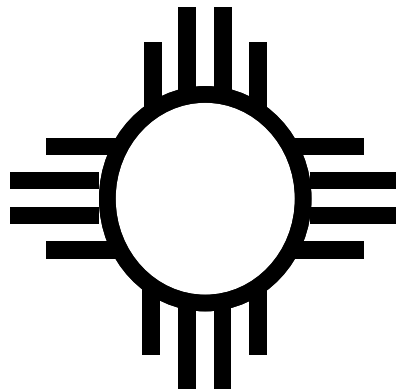


New Mexico Register

Volume XVII, Issue Number 10

May 31, 2006



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

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Administrative Law Division
Santa Fe, New Mexico
2006

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New Mexico Register

Volume XVII, Number 10

May 31, 2006

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Notices of Rulemaking and Proposed Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

FAMILY SERVICES DIVISION

NOTICE OF PUBLIC HEARING

The Children, Youth and Families Department, Family Services, Child Care Services Bureau will hold a formal public hearing on Friday, June 30, 2006 from 1:00 p.m. to 3:00 p.m. in Apodaca Hall on the 2nd floor of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico to receive public comments regarding proposed changes to regulations 8.15.2 NMAC Requirements for Child Care Assistance Programs for clients and Child Care Providers; 8.16.2 NMAC Child Care Centers, Out of School Time Programs, Family Child Care Homes, and Other Early Care and Education Programs; 8.17.2 NMAC Requirements Governing Registration of Non-Licensed Family Child Care Homes; and 8.16.3 NMAC Requirements Governing the Child Care Facility Loan Act.

The proposed regulation changes may be obtained at www.newmexicokids.org or by contacting Percy Armijo at 505-827-7499. Interested persons may testify at the hearing or submit written comments no later than 5:00 p.m. on June 30, 2006. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Percy Armijo, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number: 505-827-7361.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact the Child Care Services Bureau at 505-827-7499. CCSB requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Chiropractic

Examiners will hold a Rule Hearing on July 8, 2006. Following the Rule Hearing the New Mexico Board of Chiropractic Examiners Board will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Chiropractic Examiners Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held at the Regulation and Licensing Building, 5200 Oakland Avenue NE, Albuquerque, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules in NMAC 16.4 Chiropractic Practitioners - Part 1 General Provisions, Part 3 Requirements for Licensure By Examination, Part 4 Licensure Without Examination and Part 18 Practice Procedures.

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 Capital Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87505, or call (505) 476-4605 after June 8, 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 June 19, 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) 476-4605 at least two weeks prior to the meeting or as soon as possible.

Liz King, Board Administrator
PO Box 25101 - Santa Fe, New Mexico
87504

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC MEETING AND RULE MAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public rule making hearing on August 1, 2006 at 9:00 a.m. at the State Capitol Building, Room # 321, Santa Fe, New Mexico, to consider the matter of EIB 05-12(R) to revise 20.2.3 NMAC (Ambient Air Quality Standards), 20.2.70 NMAC (Operating Permits) and 20.2.72 NMAC (Construction Permits).

The proponent of the regulatory change is the New Mexico Environment Department ("NMED").

Proposed revisions to 20.2.70 NMAC:

NMED proposes to amend the definition of "applicable requirement" in the rule by removing the New Mexico Ambient Air Quality Standards ("NMAAQs"); to clarify the procedure for affected sources to submit dispersion modeling for and to certify compliance with the National Ambient Air Quality Standards ("NAAQS"); and to require that sources permitted under 20.2.70 NMAC (Title V permits) obtain a 20.2.72 NMAC or 20.2.74 NMAC permit if they have not done so previously. NMED's proposal clarifies that certifications of compliance for new sources under 20.2.70.300.D.11 NMAC will be based on the modeling submitted with the construction permit application and, for sources renewing their permit, on compliance with the terms and conditions of the permit. NMED proposes to revise 20.2.70.302.E.3 NMAC to clarify that annual compliance certifications are based on compliance with the terms and conditions in the permit.

NMED proposes to revise 20.2.70.300.D(5)(g) NMAC to give NMED discretion in requiring applicants to submit operational plans for start-up and shutdown. NMED proposes to revise 20.2.70.304.D NMAC to match the equivalent federal language in 40 CFR 70.6. With this revision, the rule will require Title V sources to report violations of the terms and conditions in their permits and claim affirmative defenses for such violations in a manner consistent with other permitted sources. Currently, sources permitted under 20.2.70 NMAC have some permit conditions that are subject to 20.2.7 NMAC and other conditions that are not.

Proposed revision to 20.2.3 NMAC:

NMED proposes to add section 20.2.3.9 NMAC to 20.2.3 NMAC, which would provide that 20.2.3 NMAC would not apply to 20.2.70 NMAC – Operating Permits. The proposed revision to 20.2.70 NMAC that

requires sources that have not obtained a permit under 20.2.72 NMAC (Construction Permits) or 20.2.74 NMAC (Permits – Prevention of Significant Deterioration) ensures that all sources in New Mexico will meet the requirements of 20.2.3 NMAC. This is a revision to the New Mexico State Implementation Plan.

Proposed revisions to 20.2.72 NMAC:

NMED proposes to revise 20.2.72.216 NMAC so that it will apply to existing sources that do not propose an increase in emissions but will emit a regulated air contaminant exceeding the significant concentration for that pollutant listed in 20.2.72.500 NMAC at any location that does not meet the NAAQS for the contaminant. In addition, subsection C is added to require that existing sources subject to the section must demonstrate a net air quality benefit of at least a 20 percent reduction in ambient impact for each applicable contaminant.

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

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

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

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

modifications to the proposed changes.

Notices of intent for the hearing must be received in the Office of the Board not later than **5:00 pm on July 7, 2006**, and should reference the docket number, EIB 05-12(R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Joyce Medina, Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N-2150 / 2153
Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505) 827-2836

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by July 18, 2006 at the NMED, Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

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

NEW MEXICO LIVESTOCK BOARD

NEW MEXICO LIVESTOCK BOARD NOTICE OF RULE MAKING AND ADOPTION OF RULE HEARING, SETTING MILL LEVY AND REGULAR BOARD MEETING

NOTICE IS HEREBY GIVEN that a rules hearing, setting mill levy and regular board meeting will be held on Tuesday, June 13, 2006, at the New Mexico Livestock Board, 300 San Mateo NE Suite 1000, Albuquerque, New Mexico at 9:00 a.m. The Board will initiate rule changes

regarding Food Safety, Meat and Poultry Inspection, set the mill levy and discuss other matters of general business.

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

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

NEW MEXICO STATE MINE INSPECTOR

NOTICE OF PUBLIC MEETING AND HEARING OF THE NEW MEXICO MINE SAFETY ADVISORY BOARD

The New Mexico Mine Safety Advisory Board will hold a public meeting beginning at 10:00 A.M. **Wednesday, June 14, 2006** in the Association of Commerce and Industry Conference Room located on the 4th floor of Association of Commerce and Industry building located at 2201 Buena Vista SE in Albuquerque, New Mexico.

During the meeting, the Mine Safety Advisory Board will conduct a public hearing on proposed rules for mine safety submitted by the State Mine Inspector. The Commission will consider a new rule, 11.8.2 NMAC - Emergency Notification. The new rule implements Laws 2006, chapters 102 and 106 which establish a Mine Accident Rapid Response System and require that the State Mine Inspector be immediately notified of mine accidents. The Board will also consider the repeal of rules MI 69-0 (aka 19.7.4), MI 73-2 (aka 19.7.8), SIM 76-1 (aka 19.7.16), MI 79-1 (aka 19.7.18), MI 79-2 (aka 19.7.19) and SIM 89-1 (aka 19.7.21) NMAC. To view proposed rule, go to the State Mine Inspector's homepage at <http://www.bmi.state.nm.us/>. Copies of the proposed rule changes are also available from the New Mexico Bureau of Mine Safety, 801 Leroy Place, Socorro, NM 87801 or by calling 505/835-5460. At the conclusion of the hearing, the Mine Safety Advisory Board may deliberate and make a recommendation to the State Mine Inspector on the proposed rule changes.

A copy of the agenda for the meeting/hearing will be available at least 24 hours before the meeting and may be obtained by con-

tacting Pat Kolbenschlag at 835-5460. If you need 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 Pat Kolbenschlag at 835-5460 at least 48 hours prior to the hearing. Public documents can be provided in various accessible forms. Please contact Pat Kolbenschlag if a summary or other type of accessible form is needed.

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 July 6, 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. The meetings will be held at the Bank of the West Building, 5301 Central Avenue, NE Albuquerque, NM 87108, in room 201. The building is located at the corner of Central and San Mateo.

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, e-mail or come to the Board office, located in the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, or call (505) 476-4657 or (505) 476-4607 to request draft copies after June 6, 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 June 26, 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 REGULAR MEETING

The NM Commission of Public Records has scheduled a regular meeting for Tuesday, June 20, 2006, at 9:00 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM 87507. Pursuant to the New Mexico Open Meetings Act, Section 10-15-1(H)(2) NMSA 1978, a portion of the meeting may be closed to discuss a limited personnel matter. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Darlene A. Torres at 476-7902 by June 16, 2006. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

NOTICE OF RULEMAKING

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

Repeals

1.18.521 NMAC	ERRDS, Energy, Mineral and Natural Resources Dept.
1.19.3 NMAC	LGRDRS, Office of the County Clerk
1.19.6 NMAC	LGRDRS, Office of the County Treasurer

Replacements

1.18.521 NMAC	ERRDS, Energy, Mineral and Natural Resources Dept.
1.19.3 NMAC	LGRDRS, Office of the County Clerk
1.19.6 NMAC	LGRDRS, Office of the County Treasurer

Amendments

1.18.333 NMAC	ERRDS, Taxation and Revenue Department
1.18.667 NMAC	ERRDS, Environment Department
1.18.790 NMAC	ERRDS, Department of Public Safety

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

ALCOHOL AND GAMING DIVISION

Amended Notice of Public Rule Hearing

Notice is hereby given that the New Mexico Regulation and Licensing Department, Alcohol and Gaming Division will convene a rule hearing to amend the following rules and regulations:

Title 15 NMAC Chapter 10, Part 51 - Restriction on Sales
 Title 15 NMAC Chapter 10, Part 61 - Fines and Penalties
 Title 15 NMAC Chapter 11, Part 22 - Renewal and Suspension

The hearing previously scheduled at the Rio Grande Conference Room on June 3, 2006 at 7:00 p.m., Regulation and Licensing Department, Toney Anaya Building, West Capital Complex, 2550 Cerrillos Road, Santa Fe, New Mexico 87505 **has been cancelled.**

The Regulation and Licensing Department will hold the following three hearings: The first hearing will be held at the Bank of America Theatre on Wednesday, July 5, 2006 at 8:00 a.m., located at the National Hispanic Cultural Center of New Mexico, 1601 Fourth Street, NW, Albuquerque, New Mexico 87102. The second hearing will be held at the Las Cruces Public Schools Board Room on Thursday, July 6, 2006 at 8:00 a.m., located at the Las Cruces Public Schools Administration Office, 505 South Main, Las Cruces, New Mexico 88001. The third hearing will be held at the Rio Grande Conference Room on Saturday, July 8, 2006 at 5:00 p.m., located at the Regulation and Licensing Department, Toney Anaya Building, West Capital Complex, 2550 Cerrillos Road, Santa Fe, New Mexico 87505.

The purpose of the rule hearing is to solicit public comment on adoption of the proposed amendments to the rules and regulations. The Alcohol and Gaming Division will consider adoption of the proposed rules after July 10, 2006. Copies of the proposed rules are available upon request by contacting the Alcohol and Gaming Division Office, 2550 Cerrillos Road, 2nd Floor. Copies may also be requested via email at www.agdrules.hearing@state.nm.us, or via U.S. mail at Alcohol and Gaming Division, P. O. Box 25101, Santa Fe, NM 87504-5101. The proposed rules may also be downloaded at www.rld.state.nm.us/agd.

Anyone wishing to present their views on the proposed amendments may appear in person at the hearing, or may send written comments to the Alcohol and Gaming Division. All written comments must be received by 5:00 p.m., Monday July 10, 2006 for consideration by the Alcohol and Gaming Division Director.

Individuals with a disability who wish to attend the rule hearing and are in need of reasonable accommodations should contact Annette Brumley at (505) 476-4548 no later than June 30, 2006

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

**STATE OF NEW MEXICO
 REGULATION AND LICENSING
 DEPARTMENT
 CONSTRUCTION INDUSTRIES DIVI-
 SION
 NOTICE OF PUBLIC HEARING**

Public meetings will be held on the dates and at the locations listed below to receive comments regarding the amendments to the following rules: 2005 New Mexico Building Code, Chapter 7, 14.6.3.15 NMAC - Wall Coverings; Chapter 25, 14.7.2.33 NMAC - Gypsum Board and Plaster and 2005 New Mexico Electrical Code, 14.10.4.10B (6 thru 12) NMAC; 14.10.4.10G (2, 4, 5, & 6) NMAC.

* **Santa Fe, NM** - July 11, 2006,
 9:00 a.m. - 12:00 Noon
 CID Conference Room, 2550 Cerrillos Rd.,
 Third Floor, Santa Fe

* **Albuquerque, NM** - July 11,
 2006, 9:00 a.m. - 12:00 Noon
 CID Conference Room, 5200 Oakland Ave.,
 Albuquerque

* **Las Cruces, NM** - July 11, 2006,
 9:00 a.m. - 12:00 Noon
 CID Conference Room, 505 S. Main, Suite
 150, Las Cruces

You are invited to attend and express your opinion on the adoption of the above referenced proposed rules changes. If you cannot attend the meeting, you may send your written comments to the General Construction Bureau and the Electrical Bureau, Construction Industries Division, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico 87504. Telephone (505) 476-4700. FAX (505) 476-4685. All comments must be received no later than 5:00 p.m., July 11, 2006.

Copies of the proposed rules will be available at all three Construction Industries Division Offices listed above beginning May 26, 2006.

If you require special accommodations, please notify the Division of such needs no later than May 31, 2006.

**End of Notices and
 Proposed Rules Section**

Adopted Rules

NEW MEXICO MASSAGE THERAPY BOARD

This is an amendment to Section 12 of 16.7.4 NMAC effective June 8, 2006.

16.7.4.12 MINIMUM HOURS OF MASSAGE THERAPY TRAINING:

The applicant must have completed at least a six hundred fifty (650) hour in massage therapy training. The massage therapy training must meet the following minimum curriculum requirements:

A. 125 hours minimum of anatomy and physiology, to include:

- (1) physiology;
- (2) anatomy;
- (3) kinesiology; and
- (4) forty (40) hours *minimum* of pathology.

B. 150 hours minimum of training in massage therapy as defined in 16.7.4.7 NMAC.

(1) The massage therapy training shall include contraindications of massage therapy.

