; see 19.15.13.1104 NMAC.)

**J.** Other reports on wells [—]. The operator shall submit reports on any other operations ~~which~~ that affect the well's original status ~~[of the well]~~ but ~~which~~ that are not specifically covered herein ~~[shall be submitted]~~ to the division on form C-103[; in triplicate, by the operator of the well ten] 10 days following ~~[the]~~ such operation's completion ~~[of such operation].~~

[1-1-65...2-1-96; 19.15.13.1103 NMAC - Rn, 19 NMAC 15.M.1103, 06/30/04; A, 12/15/05]

#### 19.15.13.1104 REQUEST FOR ALLOWABLE AND AUTHORIZA-

#### TION TO TRANSPORT OIL AND NATURAL GAS (Form C-104):

**A.** ~~[Form C-104 completely filled out by the operator of the well must be filed in quintuplicate before an allowable will be assigned to any newly completed or recompleted well. (A recompleted well shall be considered one which has been deepened or plugged back to produce from a different pool than previously.) Form C-104 must be accompanied by a tabulation of all deviation tests taken on the well as provided by 19.15.3.111 NMAC.] The division may assign an allowable to a newly completed or re-completed well or a well completed in an additional pool, or issue an operator authorization to transport oil or natural gas from such a well if the operator:~~

(1) has filed a complete form C-104;

(2) has provided a sworn and notarized tabulation of all deviation tests run on the well, and directional surveys with calculated bottom hole location, in accordance with the requirements of 19.15.3.111 NMAC;

(3) has dedicated a standard unit for the pool in which the well is completed, a standard unit has been communitized or pooled and dedicated to the well or the division has approved a non-standard unit; and

(4) is in compliance with Subsection A of 19.15.1.40 NMAC.

**B.** The allowable ~~[assigned]~~ the division assigns to an oil well shall be effective at 7:00 ~~[o'clock]~~ a.m. on the date of completion, provided ~~the division receives form C-104 [is received by the division]~~ during the month of completion. Date of completion shall be that date when new oil is delivered into the stock tanks. Unless otherwise specified by special pool rules, the allowable ~~[assigned]~~ the division assigns to a gas well shall be effective at 7:00 ~~[o'clock]~~ a.m. on the date of connection to a gas transportation facility, as evidenced by an affidavit of connection from the transporter to the division, or the date of receipt of form C-104 by the division, whichever date is later.

**C.** ~~No allowable will be assigned to any well until a standard unit for the pool in which the well is completed has been dedicated by the operator, or a non-standard unit has been approved by the division, or a standard unit has been communitized or pooled and dedicated to the well.~~

**D.** ~~No allowable will be assigned to any well until all forms and reports due have been received by the division and the well is otherwise in full compliance with these rules.~~

**E.** ~~Form C-104 with sections I, II, III and VI, completely filled out shall be filed in quintuplicate by the operator of the well in the event there is a change of operator of any producing well, injection~~

well or disposal well, a change in pool designation, lease name or well number, or any other pertinent change in condition of any such well. When filing form C-104 for change of operator, the new operator shall file the form in the above manner, and shall give the name and address of the previous as well as the present operator. The form C-104 will not be approved by the division unless the new operator has an approved bond in compliance with 19.15.3.101 NMAC.]

[1-1-65...2-1-96; A, 7-31-97; 19.15.13.1104 NMAC - Rn, 19 NMAC 15.M.1104, 06/30/04; A, 12/15/05]

#### 19.15.13.1115 OPERATOR'S MONTHLY REPORT (Form C-115):

**A.** ~~[Operator's]~~ The operator shall file a monthly report, form C-115, ~~[or form C-115 EDP, shall be filed]~~ for each non-plugged well completion for which the division has approved a C-104 authorization to transport, and for ~~[on each producing lease and]~~ each secondary or other enhanced recovery project injection well or other injection well within the state of New Mexico ~~[for each calendar month]~~, setting forth complete information and data indicated on said forms in the order, format and style ~~[prescribed by the division director]~~ the division director prescribes. The operator shall estimate oil production from wells ~~[which are]~~ producing into common storage ~~[shall be estimated]~~ as accurately as possible on the basis of periodic tests.

**B.** The operator shall file the reports required to be filed by 19.15.13.1115 NMAC ~~[shall be filed by the operator as follows]~~ using the division's web-based online application[;]

(1) Any operator which operates fewer than one hundred (100) wells in the state of New Mexico shall file a C-115 either electronically or by delivery of a printed copy of the report to the oil conservation division at its Santa Fe office on or before the ~~[fifteenth (15th)]~~ 15th day of the second month following the month of production, or if such day falls on a weekend or holiday, the first workday following the ~~[fifteenth]~~ 15th.

(2) Any operator which operates one hundred (100) or more wells in the state of New Mexico shall file a C-115 electronically, either by physical delivery of electronically readable media or by electronic transfer of data, to the oil conservation division at its Santa Fe office on or before the fifteenth day of the second month following the month of production, or if such day falls on a weekend or holiday, the first workday following the fifteenth[;] Any operator ~~[otherwise required to file electronically]~~ may apply to the division for exemption from ~~[this]~~ the electronic filing requirement

based upon a demonstration that such [~~electronic filing~~] requirement would operate as an economic or other hardship.

~~{~~ ~~(3)~~ C. If an operator fails to file a form C-115 that the division accepts, [or if the division finds errors in any C-115,] the division shall, within [~~thirty (30)~~] 60 days of the appropriate filing date, [~~prepare and send to the operator an error/omission message which identifies the specific well as to which the report has not been filed or is in error and a statement of the error. The operator to whom the error/omission message is addressed shall respond to the division within thirty (30) days acknowledging receipt of the error/omission message and informing the division of the operator's schedule to file the report or correct the error. If the division does not receive the operator's response within thirty (30) days, the division shall send notice to the operator that operator has failed to comply with the provisions of 19.15.13.1115 NMAC and may be subjected to loss of authority to produce from the affected well if the operator does not respond to the division. Willful failure of the operator to respond to the notice and to correct the error or omission may result in the division informing the operator by certified return receipt letter that thirty (30) days from the date of such letter the division will cancel the C-104 authority of operator to produce or inject into the well. Any operator which receives such notice may contact the division and request that the matter of the cancellation of authority to produce or inject be set for hearing before a hearing officer duly appointed by the division. If the division sends certified return receipt correspondence informing the operator of cancellation of authority to produce and the operator does not request a hearing, the division may cancel the authority of the operator to produce the well on the date set forth in the letter.~~

~~(4) The electronic filing requirements set forth in Paragraph (2), Subsection B, of 19.15.13.115 NMAC shall be phased in with all operators of three hundred (300) or more wells being required to file electronically for January 1997 production, all operators of two hundred (200) or more wells being required to file electronically for July 1997 production and all operators of one hundred (100) or more wells being required to file electronically for January 1998 production.] notify the operator by electronic mail or letter of its intent to revoke the operator's authorization to transport or inject if the operator does not submit an acceptable and complete form C-115. If the operator does not file an acceptable and complete form C-115 or request a hearing on the proposed cancellation within 120 days of the original due date of the form C-~~

~~115, the division may cancel the operator's authority to transport from or inject into all wells it operates.~~

~~[1-1-65...2-1-96; 19.15.13.1115 NMAC - Rn, 19 NMAC 15.M.1115, 06/30/04; A, 12/15/05]~~

**NEW MEXICO ENERGY,  
MINERALS AND NATURAL  
RESOURCES  
DEPARTMENT  
OIL CONSERVATION DIVISION**

**This is an amendment to 19.15.14 NMAC, with the addition of the new Section 1227. This amendment is to be effective 12/15/05.**

**19.15.14.1227 COMPLIANCE PROCEEDINGS:**

**A.** The provisions in 19.15.14 NMAC applicable to adjudicatory proceedings shall apply to compliance proceedings unless altered or amended by 19.15.14.1227 NMAC.

**B.** A compliance proceeding is an adjudicatory proceeding in which the division seeks an order imposing sanctions for violation of any provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or any provision of any rule or order issued pursuant to the act. Such sanctions may include but are not limited to:

(1) requiring compliance with any provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or any provision of any rule or order issued pursuant to the act;

(2) assessment of civil penalties pursuant to NMSA 1978, Section 70-2-31(A);

(3) corrective action including but not limited to abatement or remediation of contamination and removal of surface equipment;

(4) plugging and abandonment of a well and restoration and remediation of the well location, and authority for the division to forfeit the applicable financial assurance if the well is not plugged and abandoned and the location restored and remediated;

(5) denial, cancellation or suspension of a permit;

(6) denial, cancellation or suspension of authorization to transport; or

(7) shutting in a well or wells.

**C.** The division initiates an administrative compliance proceeding by filing a written application with the division clerk:

(1) identifying the operator and any other responsible parties against whom

the order is sought; including the surety if the division seeks an order allowing forfeiture of a surety bond;

(2) identifying the provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, or the provision of the rule or order issued pursuant to the act, allegedly violated;

(3) providing a general description of the facts supporting the allegations;

(4) stating the sanction or sanctions sought; and

(5) providing proposed legal notice.

**D.** The division shall provide notice of compliance proceedings as follows:

(1) the division shall publish notice in accordance with 19.15.14.1207 NMAC.

(2) the division shall provide notice to the operator and any other responsible parties against whom the compliance order is sought by following the provisions of 19.15.14.1210 NMAC.

**E.** The division director may enter into an agreed compliance order with an entity against whom compliance is sought to resolve alleged violations of any provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or any provision of any rule or order issued pursuant to the act. The division director may enter into an agreed compliance order prior to or after the filing of an application for an administrative compliance proceeding. An agreed compliance order shall have the same force and effect as a compliance order issued after an adjudicatory hearing.

**F.** Nothing in 19.15.14.1227 NMAC precludes the division from bringing other actions provided for in the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, including but not limited to the following: suit for indemnification pursuant to NMSA 1978, Section 70-2-14(E) or NMSA 1978, Section 70-2-38(B); an action through the attorney general with respect to the forfeiture of illegal oil or illegal gas pursuant to NMSA 1978, Section 70-2-32; an injunction under NMSA 1978, Section 70-2-28; or collection of penalties pursuant to NMSA 1978, Section 70-2-31(A).

[19.15.14.1227 NMAC - N, 12/15/05]

**NEW MEXICO  
DEPARTMENT OF HEALTH**

**TITLE 7 HEALTH  
CHAPTER 1 HEALTH GENERAL  
PROVISIONS  
PART 12 EMPLOYEE ABUSE  
REGISTRY**

**7.1.12.1 ISSUING AGENCY:**  
Department of Health.  
[7.1.12.1 NMAC - N, 01/01/2006]

**7.1.12.2 SCOPE:** This rule applies to a broad range of New Mexico providers of health care and services and employees of these providers who are not licensed health care professionals or certified nurse aides. This rule requires that providers check with the registry and avoid employing an individual on the registry. This rule provides for the investigation and determination of complaints alleging abuse, neglect or exploitation of recipients of care or services by employees. This rule further requires listing employees with substantiated registry-referred abuse, neglect or exploitation on the registry, following an opportunity for a hearing. This rule supplements other pre-employment screening requirements currently applicable to health care providers, such as the requirement for criminal history screening of caregivers employed by care providers subject to the Caregiver Criminal History Screening Act, NMSA 1978 Sections 29-17-1 *et seq.* and that Act's implementing rule, 7.1.9 NMAC. It also supplements requirements for pre-employment screening of certified nurse aides applicable to nursing facilities pursuant to 42 CFR Sections 483.75(e) and 488.335; and 16.12.20 NMAC. This rule does not address the consequences of abuse, neglect, or exploitation for which a provider, as distinguished from an employee, is responsible.

[7.1.12.2 NMAC - N, 01/01/2006]

**7.1.12.3 STATUTORY AUTHORITY:** The Department of Health Act, NMSA 1978, Section 9-7-6(E) and the Employee Abuse Registry Act, NMSA 1978, Sections 27-7A-1 to 27-7A-8 (2005).  
[7.1.12.3 NMAC - N, 01/01/2006]

**7.1.12.4 DURATION:**  
Permanent.  
[7.1.12.4 NMAC - N, 01/01/2006]

**7.1.12.5 EFFECTIVE DATE:**  
January 1, 2006, unless a later date is cited at the end of a section.  
[7.1.12.5 NMAC - N, 01/01/2006]

**7.1.12.6 OBJECTIVE:** The objective of this rule is to implement the

Employee Abuse Registry Act. The rule is intended to provide guidance as to the rights and responsibilities under the Employee Abuse Registry Act of providers, employees of providers, the department of health and the adult protective services division of the department of aging and long term services, and the public including recipients of care and services from providers.

[7.1.12.6 NMAC - N, 01/01/2006]

**7.1.12.7 DEFINITIONS:**

A. "Abuse" means,  
(1) knowingly, intentionally or negligently and without justifiable cause inflicting physical pain, injury or mental anguish, and includes sexual abuse and verbal abuse; or

(2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person.

B. "Adjudicated" means with respect to a substantiated registry-referred complaint, a final determination by the Secretary following a hearing, or by a court, that the employee committed abuse, neglect, or exploitation requiring the listing of the employee on the registry.

C. "APS" means the adult protective services division of the New Mexico aging and long term services department.

D. "Behavioral change" means an observable manifestation of psychological, emotional or mental harm, injury, suffering or damage, and includes, but is not limited to, crying, hysterical speech, or disruptions to sleeping, working, eating, speech, nonverbal communications, socially interacting, or other activities which were performed routinely before the harm, injury, suffering, or damage.

E. "Complaint" means any report, assertion, or allegation of abuse, neglect, or exploitation made by a reporter to the incident management system, and includes any reportable incident that a licensed or certified health care facility or community based services provider is required to report under applicable law.

F. "Custodian" means the person assigned by the secretary to maintain the registry in accordance with this rule and the Employee Abuse Registry Act.

G. "Department" means the New Mexico department of health.

H. "Direct care" means face-to-face services provided or routine and unsupervised physical or financial access to a recipient of care or services.

I. "Employee" means a person employed by or on contract with a provider, either directly or through a third party arrangement to provide direct care. "Employee" does not include a New Mexico licensed health care professional

practicing within the scope of the professional's license or a certified nurse aide practicing as a certified nurse aide.

J. "Exploitation" means an unjust or improper use of a person's money or property for another person's profit or advantage, pecuniary or otherwise.

K. "Investigation" means a systematic fact finding process that has as its goal the gathering of all information relevant to making a determination whether an incident of abuse, neglect or exploitation occurred.

L. "Licensed health care professional" means a person who is required to be licensed, and is licensed, by a New Mexico health care professional licensing board or authority, and the issuance of whose professional license is conditioned upon the successful completion of a post secondary academic course of study resulting in a degree or diploma, including physicians and physician assistants, audiologists, acupuncture practitioners, dentists, registered nurses, licensed practical nurses, chiropractors, pharmacists, podiatrists, certified nurse-midwife, nurse practitioners, occupational therapists, optometrists, respiratory therapists, speech language pathologists, pharmacists, physical therapists, psychologists and psychologist associates, dietitians, nutritionists and social workers.

M. "Manager" means the department employee designated by the secretary to manage the employee abuse registry program pursuant to the New Mexico Employee Abuse Registry Act and this rule.

N. "Mental Anguish" means a relatively high degree of mental pain and distress that is more than mere disappointment, anger, resentment or embarrassment, although it may include all of these and includes a mental sensation of extreme or excruciating pain.

O. "Neglect" means, subject to a person's right to refuse treatment and subject to a provider's right to exercise sound medical discretion, the failure of an employee to provide basic needs such as clothing, food, shelter, supervision, protection and care for the physical and mental health of a person or failure by a person that may cause physical or psychological harm. Neglect includes the knowing and intentional failure of an employee to reasonably protect a recipient of care or services from nonconsensual, inappropriate or harmful sexual contact, including such contact with another recipient of care or services.

P. "Provider" means an intermediate care facility for the mentally retarded; a rehabilitation facility; a home health agency; a homemaker agency; a home for the aged or disabled; a group home; an adult foster care home; a case

management entity that provides services to elderly people or people with developmental disabilities; a corporate guardian; a private residence that provides personal care, adult residential care or natural and surrogate family services provided to persons with developmental disabilities; an adult daycare center; a boarding home; an adult residential care home; a residential service or habilitation service authorized to be reimbursed by medicaid; any licensed or medicaid-certified entity or any program funded by the aging and long-term services department that provides respite, companion or personal care services; programs funded by the children, youth and families department that provide homemaker or adult daycare services; and any other individual, agency or organization that provides respite care or delivers home- and community-based services to adults or children with developmental disabilities or physical disabilities or to the elderly, but excluding a managed care organization unless the employees of the managed care organization provide respite care, deliver home- and community-based services to adults or children with developmental disabilities or physical disabilities or to the elderly.

Q. **“Registry”** means an electronic database operated by the department that maintains current information on substantiated registry-referred employee abuse, neglect or exploitation, including the names and identifying information of all employees who, during employment with a provider, engaged in a substantiated registry-referred or an adjudicated incident of abuse, neglect or exploitation involving a recipient of care or services from a provider.

R. **“Reporter”** means a person who or an entity that reports possible abuse, neglect or exploitation to the department’s incident management system.

S. **“Secretary”** means the secretary of the department.

T. **“Sexual Abuse”** means the inappropriate touching of a recipient of care or services by an employee for sexual purpose or in a sexual manner, and includes kissing, touching the genitals, buttocks, or breasts, causing the recipient of care or services to touch the employee for sexual purpose, or promoting or observing for sexual purpose any activity or performance involving play, photography, filming or depiction of acts considered pornographic.

U. **“Substantiated”** means the verification of a complaint based upon a preponderance of reliable evidence obtained from an appropriate investigation of a complaint of abuse, neglect, or exploitation.

V. **“Substantiated registry-referred”** means a substantiated complaint that satisfies the severity standard for

referral of the employee to the registry.

W. **“Unsubstantiated”** means that that the complaint’s alleged abuse, neglect or exploitation did not or could not have occurred, or there is not a preponderance of reliable evidence to substantiate the complaint, or that there is conflicting evidence that is inconclusive.

X. **“Verbal abuse”** means profane, threatening, derogatory, or demeaning language, spoken or conveyed by an employee with the intent to cause pain, distress or injury, and which does cause pain, distress or injury as objectively manifested by the recipient of care or services.

[7.1.12.7 NMAC - N, 01/01/2006]

#### 7.1.12.8 REGISTRY ESTABLISHED; PROVIDER INQUIRY REQUIRED:

Upon the effective date of this rule, the department has established and maintains an accurate and complete electronic registry that contains the name, date of birth, address, social security number, and other appropriate identifying information of all persons who, while employed by a provider, have been determined by the department, as a result of an investigation of a complaint, to have engaged in a substantiated registry-referred incident of abuse, neglect or exploitation of a person receiving care or services from a provider. Additions and updates to the registry shall be posted no later than two (2) business days following receipt. Only department staff designated by the custodian may access, maintain and update the data in the registry.

A. **Provider requirement to inquire of registry.** A provider, prior to employing or contracting with an employee, shall inquire of the registry whether the individual under consideration for employment or contracting is listed on the registry.

B. **Prohibited employment.** A provider may not employ or contract with an individual to be an employee if the individual is listed on the registry as having a substantiated registry-referred incident of abuse, neglect or exploitation of a person receiving care or services from a provider.

C. **Applicant’s identifying information required.** In making the inquiry to the registry prior to employing or contracting with an employee, the provider shall use identifying information concerning the individual under consideration for employment or contracting sufficient to reasonably and completely search the registry, including the name, address, date of birth, social security number, and other appropriate identifying information required by the registry.

D. **Documentation of inquiry to registry.** The provider shall

maintain documentation in the employee’s personnel or employment records that evidences the fact that the provider made an inquiry to the registry concerning that employee prior to employment. Such documentation must include evidence, based on the response to such inquiry received from the custodian by the provider, that the employee was not listed on the registry as having a substantiated registry-referred incident of abuse, neglect or exploitation.

E. **Documentation for other staff.** With respect to all employed or contracted individuals providing direct care who are licensed health care professionals or certified nurse aides, the provider shall maintain documentation reflecting the individual’s current licensure as a health care professional or current certification as a nurse aide.

F. **Consequences of non-compliance.** The department or other governmental agency having regulatory enforcement authority over a provider may sanction a provider in accordance with applicable law if the provider fails to make an appropriate and timely inquiry of the registry, or fails to maintain evidence of such inquiry, in connection with the hiring or contracting of an employee; or for employing or contracting any person to work as an employee who is listed on the registry. Such sanctions may include a directed plan of correction, civil monetary penalty not to exceed five thousand dollars (\$5000) per instance, or termination or non-renewal of any contract with the department or other governmental agency.

[7.1.12.8 NMAC - N, 01/01/2006]

#### 7.1.12.9 INCIDENT MANAGEMENT SYSTEM INTAKE:

The department has established an incident management system for receipt, tracking and processing of complaints. Complaints may be reported to the department’s incident management system using the department website’s on-line form completion utility, by telephone using a toll free number, facsimile, U.S. mail, email, or in-person. The method of reporting preferred by the department is on-line form completion via the department’s website, <http://dhi.health.state.nm.us/elibrary/iron-line/ir.php>. The toll free telephone line is staffed by the department during normal business hours and a message system is available for reporting complaints during non-business hours.

A. **Incident Report Form.** Complaints of suspected abuse, neglect or exploitation will be reported by providers on the department’s incident report form if possible. This form and instructions for completing and filing the form are available at the department’s web-



s i t e , <http://dhi.health.state.nm.us/elibrary/iron-line/ir.php> or may be obtained from the department by calling the toll free number 800-752-8649 or 800-445-6242, or by faxing a request to 800-584-6057, or by mailing a request to the Incident Management Bureau, Division of Health Improvement, department of Health, P.O. Box 26110, Santa Fe, New Mexico, 87502-6110.

**B. Reportable Intake information.** Reports of suspected abuse, neglect or exploitation made to the department by persons who do not have access to, or are unable to use, the department's current incident report form shall provide as specific a description of the incident or situation as possible, and shall contain the following information where applicable:

(1) the location, date and time or shift of the incident;

(2) the name, age and gender, address and telephone number of the person the reporter suspects to have been abused, neglected, or exploited, and the name, address and telephone number of the guardian or health care decision maker for such person, if applicable;

(3) the names, addresses, phone numbers and other identifying information of the providers who provide services to the person the reporter suspects to have been abused, neglected, or exploited;

(4) the names, addresses, phone numbers and other identifying information of the following people who the reporter believes may have been involved with, or have knowledge of, the incident; provider's staff and employees; family members or guardians of the person the reporter suspects to have been abused, neglected, or exploited; other health care professionals or facilities; and any other persons who may have such knowledge;

(5) the condition and status of the person the reporter suspects to have been abused, neglected, or exploited;

(6) the reporter's name, address, telephone number and other contact information, together with the name and address of the provider with whom the reporter is employed, if applicable.

**C. Method of Filing Complaint.** The completed incident report form must be filed with the department. It may be hand delivered, faxed toll free to 800-584-6057, mailed, emailed, or, preferably, filed by use of the department's procedure for on-line form completion.

[7.1.12.9 NMAC - N, 01/01/2006]

#### 7.1.12.10 COMPLAINT PROCESSING:

**A. Assignment of Complaint.** The manager or designee shall review the complaints, reports or allegations of abuse, neglect or exploitation, pri-

oritize these complaints and assign appropriate department staff to investigate when warranted, and refer the complaint, report, or allegation to APS, and other appropriate oversight agencies for investigation.

