

**NEW
MEXICO
REGISTER**

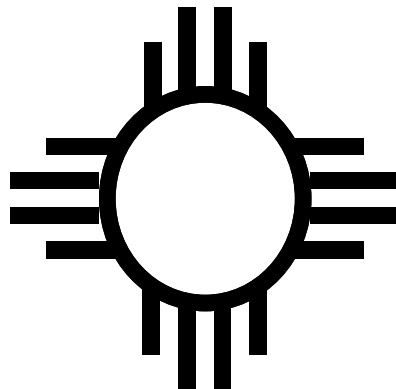


Volume XVII
Issue Number 7
April 14, 2006

New Mexico Register

Volume XVII, Issue Number 7

April 14, 2006



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

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New Mexico Register

Volume XVII, Number 7

April 14, 2006

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Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

NOTICE OF PUBLIC HEARING ON THE SOLAR MARKET DEVELOPMENT TAX CREDIT MAY 18, 2006

The New Mexico Energy, Minerals and Natural Resources Department will hold a hearing at **9:00 A.M. Thursday, May 18, 2006** in Room 307 of the State Capitol, Old Santa Fe Trail at Paseo de Peralta, Santa Fe, NM.

The New Mexico Energy, Minerals and Natural Resources Department will conduct a public hearing on proposed new rule 3.3.28 NMAC for administration of the Solar Market Development Tax Credit, under the authority of Senate Bill 269, which was enacted during the 2006 regular session of the New Mexico legislature.

Copies of the proposed rules are available from the New Mexico Energy, Minerals and Natural Resources Department, Energy Conservation and Management Division, 1220 South Saint Francis Drive, Santa Fe, NM 87505, on our website, <http://www.emnrd.state.nm.us/ecmd/>, or by contacting Brian Johnson at 505-476-3313, brian.k.johnson@state.nm.us or Harold Trujillo at 476-3318, harold.trujillo@state.nm.us.

All interested persons may participate in the hearing, and will be given an opportunity to submit relevant evidence, data, views, and arguments, orally or in writing. A person who wishes to submit a written statement, in lieu of providing oral testimony at the hearing, shall submit the written statement prior to the hearing, or submit it at the hearing. No statements will be accepted after the conclusion of the hearing.

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 Brian Johnson at least one week prior to the hearing or as soon as possible. Public documents can be provided in various accessible formats. Please contact Brian Johnson at 476-3313, through Relay New Mexico at 1-800-659-1779 Voice or 1-800 659-8331 TTY, if a summary or other type of accessible format is needed.

NEW MEXICO DEPARTMENT OF HEALTH

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing to consider amendments to 7.26.5 NMAC "Service Plans for Individuals with Developmental Disabilities Living in the Community" regulation. The Hearing will be held on Thursday, May 18, 2006 at 9:00 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 gather comments and answer questions pertaining to the 7.26.5 NMAC regulation amendments.

A copy of the proposed regulation amendment and revised Individual Service Plan (ISP) form can be accessed on the Department of Health website at: www.health.state.nm.us

A copy of the proposed regulation can be obtained from:

Ms. Eva Medina
1190 S. St. Francis Drive, Suite #N3350
Santa Fe, NM 87502
(505) 476-3769
TTY toll free number: 1-800-659-8331

Please submit any written comments regarding the proposed regulation prior to hearing to:

Ms. Jennifer Thorne-Lehman, Deputy Director
Developmental Disabilities Supports Division
1190 S. St. Francis Drive, Suite #N3061
Santa Fe, NM 87502

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 assistance or accommodations to attend or participate in the hearing, please contact Ms. Eva Medina at 476-3769. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

If you need assistance to discuss the proposed changes to the regulation in Spanish or a language other than English, please call Ms. Eva Medina at 476-3769.

Si usted necesita ayuda para discutir los cambios a la regulación en español o en otro idioma, llame a Ms. Eva Medina al 476-

3769.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold 3 separate public hearings on May 15, 2006 at the Toney Anaya Building, Rio Grande Conference Room on the 2nd floor (2550 Cerrillos Rd), Santa Fe, New Mexico.

The Centers for Medicare and Medicaid Services (CMS) require renewal of HCBS Waivers every five (5) years. Changes have been made to the Developmental Disabilities (DD) and the Disabled and Elderly (D&E) Waivers as part of the renewal process to better meet participants' needs, to remove Medicaid State plan services as required by CMS, and to achieve consistency among the State's HCBS Waivers, to the extent reasonable. The proposed DD changes are reflected in 8.314.5 NMAC and the proposed D&E changes are in 8.314.2 NMAC.

The hearing for the Developmental Disabilities Home and Community Based Services Waiver will be held at 10:30 a.m. The hearing for the Disabled and Elderly Home and Community Based Services Waiver will be held at 1:00 p.m.

The Human Services Department (HSD), in collaboration with the Aging and Long Term Services Department and Department of Health, proposes to implement a new Self-Directed Home and Community-Based Services Waiver program, Mi Via, that facilitates greater participant choice, direction and control over services and supports that are identified in the participant's individualized Service and Support Plan, purchased within an agreed upon budgetary allotment, and delivered by providers or vendors chosen by the participant. These new regulations will refer to 8.314.6 NMAC.

The hearing for the Mi Via Home and Community Based Services Waiver will be held at 2:30 p.m.

Interested persons may submit written comments no later than 5:00 p.m., May 15, 2006, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Division toll free at 1-888-997-2583 and ask for extension 7-3156. In Santa Fe call 827-3156. If you are hearing impaired, you may call the Department's TDD system at 1-800-659-8331. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Registers are available for review on our Website at www.state.nm.us/hsd/mad.html or by sending a *self-addressed stamped envelope* to Medical Assistance Division, Program Oversight & Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO MEDICAL BOARD

NEW MEXICO MEDICAL BOARD

Notice

The New Mexico Medical Board will convene a regular Board Meeting on Thursday, May 18, 2006 at 8:00 a.m. and Friday, May 19, 2006 at 8:30 a.m. in the Conference Room, 2005 S. Pacheco, Building 400, Santa Fe, New Mexico. A Public Rule Hearing will be held on Thursday, May 18, 2006 at 1:30 p.m. The Board will reconvene after the Hearing to take action on the proposed rules. The Board may enter into Executive Session during the meeting to discuss licensing or limited personnel issues.

The purpose of the Rule Hearing is to consider amending 16.10.2 NMAC (Physicians: Licensure Requirements), 16.10.7 (License Expiration, Renewal, and Reinstatement), 16.10.9 NMAC (Fees), 16.10.15 NMAC (Physician Assistants: Licensure & Practice Requirements), and to add 16.10.17 NMAC (Management of Medical Records).

Changes to the physician licensing requirements will allow for nationwide and statewide criminal history screenings and eliminate the requirement for a notarized application. Changes to Part 7 and 9 will allow for nationwide and statewide criminal history screenings. Changes to the physician assistant rule will allow for nationwide and statewide criminal history screenings and modify the requirements for license expiration, renewal and change of status. The new rule will establish requirements for the management of medical records.

Copies of the proposed rules will

be available on April 14th on request from the Board office at the address listed above, by phone (505) 476-7220, or on the Internet at www.nmmb@state.nm.us.

Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m., May 11, 2006, to the board office, 2055 S. Pacheco, Building 400, Santa Fe, NM, 87505.

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 in order to attend or participate in the hearing, please contact Lynnelle Tipton, Administrative Assistant at 2055 S. Pacheco, Building 400, Santa Fe, NM at least one week prior to the meeting. Public documents, including the agenda and minutes, can be provided in various accessible formats.

NEW MEXICO STATE PERSONNEL BOARD

State Personnel Board Public Rules Hearing

The State Personnel Board will convene a Public Rules Hearing in Santa Fe, New Mexico on Friday, June 2, 2006. The meeting will be held during the Board's regular business meeting beginning at 9:00 a.m., located in the Leo Griego Auditorium in the Willie Ortiz Building (State Personnel Office) at 2600 Cerrillos Road, Santa Fe, New Mexico, 87505.

The purpose of the Rule Hearing is to consider amending SPB Rules and Regulations related to pay differentials and family and medical leave.

A final agenda for the board meeting will be available at the board office on May 23, 2006.

Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m. May 15, 2006 to the board office, PO Box 26127, 2600 Cerrillos Road, Santa Fe, New Mexico, 87505, attention, Sandra Perez. Copies of the proposed rules are available on request from the Board office at the address listed above, by phone (505) 476-7805, or on the Internet at www.state.nm.us/spo/ beginning April 15, 2006.

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 in

order to attend or participate in the hearing, please contact the Director at 2600 Cerrillos Road, Santa Fe, New Mexico prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Director if a summary or other type of accessible format is needed.

NEW MEXICO BOARD OF PHARMACY

NEW MEXICO BOARD OF PHARMACY

SPECIAL MEETING

NOTICE TO THE PUBLIC

The New Mexico Board of Pharmacy will convene on **May 15, 2006** at 9:00 a.m. in the **Pharmacy Board Conference Room, 5200 Oakland Ave., NE, Albuquerque, New Mexico** for the purpose of conducting a Special Board meeting. The Board will have regulation hearing for 16.19.20 NMAC.

The proposed rule includes the placement of pharmaceuticals containing pseudoephedrine in Schedule V Controlled Substances and also exempts pseudoephedrine products such as liquids or liquid filled gel caps. The purchaser will be required to provide a government issued identification and sign a log

Interested persons may contact Debra Wilhite, Administrative Secretary, 5200 Oakland Ave., NE, Suite A, Albuquerque, NM 87113, (505) 222-9830 or fax (505) 222-9845, e-mail debra.wilhite@state.nm.us to receive copies of the agenda, which will be available May 1, 2006. The Board may go into executive session at any time to discuss licensee and/or personnel matters. Anyone who needs special accommodations for the meeting should contact the Board office at (505) 222-9830 as soon as possible.

Available at www.state.nm.us/pharmacy on May 1, 2006 will be all proposed regulations, notices and tentative agenda.

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Psychologist Examiners Board will hold a Rule Hearing on May 15, 2006. Following the Rule Hearing the New Mexico Psychologist Examiners Board will convene a regular meeting to adopt the rules and take care of regular business. The 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 New Mexico State University, O'Donnell Hall; Room 147. O'Donnell Hall is located at the corner of Stuart and Sweet street, Las Cruces, New Mexico.

The purpose of the rule hearing is to hear public testimony and comments regarding the proposed revisions to the rules and regulations: 16.22 NMAC: Part 1 General Provisions, Part 2 Code of Conduct, Part 3 Non-Licensed Psychologist/Applicant with an Independent Mental Health License, Part 4 Educational Requirements for Psychologists, Part 5 Application Procedures and Requirements for Licensure as a Psychologist, Part 6 Pre-Doctoral and Post-Doctoral Supervised Experience, Part 7 Examination Requirements, Part 8 License Expiration and Renewal, Part 9 Continuing Professional Education Requirements, Part 10 Inactive Status and Reinstatement, Part 11 Complaint Procedures and Adjudicatory Proceedings, Part 12 Educational Requirements and Conditions of Practice for Psychologist Associates, Part 13 Fees, Part 20 Health Care Practitioner Collaboration Guidelines, Part 21 Limits of Practice, Part 22 Prescribing Psychologist: Application Committee, Part 23 Requirements for Educational and Conditional Prescription Certificate, Part 24, Application Procedures: Two-Year Supervised Practice, Part 25 Application for Prescription Certificate: Peer Review, Part 26 Graduates of the Department of Defense: Psychopharmacology, Part 27 Psychologist and Psychologist Associates Formulary, Part 28 Prescribing Psychologists: Complaint Procedures, Part 29 Educational and Certificate Renewal.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in

Santa Fe, New Mexico 87504, or call (505) 476-4657 after April 15, 2006. 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 May 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) 476-4607 at least two weeks prior to the meeting or as soon as possible.

Jackie Holmes, Board Administrator
PO Box 25101- Santa Fe, New Mexico 87504

NEW MEXICO COMMISSION OF PUBLIC RECORDS

Notice of Public Hearing

The New Mexico Commission of Public Records will hold a public hearing at 9:00 a.m. on May 4, 2006 at the State Records Center and Archives building, Room 2022, 1209 Camino Carlos Rey, Santa Fe, New Mexico 87507. The public hearing will be held to solicit comments on the following:

Repeal

1.13.30 NMAC Destruction of Public Records

Replacements

1.13.30 NMAC Destruction of Public Records and Non-Records

Amendment

1.13.2 NMAC Fees
1.13.7 NMAC New Mexico Office of the State Historian Scholars Program
1.13.5 NMAC New Mexico Historical Records Grant Program Guidelines
1.13.11 NMAC Access to Public Records, Research in the New Mexico Archives
1.13.10 NMAC Records Custody, Access, Storage and Disposition
1.14.2 NMAC Microphotography Systems, Microphotography Standards

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Darlene A. Torres at 476-7902 by April 28, 2006. Proposed rules can be viewed at <http://www.nmcpr.state.nm.us> and can also be provided in various accessible formats. For additional assistance please contact Darlene A. Torres at 476-7902 or by e-mail at darlene.torres@state.nm.us

**NEW MEXICO PUBLIC
REGULATION
COMMISSION**

**BEFORE THE NEW MEXICO PUBLIC
REGULATION COMMISSION**

IN THE MATTER)
OF STAFF'S)
PETITION)
FOR THE)
DOCKETING)
OF CASES TO)
ADDRESS THE)
REQUIREMENTS)
OF THE EFFICIENT)
USE OF ENERGY)
ACT)

Case No.
05-00189-UT

and

IN THE MATTER)
OF A RULEMAKING)
RELATING TO)
ENERGY)
EFFICIENCY)
AND LOAD)
MANAGEMENT)
PROGRAMS)

Case No.
06-00065-UT

NOTICE OF PROPOSED RULEMAKING

THIS MATTER comes before the New Mexico Public Regulation Commission ("Commission") upon the Recommended Decision, Phase I issued by Hearing Examiner William J. Herrmann on February 15, 2006.

THE COMMISSION FINDS AND CONCLUDES:

1. On April 7, 2005, New Mexico Governor Bill Richardson signed the Efficient Use of Energy Act ("the Act"). The Act requires this Commission to direct public utilities to evaluate and implement cost-effective programs that reduce energy demand and consumption. The Act requires this Commission to direct public utilities to evaluate and implement cost-effective programs that reduce energy demand and consumption. NMSA 1978, Section 62-17-5(B) (2005). Public utilities must obtain Commission approval of energy efficiency and load management programs before they are implemented. Id., Section 62-17-5(E). The Act also requires public utilities supplying electric or gas service to periodically file an integrated resource plan ("IRP") with the Commission. Id., Section 62-17-10. IRPs shall identify the most cost-effective portfolio of resources

to supply the energy needs of customers. Id.

2. On May 31, 2005, in response to a petition filed by the Commission's Utility Division Staff, the Commission issued its Order for Workshops. The Commission ordered workshops to be held in two phases. Phase I of the workshops was for the purpose of creating guidelines to be followed by public utilities in developing energy efficiency and load management programs. Phase II of the workshop was for the purpose of developing a proposed IRP rule. Order for Workshops, 9. The Commission appointed a hearing examiner to manage the workshop process. The Commission ordered the hearing examiner, at the conclusion of the Phase I workshops, to submit a written report to the Commission, summarizing the workshop discussions, and a proposed rule if appropriate. Id., B.

3. On February 15, 2006, the Hearing Examiner issued his Phase I Recommended Decision in which he submitted a proposed rule for Commission issuance.

4. On March 16, 2006, Commissioner E. Shirley Baca and Community Action New Mexico presented additional proposed language concerning programs for low income customers that should be included in the proposed rule.

5. The Hearing Examiner's proposed rule, with the addition of the language concerning programs for low income customers, should be issued by the Commission as a proposed rule. The proposed rule is attached as Exhibit 1 to this Notice of Proposed Rulemaking.

6. The Commission will accept written comments on the rule proposed in this Notice of Proposed Rulemaking from any interested person. Interested persons shall file their written comments on the proposed rule no later than April 18, 2006. Any response comments shall be filed no later than May 9, 2006. Comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule shall be in legislative format. Any proposed changes to the proposed rule shall be submitted in hard copy. All pleadings, including comments

and suggested changes to the proposed rule, shall bear the caption and docket number contained at the top of this Notice.

7. Written comments or written response comments shall be sent to:

Melanie Sandoval
New Mexico Public Regulation
Commission
Attention: Case No. 06-00065-UT
224 East Palace Avenue, Marian Hall
Santa Fe, NM 87501
Telephone: (505) 827-6968

8. Copies of the proposed rule may be downloaded from the Commission's web site, www.nmprc.state.nm.us, under "Meetings," then "Public Notices."

9. The Commission will review all timely submitted written comments and will hold a public comment hearing on the following date and at the following time and place:

May 19, 2006
9:00 a.m.
UNM Continuing Education Bldg.
1634 University Blvd., NE
Albuquerque, NM

10. Interested persons should contact the Commission to confirm the date, time and place of any public hearing because hearings are occasionally rescheduled.

11. Any person with a disability requiring special assistance in order to participate in a hearing should contact Cecilia Rios at 827-4501 at least 48 hours prior to the commencement of the hearing.

12. Commission Rule 1.2.3.7(B) ("Ex Parte Communications") draws a distinction applicable to rule-making proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as "ex parte communications." In order to assure compliance with 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed. The Commission finds such date should be July 14, 2006. The setting of that record closure date will permit Commissioners and Commission Counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission's proposed rules or responses to any bench requests. However, this action should not be inter-

preted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

13. Copies of this Notice should be sent to all persons on the attached Certificate of Service.

IT IS THEREFORE ORDERED:

A. Case No. 06-00065-UT is created and commenced for the purpose of developing a rule relating to energy efficiency and load management programs.

B. The proposed rule, attached to this Notice of Proposed Rulemaking as Exhibit 1, is proposed for adoption as a permanent rule as provided by this Notice.

C. Initial comments on the proposed rule must be filed by April 18, 2006, and response comments must be filed by May 9, 2006.

D. The record in this case, for purposes of 17.2.3.7(B) NMAC ("Ex Parte Communications") shall be closed at 5:00 p.m. on July 14, 2006.

E. Public comment hearings shall be held as provided in this Notice of Proposed Rulemaking.

F. A copy of this Notice, including Exhibit 1, shall be mailed to all persons listed on the attached Certificate of Service. This Notice, excluding Exhibit 1, shall be published in two newspapers of general circulation in the State and in the New Mexico Register. The Commission shall provide the Notice by e-mail or facsimile transmission to any persons who so request, and shall post a copy of the proposed rules on the Commission's web site.

G. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, on March 23, 2006.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEN R. LUJAN, CHAIRMAN

JASON MARKS, VICE CHAIRMAN

DAVID W. KING, COMMISSIONER

LYNDA M. LOVEJOY, COMMISSIONER

E. SHIRLEY BACA, COMMISSIONER

NEW MEXICO WATER QUALITY CONTROL COMMISSION

NEW MEXICO WATER QUALITY CONTROL COMMISSION NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.7.4 NMAC - UTILITY OPERATOR CERTIFICATION REGULATIONS

The State of New Mexico, through its Water Quality Control Commission (Commission), hereby gives notice that the Commission will hold a public hearing following the Commission's regular business meeting on Tuesday, June 13, 2006 at 9:00 a.m., and continuing thereafter as necessary, in the New Mexico State Capital Building, Room 321, Santa Fe, New Mexico concerning proposed amendments to **Utility Operator Certification Regulations (20.7.4 NMAC)**.

The New Mexico Environment Department, proposes amendments to 20.7.4 NMAC to conform to the Utility Operator Certification Act, Section 61-33-1-10, NMSA 1978. The New Mexico Environment Department filed the proposed amendments with the Commission on February 28, 2006; the matter was docketed as WQCC 06-01 (R).

All proposed amendments and other documents related to the hearing may be reviewed during regular business hours in the office of the Commission: Joyce Medina, WQCC Administrator Harold Runnels Building, 1190 St. Francis Drive, N2150 Santa Fe, New Mexico, 87505 (505) 827-2425, Fax (505) 827-2836

The proposed amendments have been posted to the New Mexico Environment Department/Facility Operations Section webpage at <http://www.nmenv.state.nm.us/swqb/FOT/index.html>. Parties interested in receiving a hardcopy should contact Mike Coffman by email at: mike.coffman@state.nm.us or by phone at (505) 827-0108. Persons providing testimony for the New Mexico Environment Department will be Mike Coffman of the Facility Operations Section

and Violette Valerio-Hirschfeld of the Drinking Water Bureau. Testimony will be approximately 4 hours.

Notices of Intent (NOI) to present technical testimony during the hearing must be filed with the Commission by 5:00 p.m. on May 26, 2006, and should reference docket number WQCC 06-01 (R). Pursuant to a pre-hearing order setting out hearing guidelines, all technical testimony must be set out in full narrative fashion and attached to the NOI with all exhibits to be offered for admission. Testimony and exhibits not appended to the NOI will be excluded by the Hearing Officer.

The hearing will be conducted in accordance with NMSA 1978, Section 74-6-6 of the Water Quality Act; the Guidelines for Water Quality Control Commission Regulation Hearings; and the specific Hearing Guidelines entered by the Hearing Officer appointed for this matter, Felicia Orth. Ms. Orth can be reached by contacting Ms. Medina. A copy of the Guidelines for Water Quality Control Commission Regulation Hearings and the Hearing Guidelines may be obtained from Ms. Medina; they are also available on the Commission's web page at www.nmenv.state.nm.us/wqcc.