(2) A minimum of 100 hours of massage therapy training must be completed before the student is allowed to begin a clinical practicum as defined in 16.7.4.7 NMAC.

C. 50 hours minimum of general instruction to include.

- (1) business;
- (2) hydrotherapy;
- (3) six (6) hour *minimum* of professional ethics;
- (4) four hours of first aid; and
- (5) four hours of cardiopulmonary resuscitation.

D. Electives may include:

- (1) additional massage therapy;
- (2) related hands-on modalities;
- (3) additional anatomy and physiology;
- (4) clinical practicum (not to exceed 150 hours);
- (5) counseling;
- (6) herbology;
- (7) homeopathy;
- (8) nutrition;
- (9) breathing and stretching techniques;
- (10) theory; and
- (11) other courses with prior board approval. See 16.7.4.14 NMAC for instructions.

E. The total number of hours in the massage therapy program is a minimum of six hundred fifty (650) hours.

F. If an applicant is missing a core curriculum course or is missing a small portion of the core curriculum to com-

plete the 650-hour requirement, the applicant may obtain the training course(s) from a New Mexico registered independent instructor, or from a New Mexico registered school, or from another massage therapy school that meets the requirements in 16.7.4.13 NMAC.

G. Effective October 31, 2006 - change in number of required hours: The minimum number of hours required in curriculum programs listed below in Paragraphs (1), (2), and (3) of Subsection G of 16.7.4.12 NMAC will increase as follows effective October 31, 2006. The requirements for all other curriculum programs in Subsections A, B, C, and D of 16.7.4.12 NMAC will remain the same.

(1) 165 hours minimum in anatomy and physiology;

(2) 75 hours minimum in general instruction; and

(3) thirty (30) hours minimum in professional ethics.

[16.7.4.12 NMAC - N, 07-28-2005; A, 06-08-2006]

NEW MEXICO MASSAGE THERAPY BOARD

This is an amendment to Section 8 of 16.7.5 NMAC effective June 8, 2006.

16.7.5.8 REQUIREMENTS FOR REGISTRATION:

At the time of application the applicant will provide the following information to the board.

A. A completed, notarized, and legible application for licensure form, which must either be typed or printed in black ink.

(1) Incomplete application forms will be returned to the applicant for completion.

(2) Faxed applications and/or supporting documentation will not be accepted.

B. A curriculum that must provide a massage therapy training program of a minimum of 650 hours. The curriculum will include:

(1) **125 hours minimum of anatomy and physiology**, to include:

- (a) physiology
- (b) anatomy
- (c) kinesiology
- (d) 40 hours *minimum* of pathology

(2) **150 hours minimum of massage therapy** as defined in 16.7.5.7 NMAC.

(a) Shall include contraindications of massage therapy.

(b) A *minimum* of 100 hours of

massage therapy education must be completed before a student may begin clinical practicum, as defined in Subsection A of 16.7.5.7 NMAC.

(3) **50 hours minimum of general instruction**, to include.

- (a) business
- (b) hydrotherapy
- (c) first aid - 4 hours
- (d) cardiopulmonary resuscitation - 4 hours

(e) six (6) hours *minimum* of professional ethics;

(f) proof of current certification in basic life support accepted by the American heart association or the American red cross.

(4) **Electives** may include:

- (a) additional massage therapy
- (b) related hands-on modalities
- (c) additional anatomy and physiology

(d) clinical practicum (not to exceed 150 hours)

(e) counseling

(f) herbology

(g) homeopathy

(h) nutrition

(i) breathing and stretching techniques

(j) theory

(k) other, with prior board approval

C. Policies and procedures for board review, including but not limited to:

- (1) enrollment and financial;
- (2) cancellation/withdrawal and refund;

- (3) grading method;
- (4) attendance and make up;
- (5) students conduct and discipline:

(6) dress code;

(7) hygiene protocol;

(8) draping procedures;

(9) evaluation forms;

(10) curriculum;

(11) advertising catalog;

(12) list of text books for all courses; and

(13) qualifications of instructors not registered with the board as massage therapy instructors.

D. Massage therapy school registration fee in accordance with Subsection C of 16.7.3.8 NMAC.

E. Effective October 31, 2006 - change in number of required hours: The minimum number of hours required in curriculum programs listed below in Paragraphs (1), (2), and (3) of Subsection E of 16.7.5.8 NMAC will increase as follows effective October 21, 2006. The requirements for all other cur-

riculum programs in Subsections A, B, and C of 16.7.5.8 NMAC will remain the same.

(1) 165 hours minimum in anatomy and physiology;

(2) 75 hours minimum in general instruction; and

(3) thirty (30) hours minimum in professional ethics.

[12-24-99; 16.7.5.8 NMAC - Rn & A, 16 NMAC 7.5.8, 06-28-01; A, 07-28-2005; A, 06-08-2006]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.60.5 NMAC, Sections 6 through 10, effective 05-31-06.

6.60.5.6 OBJECTIVE: This regulation rule is adopted by the public education department (hereinafter department) for the purpose of establishing the New Mexico teacher assessments ("NMTA") as the primary acceptable examination for educator licensure in New Mexico. Although the department adopts the New Mexico teacher assessments as the successor examination to the core battery of the national teachers examination, this regulation rule also provides for acceptance of passing test scores from those applicants who took the core battery of the national teachers examination and have applied for licensure on or after July 30, 1999. This regulation rule also establishes the New Mexico content knowledge assessments ("NMCKA"), which is part of the NMTA, as the content tests required to be taken to hold certain endorsements on teaching licenses or to receive an initial elementary pre K-8 license. This regulation rule also establishes Prueba de Español para la Certificación Bilingüe as the department's required Spanish language proficiency examination for persons seeking an endorsement to a teaching license in Spanish/English bilingual education and allows that test to be used as the content knowledge test to be taken for an endorsement in modern and classical languages for Spanish. This regulation rule also allows the national family and consumer sciences test to be used as the content knowledge test to be taken for an endorsement in family and consumer sciences. Lastly, this regulation establishes procedures for investigating NMTA testing irregularities and taking corrective action.

[12-31-98, 07-30-99; 6.60.5.6 NMAC - Rn, 6 NMAC 4.2.2.2.6 & A, 10-13-00; A, 07-01-01; A, 07-15-02; A, 02-14-03; A, 04-29-05; A, 05-31-06]

6.60.5.7 DEFINITIONS:

A. "NMCKA" means the

New Mexico content knowledge assessments, which are the teacher-tests approved by the department, portions of which individuals must take and pass in order to receive endorsements on an initial license or as an option to add endorsements to an existing license in language arts, reading, mathematics, science, ~~the social studies, composite of history, geography, economics, civics and government,~~ social studies, the arts (music or visual arts), modern, ~~and~~ classical and native languages, health, physical education, library/media, teaching English to speakers of other languages (TESOL), and family and consumer sciences, or to receive initial licensure in elementary education from grades pre K-8.

B. "NMTA" means the New Mexico teacher assessments, which are the teacher-tests approved by the department that all individuals must take and pass in order to receive initial educator licensure; the NMTA consists of the New Mexico assessment of teacher basic skills the New Mexico assessment of teacher competency (both at the elementary and secondary levels), and the New Mexico content knowledge assessments ("NMCKA"); it shall include any test materials related to a testing applicant's taking of or registration for the NMTA.

C. "Test administrator" means the business entity, namely, the national evaluation systems, inc. or NES that developed the NMTA, administers the NMTA at testing centers throughout New Mexico, scores the NMTA, and reports NMTA testing results to the department.

D. "Testing applicant" means a person who has filed an NMTA registration form with the test administrator, or has yet taken a portion of the NMTA.

E. "Testing irregularity" means any circumstance within or beyond the control of a testing applicant that, in the sole opinion of the department or NES raises doubts about the propriety of a testing applicant's NMTA registration, NMTA score, or conduct during an NMTA test.

F. "Withheld NMTA score(s)" means the suspension of use by and disclosure to a testing applicant of his NMTA score(s) for up to 120 days upon a determination made by the department professional licensure bureau director that testing irregularity is likely to have occurred.

G. "Voided NMTA score(s)" means the cancellation, invalidation and non-disclosure of a testing applicant of his NMTA score(s) after a final determination of testing irregularity by the department's professional licensure bureau director or by a hearing officer of the secretary of education.

H. "Rules of test participation" means any written rules in the applicable NMTA registration bulletin that a test-

ing applicant has expressly agreed to comply with as a condition of registering for or taking the NMTA.

I. "Educator licensure application" means an application for any professional teaching or administrative license, excluding licensure for an athletic coach, educational assistant, substitute teacher, or instructional support providers.

J. "Core academic subjects" English, language arts, reading, mathematics, science, modern and classical languages, except the modern and classical Native American languages and cultures of New Mexico tribes or pueblos, the arts, including music and visual arts, and social studies, which includes ~~[civics, government, economics, history, and geography]~~ history, geography, economics, civics and government.

K. "Highly qualified", under this rule, means a teacher of the core academic subjects who has no certification or licensure requirements waived on a temporary basis.

L. "Specialty area examination" means the New Mexico specialty area assessments, which are the tests approved by the department for instructional support providers and administrators, which identified providers must take and pass in order to receive licensure as instructional support providers or administrators.

[6.60.5.7 NMAC - N, 07-01-01; A, 07-15-02; A, 02-14-03; A, 06-30-03; A, 04-29-05; A, 03-15-06; A, 05-31-06]

6.60.5.8 REQUIREMENTS:

The NMTA consists of two generic categories of assessments. The first category is the basic knowledge, skills and competency assessments identified at Subsection A of 6.60.5.8 NMAC below. The second category is the content knowledge assessments, sometimes called content tests, identified at Subsection B of 6.60.5.8 NMAC below.

A. Beginning July 30, 1999 except for those individuals covered by Subsection C of 6.60.5.8 NMAC, below all applicants for initial licensure in addition to meeting all other licensure and background check requirements of the department, are required to take the basic knowledge, skills and competency assessments of the New Mexico teacher assessments, which consist of the following tests and obtaining the following passing scores:

(1) assessment of teacher basic skills: passing score = 240; and

(2) either:

(a) assessment of teacher competency, elementary level (for those seeking early childhood B-3 through the testing date in July, 2004, or elementary pre K-8 licensure including special education pre K-12 until September, 2007, as provided in Paragraph 8 of Subsection (B) of 6.60.5.8

NMAC, middle level 5-9 and grade pre K-12 licensure): passing score = 240; or

(b) assessment of teacher competency, secondary level (for those seeking secondary 7-12 licensure including special education pre K-12 until September, 2007, as provided in Paragraph 8 of Subsection (B) of 6.60.5.8.NMAC, middle level 5-9 and grade [~~K-12~~] pre K-12 until September 2007, as provided in 6.60.5.8 licensure): passing score = 240; or

(c) assessment of teacher competency, early childhood level (for those seeking early childhood B-3 licensure beginning with the testing date in September, 2004): passing score = 240.

B. In addition to the testing requirement above, all applicants for initial teacher licensure must take and pass a test in their content area subject according to the following schedule:

(1) Beginning with the September, 2002, administration of the department's content testing, if they are seeking licensure in elementary pre K-8, they shall take and pass the department's content knowledge assessment in elementary education prior to issuance of that license except as provided in Paragraph (6) of Subsection B of 6.60.5.8 NMAC.

(2) Beginning with the September, 2002, administration of the department's content testing, if they are applying for licensure in early childhood birth - grade 3 or elementary pre K-8 and are also seeking an endorsement in reading, they shall take and pass the department's content knowledge assessment in that content area prior to issuance of that license.

(3) Beginning with the September, 2004, administration of the department's content testing, if they are applying for licensure in early childhood B-3, elementary pre K-8, secondary 7-12, middle level 5-9, special education pre K-12 and/or grade pre K-12, and are also seeking an endorsement in the arts (music or visual arts) or modern and classical languages (Spanish, French, or German) they must take and pass the department's content knowledge assessment(s) in the respective content area prior to issuance of the endorsement(s).

(4) Beginning with the September, 2002, administration of the department's content testing, if they are applying for licensure in secondary 7-12, middle level 5-9 and/or grade pre K-12 and are also seeking endorsement in language arts, reading, mathematics, science or [~~the social studies, composite of history, geography, economics, civics and government,~~] social studies, or any combination thereof, they shall take and pass the department's content knowledge assessment in that content area prior to issuance of that license.

(5) Beginning with the September, 2006, administration of the department's content testing if they are applying for licensure in early childhood B-3, elementary pre K-8, secondary 7-12, middle level 5-9, special education pre K-12 and/or grade pre K-12, and are also seeking an endorsement in the health, physical education, library/media, teaching English to speakers of other languages (TESOL), or family and consumer sciences, they must take and pass the department's content knowledge assessment(s) in the respective content area prior to issuance of the endorsement(s).

(6) An elementary pre K-8 licensed teacher who is new to the profession and who teaches language arts, social studies, mathematics, or science in a middle school or junior high school must either:

(a) take and pass the department's middle level content knowledge assessment(s) in each core subject area the teacher teaches; or

(b) complete twenty-four semester hours of coursework, upper or lower division, in each core academic subject the teacher teaches and take and pass the content knowledge assessment in elementary education.

(7) If they currently hold a license and seek to add an endorsement in language arts, reading, mathematics, science, [~~the social studies, composite of history, geography, economics, civics and government,~~] social studies, the arts (music or visual arts), modern, [~~and~~] classical and native languages (Spanish, French, or German), health, physical education, library/media, teaching English to speakers of other languages (TESOL), or family and consumer sciences, they may be issued an endorsement in the content area upon passage of the department's content knowledge assessment(s) in the respective content area except that a candidate who has passed the Prueba de Español para la Certificación Bilingüe must also complete required coursework in order to add an endorsement in modern and classical languages (Spanish).

(8) Beginning with the September, 2007, administration of the department's teacher competency testing, if they are applying for licensure in special education grades pre K-12, they shall take and pass the department's teacher competency assessment in special education prior to issuance of that license.

(9) Beginning with the September, 2007, administration of the department's specialty area examinations, if they are applying for licensure in guidance counseling, education diagnosis, or administration, grades pre K-12, they shall take and pass the department's specialty area

examinations in those fields prior to the issuance of those licenses.

C. Applicants for an initial Spanish/English bilingual endorsement to a teaching license must, in addition to meeting all other department requirements for the endorsement, pass Prueba de Español para la Certificación Bilingüe by obtaining a score of 2 or higher on any 12 of the 15 subsections. Applicants seeking this endorsement through licensure reciprocity should consult 6.60.4 NMAC for guidance.

[12-31-98, 07-30-99, 02-14-00; 6.60.5.8 NMAC - Rn, 6 NMAC 4.2.2.2.8 & A, 10-13-00; A, 07-15-02; A, 02-14-03; A, 06-30-03; A, 04-29-05; A, 03-15-06; A, 05-31-06]

6.60.5.9 IMPLEMENTATION: Except as provided in Subsection B of this section, applicants described in Section 6.60.5.8 NMAC who have not completed all testing requirements but have met all other licensure and background check requirements of the department except for those who have previously held a three-year license will be granted a nonrenewable one-year license, effective on July 1 of the year of application and expiring on June 30 of the following year.