(1) Assignment shall be made to appropriate staff of the department of all complaints of abuse, neglect or exploitation involving a provider for whom the department has oversight authority or for whom the department has agreed to investigate.

(2) Referral shall be made to APS of complaints of abuse, neglect or exploitation in all instances where the complaint involves a provider of medicaid waiver services administered by the aging and long-term services department and the provider is not otherwise licensed by or under contract with the department.

(3) The manager shall prioritize the complaints and ensure that the complaints that allege the most serious incidents of abuse, neglect or exploitation, or that present a high risk of future harm, are promptly investigated.

**B. Immediate threat to health or safety.** In instances where the investigation determines that there exists an immediate threat to the health or safety of a person in the care of a provider, the department or APS, in accordance with applicable statutory authority, will make the necessary arrangements or referrals to ensure the protection of persons at risk of harm or injury. The department will take appropriate action to eliminate or reduce the immediate threat to health or safety with respect to providers it licenses or with whom it contracts.

**C. Conducting the Investigation.** The department investigation of complaints will follow the procedures in this rule. The investigations conducted by APS will comply with applicable APS rules or with the provisions herein.

(1) The investigators shall gather all relevant evidence, weigh the evidence including making credibility determinations. Individuals from whom information is gathered may include the reporter, witnesses identified by the reporter, listed on the incident report form or discovered during the investigation, the alleged victim, appropriate representatives of the provider, medical personnel with relevant information, family members and guardians of the alleged victim, any employee suspected of abuse, neglect or exploitation, other recipients of care and services, and other persons possibly having relevant information.

(2) Physical injuries that are the subject of the complaint will be observed in person and documented. Complete documentation must be obtained of all objectively verifiable manifestations of mental anguish, verbal abuse, sexual abuse or neglect on the part of the recipient of care or services.

(3) The investigator will generally follow department guidelines addressing face-to-face individualized interviews, telephonic interviews, witness statements and documentation of contacts.

(4) The investigator will follow established guidelines for clinical consultations.

(5) In instances where the investigation results in discovery of other, unrelated instances of possible abuse, neglect or exploitation, the investigator will file an incident report form with the incident management system. However, additional allegations involving the same complaint as the one under investigation are considered the same case and will not be separately reported, although the investigator may supplement the Incident Report.

(6) At any time during the investigation, the manager shall make referrals to other licensing authorities based upon information of possible violations of applicable health facility, community provider or health care professional standards.

(7) The investigator will submit an investigation report to the manager with recommendations as to whether the complaint is:

- (a) unsubstantiated;
- (b) substantiated; or
- (c) substantiated registry-referred.

(8) Where appropriate, the investigation report may make findings and recommendations with respect to provider responsibility for abuse, neglect or exploitation.

(9) The manager shall review the investigation report and recommendations and shall make a determination whether the complaint of abuse, neglect or exploitation is substantiated.

(10) If the manager determines, as a result of the manager's review of the investigation report and recommendations, that the complaint is substantiated, the manager shall apply the appropriate severity standard to the substantiated complaint to further determine if the complaint is substantiated registry-referred.

**D. Investigation File and Report.** The department shall establish an investigation file, which shall contain all applicable information relating to the complaint including the incident report form, correspondence, investigation, referrals, determinations, secretary's decision, and notices of appeal. Following the investigation and determination by the manager, the complaint and investigation file will be maintained by the custodian. The investigator, or the investigator from the lead agency in a joint investigation, shall prepare and submit a written investigation report. The investigation report shall be part of the investigation file. The investigation report



shall contain a review of the evidence obtained during the investigation, including but not limited to:

- (1) interviews conducted and written statements;
- (2) interviews and statements reviewed that were originally conducted or obtained by other entities such as the provider, other health care facilities and medical providers, or law enforcement;
- (3) documents, diagrams, photographs and other tangible evidence obtained or reviewed;
- (4) a description of any actions taken by the provider in a response to the complaint or situation under investigation; and,
- (5) analysis of the evidence and recommendations.

**E. Timeline and processing of a complaint.** The investigation of each complaint shall be completed by the department within sixty (60) calendar days of receipt of the complaint.

(1) The investigation report shall be submitted to the manager no later than sixty (60) calendar days following the receipt of the complaint.

(2) The manager shall review the investigatory findings and recommendations and make a determination within five (5) business days of receipt of the findings as to whether the complaint of abuse, neglect or exploitation is substantiated registry-referred.

(3) The manager may issue a specific extension of any complaint processing deadline if reasonable grounds exist for such extension and the reasons are set out in the written extension. The written extension is included in the investigation file. Grounds for an extension may include, but are not limited to, the temporary non-availability of witnesses or documentary evidence, or the need for information not yet available from other entities that may be involved with an investigation into the facts that form the basis of the complaint, including the office of the medical investigator and agencies charged with law enforcement, auditing, financial oversight, fraud investigation, or advocacy.

**F. Validity of enforcement actions.** Failure by the department or APS to comply with the procedures or time requirements set out in this section does not abrogate or invalidate any action taken against an employee pursuant to this rule, or any action taken against a provider for non-compliance with this rule or any other applicable law or regulation. However any such failure may be admitted into evidence at a hearing.

[7.1.12.10 NMAC - N, 01/01/2006]

**7.1.12.11 SEVERITY STAN-**

**DARD:** A determination of the severity of all substantiated complaints of abuse, neglect or exploitation is made for the purpose of deciding if the employee is to be referred for placement on the registry. The determination of the severity of the substantiated complaint of abuse, neglect or exploitation is based upon application of the severity standards in this section. A substantiated complaint that satisfies the severity standard in this section is a substantiated registry-referred complaint. A substantiated complaint that does not satisfy the severity standard in this section will not be referred to the registry. Severity is determined by assessing the impact of the substantiated abuse, neglect, or exploitation on the recipient of care or services, and by assessing the employee for aggravating factors.

**A. Abuse.** A substantiated complaint of abuse meets the severity standard if:

(1) the abuse results in, or is a contributing factor to, death;

(2) the abuse results in the infliction of a significant, identifiable physical injury that reasonably requires or results in medical or behavioral intervention or treatment;

(3) the abuse results in any injury for which criminal charges are brought against the employee resulting in a plea or conviction;

(4) the abuse results in the infliction of excruciating pain or pain that endures over a significant time period;

(5) the abuse causes significant mental anguish as evidenced by the victim's descriptions, or significant behavioral changes;

(6) the abuse is sexual abuse; or

(7) the abuse is verbal abuse that causes significant mental anguish, including psychological or emotional damage, and which is evidenced by significant behavioral changes or physical symptoms.

**B. Neglect.** A substantiated complaint of neglect meets the severity standard if:

(1) the neglect results in, or is a contributing factor to, death;

(2) the neglect results in the infliction of a significant, identifiable physical injury that reasonably requires or results in medical or behavioral intervention or treatment;

(3) the neglect results in any injury for which criminal charges are brought against the employee resulting in a plea or conviction;

(4) the neglect results in the infliction of excruciating pain or pain that endures over a significant time period; or,

(5) the neglect causes significant mental anguish as evidenced by the victim's descriptions, or significant behavioral

changes.

**C. Exploitation.** A substantiated complaint of exploitation meets the severity standard where unjust or improper use of the money or property belonging to the recipient of care or services results in:

(1) a single instance of an objectively quantifiable loss, the value of which exceeds the lesser of either:

(a) twenty five dollars (\$25); or,

(b) twenty five percent (25%) of the monthly income available to the recipient of care or services for purchasing personal items or discretionary spending; or

(2) a subjectively substantial loss to the recipient of care or services due to a special attachment to the property, as demonstrated by anger, fear, frustration, depression or behavioral changes caused by the loss.

**D. Aggravating factors.** A substantiated complaint of abuse, neglect or exploitation meets the severity standard requiring referral of the employee for placement on the registry where:

(1) the employee used alcohol or a controlled substance at or near the time of the substantiated abuse, neglect or exploitation; or

(2) the employee used, brandished or threatened to use, a weapon in connection with the substantiated abuse, neglect or exploitation.

[7.1.12.11 NMAC - N, 01/01/2006]

**7.1.12.12 PROVIDER COOPERATION:**

**A. Access to provider by investigators.** The provider shall provide immediate physical access to the provider's entire facility or its service delivery sites to investigators from the department or APS. The investigators may require such access during any or all shifts.

**B. Access to provider records.** The provider shall provide to investigators from the department or APS immediate access to all information obtained as a result of the provider's own internal investigation of the matters that form the basis of the complaint, including but not limited to written statements, interviews, affidavits, physical items, medical information, electronic and computer data, and photographic information.

**C. Interviews.** Investigators from the department or APS shall have a reasonable opportunity to conduct confidential interviews with any person who may have relevant information relating to the complaint, including employees and other staff including licensed health care professionals and certified nurse aides, other licensed health care professionals and other provider staff, recipients of care or

services from the provider and their family members, guardians, health care decision makers and friends.

**D. Physical access to recipients of care and services.** The provider must allow reasonable access to individuals receiving care or services from the provider to investigators from the department or APS when such investigators announce that they are investigating a complaint. Such access may be telephonic or face-to-face.

**E. Access to the provider's records, patient trust accounts and patient property.** The provider must provide immediate access to investigators from the department or APS to the provider's billing records, patient trust accounts, representative payee records, patient care and medical records, and patient property. In addition the provider must assure access to employee and personnel records, including documentation showing provider inquiry to the registry.

**F. Copying.** The access required to be provided to investigators includes copying paper documents and printing and copying electronic and computer records or data. Copied documents shall be retained in accordance with applicable state retention policies.

**G. Consequences of provider's denial of cooperation.** The department shall administer sanctions for a provider's failure to comply with the Employee Abuse Registry Act, including failure to provide access as required herein to conduct investigations of complaints, and such sanctions include a directed plan of correction, a civil monetary penalty not to exceed five thousand dollars (\$5,000), or such sanctions as are available under applicable contract or licensing provisions. [7.1.12.12 NMAC - N, 01/01/2006]

#### **7.1.12.13 NOTIFICATION FOLLOWING INVESTIGATION:**

**A. Notification to provider and employee.** If the department or APS determines, following an investigation, that an instance of either substantiated or substantiated registry-referred employee abuse, neglect, or exploitation has occurred, then the department, if it substantiated the complaint, or APS, if it substantiated the complaint, shall promptly notify the employee and the provider.

**B. Required information for substantiated registry-referred complaints.** The notice to the provider and employee for substantiated registry-referred complaints shall be by certified mail and shall include the following information.

(1) The nature of the abuse, neglect, or exploitation.

(2) The date and time of the occurrence.

(3) The right to request a hearing, and the time and manner for requesting a hearing.

(4) The fact that the substantiated registry-referred findings will be reported to the registry, once the employee has had an opportunity for a hearing.

(5) The failure by the employee to request a hearing in writing within thirty (30) calendar days from the date of the notice shall result in the reporting of the substantiated findings to the registry and the provider.

**C. Required information for substantiated complaints.** The notice to the provider and employee for substantiated complaints may be by mail or by email and shall include the following information.

(1) The nature of the abuse, neglect, or exploitation.

(2) The date and time of the occurrence.

(3) The fact that the substantiated complaint was not sufficiently severe to warrant reporting the employee to the registry.

(4) The fact that the employee may not request a hearing.

**D. Unsubstantiated complaints.** Notice of a determination that an investigated complaint is unsubstantiated shall be mailed or emailed to the provider following such determination.

**E. APS notification to the department.** APS shall notify the manager of substantiated complaints of abuse, neglect and exploitation, and substantiated registry-referred complaints of abuse, neglect and exploitation.

[7.1.12.13 NMAC - N, 01/01/2006]

**7.1.12.14 HEARINGS :** Hearings are provided to employees by either the department or APS. This section provides rules applicable to hearings held by the department.

**A. Request for hearing.**

An employee may request an evidentiary hearing if the employee is notified that as a result of substantiated registry-referred findings of abuse, neglect, or exploitation the employee will be reported to the registry. The request for hearing shall be made to the department if the department conducted the investigation and issued the notice. The employee's request for hearing shall be made to APS if APS conducted the investigation and issued the notice. A provider may not request a hearing pursuant to the Employee Abuse Registry Act. The following applies to hearings properly requested of the department.

(1) The request for a hearing shall be in writing and mailed or delivered to the New Mexico Department of Health, Manager of the Employee Abuse Registry Program, P. O. Box 26110, Santa Fe, New

Mexico 87502-6110; or to an alternative address if set forth in the notice.

(2) The request for hearing shall include a copy of the notice.

(3) The request for hearing must be mailed or hand-delivered no later than thirty (30) calendar days after the date of the notice.

**B. Scheduling order.** The department, or the hearing officer, shall issue a scheduling order that sets the hearing at a location reasonably convenient for the employee and at a date and time reasonably convenient to the parties. The scheduling order shall establish deadlines for completion of discovery and provide for the filing of a confidentiality order. The hearing shall be scheduled within thirty (30) calendar days following the department's receipt of the request for hearing. Either party may request a continuance of the hearing for good cause. If a hearing is continued it shall be rescheduled at the earliest date and time available to the parties.

**C. Hearing officer.** The hearing will be conducted before an impartial and independent hearing officer of the department. The hearing officer is not required to be an attorney. Upon appointment, the hearing officer shall establish an official file of the case. The hearing officer shall resolve all prehearing matters, including amendment of the scheduling order, schedule and conduct prehearing conferences, rule on prehearing motions, and resolve discovery disputes. The hearing officer will preside over the hearing and allow each party an opportunity to present its case, and shall resolve all motions, evidentiary issues and other matters as may be necessary. Within thirty (30) calendar days of the conclusion of the hearing the hearing officer will issue a report and recommended decision to the secretary.

**D. Parties.** The parties to the hearing are the department, through the manager or designee, and the employee. Each party may be represented by an attorney.

**E. Confidentiality.** The hearing officer shall require the filing of an appropriate signed confidentiality order in which each party agrees to maintain and protect the confidentiality of all individually identifiable health information that is, or may be, used or disclosed at any time during the course of the entire proceeding in accordance with applicable state and federal law and regulations. Refusal or failure to sign an appropriate confidentiality order constitute grounds for denying discovery to the non-signing party, limiting the number and testimony of the non-signing party's witnesses, limiting the admission of evidence that discloses individually identifiable health information, and the imposition of other appropriate measures to limit the

scope of disclosure of individually identifiable health information to the non-signing party.

**F. Discovery.**

(1) Exhibit and witness lists will be exchanged between the parties and provided to the hearing officer prior to the hearing by the parties in accordance with the scheduling order, any prehearing order, or by agreement of the parties. The witness list shall include a summary of the subject matter of the anticipated testimony of each witness listed.

(2) No depositions are allowed except by order of the hearing officer upon a showing that the deposition is necessary to preserve the testimony of persons who are sick or elderly, or persons who will not be able to attend the hearing. Pursuant to provisions in the scheduling order or upon agreement of the parties, and with the consent of the witness if the witness is not employed by the department or another governmental entity, a party may interview witnesses identified by the other party at a reasonable time and in a reasonable manner.

(3) Production of documents. Upon request by the employee, the department shall provide a copy of the investigation to the employee. The parties may request the production of other relevant documents in accordance with the scheduling order or other discovery order.

**G. Hearing procedures.**

The hearing shall be closed to the public. The hearing officer shall conduct the hearing in an efficient and orderly manner that respects the rights of the parties to present their cases. The hearing officer shall maintain proper decorum and shall assure that all participants in the hearing are courteous to one another. The hearing officer is authorized to resolve motions and other disputes before and during the hearing.

(1) Recording. The hearing officer will cause a record to be made of the hearing and retained in the official file. Generally such record is made by use of commonly available audio recording technology. A log of the recording shall be maintained.

(2) Order of presentation at hearing. The department shall present its case, the employee shall present the employee's case, and the department may present its rebuttal case.

(3) Public. The hearing is a closed, nonpublic hearing.

(4) Evidence. The New Mexico Rules of Evidence do not apply, although they may be referred to for guidance as to type of evidence that may be admitted. Generally, evidence shall be admitted if it is of a type relied upon by reasonable persons in the conduct of important affairs. Proffered evidence may be excluded if it is

not relevant, or is repetitious or cumulative.

(5) Telephonic testimony. Upon timely notice to the opposing party and the hearing officer and with the approval of the hearing officer, the parties may present witnesses by telephone, or live video.

(6) Recommended decision. The hearing officer shall issue a recommended decision to the secretary within (30) days of the closing of the hearing and transfer the official record to the custodian.

(7) The custodian shall maintain the official record of the hearing, which shall include the recommendation of the hearing officer and the secretary's adjudicated decision.

**H. Secretary's decision.**

Within ten (10) business days of receipt of the department's or the APS' hearing officer recommendation, the secretary of the department shall issue a final decision, and promptly provide the parties with a copy. If the decision of the secretary finds that the employee was responsible for abuse, neglect or exploitation of sufficient severity for referral to the registry, it shall be the adjudicated decision of abuse, neglect or exploitation.

**I. Judicial review.**

An employee may appeal the secretary's adjudicated decision of abuse, neglect or exploitation to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978. The custodian will enter the employee's name into the registry within two (2) working days following receipt of the adjudicated decision. The custodian shall promptly remove the employee from the registry upon the department's receipt of an order issued by the district court granting a stay pending the outcome of the appeal, or upon the department's receipt of a district court order reversing the adjudicated decision.

**J. Court of Appeals.**

If the employee seeks review in the court of appeals by writ of certiorari, the employee shall remain on the registry, unless a stay is granted or the court of appeals reverses the district court. If a stay is granted or the court of appeals reverses, notification shall be made to the custodian who shall promptly remove the employee from the registry.

[7.1.12.14 NMAC - N, 01/01/2006]

**7.1.12.15 NOTIFICATION BY**

**APS:** APS shall promptly provide all required employee information to the custodian of the final disposition of complaints of substantiated registry-referred abuse, neglect or exploitation after the occurrence of each of the following:

**A. No hearing requested.**

The employee has not requested an administrative hearing within thirty (30) calendar days after the date of the notice to the

employee following an investigation resulting in the determination of substantiated registry-referred abuse, neglect, or exploitation.

**B. Adjudication of abuse, neglect or exploitation.**

The employee has not filed for review in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978 after thirty (30) calendar days following the date of the final APS administrative adjudication decision of employee abuse, neglect or exploitation of sufficient severity for registry referral.

**C. Judicial decision.**

Upon the receipt by APS of a district court order or decision sustaining the APS administrative adjudication decision of abuse, neglect or exploitation of sufficient severity for registry referral, if an employee seeks judicial review in the district court.

**D. Court of Appeals.**

If the employee seeks review in the court of appeals by writ of certiorari, the employee shall remain on the registry, unless a stay is granted or the court of appeals reverses the district court. If a stay is granted or the court of appeals reverses, then notification shall be made to the custodian who shall promptly remove the employee from the registry.

[7.1.12.15 NMAC - N, 01/01/2006]

**7.1.12.16 ENTRY ON THE**

**REGISTRY:** The custodian shall provide the employee and the provider for whom the employee worked with notice of the employee's listing on the registry. The following employees will be listed on the registry by the custodian:

**A. No hearing requested.**

Any employee determined to have committed substantiated registry-referred abuse, neglect or exploitation who does not request an administrative hearing within thirty (30) calendar days after the date of the notice to the employee.

**B. Adjudicated decision.**

Any employee who, after thirty (30) calendar days following the date of an adjudicated decision of abuse, neglect or exploitation, has not filed for review in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**C. Judicial decision.**

Any employee for whom a district court has entered an order or decision sustaining an administrative adjudication of abuse, neglect or exploitation.

**D. Court of Appeals.**

Any employee who seeks review in the court of appeals by writ of certiorari shall remain listed on the registry, unless a stay is granted pending the outcome of the case, or the court of appeals reverses the district court. If a stay is granted or the court of appeals

reverses the district court, then the custodian shall promptly remove the employee from the registry.

[7.1.12.16 NMAC - N, 01/01/2006]

**7.1.12.17 REMOVAL FROM THE REGISTRY:**

After a period of three years from the effective date of placement on the registry, an individual on the registry may petition for removal from the registry. The petition shall be sent to the custodian. The petition contents shall be reviewed for completeness within five (5) days, and if not complete, notice shall be sent to the petitioner informing the petitioner that the petition is incomplete. The petition review time does not commence to run until the submission of a complete petition.

**A. Petition contents.** Any individual whose name is on the registry may petition the custodian in writing for removal of the individual's name from the registry. In addition to the name, address, telephone number, and social security number of the petitioner, the petition shall provide:

(1) the petitioner's employment history since placement on the registry, to include for each employer, the name, address and telephone number of the employer, a brief description of the petitioner's responsibilities, the dates of the employment, reasons for ending the employment, and the names and telephone numbers of any employer contacts;

(2) evidence of any rehabilitation, restitution or education since the incident of abuse, neglect or exploitation, including copies of any certificates or other evidence of successful completion of rehabilitation or other educational programs, and including evidence of relevant volunteer activities;

(3) other relevant information including changed circumstances.

**B. Review of petition.** The department shall establish a process of review of the petition. Such process may include review of the petition by department or APS employees selected for such reviews, and shall include a requirement that a recommendation be made to the secretary on the merits of the petition within twenty (20) calendar days from receipt of the completed petition. The burden at all times rests upon the petitioner to present truthful information sufficient to show that good cause exists for removing the petitioner's name from the registry.

**C. Review considerations.** The review process established by the department shall consider all relevant factors to determine if the petitioner has presented truthful information sufficient to demonstrate that good cause exists for removing the petitioner's name from the registry, including but not limited to:

(1) the nature and extent of the substantiated abuse, neglect or exploitation which resulted in the placement of the petitioner's name on the registry including records obtained from the employee abuse registry program and the custodian of the registry;

(2) the evidence showing the rehabilitation activities of the petitioner, which may be based in part on relevant volunteer activities, education and restitution;

(3) the petitioner's age at the time of the substantiated abuse, neglect or exploitation, and the length of time since the substantiated abuse, neglect or exploitation;

(4) the likelihood that the petitioner will commit future acts of abuse, neglect or exploitation; and,

(5) the existence and extent of false or misleading statements or information provided by the petitioner in connection with the petition.

**D. Decision on Petition.** The secretary shall issue a final written determination on the petition based upon the review of the petition within thirty (30) days of receipt of the completed petition, and shall provide the decision to the petitioner in person or by certified mail. The secretary's final written determination shall be delivered or mailed to the petitioner within three (3) business days of such determination. If the petition is granted, the petitioner's name shall be promptly removed from the registry.

**E. Hearings.** If the secretary denies the petition, the petitioner may request an administrative hearing with ten (10) calendar days of receipt of the decision. Upon receipt of a request for a hearing, an independent hearing officer of the department shall conduct the hearing. If a petition is denied by the secretary and a hearing is requested and provided, the individual may not thereafter re-petition for removal from the registry. If the petition is denied following a hearing, then the petitioner may seek judicial review pursuant to the provisions of Section 39-3-1.1 NMSA 1978. If a petition is denied by the secretary, and an administrative hearing is not timely requested, then the individual on the registry may petition only one additional time for removal from the registry after a minimum of thirty six (36) months from the date of the prior petition denial.

**F. Hearing procedures for denied petition.** [Reserved]  
[7.1.12.17 NMAC - N, 01/01/2006]

**7.1.12.18 CONFIDENTIALITY:** The department complies with all state and federal confidentiality requirements regarding information obtained in connection with the operation of the Employee Abuse Registry program, including the

Health Insurance Portability and Accountability Act of 1996 (HIPAA).

**A. Confidentiality of information.** Information obtained by the incident management system involving incidents or situations of suspected abuse, neglect or exploitation is confidential, and is not subject to public inspection until completion of all investigations and hearings, and then only to the extent specifically permitted by law and only such information that does not identify individuals who are receiving care or services from providers.