Any member of the general public may present non-technical testimony and exhibits at the hearing. No prior notification is required. A member of the general public may submit a written non-technical statement for the record in lieu of oral testimony at the hearing at any time prior to the close of the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by May 26, 2006, at the New Mexico Environment Department, Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331. Copies of the proposed amendments will be available in alternative forms, e.g. audiotape, if requested by May 26, 2006.

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

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an emergency amendment to 19.31.4 NMAC, Sections 9, 11, 14, 16, effective 3-31-06.

19.31.4.9 SEASON DATES:

A. General seasons: All trout and warm waters in New Mexico shall be open for the taking of game fish from April 1 through March 31 of the effective years, with the following exceptions:

(1) Special waters

(a) The following waters shall be open between 12 noon March 1 through 12 noon October 31: McAllister lake, upper and lower Charette lakes, Maxwell lakes 13 and 14, and Clayton lake.

(b) All waters in the Valle Vidal (Vermejo tract of the Carson national forest) shall be open from July 1 through December 31.

(c) Bonito lake shall be open from April 1 through November 30.

(d) Santa Cruz lake shall be open from April 1 through October 31.

(e) Burns Canyon lake at Parkview trout hatchery shall be open from May 1 through October 31.

(f) Red River city ponds shall be open from March 1 through November 15.

(2) Waters on national wildlife refuges waters on U. S. national wildlife refuges shall be open for the taking of game fish in accordance with regulations of the U. S. fish and wildlife service; provided that season dates shall be from April 1 through March 31, on those national refuges for which the fish and wildlife service has not regulated season dates.

B. Special Kokanee salmon seasons, dates, and location

(1) The following waters shall be open October 1 through December 31 for the special kokanee salmon season: Abiquiu reservoir, Chama river from El Vado lake upstream to the west boundary of the Rio Chama wildlife and fishing area, Eagle Nest lake, El Vado lake, and Navajo lake.

(2) Heron lake and the Pine river shall be open for the special Kokanee salmon season from ~~November 15~~ the second Friday in November through December 31.

(3) Heron lake, including the Willow creek tributary, and the Pine river shall be closed to Kokanee salmon fishing between October 1 and ~~November 14~~ the second Thursday of November.

[19.31.4.9 NMAC - Rp 19.31.4.9 NMAC,

4-15-02; A, 10-31-02; A/E, 3-31-06]

19.31.4.11 DAILY BAG AND POSSESSION LIMITS:

A. Trout

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

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

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

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

(c) The daily bag limit for lake trout shall be 2 trout and no more than 4 lake trout shall be in possession.

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

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

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

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

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

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

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

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

(e) At Conservancy park/Tingley beach in Albuquerque: the southernmost pond shall be catch-and-release only.

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

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

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

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

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

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

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

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

(h) In Taos county: the Red River city ponds.

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

B. Warm-water fishes: The daily bag limit for game fish other than trout shall be as listed below and the possession limit shall be twice the daily bag limit.

(1) striped bass 3 fish;

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

(3) walleye 5 fish;

(4) crappie 20 fish;

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

(6) northern pike 10 fish;

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

(8) yellow perch 30 fish;

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

C. The following exception shall apply:

(1) At Conservancy park/Tingley

beach in Albuquerque; lake Van (Chaves county); Oasis state park; Greene Acres lake (Curry county); Burn lake (Dona Ana county); Escondida lake (Socorro county); McGaffey lake (McKinley county); Bataan lake (Eddy county); Chaparral lake (Lea county); Bosque Redondo (De Baca county); Carrizozo lake (Lincoln county); Green Meadow lake; Eunice lake; and Jal lake (Lea county): the daily bag limit for channel catfish will be 2 fish and the possession limit shall be twice the daily bag limit.

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

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

[19.31.4.11 NMAC - Rp 19.31.4.11 NMAC, 4-15-02; A, 10-31-02; A, 6-25-03; A, 8-13-04; A, 5-13-05; A, 9-15-05; A/E, 01-03-06; A, 1-31-06; A/E, 3-31-06]

19.31.4.14 WATERS WITH AGE OR HANDICAPPED USE RESTRICTIONS:

A. Only persons under 12 years of age may fish in the following waters: Shuree kids' ponds on Valle Vidal (Vermejo tract-Carson national forest); valley improvement association ponds at Belen, Young pond in Las Cruces, Harris pond in Las Vegas, Spring river park in Roswell, Grants city pond, and the Brood pond at Seven Springs state fish hatchery.

B. Only persons under 12 years of age, those 65 years and over, and handicapped persons may fish in the designated Red River hatchery pond located at the Red River state fish hatchery, Blue Hole park pond (formerly Santa Rosa seniors pond), Estancia park lake at Estancia, and in ponds located in Harry McAdams park.

C. Only handicapped persons and those under 12 years of age may fish in the ~~Red River city ponds, and in the~~ posted small pond at Cowles.

D. Olympic pond: Only persons under 12 years of age and those 65 years and over may fish in Olympic pond located at Angel Fire.

E. Burns canyon lake: Only persons 14 years of age and under, those 65 years and over, handicap persons, or up to two parents/guardians in direct supervision of a child or children 14 years of age and under who are fishing, may fish in Burns canyon lake located near Parkview hatchery.

F. Conservancy park/Tingley beach kids' pond: Only persons 12 years of age and under may fish in Conservancy park/Tingley beach kids' pond in Albuquerque.

G. Red River city east

kids' pond: Only handicapped persons and those 12 years of age and under may fish in Red River city east kids' pond.

[19.31.4.14 NMAC - Rp 19.31.4.14 NMAC, 4-15-02; A, 10-31-02; A, 8-13-04; A, 5-13-05; A/E, 01-03-06; A/E, 3-31-06]

19.31.4.16 CLOSED WATERS:
A. Waters closed to fishing

(1) In Catron county: Big Dry creek from Golden link cabin upstream through its headwaters;

(2) In Catron county: Iron creek from the "barrier" upstream to its headwater in the Gila wilderness;

(3) In Catron county: Little creek from the "barrier" upstream through all tributaries;

(4) In Catron county: McKenna, and Spruce and Sacaton creeks;

(5) In Catron and Sierra counties: Main Diamond creek above the point of confluence with east fork of Diamond creek and the south Diamond creek drainage;

(6) In Colfax county: a posted area lying within 300 feet of Eagle Nest dam, which is closed to entry;

(7) In Colfax county: a posted area of Stubblefield and Laguna Madre lakes lying within 150 feet of the outlet structures;

(8) In Grant county: east fork of Mogollon creek upstream of waterfalls near FS Trail No. 153, including Trail canyon, south fork Mogollon, and Woodrow canyon creeks;

(9) In Grant county: McKnight creek;

(10) In Grant county: Sheep coral creek;

(11) In Lincoln county: posted areas of Alto reservoir and Bonito lake near the outlets;

(12) In Catron county: White creek from waterfall near White creek cabin upstream to headwaters;

(13) In Grant county: Black canyon from "barrier" upstream to headwaters, including Aspen canyon and Fall canyon creeks.

(14) In Catron county: West fork of the Gila river and all tributaries above waterfalls between FS Trail No. 151 crossing of the West fork of the Gila river near White creek cabin and FS Trail No. 151 crossing of the West fork of the Gila river near Lilley canyon.

B. Taking fish from hatchery waters: No person shall take or attempt to take fish from the waters of any fish hatchery or rearing ponds owned and operated by state or federal agencies. During open season, however, angling for trout shall be permitted in the Glenwood pond at the Glenwood state fish hatchery, Red River hatchery pond at the Red River

state fish hatchery, Brood pond at Seven Springs hatchery, and Burns canyon lake at Parkview state fish hatchery. Additionally, the director may expressly authorize other limited fishing at the state's fish hatcheries based on management needs.

C. Taking fish from or through the ice: Fish may be taken from or through the ice except on the following waters: Santa Cruz lake, Monastery lake, and Springer lake.

[19.31.4.16 NMAC - Rp 19.31.4.16 NMAC, 4-15-02; A, 6-25-03; A/E, 3-31-06]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an emergency amendment to 19.31.10 NMAC, Section 18, effective 3-31-06.

19.31.10.18 FISHING:

A. Angling: Game fish may be taken by angling in all waters that are open for fishing.

B. Trotlines:

(1) It is unlawful for any person to set more than one trotline at a time. It is unlawful to tie or join together trotlines belonging to two or more persons.

(2) It is unlawful for trotlines to have more than 25 hooks.

(3) A person fishing with a trotline shall personally visit and inspect the trotline at least once every 24 hours. Failure to check a trotline every 24 hours is a violation of this paragraph.

(4) It is unlawful for anyone to tamper with another's trotline.

(5) A person fishing with a trotline shall attach to it an identification tag that is visible above the water line. The identification tag shall bear the fisherman's name, address, fishing license number, and the date the trotline was set. An unlicensed fisherman under 12 years of age shall also list his date of birth.

(6) It is unlawful to set or use a trotline in trout waters, with the following exceptions: Abiquiu lake, Chama river downstream from the northern boundary of the Monastery of Christ in the desert, Gila river downstream from its junction with its east fork, Navajo Lake and the Rio Grande downstream from its junction with the Chama river.

(7) Any conservation officer or other officer authorized to enforce the game laws may seize and confiscate any trotlines not set in accordance with this subsection.

C. Illegal device or substance: It is unlawful to use any device or substance capable of catching, stupefying, or killing fish except as permitted by regu-

lation.

D. Bait: It is unlawful to use protected fish, live bullfrogs, or live bullfrog tadpoles as bait in any waters containing protected species. **EXCEPTION:** the genus Lepomis may be used as cut bait; [and] roe, viscera, and eyes of legally taken game fish may be used as bait; and bullfrogs and bullfrog tadpoles may be used as cut bait. Live bullfrogs may not be in possession while fishing.

E. Use of bait fish:

(1) It is unlawful to use gar (*Lepisosteus* spp.) and goldfish (*Carassius auratus*) for bait fish in all waters.

(2) It is unlawful to use live common carp (*Cyprinus carpio*), river carpsucker (*Carpoides carpio*), and smallmouth buffalo (*Ictiobus bubalus*) in all waters. However, these species may be used as cut bait in any water where bait may be used.

(3) It is unlawful to use bait fish in all trout waters except fathead minnows and red shiners may be used in the following trout waters: Abiquiu—Clayton lake, Jackson lake, lake 13 (Maxwell refuge), Navajo lake, Caballo lake, the Rio Grande downstream of the Taos junction bridge (excluding the special trout water described in 19.31.4.11 NMAC), Power dam lake, and the Animas river.

(4) It is unlawful to use any bait fish in Bitter lake national wildlife refuge and Bottomless lakes state park.

(5) Bait fish may be used in all other waters with the following restrictions:

(a) In the Gila river and San Francisco river drainages only fathead minnows may be used.

(b) In the Pecos river drainage only fathead minnows and red shiners may be used.

(c) In the Rio Grande drainage only fathead minnows, red shiners, and shad may be used except in Elephant Butte and Caballo where golden shiners are also allowed.

(d) In the Canadian river drainage only fathead minnows, red shiners, and shad may be used.

(e) In the San Juan river drainage only fathead minnows and red shiners may be used.

F. Release of bait fish: It is unlawful to release any bait fish into any water containing game fish.

G. Eradication of fish: In waters where fish are being eradicated or where water shortage warrants reduction of fish numbers, the director may permit licensed fishermen and unlicensed persons under 12 years of age to take and possess game fish in numbers exceeding current bag and possession limits. In granting such permission, the director may specify bag and possession limits and manner and method of

taking for such waters.

H. Bait fish for personal use: Licensed fishermen and unlicensed persons under 12 years of age may take minnows and nongame fish for personal use only. They may use angling, nets, traps, and seines. All protected species of fish taken in seines, nets, and traps shall be immediately returned to the water.

I. Illegal taking of bait fish: It is unlawful for licensed minnow dealers to take bait fish for sale from waters not specified on their licenses. They may take these fish only by use of traps, seines, and/or cast nets, as specified on their licenses. All protected species of fish taken in such traps, seines, or nets shall be immediately returned to the water from which they were taken.

J. Methods for taking bait fish: Bait fish may be taken in waters containing game fish by angling, spears, and arrows.

K. Permits for taking bait fish: The director may issue permits for the use of nets, seines, traps, or cast nets in taking bait fish in waters containing protected species of fish. The permit shall specify methods of taking, places for taking, and duration of the permit. The permittee shall report monthly the species, numbers and poundage of nongame fish taken during the preceding month.

L. [Reserved]

M. [Reserved]

N. Number of fishing poles: It is unlawful to angle with more than one pole without having a current two rod validation or stamp affixed on the current license. It is unlawful under any circumstance to angle with more than two poles.

O. Exceeding daily bag limit: It is unlawful to exceed the daily bag limit and/or possession limit of any protected fish species, as specified in Title 19, Chapter 31, Part 4.

P. Snagging game fish: It is unlawful to snag game fish except during the special kokanee salmon season as specified in Title 19, Chapter 31, Part 4.

Q. Chumming: It is unlawful to "CHUM" except in the following waters: All waters designated as warm waters; Gila river downstream from its junction with its east fork; Rio Grande downstream from its junction with the Chama river, excluding the special trout water below Elephant Butte dam described in Subsection A of 19.31.4.11 NMAC.

R. Special trout waters: Only barbless lures or flies may be used in the special trout waters designated in Subsection A of 19.31.4.11 NMAC, except in the special trout water on the Rio Grande below Elephant Butte dam in which soft plastic lures may also be used.

S. Attracting or concentrating fish:

(1) **Artificial lights:** Use of artificial lights is permitted for attracting game fish.

(2) **Disturbing the bottom:** It is unlawful in all special trout waters defined in Subsection A of 19.31.4.11 NMAC, to disturb or dislodge aquatic plant growth, sediment, or rocks for the purpose of attracting or concentrating fish. It shall also be unlawful to angle in the immediate vicinity where such disturbance has occurred.

T. Spears, gigs, and arrows:

(1) Spears, gigs, and arrows with barbs that are discharged beneath the water may be used ~~in all waters open to fishing~~ only in lakes and reservoirs open to fishing.

(2) In addition, during the season established by Subsection B of 19.31.4.9 NMAC, kokanee salmon may be taken by the use of spears, gigs, and arrows with barbs that are discharged above or below the water and not driven by explosives, gas, air, or crossbow, except in the Pine river where spears, gigs, and arrows are prohibited.

U. Exemption of two rod validation requirement: A two rod validation or stamp is not required in warm waters as defined in Subsection C of 19.31.4.8 NMAC until April 1, 2004.

[6-25-90; 4-1-95; 19.31.1.18 NMAC - Rn, 19 NMAC 31.1.18, 4-14-2000; 19.31.10.18 NMAC - Rn, 19.31.1.18 NMAC, 9-29-00; A 10-31-02; A 6-25-03; A, 01-17-06; A/E, 3-31-06]

NEW MEXICO OFFICE OF GUARDIANSHIP

**TITLE 9 HUMAN RIGHTS
CHAPTER 4 PERSONS WITH
DISABILITIES
PART 21 GUARDIANSHIP
SERVICES**

9.4.21.1 ISSUING AGENCY: New Mexico Developmental Disabilities Planning Council Office of Guardianship (NMDDPC office of guardianship). [9.4.21.1 NMAC - N, 04/14/2006]

9.4.21.2 SCOPE: These rules apply to all New Mexico residents and other New Mexico state agencies requesting guardianship services from the NMDDPC office of guardianship and other private businesses that contract directly with the NMDDPC office of guardianship to provide guardianship services. [9.4.21.2 NMAC - N, 04/14/2006]

9.4.21.3 STATUTORY AUTHORITY: Section 28-16B-1 through

28-16B-6 NMSA 1978 permits the NMD-DPC office of guardianship to promulgate rules in accordance with the State Rules Act to carry out the provisions of the Office of Guardianship Act.

[9.4.21.3 NMAC - N, 04/14/2006]

9.4.21.4 DURATION: Permanent.

[9.4.21.4 NMAC - N, 4/14/2006]

9.4.21.5 EFFECTIVE DATE: April 14, 2006, unless a later date is cited at the end of a section.

[9.4.21.5 NMAC - N, 4/14/2006]

9.4.21.6 OBJECTIVE: The objective of this rule is establish standards for the provision of guardianship services to income and resource eligible incapacitated adults who are residents of the state of New Mexico, when there are no lesser forms of intervention, such as a power of attorney or surrogate decision maker, available, and to monitor contracts that provide guardianship services.

[9.4.21.6 NMAC - N, 4/14/2006]

9.4.21.7 DEFINITIONS: The following words and terms when used in this part shall have the following meanings unless the context clearly indicates otherwise.

A. "Complaint" means an allegation of wrong doing by a contractor or a violation of the contract with the office of guardianship and the contractor, including but not limited to:

- (1) failure to provide appropriate services;
- (2) violations of the civil rights of the wards; and
- (3) abuse, neglect or exploitation of the ward.

B. "Court" means the district court or family division of the district court where such jurisdiction is conferred.

C. "Contractor" means an entity under a contract with the NMD-DPC office of guardianship to provide some type of guardianship service; i.e., attorneys, court visitors, or guardians.

D. "Emergency" means any situation in which the physical or mental condition, health status or safety of an incapacitated person is at significant risk due to the unavailability of a substitute decision maker.

E. "Functional impairment" means an impairment that is measured by a person's inability to manage his/her personal care or the person's inability to manage his/her estate or financial affairs or both.

F. "Grievance" means an allegation of wrongdoing by the office of guardianship or its staff, including but not

limited to:

- (1) failure to appropriately monitor and supervise contractors;
- (2) violations of the due process rights of the ward or contractor; and
- (3) failure to comply with complaint procedures as set forth herein.

G. "Guardian" means a person who has qualified to provide for the care, custody or control of the person of an incapacitated person pursuant to testamentary or court appointment, but excludes one who is a guardian ad litem.

H. "Guardian ad litem" means an attorney appointed by the court to represent and protect the interests of an incapacitated person in connection with litigation or any other court proceeding.

I. "Incapacitated person" means any person who is found by a court to be impaired to the extent that he/she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person or management of his/her affairs.

J. "Inability to manage his/her personal care" means the inability, as evidenced by recent behavior, to meet one's needs for mental or physical health treatment or care resulting in personal neglect of medical care, nutrition, shelter, hygiene or safety so that physical injury, illness or disease has occurred or is likely to occur in the near future.

K. "Interested person" means any person who has an interest in the welfare of the alleged incapacitated adult to be protected, and may include the NMD-DPC office of guardianship.

L. "Least restrictive form of intervention" means only those limitations necessary to provide the needed care and rehabilitative services, and that the adjudicated incapacitated adult shall enjoy the greatest amount of personal freedom and legal rights.

M. "Letters" means letters of guardianship, which provide proof that the guardian of the adjudicated incapacitated adult is a court appointed guardian.

N. "Limited guardian" means a guardian appointed by the court to exercise limited authority for the incapacitated person as specified in the court order.

O. "Limited Guardianship" means the court shall appoint a limited guardian if it determines that the incapacitated person is able to manage some but not all aspects of his/her personal care. The court shall specify those powers that the limited guardian shall have and may further restrict each power so as to permit the incapacitated person to care for himself commensurate with his/her ability to do so. A person for whom a limited guardian has been appointed retains all legal rights except those that have been specifi-

cally granted to the limited guardian by the court.

P. "Petitioning attorney" means the attorney who files a petition on behalf of the interested person and represents the interested person and identifies the proposed guardian.

Q. "Plenary guardian" or "full guardian" means a guardian appointed by the court to exercise all legal rights and powers of the incapacitated person after the court has found that the incapacitated person lacks the capacity to carry out all the tasks necessary to care for his or her person.

R. "Plenary guardianship" or "full guardianship" means the most restrictive form of guardianship and is authorized by a court only when an alleged incapacitated person is found to lack capacity to carry out all of the tasks necessary to care for his or her person and only after less restrictive options have been ruled out.

S. "Power of attorney (POA)" means a document created while a person (principal) has capacity, which grants revocable authority to another person (agent) to act on behalf of the principal in specified areas.

(1) **"Durable POA"** means the document has language which indicates that it will not be affected by any subsequent incapacity of the principal. Thus, it is considered to be a durable power of attorney.

(2) **"Springing POA"** means the document contains language which indicates that it only becomes effective upon the incapacity of the principal. Thus, it is considered to be a springing power of attorney.

T. "Contracted guardianship providers" means some private/public entity under contract with the NMDDPC office of guardianship to act as guardian for an adjudicated incapacitated person who has no family or friends willing, able and appropriate to be his/her/her guardian.

U. "RFP" means the request for proposal which is the process under State Procurement Code where an individual or other non-state agency entity may be awarded a contract to provide services.

V. "Substitute judgment" means the standard of decision making for guardians of adults that requires the guardian to ascertain what the decision would have been if the ward were able to make the decision themselves and then make the decision based upon that knowledge.

W. "Surrogate decision maker" means the individual authorized by the Uniform Health Care Decisions Act to make health care decisions for a patient.

X. "Temporary

guardian" means a person appointed by the court at an expedited hearing to serve as guardian for an alleged incapacitated person. The temporary guardian has specific powers granted by the court to prevent harm to the alleged incapacitated person during the time of his or her appointment.

Y. "Temporary guardianship" means that when a petition for guardianship has been filed alleging that immediate and irreparable harm will result to the alleged incapacitated person if the normal notice and time requirements of a guardianship proceeding are kept and the court may appoint a temporary guardian for the alleged incapacitated person without notice to the alleged incapacitated person. The temporary guardianship shall last not more than sixty days although the court can extend the guardianship for an additional thirty days. A hearing shall be held to determine whether the guardianship will be permanent.