A. Consistent with Title I, Section 1119 (a) (1) and Title IX, Section 9101 (23) (A) (ii) of the No Child Left Behind Act, if a teacher is not highly qualified and has been issued a one-year license by the department in the core academic subjects under this section, local education agencies receiving funds under title I of the act shall not assign that teacher to teach the core academic subjects in a title I targeted assistance program or schoolwide program, if he/she was initially employed after the first day of school of the 2002-2003 school year.

B. Consistent with Title I, Section 1119 (a) (2) and Title IX, Section 9101 (23) (A) (ii) of the No Child Left Behind Act, which requires that all teachers of the core academic subjects be highly qualified by the end of the 2005-2006 school year, the department will not issue one year licenses in the core academic subjects under this section after June 30, 2006. [07-30-99; 6.60.5.9 NMAC - Rn, 6 NMAC 4.2.2.2.9, 10-13-00; A, 06-30-03; A, 04-29-05; A 05-31-06]

6.60.5.10 SAVINGS CLAUSE: Applicants described in Section 6.60.5.8 NMAC applying for licensure after July 30, 1999, who have taken the professional knowledge [~~portion~~], communications skills or general knowledge tests of the core battery of the national teachers examination [~~within ten years of application for licensure or who have ever taken the communications skills and general knowledge portions of the~~

~~core battery of the national teachers examination~~ that correspond with portions of the NMTA as indicated below, will be exempt from taking the same portions of the NMTA provided they have obtained the following minimum scaled score that correspond with each test of the core battery of the national teachers examination:

A.	professional knowledge	
630	corresponds with NMTA-teacher proficiency	240
B.	communication skills	
644	corresponds with NMTA-basics skills	240

[07-30-99; 6.60.5.10 NMAC - Rn, 6 NMAC 4.2.2.2.10 & A, 10-13-00; A, 07-15-02; A, 02-14-03; A, 04-29-05; A, 05-31-06]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.60.6 NMAC, Sections 6 through 12, effective 05-31-06.

6.60.6 OBJECTIVE: This ~~regulation~~ rule governs continuing licensure for persons holding valid New Mexico licensure and seeking continuing licensure on or after July 1, 1990.
[6.60.6.6 NMAC - Rp 6.60.6.6 NMAC, 09-30-03; A, 05-31-06]

6.60.6.7 DEFINITIONS:

A. "Level ~~one~~ 1 teaching license" means a provisional teaching license issued for the first ~~three~~ five years of teaching that gives a beginning teacher the opportunity, through a formal mentorship program, for additional preparation to be a quality teacher.

B. "Level ~~two~~ 2 teaching license" means a professional teaching license given to a teacher who is a fully qualified professional who is primarily responsible for ensuring that students meet and exceed ~~state board adopted~~ public education department (PED) academic content and performance standards; a teacher may choose to remain at level ~~two~~ 2 for the remainder of his/her career.

C. "Level ~~three-A~~ 3-A teaching license" means a master teaching license and is the highest level of teaching competence for those teachers who choose to advance as instructional leaders in the teaching profession and undertake greater responsibilities such as curriculum development, peer intervention, and mentoring.

D. "Full school year" means a minimum of 160 instructional days in a school year or 480 instructional days or equivalent number of days in schools or school districts on alternative schedules over multiple school years of full-time or

part-time teaching during which the teacher is the teacher of record in at least one class each school year while holding a standard teaching license. Instructional days may include teaching in summer school or similar educational setting.

[6.60.6.7 NMAC - N, 09-30-03; A, 04-29-05; A, 05-31-06]

6.60.6.8 REQUIREMENTS FOR ADVANCEMENT AND RENEWAL OF TEACHING LICENSES PRIOR TO JULY 1, 2004:

A. A person holding a valid level ~~H~~ 1 license and seeking a level ~~H~~ 2 license prior to July 1, 2004, pursuant to the provisions of this ~~regulation~~ rule shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director of the professional licensure unit (hereinafter referred to as the "director");

(2) the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated the competencies required by the public education department for a level ~~H~~ 2 license of the type sought;

(3) successfully complete the three-year level ~~H~~ 1 license.

B. A person holding a valid level ~~H~~ 2 license and seeking a level ~~H~~ 3-A license pursuant to the provisions of this ~~regulation~~ rule shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director;

(2) the applicant must hold a master's degree from a regionally accredited college or university or hold certification from the national board for professional teaching standards;

(3) the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant was most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated the competencies required by the public education department for a level ~~H~~ 3-A license; and

(4) has been a level ~~H~~ 2 teacher for at least three years.

C. A person holding a valid level ~~H~~ 2 and/or level ~~H~~ 3-A license and seeking continuing licensure pursuant to the provisions of this ~~regulation~~ rule shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director;

(2) the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated those level ~~H~~ 2 and/or level ~~H~~ 3-A competencies required by the public education department.

[6.60.6.8 NMAC - Rp 6.60.6.8 NMAC, 09-30-03; A, 08-31-04; A, 05-31-06]

6.60.6.9 REQUIREMENTS FOR ADVANCEMENT AND RENEWAL OF TEACHING LICENSES AFTER JUNE 30, 2004:

A. A teacher holding a valid level ~~H~~ 1 license and after June 30, 2004 seeking a level ~~H~~ 2 license pursuant to the provisions of this ~~regulation~~ rule shall meet the following requirements, which may not be waived or substituted by any other experience:

(1) complete three full school years of teaching experience as the teacher of record at standard level ~~H~~ 1 New Mexico licensure with successful annual evaluations, except that a teacher who has completed two full school years of teaching experience while holding standard teaching licensure in New Mexico or in another state or country or has obtained level ~~H~~ 1 New Mexico teaching licensure through reciprocity in 6.60.4 NMAC and is seeking advancement to level ~~H~~ 2 may be required by a local New Mexico school district to complete up to two full years of teaching experience in New Mexico before being eligible for licensure advancement to level ~~H~~ 2; and

(2) submit, in a form acceptable to the director, a completed licensure application and either a professional development dossier (PDD), as provided in 6.69.4.11 NMAC only between February 1st and March 1st, June 1st and July 1st, and October 15th and November 15th of any year or certification from the national board for professional teaching standards; the PDD may be submitted up to three months in advance of the completion of the requirement in Paragraph (1) of Subsection A of 6.60.6.9 NMAC with final PDD approval dependent upon the completion of three full years of teaching experience at level ~~H~~ 1 licensure.

(3) complete the mentorship requirement for beginning teachers in 6.60.10 NMAC.

B. A teacher holding a valid level ~~H~~ 2 license and seeking a level ~~H~~ 3-A license pursuant to the provisions of this ~~regulation~~ rule shall meet the

following requirements, which may not be waived or substituted by any other experience:

(1) complete three full school years of teaching experience as the teacher of record at standard level [H] 2 New Mexico licensure with successful annual evaluations, except that a teacher who has four or more full school years of teaching experience while holding standard teaching licensure in New Mexico or in another state or country or has obtained level [H] 2 New Mexico teaching licensure through reciprocity in 6.60.4 NMAC and who is seeking advancement to level [H] 3-A may be required by a local New Mexico school district to complete up to two full years of teaching experience in New Mexico before being eligible for licensure advancement to level [H] 3-A; and

(2) hold a post-baccalaureate degree from a regionally accredited college or university or hold certification from the national board for professional teaching standards; and

(3) submit, in a form acceptable to the director, a completed licensure application and either a professional development dossier (PDD), as provided in 6.69.4.11 NMAC only between February 1st and March 1st, June 1st and July 1st, and October 15th and November 15th of any year or certification from the national board for professional teaching standards, and beginning in 2005, where the PDD may be submitted up to three months in advance of the completion of the requirement in Paragraph (1) of Subsection B of 6.60.6.9 NMAC with final PDD approval dependent upon the completion of three full years of teaching experience at level [H] 2 licensure.

C. A teacher holding a valid level [H] 2 or level [H-A] 3-A teaching license and seeking licensure renewal at the same level as his current license shall meet the requirements of either (1) or (2) below:

(1) If renewing a license through the public education department (department), submit, along with the fee specified in 6.60.7.8 NMAC, a completed application for licensure renewal to the director and verification from the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal, that the applicant has satisfactorily demonstrated the competencies for his current level of licensure and has met other requirements of the high objective uniform standard of evaluation for his current level of licensure as evidenced by the teacher's annual evaluations.

(2) If renewing a license through

a local New Mexico school district, state institution or charter school, complete the department's application for licensure renewal. The employing school district or charter school shall attach to the application the department's verification by the superintendent of the local school district or the governing authority of the state institution or charter school by which the applicant has been most recently employed as of the date of the application for licensure renewal, that the applicant has satisfactorily demonstrated the competencies for his level of licensure and has met other requirements of the high objective uniform standard of evaluation for his level of licensure as is evidenced by the teacher's annual evaluations. These documents will be maintained on file in the teacher's personnel file in the local school district, state institution or charter school. The superintendent or his designee will authorize the department to issue the renewal of licensure through electronic notification procedures established by the department when the department determines such an electronic system is viable and operational. The license shall be printed by, and mailed to the license holder from, the department. Under no circumstances will local school districts directly issue or print a New Mexico educator license. The department shall determine how or if renewal fees authorized in 6.60.7.8 NMAC shall be paid by an applicant who renews his license under Paragraph (2) of Subsection C of 6.60.6.9 NMAC.

(3) If a teacher does not satisfactorily demonstrate the competencies for his level of licensure or other requirements of the high objective uniform standard of evaluation for licensure renewal, the applicant, depending on the outcome of any due process proceeding under the Uniform Licensing Act, sections 61-1-1 through 61-1-31, NMSA 1978, might not be issued a license.

D. A person holding a valid level [H-A] 3-A license may choose not to renew his or her level [H-A] 3-A license and apply for a level [H] 2 license. The superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure must submit to the director a verification that the applicant has satisfactorily met the high objective uniform standard of evaluation for level [two] 2 license as is evidenced by the teacher's annual evaluations.

E. If a level [H-A] 3-A teacher does not satisfactorily meet the high objective uniform standard of evaluation for level [H-A] 3-A licensure renewal, the applicant, depending on the outcome of any due process proceeding under the Uniform

Licensing Act, sections 61-1-1 through 61-1-3-1, NMSA 1978, might not be issued a level [H-A] 3-A license. In that case, the applicant may be issued a level [H] 2 license if the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal, submits to the director a verification that the applicant has satisfactorily met the high objective uniform standards of evaluation for level [H] 2 licensure as is evidenced by the teacher's annual evaluations. [6.60.6.9 NMAC - N, 09-30-03; A, 08-31-04; A, 04-29-05; A, 05-31-06]

6.60.6.10 REQUIREMENTS FOR RENEWAL AND ADVANCEMENT FOR EDUCATORS OTHER THAN TEACHERS:

A. A person holding a valid level [H] 1 license and seeking a level [H] 2 license pursuant to the provisions of this [regulation] rule shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director;

(2) the superintendent of the local school district, charter school administrator or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated the competencies required by the public education department for a level [H] 2 license of the type sought.

B. A person holding a valid level [H] 2 license and seeking a level [H] 3 license pursuant to the provisions of this [regulation] rule shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director;

(2) the applicant must hold a master's degree from a regionally accredited college or university;

(3) the superintendent of the local school district, charter school administrator or the governing authority of the state institution or private school by which the applicant was most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated the competencies required by the public education department for a level [H] 3-A license.

C. A person holding a valid level [H] 2 and/or level [H] 3-A license and seeking continuing licensure pursuant to the provisions of this [regula-

~~tion~~ rule shall meet the requirements of either (1) or (2) below:

(1) If renewing licensure through the department, submit, along with the fee specified in 6.60.7.8 NMAC, a completed application for continuing licensure to the director and verification from the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal, that the applicant has satisfactorily demonstrated the competencies required by the department.

(2) If renewing through a local school district, complete the department's application for continuing licensure. The employing school district shall attach to the application the department's verification by the superintendent of the local school district, charter school administrator or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal, that the applicant has satisfactorily demonstrated the competencies required by the department. These documents will be maintained on file in the individual's personnel file in the local school district. The superintendent or his designee will authorize the issuance of the renewal of licensure through procedures established by the department. The license shall be printed by, and mailed to the teacher from, the department. Under no circumstances will local school districts print a license. The department shall determine how or if renewal fees authorized in 6.60.7.8 NMAC shall be paid by an applicant who renews his license under Paragraph (2) of Subsection C of 6.60.6.9 NMAC.

[6.60.6.10 NMAC - N, 09-30-03; A, 08-31-04; A, 04-29-05; A, 05-31-06]

6.60.6.11 EXCEPTIONS:

A. Exceptions for "exigent circumstances":

(1) The provisions of this paragraph shall apply to an individual holding a valid New Mexico license who, in exigent circumstances, is unable to secure a verification of the required competencies for licensure renewal.

(2) As used in this paragraph, "exigent circumstance" means:

(a) the non-availability of the superintendent of the local school district, charter school administrator or of an authorized representative of the state institution or private school by which the applicant has been most recently employed; or

(b) the licensed individual has not been employed in elementary or secondary education during the term of the license (s) or when as a level 1 teacher has been

employed and completes less than three full school years in a New Mexico school district or combination of school districts.

(3) A person seeking to renew his or her current level of licensure who, in exigent circumstances, is unable to secure verification of the required competencies shall submit a sworn statement asserting the exigent circumstance(s). In this situation, an applicant may be granted a [~~three year level~~] five year level 1 license.

B. Exceptions for persons unable to demonstrate "exigent circumstances": A person seeking licensure renewal pursuant to this [~~regulation~~] rule and who cannot show exigent circumstances for the lack of verification of the satisfactory demonstration of the competencies required by the public education department may, upon the expiration of a period of three years from the date of expiration of the valid New Mexico license, apply to the director for a level [~~H~~] 1 license. Level [~~H~~] 1 licenses granted pursuant to this paragraph shall be subject to advancement at level [~~H~~] 2 in the same manner as other such licenses.

C. A person seeking level [~~H, III A or III B~~] 2, 3-A, or 3-B licensure renewal pursuant to this [~~regulation~~] rule who has worked in education but not in an elementary or secondary school setting or who has retired from or has not continued to work in elementary and secondary education under a New Mexico license during the effective period of the license shall submit a sworn statement asserting that he or she has not worked in an elementary or secondary school setting during the effective period of the license, and may renew the license at the current level he or she holds.