**B. Unsubstantiated complaints.** Complaints of suspected abuse, neglect or exploitation obtained by the incident management system that are not substantiated following investigation are not public information, and are not subject to public inspection.

**C. Substantiated complaints.** Complaints of suspected abuse, neglect or exploitation obtained by the incident management system that are substantiated following investigation are subject to public inspection only to the extent permitted by law and the disclosure may not include any identifying information about an individual who is receiving health care services from a provider.

**D. Permitted disclosures.** Nothing herein shall restrict an appropriate disclosure of information to the centers for medicare and medicaid services; nor shall any provision herein restrict disclosures to law enforcement officials, including district attorneys and courts, in accordance with the Adult Protective Services Act and the Resident Abuse and Neglect Act or other law.

[7.1.12.18 NMAC - N, 01/01/2006]

**History of 7.1.12 NMAC:** [Reserved]

**NEW MEXICO HUMAN SERVICES DEPARTMENT  
INCOME SUPPORT DIVISION**

**TITLE 8 SOCIAL SERVICES  
CHAPTER 102 CASH ASSISTANCE  
PROGRAMS  
PART 611 EDUCATION  
WORKS PROGRAM**

**8.102.611.1 ISSUING AGENCY:**  
New Mexico Human Services Department.  
[8.102.611.1 NMAC - N, 12/15/2005]

**8.102.611.2 SCOPE:** The rule applies to the general public.  
[8.102.611.2 NMAC - N, 12/15/2005]

**8.102.611.3 STATUTORY AUTHORITY:**  
**A.** New Mexico Statutes

Annotated 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare functions as may be assumed by the state.

**B.** Federal legislation contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 abolished the AFDC program. The federal act created the temporary assistance for needy families (TANF) block grant under title IV of the Social Security Act. Through the New Mexico Works Act of 1998, the New Mexico works (NMW) program was created to replace the aid to families with dependent children program.

**C.** Under authority granted to the governor by the federal Social Security Act, the human services department is designated as the state agency responsible for the TANF program in New Mexico.

**D.** Effective April 1, 1998, in accordance with the requirements of the New Mexico Works Act and title IV-A of the federal Social Security Act, the department is creating the New Mexico works program as one of its financial assistance programs, and in accordance with the Education Works Act of 2003 the education works program (EWP) was created.

**E.** In close coordination with the NMW program, the department administers the food stamp employment and training program (E&T) pursuant to the Food Security Act of 1985 and federal regulations at title 7, code of federal regulations. [8.102.611.3 NMAC - N, 12/15/2005]

**8.102.611.4 D U R A T I O N :** Permanent. [8.102.611.4 NMAC - N, 12/15/2005]

**8.102.611.5 EFFECTIVE DATE:** December 15, 2005, unless a later date is cited at the end of a section. [8.102.610.5 NMAC - N, 12/15/2005]

**8.102.611.6 OBJECTIVE:**

**A.** The purpose of the New Mexico works (NMW) program is to improve the quality of life for parents and children by increasing family income, assisting parents to develop the discipline necessary for self-sufficiency and to improve their self-esteem. The further purpose of the program is to increase family income through family employment and child support and by viewing financial assistance as a support service to enable and assist parents to participate in employment.

**B.** The objective of the education works program (EWP) is to pro-

vide financial assistance to a benefit group where at least one individual is enrolled in a post-secondary institution. Education and training are essential to long-term career development. The applicant or recipient benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.

**C.** The objective of general assistance is to provide financial assistance to dependent needy children and disabled adults who are not eligible for assistance under a federally matched financial assistance program like NMW or the federal program of supplemental security income (SSI).

**D.** The objective of the supplement for residential care program is to provide a cash assistance supplement to SSI recipients who reside in licensed adult residential care homes.

**E.** The objective of the burial assistance program is to assist in payment of burial expenses for deceased, low-income individuals. [8.102.611.6 NMAC - N, 12/15/2005]

**8.102.611.7 D E F I N I T I O N S :** [Reserved]

**8.102.611.8 E D U C A T I O N WORKS ASSISTANCE PAYMENTS:**

**A. Method of payment:** Cash assistance benefits are paid by deposit of funds into an EBT account. In some circumstances benefits may be issued by warrant.

**B. Authorizing payments:**

(1) FA benefits are authorized, changed, and terminated through the automated benefit delivery system.

(2) Initial payments are issued on the first mailing day following authorization. In the case of EBT, the transfer of funds takes place on the first working day after the day of authorization.

**C. Initiation of payment:**

(1) Payment is initiated and prorated from the date of authorization or from the 30th day after the day of application, whichever is earlier.

(2) If the case was eligible in a month prior to the month of approval, but is not eligible for payment in the month following the month of disposition, the benefit group is not eligible for payment in any of these months.

(3) **Payments effective in the current month:** Payments authorized during the month are written the night the information is entered into the computerized system and mailed the first business day following authorization. Cash assistance benefits are deposited into the EBT account the business day after payment is

authorized.

**(4) Payments effective in the coming month:**

(a) When authorized, the payment amount remains the same from month to month until changed. Ongoing payments are written or authorized in the regular "monthly check write" process. During the monthly check write, hard copy checks are written the night before the third to the last working day of the month. They are mailed so as to arrive on the first mail delivery day of the month.

(b) EBT deposits are transmitted to the fiscal agent so that the funds are available on the first working day of the month. Payments authorized after the monthly check write are issued on the next nightly benefit write.

**D. Change in amount of payment:**

(1) Following approval, there is a continuing responsibility on the part of both the recipient and the caseworker to make sure that eligibility and benefit amount are correctly determined. Failure on either side to recognize and carry out this responsibility can result in overpayment to the recipient. Overpayments for any reason are charged to the recipient.

(2) A recipient's assistance grant shall be increased or decreased after receipt of information indicating that changes in a recipient's circumstances may affect the amount of assistance to which the recipient is entitled.

(3) Changes in the payment amount shall be made in accordance with changes in program policy, assistance standards, or adequacy with which need may be met.

**E. Regular changes:** A change in the benefit group circumstance may change the amount for which the group is eligible.

**F. Other changes:** If a change occurs which cannot be processed before the benefits issuance run, an overpayment or underpayment may occur. If an underpayment occurs, it shall be corrected by issuing a supplemental payment. In case of an overpayment, an overpayment claim shall be filed and appropriate efforts shall be made to recover the overpayment.

**G. Whereabouts unknown:** Benefits shall be terminated if the whereabouts of the recipient are unknown to the department for 30 days or more. A recipient's whereabouts shall be considered to be unknown if:

(1) mail sent to the recipient's last known address is returned to the department indicating that the recipient no longer lives at that address; or

(2) the recipient does not make any withdrawals from the recipient's EBT

account for 90 days or more.

**H. Recovery of unused education works program (EWP) funds:** Beginning January 1, 2005, New Mexico will recover EWP funds that remain unused in EBT accounts for over 180 days.

(1) Clients will be notified of the agency's intention to close EWP cases that are not in use at 90 days.

(2) After case closure, the casehead will be notified at 135 days of the department's intention to recover unused EWP funds that remain in inactive accounts for a period of 180 days.

(3) Each complete month of recovered funds will be removed from the 24 months limit for EWP.

[8.102.611.8 NMAC - N, 12/15/2005]

**8.102.611.9 SUPPORT SERVICES:**

**A.** Subject to the availability of state and federal funds, a benefit group that has countable gross income that is less than 100% of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services.

**B.** Any month that an EWP participant receives support services will count towards the 60 month temporary assistance to needy families (TANF) lifetime limit if the EWP benefit group has no earned income in accordance with Paragraph (4) of Subsection A of 8.102.410.17 NMAC.

**C.** Support services for child care will be issued in accordance with Subsection A of 8.102.620.15 NMAC.

[8.102.611.9 NMAC - N, 12/15/2005]

**8.102.611.10 EDUCATION WORKS CASH ASSISTANCE:**

**A.** Subject to the availability of allocated state funds, the education works program (EWP) provides state-funded cash assistance to a benefit group where at least one individual is enrolled in a post-secondary institution. The applicant or recipient benefit group must be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.

(1) The state-funded benefit amount is determined based on the same determination used to calculate the benefit amount in the NMW cash assistance program.

(2) During the initial application or recertification process, the caseworker shall screen an applicant for eligibility for the EWP. The caseworker shall explain the EWP to applicants who have applied for NMW cash assistance or NMW recipients who are applying for continued assistance. The department's work program contractor may screen recipients of NMW cash assistance for eligibility for participation in the

EWP and make a referral to the caseworker for transition to the EWP.

(3) An individual shall not have a month of participation in the EWP applied to the 60-month term limit for receipt of benefits in the state's TANF program.

(4) A benefit group participating in the EWP is considered to meet the categorical eligibility factors for the food stamp program.

(5) A benefit group participating in the EWP shall have its eligibility for medicaid determined. Eligibility shall be based on the rules in place for each medicaid program.

**B. Limitations of the education works cash assistance program:**

(1) The number of participants in the EWP shall be limited to the number for which state funding is allocated.

(2) Recipients who are actively participating in the NMW cash assistance program, and who meet the requirements for the EWP, shall be given first opportunity to switch programs.

(3) A benefit group shall not participate in the NMW and EWP simultaneously.

(4) A benefit group with income from employment may receive support services funded by the federal TANF block grant. A benefit group that does not have income from employment shall not be eligible to receive support services funded by the TANF block grant.

(5) EWP is limited to participation by an individual who does not have a bachelor's degree.

(6) A recipient may participate in the EWP for no more than twenty-four (24) months, whether or not consecutive, except:

(a) that a recipient may participate in the EWP for one additional academic term following the twenty-four (24) month participation limit if doing so will result in the recipient earning a degree, or

(b) that a recipient may participate in the EWP for two additional academic terms following the twenty-four (24) month participation limit at the discretion of the director if doing so will result in the recipient earning a degree.

(7) A participant may earn only one degree through the EWP.

(8) A participant must be a full-time student as defined by the educational institution.

**C. Eligibility criteria:**

(1) **Conditions:** Eligibility for participation in the EWP shall be based on all eligibility criteria for the NMW cash assistance program. As a condition of approval, an applicant or recipient cannot have a bachelor's degree and must:

(a) be otherwise eligible for NMW cash assistance;

(b) be in good standing with the department; good standing means that sanctions are not currently applied to the benefit group due to noncompliance with work programs, child support enforcement or reporting requirements;

(c) provide proof that the applicant or recipient has been accepted or is enrolled in a two-or four-year post-secondary degree education program;

(d) apply for all financial aid available, including grants and scholarships.

**(2) Level of effort:**

(a) A participant must engage in a combination of education, training, study or work-site experience, for an average of 20 hours a week in each month of participation in the EWP.

(b) One and one-half hours of study time shall be credited for each hour of class time.

(c) Work-site experience includes, but may not be limited to, paid employment, work study, training-related practicums, an internship, a clinical placement, or laboratory or field work, or any other work activity pursuant to the NMW cash assistance program.

**D. Satisfactory participation in the education works program:**

(1) To maintain satisfactory participation in the EWP, a participant shall meet all the requirements and standards of the educational institution that the participant attends, including class attendance.

(2) A participant shall maintain a 2.0 grade point average in each school term.

**E. Reporting requirements for recipients:**

(1) A recipient must provide ISD with proof of the recipient's final grades for each school term. Final grades must be provided by the end of the month in which the school term ends.

(2) A recipient must provide ISD with a copy of all letters relating to the receipt or denial of financial aid.

(3) A recipient must report to ISD when the recipient intends to drop out of school.

(4) A recipient must report any circumstance that might affect the recipient's ability to participate in the EWP.

(5) School attendance and reporting requirements for dependent children apply to the EWP.

(6) All reporting requirements in the NMW cash assistance program apply to the EWP.

[8.102.611.10 NMAC - Rp, 8.102.610.12 NMAC, 12/15/2005]

**8.102.611.11 WORK PROGRAM REQUIREMENTS:**

**A. New applicant responsibilities:**

(1) The individual shall have an assessment completed and shall provide verification within 15 days following approval to the EWP.

(2) The individual shall complete a WPA to enter the EWP for the level of effort required of participants. The WPA shall be submitted to ISD no later than 60 days from the date of approval of assistance.

(3) ISD and participant shall develop an individual education plan (IEP) in compliance with the EWP cash assistance program's requirements for an IEP. The IEP shall be submitted to ISD no later than 60 days from the date of approval of assistance. The IEP:

(a) shall contain documentation, including, but not limited to, acceptance into a particular area of study that supports the recipient's ability to succeed in the educational program that was chosen;

(b) shall describe how the degree will increase the individual's ability to engage in full-time paid employment.

**(4) Currently participating in the NMW cash assistance program:** Individuals currently participating in the NMW cash assistance program shall have until the end of the first full month of participation in the EWP to submit a revised WPA and IEP to ISD.

**(5) Two-parent family:** In a two-parent family where only one of the parents is a participant in the EWP, the other parent, if considered as a mandatory participant in the NMW work program, shall be required to participate in qualified work activities for a minimum of 30 hours per week. At least 20 hours a week must be spent in qualified primary work activities.

**B. Changes affecting participation in the EWP:**

**(1) Twenty-four-month time limit:** Participation in the EWP shall be limited to twenty four (24) months, whether or not consecutive, except

(a) that a recipient may participate in the EWP for one additional academic term following the twenty-four (24) month participation limit if doing so will result in the recipient earning a degree, or

(b) that a recipient may participate in the EWP for two additional academic terms following the twenty-four (24) month participation limit at the discretion of the director if doing so will result in the recipient earning a degree; all requests submitted to the director for approval shall include:

(i) verification of satisfactory participation in the education works program and

(ii) verification that the additional academic terms will lead to a degree.

**(2) Leaving the program:**

(a) A participant who leaves the program for a good cause reason may resume participation when the individual is able and ready to return to the EWP.

(b) An individual who leaves the program on a voluntary basis, and good cause is not established, is not eligible to resume participation in the EWP.

**(3) Unsatisfactory participation:**

(a) A participant who falls below the standards set by the educational institution at the end of the school term shall be placed on probationary status for the following semester. The participant shall be required to become compliant with the standards set by the educational institution, including improving grades, during the probationary period.

(b) Where the participant's overall GPA for the school term falls below 2.0, the individual shall be placed on probationary status for the following school term in order to bring the overall GPA to 2.0 or better.

**(4) State funding limitation:** Participation in the EWP may be limited should state funding for the program be reduced or terminated.

**(5) Failure to comply with other requirements:** The benefit group shall be transitioned back to the NMW cash assistance program and appropriate sanctions applied if a participant fails or refuses to comply with child support enforcement, school attendance, and reporting requirements in the NMW cash assistance program. The transition is effective in the month following the month the failure or refusal to comply is established.

**C. Establishing good cause for failure to meet requirements:**

(1) Good cause for not meeting the requirements for participation in the EWP is determined on an individual basis. Good cause may be applied to the 20-hour-a-week requirement to engage in education activities, or to a situation that causes a participant to leave the program.

(2) Good cause means that there are circumstances in which the required participation would cause the participant to seriously compromise academic performance. Good cause for leaving the EWP includes academic deficiency as long as the student has consulted with the contractor, all options have been discussed, and the contractor and ISD approve of the action.

(3) Good cause includes, but may not be limited to, a verified situation requiring the participant to care for a family member with special needs; a physical or mental health problem; a chronic illness; accident; death; or a serious personal or family problem that necessitates reducing or ending participation in the EWP.

(4) Good cause for failure to meet requirements may be determined by the contractor or ISD. Final approval of good cause is determined by the ISD.

[8.102.611.11 NMAC - Rp, 8.102.610.12 NMAC, 12/15/2005]

#### **8.102.611.12 TERMINATING PARTICIPATION IN THE EDUCATION WORKS PROGRAM:**

**A.** The department shall take action to terminate an individual's participation in the EWP, or to require an individual to apply for NMW cash assistance, by issuing an advance written notice under the following conditions:

(1) copies of financial aid award or denial letters are not provided;

(2) copies of final grades are not provided;

(3) there is a failure or refusal to comply with reporting requirements of the EWP;

(4) at the end of the probationary period, a participant's grade point average is not 2.0 or better;

(5) at the end of the probationary period, a participant has failed or refused to comply with the standards set by the educational institution, including class attendance;

(6) the participant fails or refuses, without good cause, to participate in education activities for at least 20 hours a week averaged over the month;

(7) funding for the EWP has been exhausted;

(8) an individual participating in the EWP has received a bachelor's degree.

**B. Appeal rights:** A participant shall have an opportunity to appeal an adverse action taken by the department in the EWP. Appeals are handled pursuant to the appeal process currently in place for programs administered by the human services department's ISD.

[8.102.611.12 NMAC - Rp, 8.102.610.12 NMAC, 12/15/2005]

#### **HISTORY OF 8.102.611 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives: ISD 271.0000, Procedures Applicable to Payment and Related Changes, 5-16-80. ISD FA 450, Payment, 2-10-88.

**History of Repealed Material:** 8 NMAC 3.FAP, Financial Assistance Program - Repealed, 07/01/97.

8.102.610 NMAC Description of Program/Benefits - Benefit Delivery - Repealed, 07/01/01.

#### **Other History:**

8.102.610 NMAC, Section 12, Education

Works Cash Assistance replaced by 8.102.611 NMAC, Education Works Program, effective December 15, 2005.

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.610 NMAC. Section 12, effective December 15, 2005.

### 8.102.610.12 [ ~~E D U C A T I O N~~ ~~WORKS CASH ASSISTANCE:~~

~~A. Subject to the availability of allocated state funds, the education works program (EWP) provides state funded cash assistance to a benefit group where at least one individual is enrolled in a post secondary institution. The applicant or recipient benefit group must be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.~~

~~(1) The state funded benefit amount is determined based on the same determination used to calculate the benefit amount in the NMW cash assistance program.~~

~~(2) During the initial application or recertification process, the caseworker shall screen an applicant for eligibility for the EWP. The caseworker shall explain the EWP to applicants who have applied for NMW cash assistance or NMW recipients who are applying for continued assistance. The department's work program contractor may screen recipients of NMW cash assistance for eligibility for participation in the EWP and shall make a referral to the caseworker for transition to the EWP.~~

~~(3) An individual shall not have a month of participation in the EWP applied to the 60 month term limit for receipt of benefits in the state's TANF program.~~

~~(4) A benefit group participating in the EWP is considered to meet the categorical eligibility factors for the food stamp program.~~

~~(5) A benefit group participating in the EWP shall have its eligibility for medicaid determined. Eligibility shall be based on the rules in place for each medicaid program.~~

~~B. Limitations of the education works cash assistance program:~~

~~(1) The number of participants in the EWP shall be limited to the number for which state funding is allocated.~~

~~(2) Recipients who are actively participating in the NMW cash assistance program, and who meet the requirements for the EWP, shall be given first opportunity to switch programs.~~

~~(3) A benefit group shall not participate in the NMW and EWP simultaneously.~~

~~(4) A benefit group with income from employment may receive support services funded by the federal TANF block grant. A benefit group that does not have income from employment shall not be eligible to receive support services funded by the TANF block grant.~~

~~(5) EWP is limited to participation by an individual who does not have a bachelor's degree.~~

~~(6) A recipient may participate in the EWP for no more than 24 months, whether or not consecutive.~~

~~(7) A participant may earn only one degree through the EWP.~~

~~(8) A participant must be a full-time student as defined by the educational institution.~~

#### ~~C. Eligibility criteria:~~

~~(1) Conditions: Eligibility for participation in the EWP shall be based on all eligibility criteria for the NMW cash assistance program. As a condition of approval, an applicant or recipient cannot have a bachelor's degree and must:~~

~~(a) be otherwise eligible for NMW cash assistance;~~

~~(b) be in good standing with the department. Good standing means that sanctions are not currently applied to the benefit group due to noncompliance with work programs, child support enforcement or reporting requirements;~~

~~(c) provide proof that the applicant or recipient has been accepted or is enrolled in a two or four year post secondary degree education program;~~

~~(d) apply for all financial aid available, including grants and scholarships.~~

#### ~~(2) Level of effort:~~

~~(a) A participant must engage in a combination of education, training, study or work site experience, for an average of 20 hours a week in each month of participation in the EWP.~~

~~(b) One and one half hours of study time shall be credited for each hour of class time.~~

~~(c) Work site experience includes, but may not be limited to, paid employment, work study, training related practicums, an internship, a clinical placement, or laboratory or field work, or any other work activity pursuant to the NMW cash assistance program.~~

#### ~~D. Satisfactory participation in the education works program:~~

~~(1) To maintain satisfactory participation in the EWP, a participant must meet all the requirements and standards of the educational institution that the participant attends, including class attendance.~~

~~(2) A participant maintain a 2.5 grade point average in each school term.~~

#### ~~E. Reporting requirements for recipients:~~

~~(1) A recipient provide ISD with proof of the recipient's final grades for each school term. Final grades must be provided by the end of the month in which the school term ends.~~

~~(2) A recipient provide ISD with a copy of all letters relating to the receipt or denial of financial aid.~~

~~(3) A recipient must report to ISD when the recipient intends to drop out of school.~~

~~(4) A recipient must report any circumstance that might affect the recipient's ability to participate in the EWP.~~

~~(5) School attendance and reporting requirements for dependent children apply to the EWP.~~

~~(6) All reporting requirements in the NMW cash assistance program apply to the EWP.~~

#### ~~F. Work program requirements:~~

##### ~~(1) New applicant responsibilities:~~

~~(a) The individual shall have an assessment completed and shall provide verification within 15 days following approval to the EWP.~~

~~(b) The individual shall complete a WPA to enter the EWP for the level of effort required of participants. The WPA shall be submitted to ISD no later than 60 days from the date of approval of assistance.~~

~~(c) ISD and participant shall develop an in compliance with the NMW cash assistance program's requirements for an IRP. The IRP shall be submitted to ISD no later than 60 days from the date of approval of assistance. The IRP:~~

~~(i) shall contain documentation, including but not limited to acceptance into a particular area of study, that supports the recipient's ability to succeed in the educational program that was chosen;~~

~~(ii) shall describe how the degree will increase the individual's ability to engage in full time paid employment.~~

~~(2) Currently participating in the NMW cash assistance program: Individuals currently participating in the NMW cash assistance program shall have until the end of the first full month of participation in the EWP to submit a revised WPA and IRP to ISD.~~

~~(3) Two parent family: In a two parent family where only one of the parents is a participant in the EWP, the other parent, if considered as a mandatory participant in the NMW work program, shall be required to participate in qualified work activities for a minimum of 30 hours per week. At least 20 hours a week must be spent in qualified primary work activities.~~

#### ~~G. Changes affecting participation in the EWP:~~



~~(1) **Twenty-four-month time limit:** Participation in the EWP shall be limited to 24 months, whether or not consecutive, or whether or not a degree was received.~~

~~(2) **Leaving the program:**~~

~~(a) A participant who leaves the program for a good cause reason, may resume participation when the individual is able and ready to return to the EWP.~~

~~(b) An individual who leaves the program on a voluntary basis, and good cause is not established, is not eligible to resume participation in the EWP.~~

~~(3) **Unsatisfactory participation:**~~

~~(a) A participant who falls below the standards set by the educational institution at the end of the school term, shall be placed on probationary status for the following semester. The participant shall be required to become compliant with the standards set by the educational institution, including improving grades, during the probationary period.~~

~~(b) Where the participant's overall GPA for the school term falls below 2.5, the individual shall be placed on probationary status for the following school term in order to bring the overall GPA to 2.5 or better.~~

~~(4) **State funding limitation:** Participation in the EWP may be limited should state funding for the program be reduced or terminated.~~

~~(5) **Failure to comply with other requirements:** The benefit group shall be transitioned back to the NMW cash assistance program and appropriate sanctions applied if a participant fails or refuses to comply with child support enforcement, school attendance, and reporting requirements in the NMW cash assistance program. The transition is effective in the month following the month the failure or refusal to comply is established.~~

~~**H. Establishing good cause for failure to meet requirements:**~~

~~(1) Good cause for not meeting the requirements for participation in the EWP is determined on an individual basis. Good cause may be applied to the 20-hour-a-week requirement to engage in education activities, or to a situation that causes a participant to leave the program.~~

~~(2) Good cause means that there are circumstances in which the required participation would cause the participant to seriously compromise academic performance. Good cause for leaving the EWP includes academic deficiency as long as the student has consulted with the contractor, all options have been discussed, and the contractor and ISD approve of the action.~~

~~(3) Good cause includes, but may not be limited to, a verified situation requir-~~

~~ing the participant to care for a family member with special needs; a physical or mental health problem; a chronic illness; accident; death; or a serious personal or family problem that necessitates reducing or ending participation in the EWP.~~

~~(4) Good cause for failure to meet requirements may be determined by the contractor or the ISD. Final approval of good cause is determined by the ISD.~~

~~**I. Terminating participation in the education works program:** The department may take action to terminate an individual's participation in the EWP, or to require an individual to apply for NMW cash assistance, by issuing an advance written notice under the following conditions:~~

~~(1) copies of financial aid award or denial letters are not provided;~~

~~(2) copies of final grades are not provided;~~

~~(3) there is a failure or refusal to comply with reporting requirements of the EWP;~~

~~(4) at the end of the probationary period, a participant's grade point average is not 2.5 or better;~~

~~(5) at the end of the probationary period, a participant has failed or refused to comply with the standards set by the educational institution, including class attendance;~~

~~(6) the participant fails or refuses, without good cause, to participate in education activities for at least 20 hours a week averaged over the month;~~

~~(7) funding for the EWP has been exhausted;~~

~~(8) an individual participating in the EWP has received a bachelor's degree.~~

~~**J. Appeal rights:** A participant shall have an opportunity to appeal an adverse action taken by the department in the EWP. Appeals are handled pursuant to the appeal process currently in place for programs administered by the human services department's ISD-] [RESERVED]~~

~~[8.102.610.12 NMAC - Rp 8.102.610.12 NMAC, 07/01/2001; A, 12/15/2005]~~

~~[Annotation: now filed at 8.102.611 NMAC]~~

**NEW MEXICO  
INTERSTATE STREAM  
COMMISSION**

**TITLE 19 N A T U R A L  
RESOURCES AND WILDLIFE  
CHAPTER 25 ADMINISTRATION  
AND USE OF WATER - GENERAL  
PROVISIONS  
PART 14 S T R A T E G I C  
WATER RESERVE**

**19.25.14.1 ISSUING AGENCY:**  
New Mexico Interstate Stream  
Commission.

[19.25.14.1 NMAC - N, 12-15-2005]

**19.25.14.2 SCOPE:** These regulations will assist the interstate stream commission in implementing the strategic water reserve and in managing water and water rights held for the strategic water reserve.