Z. "Testamentary guardian" means a guardian appointed by will or other writing of a parent or spouse guardian pursuant to the procedures outlined in NMSA 45-5-301.

AA. "Testamentary guardianship" means a guardianship that is passed from a spouse or parent guardian to another person through a will or other writing pursuant to the procedures outlined in NMSA 45-5-301.

BB. "Treatment guardian" means a person, appointed by the court pursuant to the Mental Health and Developmental Disabilities Code (NMSA Section 43-1-15), who can make substitute decisions for an incapacitated person regarding mental health treatment, including the use of psychotropic medications, for a specified period of time, not to exceed one year per court appointment.

CC "Treatment guardianship" means a form of guardianship tailored to grant the guardian authority to make decisions regarding mental health treatment for individuals determined by the court to lack the capacity to provide informed consent for mental health treatment.

DD. "Qualified health care professional" means a physician, psychologist, nurse practitioner or other health care practitioner whose training and expertise aid in the assessment of functional impairment;

EE. "Visitor" or "court visitor" means a person who is an appointee of the court who has no personal interest in the proceeding and who has been trained or has the expertise to appropriately evaluate the needs of the person who is allegedly incapacitated. A "visitor" may include, but is not limited to, a psychologist, social worker, developmental incapacity

professional, physical and occupational therapist, an educator and a rehabilitation worker.

FF. "Ward" means an incapacitated person for whom a guardian has been appointed.

[9.4.21.7 NMAC - N, 4/14/2006]

9.4.21.8 ELIGIBILITY:

A. The alleged incapacitated person must be eighteen (18) years old to qualify for services from the NMDDPC office of guardianship.

B. The alleged incapacitated person must be financially eligible for institutional Medicaid.

C. The alleged incapacitated person must be a legal resident of New Mexico

D. The alleged incapacitated person must be recently assessed by a qualified health care provider who shall submit a report in writing to the court which:

(1) describes the nature and degree of the alleged incapacitated person's incapacity, if any, and the level of the alleged incapacitated person's intellectual, developmental and social functioning; and

(2) observations, supporting data, regarding the alleged incapacitated person's ability to make health care decisions and manage the activities of daily living. NMSA Section 45-5-303D (1993)

[9.4.21.8 NMAC - N, 4/14/2006]

9.4.21.9 PRIORITIZATION OF SERVICE:

A. In general, service will be provided based on the date of application.

B. When service requests exceed capacity or availability, individuals in the categories noted in Subparagraph C, below will be prioritized to receive the first available services, as appropriate.

C. Priority categories (all have equal prioritization):

(1) adult protective services (APS) referrals;

(2) Jackson class members;

(3) emergencies, with no family members or friends willing, able and appropriate to serve as guardian;

(4) military veterans.

[9.4.21.9 NMAC - N, 4/14/2006]

9.4.21.10 DESIGNATION OF SERVICE AREA: Services are to be provided statewide through the judicial districts. Petitions for guardianship in the state of New Mexico must be filed in the judicial district where the alleged incapacitated person resides. The NMDDPC office of guardianship recognizes the individual sovereignty of each tribe and pueblo in the state

of New Mexico.

[9.4.21.10 NMAC - N, 4/14/2006]

9.4.21.11 SERVICES TO BE PROVIDED BY THE NMDDPC OFFICE OF GUARDIANSHIP:

A. The provision of probate code guardianship services to income eligible, incapacitated persons as follows:

(1) contracting with attorneys to petition for the appointment of probate code guardians;

(2) contracting with entities/individuals to serve as probate code guardians;

(3) contracting with entities/individuals to serve as probate code guardians;

(4) contracting with visitors (court visitors) in probate code proceedings;

(5) contract with attorneys to serve as guardian ad litem in probate court proceedings;

(6) identifying available persons to serve as mental health treatment guardian;

(7) contract to provide for recruitment and training for persons interested in serving as mental health treatment guardians;

(8) providing information regarding the duties and responsibilities of probate code guardianship, including less restrictive alternatives; and

(9) investigating and addressing complaints made against the office of guardianship contractors.

B. The provision of recruitment and training for persons interested in serving as guardians.

C. The provision of information regarding the duties and responsibilities of guardianship, including less restrictive alternatives.

D. The provision of investigative measures/ processes to address complaints made against entities providing contracted guardianship services.

[9.4.21.11 NMAC - N, 4/14/2006]

9.4.21.12 REQUIREMENTS OF CONTRACTED GUARDIANSHIP PROVIDERS:

A. meet RFP Requirements when published;

B. meet office of guardianship requirements including but not limited to;

C. comply with all the terms of one's contract;

D. agree to be paid at the state approved rate;

E. must comply with the Caregivers Criminal History Screening Act (See NMSA, 1978 29-17-2);

F. must become a registered guardian within 18 months after the award of a contract;

G. assure the civil rights of

the incapacitated persons;

H. guarantee access to all records on incapacitated persons assigned through the office of guardianship; and

I. comply with the office of guardianship individual caseloads, standards of practice and ethics.

[9.4.21.12 NMAC - N, 04/14/2006]

9.4.21.13 REFERRAL PROCESS: Any person interested in the well being of an alleged incapacitated person, and seeking guardianship services to be paid for by the NMDDPC office of guardianship must call or complete a referral process form from NMDDPC office of guardianship.

[9.4.21.13 NMAC - N, 04/14/2006]

9.4.21.14 COMPLAINTS AGAINST A CONTRACTED PROVIDER WITH THE OFFICE OF GUARDIANSHIP:

A. A complaint shall be made in writing by the client or another person on behalf of the client, including but not limited to a friend, relative, advocate, or other interested person, such as a caregiver or provider. An exception to the requirement that a complaint shall be made in writing shall be made if a reasonable accommodation is necessary.

B. With the exception set forth in Subsection E of 9.4.21.14 NMAC, below, all individuals registering a complaint shall first try and resolve their complaints against a contracted provider with the office of guardianship.

C. If the complaining party and contractor are unable to reach a resolution or agreement then the complaining party may file a complaint with the office of guardianship and may file a copy with the contractor.

D. Complaining parties may file a simultaneous complaint against a contractor with the office of guardianship. The office of guardianship may choose to postpone intervention pending completion of the contractor's grievance process.

E. Exceptions shall be made to Subsections A & B of 9.4.21.14 NMAC when the office of guardianship has reason to believe that an emergency situation exists or that a delay of the investigation could result in harm to the ward or retaliation by the contractor.

F. The complaint should include as much information as possible, including the following:

(1) name of the incapacitated person;

(2) name of the contact information for the individual making the complaint on behalf of the incapacitated person;

(3) relationship of the complaining party to the incapacitated person;

(4) name of the individual contractor against whom the complaint is being made;

(5) name of the party who has attempted to resolve the complaint, if known;

(6) details of the complaint including the alleged wrongdoing, the involved parties and when and where the wrongdoing occurred;

(7) where sufficient information is provided to allow the office of guardianship to continue the investigation, the office of guardianship will make further inquiries if possible or discontinue the investigation; justification for closure of investigations based on insufficient information will be documented.

G. The complaint made to the office of guardianship may be submitted by mail or fax unless a reasonable accommodation is necessary.

H. In order to preserve the confidentiality of the incapacitated person, the complaint shall be submitted to: The NMDDPC Office of Guardianship; 810 W. San Mateo, Ste. C; Santa Fe, NM 87505-4144; (505) 476-7324; (505) 476-7322 (Fax).

I. Upon receipt of a verbal or written complaint, the office of guardianship shall:

(1) acknowledge receipt of a the complaint in writing;

(2) notify all parties involved; and
(3) initiate an investigation within 15 working days of the filing of the complaint with the office of the guardianship.

J. A determination decision shall be made within 60 working days after the complaint is filed with the office of guardianship unless a shorter time frame is required to protect the ward.

K. A determination decision shall include:

(1) the decision made;

(2) the basis for the decision;

(3) notice of the complaining party's right to grieve the actions taken by the office of guardianship related to the investigational process pursuant to 9.4.21.15 NMAC.

(4) further actions to be taken by the office of guardianship and the contractor which may include, but shall not be limited to:

(a) the institution of a corrective action plan and the contractor; and

(b) a referral of the complaint to other agencies for investigation and prosecution.

L. Persons objecting to the process of the complaint investigation taken by the office of guardianship may file a grievance against the office of guardianship with the New Mexico human services department pursuant to 9.4.21.15 NMAC

below.

M. None of these regulations restrict the due process rights of an individual to request a less restrictive guardianship or to overturn the decision of a guardianship contractor or the office of guardianship through a court of law. [9.4.21.14 NMAC - N, 04/14/2006]

9.4.21.15 GRIEVANCES AGAINST THE OFFICE OF GUARDIANSHIP: Grievances against the office of guardianship or a staff member of the office of guardianship shall be filed with and investigated by the human services department, by sending a complaint in writing directly to the secretary of human services department with a copy sent to the director of the office of guardianship. (NMSA 2003 28-16B-6E) [9.4.21.15 NMAC - N, 04/14/2006]

9.4.21.16 TRANSFER OF WARD FROM A PRIVATE PAY GUARDIANSHIP TO A PROGRAM FUNDED THROUGH THE OFFICE OF GUARDIANSHIP:

A. Purpose: It is not the intention of the office of guardianship to create a hardship on any private pay provider of guardianship services in cases where resources are being exhausted, but in order to work in a more collaborative fashion these procedures are being developed to move the private pay wards into the state funded program under the office of guardianship in a timely and reasonable manner to minimize the impact on the ward

B. Requirements: In order to affect a ward's transfer to a program funded through the office of guardianship, the private pay guardianship must do the following:

(1) obtain a request for transfer form from the office of guardianship and fill it out completely (failure to do so will result in delay of transfer);

(2) the filing of the request for transfer from with the office of guardianship does not guarantee the request will be granted;

(3) to be eligible for transfer into this program, a ward must meet the standards for qualifying for institutional medicaid and medicaid in New Mexico, (if appropriate);

(4) appropriate residential placement must be secured by the private pay guardians for the ward prior to transfer to office of guardianship;

(5) all medical information regarding the ward must be provided to the new guardian for the state;

(6) any original legal documents such as birth certificates, social security cards, medicaid cards, etc. shall be turned

over to the new guardian upon appointment; (7) legal fees for the transferring of the case must be paid by the private provider (this would include the closing of the conservatorship);

(8) if the ward has a conservatorship and no assets, then the conservatorship must be closed prior to transfer; if the conservatorship cannot be closed for some appropriate reason, then a complete accounting must be given to the office of guardianship at the time of transfer;

(9) there must be a burial policy for the ward; ownership is to be transferred by the private provider to the office of guardianship's appointed guardian;

(a) these transfers will not be given any priority status;

(b) the private pay provider will agree to cooperate with the new guardian on matters, including, but not limited to, providing any information the state provider might need, which may be in the possession of the private guardian;

(10) these transfers will be effectuated according to NMSA 1978 Section 45-5-307.

[9.4.21.16 NMAC - N, 04/14/2006]

9.4.21.17 REQUESTS FOR INFORMATION:

A. Any requests for non-confidential information will be treated as a request for inspection of public records under the state inspection of public records act. (NMSA 1978, Section 14-2-1 through 14-2-12).

B. Any requests for confidential information or client specific information will be handled according to state and federal law. (NMSA 2003 28-16B-4B). [9.4.21.17 NMAC - N, 04/14/2006]

HISTORY OF 9.4.21 NMAC:
[RESERVED]

NEW MEXICO BOARD OF PHARMACY

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 19 PHARMACISTS PART 31 EMERGENCY PROVISIONS

16.19.31.1 ISSUING AGENCY: Regulation and Licensing Department - Board of Pharmacy. [16.19.31.1 NMAC - N/E, 04/03/06]

16.19.31.2 SCOPE: All pharmacies, resident and non-resident, as defined in 61-11-2(S), (Y) NMSA 1978, and all persons or entities that own or operate, or are employed by, a pharmacy for the purpose of

providing pharmaceutical products or services.

[16.19.31.2 NMAC - N/E, 04/03/06]

16.19.31.3 STATUTORY AUTHORITY: Section 61-11-6.A.(1) authorizes the Board of Pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act, Sections 61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978. Section 61-11-6.A.(3) provides for the issuance and renewal of licenses for pharmacists. Section 61-11-6.A. NMSA 1978 authorizes the Board of Pharmacy to register and regulate qualifications, training and permissible activities of pharmacy technicians. Section 61-11-6.A.(6) NMSA 1978 requires that the Board of Pharmacy provide for the licensing of retail pharmacies and nonresident pharmacies and for the inspection of their facilities and activities. [16.19.31.3 NMAC - N/E, 04/03/06]

16.19.31.4 DURATION: Permanent. [16.19.31.4 NMAC - N/E, 04/03/06]

16.19.31.5 EFFECTIVE DATE: April 3, 2006, unless a later date is cited in the history note at the end of a section. [16.19.31.5 NMAC - N/E, 04/03/06]

16.19.31.6 OBJECTIVE: The objective of Part 31 of Chapter 19 is to ensure the safe and competent delivery of quality pharmaceutical products and services to the public by establishing standards for the operation of pharmacies, including but not limited to minimum space requirements and standards for equipment, accessories, personnel, dispensing, labeling and advertising during emergency situations. [16.19.31.6 NMAC - N/E, 04/03/06]

16.19.31.7 DEFINITIONS: The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

A. Emergency situation - and emergency caused by a natural or man-made disaster or any other exceptional situation that causes and extraordinary demand for pharmacist services.

B. Sponsoring pharmacy - a pharmacy licensed by the board in which the emergency temporary pharmacist will practice.

C. State - One of the 50 United States of America, the District of Columbia, and Puerto Rico. [16.19.31.7 NMAC - N/E, 04/03/06]

16.19.31.8 EMERGENCY TEMPORARY PHARMACIST LICENSE:

A. Emergency temporary pharmacist license. In an emergency situation, the board may grant a pharmacist who holds a license to practice pharmacy in another state an emergency temporary pharmacist license to practice in New Mexico. The following is applicable for the emergency temporary pharmacist license.

(1) An applicant for an emergency temporary pharmacist license under this section must:

(a) hold a current pharmacist license in another state and that license and other licenses held by the applicant in any other state may not be suspended, revoked, canceled, surrendered, or otherwise restricted for any reason; and

(b) be sponsored by a pharmacy with an active license in New Mexico.

(2) To qualify for an emergency temporary pharmacist license, the applicant must submit an application including the following information:

(a) name, address, and phone number of the applicant;

(b) name and license number of the pharmacist-in-charge of the sponsoring pharmacy;

(c) name and license number of the sponsoring pharmacy; and

(d) any other information that is required by the board.

(3) An emergency temporary pharmacist license shall be valid for a period as determined by the executive director of the board not to exceed six months. The executive director, in his/her discretion, may renew the license for an additional six months, if the emergency situation still exists.

(4) The board will notify the sponsoring pharmacy of the approval of an emergency temporary pharmacist license.

B. Limitations on practice. A holder of an emergency temporary pharmacist license:

(1) may only practice in the sponsoring pharmacy; and

(2) must notify the board in writing, prior to beginning employment in another sponsoring pharmacy.

[16.19.31.8 NMAC - N/E, 04/03/06]

16.19.31.9 PROVISIONS FOR PHARMACIST LICENSURE DURING DECLARED DISASTER:

A. Emergency provisions for license by endorsement. Pharmacist 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) other required verification will be obtained online if possible by board staff to include:

(a) current licensure status;

(b) national pharmacists data

bank;

(c) national association of boards of pharmacy disciplinary database; and

(3) nothing in this provision shall constitute a waiver of the requirements for licensure contained in 16.19.2 NMAC.

B. License expiration. Pharmacist licenses under 16.19.2 NMAC shall expire six months after issue date.

[16.19.31.9 NMAC - N/E, 04/03/06]

16.19.31.10 PROVISIONS FOR PRACTITIONER CONTROLLED SUBSTANCES REGISTRATION DURING A DECLARED DISASTER:

A. Emergency provisions for registration by endorsement. Practitioners currently possessing a temporary license issued by a New Mexico regulatory agency and possessing a current drug enforcement administration controlled substance registration in a state in which a federal disaster has been declared may be registered 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 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 will be obtained online if possible by board staff to include: current licensure status, national practitioners data banks; and

(3) nothing in this provision shall constitute a waiver of the requirements for licensure contained in 16.19.20 NMAC.

B. Registration expiration. Practitioners registrations issued under 16.19.20 NMAC shall expire six months after issue date.

[16.19.31.10 NMAC - N/E, 04/03/06]

History of 16.19.31 NMAC:
[RESERVED]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

Notice of Repeal

1.19.2 NMAC, LGRRDS, Office of the County Assessor, filed December 7, 2001 is being repealed and replaced with the new

1.19.2 NMAC, LGRRDS, Office of the County Assessor, effective April 24, 2006.

1.19.5 NMAC, LGRRDS, Office of the County Sheriff, filed December 7, 2001 is being repealed and replaced with the new 1.19.5 NMAC, LGRRDS, Office of the County Sheriff, effective April 24, 2006.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 19 LOCAL GOVERNMENT RECORDS RETENTION AND DISPOSITION SCHEDULES (LGR-RDS)
PART 2 LGRRDS, OFFICE OF THE COUNTY ASSESSOR**

1.19.2.1 ISSUING AGENCY: State Commission of Public Records - State Records Center and Archives
[1.19.2.1 NMAC - Rp, 1.19.2.1 NMAC, 04/24/2006]

1.19.2.2 SCOPE: county assessor - local government
[1.19.2.2 NMAC - Rp, 1.19.2.2 NMAC, 04/24/2006]

1.19.2.3 STATUTORY AUTHORITY: Section 14-3-18 NMSA 1978. The administrator may advise and assist county and municipal officials in the formulation of programs for the disposition of public records maintained in county and municipal offices.
[1.19.2.3 NMAC - Rp, 1.19.2.3 NMAC, 04/24/2006]

1.19.2.4 DURATION: permanent
[1.19.2.4 NMAC - Rp, 1.19.2.4 NMAC, 04/24/2006]

1.19.2.5 EFFECTIVE DATE: April 24, 2006, unless a later date is cited at the end of a section.
[1.19.2.5 NMAC - Rp, 1.19.2.5 NMAC, 04/24/2006]

1.19.2.6 OBJECTIVE: To establish a model records retention disposition schedule for the orderly management and retirement of records created and maintained by county assessor offices.
[1.19.2.6 NMAC - Rp, 1.19.2.7 NMAC, 04/24/2006]

1.19.2.7 DEFINITIONS:
A. "Administrator" means the state records administrator

(Section 14-3-2 NMSA 1978).

B. "Archives" means the state archives of the commission of public records.

C. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

D. "Local government records retention and disposition schedule" means rules adopted by the commission describing the records created and maintained by local government officials and establishing a timetable for their life cycle and providing authorization for their disposition.

E. "Microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission of public records.

F. "Non-record" means extra copies of documents kept solely for convenience of reference, stocks of publications, records not usually included within the scope of the official records of an agency or government entity, and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency; extra copies of correspondence; preliminary drafts.

G. "Public records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein (Section 14-4-2 NMSA 1978).

H. "Records custodian" means any public officer responsible for the maintenance, care or keeping of a public body's public records.

I. "Records management" means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

J. "Retention" means the period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, his-

torical or other purposes.

[1.19.2.7 NMAC - N, 04/24/2006]

1.19.2.8 ABBREVIATIONS AND ACRONYMS:

A. "CFR" means code of federal regulations.

B. "NMAC" means New Mexico administrative code.

C. "NMSA" means New Mexico statutes annotated.

D. "USC" means United States code.
[1.19.2.8 NMAC - N, 04/24/2006]

1.19.2.9 INSTRUCTIONS:

A. For records of a general administrative nature, refer to the GRRDS, General Administrative Records Retention and Disposition Schedule, (For use by Local Governments and Educational Institutions), 1.15.3 NMAC.

B. For records of a financial nature, refer to the GRRDS, General Financial Records Retention and Disposition Schedule, 1.15.5 NMAC.

C. For records of a personnel nature, refer to the GRRDS, General Personnel Records Retention and Disposition Schedule, 1.15.7 NMAC.

D. For records of a medical nature, refer to the GRRDS, General Medical Records Retention and Disposition Schedule, 1.15.8 NMAC.

E. Retention periods shall be extended until six months after all current or pending litigation, current claims, audit exceptions or court orders involving a record have been resolved or concluded.

F. Descriptions of files are intended to be evocative, not complete. For example, there will always be some documents that are filed in a file that are not listed in the description, and similarly not every file will contain an example of each document listed in the description.

G. Confidentiality is denoted for files likely to contain confidential materials, but files without a confidentiality note nonetheless may contain confidential or privileged materials, and failure to include an express confidentiality note in the description of a file does not waive the confidential or privileged nature of those materials. Refer questions concerning the confidentiality of a file or portions of a file to legal counsel for the agency.

H. Access to confidential documents and files shall be only by authorization of the records custodian, or by court order, unless otherwise provided by statute. Release of confidential documents to law enforcement and other government agencies shall only be upon specific statutory authorization or court order.

I. Records, papers or docu-

ments may be reformatted thorough microphotography. Such reformatted records shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies (Sections 14-1-5 and 14-1-6 NMSA 1978).