[6.60.6.11 NMAC - Rp 6.60.6.9 NMAC, 09-30-03; A, 08-31-04; A, 04-29-05; A, 05-31-06]

6.60.6.12 IMPLEMENTATION: Persons meeting these requirements may obtain a license at the level and for the duration as adopted by the public education department.

A. Absent the exceptions provided in 6.60.6.11, a level [~~H~~] 1 license shall not be renewed.

B. Continuing level [~~H~~] 2 and level [~~H~~] 3-A licenses granted pursuant to 6.60.6.8 NMAC of this [~~regulation~~] rule shall be granted for nine years.

C. Applications and requirements for licensure advancement or renewal must be completed no later than June 30 of the year following expiration of the license. After that date the license is deemed to have lapsed.

D. A license that has lapsed may be renewed at the same level of the lapsed license if the applicant submits evidence of having satisfactorily carried out

his duties as previously authorized by the lapsed license for five complete school years and submits a verification from the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal, that the applicant has satisfactorily demonstrated the competencies for his level of lapsed licensure as evidenced by annual evaluations. If the applicant cannot provide both the verification of five years experience and competency from the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed, the applicant shall be issued only a level [~~H~~] 1 license.

[6.60.6.12 NMAC - Rp 6.60.6.11 NMAC, 09-30-03; A, 08-31-04; A, 04-29-05; A, 05-31-06]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.60.7 NMAC, Section 8, effective 05-31-06.

6.60.7.8 REQUIREMENTS:

A. [~~Applicants~~] Beginning July 1, 2006, applicants seeking an initial educator license shall pay by money order or certified check or other form acceptable to the public education department the following fees prior to or at the time of submission of their applications:

(1) all applicants, except those described in Paragraphs (2) or (3) below, shall pay an application fee of [~~\$50.00~~] \$65.00.

(2) applicants for educational assistant, school health assistant licensure or substitute teacher certification shall pay an application fee of [~~\$15.00~~] \$25.00.

(3) applicants for athletic coaching licensure who are seeking a coaching license only shall pay a fee of [~~\$15.00~~] \$25.00.

B. [~~Applicants~~] Beginning July 1, 2006, applicants seeking the renewal of an existing educator license through the public education department shall pay by money order or certified check or other form acceptable to the public education department the following fees at the time of submission of their applications:

(1) all applicants, except those described in Paragraphs (2) or (3) below, shall pay an application fee of [~~\$25.00~~] \$35.00.

(2) applicants for educational assistant, school health assistant licensure or substitute teacher certification shall pay an application fee of [~~\$15.00~~] \$25.00.

(3) applicants for athletic coaching licensure who are seeking a coaching license only shall pay a fee of ~~[\$15.00]~~ \$25.00.

C. ~~[Applicants seeking the]~~ Beginning July 1, 2006, applicants seeking advancement to higher levels of teacher licensure by initial submission of a professional development dossier (PDD) as provided in 6.69.4.11 NMAC shall pay by money order, certified check or other payment method acceptable ~~[\$175.00]~~ \$185.00 to the public education department or its contractor at the time of submission of their PDD. Applicants who resubmit previously failed PDD strands shall pay a fee of \$65 for one strand, \$115 for two strands and \$165 for three strands. If submission of the PDD corresponds with the renewal of licensure, the fee for renewal in Subsection B of this section shall be waived.

D. ~~Beginning [May 1, 2005]~~ Beginning July 1, 2006, applicants seeking to add an endorsement or endorsements to an existing license shall pay by money order or certified check or other form acceptable to the public education department a fee of ~~[\$25.00]~~ \$35.00. [6-15-98; 6.60.7.8 NMAC - Rn, 6 NMAC 4.2.4.7.8 & A, 10-13-00; A, 09-30-03; A, 08-31-04; A, 04-29-05; A, 05-31-06]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.64.10 NMAC, Sections 1, 2, 6 and 8 through 10, effective 05-31-06.

6.64.10.1 ISSUING AGENCY: ~~[State Board of Education]~~ Public Education Department
[6.64.10.1 NMAC - N, 09-29-00; A, 05-31-06]

6.64.10.2 SCOPE: All persons seeking an endorsement in bilingual education to a New Mexico educator license and persons seeking to qualify for an internship license in bilingual education.
[6.64.10.2 NMAC - N, 09-29-00; A, 05-31-06]

6.64.10.6 OBJECTIVE: This ~~[regulation]~~ public education (PED) rule establishes entry-level bilingual education competencies that are based on what beginning bilingual education teachers must know and be able to do to provide effective bilingual programs in New Mexico schools. The competencies were developed to ensure alignment with the New Mexico's content standards and benchmarks and with the national standards of the national association for bilingual education and must be

used by New Mexico institutions of higher education to establish bilingual education preparatory programs.

[6.64.10.6 NMAC - N, 09-29-00; A, 05-31-06]

6.64.10.8 CORE LICENSURE REQUIREMENTS: ~~[Persons seeking an endorsement in bilingual education to a New Mexico educator license must complete the following core requirements.~~

A. ~~hold a minimum of a baccalaureate degree from a regionally accredited college or university,~~

B. ~~have completed an approved educator preparation program that includes at least 14 weeks of supervised student teaching, and~~

C. ~~pass the state board of education's required licensure examination.]~~

A. Except as provided in Subsections C or D of 6.64.10.8 NMAC, teachers seeking to add an endorsement in bilingual education to an initial level I New Mexico teaching license must meet all of the requirements of the license provided in PED rule for that license, which includes, among other requirements, completing 24-36 semester hours in bilingual education and passage of the bilingual education licensure exam as required in 6.60.5 NMAC.

B. Teachers seeking to add an endorsement in bilingual education to an existing New Mexico teaching license of any level shall meet one of the following requirements:

(1) pass the bilingual education licensure exam as required in 6.60.5 NMAC or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state in bilingual education; or

(2) complete 24-36 semester hours in bilingual education or a graduate degree in bilingual education; or

(3) obtain certification in bilingual education for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

C. Persons who are "highly qualified" in the core academic subjects that they teach and who are enrolled in a public education (PED) approved bilingual education licensure or endorsement program or similar program in another state, whether as part of a teacher preparation program or in a licensure endorsement program only, may be issued a three-year non-renewable internship license in bilingual education under 6.60.3.9 NMAC if they have passed the required bilingual education licensure examination in 6.60.5 NMAC. Persons who have passed the required bilin-

gual education licensure examination in 6.60.5 NMAC shall be required to complete at least 12 semester hours in the teaching of bilingual education that address the competencies in Subparagraphs C-F in 6.64.10.9 NMAC.

D. Persons who hold a licensure endorsement in teaching English as a second language (TESOL) on an existing New Mexico teaching license may add an endorsement in bilingual education by passing the required bilingual education licensure examination in 6.60.5 NMAC and completing at least 6 semester hours in the teaching of bilingual education that address the competencies in Subsections C-F in 6.64.10.9 NMAC.

[6.64.10.8 NMAC - N, 09-29-00; A, 05-31-06]

6.64.10.9 COMPETENCIES FOR ENTRY-LEVEL BILINGUAL EDUCATION TEACHERS:

A. Language other than English

(1) The teacher communicates effectively orally and in writing *(where the written form exists and is allowed) in the language other than English. For Native American languages which have locally developed tribal standards for language proficiency, tribal standards may be used.

(a) The teacher *demonstrates at least a minimum of an eighth grade level of proficiency in oral and written language (where the written form exists and is allowed), necessary to deliver content pre-K-12 in the language other than English.

(b) The teacher demonstrates a high level of accuracy and fluency in spoken language.

(c) The teacher utilizes vocabulary appropriate to a broad range of functions, topics and genres in speech.

(d) The teacher demonstrates competency as a participant in ordinary social situations in which the language other than English is spoken.

(e) The teacher *responds adequately to written material by exercising the processes of comparing, contrasting, categorizing, summarizing, inferring, analyzing, synthesizing, hypothesizing, and evaluating.

(f) The teacher *reads with comprehension a broad range of literary forms (folk, technical, classic, etc.) across the content areas.

(g) The teacher *writes sentences, paragraphs and essays, utilizing formal language models which express original thought; communicates and accomplishes complete and well-organized ideas; and accomplishes a full set of written functions.

(2) The teacher carries out instruction in content areas of the curricu-

lum to attain the standards and benchmarks for the content area in the language other than English.

B. Culture: Bilingual teachers shall increase and diffuse their knowledge of the internal and external forces of change and how they relate to culture.

(1) The teacher understands and accepts the diversity of behavior involved in multicultural settings.

(2) The teacher develops an ability to demonstrate to the learner the value of cultural diversity.

(3) The teacher prepares and assists students to interact successfully in pluralistic cultural settings.

(4) The teacher recognizes and accepts different patterns of child rearing within and between cultures in order to formulate realistic instructional strategies.

(5) The teacher assists students to maintain and extend identification with and pride in one's cultural heritage and awareness of being part of a larger global coalescence.

(6) The teacher demonstrates knowledge of the monumental (art, literature, architecture, history, civilization and literary history) and fundamental (food, folklore, customs, and traditions) elements of traditional and modern cultural influences affecting learners.

(7) The teacher recognizes and respects the similarities and differences among many cultures within a pluralistic society.

(8) The teacher demonstrates knowledge of the effects of cultural and socio-economic variables on the student's learning styles.

(9) The teacher accesses, analyzes, evaluates and applies current research to educate students from linguistically and culturally diverse backgrounds.

(10) The teacher recognizes the culture and history of each student's ancestry.

(11) The teacher recognizes the contributions of the diverse cultural groups to New Mexico and to the United States.

C. English language development

(1) The teacher recognizes and accepts the standard and dialectal language variety as valid systems of communication, each with its own legitimate functions.

(2) The teacher demonstrates knowledge of the basic nature of language, language acquisition, language acquisition, language variation, language change, and the relations of language to society and culture.

(3) The teacher demonstrates knowledge of the nature of bilingualism and the process of becoming bilingual.

(4) The teacher identifies structur-

al and semantic differences between the student's first and second language, recognizing areas of potential influences of the first language and utilizes this information for instructional purposes.

(5) The teacher uses methods for teaching English as a second language for the English language development of students in all content areas, including the language arts.

D. Instructional methodology

(1) The teacher demonstrates knowledge of the philosophical, historical, legal, theoretical, and sociological foundations of bilingual education programs, including a knowledge of national, state and local curriculum requirements and standards.

(2) The teacher demonstrates knowledge of major models and prototype of bilingual and English as a second language programs and components of such programs.

(3) The teacher demonstrate knowledge of theories of first and second language acquisition by utilizing teaching methods appropriate to various language groups, distinct learning styles, different developmental levels.

(4) The teacher demonstrates knowledge of and use theories, approaches, methods, and techniques for teaching listening, speaking, reading and writing in two or more languages in the development of literacy, mathematics, social studies, science, art, music and physical education.

(5) The teacher demonstrates curriculum planning and classroom management skills, including procedures for identifying biases and deficiencies in existing curricula and strategies to modify the curriculum to better address student linguistic, cultural and developmental needs in English and the language other than English.

(6) The teacher applies strategies to develop, acquire, adapt and evaluate materials appropriate to the bilingual/multicultural classroom.

(7) The teacher demonstrates abilities to organize, plan and teach specific lessons in required curriculum areas using the appropriate terminology in English and the language other than English.

(8) The teacher demonstrates the ability to collaborate with other education professionals in promoting the participation of second language learners in all aspects of schooling.

(9) The teacher explores, evaluates and uses technology including applications, tools, educational software, and assorted documentation for culturally and linguistically diverse students.

(10) The teacher knows about exceptionalities in learning, and is able to

access resources and facilitate inclusive learning for all students.

E. Community/family involvement

(1) The teacher values family and community involvement for the success of learners and bilingual programs.

(2) The teacher demonstrates a concerned and caring attitude by establishing a trusting, mutual sharing relationships with families.

(3) The teacher demonstrates knowledge of the teaching and learning patterns of the student's home environment and incorporates these into the instructional areas of the program.

(4) The teacher demonstrates ability to involve families in teaching, curriculum development, classroom management and materials development.

(5) The teacher knows how to act as a catalyst in enhancing the educational skills of second language speaking family members to better assist their children.

(6) The teacher demonstrates ability to move family members from passive observers to active change agents on behalf of their children's education.

(7) The teacher acquires and uses culturally relevant information and materials from the community for curriculum content and instructional materials.

(8) The teacher understands the importance of encouraging bilingual students as they grow and develop to become proponents and models of bilingualism in the community.

F. Assessment

(1) The teacher recognizes potential linguistic and cultural biases of assessment instruments and procedures when prescribing a program for the second language learner.

(2) The teacher assesses oral and written language proficiency in academic areas in both languages utilizing the results for instructional placement, prescription and evaluation.

(3) The teacher evaluates growth of learner's first and second language in the context of the curriculum.

(4) The teacher continuously assesses and adjusts instructional language to maximize student comprehension and verbal participation.

G. Professional leadership

(1) The teacher demonstrates knowledge of the legal issues concerning the education of language-minority children in New Mexico and in the United States.

(2) The teacher demonstrates knowledge of the different theories and philosophies related to bilingual education programs.

(3) The teacher demonstrates knowledge of the history of bilingual education programs.

(4) The teacher demonstrates knowledge of the importance of advocating knowledge of bilingual education among peers, family and community.

(5) The teacher demonstrates knowledge of current trends related to the education of culturally and linguistically diverse students.

(6) The teacher demonstrates knowledge of the ability to collaborate with all other education professionals. [6.64.10.9 NMAC - N, 09-29-00; A, 05-31-06]

6.64.10.10 IMPLEMENTATION: Institutions of higher education that ~~prepares~~ prepare teachers shall deliver the competencies in a ~~state board of education~~ state board of education PED approved endorsement program within a range of twenty-four (24) to thirty-six (36) semester hours of credit. For secondary, middle level and pre K-12 specialty area licensed teachers, a minimum of twelve (12) semester hours must be upper division credit. [6.64.10.10 NMAC - N, 09-29-00; A, 05-31-06]

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

Notice of Repeal

1.13.30 NMAC, Destruction of Public Records, is hereby repealed and replaced by 1.13.30 NMAC, Destruction of Public Records and Non-Records, effective June 1, 2006.