[19.25.14.2 NMAC - N, 12-15-2005]

**19.25.14.3 S T A T U T O R Y  
AUTHORITY:** These regulations are written pursuant to Section 72.14-3.3 NMSA 1978, authorizing the interstate stream commission to establish a strategic water reserve and requiring the promulgation of rules in conformity therewith.

[19.25.14.3 NMAC - N, 12-15-2005]

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

[19.25.14.4 NMAC - N, 12-15-2005]

**19.25.14.5 EFFECTIVE DATE:**  
December 15, 2005, unless a later date is cited at the end of a section.

[19.25.14.5 NMAC - N, 12-15-2005]

**19.25.14.6 OBJECTIVE:** These regulations will ensure that water and water rights acquired for the strategic water reserve are used only for the purposes of the reserve, that adequate public notice exists in each affected area for the acquisition or disposal of water rights and that the procedures for the acquisition of water and water rights for the strategic water reserve comply with the state engineer transfer procedures.

[19.25.14.6 NMAC - N, 12-15-2005]

**19.25.14.7 DEFINITIONS:** Unless defined below or in a specific section of these regulations, all other words used herein shall be given their customary and accepted meanings. **"Water rights"** means valid existing surface or groundwater rights that have sufficient seniority and a consistent, historic beneficial use to effectively contribute to the purpose of the strategic water reserve.

[19.25.14.7 NMAC - N, 12-15-2005]

**19.25.14.8 LIBERAL CONSTRUCTION:** These regulations shall be liberally construed to carry out their intended purpose.

[19.25.14.8 NMAC - N, 12-15-2005]

**19.25.14.9 IMPLEMENTATION  
OF STRATEGIC WATER RESERVE -  
RIVER REACH OR BASIN PRIORITIES:**

**A.** During the first quarter of each year, the interstate stream commis-

sion, after consultation with the state engineer, and the attorney general, shall adopt river reach or ground water basin priorities for the strategic water reserve and for the acquisition of water or water rights and storage rights for the reserve. In establishing such priorities, the interstate stream commission shall consider:

(1) the urgency of need for water or water rights to be held in the strategic water reserve in a river reach or basin;

(2) the unavailability of water rights for sale or lease in the river reach or basin and/or whether storage exists for such water;

(3) the cost, location and seniority of the water or water rights in the river reach or basin;

(4) whether and to what extent water rights to be purchased or leased will assist the state in complying with its interstate stream compacts or court decrees or will assist the state in managing its waters for the benefit of threatened or endangered species;

(5) whether water or water rights are available by donation; and

(6) written comments, if any, from interested public and private entities.

**B.** The interstate stream commission shall publish its designated river reach or ground water basin priorities in newspapers of general circulation throughout the state. In addition, the interstate stream commission shall publish its designated river reach or ground water basin priorities on its website.

[19.25.14.9 NMAC - N, 12-15-2005]

**19.25.14.10 IMPLEMENTATION OF STRATEGIC WATER RESERVE - PRIORITIZATION WITHIN RIVER REACH OR BASINS:**

Consistent with Section 72-14-3.3 NMSA 1978, for each priority river reach or ground water basin, the interstate stream commission shall establish additional prioritization in coordination with the governing bodies of each Indian nation, tribe, pueblo, board of county commissioners, municipality, special district established pursuant to Chapter 73 NMSA 1978, soil and water conservation district, water authority and water planning region within each affected river reach or ground water basin. Upon making the initial prioritization of river reach or ground-water basin, the commission shall notify the governing bodies of each such entity. Within thirty (30) days after adoption of such initial river reach or ground water basin priorities by the commission as provided in the preceding paragraph, or at the next regularly scheduled meeting of the commission that occurs at least fifteen (15) days after adoption of such priorities as provided in the preceding paragraph, the governing bodies of each such entity and any

other interested public and private entities, shall submit comments and suggestions as to this additional prioritization of the acquisition of water or water rights within each priority river reach or groundwater basin. The interstate stream commission will publish notice of, and hear public comments regarding, its prioritization decisions.

[19.25.14.10 NMAC - N, 12-15-2005]

**19.25.14.11 ACQUISITION OF WATER OR WATER RIGHTS:**

Consistent with its prioritizations, the interstate stream commission shall acquire water or water rights from willing sellers or lessors. The commission shall acquire water or water rights at a price no higher than appraised market value, based upon the best available information and considering the seniority and the consistent historic beneficial use of the water or water rights. The interstate stream commission may acquire water or water rights by donation at any time. Acquisitions shall be contingent upon a successful transfer of the water rights to the interstate stream commission pursuant to the procedures for transfer of water rights established by the state engineer. The interstate stream commission shall not purchase or lease water or water rights that will result in an increase in net depletions in the affected river reach or that will create cumulative adverse impacts on existing water users or delivery systems or the ability of the state of New Mexico to properly manage its waters or meet interstate obligations. The commission shall not acquire water or water rights that are served by or owned by an acequia or community ditch established pursuant to Articles 2 and 3 of Chapter 73 NMSA 1978 for inclusion in the strategic water reserve. The interstate stream commission shall not acquire water or water rights that are served by an irrigation district established pursuant to Article 10 of Chapter 73 NMSA 1978 except through a contractual arrangement with the district board of directors or the interstate stream commission may establish a special water users association pursuant to 73-10-48 NMSA 1978. The interstate stream commission acquires water or water rights from a member of an irrigation or conservancy district established pursuant to Chapter 73 NMSA 1978, the interstate stream commission shall utilize funds from the strategic water reserve to pay the annual assessment to the district that would accrue to the district absent the transaction.

[19.25.14.11 NMAC - N, 12-15-2005]

**19.25.14.12 APPLICATION FOR PERMIT WITH THE STATE ENGINEER:** All acquisitions of water or water rights by the commission for the strategic water reserve are subject to approval by the state engineer and shall comply with all state engineer rules and regulations govern-

ing surface and ground water transfer applications.

[19.25.14.12 NMAC - N, 12-15-2005]

**19.25.14.13 MANAGEMENT OF WATER:**

**A.** The interstate stream commission shall manage water and water rights within the strategic water reserve in order to assist the state in complying with its interstate compacts and court decrees or to assist the state and water users in water management efforts for the benefit of threatened or endangered species or in a program intended to avoid additional listings of species.

**B.** If water or water rights are purchased, leased or acquired through donation to assist the state and water users in water management efforts for the benefit of threatened or endangered species or in connection with a program intended to avoid additional listings of species, the interstate stream commission shall manage such water or water rights in conjunction with collaborative programs or processes where they exist.

**C.** The commission shall expedite the transfer and management of water rights donated to the strategic water reserve.

**D.** Water or water rights acquired for the strategic water reserve shall remain in their river reach or groundwater basin of origin.

[19.25.14.13 NMAC - N, 12-15-2005]

**19.25.14.14 ADMINISTRATIVE COSTS:**

The interstate stream commission shall determine annually its administrative costs associated with the strategic water reserve and consistent with Section 72-14-3.3 NMSA 1978 such costs shall be paid for from funds received for the strategic water reserve.

[19.25.14.14 NMAC - N, 12-15-2005]

**19.25.14.15 DISPOSAL OF WATER RIGHTS:**

The interstate stream commission may sell or lease water or water rights from the strategic water reserve only upon a finding by the commission that such water or water rights are no longer necessary for the reserve and only at a price no less than appraised market value. The interstate stream commission may lease water or water rights from the strategic water reserve to the United States but shall not sell water rights from the strategic water reserve to the United States. The interstate stream commission shall utilize proceeds from the leasing of water rights from the strategic water reserve for carrying out the purposes of the strategic water reserve. Any sale of water or water rights from the strategic water reserve shall first be offered for the original purpose of use. Proceeds from such sales shall be

used by the office of the state engineer to adjudicate water rights.

[19.25.14.15 NMAC - N, 12-15-2005]

**19.25.14.16 ANNUAL LEGISLATIVE REPORT:** On or before December 15th of each year, the interstate stream commission shall report to the appropriate committee of the legislature on the status of the strategic water reserve.

[19.25.14.16 NMAC - N, 12-15-2005]

HISTORY OF 19.25.14 NMAC:  
[RESERVED]

## NEW MEXICO BOARD OF LANDSCAPE ARCHITECTS

This is an emergency amendment to 16.44.3 NMAC, Sections 15 and 16, effective November 30, 2005.

### 16.44.3.15 PROVISIONS FOR EMERGENCY LICENSURE:

**A. Landscape architects** 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 a (4) four months period following the declared disaster at no cost upon satisfying the following requirements:

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

(2) other required verification may be obtained from the council of landscape architectural registration boards through the CLARB council record;

(3) nothing in this section shall constitute a waiver of qualifications of the requirements for licensure contained in 16.44.3.8 NMAC;

(4) sworn affidavit that the applicant was personally and/or professionally affected by the disaster.

**B. The board** may waive the application fees only.

**C. The board** may waive the specific forms required under **16.44.3.12 NMAC** only if the applicant is unable to obtain documentation from the federal declared disaster areas.

**D. Emergency provision-** **al license** shall expire on **June 30th** following the date of issue. Application for initial license shall be made on or before **April 1st** 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.  
[16.44.3.15 NMAC - N/E, 11/30/05]

### 16.44.3.16 TERMINATION OF EMERGENCY LICENSURE:

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

(1) the issuance of an initial license under section 16.44.2.8 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.**

[16.44.3.16 NMAC - N/E, 11/30/05]

## NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.2 NMAC, Sections 7, 8 and 16, Effective December 30, 2005. Section 16 was previously filed as an Emergency Rule.

### 16.10.2.7 DEFINITIONS.

**A. "Board approved school"** means a medical school that has been approved by the liaison committee on medical education, composed of the American medical association and the association of American medical colleges, has a liaison council on medical education (LCME)-approved curriculum or equivalent for graduates of Canadian schools, is on the approved list of the California state medical board, or has been approved by the board.

**B. "Board approved training program"** means a program approved by the accrediting council on graduate medical education of the American medical association (ACGME), the royal college of physicians and surgeons of Canada (RCPC), or a residency program located within an ACGME approved institution that has been approved by the board.

**C. "HSC"** means the hospital services corporation, a New Mexico corporation, and a credential verification organization certified by the national commission on quality assurance (NCQA).

**D. "FCVS"** means the federation credential verification service of the federation of state medical boards.

**E. "Major disaster"** means a declaration of a major disaster by the federal emergency management agency (FEMA).

**[E.] E. "Telemedicine"** means the practice of medicine across state lines as

defined in the Medical Practice Act, Section 61-6-6, K NMSA 1978.

[16.10.2.7 NMAC - Rp 16 NMAC 10.2.7, 4/18/02; A, 1/20/03, A, 10/7/05; A, 12/30/05]

**16.10.2.8 CATEGORIES OF ACTIVE LICENSES.** Individuals holding one of the following categories of medical license are eligible to practice medicine and surgery in New Mexico.

**A. Medical.** An unrestricted license to practice medicine and surgery.

**B. Telemedicine.** A limited medical license that allows a physician located outside New Mexico to practice medicine on patients located in New Mexico.

**C. Post-graduate.** A limited training license issued by the board to physicians who are enrolled in a board approved training program.

**D. Public service.** A limited license issued by the board to physicians in training who have successfully completed one year of post-graduate training.

**E. Temporary.** A limited license that allows a physician to practice medicine for a limited time after meeting certain specific conditions.

**F. Federal emergency.** An unrestricted license to practice medicine and surgery issued without receipt of all documentation required for a medical license because of a major disaster.

[16.10.2.8 NMAC - N, 4/18/02; A, 4/3/05; A, 12/30/05]

### 16.10.2.16 PROVISIONS FOR PHYSICIAN LICENSURE DURING A DECLARED DISASTER.

~~**[A.] Emergency provisions for license by examination.** Physicians currently licensed in a state in which a federal disaster has been declared may be licensed by examination in New Mexico during the four months following the declared disaster at no cost. The board may waive the specific forms required under Subsection B of 16.10.2.9 NMAC if the applicant is unable to obtain documentation from the federal declared disaster areas. Nothing in this provision shall constitute a waiver of the requirements for licensure contained in Subsection A of 16.10.2.9 NMAC.~~

**B. Emergency provisions for license by endorsement.** Physicians currently licensed in a state in which a federal disaster has been declared may be licensed by endorsement in New Mexico during the four months following the declared disaster at no cost with the following requirements:

~~(1) receipt of a completed application which has been signed and notarized 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) the board will consider the required three years of practice experience to be met through any combination of post-graduate medical education and actual work experience;~~

~~(3) the board may waive any requirements for recommendation forms or verification of work experience forms;~~

~~(4) other required verification will be obtained online by board staff to include: current licensure status, national practitioners data bank, federation of state medical board disciplinary database, American medical association records of education and postgraduate training, and the records of the American board of medical specialties to confirm board certification status; and~~

~~(5) nothing in this provision shall constitute a waiver of the requirements for licensure contained in Subsection A of 16.10.2.10.~~

~~**C. License expiration.** Medical licenses issued under 16.10.2.16 NMAC shall expire on October 1, 2006, unless a renewal application is approved by the board or an agent of the board. Applications for renewal shall be made on or before July 1, 2006 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.] The board will make accommodations for physicians who have been impacted by a major disaster. Based on the nature of the disaster, the extent of the damage, and the number of individuals and institutions that have been affected, the board may waive documentation requirements for any new or pending applications when the disaster delays or prohibits the procuring of the required documents. The board may also waive any required fees for applications submitted after the major disaster. The board will determine the length of time the emergency provisions will be in effect for each major disaster that results in applications for a federal emergency license.~~

**A. Federal emergency license by examination.** Physicians currently licensed in a state in which a major disaster has been declared may be issued a federal emergency license in New Mexico. The board may waive specific documentation required in Subsections B through E of 16.10.2.9 NMAC if the applicant is unable to obtain the documentation from individuals or institutions located in the disaster area. Nothing in this provision shall consti-

tute a waiver of the requirements for licensure contained in Subsection A of 16.10.2.9 NMAC.

**B. Federal emergency license by endorsement.** Physicians currently licensed in a state in which a major disaster has been declared may be issued a federal emergency license in New Mexico. The board may waive specific requirements of Subsection B of 16.10.2.10 NMAC if the applicant is unable to obtain documentation from individuals or institutions located in the disaster area. Nothing in this provision shall constitute a waiver of the requirements for licensure contained in Subsection A of 16.10.2.10 NMAC. The following requirements will apply to applicants under this provision:

(1) a completed application which has been signed and notarized is required, 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) the board will consider the required three years of practice experience to be met through any combination of post-graduate medical education and actual work experience;

(3) the board may waive any requirements for recommendation forms or verification of work experience forms;

(4) other required verification will be obtained online by board staff to include: current licensure status, national practitioners data bank, federation of state medical board disciplinary database, American medical association records of education and postgraduate training, and the records of the American board of medical specialties to confirm board certification status.

**C. License expiration.** Initial federal emergency licenses shall be valid for not less than three months or more than fifteen months. Licenses shall be renewed on July 1 following the date of issue, pursuant to 16.10.7 NMAC. 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. At the time a federal emergency license is approved for renewal it will be transferred to a full medical license. [16.10.2.16 NMAC - N/E, 9/22/05; A, 12/30/05]

## NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.6 NMAC, Sections 1, 8, 10, 12 and 21, Effective December 30, 2005.

**16.10.6.1 ISSUING AGENCY:** New Mexico [Board of Medical Examiners] Medical Board, hereafter called the board. [16.10.6.1 NMAC - Rp 16 NMAC 10.6.1, 4/18/02; A, 12/30/05]

**16.10.6.8 COMPLAINTS.** A complaint may be filed against a physician, physician assistant or anesthesiologist assistant. All complaints must be in writing [and must be verified under oath or given in sworn testimony to the board or a member of the board's staff]. The date of receipt of [sworn or notarized] the complaint shall begin the running of the statute of limitation.

[16.10.6.8 NMAC - Rp 16 NMAC 10.6.8, 4/18/02; A, 12/30/05]

**16.10.6.10 COMPLAINT COMMITTEE.** The [President] chair of the board shall appoint at least one member of the board to serve on each complaint committee. [At least one] A complaint committee shall review each complaint charging a physician, physician assistant or anesthesiologist assistant with unprofessional conduct or other violations under the Medical Practice Act. [The following procedures may apply:

**A.** Upon receipt of the complaint and prior to the review by a complaint committee, assigned board personnel shall notify the complainant that the board has received the complaint.

**B.** Upon receipt of the complaint, the assigned board staff shall furnish copies to the appropriate complaint committee. Staff will supplement the material when additional information is obtained.

**C.** The complaint committee shall review the complaint to determine if the board has jurisdiction over the matter, and if the complaint may have merit.

**D.** The complaint committee shall conduct a preliminary investigation to determine if the allegations in the complaint are supported by the facts.

**E.] A.** The complaint committee may refer complaints to other board members or experts in the field for a determination of merit.

**[F.] B.** Upon completion of an investigation, the complaint committee shall submit its recommendations to the board. After submitting their recommendations to the board, the members of the complaint committee shall recuse themselves

from all further proceedings in that case.

~~[G. The complaint committee shall report to the board the status of complaints during board meetings, upon request by the board.~~

~~H.] C.~~ The complaint committee, on behalf of the board, may issue investigative subpoenas. Failure to comply with a subpoena may result in the initiation of a contempt procedure as set forth in 61-1-10 NMSA 1978 or in the service of a notice of contemplated action pursuant to Section 61-6-15 (D) 23, NMSA 1978.

[16.10.6.10 NMAC - Rp 16 NMAC 10.6.10, 4/18/02; A, 12/30/05]

**16.10.6.12 INVESTIGATIVE SUBPOENA.** Pursuant to Sections 61-6-23 and 61-1-9 NMSA (1978) the board may issue investigative subpoenas. Investigative subpoenas may be signed by the executive director of the board at the request of the ~~[President]~~ chair or complaint committee. Failure to comply with a subpoena may result in the initiation of a contempt procedure as set forth in Section 61-1-10, NMSA (1978) of the service of a notice of contemplated action pursuant to Section 61-6-15(D)(23), NMSA 1978.

[16.10.6.12 NMAC - Rp 16 NMAC 10.6.12, 4/18/02; A, 12/30/05]

**16.10.6.21 HEARING PROCEDURE.**

A. The board ~~[President]~~ chair, or his designated representative, on behalf of the board, shall decide whether the hearing shall be before the board or a hearing officer. If the ~~[President]~~ chair of the board, or his designated representative, decides that the matter shall be heard before the board or a hearing officer and the board disagrees with that decision, the board may reverse the decision and designate whether the hearing shall be before it or a hearing officer.

B. If the board or the ~~[President]~~ chair of the board, or his designated representative, decides that the matter shall be before a hearing officer, the board, the ~~[President]~~ chair of the board, or his designated representative shall appoint a person to act as the hearing officer.

C. Motions may be submitted in writing or made orally during the hearings. The board may request parties to submit a memorandum of law following the hearing in support of a motion made orally. The board may defer judgment on a motion made during the hearing until it has had an opportunity to hear the presentation of evidence. All motions not specifically acted upon during the hearing shall be acted upon in the board's final decision.

[16.10.6.21 NMAC - Rp 16 NMAC 10.6.21, 4/18/02; A, 12/30/05]

**NEW MEXICO MEDICAL BOARD**

This is an amendment to 16.10.13 NMAC, Sections 1, 2, 3, 6, 7, 8 and 9, Effective December 30, 2005. The Part name is also amended.

**PART 13 [USE OF DEVICES AND PROCEDURES BY UNLICENSED PERSONNEL] DELEGATED USE OF DEVICES AND PROCEDURES BY MEDICAL ASSISTANTS; COSMETIC INJECTIONS**

**16.10.13.1 ISSUING AGENCY:** New Mexico ~~[Board of Medical Examiners]~~ Medical Board, hereafter called the board.  
[16.10.13.1 NMAC - Rp 16 NMAC 10.13.1, 4/18/02; A, 12/30/05]

**16.10.13.2 SCOPE:** This part ~~[applies to new or established medical or surgical procedures and their use by unlicensed personnel]~~ governs the delegated use of procedures and use of certain medical devices by medical assistants under the supervision of the physician.  
[16.10.13.2 NMAC - Rp 16 NMAC 10.13.2, 4/18/02; A, 12/30/05]

**16.10.13.3 STATUTORY AUTHORITY:** These rules of practice and procedure govern the use of medical ~~[or surgical]~~ devices and procedures by unlicensed ~~[personnel, or non-medical personnel]~~ medical assistants under the supervision of a physician in New Mexico. These rules are promulgated pursuant to and in accordance with the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978.