J. Public records placed on magnetic tapes, disks or other data processing media shall be retained for the length of time specified in records retention and disposition schedules and are subject to the same confidentiality and access restrictions as paper records. See also 1.13.70 NMAC, Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems.

[1.19.2.9 NMAC - N, 04/24/2006]

1.19.2.10-102 [RESERVED]

1.19.2.103 RESIDENTIAL REAL PROPERTY TRANSFER DECLARATION AFFIDAVIT:

A. Program: assessments
B. Maintenance system: local government preference

C. Description: records concerning the transfer of real property by deed or real estate contract. Affidavit may include property address, sellers name and mailing address, buyer's name and mailing address, physical location of property, legal description, sales information, structure type and description, signature of buyer and seller, date, notary signature, etc.

D. Retention: two years from date of affidavit

E. Confidentiality: Portions of this record may be confidential per Section 7-38-12 NMSA

[1.19.2.103 NMAC - N, 04/24/2006]

1.19.2.104 NOTICE OF VALUATION SYSTEM:

A. Program: assessments
B. Maintenance system: local government

C. Description: system used to track the net taxable value of property. Data may include property owner's name, legal description, ownership deed information, real estate contract information, uniform property card number, location number, exemptions, type and amount of exemptions, school district, property use (residential or non-residential), physical address, owner's mailing address, valuation mailing date, notice of valuation contest, distance to street, lot dimensions, acreage, square feet of building, components of dwelling, sale price information, parcel number, etc.

D. Retention: permanent

E. Hardcopy input docu-

ments: All documents used as input for *notice of valuation system* are filed in the *notice of valuation* file. Those documents include the following: *real estate contracts, plats, deeds, mortgages, etc.*

F. Hardcopy output documents: Because this is a data-based system, ad hoc reports may be generated upon request or demand. When produced, these reports are forwarded to the requesting entity. Some of these reports include valuation protests, etc.

[1.19.2.104 NMAC - N, 04/24/2006]

1.19.2.105 NOTICE OF VALUATION FILE:

A. Program: assessments
B. Maintenance system: local government preference

C. Description: notice issued to property owner regarding the net taxable value of property. Notice may include property owner's name, mailing address, legal description, uniform property card number, location number, property use (residential or non-residential), property value information, exemptions, type and amount of exemptions, school district, property use, location address, valuation mailing date, protest period end date, general information, address or ownership changes, owner signature, notice of valuation contest, distance to street, lot dimensions, acreage, square feet of building, components of dwelling, sale price information, parcel number, ground plan sketch, etc. Serves as input to the notice of valuation system.

D. Retention: permanent

E. Confidentiality: Portions of this record may be confidential per Section 7-38-4 NMSA (i.e., confidentiality of information, violations by department employees).

[1.19.2.105 NMAC - Rp, 1.19.2.105 NMAC, 04/24/2006]

1.19.2.106 TAX SCHEDULE:

A. Program: assessments
B. Maintenance system: local government preference

C. Description: record of annual assessment and valuation on declared property, within the school district, by the tax assessor. Schedule may include tax certificate information and tax rates, etc.

D. Retention: permanent
[1.19.2.106 NMAC - Rp, 1.19.2.106 NMAC, 04/24/2006]

1.19.2.107 GEOGRAPHIC INFORMATION SYSTEM: [GIS]

A. Program: assessments
B. Maintenance system: local government preference

C. Description: system used to track geographical information on

properties being taxed. Data may include aerial photographs, valuation information, township number, range number, section number, school district code, commercial or residential property, area section, parcel map, uniform parcel code, lot splits, lot consolidations and subdivisions, etc.

D. Retention: permanent

E. Hardcopy input documents: All documents used as input for *geographic information system* are filed in the *notice of valuation* file, *tax schedule*, *valuation protest* file. Those documents include: *plats, deeds, mortgages, tax schedule, exemption forms, valuation protest* form, etc.

F. Hardcopy output documents: Because this is a data-based system, ad hoc reports may be generated upon request or demand. When produced, these reports are forwarded to the requesting entity. Some of these reports include deeds, valuation protests, plats, etc.

[1.19.2.107 NMAC - N, 04/24/2006]

1.19.2.108 CERTIFICATE OF CORPORATE PROPERTY:

A. Program: assessments
B. Maintenance system: local government preference

C. Description: certificate issued by state property tax division regarding valuation properties that do business in multiple counties. Certificate may include school district number, properties owned, assets, name of business, township number, section number, range number, etc.

D. Retention: 10 years after close of fiscal year in which created
[1.19.2.108 NMAC - Rp, 1.19.2.108 NMAC, 04/24/2006]

1.19.2.109-111 [RESERVED]

1.19.2.112 CHANGE ORDER AND AUTHORIZATION FORM:

A. Program: assessments
B. Maintenance system: local government preference

C. Description: form used to authorize corrections to notice of valuation. Form may include taxpayer name, tax district, address, property description, tax identification number, year, old value, new value, old taxes charged, tax rate, taxes due, net change, first half amount, second half amount, comments, assessor's authorization signature, treasurer's authorization signature, date, clerk name, reason for authorization (omitted, corrected, canceled), etc.

D. Retention: three years after date of authorization

[1.19.2.112 NMAC - Rp, 1.19.2.112 NMAC, 04/24/2006]

1.19.2.113 PLATS, SURVEYS

AND MAPS FILE:

A. Program: assessments
B. Maintenance system: local government preference

C. Description: records concerning plats, surveys, or maps of property used for tax purposes. File may include information contained on plats (lot and square number, sketch of the layout of the lot), surveys (mapping the boundaries and improvements of land), maps (legal land parcel and property boundaries), etc.

D. Retention: permanent
[filed in county clerks office]

[1.19.2.113 NMAC - Rp, 1.19.2.113 NMAC, 04/24/2006]

1.19.2.114 ASSESSMENT MAPS:

A. Program: assessments
B. Maintenance system: local government preference

C. Description: maps used to determine assessment value of property located within one adjacent square mile of township, range and section number. Map may include lot number, name of subdivision, size, legal description, meets and bounds, drawing improvements, tax code, etc.

D. Retention: permanent
[filed in county clerks]

[1.19.2.114 NMAC - Rp, 1.19.2.114 NMAC, 04/24/2006]

1.19.2.115 SALES RATIO STUDY LOG:

A. Program: assessments
B. Maintenance system: local government preference

C. Description: annual record of property sales figures used to determine property market value. Log may include property description and location, net taxable value, full value, property type, etc.

D. Retention: five years after study completed

[1.19.2.115 NMAC - Rp, 1.19.2.115 NMAC, 04/24/2006]

1.19.2.116-117 [RESERVED]

1.19.2.118 NON GOVERNMENTAL CLAIM FOR EXEMPTION FORM:

A. Program: assessments
B. Maintenance system: local government preference

C. Description: form used by non-governmental entities to apply for tax exempt status. Form may include name of property owner, address, property description, primary use of property (educational, charitable, urban renewal property, municipal property, church property not used for commercial purposes, if exemption

has been authorized under a ruling or order in force of the department or a ruling of the predecessor property appraisal department), oath of affirmation, file number, etc. issued subsequent to

D. Retention: one year after property use changes or ownership changes
[1.19.2.118 NMAC - N, 04/24/2006]

1.19.2.119 TAX EXEMPTION FORM:

A. Program: assessments
B. Maintenance system: local government preference

C. Description: form used to apply for tax exemption by military, low income households, persons with disabilities, head of household, or age sixty five or older property owners who are applying for the tax exempt status. Form may include name of property owner, address, property description, social security number, military service number, location of property, signature, notarized signature of county assessor, county name, tax year, driver's license number, date of birth, physical address, legal description of property, uniform property code number, income received, valuation limitation, certification by property owner, signature of county assessor, approved or denied status, etc.

D. Retention: one year from date of application

E. Confidentiality: Portions of this record may be confidential per 5 USC Section 552a (i.e., social security number).
[1.19.2.119 NMAC - Rp, 1.19.2.119 NMAC, 04/24/2006]

1.19.2.120 LIVESTOCK OWNERS AND AGRICULTURAL ACRES CERTIFICATE:

A. Program: assessments
B. Maintenance system: local government preference

C. Description: certificate concerning all livestock and acres farmed that are valued for property taxation purposes. Certificate may include type of livestock, number of livestock (commercial and registered), number of months grazed annually, livestock identification number, livestock code, owner's name address and telephone number, assessor's real property location identification number, owner signature, property account numbers, total acreage farmed, crops grown, irrigated farming, dryland farming, crops sold, number of acres grazed, number of agricultural acres farmed, date livestock shipped, inspector name, etc.

D. Retention:
(1) Paid: one year after taxes paid
(2) Unpaid: ten years from date

taxes due
[1.19.2.120 NMAC - Rp, 1.19.2.120 NMAC, 04/24/2006]

1.19.2.121 MANUFACTURED HOME SYSTEM:

A. Program: assessments
B. Maintenance system: local government preference

C. Description: system used to track history of manufactured homes located within county boundaries. Log may include owners name, address, make, model, and year of manufactured home; vehicle identification number; location, tax releases; valuation calculations; registration; *manufactured home assessment* form; *notification of no tax liability* form; *real property request for tax year* form; etc.

D. Retention: 10 years from date of motor vehicle registration

E. Hardcopy input documents: All documents used as input for manufactured home system are filed in the manufactured home file. Those documents include: manufactured home assessment form; notification of no tax liability form; real property request for tax year form; etc.

F. Hardcopy output documents: Because this is a data-based system, ad hoc reports may be generated upon request or demand. When produced, these reports are forwarded to the requesting entity.
[1.19.2.121 NMAC - N, 04/24/2006]

1.19.2.122 MANUFACTURED HOME FILE:

A. Program: assessments
B. Maintenance system: local government preference

C. Description: record concerning the history of manufactured homes located within county boundaries. File may include owner's name, address; make, model, and year of manufactured home; vehicle identification number; location, tax releases; valuation calculations; registration; *manufactured home assessment* form; *notification of no tax liability* form; *real property request for tax year* form; etc.

D. Retention: 10 years from date of motor vehicle registration
[1.19.2.122 NMAC - Rp, 1.19.2.122 NMAC, 04/24/2006]

1.19.2.123 VALUATION PROTEST FILE:

A. Program: assessments
B. Maintenance system: local government preference

C. Description: records protest of tax valuation by property or business owners. File may include the *business personal property valuation protest* form

(protest number, account number, name of business, legal address, name of authorized agent, owner signature, hearing date, hearing time, lost of personal property, reason for protest, assessor's value, owner's value, difference of protested value, withdrawal information), *county valuation protest* form (protest number, hearing date, hearing time, name of owner, property description or legal address, mailing address, telephone number, name of authorized agent, signature of owner, account number, reason for protest, withdrawal, adjusted value, final decision, department authorization, name of business, legal address, tangible personal property, assessor's value, difference of protested amount), *vacant land comparable* form (uniform parcel code, owners name, legal address, property data, subject, sale number one, sale number two, sale number three, notes), etc.

D. Retention: one year from date of protest
[1.19.2.123 NMAC - Rp, 1.19.2.123 NMAC, 04/24/2006]

HISTORY OF 1.19.2 NMAC:

History of Repealed Material: 1.19.2 NMAC, LGRRDS, Office of the County Assessor, filed 12/7/2001 - Repealed effective 4/24/2006.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 19 LOCAL GOVERNMENT RECORDS RETENTION AND DISPOSITION SCHEDULES (LGR-RDS)
PART 5 LGRRDS, OFFICE OF THE COUNTY SHERIFF**

1.19.5.1 ISSUING AGENCY: State Commission of Public Records - State Records Center and Archives
[1.19.5.1 NMAC - Rp, 1.19.5.1 NMAC, 04/24/2006]

1.19.5.2 SCOPE: county sheriff - local government
[1.19.5.2 NMAC - Rp, 1.19.5.2 NMAC, 04/24/2006]

1.19.5.3 STATUTORY AUTHORITY: Section 14-3-18 NMSA 1978. The administrator may advise and assist county and municipal officials in the formulation of programs for the disposition of public records maintained in county and municipal offices.
[1.19.5.3 NMAC - Rp, 1.19.5.3 NMAC,

04/24/2006]

1.19.5.4 DURATION: permanent

[1.19.5.4 NMAC - Rp, 1.19.5.4 NMAC, 04/24/2006]

1.19.5.5 EFFECTIVE DATE: April 24, 2006, unless a later date is cited at the end of a section.

[1.19.5.5 NMAC - Rp, 1.19.5.5 NMAC, 04/24/2006]

1.19.5.6 OBJECTIVE: To establish a records retention and disposition schedule for the orderly management and retirement of records created and maintained by county sheriff offices.

[1.19.5.6 NMAC - Rp, 1.19.5.6 NMAC, 04/24/2006]

1.19.5.7 DEFINITIONS:

A. "Administrator" means the state records administrator (Section 14-3-2 NMSA 1978).

B. "Archives" means the state archives of the commission of public records.

C. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

D. "Local government records retention and disposition schedule" means rules adopted by the commission describing the records created and maintained by local government officials and establishing a timetable for their life cycle and providing authorization for their disposition.

E. "Microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission of public records.

F. "Non-record" means extra copies of documents kept solely for convenience of reference, stocks of publications, records not usually included within the scope of the official records of an agency or government entity, and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency; extra copies of correspondence; preliminary drafts.

G. "Public records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or

received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein (Section 14-4-2 NMSA 1978).

H. "Records custodian" means any public officer responsible for the maintenance, care or keeping of a public body's records.

I. "Records management" means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

J. "Retention" means the period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

[1.19.5.7 NMAC - N, 04/24/2006]

1.19.5.8 ABBREVIATIONS AND ACRONYMS:

A. "CFR" means code of federal regulations.

B. "DOB" means date of birth.

C. "NMAC" means New Mexico administrative code.

D. "NMSA" means New Mexico statutes annotated.

E. "USC" means United States code.

[1.19.5.8 NMAC - N, 04/24/2006]

1.19.5.9 INSTRUCTIONS:

A. For records of a general administrative nature, refer to the GRRDS, General Administrative Records Retention and Disposition Schedule (For Use by Local Governments and Educational Institutions), 1.15.3 NMAC.

B. For records of a financial nature, refer to the GRRDS, General Financial Records Retention and Disposition Schedule, 1.15.5 NMAC.

C. For records of a personnel nature, refer to the GRRDS, General Personnel Records Retention and Disposition Schedule, 1.15.7 NMAC.

D. For records of a medical nature, refer to the GRRDS, General Medical Records Retention and Disposition Schedule, 1.15.8 NMAC.

E. Retention periods shall be extended until six months after all current or pending litigation, current claims, audit exceptions or court orders involving a record have been resolved or concluded.

F. Descriptions of files are intended to be evocative, not complete. For example, there will always be some docu-

ments that are filed in a file that are not listed in the description, and similarly not every file will contain an example of each document listed in the description.

G. Confidentiality is denoted for files likely to contain confidential materials, but files without a confidentiality note nonetheless may contain confidential or privileged materials, and failure to include an express confidentiality note in the description of a file does not waive the confidential or privileged nature of those materials. Refer questions concerning the confidentiality of a file or portions of a file to legal counsel for the agency.

H. Access to confidential documents and files shall be only by authorization of the records custodian, or by court order, unless otherwise provided by statute. Release of confidential documents to law enforcement and other government agencies shall only be upon specific statutory authorization or court order.

I. Records, papers or documents may be reformatted thorough microphotography. Such reformatted records shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies (Sections 14-1-5 and 14-1-6 NMSA 1978).

J. Public records placed on magnetic tapes, disks or other data processing media shall be retained for the length of time specified in records retention and disposition schedules and are subject to the same confidentiality and access restrictions as paper records. See also 1.13.70 NMAC, Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems.

[1.19.5.9 NMAC - N, 04/24/2006]

1.19.5.10 - 20 [RESERVED]**1.19.5.21 OATH OF OFFICE CERTIFICATE:**

A. Program: administrative services

B. Maintenance system: local government preference

C. Description: oath of office certificate for deputy sheriffs commissioned for service by Sheriff. Certificate may include deputy's name and signature, notary seal and signature, and sheriff's signature.

D. Retention: one year after sheriff's term ends

[1.19.5.21 NMAC - Rp, 1.19.5.101 NMAC, 04/24/2006]

1.19.5.22 BOND RECEIPT BOOK:

A. Program: administrative services

B. Maintenance system: local government preference

C. Description: records of cash or surety bond posted for inmate bail. Book may include entries of cash or surety amount, defendant name, fine, name of bonding person or entity, name of county personnel receiving cash or bond, receipt number, arrest number, arrest date, date bond posted, charges, name of arresting officer, etc.

D. Retention: six years after close of fiscal year in which most recent case closed

[1.19.5.22 NMAC - Rp, 1.19.5.108 NMAC, 04/24/2006]

1.19.5.23 WEEKLY BOND REPORT FILES:

A. Program: administrative services

B. Maintenance system: local government preference

C. Description: weekly reports submitted to the county finance department regarding cash bonds collected. File may include weekly ledger, receipt book, bond amount posted, monies received, listing of bonds paid, etc.

D. Retention: three years after close of fiscal year in which bond was posted

[1.19.5.23 NMAC - N, 04/24/2006]

1.19.5.24 EXTRADITION FILES:

A. Program: administrative services

B. Maintenance system: local government preference

C. Description: records concerning the extradition and transport of prisoners to other counties or states. File may include travel fax cover sheet, transport order, travel arrangements, request for airfare, travel quotes, request for car rental, memo for car rental, credit card information, etc.

D. Retention: three years after close of fiscal year in which extradition occurred.

E. Confidentiality: Portions of this record may be confidential per 5 USC Section 552a (i.e., social security number), Section 30-16-25 NMSA 1978 (i.e., credit card information).

[1.19.5.24 NMAC - Rp, 1.19.5.207 NMAC, 04/24/2006]

1.19.5.25 CRIME STATISTICS REPORTS:

A. Program: administrative services

B. Maintenance system: local government preference

C. Description: report

summarizing activity handled by the county sheriff's office. Report may include number of service calls, felony cases, misdemeanor cases, citations and warrants issued, arrests, extraditions, subpoenas, writs of execution, notice of trials served, narcotic activity, amount of cash received, evidence collected, reserve deputies activity, number of animal control complaints, animal citations issued, animals impounded, internal investigations, transports, internal affairs issues, amount of evidence, cash received, etc.

D. Retention:

(1) Monthly report: one calendar year from date annual report published

(2) Annual report: five years from calendar year in which published

[1.19.5.25 NMAC - N, 04/24/2006]

1.19.5.26 EQUIPMENT ISSUANCE LOG:

A. Program: administrative services

B. Maintenance system: local government preference

C. Description: record concerning equipment assigned to each sheriff deputy. Log may include deputy name, equipment issued, serial number, badge number, tazer number, date issued, etc.

D. Retention: one year after equipment returned

[1.19.5.26 NMAC - N, 04/24/2006]

1.19.5.27 - 37 [RESERVED]

1.19.5.38 INTERNAL AFFAIRS CASE FILES:

A. Program: internal investigations

B. Maintenance system: local government preference

C. Description: records documenting complaints against officers or civilian employees and results of subsequent investigations. File may include the complaint (e.g., officer involved shooting, misuse of office, etc), sustained findings, tapes or transcriptions of hearings, staff inspection order, order to appear, evidence (e.g., tapes, videos, reports, photographs, etc.), copies of police reports, medical releases, investigation summary, chain of command reviews, case reviews, case recommendations, sheriff's determination, determination notification copy, etc.

D. Retention:

(1) Disciplinary action taken: three years after officer leaves department

(2) Disciplinary action dismissed: three years after date of incident

E. Confidential: Portions of these records may be confidential per Section 29-10-4 NMSA 1978 (i.e., arrest

record information), Section 14-2-1 NMSA 1978 (i.e., open investigation file), Section 14-6-1 NMSA 1978 (i.e., medical information).

[1.19.5.38 NMAC - Rp, 1.19.5.401 NMAC, 04/24/2006]

1.19.5.39 - 49 [RESERVED]

1.19.5.50 CRIMINAL HISTORY RECORDS:

A. Program: law enforcement

B. Maintenance system: local government preference

C. Description: records of complete cumulative history on any subject arrested for a crime by the sheriff's department. Portions of this record may be input into the *criminal history* system, the *national crime information center* system and the *New Mexico criminal justice and history information* system [1.18.790.186 NMAC]. File may include name of suspect, DOB, social security number, physical description, federal bureau of investigation number, address, employment, marital status, education, date of arrests or releases, mug shots, fingerprints, facts surrounding investigation, final court disposition, etc.

D. Retention:

(1) Adult records: five years after final court disposition

(2) Juvenile records: five years after final court disposition or until subject reaches 22 years of age, whichever comes first

E. Confidentiality:

Portions of this record may be confidential per 5 USC Section 552a (i.e., social security number).

[1.19.5.50 NMAC - Rp, 1.19.5.102 NMAC, 04/24/2006]

1.19.5.51 CRIMINAL HISTORY SYSTEM:

A. Program: law enforcement

B. Maintenance system: local government preference

C. Description: system used to track all incident and arrest reports filed by county sheriff deputies. Data may include name, date of birth, social security number, physical description, federal bureau of investigation number, address, employment, marital status, education, date of arrests or releases, mug shots, fingerprints, facts surrounding investigation, final disposition, etc.

D. Retention:

(1) Adult records: five years after final court disposition

(2) Juvenile records: five years after final court disposition or until subject reaches 22 years of age, whichever comes

first

E. Hardcopy input documents: All documents used as input for *criminal history system* are filed in *incident reports*, *criminal history records*, *arrest reports* and *animal citation file*.