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 13 PUBLIC RECORDS
PART 30 DESTRUCTION OF PUBLIC RECORDS AND NON-RECORDS**

1.13.30.1 ISSUING AGENCY: State Commission of Public Records - State Records Center and Archives. [1.13.30.1 NMAC - Rp, 1.13.30.1 NMAC, 06/01/2006]

1.13.30.2 SCOPE: All state agencies. [1.13.30.2 NMAC - Rp, 1.13.30.2 NMAC, 06/01/2006]

1.13.30.3 STATUTORY AUTHORITY: Section 14-3-6 NMSA 1978 provides the state records administra-

tor the authority to establish records and information management programs for the application of efficient and economical management methods for the creation, utilization, maintenance, retention, preservation and disposal of public records. [1.13.30.3 NMAC - Rp, 1.13.30.3 NMAC, 06/01/2006]

1.13.30.4 DURATION: Permanent. [1.13.30.4 NMAC - Rp, 1.13.30.4 NMAC, 06/01/2006]

1.13.30.5 EFFECTIVE DATE: June 01, 2006 unless a later date is cited at the end of a section. [1.13.30.5 NMAC - Rp, 1.13.30.5 NMAC, 06/01/2006]

1.13.30.6 OBJECTIVE: To establish requirements for the proper and orderly destruction of public records created by state agencies. [1.13.30.6 NMAC - Rp, 1.13.30.6 NMAC, 06/01/2006]

1.13.30.7 DEFINITIONS:
A. "Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico (Section 14-3-2 NMSA 1978).

B. "Archives" means the New Mexico state archives the entity responsible for selecting, preserving and making available permanent records.

C. "Computer" means an electronic device designed to accept data (input), perform prescribed mathematical and logical operations at high speed (processing) and supply the results of these operations (output). This includes, but is not limited to, mainframe computers, minicomputers and microcomputers, personal computers, portable computers, pocket computers, tablet computers, telephones capable of storing information, PDAs and other devices.

D. "Confidential" means information provided to, created by or maintained by a government agency and that is exempt from release under state or federal laws, because disclosure would cause substantial harm or constitute an invasion of privacy or is otherwise prohibited by law.

E. "Custodial agency" means the agency responsible for the maintenance, care or keeping of public records, regardless of whether the records are in that agency's actual physical custody and control.

F. "Custody" means the

guardianship of records, archives and manuscripts, which may include both physical possession (protective responsibility) and legal title (legal responsibility).

G. "Degaussing" means the process of removing magnetism from magnetically recorded tape thereby rendering most of the information non-reconstructable.

H. "Destruction" means the disposal of records of no further value by shredding, burial, pulping, electronic overwrite or some other process, resulting in the obliteration of information contained on the record.

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

J. "Electronic public record" means any information that is recorded in a form that only an electronic device can process and that satisfies the definition of a public record in Subsection G of Section 14-3-2 NMSA 1978.

K. "Non-records or non-essential records" 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; blank forms, transmittal letters or forms that do not add information; sample letters; and reading files or informational files.

L. "On-site destruction" means that once an agency has received approval from state records center and archives to destroy records, the agency has the option to destroy records on-site at the physical location of the agency using an approved method of destruction.

M. "Permanent records" means records considered unique or so valuable in documenting the history or business of an organization that they are preserved in an archives.

N. "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 govern-

ment or because of the informational and historical value of data contained therein (Section 14-4-2 NMSA 1978).

O. "Records" means information preserved by any technique in any medium now known or later developed, that can be recognized by ordinary human sensory capabilities either directly or with the aid of technology (1.13.70 NMAC).

P. "Records center" means a facility designed and constructed to provide low-cost, effective storage for records that have become inactive but have not reached their disposition date. The state records center, as defined by Subsection E of Section 14-3-2 NMSA 1978, is the "central depository which is the principal state facility for the storage, disposal, allocation or use of non-current records of agencies or materials obtained from other sources."

Q. "Records custodian" means the statutory head of the agency using or maintaining the records or the custodian's designee.

R. "Records liaison officer(s)" means a person in an agency responsible for authorizing the transfer, withdrawal or destruction of records and who acts on behalf of the records custodian.

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

T. "Records retention and disposition schedules" means rules adopted by the state commission of public records pursuant to Section 14-3-6 NMSA 1978 describing records of an agency, establishing a timetable for their life cycle and providing authorization for their disposition.

U. "Recycling" means the process that recovers the raw materials of a medium allowing for the reuse of various media. Overwriting on magnetic media is a means of recycling.

V. "Reformatting" means the process in which hard drives and floppy drives are reinitialized.

W. "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.

[1.13.30.7 NMAC - Rp, 1.13.30.7 NMAC, 06/01/2006]

1.13.30.8 [RESERVED]

1.13.30.9 ASSIGNMENT OF RESPONSIBILITIES: Section 14-3-4 NMSA 1978 authorizes the commission of public records to appoint a state records administrator to carry out the purposes of the Public Records Act. The state records administrator is responsible for establishing

records management programs within state government for the purpose of ensuring the efficient and economical management of public records throughout their lifecycle from their creation, utilization, maintenance, retention, preservation and final disposition.

A. The commission of public records hereby delegates the authority to order the routine destruction of public records, in accordance with adopted records retention and disposition schedules, to the state records administrator.

B. The state records administrator shall prescribe the appropriate method of destruction of public records.

C. The state records center and archives, in accordance with the rules established by the state records administrator and the commission of public records, is the authorized facility for the receipt, storage or disposition of all inactive and infrequently used records of present or former state agencies.

D. The state records administrator has the authority to request any agency to designate a records liaison officer to cooperate with, assist and advise the state records administrator in the performance of his or her duties and to provide such other assistance and data as shall enable the commission and state records administrator to properly carry out the purposes of the Public Records Act (Section 14-3-4 NMSA 1978).

[1.13.30.9 NMAC - Rp, 1.13.30.8 NMAC, 06/01/2006]

1.13.30.10 DISPOSITION OF PUBLIC RECORDS:

A. Agencies shall ensure the proper authorized disposition of their records regardless of format or medium so that permanent records are preserved and records no longer of use to an agency are promptly deleted or destroyed based on retention periods established in records retention and disposition schedules and subject to the written approval of the state records administrator.

B. The records custodian for each agency shall assign one or more records liaison officers the responsibility for implementing records management requirements for all agency records at all levels and locations in all media including those received or created using electronic mail. The records liaison officer is responsible for authorizing the storage and destruction of his or her agency's records.

C. Agencies shall secure the written approval of the state records administrator before destroying any records or transferring records to the state archives.

D. Agencies shall follow regulations issued by the state records administrator governing the methods of

destruction.

[1.13.30.10 NMAC - Rp, 1.13.30.9 NMAC, 06/01/2006]

1.13.30.11 ON-SITE DESTRUCTION OF PUBLIC RECORDS:

Destruction of public records may occur on-site at the custodial agency or through the state records center.

A. Agencies who choose to store public records on-site for the life cycle of the records shall contact the agency analysis bureau of the state records center and archives when the records have met their legal retention period.

B. The records liaison officer shall complete and submit the state records center and archives *request for disposition* form. The records liaison officer shall indicate on the form that the records are to be destroyed on-site. The *request for disposition* form shall contain but is not limited to the following: agency code, agency name, division, contact person, address, e-mail address, telephone number, fax number, destruction type, records title and description, disposition trigger date, quantity of boxes or bundles, records retention and disposition schedule section number, transfer to archives, record liaison officer signature and printed name, analyst review, records management division director review, records center section and archive section.

(1) The agency analysis bureau shall review the *request for disposition* and submit it to the state records administrator for approval. The state records administrator shall either approve or deny the request.

(a) When appropriate the state records administrator shall order the transfer of records to the state archives for review and appraisal.

(b) If the records listed on the *request for disposition* have met their legal retention period and are eligible for destruction, the agency shall receive a letter from the state records administrator authorizing the destruction of the records.

(c) The state records administrator shall notify an agency in writing if the request for on-site destruction is denied.

(2) Agencies that destroy records on-site shall certify the destruction in writing. A certificate of destruction shall be submitted to the agency analysis bureau of the state records center and archives. For legal and audit purposes, the records liaison officer(s) shall retain a copy of the certification on file. Agencies shall use only approved methods for agency on-site destruction of public records as identified below.

(a) Records that contain confidential or sensitive information shall be destroyed in such a manner that the information cannot be read, interpreted or recon-

structed by:

(i) witnessed shredding, then pulping through a bonded document destruction vendor, or

(ii) witnessed macerating through a bonded document destruction vendor.

(b) Records without confidentiality requirements shall be destroyed by:

(i) recycling by a bonded document destruction vendor,

(ii) shredding;

(iii) macerating or

(iv) witnessed dumpster burial.

(c) Electronic records shall be destroyed pursuant to 1.13.3 NMAC, Management of Electronic Records. [1.13.30.11 NMAC - Rp, 1.13.30.9 NMAC, 06/01/2006]

1.13.30.12 PUBLIC RECORDS DELIVERED TO THE RECORDS CENTER FOR DESTRUCTION:

Agencies storing public records on-site may elect to deliver public records that have met their retentions to the records center for destruction.

A. Agencies shall contact the agency analysis bureau of the state records center and archives when records have met their legal retention period.

B. The records liaison officer(s) shall complete and submit the state records center and archives *request for disposition* form. The records liaison officer(s) shall indicate on the form whether the records are to be delivered to the Santa Fe or Albuquerque records center for destruction. The *request for disposition* form shall contain but is not limited to the following: agency code, agency name; division, contact person, address, e-mail address, telephone number; fax number, destruction type, records title and description, disposition trigger date, quantity of boxes or bundles, records retention and disposition schedule section number, transfer to archives, record liaison officer signature and printed name, analyst review, records management division director review, records center section and archive section.

C. The agency analysis bureau shall review the *request for disposition* and submit it to the state records administrator for approval. The state records administrator shall either approve or deny the request.

(1) When appropriate the state records administrator shall order the transfer of records to the state archives for review and appraisal.

(2) If the records listed on the *request for disposition* have met their legal retention period and are approved for destruction, the request shall be forwarded

to the appropriate records center.

(3) Records center staff shall contact the agency to arrange a date and time for the records to be delivered to the records center.

(4) The records description and the number of boxes delivered to the records center shall match what is listed on the approved *request for disposition* form. Upon delivery if there is a discrepancy between what is listed on the approved *request for disposition* form and what is delivered to the records center, the shipment shall be rejected and sent back to the agency for clarification.

(5) The records center shall prepare a destruction order for the state records administrator's signature that lists the records approved for destruction that were delivered to the records center.

(6) Records approved for destruction shall be destroyed according to the procedures established in Subsection C of 1.13.30.13 NMAC for destruction of public records.

(7) The state records administrator shall notify an agency in writing if the request for destruction is denied. [1.13.30.12 NMAC - Rp, 1.13.30.9 NMAC, 06/01/2006]

1.13.30.13 DESTRUCTION OF PUBLIC RECORDS:

The state records center is responsible for the timely and efficient destruction of public records that have met their retention periods and that have been reviewed and released for destruction by the agency's record liaison officer and the state records administrator.

A. The state records center procedure for destruction of records (paper and microform) stored at the state records centers shall be to:

(1) schedule quarterly, the destruction of all public records stored in the records centers that have met their scheduled retention periods; and

(2) prepare a report notifying custodial agencies of records that have met their scheduled retention periods and are eligible for destruction or transfer to archives.

B. Custodial agencies receiving notification of records eligible for destruction shall review the report of records to be destroyed.

(1) The records liaison officer(s) shall notify the state records center of any records scheduled for destruction which must be held and shall cite the reason for holding the records beyond the retention period, e.g., pending litigation, audit in process or audit pending.

(2) The agency records liaison officer(s) shall approve the notice of destruction or the notice of transfer to the

state archives in writing and return it to the records center.

(3) The records center shall:

(a) prepare a destruction order for the state records administrator's signature that lists the records approved for destruction; and

(b) prepare a transfer order for the state records administrator's signature that lists the records approved for transfer to the state archives.

C. The state records center shall adhere to the following standards in destroying records.

(1) It shall destroy records that contain confidential or sensitive information in such a manner that the information cannot be read, interpreted or reconstructed by:

(a) witnessed shredding, then pulping through a bonded document destruction vendor, or

(b) witnessed macerating through a bonded document destruction vendor.

(2) It shall destroy records without confidentiality requirements by:

(a) recycling by a bonded document destruction vendor,

(b) shredding,

(c) macerating or

(d) witnessed dumpster burial.

(3) It shall direct the document destruction vendor to prepare and submit to the state records center a certificate of destruction showing the date of destruction, the method of destruction and the names and signatures of person or persons that witnessed the destruction.

D. Destruction of source documents converted to alternative media shall comply with the applicable standards to ensure reliability and authenticity prior to their destruction.

(1) Destruction of paper public records converted to microfilm.

(a) Agencies shall meet all requirements of 1.14.2 NMAC prior to destruction of microfilmed paper records.

(b) Agencies shall comply with 1.13.30.11 NMAC for on-site destruction of public records or 1.13.30.12 NMAC for public records delivered to the state records center for destruction.

(2) Destruction of paper records converted to electronic or machine readable media.

(a) Agencies shall meet all provisions of 1.13.70 NMAC prior to destruction of converted paper records.

(b) Agencies shall comply with 1.13.30.11 NMAC for on-site destruction of public records or 1.13.30.12 NMAC for public records delivered to the state records center for destruction.

(3) Destruction of machine readable records converted to microform.

(a) Agencies shall meet all requirements of 1.14.2 NMAC prior to destruction of machine readable records.

(b) Agencies shall comply with 1.13.30.11 NMAC for on-site destruction of public records or request destruction by the state records center.

(c) Agencies shall meet all provisions of 1.13.70 NMAC prior to destruction of converted machine readable records.

E. Destruction of microfilm. When destruction of microfilm is required and the records contained on the microfilm have met the required retention period, destruction of the microfilm shall be accomplished by witnessed shredding.

F. Destruction of electronic media. When destruction of electronic media is required and the records contained on the electronic media have met the required retention period, destruction of the electronic media shall be accomplished by an approved method of destruction. For information on methods of destruction see Subsection G of 1.13.30.13 NMAC.

(1) For additional information on the destruction of non-records see 1.13.30.14 NMAC.

(2) Public records shall be destroyed in accordance with a current retention schedule.

(3) Supporting documentation (e.g., audit trails and results, certification records, etc.) shall be disposed of in conjunction with the record(s) they support.

G. The destruction of an electronic record involves two components. The first component includes the destruction of the information and the record medium. The second component is where the information is obliterated but the electronic medium is retained because it may still be useful. An agency shall select the best method for the destruction of an electronic record based on the retention of the record, the medium and the nature or sensitivity of the information. For a local hard disk, methods one and two that follow should be sufficient. For other magnetic, optical or solid-state storage media, agency information systems staff should be consulted. Agencies shall select from the following methods of destruction:

(1) erasure from electronic media and all back up media;

(2) emptying of electronic trash receptacle;

(3) witnessed overwriting of reusable magnetic media multiple times as recommended by the US department of defense;

(4) witnessed degaussing of the magnetic media; or

(5) witnessed physical destruction of the media as recommended by the US department of defense.

[1.13.30.13 NMAC - Rp, 1.13.30.8 and 9

NMAC, 06/01/2006]

1.13.30.14 DESTRUCTION OF NON-RECORDS: Destruction of non-records is the sole responsibility of the custodial agency and does not require the prior approval of the state records administrator. That responsibility includes identifying whether the information is a non-record or a public record.