[16.10.13.3 NMAC - Rp 16 NMAC 10.13.3, 4/18/02; A, 12/30/05]

**16.10.13.6 OBJECTIVE:** This part establishes the procedures whereby physicians licensed in New Mexico ~~[can]~~ may delegate responsibility for certain medical ~~[or surgical procedures to unlicensed personnel]~~ procedures generally considered to be the practice of medicine to medical assistants with appropriate training and supervision, pursuant to Section 61-6-17 (I) ~~[, as amended in 1997]~~ NMSA 1978.

[16.10.13.6 NMAC - Rp 16 NMAC 10.13.6, 4/18/02; A, 12/30/05]

**16.10.13.7 DEFINITIONS:**

A. "Supervising physician" means a physician licensed to practice in New Mexico who is responsible for the patient's care and will provide oversight and guidance of ~~[unlicensed personnel]~~ the medical assistant.

~~B. "Unlicensed personnel" means an individual not licensed to~~

practice as a physician or a physician assistant in New Mexico.

~~C. "Immediate premises" means in the same building or building complex.~~

~~D. "Direct supervision" means the supervising physician is in the immediate premises.]~~

~~B. "Medical assistant" means any individual who is not licensed as a healthcare practitioner in New Mexico and is working under the direction and supervision of a licensed physician. Licensed practitioners, including registered nurses and physician assistants, are not considered to be medical assistants pursuant to this rule.~~

~~C. "Medical therapeutic or cosmetic device" means a federal food and drug administration approved prescription device that uses waveform energy, including, but not limited to lasers or intense pulsed light, to alter human tissue.~~

~~D. "Certified" means the medical assistant has been awarded a certificate of completion of training by a physician trained to use the equipment, a representative of the medical equipment company, or other entity qualified to offer the required training.~~

[16.10.13.7 NMAC - Rp 16 NMAC 10.13.7, 4/18/02; A, 12/30/05]

~~16.10.13.8 [USE OF LASERS AND LIGHT ACTIVATED DEVICES FOR HAIR REMOVAL. Unlicensed personnel may perform hair removal using lasers and light activated devices when the following requirements must have been met:~~

~~A. The supervising physician has interviewed the patient and executed and recorded an appropriate history and physical examination that indicates the need for, or the advisability of, the planned hair removal;~~

~~B. The unlicensed personnel who will perform the procedure must have received appropriate training in laser physics, clinical application of the device or devices, and recognition and management of complications that may result from the use of the device or devices.~~

~~C. The accountable, supervising physician must be on the immediate premises at all times during the procedure being performed by the unlicensed assistant;~~

~~D. The unlicensed assistant must be fully insured under the supervising physician's medical malpractice policy;~~

~~E. The patient must be informed and aware that the individual performing the procedure is an unlicensed assistant and is under the direct supervision~~

of the supervising physician.

**F. Reporting Requirements.** The supervising physician shall report the following in writing to the Board of Medical Examiners:

(1) The name and local address of the unlicensed assistant who will be performing the procedure(s) under the physician's supervision;

(2) Documentation of training to include the name of the institution providing the training, the number of hours, a course outline, a resume of the primary instructor, and proof of successful completion of the training in the procedures to be performed;

(3) The report shall be submitted to the board at least twenty one (21) days prior to the performance of the first planned procedure.

**G.** The patient shall sign a statement, which is kept in the medical record, acknowledging they have been informed that the unlicensed personnel performing the procedure is not licensed as a physician or a physician assistant.

**H.** Any violation of the provisions of this rule shall be disciplined under the provisions of the Medical Practice Act, 61-6-15 (D)(29).] **USE OF MEDICAL THERAPEUTIC AND COSMETIC DEVICES.** Medical therapeutic or cosmetic devices penetrate and alter human tissue and can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation and hyperpigmentation. The use of medical therapeutic and cosmetic devices is the practice of medicine as defined in Section 61-6-1 NMSA 1978.

**A. Limitations.**

(1) Medical assistants are limited to using medical therapeutic and cosmetic devices that are non-incisive and non-ablative.

(2) Medical therapeutic and cosmetic devices may only be used by a medical assistant who is certified pursuant to Subsection D of 16.10.13.7 NMAC and when the supervising physician is immediately available on the premises.

**B. Responsibility of the supervising physician.** A physician who is trained in the safety and use of medical therapeutic or cosmetic devices may supervise medical assistants who perform hair removal and other therapeutic or cosmetic procedures using devices that use waveform energy consistent with the following requirements.

(1) The supervising physician must provide the following services before treatment by a medical assistant is initiated: patient history, physical examination, diagnosis, treatment protocol, and preparation of medical record.

(2) The supervising physician

shall review any adverse outcomes or changes in the treatment protocol.

(3) The supervising physician shall assure the patient is informed and aware that the individual performing the procedure is a medical assistant and is under the physician's supervision.

(4) The supervising physician shall provide the patient instructions for emergency and follow-up care.

(5) The supervising physician shall prepare a written protocol for the medical assistant to follow when using the medical therapeutic or cosmetic device. The protocol may include pre and post care treatment related to the procedure as long as the treatment is topical and non-injectable. The physician is responsible for ensuring that the medical assistant uses the medical therapeutic or cosmetic device only in accordance with the written protocol and does not exercise independent medical judgment when using the device.

(6) The supervising physician shall assure compliance with the training and reporting requirements of this rule.

(7) The supervising physician is ultimately responsible for the safety of the patient, regardless of who performs the treatment using the medical therapeutic or cosmetic device.

**C. Training requirements.** Medical assistants who use medical therapeutic or cosmetic devices must have training and be certified on each device they will use. The training on each device must include the following:

(1) physics and safety of the medical therapeutic or cosmetic device;

(2) basic principle of the planned procedure;

(3) clinical application of the medical therapeutic or cosmetic device, including wavelengths to be used;

(4) indications and contraindications for the use of the medical therapeutic or cosmetic device;

(5) pre-operative and post-operative care;

(6) recognition and acute management of complications that may result from the procedure; and

(7) infectious disease control procedures required for each procedure.

**D. Reporting requirements.** The supervising physician shall complete a "certificate of training" form and submit it to the board prior to the use of a medical therapeutic or cosmetic device by the medical assistant. The form will be device-specific and document training for each medical therapeutic or cosmetic device used by the medical assistant.

[16.10.13.8 NMAC - Rp 16 NMAC 10.13.8, 4/18/02; A, 12/30/05]

**16.10.13.9 INJECTION OF**

**COSMETIC OR AESTHETIC SUBSTANCES.** The injection of cosmetic or aesthetic substances is considered to be the practice of medicine and shall not be delegated to medical assistants.

[16.10.13.9 NMAC - N, 12/30/05]

## NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.15 NMAC, Sections 7, 18 and 19, Effective December 30, 2005.

Section 18 and 19 were previously filed as an Emergency Rule.

### 16.10.15.7 DEFINITIONS:

**A. "AAPA"** means American academy of physician assistants.

**B. "Alternate supervising physician"** means a physician who holds a current unrestricted license, is a cosignatory on the notification of supervision, agrees to act as the supervising physician in the supervising physician's absence and is approved by the board.

**C. "Interim permit"** means a document issued by the board that allows a physician assistant to practice pending completion of all licensing requirements.

**D. "NCCPA"** means national commission of certification of physician assistants.

**E. "Oral communication"** means in person, telephonically, by two-way radio, by email or other electronic means.

**F. "Scope of practice"** means duties and limitations of duties placed upon a physician assistant by their supervising physician and the board; includes the limitations implied by the field of practice of the supervising physician.

**G. "Supervising physician"** means a physician who holds a current unrestricted license, provides a notification of supervision, assumes legal responsibility for health care tasks performed by the physician assistant and is approved by the board.

**H. "Emergency supervising physician"** means a physician who is responsible for the operations of a team or group of health professionals, including physician assistants, who are responding to a major disaster.

**I. "Major disaster"** means a declaration of a major disaster by the federal emergency management agency (FEMA).

[16.10.15.7 NMAC - Rp 16 NMAC 10.15.7, 7/15/01; A, 10/7/05; A, 12/30/05]

**16.10.15.18 PROVISIONS FOR**

**PHYSICIAN ASSISTANT LICENSURE DURING A DECLARED DISASTER.**

~~[Physician assistants currently licensed 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. The requirement for letters of recommendation may be waived and online license verification may be accepted for applicants under this provision.]~~

**A. Licensing.** The board will make accommodations for physician assistants who have been impacted by a major disaster. Based on the nature of the disaster, the extent of the damage, and the number of individuals and institutions that have been affected, the board may waive documentation requirements for any new or pending applications when the disaster delays or prohibits the procuring of the required documents. The board may also waive any required fees for applications submitted after the major disaster. The board will determine the length of time the emergency provisions will be in effect for each major disaster.

**B. License expiration.** Licenses issued under Subsection A of 16.10.15.18 NMAC shall be valid for not less than three months or more than twenty-seven months. Licenses expire on March 1 of the year following NCCPA expiration. Licenses not renewed by March 1 of the expiration year are considered expired. The board reserves the right to request additional documentation, including but not limited to recommendation forms prior to approving license renewal.

[16.10.15.18 NMAC - N/E, 9/22/05; A, 12/30/05]

**16.10.15.19 SERVICES PERFORMED DURING AN EMERGENCY OR DISASTER**

**A.** The supervision and delegation requirements of 16.10.15.12 NMAC and Sections 61-6-7 through 61-6-10 NMSA 1978 do not apply to medical tasks performed by a physician assistant during a ~~federally declared~~ major disaster.

**B.** A physician assistant may provide medical services and perform tasks described by 16.10.15.12 NMAC and Sections 61-6-7 NMSA 1978 while:

(1) under the supervision of any physician who is also performing volunteer work in the disaster; or

(2) without the supervision of a physician, if a physician is not currently available to provide supervision.

**C.** The physician assistant is responsible for notifying the board of the following information by email, fax or by mail, within 30 days of initiation of the activity:

(1) ~~the name of the supervising physician(s)]~~ the name of the emergency supervising physician(s), if known, or the organization providing oversight;

(2) a general description of the time period; and

(3) the location of the emergency duties.

**D.** There are no limits on the number of physician assistants who may be supervised by the emergency supervising physician.

[16.10.15.19 NMAC - N/E, 9/22/05; A, 12/30/05]

**NEW MEXICO NURSING HOME ADMINISTRATORS BOARD**

This is an emergency amendment to 16.13.5 NMAC, with the addition of new Sections 12 and 13, effective November 29, 2005.

**16.13.5.12 PROVISIONS FOR EMERGENCY LICENSURE:**

**A. Nursing home administrators** 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 (4) four months following the declared disaster at no cost upon satisfying the following requirements:

(1) receipt by the nursing home administrators board office 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 16.13.3.9 NMAC, Documentation and Other Requirements and 16.13.5.8 NMAC, License Required to Practice;

(3) other required verification may be obtained by the national association of boards of examiners for long term care administrators (NAB);

(4) sworn affidavit that the applicant was personally and/or professionally effected by the disaster;

(5) nothing in this section shall constitute a waiver of qualifications of the requirements for licensure contained in 16.13.3.9 NMAC, 16.13.5.8 NMAC.

**B. The board** may waive the application fees.

**C. The board** may waive the specific forms required under **16.13.3.9 NMAC only** if the applicant is unable to obtain documentation from the federal declared disaster areas.

**D. EMERGENCY PRO-**

**VISIONAL LICENSE** shall expire on March 31st, following the date of issue. Application for initial license shall be made on or before Feb 1st 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. [16.13.5.12 NMAC - N/E, 11/29/2005]

**16.13.5.13 TERMINATION OF EMERGENCY LICENSE:**

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

(1) the issuance of a permanent license under section 16.13.7.8 NMAC, 16.13.7.9 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.

[16.13.5.13 NMAC - N/E, 11/29/2005]

**NEW MEXICO NUTRITION AND DIETETICS PRACTICE BOARD**

This is an emergency amendment to 16.14.3 NMAC, with the addition of new Sections 12 and 13, effective November 22, 2005.

**16.14.3.12 PROVISIONS FOR EMERGENCY LICENSURE:**

**A. Nutrition and dietetic practitioners** 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 (4) four months following the declared disaster at no cost upon satisfying the following requirements:

(1) receipt by the nutrition and dietetic practitioners board of a completed application that has been signed and notarized and that 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) other required verification may be obtained from the commission on dietetic registration;

(3) nothing in this section shall constitute a waiver of qualifications of the requirements for licensure contained in 16.14.3.8, 16.14.3.9, 16.14.3.10 NMAC; and

(4) sworn affidavit that the applicant was personally and/or professionally affected by the disaster.

B. The board may waive only the application fees.

C. The board may waive the specific forms required under 16.14.3.8, 16.14.3.9, 16.14.3.10 NMAC only if the applicant is unable to obtain documentation from the federal declared disaster area.

D. Emergency provision-al license shall expire one (1) year from the date of issue of the emergency issued license. Application for a permanent license shall be made before the one-year expiration date of the emergency 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 permanent license.

[16.14.3.12 NMAC - N/E, 11-22-2005]

#### **16.14.3.13 TERMINATION OF EMERGENCY LICENSE**

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

(1) the issuance of an initial license under section 16.14.3.11 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.

[16.14.3.13 NMAC - N/E, 11/22/2005]

### **NEW MEXICO PUBLIC REGULATION COMMISSION UTILITY DIVISION**

Effective 2-1-06, the Public Regulation Commission repeals 17.11.16 NMAC, Customer Protection (filed 12-14-00).

Effective 2-1-06, the Public Regulation Commission repeals 17.11.22 NMAC, Quality of Service Standards (filed 12-14-00).

### **NEW MEXICO PUBLIC REGULATION COMMISSION UTILITY DIVISION**

**TITLE 17 PUBLIC UTILITIES  
AND UTILITY SERVICES  
CHAPTER 11 TELECOMMUNI-  
CATIONS  
PART 16 CONSUMER PRO-  
TECTION**

**17.11.16.1 ISSUING AGENCY:** New Mexico Public Regulation Commission.

[17.11.16.1 NMAC - Rp, 17.11.16.1 NMAC, 2-1-06]

**17.11.16.2 SCOPE:** This rule applies to all carriers, except incumbent rural telecommunications carriers, authorized by the commission to provide retail telecommunications services in New Mexico.

**A.** Where the commission has approved an alternative form of regulation plan for an ILEC, and a provision in the approved plan is inconsistent with a provision in this rule, the provision in the approved plan shall apply.

**B.** Where the commission has approved an alternative form of regulation plan for an ILEC, and the approved plan is silent with respect to the subject matter of a provision in this rule, the provision in this rule shall apply.

[17.11.16.2 NMAC - Rp, 17.11.16.2 NMAC, 2-1-06]

**17.11.16.3 STATUTORY AUTHORITY:** NMSA 1978 Sections 8-8-4, 8-8-15, 63-9A-8.2, 63-9B-4, 63-9B-6, 63-9G-4, and 63-9G-8.

[17.11.16.3 NMAC - Rp, 17.11.16.3 NMAC, 2-1-06]

**17.11.16.4 DURATION:** Permanent.

[17.11.16.4 NMAC - Rp, 17.11.16.4 NMAC, 2-1-06]

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

[17.11.16.5 NMAC - Rp, 17.11.16.5 NMAC, 2-1-06]

**17.11.16.6 OBJECTIVE:** The purpose of this rule is to ensure that carriers provide accurate and timely information to customers about their telecommunications services, and that their business conduct toward customers is courteous, efficient, and respectful of the customer's privacy. The rule also specifies procedures relating to discontinuance of basic local exchange service, the resolution of complaints and billing disputes, and customer deposits, and provides the commission with tools for monitoring carriers' compliance.

[17.11.16.6 NMAC - Rp, 17.11.16.6 NMAC, 2-1-06]

**17.11.16.7 DEFINITIONS:** As used in this rule:

**A. access line** means a dial tone line that provides local exchange service from a LEC's switching equipment to a

point of termination at the customer's network interface;

**B. basic local exchange service** means the customer's voice grade access to the public switched network, dual tone multifrequency (DTMF) signaling or its functional equivalent, and access to emergency services (911 and E-911), operator services, toll services, directory assistance, and toll blocking services for qualifying low income customers, but does not include discretionary services;

**C. billing agent** means any person that submits bills for telecommunications services to a customer on behalf of a carrier;

**D. carrier** means any person that furnishes telecommunications service to the public subject to the jurisdiction of the commission, regardless of the facilities used and regardless of whether the person relies in part or entirely on another carrier's facilities, and includes wireless carriers;

**E. chronically delinquent** means the status of a residential customer who during the prior twelve (12) months has been disconnected by a carrier for non-payment or who on three (3) or more occasions during the prior twelve months has not paid a bill by the date a subsequent bill is rendered;

**F. competitive local exchange carrier (CLEC)** means a carrier that provides competitive local exchange service in its service area and is not an ILEC;

**G. complaint** means an oral or written expression of dissatisfaction with a carrier's charges or services (including a request for repair) made to a carrier by or on behalf of a customer;

**H. customer** means a person that has applied for or is currently receiving telecommunications services;

**I. delinquent** means the status of a bill rendered to a residential customer for telecommunications service which remains unpaid after the due date of the bill;

**J. discontinuance of service** means the intentional cessation of basic local exchange service by a LEC not voluntarily requested by a customer;

**K. discretionary service** means voice mail, caller ID, caller name ID, call waiting, 3-way calling, call forwarding, call return, call blocker, and auto redial, and any similar service sold as an add-on to a customer's basic local exchange service;

**L. incumbent local exchange carrier (ILEC)** means a person that was authorized to provide local exchange service in New Mexico on February 8, 1996, or a successor or assignee of the person; a carrier will also be treated as an ILEC if the federal communications



commission determines that such provider (or class or category of carrier) shall be treated as an ILEC pursuant to 47 U.S.C. Section 251(h)(2);

**M. incumbent rural telecommunications carrier (IRTC)** has the meaning given in NMSA 1978 Section 63-9H-3;

**N. local exchange carrier (LEC)** includes incumbent local exchange carriers and competitive local exchange carriers;

**O. medical professional** means a licensed physician, physician's assistant, osteopathic physician, osteopathic physician's assistant or certified nurse practitioner;

**P. network interface** means the point at which the network side of telecommunications service meets the customer side;

**Q. primary local exchange line** means the first exchange access line installed by any LEC to serve a customer at the customer's premises, as distinct from additional lines that may be ordered at the same or a subsequent time at the same premises;

**R. small business customer** means a customer subscribing to ten (10) or fewer exchange access lines;

**S. telecommunications service** has the meaning given to the term "public telecommunications service" in NMSA 1978 Section 63-9A-3;

**T. wire center** means a facility where local exchange access lines converge and are connected to a switching device which provides access to the public switched network, and includes remote switching units and host switching units;

**U. wireless carrier** means a telecommunications carrier licensed by the federal communications commission to provide wireless service in New Mexico. [17.11.16.7 NMAC - Rp, 17.11.16.7 NMAC, 2-1-06]

**17.11.16.8 DISCONNECTION OF BASIC LOCAL EXCHANGE SERVICE AND ALLOCATION OF PARTIAL PAYMENTS:**

**A.** A LEC may not disconnect, or threaten to disconnect, either directly or through the use of ambiguous, deceptive, or misleading language, a customer's basic local exchange service for failure to pay charges for toll or discretionary services.

**B.** A LEC shall offer toll blocking upon a customer's request.

**C.** A LEC may impose involuntary toll blocking on a customer's primary local exchange line for failure to pay charges for toll service. However, the toll blocking must be provided without

charge and the LEC must remove the toll blocking when the bill is paid.

**D.** A LEC shall credit customer's partial payments for current bills or past due amounts first to basic local exchange service, unless the customer instructs the LEC to allocate the payment in a different manner. A LEC shall provide to the customer or the consumer relations division of the commission upon request of either written verification of oral instructions given by a customer.

[17.11.16.8 NMAC - Rp, 17.11.16.8 NMAC, 2-1-06]

**17.11.16.9 ACCESS TO AND AUDIT OF DATA:**

Unless otherwise authorized by the commission, a carrier shall make all records required by this rule available to the commission, staff with the consent of the commission, or its authorized representatives at any time upon reasonable notice. A carrier shall make customer proprietary network information available to the commission to the extent allowed by law. A carrier shall retain all records required by this rule for at least two (2) years. The commission, or staff with the consent of the commission, may periodically audit the timeliness and accuracy of carriers' customer service and repair records.

[17.11.16.9 NMAC - Rp, 17.11.16.9 NMAC, 2-1-06]

**17.11.16.10 CUSTOMER COMPLAINT TRACKING:**

**A.** A wireline carrier shall maintain a record of all oral and written complaints, including informally resolved billing disputes, made by or on behalf of customers, which shall contain:

(1) the date the complaint was lodged;

(2) the class of customer (residential or business);

(3) the category of the complaint (based on the consumer relations division's list of complaint categories); and

(4) the region within the state (e.g., by wire center, exchange, county).

**B.** A carrier shall not retaliate against a customer for any complaint made by the customer to the commission or any other person.

**C.** Upon request of the commission or staff, and for a specified time period not to exceed two (2) years, a wireline carrier shall compile and submit to the commission reports that state the total number of complaints recorded pursuant to Subsection A of this section and the number of such complaints categorized by the:

(1) the category of the complaint;

(2) region within the state (e.g., by wire center, exchange, county); and

(3) class of customer (residential

or business).

**D.** A carrier shall cooperate with the commission, the consumer relations division, and staff in resolving complaints.

[17.11.16.10 NMAC - Rp, 17.11.16.10 NMAC, 2-1-06]

**17.11.16.11 ACCESS TO SERVICE AND RATE INFORMATION:**

**A.** A carrier shall maintain comprehensive, understandable, accurate, and up-to-date service and rate information. A carrier:

(1) shall provide a toll-free telephone number by which customers can access such information and shall, upon request, mail written information to a customer;

(2) shall provide such information to disabled customers in a form accessible to them;

(3) shall provide such information in English and Spanish as requested by the customer; and

(4) may provide such information electronically (e.g., by email or text message) if a customer agrees in writing.

**B.** A carrier shall provide:

(1) information regarding the rates for direct dialed calls;

(2) information regarding all relevant charges and rates for calls using a credit card or calling card;

(3) details on all advance payments or termination procedures and charges that may apply;

(4) information regarding where and how a customer may subscribe to the carrier's services;

(5) an explanation of charges on customers' bills;

(6) information regarding proposed changes in services and rates;

(7) information regarding the availability of service; and

(8) information describing the commission's procedures for resolving slamming and cramming disputes, as set forth in 17.13.8 NMAC, Slamming and Cramming Protection.

**C.** A LEC shall also provide information regarding:

(1) the timing of installation of primary local exchange lines or additional lines; and

(2) rates for repair work done on the customer's side of the network interface.

**D.** A carrier shall provide notice of a rate or fee increase or a new charge for an existing service prior to the implementation of the rate increase or new charge. The notice shall be provided in a bill, a bill insert, or by separate mailing, in a form and manner that clearly identifies

every rate or fee increase or new charge as such. A carrier shall provide notice of a rate decrease by no later than the next bill following the billing cycle in which the rate decrease was implemented. This notice requirement shall not apply to increases or decreases in taxes or other government-related fees.