F. Hardcopy output documents: Because this is a data-based system, ad hoc reports may be generated upon request. Some documents generated by this system include *united crime reporting report*, *eighteen and under arrested report*, *persons arrested report*, *property stolen report*, *arson report*, *hate crime report*, *law enforcement officer killed or assaulted report*, *homicide report*, *domestic violence report*, *driving while intoxicated (DWI) report*, *homicide report*, *criminal sexual penetration report*, *dispatch sheet*, *staff reviews*, etc.

G. Confidentiality: Portions of this record may be confidential per 5 USC Section 552a (i.e., social security number).
[1.19.5.51 NMAC - N, 04/24/2006]

1.19.5.52 INCIDENT REPORTS:

A. Program: law enforcement

B. Maintenance system: local government preference

C. Description: records concerning felonies or misdemeanors committed and relevant information surrounding the incident. Portions of this record may be input into the *criminal history system*, the *national crime information center system*, and the *New Mexico criminal justice and history information system* [1.18.790.186] NMAC. Report may include incident type, case number, national crime information center entry date, incident code, investigative information, incident location, incident date, time, reporting area complaint, victim, suspect, social security number, vehicle and witness information, arrest date, narrative, etc.

D. Retention:

(1) **Adult records:** five years after final court disposition

(2) **Juvenile records:** five years after final court disposition or until subject reaches 22 years of age, whichever comes first

E. Confidentiality: Portions of this record may be confidential per 5 USC Section 552a (i.e., social security number).
[1.19.5.52 NMAC - Rp, 1.19.5.103 NMAC, 04/24/2006]

1.19.5.53 ARREST REPORTS:

A. Program: law enforcement

B. Maintenance system: local government preference

C. Description: records concerning the arrest and booking of suspects. Portions of this record may be input into the *criminal history system*, the *national crime information center system*, and the *New Mexico criminal justice and history information system* [1.18.790.186] NMAC. Report may include subject name, social security number, arrest number, physical characteristics, arrest date and time, arrest location, arresting officer name, charges, etc.

D. Retention:

(1) **Adult records:** five years after final court disposition

(2) **Juvenile records:** five years after final court disposition or until subject reaches 22 years of age, whichever comes first

E. Confidentiality:

Portions of this record may be confidential per 5 USC Section 552a (i.e., social security number).
[1.19.5.53 NMAC - Rp, 1.19.5.104 NMAC, 04/24/2006]

1.19.5.54 UNIFORM TRAFFIC CITATION:

A. Program: law enforcement

B. Maintenance system: local government preference

C. Description: records concerning uniform traffic citations issued by sheriff's deputies. . Portions of this record may be input into the *criminal history system*, the *national crime information center system*, and the *New Mexico criminal justice and history information system* [1.18.790.186] NMAC. Citation may include citation number, subject name, address, city, state, name of person charged, social security number, physical description, DOB, gender; car registration number, year, state, make, type of vehicle involved, state, drivers license number; section number and offense charged, date and time of arrest, arresting officers signature, identification number, conditions existing at the time of violation, notice to appear information, penalty assessment notice, warning notice, etc.

D. Retention: five years from date citation issued

E. Confidentiality:

Portions of this record may be confidential per 5 USC Section 552a (i.e., social security number).
[1.19.5.54 NMAC - Rp, 1.19.5.109 NMAC, 04/24/2006]

1.19.5.55 UNIFORM ACCIDENT REPORTS:

A. Program: law enforcement

B. Maintenance system: local government preference

C. Description: records concerning the investigation of vehicle accidents. Report may include date and time of accident, location, persons involved, social security number, vehicles involved, vehicle or property damage, injury codes, seat belt codes, witness information, road and weather conditions, contributing factors, driver or pedestrian sobriety or physical condition, diagrams, etc Serves as input to the criminal history system.

D. Retention: five years after date of accident

E. Confidentiality: Portions of this record may be confidential per 5 USC Section 552a (i.e., social security number).
[1.19.5.55 NMAC - Rp, 1.19.5.110 NMAC, 04/24/2006]

1.19.5.56 BACKGROUND CHECK REQUEST:

A. Program: law enforcement

B. Maintenance system: local government preference

C. Description: records concerning background checks on individuals for employment or volunteer purposes. Request may include the written request, name, alias, DOB, arrest record, request for incident report, social security number, name of requesting entity, etc.

D. Retention: two years after background check released

E. Confidentiality: Portions of this record may be confidential per 5 USC Section 552a (i.e., social security number).
[1.19.5.56 NMAC - N, 04/24/2006]

1.19.5.57 RELEASE ORDER FILES:

A. Program: law enforcement

B. Maintenance system: local government preference

C. Description: records concerning the authorized release order of inmates from custody by the sheriff's office. Portions of this record may be input into the *criminal history system*, the *national crime information center system*, and the *New Mexico criminal justice and history information system* [1.18.790.186] NMAC. File may include bench warrant, name of booking authority, amount of bond, *release of custody* form, *bond acceptance* form (name, date, address, city, state), court services docket sheet, etc.

D. Retention:

(1) **Adult records:** five years after final court disposition

(2) **Juvenile records:** five years after final court disposition or until subject reaches 22 years of age, whichever comes first

E. Confidentiality: Portions of this record may be confidential per 5 USC Section 552a (i.e., social security number).
[1.19.5.57 NMAC - Rp, 1.19.5.204 NMAC, 04/24/2006]

1.19.5.58 - 68 [RESERVED]

1.19.5.69 VIDEO OR VOICE RECORDINGS:

A. Program: evidence
B. Maintenance system: local government preference
C. Description: records concerning surveillance, evidentiary footage or recordings of all facilities. Record may include footage or recordings of jail booking area, entrance or exit areas, parking areas, driving while intoxicated arrests, interviews, any criminal incident, etc.
D. Retention:
(1) Routine surveillance or recordings: 30 days after date created
(2) Incident surveillance or recordings: 60 days after investigation closed
[1.19.5.69 NMAC - Rp, 1.19.5.105 NMAC, 04/24/2006]
[If investigation evolves into a court proceeding then the case recordings are incorporated into the investigation file]

1.19.5.70 PROPERTY RECORD FORMS:

A. Program: evidence
B. Maintenance system: local government preference
C. Description: records concerning property or evidence that is seized or found. Record may include: evidence tag or lost and found tag (date and time acquired, date and time item placed in evidence area, case number, offense, place of occurrence, area, item type, name DOB, telephone number, address, officer remarks, article description, serial number, controlled substance weight, officer name, employee number, officer's signature, value, item location, investigative unit referred to, property disposition information, name of officer placing evidence in evidence area), chain of custody, etc.
D. Retention:
(1) Guns: one year after final disposition of case
(2) Lost and found: 90 days after acquired, [then sent to New Mexico state police for auction]
(3) All other material: 60 days after final disposition of case
[1.19.5.70 NMAC - Rp, 1.19.5.106 NMAC, 04/24/2006]

1.19.5.71 DISTRICT ATTOR-

NEY DISPOSITION FORMS:

A. Program: evidence
B. Maintenance system: local government preference
C. Description: records concerning the final disposition of court cases. Portions of this record may be input into the *criminal history* system the *national crime information center* system, and the *New Mexico criminal justice and history information* system [1.18.790.186 NMAC]. Form may include case number, name of persons involved, DOB, social security number, date case closed, final disposition of case, district attorney name, police agency, sentence, indictment, release date, etc.
D. Retention: one year after date of final disposition of case
E. Confidentiality: Portions of this record may be confidential per 5 USC Section 552a (i.e., social security number).
[1.19.5.71 NMAC - N, 04/24/2006]

1.19.5.72 - 82 [RESERVED]

1.19.5.83 RADIO OR TELEPHONE RECORDING SYSTEM:

A. Program: radio dispatch
B. Maintenance system: local government preference
C. Description: system used to track all incoming and outgoing radio or telephone calls received for the county sheriff's office and animal control. Recordings may include name of person calling, address, telephone number, reason for call, date and time of call, name of responding officer, unit number, dispatcher name, etc.
D. Retention: three years after date of call
E. Input: information regarding calls entered into system manually
F. Hardcopy output documents: Because this is a data-based system, recordings may be generated upon request. Recordings may be requested by responding officer for court case, attorneys or the public and may be filed with investigative portion of *incident* reports.
[1.19.5.83 NMAC - Rp, 1.19.5.111 NMAC, 04/24/2006]

1.19.5.84 - 90 [RESERVED]

1.19.5.91 ANIMAL CONFINEMENT AGREEMENT FILES:

A. Program: animal control
B. Maintenance system: local government preference
C. Description: records

concerning animals picked up for aggressive behavior by animal control officers. File may include name and address of owner, animal information, name and address of victim, time of bite, date and time of incident, nature and location of wound, where animal is to be confined, and date of release of animal, etc.
D. Retention: five years from date animal released to owner, animal shelter or game warden
[1.19.5.91 NMAC - N, 04/24/2006]

1.19.5.92 ANIMAL OFFENSE REPORTS:

A. Program: animal control
B. Maintenance system: local government preference
C. Description: records concerning investigation of animal complaint received from general public. Report may include date, time of pick up, type of animal, color, reason for pick up, case number, complainants name and address, time complaint received, time officer dispatched, written complaint, incident and report number, etc.
D. Retention: five years after case closed
[1.19.5.92 NMAC - N, 04/24/2006]

1.19.5.93 ANIMAL CUSTODY CARDS:

A. Program: animal control
B. Maintenance system: local government preference
C. Description: records concerning the release of the animal by owner to animal control. Card may include case number, officer name, impound location, time of impound, type of animal, breed, color, gender, age, license number, rabies tag number, owner's name, address, signature, reason for release, rabies number, release form, etc.
D. Retention: one year from date release signed
[1.19.5.93 NMAC - N, 04/24/2006]

1.19.5.94 ANIMAL TRAP LOAN AGREEMENTS:

A. Program: animal control
B. Maintenance system: local government preference
C. Description: records concerning the tracking of humane animal traps loaned to the general public. Agreement may include borrower's name, address, date, time, signature, etc.
D. Retention: one year from date of agreement
[1.19.5.94 NMAC - N, 04/24/2006]

1.19.5.95 ANIMAL LICENSE REGISTRATION FORMS:

A. Program: animal control

B. Maintenance system: local government preference

C. Description: records concerning the registration of all dogs in the county. Form may include owner name, address, telephone number, dog name, tag license number, rabies tag number, etc.

D. Retention: three years after date license issued
[1.19.5.95 NMAC - N, 04/24/2006]

1.19.5.96 ANIMAL CITATION FILES:

A. Program: animal control

B. Maintenance system: local government preference

C. Description: records concerning animal control citations issued to animal owners. Portions of this record are used as input into the *criminal history* system. File may include *violation citation* form (owners name, address, social security number, date of birth, telephone number, place of employment, ordinance number, remarks, officer name, signature, identification number, date signed, and notice to appear), *dispatch* form, etc.

D. Retention:

(1) Citations: three years after citation issued

(2) All other documents: 30 days after information entered into *criminal history system*
[1.19.5.96 NMAC - N, 04/24/2006]

1.19.5.97 NOTICE OF DISMISSAL FORMS:

A. Program: animal control

B. Maintenance system: local government preference

C. Description: records concerning court dismissal of animal criminal complaints. Portions of this record are used as input into the *criminal history* system. Form may include notice of dismissal of criminal complaint form (defendant name, case number, prosecutor name, date dismissed, judge's name), etc.

D. Retention: one year after notice of dismissal received by animal control
[1.19.5.97 NMAC - N, 04/24/2006]

1.19.5.98 - 108 [RESERVED]**1.19.5.109 INMATE FILES:**

A. Program: county jail

B. Maintenance system: local government preference

C. Description: records concerning inmates incarcerated at the

county jail. Portions of file are used as input into the *inmate management system*. File may include *booking authority* form, *inmate data sheet*, *classification and housing separation profile* form (date, booking number, file number, race, DOB, age, sex, inmates name, citizenship, religious preference, educational history, confinement history, primary factors for classification and separation of inmates, officer signature, housing assignment, cell number), *initial custody assessment* form, (severity of current offense, offense history, escape history, disciplinary history, alcohol or drug abuse, stability factors, scale summary and recommendations), social security number, offense, arraignment information, probable cause statement, criminal complaints, served warrants, medical clearance, property inventory, bond information sheet, extradition information, date of commitment, arresting agency, copy of arrest report, amount of bond, release orders, segregation information, trustee information, protective custody information, date released, judgment and sentence orders, copy of release orders, fingerprints, mug shots, etc.

D. Retention: ten years from date of release

E. Confidentiality: Portions of this record may be confidential per 5 USC Section 552a (i.e., social security number); Section 14-6-1 NMSA 1978 (i.e., medical information).

[1.19.5.109 NMAC - Rp, 1.19.5.127 NMAC, 04/24/2006]

1.19.5.110 INMATE MANAGEMENT SYSTEM:

A. Program: county jail

B. Maintenance system: local government preference

C. Description: system used to track and monitor number of incoming and outgoing inmates at the county jail. Data may include inmate name, address, telephone number, date of birth, emergency contact, classification, mug shots, fingerprints, social security number, prior arrests, releases, offense, judgment and sentence, medical information, etc.

D. Retention: ten years from date of release

E. Hardcopy input documents: all documents used as input for *inmate management system* are entered from the *inmate file*; those documents may include the *classification and housing profile*, *arrest* report, inmate information sheet, jail incidents, etc.

F. Hardcopy output documents: Because this is a data-based system, ad hoc reports may be generated upon request.

G. Confidentiality: Portions of this record may be confidential per 5 USC Section 552a (i.e., social securi-

ty number), Section 14-6-1 NMSA 1978 (i.e., medical information).

[1.19.5.110 NMAC - N, 04/24/2006]

1.19.5.111 TEMPORARY INMATE FILES:

A. Program: county jail

B. Maintenance system: local government preference

C. Description: records concerning state prisoners housed temporarily at the county jail and inmates that are held less than forty eight hours. File may include name of inmate, DOB, property inventory sheet, length of sentence, offense committed, corrections classification pending transfer log, etc.

D. Retention: ten years from date of transfer or release

E. Confidentiality: Portions of this record may be confidential per 5 USC Section 552a (i.e., social security number).

[1.19.5.111 NMAC - N, 04/24/2006]

1.19.5.112 INMATE TELEPHONE SYSTEM:

A. Program: county jail

B. Maintenance system: local government preference

C. Description: records concerning recordings of telephone calls made by inmates. Data may include inmate name, telephone number called, date, time of call, verbatim recording, etc.

D. Retention: six months after date of call

E. Input: outgoing calls are automatically recorded and maintained electronically

F. Hardcopy output documents: Because this is a data-based system, recordings may be generated upon request for up to six months from date of call

[1.19.5.112 NMAC - N, 04/24/2006]

[If investigation evolves into a court proceeding then the case recordings are incorporated into the investigation file]

1.19.5.113 JAIL INCIDENT REPORTS:

A. Program: county jail

B. Maintenance system: local government preference

C. Description: records concerning incidents involving correctional officers or inmates. File may include name of inmate or correctional officer involved, date of incident, description of incident, disciplinary action taken, etc.

D. Retention: four years after date of final action

[1.19.5.113 NMAC - N, 04/24/2006]

[Copy placed in correctional officer personnel file or inmate file]

1.19.5.114 JAIL VISITORS LOG:
A. Program: county jail
B. Maintenance system: local government preference
C. Description: log of daily visitors to facility. Log may include visitor name, address, driver's license number, inmate name, badge number, date, relationship to inmate, time in, time out, date, officer on duty, etc.
D. Retention: three years from close of calendar year in which created
 [1.19.5.114 NMAC - N, 04/24/2006]

HISTORY OF 1.19.5 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: SRC Rule No. 94-02, Records Retention and Disposition Schedule for Office of the County Sheriff, 7-29-94.

History of Repealed Material:
 1.19.5 NMAC, LGRRDS Office of the County Sheriff filed 12/07/2001 - Repealed 04/24/2006

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.630 NMAC, Sections 8, 349 and 350, effective April 24, 2006.

1.18.630.8 ABBREVIATIONS AND ACRONYMS:
A. "CFR" stands for code of federal regulations
B. "CPA" stands for certified public accountant
C. "CSBG" stands for community service block grant
D. "CSED" stands for child support enforcement division
E. "CSES" stands for child support enforcement system
~~[E-] E.~~ "DOB" stands for date of birth
~~[F-] F.~~ **G.** "EBT" stands for electronic benefits transfer
~~[G-] H.~~ "EDI" stands for electronic data interchange system
~~[H-] I.~~ "EPS" stands for early periodic screening
~~[I-] J.~~ "EPSDT" stands for early periodic screening diagnosis and treatment
~~[J-] K.~~ "ERRDS" stands for executive records retention and disposition schedule
~~[K-] L.~~ "FNS" stands for food and nutrition service
~~[L-] M.~~ "HCFA" stands for

health care financing administration
~~[M-] N.~~ "HSD" stands for human services department
~~[N-] O.~~ "ISD" stands for income support division
~~[O-] P.~~ "MAD" stands for medical assistance division
~~[P-] Q.~~ "MCO" stands for managed care organization
~~[Q-] R.~~ "MITS" stands for medicaid in the schools
~~[R-] S.~~ "NCIC" stands for national crime information center
~~[S-] T.~~ "NMSA" stands for New Mexico statutes annotated
~~[T-] U.~~ "OFM" stands for office of financial management
~~[U-] V.~~ "OIG" stands for office of the inspector general
~~[V-] W.~~ "SDX" stands for state data exchange
~~[W-] X.~~ "SSN" stands for social security number
~~[X-] Y.~~ "TANF" stands for temporary assistance to needy families
~~[Y-] Z.~~ "TEFAP" stands for the emergency food assistance program
~~[Z-] AA.~~ "US" stands for United States
~~[AA-] BB.~~ " U S C " stands for United States code
~~[BB-] CC.~~ " U S D A " stands for United States department of agriculture
 [1.18.630.8 NMAC - N, 09/30/02; A, 04/24/2006]

1.18.630.349 LICENSE SUSPENSION CASE FILE:
A. Program: license suspension
B. Maintenance system: chronological by date certificate generated, then alphabetical by non-custodial parent last name, and date certificate of compliance case file closed.
C. Description: record of financial compliance for child support of non custodial parent. File may include certificate of compliance [CSED form 515D], CSED license suspension fact sheet, child support enforcement system screen print outs for enforcement override, notepad, amounts due and amounts received, case financial summary, obligation summary, license revocation summary, etc.
D. Retention: three years after close of federal fiscal year in which certificate of compliance case closed
E. Confidentiality: Access to file restricted per 45 CFR 205.50 (i.e., name, address, medical information, social and economic conditions, amount of assistance), confidential per 5 USC, Section 552a (i.e., social security number) confidential per 26 USC 6103a (i.e., personal

income tax return information).
 [1.18.630.349 NMAC - N, 04/24/2006]
1.18.630.350 FINANCIAL INSTITUTION DATA MATCH CASE FILE:
A. Program: financial institution data match
B. Maintenance system: numerical by CSED member number, then alphabetical by non-custodial parent surname, and chronological by date case closed.
C. Description: record of agreements with financial institutions to conduct data matches to identify accounts of delinquent child support obligors. File may include CSED case summary sheet; copies of checks; CSES screen printouts for inquire update; copies of envelopes; seize order - financial institution subpoena to surrender assets [CSED form 808-fidm]; copies of certified mail envelopes returned unopened; copies of US postal service certified mail receipts; fact sheet [CSED form 810-fidm]; CSES notepad screen print out; CSES member to case inquiry screen print out; case member addition-update screen print out; case financial summary screen print out; support order obligation information screen print out; CSES amounts due/amounts received screen print out; member demographics screen print out; address history screen print out; case information screen print out; answer by financial institution [CSED form 805-fidm]; financial institution freeze order subpoena to freeze assets [CSED form 804-fidm]; summary of attached audits; payment record and interest calculation sheets; copy of child support court order; copy of stipulated order modifying child support; worksheet for basic visitation monthly child support obligation; etc.
D. Retention: three years after close of federal fiscal year in which data match case file closed
E. Confidentiality: Access to file restricted per 45 CFR 205.50 (i.e., name, address, medical information, social and economic conditions, amount of assistance), confidential per 5 USC, Section 552a (i.e., social security number), confidential per 26 USC 6103a (i.e., personal income tax return information).
 [1.18.630.350 NMAC - N, 04/24/2006]

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

March 23, 2006

Leo R. Lucero, Agency Analysis Bureau Chief
NM Commission of Public Records
1205 Camino Carlos Rey
Santa Fe, New Mexico 87505

Mr. Lucero:

You recently requested to publish a synopsis in lieu of publishing the full content of the following listed rules:

* 1.18.632 NMAC ERRDS, Workers Compensation Administration

A review of these rules shows that their most impact is limited to the individual agencies to which they pertain, and they are "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis for each is approved.

Sincerely,

Sandra Jaramillo
State Records Administrator

SJ/lrl

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

SYNOPSIS

1.18.632 NMAC ERRDS, Workers' Compensation Administration

1. Subject matter: 1.18.632 NMAC, Executive Records Retention and Disposition Schedule for the Workers' Compensation Administration. Amendments to the Sections 1, 2, 3, 5, 6, 7, 9, and 102 of 1.18.632 NMAC ERRDS, Workers' Compensation Administration filed on 12/7/2001. This records retention and disposition schedule is a timetable for the management of specific records series of the Workers' Compensation Administration. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the agency as well as its final disposition. The retention and disposition requirements in this rule are based on the

legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives and approved by the Workers' Compensation Administration Director, the Commission of Public Records and the Legal Counsel for the Workers' Compensation Administration.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Workers' Compensation Administration. Persons and entities normally subject to the rules and regulations of the Workers' Compensation Administration may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Workers' Compensation Administration.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Workers' Compensation Administration. Any person or entity outside the covered geographical area that conducts business with or through the Workers' Compensation Administration may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87507. Telephone number: (505) 476-7900.