A. Non-records that contain confidential or sensitive information exempted from disclosure by statute shall be destroyed in such a manner that the information cannot be read, interpreted or reconstructed. Non-records that contain confidential or sensitive information shall be destroyed by shredding, macerating or recycling through a bonded document destruction vendor.

B. Non-records without confidential requirements or that do not contain personal identifiers may be destroyed in accordance with approved methods of destruction. To ensure information is destroyed, use one of the following methods:

(1) dumpsite burial;

(2) recycling through bonded recycler; or

(3) shredding.

C. Electronic non-records that do not contain confidential or sensitive information may be destroyed by physical destruction of the media or erasure of the data from all media including back-up media.

[1.13.30.14 NMAC - Rp, 1.13.30.9 NMAC, 06/01/2006]

1.13.30.15 DESTRUCTION OF PUBLIC RECORDS HELD BY CONTRACTORS: All public records or data created by a contractor or non-government entity for a state agency shall be disposed of in accordance with the procedures established in 1.13.30 NMAC.

[1.13.30.15 NMAC - N, 06/01/2006]

HISTORY OF 1.13.30 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

SRC Rule No. 70-3, Records Management Division, Regulations Regarding Destruction of Records and Appointment of Liaison Officers, filed 9/9/70.

SRC Rule No. 89-05, Regulations Regarding the Public Records Act, filed 5/22/89.

History of Repealed Material:

1.13.30 NMAC, Destruction of Public Records, filed 6/16/2004 - Repealed effective 06/01/2006.

NMAC History:

1 NMAC 3.55, Destruction of Public Records, filed 12/1/94.

1 NMAC 3.2.50.1, Destruction of Public Records, filed 4/18/97.

1.13.30 NMAC, Destruction of Public Records, filed 6/16/2004

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.2 NMAC, Sections 7, 10, 13, 16 and 21, effective June 1, 2006.

1.13.2.7 DEFINITIONS:

A. "Acid-free" means having a pH of 7.0 or greater.

B. "Archival" means the material properties inherent in any medium permitting its preservation under controlled conditions.

C. "Certified copy" means a reproduction of a public record expressly verified by the custodial agency as a true and accurate representation of the official copy of the record.

D. "Clip" means a selected part of a motion picture film.

E. "Commercial-use requester" means a requester seeking records and information for a use or purpose that furthers the commercial, trade or profit interests of the requester, organization or person on whose behalf the request is made.

~~[E]~~ **E.** "Digital restoration" means digitally improving the overall appearance of a scanned photograph by adjusting brightness or contrast or both, sharpening, adjusting overall color, cropping, etc.

~~[F]~~ **G.** "Enhancement" means digitally repairing a scanned photograph to remove signs of deterioration and damage (spots, tears, red eye, fold lines, etc.).

H. "Non-profit organization" means any organization, which by its articles of association and by-laws prohibits acts of private inurement, that is, transferring of the organization's earnings to persons in their private capacity; non-profit organizations are required to use their earnings for their program activities and these earnings are tax-exempt if the organization has met the approval of the internal revenue service as falling within a category such as 501(c)(3).

~~[G]~~ **I.** "Record" means all books, papers, maps, photographs, recordings, tapes or other documentary materials, regardless of physical form or characteristics.

J. "Requester" means any individual who is not a commercial-use requester. This term does not include requests citing the Inspection of Public

Records Act, which are handled in accordance with the law and agency policy.

~~[H-] K.~~ "SRCA" means the state records center and archives.
[1.13.2.7 NMAC - N, 3/14/01; A, 7/15/03; A, 6/30/05; A, 6/1/06]

1.13.2.10 A C I D - F R E E ARCHIVAL STORAGE CONTAINERS:

A. Document storage box 15 ¼ in. x 10 ¼ in. x 5 in. - ~~[\$3.15]~~ \$3.30

B. Document storage box 15 ¼ in. x 10 ¼ in. x 2 in. - ~~[\$3.10]~~ \$3.50

C. Record storage box 15 in. x 12 in. x 10 in. - ~~[\$4.00]~~ \$4.15

D. Full telescope box 15 in. x 11 ½ in. x 3 in. - ~~[\$5.15]~~ \$5.30

E. Full telescope box 24 ½ in. x 20 ½ in. x 3 in. - ~~[\$6.70]~~ \$6.90

F. Clam shell box 15 ¼ in. x 10 ¼ in. x 3 ½ in. - ~~[\$3.30]~~ \$3.45

G. Newspaper box 25 in. x 19 in. x 2 ½ in. - ~~[\$7.95]~~ \$7.50

H. Legal size folder full tab package (100 count) - ~~[\$21.75]~~ \$23.65

I. Letter size folder full tab package (100 count) - ~~[\$19.10]~~ \$21.00

J. Corrugated board, 40 in. x 60 in. sheet - ~~[\$6.60]~~ \$6.65

K. Other containers - containers of sizes other than those listed above may be available at cost plus five percent.
[1.13.2.10 NMAC - N, 3/14/01; A, 4/30/02; A, 6/30/04; A, 6/1/06]

[Please contact the Archives and Historical Services Division at 505-476-7956 for the availability and prices of the other containers noted in Subsection K.]

1.13.2.13 PHOTOGRAPH AND MOTION PICTURE FILM REPRODUCTION:

A. Requests for duplication and reproduction of photographs and film that are covered under Section 14-3-15.1 NMSA 1978 or are copyrighted or otherwise contractually restricted shall be accompanied by a letter of intent describing the proposed use and SRCA form 96-18 "conditions for publication/reproduction."

B. Prints from digital images.

(1) 5 x 7 - \$12.00

(2) 8 x 10 - \$12.00

C. Video copies.

(1) Video cassette-to-video cassette copies - \$30.00

(2) Motion picture film-to-video cassette copies - \$47.50

(3) ¾ in. broadcast tape, 30 min - \$50.00

(4) ¾ in. broadcast tape, 60 min. - \$60.00

D. Digital copies.

(1) Motion picture film-to-DVD copies - \$55.00

(2) Motion picture film-to-

miniDV copies - \$58.00

(3) Video cassette-to-DVD copies - \$37.00

(4) Video cassette-to-miniDV copies - \$40.00

~~[D-] E.~~ Where items are fragile or require specialized handling, the SRCA may charge the costs of the additional labor.

~~[E-] E.~~ Fees for digital restoration or enhancement or clip selection of digitized materials or motion picture films vary according to the extent of work required. The minimum fee for digital restoration or enhancement or clip selection shall be \$15.00 per reproduced item, in addition to the reproduction fee set forth in Subsection B of this section. For work requiring over one hour, \$15.00 per additional hour shall be charged.

[7/1/95, 4/30/96, 12/15/98; 1.13.2.13 NMAC - Rn, 1 NMAC 3.100.11 & A, 3/14/01; A, 4/30/02; A, 7/15/03; A, 6/30/05; A, 6/1/06]

1.13.2.16 TRAINING PROGRAMS: The SRCA offers without charge basic training in subjects integral to the performance of its statutory duties. Programs for which fees are imposed under this section provide advanced or other training beyond those basic requirements, and fees for these services are as set forth below.

A. One-half-day session - \$25.00

B. One-day session - ~~[\$35.00]~~ \$40.00

C. One-and-one-half-day session - ~~[\$45.00]~~ \$55.00

D. Two-day session - ~~[\$55.00]~~ \$75.00

E. Special workshops may be priced to cover costs plus five percent for expected participants.

[1.13.2.16 NMAC - N, 3/14/01; A, 7/15/03; A, 6/1/06]

1.13.2.21 COMMERCIAL-USE FEES:

A. Commercial-use requesters, as defined in 1.13.2 NMAC, who make requests for records shall be assessed a commercial service fee. Service fees shall be pre-paid and shall be in addition to the fees for copying or reproduction prescribed in 1.13.2 NMAC.

B. The SRCA requires all requesters to submit a letter of intent and SRCA form 96-18, "conditions for publication/reproduction," before a request is considered.

C. Not-for-profit organizations requesting reproductions of records and information for fund raising shall be charged 50 percent of the applicable commercial-use fees. Proof of not-for-profit status shall be provided before the not-for-

profit rate is considered.

D. The SRCA reserves the right to require proof of intent of publication prior to final approval.

E. The SRCA shall not grant exclusive rights for use of its materials. Permission shall be granted for one time use only. Requesters shall submit an additional letter of intent and SRCA form 96-18 "conditions for publication/reproduction" and pay additional fees for any subsequent use.

F. The SRCA reserves the right to restrict the use of reproductions of rare and valuable records and to make special fee quotations on records involving unusual and difficult reproduction.

G. Fees for commercial use of reproductions of records in books, including book jackets and end papers, shall be as follow:

(1) less than 5,000 editions - \$30.00 per reproduction;

(2) 5,000 to 24,999 editions - \$75.00 per reproduction;

(3) 25,000 or more editions - \$100.00 per reproduction.

H. Fees for commercial use of reproductions of records in serials, magazines, including magazine covers, and newspapers shall be as follow:

(1) circulation of 49,999 or less - \$20.00 per reproduction;

(2) circulation 50,000 to 99,999 - \$50.00 per reproduction;

(3) circulation over 100,000 - \$100.00 per reproduction.

I. Commercial use of reproductions of records in videotapes, CD-ROMs, DVDs or other digital media shall require a fee of \$150.00 per reproduction.

J. Commercial use of reproductions of records in motion picture productions and documentaries shall require a fee of \$150.00 per reproduction.

K. Fees for commercial use of reproductions of records for posters, postcards, T-shirts, calendars, mousepads and non-paper shall be as follow:

(1) less than 999 items - \$20.00 per reproduction;

(2) 1,000 to 4,999 items - \$75.00 per reproduction;

(3) 5,000 or more items - \$100.00 per reproduction.

L. Fees for commercial use of reproductions of records in advertising shall be as follow:

(1) display in commercial offices, stores, and restaurants - \$25.00 per reproduction;

(2) other advertising formats - \$150.00 per reproduction.

[1.13.2.21 NMAC - N, 6/1/06]

[See 1.13.2.15 NMAC for a description of form 96-18.]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to Section 17 of 1.13.5 NMAC. This amendment is effective June 1, 2006.

1.13.5.17 POST - AWARD REQUIREMENTS: Successful historical record grant applicants shall comply with the following post award requirements.

A. Submit progress reports ~~[halfway through the project.]~~ by end of seventh month for work completed in the first six months of the grant period. Progress reported shall be substantially in line with the project timeline included in the grant application. Any appreciable deviation from the timeline shall be justified in the progress report.

(1) If work has not been initiated by the due date of the progress report, the entire grant award shall be nullified.

(2) If progress reported lags substantially behind that described in the project timeline, the grant administrator shall review the project, consult with the grantee to determine whether timely completion of the project is feasible and make a recommendation to the chair of the NMHRAB on continuation of the project. Based on the recommendation, the chair reserves the right to terminate the grant or require an amended scope of work and reduced award.

(3) Failure to submit the progress report by the established deadline shall result in suspension of further reimbursements until the report is submitted and accepted. If the report is not submitted within 30 days of the due date of the progress report, no further requests for reimbursements shall be honored and any balance remaining in the grant award shall revert to the state records center and archives.

B. Submit final reports within ~~[60]~~ 30 days of project completion or no later than June 30 of the fiscal year for which the grant award is made, whichever is earlier.

C. Request funds on a reimbursement basis and no more than 50 percent before substantial completion of the work.

D. Submit proof of completion of training before project start date, if required.

E. Adhere to the State Procurement Code for purchase of goods and services.

F. Maintain grant records for at least two years after completion of the project.

G. Submit an article to the NMHRAB office for possible publication in

agency newsletter, the Quipu, or other publication.

H. ~~[Project _____ period: Funded projects shall be completed within one year from date specified in award letter]~~ Complete the project within the grant period specified in the grant award. No extensions of the grant period shall be made.

[1.13.5.16 NMAC Rn to 1.13.5.17 NMAC & A, 09/30/02; A, 06/30/04; A, 06/30/05; A, 06/01/06]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.7 NMAC, Sections 3, 4, 6, 7, 8, 9, 11, 13 and 14, effective 06/01/06.

1.13.7.3 STATUTORY AUTHORITY: Section 14-3-6 NMSA 1978 provides that the state records administrator shall adopt regulations necessary for carrying out the Public Records Act, which governs the management of the public records, including those held in the state archives. ~~[Laws 2005, Chapter 34, Section 4, Subsection E, Paragraph (1) provides funding for fiscal year 2006 for the New Mexico history scholars program.]~~

[1.13.7.3 NMAC - N, 06/30/05; A, 06/01/06]

[The program was first funded through a special appropriation in Laws 2005, Chapter 34, Section 4, Subsection E. Money to continue the program was included in the agency's subsequent fiscal year base budget.]

1.13.7.4 DURATION: ~~[June 30, 2006]~~ Permanent.

[1.13.7.4 NMAC - N, 06/30/05; A, 06/01/06]

1.13.7.6 OBJECTIVE: To promote an understanding and appreciation of New Mexico history by providing financial assistance to ~~[eligible applicants to defray living costs while]~~ fellows conducting historical research at the state records center and archives.

[1.13.7.6 NMAC - N, 06/30/05; A, 06/01/06]

1.13.7.7 DEFINITIONS:

A. Fellowship means a stipend awarded by the state records center and archives ~~[for the purpose of defraying the costs incurred by recipients of residing in Santa Fe while conducting]~~ to conduct historical research at the state records center and archives.

B. Historical research means, for purposes of 1.13.7 NMAC, research conducted using primary sources

from the archival collections at the state records center and archives.

C. Independent scholar means an individual, regardless of academic credentials, who is recognized as an authority in any field or discipline that advances an understanding and appreciation of New Mexico history. Independent scholars may include individuals such as community historians, tribal elders, etc.

[1.13.7.7 NMAC - N, 06/30/05; A, 06/01/06]

1.13.7.8 ELIGIBILITY: Applicants for fellowships shall meet the requirements described below.

A. An applicant shall be a citizen of the United States or a foreign national who is legally residing in the United ~~[State]~~ States and who:

(1) is enrolled in a graduate program in an accredited college or university and is conducting research toward a graduate degree at that institution, subject to the provisions of Subsection B of 1.13.7.8 NMAC;

(2) holds a graduate degree in a field or discipline from an accredited college or university, subject to the provisions of Subsection B of 1.13.7.8 NMAC; or

(3) is an independent scholar.

B. An applicant may be studying or working in any field or discipline, provided that the research proposed shall foster an understanding and ~~[an]~~ appreciation of New Mexico history and that his or her academic or work experience shall qualify him or her to conduct the proposed research.

~~[C. An applicant shall reside outside a 60 mile radius of Santa Fe, NM at the time of application.]~~

~~[D.]~~ **C.** An applicant shall demonstrate financial need.