**E.** When a customer initially subscribes to basic local exchange service, a LEC shall inform the customer, in English or Spanish, as requested by the customer:

(1) that a low income telephone assistance program (LITAP) is available to qualifying residential customers and shall ask if the customer would like to receive further information about the program. If the customer answers affirmatively, the LEC shall inform the customer:

(a) that applications are available at its billing offices or that the LEC will mail an application to the customer;

(b) that the customer must submit to the LEC a completed application and proof that the customer meets the eligibility requirements for one or more need-based assistance programs administered by the human services department;

(c) if the customer does not have such proof, the LEC shall advise the customer to contact his or her local human services department income support division office or call the HSD customer help desk at its toll free telephone number for information on how to obtain proof of eligibility;

(d) of other community assistance programs that may be available; and

(e) that the customer may obtain additional assistance from the commission's consumer relations division and the LEC shall provide the toll-free telephone number of the commission's consumer relations division.

(2) that a third party notification program is available to residential customers; and

(3) of the existence of "900" number calling, specifically noting that the calling party incurs a charge each time a "900" number is called, and shall offer "900" number blocking at no charge to the customer.

**F.** The commission strongly encourages each carrier to make service and rate information accessible to customers on its website and at its business offices or customer service centers open to the public, where these exist.

[17.11.16.11 NMAC - Rp, 17.11.16.11 NMAC, 2-1-06]

#### **17.11.16.12 FAIR MARKETING PRACTICES:**

**A.** Any carrier subject to the commission's jurisdiction shall, in all

oral or written contacts with customers:

(1) provide timely, courteous, and accurate information;

(2) explain services, and switching and discontinuance of service, accurately and unambiguously;

(3) not represent discretionary services as essential;

(4) not engage in any unfair or deceptive trade practice, including but not limited to the unfair or deceptive trade practices and unconscionable trade practices defined in NMSA 1978 Section 57-12-2;

(5) upon a customer-initiated inquiry about services, make a good-faith effort to identify the service that is the most economical for the customer, based on the customer's representation of his or her telecommunications requirements.

**B.** Upon request of the commission or staff, a carrier shall provide its sales scripts, marketing materials, and sales and marketing practices and procedures to the commission for review. A carrier may petition for a protective order pursuant to the commission's rules of procedure prior to providing the requested information.

[17.11.16.12 NMAC - Rp, 17.11.16.12 NMAC, 2-1-06]

#### **17.11.16.13 TARIFFS AND BOUNDARY MAPS:**

**A.** Unless specifically exempted by the commission, a LEC shall file with the commission tariffs containing rates, charges, terms, and conditions for all intrastate services that specifically set forth:

(1) the conditions and circumstances under which the LEC, or entities under contract to the LEC, will make line extensions or extensions of service to customers within the exchange area;

(2) minimum standards for discontinuance of residential basic local exchange service;

(3) the LEC's deposit policy; and

(4) charges for service connections, extensions and line mileage.

**B.** Where possible, a LEC shall post tariffs on its website and make copies available for inspection by the public during regular business hours at its business offices in New Mexico.

**C.** Each ILEC shall file with the commission an exchange area boundary map for each of its exchanges in New Mexico. Each map shall clearly show the boundary lines of the exchange area the ILEC holds itself out as serving. Where a portion of the boundary line is not located on section lines, waterways, railroads, etc, the exchange boundary lines shall be located by appropriate measurement to an identifiable location. Maps generally shall contain the detail shown on county highway maps. The map shall be to a scale and in

sufficient detail to permit a person in the field to locate the exchange service area boundaries.

[17.11.16.13 NMAC - Rp, 17.11.16.13 NMAC, 2-1-06]

**17.11.16.14 BILLS:** A carrier shall provide easily readable, readily understandable detailed bills that:

**A.** itemize services, usage, and charges, including quantities of units and per-unit charges, unless the customer selects an alternative billing option offered by the carrier;

**B.** separately identify each nonrecurring and recurring charge;

**C.** describe and itemize charges for repair work on the customer's side of the network interface according to whether they are for labor, materials, travel, or other necessary expenses which must be specified;

**D.** include the name and toll-free number of the carrier;

**E.** include, where applicable, the name and toll-free number of the billing agent;

**F.** include a statement, in English or Spanish, as requested by the customer, advising customers that if they have a question about their bill, they should first contact the carrier; and

**G.** include the toll-free number of the consumer relations division of the commission together with a statement advising customers that they may contact the commission if they are unable to resolve a billing inquiry with the carrier.

[17.11.16.14 NMAC - Rp, 17.11.16.14 NMAC, 2-1-06]

#### **17.11.16.15 INFORMATION REQUIRED SEMI-ANNUALLY:**

**A.** A LEC shall semi-annually provide information to customers in English and Spanish. A LEC need not provide all of the information at the same time and may choose to provide it in a prominent place on a customer's bill or in a bill insert. The following information is required:

(1) the statement described in paragraph (6) of subsection A of 17.11.16.19 NMAC;

(2) a statement, using commonly understood descriptions and examples, that basic local exchange service will not be discontinued for failure to pay charges for toll or discretionary services;

(3) notification that a third party notification program is available to residential customers;

(4) notification that up-to-date service and rate information is available as provided in subsection A of 17.11.16.11 NMAC; and

(5) notification that a low income

telephone assistance program (LITAP) is available to qualifying residential customers; that applications for the program are available at the LEC's billing offices or that the LEC will mail an application to a customer if the customer calls the customer service department of the LEC at [insert toll-free telephone number of the customer service department] to request an application; that the customer must submit to the LEC a completed application and proof that the customer meets the eligibility requirements for one or more need-based assistance programs administered by the human services department; that if the customer does not have proof of eligibility, the customer should contact his or her local human services department income support division office or call the HSD customer help desk at its toll free telephone number for information on how to obtain proof of eligibility that other community assistance programs may be available; and that the customer may obtain additional assistance from the commission's consumer relations division and the LEC shall provide the toll-free telephone number of the commission's consumer relations division.

**B.** In the event a court of competent jurisdiction determines that Subsection B of 17.11.16.30 NMAC is invalid, a LEC shall semi-annually notify customers that they have the right to request that the carrier not disclose to any person, other than to employees of the carrier who have a need for the information in the course of providing telecommunications services, information about the customer, including the customer's calling patterns. [17.11.16.15 NMAC - Rp, 17.11.16.15 NMAC, 2-1-06]

#### **17.11.16.16 BILLING DISPUTES AND ERRORS, GENERAL REFUNDS AND BILL CREDITS:**

**A.** In the event of a dispute between a customer and a carrier concerning a bill for telecommunications services, the carrier may require the customer to pay the undisputed portion of the bill to avoid discontinuance of service for non-payment. The carrier shall make an investigation appropriate to the case, and report the results to the customer. In the event the dispute is not reconciled, the carrier shall advise the customer that the customer may file a complaint with the commission for disposition of the matter.

**B.** Whenever the billing for service has not been determined accurately because of a carrier's omission or negligence, the carrier shall:

(1) notify customers that an adjustment has been made;

(2) explain the reasons for the adjustment;

(3) offer and enter into reasonable payment arrangements in accordance with the following criteria:

(a) whenever a carrier has overbilled a customer for service and the customer has paid the overbilled amount, the carrier shall credit the total overbilled amount within a reasonable time, but in no event later than the second bill after the carrier becomes aware of the error;

(b) whenever a carrier has underbilled a customer for service, the carrier may add the underbilled amount to the customer's next regular bill, unless the amount exceeds the customer's average bill for the preceding six (6) months, in which case the customer may elect to make payments, without interest, over a time period equal to the period over which the errors were accumulated;

(4) upon request, send the customer written verification of the payment arrangements agreed to by the customer and the carrier; a carrier may provide written verification electronically if the customer agrees.

[17.11.16.16 NMAC - Rp, 17.11.16.16 NMAC, 2-1-06]

#### **17.11.16.17 DISCONTINUANCE OR INTERRUPTION OF SERVICE:**

**A. Discontinuance without prior notice.** A LEC may discontinue basic local exchange service to a customer without prior notice in the event of:

(1) a condition determined by the LEC to be hazardous;

(2) a customer's use of equipment in such manner as to adversely affect the LEC's service to others;

(3) a customer's tampering with, or negligently or intentionally damaging or destroying equipment furnished and owned by the carrier; or

(4) unauthorized use of service provided by the carrier.

**B. Discontinuance with prior notice.** Pursuant to 17.11.16.18 and 17.11.16.19 NMAC, a LEC may discontinue basic local exchange service to a customer with prior notice:

(1) for nonpayment of a delinquent account for basic local exchange service; or

(2) for failure to post a security deposit or guarantee.

**C. Temporary interruption without notice.** A LEC may temporarily and without notice interrupt service for an operational emergency, necessary and unavoidable network maintenance, or reasons related to the public safety and welfare.

[17.11.16.17 NMAC - Rp, 17.11.16.17 NMAC, 2-1-06]

**17.11.16.18 PROHIBITIONS ON DISCONTINUANCE OF SERVICE:** A LEC shall not discontinue basic local exchange service:

**A.** to any residence where a seriously or chronically ill person resides, or will re-establish service to such a residence, if, at least two (2) days prior to the proposed service discontinuance date specified in the notice:

(1) the LEC receives a medical certification, valid for thirty (30) days, on the form prescribed by the commission in 17.11.16.33 NMAC or a substantially similar form, from a medical professional stating that discontinuance of service might endanger the customer's life or health;

(2) the LEC receives a financial certification, valid for ninety (90) days, on the form prescribed by the commission in 17.11.16.34 NMAC or a substantially similar form, from the customer stating that the customer does not have the financial resources to pay the charges for telecommunications services; and

(3) the residential customer enters into a payment plan with the LEC;

**B.** for nonpayment of the disputed portion of a bill; or

**C.** for delinquency in payment for service to a previous occupant of the same premises unless the previous occupant continues to reside at the premises or the new customer is legally liable for the debt of the previous occupant.

[17.11.16.18 NMAC - Rp, 17.11.16.18 NMAC, 2-1-06]

#### **17.11.16.19 REQUIREMENTS PRIOR TO DISCONTINUANCE OF SERVICE:**

**A. Fifteen day notice.** At least fifteen (15) days before a LEC discontinues basic local exchange service to a customer, the LEC shall mail written notice to the customer stating its intent to discontinue service and setting forth the customer's rights regarding discontinuance of service. The notice shall be in English and Spanish, shall be dated, and shall be in simple, non-technical language. The notice shall be sent by U.S. Mail, postage prepaid, to the last address for the customer known to the LEC. A fifteen-day notice of discontinuance shall contain:

(1) the toll-free telephone number and working hours of LEC personnel responsible for administering the procedures in this section;

(2) the amount owed and the specific date service will be discontinued unless the customer pays the amount due or makes other arrangements with the LEC concerning payment of the charges; upon request, the LEC shall provide information to the customer concerning the outstanding

charges, including the dates of the service interval over which the outstanding charges were incurred and the date and amount of the last payment;

(3) a statement that basic local exchange service cannot be discontinued for failure to pay charges for toll or discretionary services;

(4) a statement that, if the customer pays the portion of the bill which the customer does not dispute, the LEC shall review the portion of the bill which the customer does dispute;

(5) a statement that a customer may file a complaint with the consumer relations division of the commission if the customer disagrees with the LEC's determination concerning discontinuance of service;

(6) a statement in capital letters of the cost of reconnection;

(7) for residential customers, a statement that:

(a) the LEC will not discontinue basic local exchange service to a residence where a seriously or chronically ill person resides, or will re-establish service to such a residence, if, at least two (2) days prior to the proposed service discontinuance date specified in the notice:

(i) the LEC receives a medical certification, valid for thirty (30) days, on the form prescribed by the commission in 17.11.16.33 NMAC or a substantially similar form, from a medical professional stating that discontinuance of service might endanger the customer's life or health;

(ii) the LEC receives a financial certification, valid for ninety (90) days, on the form prescribed by the commission in 17.11.16.34 NMAC or a substantially similar form, from the customer stating that the customer does not have the financial resources to pay the charges for telecommunications services; and

(iii) the residential customer enters into a payment plan with the LEC;

(b) if service has been discontinued, the LEC shall reestablish service within twelve (12) hours after the residential customer has satisfied the requirements of subparagraphs (a)(i) through (a)(iii) of paragraph (6) of this subsection;

(c) the residential customer will not be relieved of the obligation to pay for services rendered if service is continued or reestablished under the provisions of this paragraph; and

(d) timely delivery by a residential customer to the LEC of duly executed medical certification and financial certification forms shall be adequate to delay discontinuance of service for at least thirty (30) days and that the LEC may, in its discretion, delay the discontinuance for a longer peri-

od;

(8) for residential customers, blank copies of the medical certification form prescribed by the commission in 17.11.16.33 NMAC and the financial certification form prescribed by the commission in 17.11.16.34 NMAC, or substantially similar forms; these forms include an agreement to enter into a payment plan with the LEC;

(9) for residential customers, the following statement in capital letters, "If you have difficulty paying this bill, and feel you may qualify for assistance from the low income telephone assistance program (LITAP), contact a customer service representative at [insert toll-free telephone number of the carrier's customer service department]. You may obtain an application for the low income telephone assistance program at our billing offices or we can mail an application to you. You should return the completed application and proof that you meet the eligibility requirements for one or more need-based assistance programs administered by the human services department to us at [insert name and mailing address of carrier's office]. If you do not have such proof, you should contact your local human services department income support division office or call the HSD customer help desk at its toll free telephone number for information on how to obtain proof of eligibility."

**B. Two-day notice.** Each LEC shall take reasonable steps to communicate with a customer by telephone or personal contact at least two (2) days prior to the actual date of discontinuance of service to remind the customer of the pending date of discontinuance of service, advise the customer again of the availability of financial assistance for telecommunications services payments, and obtain payment of delinquent accounts. The LEC employee who personally contacts a residential customer shall note any information made known to the employee by the residential customer regarding any resident's serious illness or life endangering health condition, such as whether a resident is physically disabled, frail, or elderly. Such information shall immediately be reported in writing to a LEC employee authorized to prevent discontinuance. That employee shall either delay the discontinuance if it is apparent that the forms required by Subparagraphs (a)(i) and (a)(ii) of Paragraph (7) of subsection A of this section will be received or state in writing why discontinuance of service will not be delayed. The LEC and LEC employee shall be held harmless for errors made in good faith in noting, acting upon, or failing to act upon the information made known by the residential customer.

**C. Third-party notification.** Each LEC shall offer its residential

customers a third party notification program and shall notify residential customers that such program is available. The LEC shall extend the third party notification program to those residential customers who notify the LEC in writing of their desire to participate in the program and designate a specific person, organization, or governmental agency that is ready, willing, and able to assist the residential customer with the payment of LEC bills. Upon receipt of such notice and designation from a residential customer, a LEC shall not discontinue service to a participating customer for nonpayment of past due charges without providing the fifteen (15) day notice and the two (2) day notice required by this section.

**D. Hours when service may be discontinued.** A LEC may discontinue service to a residential customer Monday through Thursday during the hours from 8:00 a.m. to two (2) hours before the LEC's business office regularly closes. A LEC may not discontinue service less than twenty-four (24) hours prior to a holiday or weekend unless the LEC's business office is open for receipt of payment of past due charges and LEC personnel are available to restore service during the holiday or weekend once payment is received.  
[17.11.16.19 NMAC - Rp, 17.11.16.19 NMAC, 2-1-06]

**17.11.16.20 PAYMENT PLANS:**

**A.** A LEC shall attempt to arrange a plan for the payment of past due LEC charges when a residential customer who has not been chronically delinquent indicates an inability to pay the charges. The LEC shall not discontinue service to the residential customer while a payment plan is being negotiated.

**B.** The LEC shall also inform the customer that a low income telephone assistance program (LITAP) is available to qualifying residential customers and shall ask if the customer would like to receive further information about the program. If the customer answers affirmatively, the LEC shall inform the customer:

(1) that applications are available at its billing offices or that the LEC will mail an application to the customer;

(2) that the customer must submit to the LEC a completed application and proof that the customer meets the eligibility requirements for one or more need-based assistance programs administered by the human services department;

(3) that, if the customer does not have such proof, the LEC shall advise the customer to contact his or her local human services department income support division office or call the HSD customer help desk at its toll free telephone number for information on how to obtain proof of eligibility;

(4) of other community assistance programs that may be available; and

(5) that the customer may obtain additional assistance from the commission's consumer relations division and the LEC shall provide the toll-free telephone number of the commission's consumer relations division.

C. Each LEC shall provide a procedure for reviewing residential customer allegations that a proposed payment plan is unreasonable, that a LEC charge is not due and owing, or that the customer has not violated an existing payment plan. The procedure shall grant the reviewing employee authority to order appropriate corrective action. A LEC shall not discontinue service until the review is completed. If a residential customer fails to comply with a payment plan and the LEC decides to discontinue service due to such failure, the LEC shall notify the customer as prescribed in Subsection B of 17.11.16.19 NMAC. The LEC shall submit the procedure to staff for approval thirty (30) days prior to implementing the procedure. If staff and the LEC cannot resolve any differences regarding the procedure, staff will present the issues to the commission for determination.

[17.11.16.20 NMAC - Rp, 17.11.16.19 NMAC, 2-1-06]

#### **17.11.16.21 RESTORATION OF SERVICE:**

A. Upon request of a customer, a LEC shall promptly restore service that has been temporarily discontinued by the LEC when the cause for discontinuance of service has been eliminated, applicable restoration or reconnection charges have been paid, and, if required, satisfactory credit arrangements have been made. At all times, the LEC shall make a reasonable effort to restore service on the day restoration is requested, and shall restore service no later than the next business day following the day on which the cause for discontinuance of service has been eliminated.

B. A LEC shall restore service to a residential customer within twelve (12) hours of receipt of the medical certification form prescribed by the commission in 17.11.16.33 NMAC and the financial certification form prescribed by the commission in 17.11.16.34 NMAC, or substantially similar forms which include an agreement to enter into a payment plan with the LEC.

[17.11.16.21 NMAC - Rp, 17.11.16.20 NMAC, 2-1-06]

#### **17.11.16.22 COMPLAINTS AND APPEALS:**

A. A carrier shall fully and promptly investigate and respond to all complaints made directly to the carrier by customers. The carrier shall make a good

faith attempt to resolve the complaint and shall notify the customer promptly of its proposed disposition of the complaint. Upon request, the carrier shall send written confirmation of its proposed disposition of the complaint to the customer.

B. If a carrier's customer representatives cannot resolve a complaint to a customer's satisfaction, the carrier shall provide the complainant with the name, address and current local or toll-free telephone number of the consumer relations division of the commission.

C. Upon receipt of a complaint forwarded by the commission on behalf of a customer, a carrier shall make a suitable investigation. A carrier shall provide an initial response to the commission within ten (10) business days after the carrier receives the complaint. When the carrier has concluded its investigation of a complaint, the carrier shall provide a written response to the commission detailing the results of the carrier's investigation and its proposed resolution. A complaint forwarded by the commission on behalf of a customer shall not be considered resolved until the Consumer Relations Division closes the complaint.

[17.11.16.22 NMAC - Rp, 17.11.16.21 NMAC, 2-1-06]

**17.11.16.23 C U S T O M E R DEPOSIT POLICY:** 17.11.16.23 NMAC through 17.11.16.28 NMAC apply only to wireline carriers that require deposits of residential and small business customers for services regulated by the commission and to wireless carriers that require deposits of their customers.

A. A carrier that requires deposits shall develop a written deposit policy that allows applicants for service to establish credit, and existing customers to reestablish credit, and shall make a copy of its policy available to any customer who inquires about the criteria for deposits.

B. A carrier shall determine credit worthiness in an equitable and nondiscriminatory manner. The decision to require a deposit shall be based solely on the customer's credit history and shall not be based upon location, income level, source of income, occupation, race, creed, sex, sexual orientation, national origin, marital status, or number of dependents.

C. A carrier may, in accordance with 17.11.16.24 NMAC, at any time require from a customer a deposit intended to guarantee payment for services provided by the carrier.

D. The carrier shall establish a mechanism for internal review of a deposit requirement in the event a customer challenges the initial determination of the terms of such deposit. Should a customer continue to challenge the proposed terms of

the deposit after such review is completed, the carrier shall provide the customer with the name, address and current local or toll-free telephone number of the consumer relations division of the commission for further review.

E. The carrier shall provide:

(1) a copy of its written deposit policy and associated procedures to each of its employees who process applications for service; and

(2) either a copy of its written deposit policy and associated procedures or a specific tariff cite, if such policy and procedures are included in tariffs filed with the commission, to the director of the consumer relations division of the commission.

[17.11.16.23 NMAC - Rp, 17.11.16.22 NMAC, 2-1-06]

#### **17.11.16.24 CRITERIA FOR ESTABLISHING THE NEED FOR AND AMOUNT OF A DEPOSIT:**

A. A LEC shall use the criteria in this subsection to determine whether to require a deposit or other guarantee of payment as a condition of new or continued service.

(1) A LEC may require an existing customer to make a deposit if the customer's payment record shows substantial nonpayment for intrastate services provided by the LEC in any two (2) of the last six (6) months, or any three (3) of the last twelve (12) months. A LEC may require a deposit even if such customer has paid part of the amount owed before the date service is to be discontinued for nonpayment.

(2) A LEC may, without notice, require an existing customer to pay a deposit in full before service is restored whenever service has been disconnected for nonpayment of outstanding charges.

(3) A LEC shall not require a deposit if the customer furnishes, to the LEC's satisfaction, a written guarantee from a third party to secure payment of the customer's bills for intrastate services provided by the LEC. A LEC shall not require the guarantee amount to exceed the maximum amount of the deposit that would otherwise have been required. The guarantee shall remain in effect until terminated in writing by the guarantor, or until the customer has achieved a satisfactory payment record for services for twelve (12) consecutive months. A LEC shall terminate the guarantee five (5) business days after receiving written notice from the guarantor or five (5) business days after a twelve (12) month period of satisfactory payment.

(4) A LEC shall not require a deposit if the customer has been a customer of the LEC for a similar type of service within a preceding twelve (12) consecutive

month period, and the customer's credit was satisfactory and is not otherwise impaired.

**B.** The commission may authorize a LEC to waive deposit requirements for low-income customers eligible for tariffed discount programs.

**C.** A carrier shall not require a deposit of a customer that exceeds three (3) times the average monthly bill for telecommunications services provided by that carrier for the same class of customers; wireless carriers may instead use three (3) times the monthly plan fee for wireless services for that customer. An estimate of monthly billing may be used for the purpose of determining a deposit if the carrier can reasonably demonstrate that the customer's usage may be substantially different than the average usage for the same class of service or the monthly plan fee.

**D.** A carrier may adjust the amount of deposit at the request of the customer or at the carrier's initiative at any time the character, purpose, or degree of the customer's use of the service has materially changed, or there are indications it will change.

**E.** A LEC may require a deposit in addition to any advance, contribution, or guarantee it may require in connection with the construction of lines or facilities, as provided in the line extension policy of the LEC's tariffs on file with the commission.

**F.** If a customer files a complaint regarding a proposed discontinuance of service, the commission may, upon motion by the carrier, require the customer to deposit cash or post bond with the carrier, in an amount deemed reasonable by the commission, pending resolution of the disputed proposed discontinuance.

[17.11.16.24 NMAC - Rp, 17.11.16.23 NMAC, 2-1-06]

#### **17.11.16.25 LIMITATIONS ON THE USE OF DEPOSITS:**

**A.** The making of a deposit shall not relieve any customer of the obligation to pay current bills when due. A carrier may require a deposit for services provided by another carrier only if the carrier is the billing agent for that carrier. The carrier shall not apply deposits for services provided by the carrier to an account for services provided by another carrier, even if the carrier is the billing agent for the other carrier. A LEC shall not require a deposit for, or refuse to connect, basic local exchange service because of a customer's indebtedness for toll or discretionary services.