7. Effective date of this rule: April 24, 2006.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.632 NMAC ERRDS, Workers' Compensation Administration.

Alvin Garcia Date
Assistant Attorney General

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
ALCOHOL AND GAMING
DIVISION**

This is an amendment to 15.10.33.3 NMAC; 15.10.33.5 NMAC; 15.10.33.7 NMAC; 15.10.33.8 NMAC, effective 04/14/06. 15.10.33 NMAC has also been renumbered and reformatted to comply with current NMAC requirements.

15.10.33.3 STATUTORY AUTHORITY: Sections 9-16-6(D) and 9-16-6(B)(2) NMSA 1978 of the Regulation and Licensing Department Act authorize the superintendent, or the superintendent's designee, to make and adopt such rules and regulations as necessary to carry out the duties of the department. Section 60-3A-10 of the Liquor Control Act authorizes the director of the alcohol and gaming division to issue and file rules necessary to administer the licensing provisions of the Liquor Control Act (60-3A-1 NMSA 1978). Section 60-3A-7 [NMSA 1978] gives the alcohol and gaming division of the regulation and licensing department authority over all matters relating to the issuance, denial, suspension, or revocation of licenses under the Liquor Control Act. In addition, Section 60-7B-10 [NMSA 1978] of the act requires that the director adopt regulations classifying the types of licensed premises or areas of licensed premises where minors may be present.

[3/31/97, A, 7/15/99; 15.10.33.3 NMAC - Rn, 15 NMAC 10.3.3.3 & A, 04/14/06]

15.10.33.5 EFFECTIVE DATE: March 31, 1997, unless a later date is cited at the end of a section. [~~or paragraph~~]. [3/31/97; 15.10.33.5 NMAC - Rn, 15 NMAC 10.3.3.5 & A, 04/14/06]

15.10.33.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms used in these regulations have the same meanings as set forth in the Liquor Control Act.

~~[A. This paragraph has been moved and renumbered to 15 NMAC 10.1.1.7.16.~~

~~B. This paragraph has been moved and renumbered to 15 NMAC 10.1.1.7.22.~~

~~C. This paragraph has been moved and renumbered to 15 NMAC 10.1.1.7.27.]~~

[3/31/97; 7/15/99; 15.10.33.7 NMAC - Rn, 15 NMAC 10.3.3.7 & A, 04/14/06]

15.10.33.8 MINORS ON LICENSED PREMISES:

[A. If a licensee chooses to

~~allow minors on the licensed premises for any reason, except a bona fide emergency, the licensee must designate the licensed premises as either entirely a restricted area, entirely an unrestricted area, or as both restricted and unrestricted areas.~~

~~(1) If the licensed premises are designated as both restricted and unrestricted areas, restricted areas must be clearly marked so that they are unmistakable from unrestricted areas.~~

~~(2) A licensee who designates both restricted and unrestricted areas on the same licensed premises must maintain separate books of account for restricted and unrestricted areas to show whether the primary activity in each area is the sale of alcoholic beverages for consumption on the licensed premises.]~~

A. If a licensee chooses to allow minors on the licensed premises for any reason except a bona fide emergency, the licensee must, in an annual application filed with the division, designate the licensed premises as either entirely a restricted area, entirely an unrestricted area, or both restricted and unrestricted areas, showing such designations on a correct floor plan of the licensed premises. The designations shall be approved or disapproved by the division. Licensees shall not permit minors to be in restricted areas. The applicant shall also indicate the nature and extent of security that will be provided to control restricted areas.

(1) If the licensed premises are designated as both restricted and unrestricted areas, and the division approves the designations, restricted areas of the licensed premises must be clearly posted and marked so that they are unmistakable from unrestricted areas.

(2) A licensee who designates both restricted and unrestricted areas on the same licensed premises and receives approval of the division for such designations, must maintain separate books of account for restricted and unrestricted areas to show whether the primary activity in each area is the sale of alcoholic beverages for consumption on the licensed premises.

B. A licensee who chooses to allow minors on the licensed premises ~~in~~ either restricted or unrestricted areas] must:

(1) ensure that no minor is sold or served, purchases, possesses or consumes an alcoholic beverage on the premises; and

(2) post in restricted areas of the licensed premises conspicuous signs that state that "minors are not permitted in this area, unless accompanied by a parent, adult spouse or legal guardian".~~[If no signs are posted, the entire licensed premises will be considered to be designated as an unrestricted area.]~~

[3/31/97; 7/15/99; 15.10.33.8 NMAC - Rn,

15 NMAC 15.10.3.3.8 & A, 04/14/06]

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

This is an Amendment to 14.9.4 NMAC, Section 20, effective 05-01-06.

**14.9.4.20 ABSENCE FROM
BOILER:**

A. Constant attendance of a boiler with automatic controls is not required. However, there shall be a properly licensed individual (reference Section 29 [now 14.9.4.29 NMAC], Boiler Operator, Certificate of Competence, of these rules) responsible for the safe operation of such equipment. Such individual shall be responsible for maintaining a ~~[daily]~~ weekly inspection/tour log for high-pressure steam and high temperature water boilers and a weekly inspection/tour log for low-pressure hot-water heating boilers as defined in Subsections R, S, T & Z of 14.9.4.7 NMAC.

B. Any boiler that is not considered an automatic boiler and located in a publicly owned place of public assembly shall have a full-time, licensed operator. The boiler operator shall not leave the operating floor for more than 10 minutes at any one time without leaving on duty an operator with the same classification as the boiler operator.

[1-1-98; 14.9.4.20 NMAC - Rn, 14 NMAC 9.4.20, 08-01-03; A, 05-01-06]

**NEW MEXICO BOARD OF
SOCIAL WORK
EXAMINERS**

16.63.16 NMAC, Code of Conduct, filed May 20, 2002, is repealed effective 4-24-06 and replaced as 16.63.16 NMAC, Code of Conduct, effective 4-24-06.

**NEW MEXICO BOARD OF
SOCIAL WORK
EXAMINERS**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 63 SOCIAL WORKERS
PART 16 CODE OF CON-
DUCT**

16.63.16.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Social Work Examiners, P.O. Box 25101, Santa Fe, NM 87504.

[16.63.16.1 NMAC - Rp, 16.63.16.1 NMAC, 4/24/06]

16.63.16.2 SCOPE: All baccalaureate social workers, master social workers, and independent social workers.

[16.63.16.2 NMAC - Rp, 16.63.16.2 NMAC, 4/24/06]

16.63.16.3 STATUTORY AUTHORITY: These parts are promulgated pursuant to the Social Work Practice Act, Section 61-31-8A, 14-2-1, 61-31-19 NMSA 1978.

[16.63.16.3 NMAC - Rp, 16.63.16.3 NMAC, 4/24/06]

16.63.16.4 DURATION: Permanent

[16.63.16.4 NMAC - Rp, 16.63.16.4 NMAC, 4/24/06]

16.63.16.5 EFFECTIVE DATE: April 24, 2006, unless a later date is cited at the end of a section.

[16.63.16.5 NMAC - Rp, 16.63.16.5 NMAC, 4/24/06]

16.63.16.6 OBJECTIVE: To inform the licensees of the social work code of conduct.

[16.63.16.6 NMAC - Rp, 16.63.16.6 NMAC, 4/24/06]

16.63.16.7 DEFINITIONS: [Reserved]

16.63.16.8 SOCIAL WORKERS' ETHICAL RESPONSIBILITIES TO CLIENTS:

A. Commitment to clients. Social workers' primary responsibility is to promote the well being of clients. In general, clients' interests are primary. However, social workers' responsibility to the larger society or specific legal obligations may on limited occasions supersede the loyalty owed clients, and clients should be so advised. (Examples include when a social worker is required by law to report that a client has abused a child or has threatened to harm self or others.)

B. Self-determination. Social workers respect and promote the right of clients to self-determination and assist clients in their efforts to identify and clarify their goals. Social workers may limit clients' right to self-determination when, in the social workers' professional judgment, clients' actions or potential actions pose a serious, foreseeable, and imminent risk to themselves or others.

C. Informed consent:

(1) Social workers should provide services to clients only in the context of a professional relationship based, when

appropriate, on valid informed consent. Social workers should use clear and understandable language to inform clients of the purpose of the services, risks related to the services, limits to services because of the requirements of a third-party payer, relevant costs, reasonable alternatives, clients' right to refuse or withdraw consent, and the time frame covered by the consent. Social workers should provide clients with an opportunity to ask questions.

(2) In instances when clients are not literate or have difficulty understanding the primary language used in the practice setting, social workers should take steps to ensure clients' comprehension. This may include providing clients with a detailed verbal explanation or arranging for a qualified interpreter or translator whenever possible.

(3) In instances when clients lack the capacity to provide informed consent, social workers should protect clients' interests by seeking permission from an appropriate third party, informing clients consistent with the clients' level of understanding. In such instances social workers should seek to ensure that the third party acts in a manner consistent with clients' wishes and interests. Social workers should take reasonable steps to enhance such clients' ability to give informed consent.

(4) In instances when clients are receiving services involuntarily, social workers should provide information about the nature and extent of services and about the extent of clients' right to refuse service.

(5) Social workers who provide services via electronic media (such as computer, telephone, radio, and television) should inform recipients of the limitations and risks associated with such services.

(6) Social workers should obtain clients' informed consent before audiotaping or videotaping clients or permitting observation of services to clients by a third party.

D. Competence:

(1) Social workers should provide services and represent themselves as competent only within the boundaries of their education, training, license, certification, consultation received, supervised experience, or other relevant professional experience.

(2) Social workers should provide services in substantive areas or use intervention techniques or approaches that are new to them only after engaging in appropriate study, training, consultation, and supervision from people who are competent in those interventions or techniques.

(3) When generally recognized standards do not exist with respect to an emerging area of practice, social workers should exercise careful judgment and take responsible steps (including appropriate

education, research, training, consultation, and supervision) to ensure the competence of their work and to protect clients from harm.

E. Cultural competence and social diversity:

(1) Social workers should understand culture and its function in human behavior and society, recognizing the strengths that exist in all cultures.

(2) Social workers should have a knowledge base of their clients' cultures and be able to demonstrate competence in the provision of services that are sensitive to clients' cultures and to differences among people and cultural groups.

(3) Social workers should obtain education about and seek to understand the nature of social diversity and oppression with respect to race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, and mental or physical disability.

F. Conflicts of interest:

(1) Social workers should be alert to and avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgment. Social workers should inform clients when a real or potential conflict of interest arises and take reasonable steps to resolve the issue in a manner that makes the clients' interests primary and protects clients' interests to the greatest extent possible. In some cases, protecting clients' interests may require termination of the professional relationship with proper referral of the client.

(2) Social workers should not take unfair advantage of any professional relationship or exploit others to further their personal, religious, political, or business interests.

(3) Social workers should not engage in dual or multiple relationships with clients or former clients in which there is a risk of exploitation or potential harm to the client. In instances when dual or multiple relationships are unavoidable, social workers should take steps to protect clients and are responsible for setting clear, appropriate, and culturally sensitive boundaries. (Dual or multiple relationships occur when social workers relate to clients in more than one relationship, whether professional, social, or business. Dual or multiple relationships can occur simultaneously or consecutively.)

(4) When social workers provide services to two or more people who have a relationship with each other (for example, couples, family members), social workers should clarify with all parties which individuals will be considered clients and the nature of social workers' professional obligations to the various individuals who are receiving services. Social workers who anticipate a conflict of interest among the

individuals receiving services or who anticipate having to perform in potentially conflicting roles (for example, when a social worker is asked to testify in a child custody dispute or divorce proceedings involving clients) should clarify their role with the parties involved and take appropriate action to minimize any conflict of interest.

G. Privacy and confidentiality:

(1) Social workers should respect clients' right to privacy. Social workers should not solicit private information from clients unless it is essential to providing services or conducting social work evaluation or research. Once private information is shared, standards of confidentiality apply.

(2) Social workers may disclose confidential information when appropriate with valid consent from a client or a person legally authorized to consent on behalf of a client.

(3) Social workers should protect the confidentiality of all information obtained in the course of professional service, except for compelling professional reasons. The general expectation that social workers will keep information confidential does not apply when disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or other identifiable person. In all instances, social workers should disclose the least amount of confidential information necessary to achieve the desired purpose; only information that is directly relevant to the purpose for which the disclosure is made should be revealed.

(4) Social workers should inform clients, to the extent possible, about the disclosure of confidential information and the potential consequences, when feasible before the disclosure is made. This applies whether social workers disclose confidential information on the basis of a legal requirement or client consent.

(5) Social workers should discuss with clients and other interested parties the nature of confidentiality and limitations of clients' right to confidentiality. Social workers should review with clients circumstances where confidential information may be requested and where disclosure of confidential information may be legally required. This discussion should occur as soon as possible in the social worker-client relationship and as needed throughout the course of the relationship.

(6) When social workers provide counseling services to families, couples, or groups, social workers should seek agreement among the parties involved concerning each individual's right to confidentiality and obligation to preserve the confidentiality of information shared by others. Social workers should inform participants in family, couples, or group counseling that social workers cannot guarantee that all partici-

pants will honor such agreements.

(7) Social workers should inform clients involved in family, couples, marital, or group counseling of the social worker's, employer's, and agency's policy concerning the social worker's disclosure of confidential information among the parties involved in the counseling.

(8) Social workers should not disclose confidential information to third-party payers unless clients have authorized such disclosure.

(9) Social workers should not discuss confidential information in any setting unless privacy can be ensured. Social workers should not discuss confidential information in public or semipublic areas such as hallways, waiting rooms, elevators, and restaurants.

(10) Social workers should protect the confidentiality of clients during legal proceedings to the extent permitted by law. When a court of law or other legally authorized body orders social workers to disclose confidential or privileged information without a client's consent and such disclosure could cause harm to the client, social workers should request that the court withdraw the order or limit the order as narrowly as possible or maintain the records under seal, unavailable for public inspection.

(11) Social workers should protect the confidentiality of clients when responding to requests from members of the media.

(12) Social workers should protect the confidentiality of clients' written and electronic records and other sensitive information. Social workers should take reasonable steps to ensure that clients' records are stored in a secure location and that clients' records are not available to others who are not authorized to have access.

(13) Social workers should take precautions to ensure and maintain the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology. Disclosure of identifying information should be avoided whenever possible.

(14) Social workers should transfer or dispose of clients' records in a manner that protects clients' confidentiality and is consistent with state statutes governing records and social work licensure.

(15) Social workers should take reasonable precautions to protect client confidentiality in the event of the social worker's termination of practice, incapacitation, or death.

(16) Social workers should not disclose identifying information when discussing clients for teaching or training pur-

poses unless the client has consented to disclosure of confidential information.

(17) Social workers should not disclose identifying information when discussing clients with consultants unless the client has consented to disclosure of confidential information or there is a compelling need for such disclosure.

(18) Social workers should protect the confidentiality of deceased clients consistent with the preceding standards.

H. Access to records:

(1) Social workers should provide clients with reasonable access to records concerning the clients. Social workers who are concerned that clients' access to their records could cause serious misunderstanding or harm to the client should provide assistance in interpreting the records and consultation with the client regarding the records. Social workers should limit clients' access to their records, or portions of their records, only in exceptional circumstances when there is compelling evidence that such access would cause serious harm to the client. Both clients' requests and the rationale for withholding some or all of the record should be documented in clients' files.

(2) When providing clients with access to their records, social workers should take steps to protect the confidentiality of other individuals identified or discussed in such records.

I. Sexual relationships:

(1) Social workers should under no circumstances engage in sexual activities or sexual contact with current clients, whether such contact is consensual or forced.

(2) Social workers should not engage in sexual activities or sexual contact with clients' relatives or other individuals with whom clients maintain a close personal relationship when there is a risk of exploitation or potential harm to the client. Sexual activity or sexual contact with clients' relatives or other individuals with whom clients maintain a personal relationship has the potential to be harmful to the client and may make it difficult for the social worker and client to maintain appropriate professional boundaries. Social workers—not their clients, their clients' relatives, or other individuals with whom the client maintains a personal relationship—assume the full burden for setting clear, appropriate, and culturally sensitive boundaries.

(3) Social workers should not engage in sexual activities or sexual contact with former clients because of the potential for harm to the client. If social workers engage in conduct contrary to this prohibition or claim that an exception to this prohibition is warranted because of extraordinary

circumstances, it is social workers—not their clients—who assume the full burden of demonstrating that the former client has not been exploited, coerced, or manipulated, intentionally or unintentionally.

(4) Social workers should not provide clinical services to individuals with whom they have had a prior sexual relationship. Providing clinical services to a former sexual partner has the potential to be harmful to the individual and is likely to make it difficult for the social worker and individual to maintain appropriate professional boundaries.

J. Physical contact.

Social workers should not engage in physical contact with clients when there is a possibility of psychological harm to the client as a result of the contact (such as cradling or caressing clients). Social workers who engage in appropriate physical contact with clients are responsible for setting clear, appropriate, and culturally sensitive boundaries that govern such physical contact.

K. Sexual harassment.

Social workers should not sexually harass clients. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

L. Derogatory language.

Social workers should not use derogatory language in their written or verbal communications to or about clients. Social workers should use accurate and respectful language in all communications to and about clients.

M. Payment for services:

(1) When setting fees, social workers should ensure that the fees are fair, reasonable, and commensurate with the services performed. Consideration should be given to clients' ability to pay.

(2) Social workers should avoid accepting goods or services from clients as payment for professional services. Bartering arrangements, particularly involving services, create the potential for conflicts of interest, exploitation, and inappropriate boundaries in social workers' relationships with clients. Social workers should explore and may participate in bartering only in very limited circumstances when it can be demonstrated that such arrangements are an accepted practice among professionals in the local community, considered to be essential for the provision of services, negotiated without coercion, and entered into at the client's initiative and with the client's informed consent. Social workers who accept goods or services from clients as payment for professional services assume the full burden of demonstrating that this arrangement will not be detrimental to the client or the professional relationship.

(3) Social workers should not

solicit a private fee or other remuneration for providing services to clients who are entitled to such available services through the social workers' employer or agency.

N. Clients who lack decision-making capacity. When social workers act on behalf of clients who lack the capacity to make informed decisions, social workers should take reasonable steps to safeguard the interests and rights of those clients.

O. Interruption of services. Social workers should make reasonable efforts to ensure continuity of services in the event that services are interrupted by factors such as unavailability, relocation, illness, disability, or death.

P. Termination of services:

(1) Social workers should terminate services to clients and professional relationships with them when such services and relationships are no longer required or no longer serve the clients' needs or interests.

(2) Social workers should take reasonable steps to avoid abandoning clients who are still in need of services. Social workers should withdraw services precipitously only under unusual circumstances, giving careful consideration to all factors in the situation and taking care to minimize possible adverse effects. Social workers should assist in making appropriate arrangements for continuation of services when necessary.

(3) Social workers in fee-for-service settings may terminate services to clients who are not paying an overdue balance if the financial contractual arrangements have been made clear to the client, if the client does not pose an imminent danger to self or others, and if the clinical and other consequences of the current nonpayment have been addressed and discussed with the client.

(4) Social workers should not terminate services to pursue a social, financial, or sexual relationship with a client.

(5) Social workers who anticipate the termination or interruption of services to clients should notify clients promptly and seek the transfer, referral, or continuation of services in relation to the clients' needs and preferences.

(6) Social workers who are leaving an employment setting should inform clients of appropriate options for the continuation of services and of the benefits and risks of the options.

[16.63.16.8 NMAC - Rp, 16.63.16.9 NMAC, 4/24/06]

16.63.16.9 SOCIAL WORKERS' ETHICAL RESPONSIBILITIES TO COLLEAGUES:

A. Respect:

(1) Social workers should treat colleagues with respect and should represent accurately and fairly the qualifications, views, and obligations of colleagues.

(2) Social workers should avoid unwarranted negative criticism of colleagues in communications with clients or with other professionals. Unwarranted negative criticism may include demeaning comments that refer to colleagues' level of competence or to individuals' attributes such as race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, and mental or physical disability.

(3) Social workers should cooperate with social work colleagues and with colleagues of other professions when such cooperation serves the well-being of clients.

B. Confidentiality. Social workers should respect confidential information shared by colleagues in the course of their professional relationships and transactions. Social workers should ensure that such colleagues understand social workers' obligation to respect confidentiality and any exceptions related to it.

C. Interdisciplinary collaboration:

(1) Social workers who are members of an interdisciplinary team should participate in and contribute to decisions that affect the well-being of clients by drawing on the perspectives, values, and experiences of the social work profession. Professional and ethical obligations of the interdisciplinary team as a whole and of its individual members should be clearly established.

(2) Social workers for whom a team decision raises ethical concerns should attempt to resolve the disagreement through appropriate channels. If the disagreement cannot be resolved, social workers should pursue other avenues to address their concerns consistent with client well being.

D. Disputes involving colleagues:

(1) Social workers should not take advantage of a dispute between a colleague and an employer to obtain a position or otherwise advance the social workers' own interests.

(2) Social workers should not exploit clients in disputes with colleagues or engage clients in any inappropriate discussion of conflicts between social workers and their colleagues.