[1.13.7.8 NMAC - N, 06/30/05; A, 06/01/06]

1.13.7.9 FELLOWSHIPS - TERMS AND CONDITIONS:

A. Fellowships shall be awarded for a maximum of \$1,000 per month. The amount of a fellowship shall be determined by the financial need demonstrated by the successful applicant and budget availability. The funding shall be used ~~[only to defray living costs incurred as a result of the required Santa Fe residency and shall be made available on a reimbursement basis only, as specified in 1.13.7.11 NMAC]~~ to support research relating to the advancement of an understanding and appreciation of New Mexico history and culture.

B. The duration of a fellowship shall be one to two months, except as provided in Subsection C of 1.13.7.9 NMAC, and shall be determined by the

nature of the proposed research project and budget availability.

C. A fellowship with duration of greater than two months may be awarded, if the proposed research is sufficiently extensive and the benefit to the state of New Mexico and to the advancement of an understanding and ~~an~~ appreciation of New Mexico is determined to be sufficiently significant. The sufficiency of the research and the significance of the benefit shall be determined by the fellowship awards committee.

D. Fellowships shall be awarded only for research projects based on research conducted using primary sources available in the state archives of the state records center and archives. A minimum of ~~[30]~~ 80 hours per month of on-site research in the state archives shall be required.

E. Fellowships shall be awarded only for research projects that shall benefit the state of New Mexico and its citizens by advancing an understanding and appreciation of New Mexico history.

F. Each fellow shall be required to ~~[submit a report of research findings within one month of completing a fellowship. In addition, the fellow will be asked to submit any completed research findings that result in reports, papers, chapters and manuscripts to the state records center and archives. All submitted material shall be included in the state archives unpublished manuscript collection and shall be accessible to the public. Failure to comply with this requirement shall require immediate reimbursement to the state of the fellowship award. These requirements shall be further defined in the acceptance agreement] meet the post-award requirements set forth in 1.13.7.13 NMAC.~~

[1.13.7.9 NMAC - N, 06/30/05; A, 06/01/06]

1.13.7.11 FUNDING AND COMPENSATION:

A. The New Mexico office of the state historian scholars program ~~[is a pilot project, currently funded through a one-year special appropriation expiring June 30, 2006] is contingent on sufficient appropriation and operating budget.~~

B. Although an applicant shall request, pursuant to 1.13.7.10 NMAC, a fellowship for a given amount, duration and time, the decisions concerning these issues shall be made by the fellowship awards committee and shall be based on funding availability, the nature of the proposed research and access to collections and the number of fellowships awarded. All research conducted under a fellowship shall be completed by the end date of the fellowship period and, in all cases, no later than June 30 ~~[-2006] of the fiscal year in which~~

the fellowship is awarded.

C. A successful applicant shall enter into an acceptance agreement issued by the state records center and archives, which shall describe the specific research topic, research requirements, specific deliverables, timetables and compensation provisions.

D. As set forth in 1.13.7.8 NMAC, compensation shall not exceed \$1000 per month ~~[and shall be rendered on a reimbursement basis]. For a fellowship of one-month duration, payment shall be made at the conclusion of the fellowship, subject to the successful completion of all fellowship requirements [and the submittal of an itemized accounting of expenses, including receipts, for which reimbursement is sought]. For a fellowship of a duration of longer than one month, [reimbursement may] payment shall be made monthly, subject to the successful completion of identified deliverables [and submittal of an itemized accounting of expenses, including receipts, for which reimbursement is sought]. The [reimbursement requirements] deliverables shall be delineated in the acceptance agreement.~~

[1.13.7.11 NMAC - N, 06/30/05; A/E, 04/14/06; A, 06/01/06]

1.13.7.13 P O S T - A W A R D REQUIREMENTS: Successful fellowship applicants shall comply with the following post-award requirements.

A. ~~[Fellows shall reside within a 60-mile radius of Santa Fe, NM during the fellowship period, and research] Research work shall take place at the state records center and archives.~~

B. Prior to the conclusion of the fellowship period, each fellow shall be required to give a public lecture based on the research accomplished during the fellowship period.

C. Each fellow shall be required to submit a report of research findings within one ~~[month] week~~ of completing a fellowship. Each fellow shall produce and submit a three-page, historical essay that may be included in the New Mexico history web project. In addition, the fellow ~~[will be asked to] shall~~ submit any completed research findings that result in reports, papers, chapters and manuscripts to the state records center and archives. All submitted material shall be included in the state archives unpublished manuscript collection and shall be accessible to the public. Failure to comply with this requirement shall require immediate reimbursement to the state of the fellowship award. These requirements shall be further defined in the acceptance agreement.

[1.13.7.13 NMAC - N, 06/30/05; A, 06/01/06]

1.13.7.14 TIMETABLE APPLICATIONS AND AWARDS:

A. Completed applications shall be received in the state records center and archives by ~~[3:00 pm, on August 1, 2005 and January 1, 2005 respectively as the two deadlines set by the call for applications] the deadline set forth in the call for proposals.~~

B. The staff of the state records center and archives shall conduct an initial review to determine if applications are complete and applicants meet minimum qualification within ten working days of the receipt of applications.

C. The fellowship review committee shall conduct its review and evaluation process of qualifying applications and award fellowships within one month of receipt of applications. Successful applicants shall be notified by e-mail or, if an applicant has no e-mail address, by registered mail, return receipt requested. An applicant shall satisfy the requirements of Subsections D and E of 1.13.7.14 NMAC prior to beginning research and within the timeframes specified or the award may be rescinded.

D. Successful applicants shall notify the state records center and archives (office of the state historian) of their acceptance or rejection of fellowships within five days of notification of award. Notification shall be made by e-mail, or if the applicant has no e-mail address, by registered U.S. mail, return receipt requested.

E. Acceptance agreements shall be completed and signed prior to the beginning of research or within one month of notification of acceptance, ~~[which ever] whichever~~ is earlier.

F. All research and deliverables identified in the acceptance agreement shall be completed by the end of the fellowship period, but in all cases no later than June 30 ~~[-2006] of the fiscal year in which the fellowship is awarded.~~

[1.13.7.14 NMAC - N, 06/30/05; A/E, 04/14/06; A, 06/01/06]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.10.13 NMAC, effective June 1, 2006.

1.13.10.13 STORAGE OF PAPER RECORDS WITH A FINITE RETENTION AT THE STATE RECORDS CENTER AND ARCHIVES:

A. The state records center and archives (state records center) provides storage to state agencies for ~~[active and] inactive~~ public records. Non-record materi-

als shall not be submitted for storage in the records center.

B. ~~[Agencies]~~ Agency's records liaison officers shall complete a storage transmittal form and submit it to the agency analysis bureau for approval before records can be stored. The form shall contain but not limited to the following: agency code; agency name; division name; date prepared; page number; office location; name and signature of the records liaison officer; records liaison officer telephone number; records liaison officer fax number; schedule item number; record description; disposition trigger date; destroy date; shipment box number and media type.

C. Agencies approved to store records shall be provided with barcode labels by the records center.

D. The barcode labels shall be affixed to the records storage boxes prior to delivery to the records center. The labels shall be placed two to three inches below the handle side of the storage box.

E. The records custodian and records liaison officer shall be notified by the records center when records in storage have met the legal retention period and are eligible for destruction.

F. If an agency does not respond to the records center's *notice of records eligible for destruction* by the established deadline, the state records center and archives ~~[will]~~ shall charge the custodial agency a storage fee as established in 1.13.2 NMAC, Fees.
[1.13.10.13 NMAC - N, 6/30/2005, A, 06/01/2006]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.11 NMAC Sections 7, 8, 9, 10, 11 and 12. This amendment is effective June 1, 2006.

1.13.11.7 DEFINITIONS:

A. **"Archives"** ~~[The]~~ means the permanent records of the state of New Mexico, which may include the government and private records of the Spanish, Mexican, territorial and statehood periods; ~~assessed by NMSRCA archivists to have significant historical or other value to warrant their preservation by the state of New Mexico. Also refers to the organizational unit of the NMSCRA storing these records].~~ It also refers to the state archives of the commission of public records.

B. **"Archivist"** ~~[A]~~ means a professionally trained staff member of the archives and historical services division of the NMSRCA responsible for the appraisal, arrangement, description, preservation and use of archival material.

~~[C.]~~ **Director:** ~~The head of the archives and historical services division of the NMSRCA responsible for servicing the archival records of the state of New Mexico.]~~

~~[D.]~~ **C. "Documents"** ~~[Any]~~ means any recorded information regardless of media, including books, correspondence, reports, maps, manuscripts, may include paper, microforms, photographs, sound recordings, motion pictures, drawings and electronic files.

~~[E.]~~ **D. "Public records"** ~~[All]~~ 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 14-3-2 NMSA 1978). For the purpose of this rule, public records do not include the current records of state government.

~~[F.]~~ **E. "Records"** ~~[Information]~~ means information preserved by any technique in any medium now known, or later developed, that can be recognized by ordinary human sensory capabilities either directly or with the aid of technology (1.13.70 NMAC).

~~[G.]~~ **F. "Records center"** ~~[Also known as]~~ means the New Mexico state records center and archives. It is the principal central records repository for the non-current records of agencies, former governments of the state, and materials obtained from other sources.

~~[H.]~~ **G. "Researcher"** ~~[A]~~ means a person who requests access to original documents or copies of original documents in the archives.

~~[I.]~~ **Research rooms:** ~~Rooms provided by the NMSRCA in which researchers may view and use documents.]~~
[07/01/96; 1.13.11.7 NMAC - Rn, 1 NMAC 3.2.10.2.7, 07/15/03; A, 06/01/06]

1.13.11.8 GUIDELINES FOR USE OF ARCHIVES RESEARCH ROOM:

A. Research room hours are 8:00 am to 4:45 pm, Monday through Friday, except holidays or other times specified by NMSRCA.

(1) Reference assistance is available from 9:00 am to 12:00 pm and 1:00 pm to 4:30 pm.

(2) Historical films and videos can be viewed by appointment only.

(3) Requests to view 10 or more photographs require an appointment.

B. All researchers and visitors must sign the daily log as they enter the ~~[facility]~~ research rooms.

C. Researchers must complete a one-time user registration form (SRC 96-20).

D. The NMSRCA prohibits researchers from carrying boxes, briefcases, satchels, valises, backpacks, purses, folders, coats, newspapers, or other large containers into the research rooms.

(1) Researchers will be provided lockers for their belongings on a first-come, first-serve basis. Lockers are available for a quarter.

(2) Researchers' personal belongings must be removed from the lockers each night.

E. Except as provided in Paragraphs (1) through (4) of Subsection E of 1.13.11.8 NMAC, only paper and pencils may be taken into the research rooms.

(1) Researchers may use a personal computer or tape recorder provided their use does not disturb others.

(2) Cell phones brought into the research rooms are subject to the following procedures:

(a) Cell phones must be placed on vibrate mode.

(b) Calls must be made or answered outside of the research rooms.

(3) Tape recorders; cameras and other video equipment may be brought into the ~~[film research room]~~ research rooms. Equipment is subject to the following procedures:

(a) A written request shall be submitted to director for approval.

(b) Approval shall be granted before equipment is allowed to be brought into the ~~[film research room]~~ research rooms.

(c) If approval is not granted, requester will be notified with explanation.

(d) Equipment is subject to inspection by staff prior to admittance.

(4) Notes, references, list of documents to be consulted, such as one spiral notebook or binder, may be admitted if they are essential to a researchers work but are subject to inspection upon entering or leaving the research rooms.

F. No eating, drinking, or smoking is permitted in the research rooms.

G. Loud talking or other activities likely to disturb other researchers is prohibited.

H. Children under the age of 16 years ~~[will not]~~ shall not be admitted in the research rooms unless they are accompanied by an adult. The director of archives and historical services may waive this requirement with respect to individual researchers.

I. Researchers refusing to comply with NMSRCA research room

guidelines or whose actions present a danger to the documents or annoyance to other researchers [~~will~~] shall be denied access to archival collections [~~and/or will~~] and shall be asked to leave by the director of archives and historical services.

[07/01/96; 1.13.11.8 NMAC - Rn, 1 NMAC 3.2.10.2.8 & A, 07/15/03; A, 06/01/06]

1.13.11.9 GUIDELINES FOR USE OF DOCUMENTS:

A. Researchers [~~must~~] shall complete a records request form (SRC Form 11A) when requesting documents.

(1) The name of the collection, series, box, and folder number [~~must~~] shall be noted.

(2) The researcher [~~may~~] shall hand the completed request form to an archivist or the person at the reference desk.

B. Researchers [~~may~~] shall use documents only in research rooms. Documents [~~may not~~] shall not be removed from the research room.

C. Original records [~~will not~~] shall not normally be made available when microfilm or digital copies are available.

D. Archivists may limit the quantity of materials delivered to a researcher at one time.

(1) Only one folder, box, or container of documents may be made available to a researcher at one time.

(2) The researcher may exchange one container (box) for another by informing an archivist or the person at the reference desk.

E. The researcher is responsible for all records delivered to him until he returns them.

(1) Before leaving the research room, even for a short time, the researcher [~~must~~] shall notify the person at the reference desk and place all documents in their proper container.

(2) When the researcher is finished using the records, they [~~must~~] shall be returned to the reference desk.

F. Researchers [~~must~~] shall keep unbound records in the order in which they are delivered to him.

(1) Documents that appear to be in disorder [~~must not~~] shall not be rearranged by the researcher, but [~~must~~] shall be referred to an archivist.

(2) Researchers [~~are not allowed to~~] shall not remove documents from more than one folder at a time.

G. Researchers [~~may not~~] shall not write on, lean on, fold, trace, erase, staple, or handle documents in any way likely to damage them.

H. The use of protective gloves shall be required with the use of documents.

I. Use of microfilm readers at the NMSRCA is on a first-come, first-serve basis. When other researchers are waiting to use a microfilm reader, a 3-hour limit may be placed on using a reader. During periods of heavy use, researchers may sign a waiting list for the use of a microfilm reader.

J. Microfilm is available on a self-service basis.

(1) Archivists may assist researchers in identifying rolls of film.

(2) After using each roll, the researcher [~~must~~] shall rewind the film and place the roll in the re-file basket.

(3) Researchers shall bring to the attention of an archivist microfilm placed in the wrong box or file cabinet.

(4) Researchers shall bring to the attention of an archivist microfilm that is backwards on the reel.

K. Reference books may be taken off the shelf by researchers.

(1) Books [~~may not~~] shall not be re-shelved by researchers.

(2) Books [~~may~~] shall only be used in the research room.

[07/01/96; 1.13.11.9 NMAC - Rn, 1 NMAC 3.2.10.2.9 & A, 07/15/03; A, 06/01/06]

1.13.11.10 DUPLICATION, CITATION, PUBLICATION, AND COPYRIGHT:

A. Documents may be photocopied or duplicated for a fee. (1.13.2 NMAC)

B. Certain documents may not be copied due to physical condition, possible damage, or legal restrictions.

(1) Archivists [~~will~~] shall determine the suitability of documents to be photocopied.