**B.** A carrier shall not require any security for payment of intrastate or wireless services other than a cash deposit or a third party guarantee. In no event shall any indebtedness related to

the furnishing of intrastate or wireless services or the extension of facilities result in a lien, mortgage or other security interest in any real or personal property of the customer, unless the indebtedness has been reduced to a judgment by a court of law.

**C.** If requested by the customer that has made the deposit, a carrier may, in its discretion, transfer a deposit to another customer.

[17.11.16.25 NMAC - Rp, 17.11.16.24 NMAC, 2-1-06]

#### **17.11.16.26 INTEREST ON**

**DEPOSITS:** A carrier shall accrue simple interest on deposits at the interest rate the carrier charges for late payment of bills or the rate specified in NMSA 1978 Section 62-13-13, whichever is greater. A carrier shall accrue interest on a deposit for the time it holds the deposit, calculated from the date the carrier receives the deposit to the date the carrier refunds the deposit or credits the amount of the deposit to the customer's account. The carrier may, at its option, pay interest directly to the customer or credit the interest to the customer's account.

[17.11.16.26 NMAC - Rp, 17.11.16.25 NMAC, 2-1-06]

#### **17.11.16.27 D E P O S I T RECORDS:**

**A.** A carrier shall maintain a record of each deposit until one (1) year after the deposit is returned. The record shall contain:

(1) the name of each customer making a deposit;

(2) the premises occupied by the customer when making the deposit and each successive premise occupied while the deposit is retained by the carrier; and

(3) the amount of the deposit and the date it was received by the carrier.

**B.** Upon receipt of a deposit, a carrier shall provide to the customer a receipt showing the deposit date, the name and billing address of the customer, and the amount of the deposit.

[17.11.16.27 NMAC - Rp, 17.11.16.26 NMAC, 2-1-06]

#### **17.11.16.28 REFUND OF DEPOSITS:**

**A.** Upon discontinuance of service, or when a customer establishes credit by other means, a carrier shall promptly refund any deposit, plus accrued interest, or the balance of a deposit, if any, in excess of the unpaid bills for intrastate or wireless services furnished by the carrier. A transfer of service from one location to another within the area served by a carrier shall not be deemed a discontinuance of service if the character of the service remains unchanged.

**B.** When a deposit, plus accrued interest, is applied to the liquidation of unpaid bills, a carrier shall mail, or otherwise deliver to the customer, a statement showing the amount of the original deposit, plus any accrued interest, the amount of unpaid bills, plus any interest, liquidated by the deposit, and the balance remaining due either to the customer or the carrier.

**C.** A carrier shall annually review accounts of customers with deposits and, unless the carrier has obtained sufficient factual information to determine that a customer is an unsatisfactory credit risk based upon the criteria prescribed in 17.11.16.24 NMAC, the carrier shall promptly refund a customer's deposit, plus accrued interest, upon satisfactory payment of all proper charges for twelve (12) consecutive months. A carrier may, at its option, refund a deposit plus accrued interest in whole or in part at an earlier time.

**D.** A carrier shall pay any balance due a customer within thirty (30) calendar days after service is discontinued and the carrier has rendered a final bill, without demand or notice from the customer.

**E.** When a carrier is unable to refund a deposit on the first attempt, the carrier shall continue its efforts to refund the deposit.

**F.** When a carrier refunds a deposit, it shall, upon customer request, render to the depositor a statement showing the amount of the deposit, the period the deposit was held, and the amount of interest accrued.

[17.11.16.28 NMAC - Rp, 17.11.16.27 NMAC, 2-1-06]

**17.11.16.29 PRIVACY:** The commission hereby adopts by reference the federal communications commission's rules on customer proprietary network information codified at 47 CFR 64.2001-64.2009.

[17.11.16.29 NMAC - Rp, 17.11.16.28 NMAC, 2-1-06]

#### **17.11.16.30 CONFIDENTIALITY; OPERATOR ASSISTED CALLS:**

**A.** A carrier shall consider all communications by customers to be confidential in nature. A carrier shall take reasonable steps to minimize the potential for access by other entities to those communications. The carrier's operators and employees shall not listen to any conversation between customers, except when necessary to provide operator services, and shall not repeat or divulge the nature of any conversation or any information inadvertently overheard. A carrier shall ensure that its operators and employees comply strictly with this requirement.

**B.** A carrier shall adopt suitable rules and instructions to be fol-

lowed by its operators and employees governing the language and methods to be used when providing assistance to customers. Specifically, operators and employees shall be courteous, considerate, and efficient in handling customer calls. For intrastate operator assisted calls, a carrier shall accurately record when a customer-requested connection is established and when it is terminated.

[17.11.16.30 NMAC - Rp, 17.11.16.29 NMAC, 2-1-06]

**17.11.16.31 TROUBLE ISOLATION CHARGE PROHIBITED:** If a customer reports trouble on a line, a LEC shall, without charge to the customer and by use of whatever means necessary, determine whether the trouble is on the LEC or customer side of the network interface. For a LEC subject to an alternative form of regulation plan on January 1, 2006, this section shall not be effective until the expiration of its alternative form of regulation plan.

[17.11.16.31 NMAC - N, 2-1-06]

**17.11.16.32 EXEMPTION OR VARIANCE:**

**A.** Any carrier may petition for an exemption or variance from any of the requirements of this rule. Such petition 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 carrier and its customers, and on its competitive affiliates and their customers, if the exemption or variance is not granted;

(4) state how the exemption or variance will achieve the purposes of this rule and the New Mexico Telecommunications Act;

(5) state why the proposed alternative is in the public interest and is better than the requirement in the rule; and

(6) state why the exemption or variance would have no anticompetitive effect.

**B.** Such petition may include a motion that the commission stay the affected portion of this rule for the transaction specified in the motion.

**C.** Petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by an officer of the carrier or other person with authority to bind the carrier.

**D.** The commission may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

[17.11.16.32 NMAC - N, 2-1-06]

**17.11.16.33 MEDICAL CERTIFICATION FORM:**

MEDICAL CERTIFICATION FORM (VALID FOR 30 DAYS)

NOTE: You must complete both parts of this Medical Certification Form and a Financial Certification Form to continue receiving telecommunications service.

I, [insert printed name of residential customer], hereby certify that I am the person responsible for the charges for telecommunications service at [insert service address], that a seriously or chronically ill person, [insert name of seriously or chronically ill person] resides there, and that I am financially unable to pay my bill at this time. I understand that this certification does not relieve me of the responsibility to pay my bill, and that I must reapply for financial certification every 90 days. In addition, I understand that I must make arrangements for a payment plan with [insert name of LEC] in order to continue receiving telecommunications service.

[date] [customer's telephone number] [customer's signature]

I, [insert name of medical professional] certify that I am a licensed physician, physician's assistant, osteopathic physician, osteopathic physician's assistant or certified nurse practitioner who holds license number [insert license number] and that on [insert date] I examined [insert name of seriously or chronically ill person] who I am informed resides at [insert service address]. Said person is seriously or chronically ill with [describe condition]. Discontinuance of telecommunications service to this residence might endanger this person's health or life during the recovery period. This certification is valid for 30 days.

[signature of medical professional] [office address and telephone number of medical professional]

[17.11.16.33 NMAC - N, 2-1-06]

**17.11.16.34 FINANCIAL CERTIFICATION FORM:**

FINANCIAL CERTIFICATION FORM (VALID FOR 90 DAYS)

NOTE: You must complete this Financial Certification Form and a Medical Certification Form to continue receiving telecommunications service.

FINANCIAL SELF-CERTIFICATION (VALID FOR 90 DAYS)

I, [insert printed name] hereby certify that I am the person responsible for the charges for telecommunications service at [insert service address], that a seriously or chronically ill person, [insert name of seriously or chronically ill person], resides there, and that I do not have the financial resources to pay the charges for telecommunications service.

I understand that this certificate does not relieve me of the responsibility to pay my bill, and that I must submit another Financial Certification Form every 90 days.

I understand that if I provide false information, I could be denied medical emergency telecommunications services.

[customer's signature] [date]

[customer's social security number] [customer's telephone number] [service address]

[city] [state] [zip code]

[17.11.16.34 NMAC - N, 2-1-06]

**HISTORY OF 17.11.16 NMAC: Pre-NMAC History:**

None.

**History of Repealed Material:**

17.11.16 NMAC, Customer Protection (filed 12-14-00) repealed 2-1-06.

**NMAC History:**

17.11.16 NMAC, Customer Protection (filed 12-14-00) was replaced by 17.11.16 NMAC, Consumer Protection, effective 2-1-06.

**NEW MEXICO PUBLIC REGULATION COMMISSION UTILITY DIVISION**

**TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES CHAPTER 11 TELECOMMUNICATIONS PART 22 QUALITY OF SERVICE**

**17.11.22.1 ISSUING AGENCY:** New Mexico Public Regulation Commission.

[17.11.22.1 NMAC - Rp, 17.11.22.1 NMAC, 2-1-06]

**17.11.22.2 SCOPE:** This rule applies to all local exchange carriers, except incumbent rural telecommunications carriers, authorized by the commission to pro-

vide retail telecommunications services in New Mexico, except that 17.11.22.18 NMAC applies to all carriers offering operator assistance in New Mexico.

**A.** Where the commission has approved an alternative form of regulation plan for an ILEC, and a provision in the approved plan is inconsistent with a provision in this rule, the provision in the approved plan shall apply.

**B.** Where the commission has approved an alternative form of regulation plan for an ILEC, and the approved plan is silent with respect to the subject matter of a provision in this rule, the provision in this rule shall apply.

[17.11.22.2 NMAC - Rp, 17.11.22.2 NMAC, 2-1-06]

**17.11.22.3 STATUTORY AUTHORITY:** NMSA 1978 Sections 8-8-4, 8-8-15, 63-9A-8.2, 63-9B-4, and 63-9B-6.

[17.11.22.3 NMAC - Rp, 17.11.22.3 NMAC, 2-1-06]

**17.11.22.4 DURATION:** Permanent.

[17.11.22.4 NMAC - Rp, 17.11.22.4 NMAC, 2-1-06]

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

[17.11.22.5 NMAC - Rp, 17.11.22.5 NMAC, 2-1-06]

**17.11.22.6 OBJECTIVE:** The purpose of this rule is to establish standards, procedures, reporting requirements, penalties, and customer credits to ensure that carriers provide telecommunications services to retail customers at an adequate quality of service level and in a manner consistent with the promotion of universal service.

[17.11.22.6 NMAC - Rp, 17.11.22.6 NMAC, 2-1-06]

**17.11.22.7 DEFINITIONS:** As used in this rule:

**A. access line** means a dial tone line that provides local exchange service from a carrier's switching equipment to a point of termination at the customer's network interface;

**B. answer** means a company representative is ready to assist the customer or is ready to accept information necessary to process the call;

**C. basic local exchange service** means the customer's voice grade access to the public switched network, dual tone multifrequency (DTMF) signaling or its functional equivalent, and access to emergency services (911 and E-911), operator services, toll services, directory assistance, and toll blocking services for qualify-

ing low income customers;

**D. busy hour** means the uninterrupted period of sixty (60) minutes during the day when traffic is at a maximum;

**E. carrier** means any person that furnishes telecommunications service to the public subject to the jurisdiction of the commission, regardless of the facilities used and regardless of whether the person relies in part or entirely on another carrier's facilities;

**F.** circumstances beyond the reasonable control of an ILEC means delays caused by:

(1) a vendor in the delivery of necessary equipment or supplies, where the ILEC has made a timely order of the equipment or supplies;

(2) local or tribal government entities in approving easements or access to rights-of-way, where the ILEC has made a timely application for such approval;

(3) the customer;

(4) negligent or willful misconduct by third parties not in privity with the ILEC; or

(5) force majeure (meaning causes which are outside the control of the ILEC and could not be avoided by the exercise of due care, including but not limited to terrorism, explosions, fires, floods, severe storms, epidemics, civil unrest, wars, injunctions, strikes, work stoppages, and other emergencies and catastrophes);

**G. competitive local exchange carrier (CLEC)** means a carrier that provides competitive local exchange service in its service area and is not an ILEC;

**H. customer** means any person that has applied for or is currently receiving telecommunications services;

**I. designed services** means the provisioning of regulated circuits requiring treatment, equipment, or engineering design purchased from an ILEC's tariff or on an individual contract basis, including but not limited to analog private line services, DDS, DS-1 (including channelized), DS-3, ISDN-BRI, and special assemblies, where all facilities and equipment provided are physically located in the state of New Mexico;

**J. discretionary services** means voice mail, caller ID, caller name ID, call waiting, 3-way calling, call forwarding, call return, call blocker, and auto redial, and any similar service sold as an add-on to a customer's basic local exchange service;

**K. end office switch** means a switch to which a telephone subscriber is connected; frequently referred to as a class 5 office, it is the last central office before the subscribers (sic) phone equipment and is the switch that actually delivers dial tone to the subscriber;

**L. facilities-based CLEC** means a CLEC providing local exchange service that relies predominantly on its own facilities, including switching equipment, to route calls for at least twenty-five (25) percent of the local exchange access lines it serves;

**M. held order** means any order for telecommunications service that is not filled within the time frames set forth in 17.11.22.14 NMAC or within fifteen (15) calendar days of the time frames set forth in 17.11.22.12;

**N. high density zone** means all wire centers that the ILEC has classified within its lowest cost density pricing zone pursuant to 47 C.F.R. Section 69.123;

**O. incumbent local exchange carrier (ILEC)** means a person, or an affiliate of a person, that was authorized to provide local exchange service in New Mexico on February 8, 1996, or a successor or assignee of the person or affiliate; a carrier will also be treated as an ILEC if the federal communications commission determines that such provider (or class or category of carrier) shall be treated as an ILEC pursuant to 47 U.S.C; Section 251(h)(2) but does not include an incumbent rural telecommunications carrier;

**P. incumbent rural telecommunication carrier (IRTC)** has the meaning given in NMSA 1978 Section 63-9H-3;

**Q. installation commitment** means a date pledged by a LEC to provide basic local exchange service or designed services to a customer;

**R. local exchange carrier (LEC)** includes incumbent local exchange carriers and competitive local exchange carriers;

**S. low density zone** means all wire centers that the ILEC has classified within any zone other than the lowest cost density pricing zone pursuant to 47 C.F.R. Section 69.123;

**T. primary local exchange line** means the first exchange access line installed by a LEC to serve a customer at the customer's premises, as distinct from additional lines that may be ordered at the same or a subsequent time at the same premises;

**U. repeat trouble report** means a trouble report received within thirty (30) days of a closed trouble report on the same line regarding the same trouble;

**V. tandem switch** (local, access, or toll) means an intermediary switch or connection other than the end office switch between an originating call location and the final destination of a call; it serves to connect end office switches without the need for direct interoffice trunking;

**W. trouble report** means



notification of trouble or perceived trouble by a subscriber, third party, or employee acting on behalf of a subscriber to a LEC's repair office; it shall include troubles reported on access lines by the LEC's own retail customers and the retail customers of LECs that purchase wholesale services from the LEC but shall not include troubles associated with customers' unfamiliarity with new features or customer premises equipment, or extraordinary or abnormal conditions of operation;

**X. wire center** means a facility where local exchange access lines converge and are connected to a switching device which provides access to the public switched network, and includes remote switching units and host switching units. [17.11.22.7 NMAC - Rp, 17.11.22.7 NMAC, 2-1-06]

**17.11.22.8 REPORTING REQUIREMENTS FOR ILECS:** Unless otherwise specified, an ILEC shall provide data both by wire center listed alphabetically by name, and on a statewide average basis. An ILEC shall submit all reports to the commission in printed and electronic spreadsheet format. An ILEC shall file separate reports for nondesigned and designed services for the categories specified in subsections A through F. An ILEC shall file reports quarterly, except for held order reports, which shall be filed monthly, but shall compile data on a monthly basis. Reports shall be filed with the commission within thirty (30) days of the period covered by the report.

**A. Trouble reports.** An ILEC shall maintain an accurate and complete record of all trouble reports, categorized as out-of-service trouble reports or all other trouble reports, and shall note the wire center associated with each trouble report. Trouble reports received after 4:00 p.m. Monday through Friday shall be deemed received at 8:00 a.m. the following business day. Each ILEC shall report the number of trouble reports in each category received at each wire center and the number of access lines in service at each wire center.

**B. Trouble report rate.** An ILEC shall report the trouble report rate for out-of-service and all other trouble reports for each wire center (number of trouble reports per hundred access lines per wire center) and, where applicable, the reason a wire center exceeded the trouble report rate.

**C. Trouble reports cleared.** An ILEC shall report the percentage of out-of-service and all other trouble reports cleared by each wire center within twenty-four (24) hours, and the average repair interval for out-of-service trouble reports.

**D. Repeat trouble report rate.** An ILEC shall report the repeat trouble report rate for out-of-service and all other trouble reports for each wire center (number of repeat trouble reports per hundred access lines per wire center) and, where applicable, the reason a wire center exceeded the applicable repeat trouble report rate.

**E. Installation of primary local exchange lines within established time frames.** An ILEC shall calculate and report by wire center the percentage of orders for primary local exchange lines installed within the time frames established in 17.11.22.12 NMAC, excluding installations not completed due to circumstances beyond the reasonable control of the ILEC or for which a waiver or variance has been granted.

**F. Average repair interval.** An ILEC shall report, by wire center, the average interval for repairing service.

**G. Held orders.**

**(1) Non-designed services.** An ILEC shall report, by wire center and on a statewide average basis, the number of held orders for non-designed services in each of the following categories, and shall, upon request of the commission, provide an explanation for the level of held orders in any particular category. For primary local exchange lines, an ILEC shall also report the number of held orders as a percentage of the total switched access lines in service each month:

- (a) total;
- (b) business customers;
- (c) residence customers;
- (d) primary local exchange lines;
- (e) additional lines;
- (f) orders held for 15-30 days;
- (g) orders held 31-90 days;
- (h) orders held 91-180 days;
- (i) orders held over 180 days;
- (j) orders for which waiver petitions are pending or have been granted; and
- (k) orders cancelled by the customer.

**(2) Designed services.** An ILEC shall report the number of held orders for designed services in each of the following categories and shall, upon request of the commission, provide an explanation for the level of held orders in any particular category:

- (a) wire center;
- (b) orders held for 15-30 days;
- (c) orders held for 31-90 days;
- (d) orders held for 91-180 days;
- (e) orders held for over 180 days;
- (f) orders for which waiver petitions are pending or have been granted; and
- (g) orders cancelled by the customer.

**H. Business office and**

**repair office answer time.** An ILEC shall report separately for its business office and its repair office the percentage of calls answered within the time frames specified in 17.11.22.20 NMAC.

**I. Carrier profile.** No later than March 1 of each year, ILECs shall also report the following information to the commission, based on its operations as of December 31 of the previous year:

(1) total number of switched access lines in service;

(2) total number of residence switched access lines in service;

(3) total number of business switched access lines in service; and

(4) total number of orders received.

[17.11.22.8 NMAC - Rp, 17.11.22.8 NMAC, 2-1-06]

**17.11.22.9 OUTAGES:**

**A.** A LEC shall report outages affecting more than one thousand five hundred (1500) customers and lasting longer than thirty (30) minutes to the consumer relations division of the commission by telephone, facsimile, e-mail, or in person within ninety (90) minutes of the onset of the outage, or, for outages not occurring during business hours, at the start of the next business day.

**B.** A LEC shall submit a subsequent written report stating the location, duration, number of customers affected, cause and corrective action taken. Both the initial and subsequent outage reports shall state whether 911 circuits were affected.

**C.** A LEC shall file on a quarterly basis a record of each outage in the preceding three (3) months for which the LEC was unable to provide emergency service and an explanation of why emergency service was unavailable.

[17.11.22.9 NMAC - Rp, 17.11.22.9 NMAC, 2-1-06]

**17.11.22.10 PROVISION OF SERVICE DURING MAINTENANCE OR EMERGENCIES:**

**A. Emergency procedures.** Each ILEC and facilities-based CLEC shall establish, and instruct its employees regarding, procedures for preventing or mitigating interruption to or impairment of telecommunications service in emergencies resulting from power failures, sudden and prolonged increases in traffic, illness of operators, or force majeure. ILECs and facilities-based CLECs shall file written plans detailing their emergency procedures with the telecommunications bureau of the commission no later than sixty (60) days after certification by the commission. Any changes to

the plan shall be filed with the telecommunications bureau of the commission within thirty (30) days of the change.

**B. Reserve power requirements.** ILECs and facilities-based CLECs shall maintain in each local wire center, toll switching office, and tandem switching office a minimum of four (4) hours of battery reserve rated for peak traffic load requirements and shall:

(1) install a permanent auxiliary power unit in toll and tandem switching offices and in wire centers serving 10,000 or more access lines;

(2) have available a mobile power unit which normally can be delivered and connected within four (4) hours or the time limit of the available battery reserve for wire centers serving fewer than 10,000 lines.

**C. Maintenance scheduling.** ILECs and facilities-based CLECs shall schedule maintenance requiring extended service interruptions when it will cause minimal inconvenience to customers. To the extent possible, ILECs and facilities-based CLECs shall notify customers in advance of extended service interruptions. Based upon their prior experience, ILECs and facilities-based CLECs shall make emergency service available in any area that may experience service interruptions affecting 1,000 or more access lines and lasting more than four (4) hours between the hours of 8:00 a.m. to 10:00 p.m. If an ILEC or facilities-based CLEC cannot provide emergency service, it shall file a report of the service interruption with the telecommunications bureau of the commission.

**D. Loss of switch plan.** Each ILEC and facilities-based CLEC shall develop a contingency plan to prevent or minimize service interruptions due to the loss of a wire center switch that serves more than 10,000 access lines or is the toll or tandem switching office for 10,000 access lines. The plan shall describe the actions and systems installed to prevent or minimize the probability of such an occurrence as well as the actions and systems available to minimize the extent of any incurred service interruption. ILECs and facilities-based CLECs shall file the plans with the telecommunications bureau of the commission no later than sixty (60) days after certification by the commission. Any changes to the plan shall be filed with the telecommunications bureau within thirty (30) days of the change.

[17.11.22.10 NMAC - Rp, 17.11.22.10 NMAC, 2-1-06]

**17.11.22.11 ACCESS TO AND AUDIT OF DATA:** Unless otherwise authorized by the commission, a LEC shall make all records required by this rule available to the commission, staff, or its author-

ized representatives at any time upon reasonable notice. A LEC shall make customer proprietary network information available to the commission to the extent allowed by law. A LEC shall retain records of reports, measurements, summaries, and backup information for at least two (2) years. The commission or staff may periodically audit a LEC's quality of service data.

[17.11.22.11 NMAC - Rp, 17.11.22.11 NMAC, 2-1-06]

**17.11.22.12 INSTALLATION OF BASIC LOCAL EXCHANGE SERVICE:**

**A. Order tracking.** At the time of each service order, a LEC shall provide to each applicant for basic local exchange service a unique indicator that will permit an applicant to track and verify the order.

**B. Premises within 1000 feet of distribution terminal.**

(1) Whenever an ILEC receives an application for installation of a primary local exchange line for a premises that is within 1000 feet of a distribution terminal, the ILEC shall provision service within five (5) business days of receipt of the service request, or by such later date as the customer may request.

(2) When an ILEC cannot fill an order for a primary local exchange line within ten (10) business days of receipt of the order, it shall provide written notice to the customer noting the date of the service order and stating the expected installation date and the reason for the delay. This notice must be postmarked within ten (10) business days of the date the service order is received by the ILEC. The ILEC shall promptly notify the customer of any changes in the expected installation date.