E. Consultation

(1) Social workers should seek the advice and counsel of colleagues whenever such consultation is in the best interests of clients.

(2) Social workers should keep themselves informed about colleagues' areas of expertise and competencies. Social workers should seek consultation only from colleagues who have demonstrated knowl-

edge, expertise, and competence related to the subject of the consultation.

(3) When consulting with colleagues about clients, social workers should disclose the least amount of information necessary to achieve the purposes of the consultation.

F. Referral for services:

(1) Social workers should refer clients to other professionals when the other professionals' specialized knowledge or expertise is needed to serve clients fully or when social workers believe that they are not being effective or making reasonable progress with clients and that additional service is required.

(2) Social workers who refer clients to other professionals should take appropriate steps to facilitate an orderly transfer of responsibility. Social workers who refer clients to other professionals should disclose, with clients' consent, all pertinent information to the new service providers.

(3) Social workers are prohibited from giving or receiving payment for a referral when no professional service is provided by the referring social worker.

G. Sexual relationships

(1) Social workers who function as supervisors or educators should not engage in sexual activities or contact with supervisees, students, trainees, or other colleagues over whom they exercise professional authority.

(2) Social workers should avoid engaging in sexual relationships with colleagues when there is potential for a conflict of interest. Social workers who become involved in, or anticipate becoming involved in, a sexual relationship with a colleague have a duty to transfer professional responsibilities, when necessary, to avoid a conflict of interest.

H. Sexual harassment.

Social workers should not sexually harass supervisees, students, trainees, or colleagues. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

I. Impairment of colleagues:

(1) Social workers who have direct knowledge of a social work colleague's impairment that is due to personal problems, psychosocial distress, substance abuse, or mental health difficulties and that interferes with practice effectiveness should consult with that colleague when feasible and assist the colleague in taking remedial action.

(2) Social workers who believe that a social work colleague's impairment interferes with practice effectiveness and that the colleague has not taken adequate steps to address the impairment should take

action through appropriate channels established by employers, agencies, NASW, licensing and regulatory bodies, and other professional organizations.

J. Incompetence of colleagues:

(1) Social workers who have direct knowledge of a social work colleague's incompetence should consult with that colleague when feasible and assist the colleague in taking remedial action.

(2) Social workers who believe that a social work colleague is incompetent and has not taken adequate steps to address the incompetence should take action through appropriate channels established by employers, agencies, NASW, licensing and regulatory bodies, and other professional organizations.

K. Unethical conduct of colleagues:

(1) Social workers should take adequate measures to discourage, prevent, expose, and correct the unethical conduct of colleagues.

(2) Social workers should be knowledgeable about established policies and procedures for handling concerns about colleagues' unethical behavior. Social workers should be familiar with national, state, and local procedures for handling ethics complaints. These include policies and procedures created by NASW, licensing and regulatory bodies, employers, agencies, and other professional organizations.

(3) Social workers who believe that a colleague has acted unethically should seek resolution by discussing their concerns with the colleague when feasible and when such discussion is likely to be productive.

(4) When necessary, social workers who believe that a colleague has acted unethically should take action through appropriate formal channels (such as contacting a state licensing board or regulatory body, an NASW committee on inquiry, or other professional ethics committees).

(5) Social workers should defend and assist colleagues who are unjustly charged with unethical conduct.

[16.63.16.9 NMAC - Rp, 16.63.16.10 NMAC, 4/24/06]

16.63.16.10 SOCIAL WORKERS' ETHICAL RESPONSIBILITIES IN PRACTICE SETTINGS:

A. Supervision and consultation:

(1) Social workers who provide supervision or consultation should have the necessary knowledge and skill to supervise or consult appropriately and should do so only within their areas of knowledge and competence.

(2) Social workers who provide

supervision or consultation are responsible for setting clear, appropriate, and culturally sensitive boundaries.

(3) Social workers should not engage in any dual or multiple relationships with supervisees in which there is a risk of exploitation of or potential harm to the supervisee.

(4) Social workers who provide supervision should evaluate supervisees' performance in a manner that is fair and respectful.

B. Education and training:

(1) Social workers who function as educators, field instructors for students, or trainers should provide instruction only within their areas of knowledge and competence and should provide instruction based on the most current information and knowledge available in the profession.

(2) Social workers who function as educators or field instructors for students should evaluate students' performance in a manner that is fair and respectful.

(3) Social workers who function as educators or field instructors for students should take reasonable steps to ensure that clients are routinely informed when services are being provided by students.

(4) Social workers who function as educators or field instructors for students should not engage in any dual or multiple relationships with students in which there is a risk of exploitation or potential harm to the student. Social work educators and field instructors are responsible for setting clear, appropriate, and culturally sensitive boundaries.

C. Performance evaluation. Social workers who have responsibility for evaluating the performance of others should fulfill such responsibility in a fair and considerate manner and on the basis of clearly stated criteria.

D. Client records:

(1) Social workers should take reasonable steps to ensure that documentation in records is accurate and reflects the services provided.

(2) Social workers should include sufficient and timely documentation in records to facilitate the delivery of services and to ensure continuity of services provided to clients in the future.

(3) Social workers' documentation should protect clients' privacy to the extent that is possible and appropriate and should include only information that is directly relevant to the delivery of services.

(4) Social workers should store records following the termination of services to ensure reasonable future access. Records should be maintained for the number of years required by state statutes or relevant contracts.

E. Billing. Social workers

should establish and maintain billing practices that accurately reflect the nature and extent of services provided and that identify who provided the service in the practice setting.

F. Client transfer:

(1) When an individual who is receiving services from another agency or colleague contacts a social worker for services, the social worker should carefully consider the client's needs before agreeing to provide services. To minimize possible confusion and conflict, social workers should discuss with potential clients the nature of the clients' current relationship with other service providers and the implications, including possible benefits or risks, of entering into a relationship with a new service provider.

(2) If a new client has been served by another agency or colleague, social workers should discuss with the client whether consultation with the previous service provider is in the client's best interest.

G. Administration:

(1) Social work administrators should advocate within and outside their agencies for adequate resources to meet clients' needs.

(2) Social workers should advocate for resource allocation procedures that are open and fair. When not all clients' needs can be met, an allocation procedure should be developed that is nondiscriminatory and based on appropriate and consistently applied principles.

(3) Social workers who are administrators should take reasonable steps to ensure that adequate agency or organizational resources are available to provide appropriate staff supervision.

(4) Social work administrators should take reasonable steps to ensure that the working environment for which they are responsible is consistent with and encourages compliance with the NASW code of ethics. Social work administrators should take reasonable steps to eliminate any conditions in their organizations that violate, interfere with, or discourage compliance with the code.

H. Continuing education and staff development. Social work administrators and supervisors should take reasonable steps to provide or arrange for continuing education and staff development for all staff for whom they are responsible. Continuing education and staff development should address current knowledge and emerging developments related to social work practice and ethics.

I. Commitments to employers:

(1) Social workers generally should adhere to commitments made to

employers and employing organizations.

(2) Social workers should work to improve employing agencies' policies and procedures and the efficiency and effectiveness of their services.

(3) Social workers should take reasonable steps to ensure that employers are aware of social workers' ethical obligations as set forth in the NASW code of ethics and of the implications of those obligations for social work practice.

(4) Social workers should not allow an employing organization's policies, procedures, regulations, or administrative orders to interfere with their ethical practice of social work. Social workers should take reasonable steps to ensure that their employing organizations' practices are consistent with the NASW code of ethics.

(5) Social workers should act to prevent and eliminate discrimination in the employing organization's work assignments and in its employment policies and practices.

(6) Social workers should accept employment or arrange student field placements only in organizations that exercise fair personnel practices.

(7) Social workers should be diligent stewards of the resources of their employing organizations, wisely conserving funds where appropriate and never misappropriating funds or using them for unintended purposes.

J. Labor-management disputes:

(1) Social workers may engage in organized action, including the formation of and participation in labor unions, to improve services to clients and working conditions.

(2) The actions of social workers who are involved in labor-management disputes, job actions, or labor strikes should be guided by the profession's values, ethical principles, and ethical standards. Reasonable differences of opinion exist among social workers concerning their primary obligation as professionals during an actual or threatened labor strike or job action. Social workers should carefully examine relevant issues and their possible impact on clients before deciding on a course of action.

[16.63.16.10 NMAC - N, 4/24/06]

16.63.16.11 SOCIAL WORKERS' ETHICAL RESPONSIBILITIES AS PROFESSIONALS:

A. Competence:

(1) Social workers should accept responsibility or employment only on the basis of existing competence or the intention to acquire the necessary competence.

(2) Social workers should strive to become and remain proficient in professional practice and the performance of pro-

fessional functions. Social workers should critically examine and keep current with emerging knowledge relevant to social work. Social workers should routinely review the professional literature and participate in continuing education relevant to social work practice and social work ethics.

(3) Social workers should base practice on recognized knowledge, including empirically based knowledge, relevant to social work and social work ethics.

B. Discrimination. Social workers should not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, or mental or physical disability.

C. Private conduct. Social workers should not permit their private conduct to interfere with their ability to fulfill their professional responsibilities.

D. Dishonesty, fraud, and deception. Social workers should not participate in, condone, or be associated with dishonesty, fraud, or deception.

E. Impairment:

(1) Social workers should not allow their own personal problems, psychosocial distress, legal problems, substance abuse, or mental health difficulties to interfere with their professional judgment and performance or to jeopardize the best interests of people for whom they have a professional responsibility.

(2) Social workers whose personal problems, psychosocial distress, legal problems, substance abuse, or mental health difficulties interfere with their professional judgment and performance should immediately seek consultation and take appropriate remedial action by seeking professional help, making adjustments in workload, terminating practice, or taking any other steps necessary to protect clients and others.

F. Misrepresentation:

(1) Social workers should make clear distinctions between statements made and actions engaged in as a private individual and as a representative of the social work profession, a professional social work organization, or the social worker's employing agency.

(2) Social workers who speak on behalf of professional social work organizations should accurately represent the official and authorized positions of the organizations.

(3) Social workers should ensure that their representations to clients, agencies, and the public of professional qualifications, credentials, education, competence, affiliations, services provided, or results to be achieved are accurate. Social workers should claim only those relevant professional credentials they actually possess and take steps to correct any inaccuracies or

misrepresentations of their credentials by others.

G. Solicitations:

(1) Social workers should not engage in uninvited solicitation of potential clients who, because of their circumstances, are vulnerable to undue influence, manipulation, or coercion.

(2) Social workers should not engage in solicitation of testimonial endorsements (including solicitation of consent to use a client's prior statement as a testimonial endorsement) from current clients or from other people who, because of their particular circumstances, are vulnerable to undue influence.

H. Acknowledging credit:

(1) Social workers should take responsibility and credit, including authorship credit, only for work they have actually performed and to which they have contributed.

(2) Social workers should honestly acknowledge the work of and the contributions made by others.

[16.63.16.11 NMAC - N, 4/24/06]

16.63.16.12 SOCIAL WORKERS' ETHICAL RESPONSIBILITIES TO THE SOCIAL WORK PROFESSION:

A. Integrity of the profession:

(1) Social workers should work toward the maintenance and promotion of high standards of practice.

(2) Social workers should uphold and advance the values, ethics, knowledge, and mission of the profession. Social workers should protect, enhance, and improve the integrity of the profession through appropriate study and research, active discussion, and responsible criticism of the profession.

(3) Social workers should contribute time and professional expertise to activities that promote respect for the value, integrity, and competence of the social work profession. These activities may include teaching, research, consultation, service, legislative testimony, presentations in the community, and participation in their professional organizations.

(4) Social workers should contribute to the knowledge base of social work and share with colleagues their knowledge related to practice, research, and ethics. Social workers should seek to contribute to the profession's literature and to share their knowledge at professional meetings and conferences.

(5) Social workers should act to prevent the unauthorized and unqualified practice of social work.

B. Evaluation and research:

(1) Social workers should monitor and evaluate policies, the implementa-

tion of programs, and practice interventions.

(2) Social workers should promote and facilitate evaluation and research to contribute to the development of knowledge.

(3) Social workers should critically examine and keep current with emerging knowledge relevant to social work and fully use evaluation and research evidence in their professional practice.

(4) Social workers engaged in evaluation or research should carefully consider possible consequences and should follow guidelines developed for the protection of evaluation and research participants. Appropriate institutional review boards should be consulted.

(5) Social workers engaged in evaluation or research should obtain voluntary and written informed consent from participants, when appropriate, without any implied or actual deprivation or penalty for refusal to participate; without undue inducement to participate; and with due regard for participants' well-being, privacy, and dignity. Informed consent should include information about the nature, extent, and duration of the participation requested and disclosure of the risks and benefits of participation in the research.

(6) When evaluation or research participants are incapable of giving informed consent, social workers should provide an appropriate explanation to the participants, obtain the participants' assent to the extent they are able, and obtain written consent from an appropriate proxy.

(7) Social workers should never design or conduct evaluation or research that does not use consent procedures, such as certain forms of naturalistic observation and archival research, unless rigorous and responsible review of the research has found it to be justified because of its prospective scientific, educational, or applied value and unless equally effective alternative procedures that do not involve waiver of consent are not feasible.

(8) Social workers should inform participants of their right to withdraw from evaluation and research at any time without penalty.

(9) Social workers should take appropriate steps to ensure that participants in evaluation and research have access to appropriate supportive services.

(10) Social workers engaged in evaluation or research should protect participants from unwarranted physical or mental distress, harm, danger, or deprivation.

(11) Social workers engaged in the evaluation of services should discuss collected information only for professional purposes and only with people professionally concerned with this information.

(12) Social workers engaged in evaluation or research should ensure the anonymity or confidentiality of participants and of the data obtained from them. Social workers should inform participants of any limits of confidentiality, the measures that will be taken to ensure confidentiality, and when any records containing research data will be destroyed.

(13) Social workers who report evaluation and research results should protect participants' confidentiality by omitting identifying information unless proper consent has been obtained authorizing disclosure.

(14) Social workers should report evaluation and research findings accurately. They should not fabricate or falsify results and should take steps to correct any errors later found in published data using standard publication methods.

(15) Social workers engaged in evaluation or research should be alert to and avoid conflicts of interest and dual relationships with participants, should inform participants when a real or potential conflict of interest arises, and should take steps to resolve the issue in a manner that makes participants' interests primary.

(16) Social workers should educate themselves, their students, and their colleagues about responsible research practices.

[16.63.16.12 NMAC - Rp, 16.63.16.12 NMAC, 4/24/06]

16.63.16.13 SOCIAL WORKERS' ETHICAL RESPONSIBILITIES TO THE BROADER SOCIETY:

A. Social welfare. Social workers should promote the general welfare of society, from local to global levels, and the development of people, their communities, and their environments. Social workers should advocate for living conditions conducive to the fulfillment of basic human needs and should promote social, economic, political, and cultural values and institutions that are compatible with the realization of social justice.

B. Public participation. Social workers should facilitate informed participation by the public in shaping social policies and institutions.

C. Public emergencies. Social workers should provide appropriate professional services in public emergencies to the greatest extent possible.

D. Social and political action:

(1) Social workers should engage in social and political action that seeks to ensure that all people have equal access to the resources, employment, services, and opportunities they require to meet their basic human needs and to develop fully.

Social workers should be aware of the impact of the political arena on practice and should advocate for changes in policy and legislation to improve social conditions in order to meet basic human needs and promote social justice.

(2) Social workers should act to expand choice and opportunity for all people, with special regard for vulnerable, disadvantaged, oppressed, and exploited people and groups.

(3) Social workers should promote conditions that encourage respect for cultural and social diversity within the United States and globally. Social workers should promote policies and practices that demonstrate respect for difference, support the expansion of cultural knowledge and resources, advocate for programs and institutions that demonstrate cultural competence, and promote policies that safeguard the rights of and confirm equity and social justice for all people.

(4) Social workers should act to prevent and eliminate domination of, exploitation of, and discrimination against any person, group, or class on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, or mental or physical disability.

[16.63.16.13 NMAC - Rp, 16.63.16.13 NMAC, 4/24/06]

HISTORY OF 16.63.16 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives: Rule 16, Code of Conduct, 5/22/92.

History of Repealed Material:

16.63.16 NMAC, Code of Conduct, filed 5/20/2002 - Repealed effective 4/24/2006.

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.1 NMAC Sections 7 and 8, effective 4/24/06:

16.63.1.7 DEFINITIONS:

A. Appropriate supervision:

(1) Supervision, for the purposes of licensure, shall be provided by an individual qualified by the board of social work examiners. For ~~those~~ licensed masters social workers aspiring to achieve licensure at an independent level (LISW), supervision shall be provided by a licensed independent social worker (LISW). For those licensed independent social workers aspiring to add a specialty to their license, supervision shall be provided by a licensed independent

social worker licensed in that specialty. The relationship between the supervisor and supervisee must be designed to promote the development of professional social work skills for the delivery of social work services. These skills include the integration of theory and practice, the development and application of intervention techniques, the development and constant improvement of social work standards and ethics, and the continued acquisition of professional knowledge.

(2) Supervisors shall evaluate and oversee the manner in which the above skills development is reflected in the supervisee's practice. The supervisor's responsibility insures that the supervisee acquires the necessary skills required for advanced and professional social work practice.

(3) Applicant for licensure at the independent level must document 3,600 hours of licensed masters level social work experience which has been accumulated over no more than a 48 month period. Applicants for licensure must document 90 hours of supervision during this 3,600 hour period. One (1) hour of supervision must be documented for every 40 hours worked. No more than 60% of the 90 hours of supervision may be group supervision. No more than 25% of the 90 hours of supervision may be non face-to-face. The supervised contact may include live video-teleconferencing which would be equal to face-face supervision. Teleconferencing can be included as supervision. Individual or group supervision will be accepted. Group supervision means supervision rendered to not more than four (4) individuals at one time. Applicants and supervisors will engage the process of supervision in accordance with the guidelines established by the board of social work examiners.

B. Licensed clinical social worker: an independent social worker with a clinical specialty is equivalent to a licensed clinical social worker (LCSW).

C. Qualified applicants:

(1) Means those programs having received accreditation by CSWE and those programs having candidacy status, conditional status, or under review status with CSWE.

(2) For those applicants who graduated from a institution of higher education before CSWE began to accredit programs (prior to 1974), the New Mexico board of social work examiners will require:

(a) a letter from the university's registrars office stating that the applicant's course of study culminated in a degree which was the equivalent of an emphasis or major in social work;

(b) demonstrated social work experience;

(c) documentation of social work licensure in a previous state; and

(d) concurrence among the majority of professional members of the board that the transcripts reflect sufficient coursework in social work.

D. CSWE (council on social work education) accreditation: means those programs having received accreditation by CSWE and those programs having candidacy status or under review status with CSWE.

[1/1/90, 5/15/91, 6/22/92, 1/5/95, 5/1/99; 16.63.1.7 NMAC - Rn, 16 NMAC 63.1.7, 06/19/02; A, 4/24/06]

16.63.1.8 PUBLIC RECORDS:

Except as provided herein and except as otherwise provided by law, all applications, pleadings, petitions and motions are matters of public record as of the time of filing with the board. Any information covered in this section may be released to the disciplinary action reporting system ("DARS") of the ~~[American]~~ association of ~~[state]~~ social work boards "ASWB".

[1/1/90, 9/13/90, 5/15/91, 6/22/92, 1/5/95; 16.63.1.8 NMAC - Rn & A, 16 NMAC 63.1.8, 06/19/02; A, 4/24/06]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.3 NMAC Sections 8, 10 and 11, effective 4/24/06:

16.63.3.8 APPLICATION FOR LICENSURE:

Applicants, other than those applying for licensure by credentials, must submit or cause to be submitted the following documentation to the board:

A. completed application;

B. two (2) personal character references;

C. one (1) 2" x 2" original photograph of the applicant taken within the preceding six (6) months affixed to the application;

D. license fee as provided in Part 8;

E. official ~~[transcript]~~ transcripts directly from the university or college or by other means approved by the board;

F. verification of supervision must be received directly from the supervisor or by other means approved by the board;

G. if currently or previously licensed in another state you must submit verification of licensure, which must be sent directly to the board by the issuing jurisdiction; and

H. official exam scores; proof of passing the licensure exam must be received directly from the association of social work boards or from the jurisdiction

in which the applicant is licensed.

[5/15/91, 6/22/92, 1/5/95, 5/1/99; 16.63.3.8 NMAC - Rn, 16 NMAC 63.3.8, 06/19/02; A, 4/24/06]

16.63.3.10 RENEWAL OF LICENSE:

A. By July 1 of each year, each licensed social worker shall apply for license renewal and pay the annual renewal fee as set forth in Part 8.

B. A 30-day grace period, running from July 1 - July 30, allows the social worker to submit a renewal without a renewal fee penalty. However the social worker's license shall be considered expired and the social worker will refrain from practicing.

C. From July 31 to September 29 the social worker may renew his license, however a penalty fee will be assessed (16.63.8.17 NMAC).

D. After September 29 the social worker's license will be considered revoked. If revoked for non-renewal, then the licensee will be required to pay previous penalties, ~~[application fees and retake the exam(s)]~~ complete a new application and pay another application fee. The applicant will also have to take an exam prescribed by the board.

[5/15/91, 6/22/92, 1/5/95; 5/1/99, 16.63.3.10 NMAC - Rn, 16 NMAC 63.3.10, 06/19/02; A, 4/24/06]

16.63.3.11 QUALIFIED APPLICANTS:

As per 16.63.4.12 NMAC "Qualified applicants who fail to obtain the minimum required score may retake the (ASWB or NMBSWE Cultural) exam an unlimited number of times. Applicants must pay the examination fee for each administration of the examination." Prior to the re-examination a new application must be submitted to the board by the applicant. A non-refundable application fee must accompany the new application. Qualifications for examination will be evaluated based on the most recent application.

Initial applications are valid for a period of six months; additional, applications shall be valid for a period not to exceed twelve (12) months from the date of initial submission.

[5/15/91, 6/22/92, 1/15/95, 5/1/99; 16.63.3.11 NMAC - Rn & A, 16 NMAC 63.3.11, 06/19/02; A, 4/24/06]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.4 NMAC Sections 8 and 11, effective 4/24/06:

16.63.4.8 EXAMINATIONS: The board adopts as its examination the examination as administered by the ~~[American]~~ association of ~~[State]~~ social work boards at the appropriate license level and the New Mexico board of social work examiners cultural awareness examination. [1/1/90, 9/13/90, 5/15/91, 6/22/92, 1/5/95; 16.63.4.8 NMAC - Rn, 16 NMAC 63.4.8, 06/19/02; A, 4/24/06]

16.63.4.11 PASSING SCORES: For the examinations administered by the ~~[American]~~ association of ~~[State]~~ social work boards, ASWB, the board will accept as passing, scores of 70 or higher. [1/1/90, 9/13/90, 5/15/91, 6/22/92, 1/5/95; 16.63.4.11 NMAC - Rn & A, 16 NMAC 63.4.11, 06/19/02; A, 4/24/06]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.7 NMAC Sections 8, 9 and 10 effective 4/24/06:

16.63.7.8 APPLICABILITY
 A. When an applicant has submitted all documentation required for the license sought and the application is complete except that ~~[he]~~ the applicant has not completed either component of the licensure exam, the board may issue a provisional license to the applicant at the level sought.
 B. The board will accept, in the absence of an official transcript, certification bearing official seal and attesting to completion of degree requirements from the registrar, mailed directly to the board from the conferring institution. [1/1/90, 5/15/91, 6/22/92, 1/5/95, 5/1/99; 16.63.7.8 NMAC - Rn, 16 NMAC 63.7.8, 06/19/02; A, 4/24/06]

16.63.7.9 DURATION: The provisional license shall be valid for ~~[3]~~ 6 months or until the applicant passes/fails the national examination and the New Mexico cultural examination, whichever comes first.
 A. The provisional license shall become immediately invalid if the provisional licensee fails to submit an official transcript of certification.
 B. The provisional licens-

ee must pass the national and New Mexico cultural exam during this ~~[3]~~ 6 month period.
 C. Only one provisional license will be issued for each level of licensure. [1/1/90, 5/15/91, 6/22/92, 1/5/95, 5/1/99; 16.63.7.9 NMAC - Rn & A, 16 NMAC 63.7.9, 06/19/02; A, 4/24/06]

16.63.7.10 EXTENUATING CIRCUMSTANCES: A qualified provisional licensee may apply for an extension of a provisional license if ~~[he]~~ the applicant:
 A. fails to sit for the examination due to extenuating circumstances; these extenuating circumstances are defined as serious, physician-verified illness or death in immediate family, and military service; the extenuating circumstances must be presented for the board's administrator's consideration on a case-by-case basis;
 B. should the applicant be granted an extension, ~~[he]~~ the applicant must sit for the examination at the next available time it is offered; the extended provisional license will be in effect only until the next available test date and not to exceed under any circumstances 4 months. [1/1/90, 5/15/91, 6/22/92, 1/5/95; 5/1/99; 16.63.7.10 NMAC - Rn, 16 NMAC 63.7.10, 06/19/02; A, 4/24/06]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.8 NMAC Section 20 effective 4/24/06:

16.63.8.20 [APPLICATION PACKET]
~~A. The first copy of the application packet is issued at no cost. There is a five dollar (\$5.00) fee for additional copies of the packet. The packet includes:~~
 B. Rules and Regulations;
 C. Practice Act.
[RESERVED]
 [1/1/90, 9/13/90, 5/15/91, 6/22/92, 5/1/99; 16.63.8.20 NMAC - Rn, 16 NMAC 63.8.20, 06/19/02; Repealed, 4/24/06]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.9 NMAC Sections 8 and 9, effective 4/24/06:

16.63.9.8 QUALIFICATION OF LICENSURE: Applicants for licensure as baccalaureate social worker must possess the following minimum qualifica-

tions:
 A. be at least 18 years of age;
 B. possess a bachelor's degree in social work from a program accredited by the council on social work education;
 C. successfully pass the ~~[American]~~ association of ~~[State]~~ social work board examination ASWB;
 D. successfully pass the New Mexico board of social work examiners cultural awareness examination. [1/1/90, 5/15/91, 6/22/92; 16.63.9.8 NMAC - Rn & A, 16 NMAC 63.9.8, 06/19/02; A, 4/24/06]

16.63.9.9 PARAMETERS OF PRACTICE

A. This is the entry licensing level. The baccalaureate social worker ("LBSW") is prepared to assume the beginning level professional role in public and private social service agencies
 B. LBSWs are prepared through beginning professional knowledge in human behavior in the social environment, generalist social work practice, knowledge of the history of social policy, knowledge of how to utilize social research findings in their practice and having had supervised field practicum experience. [The LBSW provides generalist services in the role of social broker, enabler, case manager, educator and mediator.] Baccalaureate social work is basic generalist practice that includes assessment planning, intervention, evaluation, case management, information and referral, counseling, supervision, consultation, education, advocacy, community organization, and the development, implementation, of policies, programs and activities. LBSWs may work with individuals, families, communities, groups and organizations at a beginning level. [LBSWs do not conduct clinical psycho-social evaluations but may be involved in taking social histories and/or conducting home studies].
 C. The LBSW utilizes the basic problem-solving process of gathering information, assessing that information at a beginning professional level, developing an intervention plan, [then assuming the roles enumerated above, implement the plan and conducts follow-up] implementing the plan and conducts follow-up. This process at the LBSW level requires the application of social work theory, knowledge, methods, ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning.
 D. The LBSW must not practice independently as a private practitioner. [1/1/90, 5/15/91, 6/22/92; 16.63.9.9 NMAC - Rn & A, 16 NMAC 63.9.9, 06/19/02; A,

4/24/06]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.10 NMAC Sections 8 and 9, effective 4/24/06:

16.63.10.8 QUALIFICATION FOR LICENSURE:

Applicants for licensure as master social worker must:

A. be at least 18 years of age;

B. possess a master's degree in social work from a graduate program of social work accredited by the council on social work education;

C. successfully pass the [American] association of [State] social work board examination ASWB;

D. successfully pass the New Mexico board of social work examiners cultural awareness examination.

[1/1/90, 9/13/90, 5/15/91, 6/22/92; 16.63.10.8 NMAC - Rn & A, 16 NMAC 63.10.8, 06/19/02; A, 4/24/06]

16.63.10.9 PARAMETERS OF PRACTICE

A. The licensed master social worker ("LMSW") provides a wide range of services. The LMSW has preparation as a generalist social worker, as found in the LBSW level in addition to specialization in either direct or indirect services such as work in a field of practice or with a specific population.

B. The LMSW may provide diagnostic, preventive and treatment services [pertaining to individuals, families, groups, communities and organizations. The LMSW should be able to engage the client system, develop a relationship and employ a series of interventions, which modify or eliminate targeted behaviors and can promote positive growth and development]. The practice of master's social work means the application of social work theory, knowledge, methods and ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. Master's social work practice requires the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation and evaluation, case management, information and referral, counseling, supervision, consultation, education, research, advocacy, community organization and the development, implementation and administration of policies, programs and activities. The practice of master's social work may include the practice of clinical social work

under appropriate clinical social work supervision. The LMSW is able to explain and interpret the results of psychosocial evaluations in the problem-solving process. The LMSW is able to supervise LBSWs and practice in the areas of social work administration, community organization and policy analysis.

C. The LMSW may not practice independently as a private practitioner.

[1/1/90, 9/13/90, 5/15/91, 6/22/92; 5/1/99, 16.63.10.9 NMAC - Rn, 16 NMAC 63.10.9, 06/19/02; A, 4/24/06]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.11 NMAC Sections 8 and 9, effective 4/24/06:

16.63.11.8 QUALIFICATION FOR LICENSURE:

Applicants for licensure as independent social workers must:

A. be at least eighteen (18) years of age;

B. possess at least a master's degree in social work from a graduate program of social work accredited by the council on social work education;

C. complete not less than two years of post graduate social work experience (employed or volunteer), under appropriate supervision; as defined in ~~[16.63.1.8]~~ 16.63.1.7 NMAC for the purposes of this part, 3600 hours of post graduate social work practice is required under appropriate supervision; applicants and supervisors will engage the process of supervision in accordance with the guidelines established by the board of social work examiners;

D. successfully pass the New Mexico board of social work examiners cultural awareness examination; and

E. successfully pass the [American] association of [State] social work board examination, (ASWB) clinical or advanced, as determined by the board.

[1/1/90, 9/13/90, 5/15/91, 6/22/92, 1/5/95; 5/1/99, 16.63.11.8 NMAC - Rn & A, 16 NMAC 63.11.8, 06/19/02; A, 4/24/06]

16.63.11.9 PARAMETERS OF PRACTICE:

This is the highest level of licensure. The licensed independent social worker (LISW) is to function independently and demonstrate specialized knowledge and skills. The LISW must exercise independent judgment. The LISW should be able to demonstrate skill and interventions directly related to individuals, couples, families, groups, communities or organizations. In at least one of these client groups, the LISW

shall demonstrate in-depth knowledge and skills. The LISW should be able to employ practice theory and research findings in all aspects of their practice. The LISW may supervise LBSWs, LMSWs and other LISWs.

[1/1/90, 9/13/90, 5/15/91, 6/22/92, 1/5/95; 16.63.11.9 NMAC - Rn, 16 NMAC 63.11.9, 06/19/02; A, 4/24/06]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.12 NMAC Sections 9, 12 and 13, effective 4/24/06:

16.63.12.9 CONTINUING EDUCATION CREDIT:

Fifteen (15) hours of continuing education will be required annually. Proof of participation in or presentation of continuing education activity must be submitted with the license renewal request if the licensee is audited.

[5/15/91, 6/22/92, 5/1/99; 16.63.12.9 NMAC - Rn, 16 NMAC 63.12.9, 06/19/02; A, 4/24/06]

16.63.12.12 CONTINUING EDUCATION CREDIT CARRYOVER:

All continuing education hours must be earned during the current renewal period of July 1 thru June 30; no carryover will be permitted.

[5/15/91, 6/22/92, 5/1/99; 16.63.12.12 NMAC - Rn, 16 NMAC 63.12.12, 06/19/02; A, 4/24/06]

16.63.12.13 DOCUMENTATION OF PARTICIPATION:

~~[All continuing education hours must be documented on or before the license renewal date. Documentation of continuing education hours is the responsibility of the social worker seeking re licensure. The Board reserves the right to require additional documentation such as a sworn statement in order to document participation.]~~ The board shall audit a percentage of renewal applications each year to verify the continuing education requirement. The licensee must maintain proof of continuing education courses taken for the past three (3) years.

A. If a notice of audit letter is received with the annual renewal form, evidence of continuing education hours earned during the renewal year must be submitted to the board as requested and as required in the Social Work Practice Act and by this rule.

B. If the licensee is not audited, all documentation of attendance and agendas must be retained by the licensee for a minimum of three (3) years imme-

diately preceding the current renewal.

C. The board reserves the right to audit a licensee's continuing education records as it deems necessary.

[5/15/91, 6/22/92, 16.63.12.13 NMAC - Rn, 16 NMAC 63.12.13, 06/19/02; A, 4/24/06]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.14 NMAC Section 8, effective 4/24/06:

16.63.14.8 PROCEDURE

A. Any person licensed under the Social Work Practice Act (NMSA 1978 Sections 61-31-1 to 61-31-24) who wishes to assume inactive status in the practice of social work shall notify the board's administrator in writing ~~[prior to the July 1 expiration of his current license]~~ post-marked on or before July 30th of the year the license expires. As part of the written request for inactive status, the licensee must show proof of having completed the required continuing education hours defined in Part 12 of these rules. If the licensee has not met the continuing education requirements, inactive status may be granted but the licensee will be subject to all rules related to continuing education if reinstatement of license is requested. ~~[The Administrator shall acknowledge receipt of the request and place the request on the agenda for the next Board meeting.]~~

B. Upon approval by the board, the licensee shall assume inactive status. Any license in inactive status will be subject to an annual fee of fifteen dollars (\$15.00) for LBSW, twenty dollars (\$20.00) for LMSW and twenty-five dollars (\$25.00) for LISW.

C. The practice of social work in New Mexico under an inactive license is strictly prohibited.

D. Any person licensed under the Social Work Practice Act who has assumed inactive status as provided in this section, may notify the board, in writing, of his desire to resume active practice.

E. Upon receipt of the notice required in Subsection D of 16.63.14.8 NMAC, the administrator shall send to the licensee an application for reinstatement of license.

F. The fee for reinstatement of a license shall be in accordance with 16.63.8 NMAC, Sections 8, 9, 10 & 11.

G. The applicant must, in addition, provide satisfactory proof of:

(1) completion of no less than ten (10) hours of continuing education for each year of inactive status; such continuing education to be accumulated in accordance with

Part 12.

(2) completion of all continuing education requirements determined to have been unmet at the time inactive status was granted.

H. If the board finds the application in order and is satisfied that the applicant has fulfilled his continuing education requirements as outlined in Subsection G of 16.63.14.8 NMAC, the board shall reinstate the applicant's license.

I. No person licensed under the Social Work Practice Act who has assumed inactive status shall reactivate his practice until he receives notification from the board that his license is active.

J. The board will not accept applications for inactive status from licensees who are under investigation for violations of the Social Work Practice Act or who have an active complaint pending with the board.

K. The board will accept applications under this section from any social worker who is impaired as further defined in this section and who is participating in a rehabilitation plan approved by the board.

(1) For purposes of this section, impaired means inability to practice social work with reasonable skill or safety to clients by reason of one or more of the following:

(2) mental illness;

(3) habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act (NMSA Sections 30-31-1 to 30-31-40) or alcohol.

L. The board may, in its discretion, require that an applicant for reinstatement take and pass a written or oral examination as prescribed by the board.

[6/22/92, 1/5/95, 5/1/99; 16.63.14.8 NMAC - Rn & A, 16 NMAC 63.14.8, 06/19/02; A, 4/24/06]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.15 NMAC Section 8, effective 4/24/06:

16.63.15.8 PROCEDURE

A. Any person licensed under the Social Work Practice Act (NMSA 1978 Sections 61-31-1 to 61-31-24) who wishes to retire from practice shall notify the board's administrator in writing prior to the July 1 expiration of his current license. As part of the written request for retirement status, the licensee must show proof of having completed the required continuing education hours defined in Part 12 of these rules. If the licensee has not met the contin-

uing education requirements, retirement status may be granted but the licensee will be subject to all rules related to continuing education if reinstatement of license is requested. The administrator shall acknowledge receipt of the request and place the request on the agenda for the next board meeting.

B. Upon approval by the board of the request, the licensee shall assume retirement status and shall be exempt from payment of the yearly renewal fees during the period of retirement.

C. The practice of social work in New Mexico under a retired license is strictly prohibited. Any person licensed under the Social Work Practice Act who has retired as provided in this section, may notify the board, in writing, of his desire to resume active practice.

D. Upon receipt of the notice required in Subsection C of 16.63.15.8 NMAC, the administrator shall send to the retired licensee an application for reinstatement of license.

E. The application must be completed and returned to the board's administrator with the appropriate fee as required in sections 8, 9, 10 and 11 of 16.63.8 NMAC

F. The applicant must, in addition provide satisfactory proof of:

(1) completion of no less than ~~[five (5)]~~ ten (10) hours of continuing education for each year of retirement; such continuing education to be accumulated in accordance with Part 12.

(2) completion of all continuing education requirements determined to have been unmet at the time retirement status was granted.

G. The board may, in its discretion, require that an applicant for reinstatement take and pass a written ~~[or oral]~~ examination as prescribed by the board.

H. If the board finds the application in order and is satisfied that the applicant has fulfilled his continuing education requirements as outlined in Subsection F of 16.63.15.8 NMAC, the board shall issue the applicant a new license.

I. No person licensed under the Social Work Practice Act who has retired shall reactivate his practice until he receives his new license certificate.

J. The board will not accept applications for retirement from licensees who are under investigation for violations of the Social Work Practice Act or who have an active complaint pending with the board.

K. The board will accept applications under this section from any social worker who is impaired as further defined in this section and who is participating in a rehabilitation plan approved by

the board. For purposes of this section, impaired means inability to practice social work with reasonable skill or safety to clients by reason of one or more of the following:

- (1) mental illness;
 - (2) habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act (NMSA Sections 30-31-1 to 30-31-40) or alcohol.
- [6/22/92, 1/5/95, 5/1/99; 16.63.15.8 NMAC - Rn, 16 NMAC 63.15.8, 06/19/02; A, 4/24/06]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 302: CREDIT - GROSS RECEIPTS TAX - SERVICE FOR RESALE

3.2.302.1 **ISSUING AGENCY:**
Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[3.2.302.1 NMAC - N, 4/14/06]

3.2.302.2 **SCOPE:** This part applies to each person engaging in business in New Mexico.
[3.2.302.2 NMAC - N, 4/14/06]

3.2.302.3 **STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.
[3.2.302.3 NMAC - N, 4/14/06]

3.2.302.4 **DURATION:** Permanent.
[3.2.302.4 NMAC - N, 4/14/06]

3.2.302.5 **EFFECTIVE DATE:** 4/14/06, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[3.2.302.5 NMAC - N, 4/14/06]

3.2.302.6 **OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.
[3.2.302.6 NMAC - N, 4/14/06]

3.2.302.7 **DEFINITIONS:**
[Reserved]

3.2.302.8 **SERVICE FOR RESALE TAX CREDIT**
A. **Qualifying sales con-**

ditions. The seller of a service may qualify for the credit if the transaction meets these conditions:

- (1) the sale for which the credit is sought is subject to gross receipts tax or governmental gross receipts tax;
- (2) the service is sold for subsequent resale;
- (3) the subsequent resale is not subject to the gross receipts tax; and
- (4) the buyer of the service certifies to the seller in writing and in a form prescribed by the secretary that the subsequent resale is in the ordinary course of the buyer's business and will not be subject to gross receipts tax or governmental gross receipts tax.

B. **Amount of credit.** The amount of credit available for qualifying transaction si equal to 10% of the receipts from the sale multiplied by either 5%, if the taxpayer's business I located in the unincorporated area of the county or 3.775%, if the taxpayer's business is located in a municipality. Examples:

(1) A's business is located in a municipality. A sells engineering services to B. B resells the engineering services to C. C sells the services to the final consumer, D. B accepts an nttc pursuant to Section 7-9-48 NMSA 1978 from C because C's sale to D will be taxable. B, however, cannot execute an nttc to A, because B's sale to C is not taxable. B provides written documentation to A that the resale of the service (B's sale to C) is in the ordinary course of business and will not be subject to gross receipts tax. A pays gross receipts tax on the sale to B; but takes a credit of 10 percent of the gross receipts from the sale to B multiplied by 3.775 percent (gross receipts multiplied by .10 multiplied by .03775).

(2) A, located in Albuquerque, sells a service to B for \$10,000 on July 15, 2005. B provides documentation that the next sale is in the ordinary course of business and is not subject to gross receipts tax. A may claim a credit of \$37.75 (10,000 multiplied by .10 multiplied by .03775).

(3) X, a business located in the unincorporated part of a county, sells accounting services which are performed on tribal land to Y (not a tribal member) who resells those services (in connection with other services which are also performed on tribal land) to Z, a Native American residing on tribal land of which he is a member. Y's sale to Z is not subject to the gross receipts tax because the service was performed on tribal land for a tribal member. Y therefore may not execute an nttc pursuant to Section 7-9-48 NMSA 1978 to X, because a deduction for services sold for resale is only allowed if the next sale is taxable. X, however, may reduce his tax due on the sale to Y by the amount of the credit — 10 % of the gross receipts from the sale multiplied by

5% — if Y provides written documentation that the resale (Y's sale to Z) is in the ordinary course of business and will not be subject to gross receipts tax.

C. **Claiming the sale of service for resale credit does not preclude executing an nttc.** A reseller who takes the sale-for-resale credit for the sale of a service may execute an nttc pursuant to Section 7-9-48 NMSA 1978 for the original purchase of that service.

D. **Example:** N purchases drafting services from M and resells them to O who resells them outside New Mexico for initial use outside New Mexico. N can reduce the tax due on his sale to O by the amount of the credit and N may execute an nttc to M for the purchase of the drafting services.

E. **Sale of service for resale credit; documentation.** In order to take the sale-for-resale credit, the seller must obtain from the buyer a completed form RPD-41305 *Declaration of Services Purchased for Resale* certifying that the service is purchased for resale in the ordinary course of business and stating the reason or reasons why the resale is not subject to gross receipts tax or governmental gross receipts tax.

[3.2.302.8 NMAC - N, 4/14/06]

History of 3.2.302 NMAC: [RESERVED]

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2006

Volume XVII	Submittal Deadline	Publication Date
Issue Number 1	January 3	January 17
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 3	April 14
Issue Number 8	April 17	April 28
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 3	July 17
Issue Number 14	July 18	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
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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