**C. Premises 1000 feet or more from distribution terminal.** Whenever an ILEC receives an application for installation of a primary local exchange line for a premises that is 1000 feet or more from a distribution terminal, the ILEC shall provision service within thirty (30) business days of receipt of the service request, or by such later date as the customer may request, unless installation cannot be completed due to circumstances beyond the reasonable control of the ILEC.

**D. Line extension policy.** Each ILEC shall file its line extension policy for commission review and approval by March 1, 2001 and shall file any subsequent material changes to the policy for commission review and approval in accordance with commission procedures for tariff changes.

[17.11.22.12 NMAC - Rp, 17.11.22.12 NMAC, 2-1-06]

**17.11.22.13 ALTERNATIVE**

**SERVICE:** An ILEC shall provide alternative service to a customer whose order is held, unless the customer was the cause of the delay.

**A.** Where wireless phone service or equivalent service is available, an ILEC shall offer to pay for the customer to receive such service.

(1) The ILEC shall cover all non-recurring charges, including charges for the wireless handset, all monthly recurring charges, and unlimited local calling until the ILEC completes the service request. The ILEC may supply the customer with a wireless handset and a prearranged service plan or a voucher to obtain the same from a third party.

(2) The customer shall be responsible for paying roaming and long distance charges.

**B.** Where wireless phone service or equivalent service is not available, the ILEC shall offer the customer free of charge a telephone number, a listing, and the customer's choice of either:

(1) free remote call forwarding of that number until service is provided; or

(2) a free voice mailbox to which the customer's calls may be directed until service is provided.

[17.11.22.13 NMAC - Rp, 17.11.22.13 NMAC, 2-1-06]

**17.11.22.14 INSTALLATION OF DESIGNED SERVICES:**

**A. Confirmation of service order.** Within three (3) business days of receipt of a customer's order for designed services, an ILEC shall notify the customer of the proposed installation date and the customer's remedies for the ILEC's failure to meet the proposed installation date.

**B. Held order standard.** An ILEC shall complete eighty-five (85) percent of installations for designed services in accordance with the installation intervals set forth in subsections C and D of this section.

**C. Installation interval – facilities available.** Where facilities exist, the installation interval shall be ten (10) business days.

**D. Installation interval – new facilities required.** Where new facilities are needed to provide designed service, the ILEC shall install the service within forty-five (45) calendar days, unless the customer requests a later date. If the order is not completed within forty-five (45) calendar days or the later date requested by the customer, the customer shall receive a credit of the nonrecurring charge except when the ILEC can establish that delay was caused by circumstances beyond its reasonable control.

(1) When the delay is caused by circumstances beyond the ILEC's reason-

able control and the commission has granted a waiver of the held order standard pursuant to 17.11.22.25 NMAC, the period of delay shall be added to the time period allowed for installation of the service.

(2) An ILEC shall report any case in which it claims the delay is caused by circumstances beyond the reasonable control of the ILEC to the affected customer who shall have the right to challenge the exception.

**E. Credits for failure to comply with installation interval.** The following credits shall apply when an ILEC fails to meet designed services installation intervals during the preceding calendar year.

% installed within installation interval	Amount per day late to be credited to customer for failure to meet held order standard
85% to 100%	no credit applies
75% to 84%	\$ 200
65% to 74%	\$ 500
55% to 64%	\$1,000
45% to 54%	\$1,500
35% to 44%	\$3,000
0 to 34%	\$5,000

**F. Calculation and payment of credits.** By February 1 of each year, beginning in 2002, the ILEC shall submit a report showing its calculation of the credits specified in subsection E of this section, and shall, no later than March 15 of that year, apply the appropriate credit to the bill of each customer who experienced a held order during the prior calendar year. If the customer is no longer a customer of record as of the date the credit is issued, the ILEC shall mail payment to the former customer.

[17.11.22.14 NMAC - Rp, 17.11.22.14 NMAC, 2-1-06]

**17.11.22.15 OUT-OF-SERVICE CREDITS FOR DESIGNED SERVICES:**

**A.** When service is out for the designated time period, then unless the customer caused the out-of-service condition, an ILEC shall credit the stated amount to the customer's account, unless otherwise determined by customer contract.

Period out of service, in clock hours, whether continuous or discontinuous	Credit for DS-1 services	Credit for DS-3 services	Credit for ISDN-BRI services
Less than 4 hours in a 12 hour period	no credit	no credit	no credit
4 to 8 hours in a 24 hour period	\$120	\$1000	no credit
8 to 16 hours in a 36 hour period	\$210	\$2100	no credit
16 to 24 hours in a 48 hour period	\$240	\$2400	no credit
24 to 48 hours in a 60 hour period	\$300	\$3000	\$10 per day
More than 48 hours in a 72 hour period	The greater of \$420 or 100% of the total monthly recurring charge	The greater of \$4000 or 100% of the total monthly recurring charge	\$10 per day

**B.** Whenever an ILEC fails to repair an out-of-service condition for DS-1 or DS-3 service within twenty-four (24) clock hours of notification, it shall credit the pro rata cost of the circuit and trunks to the customer's account.

[17.11.22.15 NMAC - Rp, 17.11.22.15 NMAC, 2-1-06]

**17.11.22.16 DIRECTORY ASSISTANCE AND INTERCEPT:**

**A.** An ILEC shall list basic local exchange service customers (except those

customers requesting otherwise) in the directory assistance database within twenty-four (24) hours of service connection, except during times of regular maintenance, in which case the listing shall occur within forty-eight (48) hours of service connection.

**B.** If an ILEC makes an error in the listed number or name of any customer, then until a new directory is published, the ILEC shall make, at no charge to the customer, whatever special arrangements are necessary and reasonable to ensure that calling parties are able to reach the customer whose listed number or name is in error.

**C.** If an ILEC makes an error in the number, name or address of any listing of any customer, the ILEC shall place the customer's correct name, address and telephone number in the files of the directory assistance and intercept operators within seventy-two (72) hours of confirmation of the error.

**D.** When a customer's telephone number is changed at the request of the customer after a directory is published, the LEC shall provide intercept service for all calls to the former number for the lesser of sixty (60) days or until a new directory is issued. If the change is made at the initiative of the LEC, the LEC shall provide intercept service for the former number at no charge to the customer for the greater of sixty (60) days or the remaining life of the current directory. The LEC shall provide the correct number to its information operator within twenty-four (24) hours of the number change (except during times of regular maintenance, in which the case the listing shall occur within forty-eight (48) hours of service connection) or send it to the carrier providing information operator service within twenty-four (24) hours if the local exchange carrier does not provide its own service. The LEC's intercept recording shall state how the caller can obtain the new number.

[17.11.22.16 NMAC - Rp, 17.11.22.16 NMAC, 2-1-06]

**17.11.22.17 NETWORK CALL COMPLETION REQUIREMENTS FOR DIRECT DIALED CALLS:**

**A.** An ILEC shall maintain sufficient wire center and interoffice channel capacity and any other necessary facilities to meet the following minimum requirements during any normal busy hour:

(1) dial tone within three (3) seconds for ninety-eight (98) percent of call attempts on the switched network;

(2) correct termination of ninety-eight (98) percent of properly dialed intraoffice or interoffice calls within an extended service area; and

(3) correct termination of ninety-

eight (98) percent of properly dialed intraLATA calls when the call is routed entirely over the network of the ILEC.

**B.** Unless otherwise authorized by the commission, a carrier providing toll service shall maintain sufficient switching and network channel capacity and any other necessary facilities so that ninety-eight (98) percent of properly dialed intrastate toll calls are correctly terminated.

**C.** An ILEC shall terminate a properly dialed call in one of the following ways:

(1) the calling party shall receive an indication of ringing and a ringing signal shall be delivered to the station location of the called party; if the called party answers, a connection shall be established between the calling and called parties;

(2) if the called number is busy, the calling party shall receive a busy signal, unless the called party has subscribed to a voice messaging, call forwarding, or call waiting service;

(3) if the ILEC cannot establish a connection between the calling and called parties, the calling party shall receive an announcement or an appropriate overflow signal that is different than a called party busy signal; a call terminated in this way shall not be considered correctly terminated for purposes of calculating the percentage of correctly terminated calls required by subsections A and B of this section;

(4) if a call is made to a non-working code or inoperative customer number, it shall be directed to the ILEC's intercept service.

[17.11.22.17 NMAC - Rp, 17.11.22.17 NMAC, 2-1-06]

#### **17.11.22.18 NETWORK CALL COMPLETION REQUIREMENTS FOR OPERATOR ASSISTED CALLS:**

A carrier offering operator assistance to the public shall answer eighty-five (85) percent of directory, intercept, toll and local assistance calls within ten (10) seconds. The following are not answers:

**A.** an acknowledgement that the customer is waiting on the line;

**B.** a dropped call;

**C.** directing the call to a company representative or mechanized system incapable of providing assistance to the customer; or

**D.** directing the call to a system that will only take a message from the customer.

[17.11.22.18 NMAC - Rp, 17.11.22.18 NMAC, 2-1-06]

#### **17.11.22.19 QUALITY OF SERVICE STANDARDS FOR NON-DESIGNED SERVICES:**

**A. Installation of primary local exchange lines.** An ILEC shall

complete at least ninety-six (96) percent of all requests for installation of primary local exchange lines within the time frames established 17.11.22.12 NMAC.

**B. Held orders for primary local exchange lines.** An ILEC's annual held order rate for primary local exchange lines shall not exceed 0.035 percent. The annual held order rate shall be the average of the monthly held order rates. The monthly held order rate shall be calculated as the number of an ILEC's held orders for primary local exchange lines as of the last day of the month, excluding orders for which waivers have been granted, expressed as a percentage of the total number of the ILEC's switched access lines in service at the end of that month.

#### **C. Trouble reports.**

(1) An ILEC's trouble report rate shall not exceed five (5) trouble reports per month per 100 access lines in service per wire center.

(2) An ILEC's repeat trouble report rate shall not exceed 18% of total monthly trouble reports, on a wire center basis.

#### **D. Out-of-service clearances.**

(1) An ILEC shall clear eighty-five (85) percent of out-of-service trouble reports in each month within twenty-four (24) hours, on a wire center basis.

(2) The monthly average repair interval in a wire center shall not exceed twenty (20) hours.

[17.11.22.19 NMAC - Rp, 17.11.22.19 NMAC, 2-1-06]

#### **17.11.22.20 TIMELY RESPONSE BY CUSTOMER SERVICE REPRESENTATIVES:**

**A. Standards.** An ILEC's business and repair offices shall answer calls within an average of thirty-five (35) seconds. If a carrier uses an automated response system, the system shall transfer calls to a customer service representative within an average of thirty-five (35) seconds of the customer's selection or within forty (40) seconds if the customer does not make a selection. An ILEC shall ensure that no more than one (1) percent of calls to its business offices reach a busy signal and that no more than one (1) percent of calls to its repair offices reach a busy signal.

**B. Reports.** An ILEC shall file an exception report within thirty (30) calendar days of the end of any month in which it failed to meet any of the standards set forth in Subsection A of this section. The report shall identify each offending business office and repair office, the percent of calls answered, the percent of calls reaching a busy signal, the reason for failure to meet the respective standard, the remedial action taken by the ILEC, and any

known results of that remedial action.

[17.11.22.20 NMAC - Rp, 17.11.22.20 NMAC, 2-1-06]

**17.11.22.21 AGGREGATE CUSTOMER CREDITS:** This section applies only to non-designed services.

#### **A. Annual compliance reports.**

(1) By February 15 of each year, each ILEC shall submit to the commission a report detailing, on a statewide basis, its compliance in the preceding calendar year with the quality of service standards set forth in this rule. The report shall also list each wire center alphabetically and shall indicate for each wire center which of the standards set forth in subsections C and D of 17.11.22.19 NMAC the ILEC failed to meet and the months in which the ILEC failed to meet the standard.

(2) The report shall include the details of the calculations made pursuant to 17.11.22.22 NMAC to determine the credit obligations the ILEC has incurred for the preceding calendar year, including those that are the subject of a petition for waiver or variance.

#### **B. Payment of credits.**

(1) An ILEC shall issue a one-time credit on customer bills for an equal amount of the aggregate customer credits incurred in any given year to each customer active in the billing cycle in which the credits are issued.

(2) An ILEC shall issue aggregate customer credits in a billing cycle that begins by May 1 for all quality of service standards that are not the subject of a petition for waiver or variance or for which such a petition has been denied by January 31.

(3) An ILEC shall issue aggregate customer credits for all quality of service standards for which a petition for a waiver or variance has been denied after January 31 in a billing cycle that begins within ninety (90) days of the date the petition was denied.

(4) An ILEC need not issue aggregate customer credits for those quality of service standards for which it has been granted a waiver.

[17.11.22.21 NMAC - Rp, 17.11.22.21 NMAC, 2-1-06]

**17.11.22.22 CALCULATION OF AGGREGATE CUSTOMER CREDITS:** This section applies only to nondesigned services.

**A. Installation of service.** For any calendar year in which an ILEC failed to achieve, on a statewide basis, the ninety-six (96) percent installation standard for primary local exchange lines, the ILEC shall incur the following credit obligations:

(1) for each percentage point

from .1 to 3.0 percentage points less than the benchmark: .06 percent of the ILEC's total intrastate revenues for the year;

(2) for each percentage point from 3.1 to 7.0 percentage points less than the benchmark: .10 percent of the ILEC's total intrastate revenues for the year;

(3) for each percentage point from 7.1 to 12.0 percentage points less than the benchmark: .13 percent of the ILEC's total intrastate revenues for the year; and

(4) for each percentage point over 12.0 percentage points less than the benchmark: .16 percent of the ILEC's total intrastate revenues for the year.

**B. Held orders up to 180 days.** For any calendar year in which an ILEC failed to achieve, on a statewide basis, the 0.035% held order standard, the ILEC shall incur the following credit obligations:

(1) for each .001 increment from .001 to .005 percentage points in excess of the benchmark: .06 percent of the ILEC's total intrastate revenues for the year;

(2) for each .001 increment from .006 to .01 percentage points in excess of the benchmark: .1 percent of ILEC's total intrastate revenues for the year;

(3) for each .001 increment from .011 to .015 percentage points in excess of the benchmark: .13 percent of the ILEC's total intrastate revenues for the year; and

(4) for each .001 percentage point increment over .015 percentage points in excess of the benchmark: .16 percent of ILEC's total intrastate revenues for the year.

**C. Held orders in excess of 180 days:** For each month during a calendar year in which an ILEC had, as of the last day of the month, one or more held orders pending for more than 180 days, an ILEC shall incur the following credit obligations:

(1) for each month with 1 to 5 such orders as of the last day of the month: .01 percent of an ILEC's total intrastate revenues for the year;

(2) for each month with 6 to 10 such orders as of the last day of the month: .015 percent of ILEC's total intrastate revenues for the year; and

(3) for each month with 11 or more such orders as of the last day of the month: .02 percent of ILEC's total intrastate revenues for the year.

**D. Trouble reports.** For any calendar year in which an ILEC failed to achieve, on a statewide basis, an average trouble report rate of 5.0 trouble reports per 100 access lines, the ILEC shall incur the following credit obligations:

(1) for an annual average trouble report rate from .1 to 2.0 reports per 100 access lines in excess of the benchmark, .06% of the ILEC's total intrastate revenues for the year;

(2) for an annual average trouble report rate from 2.1 to 4.0 reports per 100 access lines in excess of the benchmark, .1% of the ILEC's total intrastate revenues for the year;

(3) for an annual average trouble report rate from 4.1 to 6.0 reports per 100 access lines in excess of the benchmark, .13% of the ILEC's total intrastate revenues for the year; and

(4) for an annual average trouble report rate more than 6.0 reports per 100 access lines in excess of the benchmark, .16% of the ILEC's total intrastate revenues for the year.

**E. Out-of-service clearances.** For any calendar year in which an ILEC failed to achieve, on a statewide basis, an average out-of-service clearance rate of eighty-five (85) percent in twenty-four (24) hours, the ILEC shall incur the following credit obligations:

(1) for each percentage point from .1 to 3.0 percentage points less than the benchmark, .02% of the ILEC's total intrastate revenues for the year;

(2) for each percentage point from 3.1 to 7.0 percentage points less than the benchmark, .03% of the ILEC's total intrastate revenues for the year;

(3) for each percentage point from 7.1 to 12.0 percentage points less than the benchmark, .04% of the ILEC's total intrastate revenues for the year; and

(4) for each percentage point beyond 12.0 percentage points less than the benchmark, .05% of the ILEC's total intrastate revenues for the year.

**F. Repeat trouble reports.** For any calendar year in which an ILEC failed to achieve, on a statewide basis, an average repeat trouble report rate of eighteen (18) percent, the ILEC shall incur the following credit obligations:

(1) for a repeat trouble report rate from 0.1 to 5.0 percentage points in excess of the benchmark, .06% of total intrastate revenues for the year;

(2) for a repeat trouble report rate from 5.1 to 10.0 percentage points in excess of the benchmark, .1% of total intrastate revenues for the year;

(3) for a repeat trouble report rate from 10.1 to 15.0 percentage points in excess of the benchmark, .13% of total intrastate revenues for the year; and

(4) for a repeat trouble report rate more than 15.0 percentage points in excess of the benchmark, .16% of total intrastate revenues for the year.

**G. Wire center-specific standards.** In addition to the credit obligations based on statewide performance, an ILEC shall incur a credit obligation of \$3.00 per access line in service at a given wire center for each wire center-specific standard

set forth in subsections C and D of 17.11.22.19 NMAC the ILEC failed to achieve at that wire center for two consecutive months or any three months in a calendar year.

[17.11.22.22 NMAC - Rp, 17.11.22.22 NMAC, 2-1-06]

#### 17.11.22.23 INDIVIDUAL CUSTOMER CREDITS:

**A. Out-of-service clearances.** A LEC shall automatically make appropriate adjustments to a customer's bill whenever service from the LEC is interrupted and remains out of order for more than eight (8) hours during a continuous twenty-four (24) hour period after the customer reports it or the LEC finds it, whichever occurs first.

(1) The LEC shall provide a credit on the monthly bill for LEC services that is proportional to the duration of the service interruption. Each occurrence of a loss of service for eight (8) hours during a twenty-four (24)-hour time period shall count as one day and every month shall be considered to have thirty (30) days.

(2) The LEC shall not be required to provide an adjustment for loss of service due to:

(a) the negligence or willful act of the customer;

(b) a malfunction of facilities other than those under control of the LEC;

(c) force majeure; or

(d) the inability of the LEC to gain access to the customer's premises when necessary.

**B. Held orders.** For each customer whose order is held, an ILEC shall:

(1) provide a credit of \$45 for each primary residential line, and a credit of \$135 for each primary business line it fails to install within the time frames set forth in 17.11.22.12 NMAC;

(2) pay the sum of \$300 and three (3) times the installation charge for each primary residential or business line not installed within seven (7) days of the time frames set forth in 17.11.22.12 NMAC;

(3) waive the service charge for the first month of service once service is provided; and,

(4) for each customer whose premises is located where wireless phone service or equivalent service is not available, provide a credit of two (2) times the basic local exchange service rate for every month or partial month the customer's order is held.

[17.11.22.23 NMAC - Rp, 17.11.22.23 NMAC, 2-1-06]

#### 17.11.22.24 RATE MAKING TREATMENT OF PENALTIES AND

**CREDITS:** Regardless of the form of regulation, an ILEC shall not recover from customers through its rates the costs it incurs for penalties imposed pursuant to NMSA 1978 Section 63-7-23 or credits provided to customers pursuant to this rule.

[17.11.22.24 NMAC - Rp, 17.11.22.24 NMAC, 2-1-06]

### 17.11.22.25 EXEMPTION OR VARIANCE:

#### A. General requirements.

(1) Any carrier may petition for an exemption or 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 carrier or other person with authority to bind the carrier.

(4) The commission may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

#### B. Waiver of held order standard.

(1) An ILEC may petition for a waiver of the held order standard in 17.11.22.19 NMAC for circumstances beyond the reasonable control of the ILEC. The petition shall be filed with the commission within thirty (30) calendar days of the installation dates established in 17.11.22.12 NMAC and shall be accompanied by an affidavit executed by a person employed by the ILEC who is knowledgeable concerning the facts surrounding the waiver request. At the same time, the ILEC shall serve a copy of the waiver petition on the affected customers.

(2) The petition shall include:

(a) the names and addresses of all known customers who will be affected by the waiver request and an estimate of the number of unknown customers who might be affected;

(b) a detailed explanation of the relief being sought;

(c) the date when the service orders are expected to be filled; and

(d) a detailed explanation of the circumstances giving rise to the waiver request.

(3) The telecommunications bureau of the commission shall approve or disapprove the petition for waiver of the held order standard within thirty (30) calendar days of its submittal. The order shall not be counted as a held order and the ILEC shall not be required to pay credits while the petition is pending before the telecommunications bureau.

(4) Neither a waiver or a waiver petition shall relieve the ILEC of its obligations to provide alternative service to the individual customer unless the customer failed to provide the necessary facilities to enable the ILEC to complete the order or otherwise caused the delay.

(5) Where a waiver request is granted, the ILEC need not count any order subject to the waiver as a held order for purposes of this rule.

#### C. All other exceptions.

A petition for an exemption or variance from any other requirement of this rule 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 carrier and its customers, and on its competitive affiliates and their customers, if the exemption or variance is not granted;

(4) state how the exemption or variance will achieve the purposes of this rule and the New Mexico Telecommunications Act;

(5) state why the proposed alternative is in the public interest and is better than the requirement in the rule; and

(6) state why the exemption or variance would have no anticompetitive effect.

[17.11.22.25 NMAC - Rp, 17.11.22.25 NMAC, 2-1-06]

#### HISTORY OF 17.11.22 NMAC:

##### Pre-NMAC History:

None.

##### History of Repealed Material:

17.11.22 NMAC, Quality of Service Standards (filed 12-14-00) repealed 2-1-06.

##### NMAC History:

17.11.22 NMAC, Quality of Service Standards (filed 12-14-00) was replaced by 17.11.22 NMAC, Quality of Service, effective 2-1-06.

## NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.19 NMAC, Section 8, effective 1-1-2006.

#### 16.61.19.8 BROKER DUTIES;

**DISCLOSURE:** Prior to the time an associate broker or qualifying broker generates or presents any written document that has the potential to become an express written agreement, the associate broker or qualifying broker shall disclose in writing to a prospective, buyer, seller, landlord or ten-

ant, the following list of broker duties that are owed to all customers and clients by all 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 other applicable local, state, and federal laws and regulations;

C. performance of any and all oral or written agreements made with the customer or client;

D. assistance to the broker's customer or client in completing the transaction, unless otherwise agreed to in writing by the customer or client, including:

(1) ~~[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;]~~ presentation of all offers or counter-offers in a timely manner;

(2) ~~[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;]~~ assistance in complying with the terms and conditions of the contract and with the closing of the transaction; if the broker 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 broker is not expected to provide such service, advice or assistance, and the broker shall disclose such agreement in writing to the other brokers involved in the transaction;

E. acknowledgement by the broker that there may be matters related to the transaction that are outside the associate broker's or qualifying broker's knowledge or expertise and that the 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 broker;

G. prior to the time the 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 relationship the 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 broker has in the transaction;

H. disclosure of any adverse material facts actually known by the 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, 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 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; A, 1-1-2006]

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**End of Adopted Rules Section**

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**SUBMITTAL DEADLINES AND PUBLICATION DATES**

**2005**

<b>Volume XVI</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
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

**2006**

<b>Volume XVII</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
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
Issue Number 18	September 18	September 29
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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