(2) Original documents which are available on microfilm [~~will not be photocopied when a legible copy can be made from the microfilm~~] or some form of digital media shall not be photocopied when a legible copy can be made from the microfilm or digital media.

(3) Researchers [~~are not to~~] shall not remove documents from folders when requesting photocopies.

(4) Researchers [~~must not~~] shall not tag documents to be copied with adhesive note pads. Researchers [~~must~~] shall ask an archivist or the person at the reference desk for assistance.

C. Permission to examine materials is not an authorization to publish them.

(1) Permission to reproduce for publication unpublished documents [~~must~~] shall be obtained from the holder of the copyright.

(2) Permission to reproduce and publish previously published works in its

entirety [~~must~~] shall be obtained from the holder of the copyright.

(3) The researcher making [~~and/or~~] and using copied material is responsible for obtaining any needed permission or release of copyright from the [~~owner/author~~] owner or author.

D. [~~Requests to use film and photographs in publications must be made in the form of a written letter addressed to the administrator stating the intended use of the material~~] Requests to use reproductions of film and photographs in publications shall be made in writing.

(1) Each researcher must complete and sign SRC Form 96-18, conditions for publication and reproduction [~~;- a summary of the applicable rules~~].

(2) A letter of intent that details how the reproduction will be used shall be submitted to the administrator.

[~~(2)~~] (3) Approval to use the requested materials will be made in writing.

E. Documents [~~must~~] shall be properly cited and credited in publications, exhibits, or other use. Citations should follow this format: identification of item, name of collection, photo or film number (if applicable), New Mexico state records center and archives.

[11/3/69...07/01/96; 1.13.11.10 NMAC - Rn, 1 NMAC 3.2.10.2.10, 07/15/03; A, 06/01/06]

1.13.11.11 ACCESS:

A. Under the Inspection of Public Records Act, access to certain records is restricted.

(1) medical records;

(2) personnel files;

(3) law enforcement records that reveal confidential sources, methods, or information on individuals accused but not charged with a crime;

(4) confidential material, which would invade the privacy of an individual.

B. The use of donated materials [~~may~~] shall be subject to restrictions placed by the donor.

C. Access to materials which are not arranged or are being processed may also be restricted.

D. Access to fragile or very valuable materials may also be restricted.

E. Access to permanent agency records in the custody of the NMSRCA, but not yet accessioned into the archives [~~must be made through the administrator~~] shall be requested by the state records administrator.

[07/01/96; 1.13.11.11 NMAC - Rn, 1 NMAC 3.2.10.2.11, 07/15/03; A, 06/01/06]

1.13.11.12 LOAN OF DOCUMENTS:

A. All loans ~~[must]~~ shall be authorized by the administrator.

B. Requests ~~[must]~~ shall be made in writing at least 60 days before the documents leave the NMSRCA.

C. Borrower ~~[must]~~ shall complete, sign and agree to all security measures, insurance requirements, packing, transporting, display, storage and handling provisions listed in the outgoing loan agreement, Form SRC 96-24.

D. Loans ~~[will]~~ shall be made for a period not to exceed one year.

E. The NMSRCA ~~[must]~~ shall approve any arrangements to include loaned records in related publications.

F. The NMSRCA reserves the right to require other safeguards than those listed on the outgoing loan agreement form and to withdraw records from exhibit at any time.

[07/01/96; 1.13.11.12 NMAC - Rn, 1 NMAC 3.2.10.2.12, 07/15/03; A, 06/01/06]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.14.2 NMAC, Sections 1, 3, 6, 7, 10 - 16, effective June 1, 2006.

1.14.2.1 ISSUING AGENCY: ~~[NM Commission of Public Records (NM State Records Center and Archives)]~~ State Commission of Public Records - State Records Center and Archives

[7-29-96; 1.14.2.1 NMAC - Rn, 1 NMAC 3.2.60.1.1, 12-29-00; A, 06/01/2006]

1.14.2.3 STATUTORY AUTHORITY: Sections 14-3-2, 14-3-15 and 14-3-17 of the Public Records Act (Chapter 14, Article 3 NMSA 1978) ~~[give]~~ gives the state records administrator review and approval authority over microphotography systems of state agencies, and ~~[give]~~ gives the commission of public records authority to establish microphotography standards. The operation of any microphotography system requires the written approval of the state records administrator, and compliance with the minimum standards established by the commission of public records.

[6-8-74...7-29-96; 1.14.2.3 NMAC - Rn, 1 NMAC 3.2.60.1.3 & A, 12-29-00; A, 06/01/2006]

1.14.2.6 OBJECTIVE: To ensure uniformity [7] and legal acceptability, and to facilitate the microphotography of public records of government entities, the following standards, targets, and image sequence and spacing shall be adopted for source document microphotography.

[6-8-74...7-29-96; 1.14.2.6 NMAC - Rn, 1 NMAC 3.2.60.1.6 & A, 12-29-00; A, 06/01/2006]

1.14.2.7 DEFINITIONS:

~~[A.]~~ "Administrator" means the state records administrator and the individual responsible for carrying out the purposes of the Public Records Act, specifically Section 14-3-15 NMSA 1978.

~~[B.]~~ "Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, including district courts. See Sections 14-3-2 and 14-3-15 NMSA 1978.

~~[C.]~~ "Approved microphotography system" means a microphotography system that has been approved in writing by the administrator under the provisions of Section 14-3-15 NMSA 1978.

~~[D.]~~ "CD-ROM mastering process" means the creation of the first recording (the master) in the compact disk-read only memory replication process.

~~[E.]~~ "CD-ROM premastering" see premastering.

~~[F.]~~ "Compact disk" means read-only optical disk available in formats for audio, data and other information.

~~[G.]~~ "Compact disk-read only memory" means optical disk that is created by a mastering process and used for reading.

~~[H.]~~ "Compact disk-write once read many" means an optical disk that is written and then available for reading.

~~[I.]~~ "Density" means the light-absorbing or light-reflecting characteristics of a photographic image, filter, etc.; or the number of pixels per square inch.

~~[J.]~~ "Document accountability" means the process whereby original documents are compared against the images produced, so that the film ensures the validity and integrity of the images.

~~[K.]~~ "Dots per inch" means the measurement of output device resolution and quality, e.g., number of pixels per inch on display device. Measures the number of dots horizontally and vertically.

~~[L.]~~ "Enhancement algorithms" means the set of techniques for processing an image so that the result is visually clearer than the original image.

~~[M.]~~ "JPEG" means the specific compressed image file format specified by ISO. [See JPEG acronym]

~~[N.]~~ "Master" (noun) means:

(1) in micrographics, the original microform produced from which duplicates or intermediates can be obtained (ISO); and

(2) in electronic imaging, the first recording, one from which duplicates can be obtained.

~~[O.]~~ "Master" (verb) means

creating the first recording.

~~[P.]~~ "Microphotography" means the transfer of images onto storage media including but not limited to film, tape, disk, or other information storage techniques that meet the Performance Guidelines for Legal Acceptance of Public Records produced by information technology system technologies pursuant to regulations adopted by the commission of public records. See Section 14-3-2 NMSA 1978.

~~[Q.]~~ "Microphotography program manager" means the person responsible for the microphotography system program in a state agency.

~~[R.]~~ "Microphotography system" means all microphotography equipment, services, policies, procedures and supplies that together create, store and reproduce public records.

~~[S.]~~ "Open system" means a system that implements sufficient open specifications for interfaces, services, and supporting formats to enable properly engineered image processing applications that can be ported with minimal changes across a wide range of systems; can inter-operate with other applications on local and remote systems; and can interact with users in a manner that facilitates access and maintenance of public records on such systems.

~~[T.]~~ "Open system environment" means the comprehensive set of interfaces, services, and supporting formats, plus user aspects, for portability or interoperability of applications and data.

~~[U.]~~ "Optical disk" means the medium that will accept and retain information in the form of marks in a recording layer that can be read with an optical beam. See also compact disk-read only memory, rewritable optical disk and write-once read many optical disk.

~~[V.]~~ "Pixel" means the smallest element of a display surface that can be independently assigned color or intensity.

~~[W.]~~ "Premaster" means the intermediate recording from which a master will be created.

~~[X.]~~ "Pmastering" ~~[(1) includes the conversion to digital code, the addition of error correction codes and the intelligent preprocessing of the data records; and~~

~~(2) the phase of CD-ROM production in which machine-readable and bit-stream data are converted to optical disk.]~~ means the conversion to digital code, the addition of error correction codes and the intelligent preprocessing of the data records. It also includes the phase of optical disk production in which machine-readable and bit-stream data are converted to optical disk.

~~[Y.]~~ "Records" means information preserved by any technique in any

medium, now known, or later developed, that can be recognized by ordinary human sensory capabilities either directly or with the aid of technology.

~~[Z-]~~ **Y.** "Records custodian" means the statutory head of an agency which creates or maintains the records that are being microphotographed, or his designee.

~~[A-A-]~~ **Z.** "Resolution" means the ability of a system to record fine detail, or the measure of that fine detail.

~~[B-B-]~~ **AA.** "Scanner" means a device that converts a document into binary (digital) code by detecting and measuring the intensity of light reflected from paper or transmitted through microfilm.

~~[C-C-]~~ **BB.** "Tag image file format" means the standardized format for storage of digitalized images, which contains a header or tag that defines the exact data structure of the associated image. [7-29-96, 1-12-98; 1.14.2.1.7 NMAC - Rn, 1 NMAC 3.2.60.1.7 & A, 12-29-00; A, 04-30-02; A, 06/01/2006]

1.14.2.10 STANDARD FOR MICROFILM: To maintain the integrity of the original records and to ensure that the microfilm produced is an adequate substitute for the original record and serves the purpose for which such records were created and or maintained the following standard shall be adhered to:

A. For agencies conducting on-site microfilm operations, the microphotography program manager and all program staff are encouraged to attend records and information management training provided by the state records center. For an agency utilizing a service provider for the filming, processing, duplication or storage of microfilm, the agency shall have a written agreement in place to provide for compliance with this standard.

B. A microfilm system ~~[will]~~ shall be determined to meet the minimum ~~[standard]~~ standards of the New Mexico commission of public records if the combined results of the ~~[consumable]~~ consumables (i.e. film, chemicals, etc.) and microfilm equipment ~~[producing microfilm]~~ meet the standards developed or approved by the American national standards institute for the production of microfilm (see 1.14.2.17 NMAC). The requirements of the most current revisions of said standard shall prevail unless otherwise specified in this rule.

C. The microfilm shall be complete and contain all information shown on the original records.

D. Documents from different record series may be filmed on a single roll provided destruction dates coincide.

E. State agencies shall maintain an index for the purpose of tracking all records microfilmed.

F. Methylene blue test.

(1) For records possessing a permanent retention, a methylene blue test shall be conducted on a six inch unexposed clear strip of leader cut from a processed roll of microfilm. The methylene blue test shall be conducted on the microfilm strip within two weeks after the processing of the microfilm with the test results provided to the SRCA.

(2) Systems producing more than 10 rolls per week, shall maintain proof of biweekly test results.

(3) Residual thiosulphate ion shall not exceed 1.4 micrograms per square centimeter as tested by the methylene blue test.

(4) Test results shall be maintained for the retention period of the records on microfilm produced (until film is eligible for destruction) or until the microfilm is regenerated.

(5) Annual proof of methylene blue testing shall be submitted to the state records center and archives by the end of each fiscal year in which microfilm is produced.

G. Resolution. The required resolution for source document microfilm is based on filming a microcopy test chart.

(1) Rotary cameras. A minimum resolving power of 2.5 shall be read on the required test chart.

(2) Planetary cameras. A minimum resolving power of 4.0 shall be read on the required test chart.

(3) Resolution readings shall be determined by following the procedures for determining microfilm resolution as set forth in ANSI/AIIM MS23.

(4) The required test chart shall appear at the beginning and end of each roll.

H. Density maximum (Dmax). The required background transmission density (relative Dmax) for source document microfilm is based on filming a target consisting of a blank sheet of 20 lb white bond paper.

(1) Paper records dated prior to 1960, the relative Dmax shall read between .9 and 1.19.

(2) Paper records dated 1960 and after, the relative Dmax shall read between .85 and 1.29.

(3) Density targets shall appear at the beginning and end of each roll.

(4) Density readings shall be measured at the center of the density target.

I. Density minimum (Dmin). The required base plus fog density (relative Dmin) for unexposed processed microfilms ~~[must]~~ shall not exceed 0.10.

J. Splicing and erasures. Roll form master negative microfilm shall have no splicing or erasures between certification statements, unless expungement of a particular image or images is authorized in writing by the custodial agency.

K. Statement of intent and purpose. A certification statement shall be filmed as the first and last document on the roll of film. For roll form microfilm, a statement of intent and purpose shall be filmed at the beginning and end of each roll of film.

L. Certification plaque for filmstrip form microfilm:

(1) A certification plaque shall be filmed at the beginning and end of each filmstrip.

(2) No splicing or erasures are allowed between the certification plaques, unless expungement of a particular image or images is authorized in writing by the custodial agency.

M. Each roll of source document microfilm shall be identified by a start of roll target and an end of roll target.

N. Master negative microfilm shall be inspected by state agencies or by vendors filming for agencies. Inspection shall consist of verification of the following:

- (1) targets;
- (2) indexing;
- (3) labeling;
- (4) document accountability;
- (5) density;
- (6) resolution; and
- (7) visual observation of major defects and errors.

O. Master microforms stored at the state records center are subject to audit by the state records center and archives staff at any time and shall comply with the standards set out in Subsection N of 1.14.2.10 NMAC. In the event densitometer readings by an agency or vendor consistently vary from those of the SRCA, the agency or vendor shall calibrate their densitometers to correspond to readings obtained by densitometers at the state records center.

P. Agencies shall inspect duplicate film for the following:

- (1) major defects and errors;
- (2) indexing accuracy;
- (3) document accountability; and
- (4) legibility.

Q. Microforms failing to pass inspection by the agency or the vendor filming for the agency shall be refiled.

R. Disposition of originals.

(1) Prior to the final disposition of any microfilmed paper records, all requirements of this rule shall be met.

(2) Agencies shall submit a request for destruction which includes the

following information:

(a) a statement that the records for destruction have been microfilmed;
 (b) that the microfilm has been filmed in accordance to NM microphotography standards;

(c) roll numbers;

(d) record series; and

(e) shall be signed by the records custodian for destruction approval.

(3) Agencies not required to submit a request for destruction to the NM state records center shall maintain a certificate of record destruction, which meets the requirements of the Public Records Act. This certificate shall include:

(a) a statement that the records for destruction have been microfilmed;

(b) that the microfilm has been filmed in accordance to NM microphotography standards;

(c) roll numbers;

(d) record series; and

(e) shall be signed by the records custodian for destruction approval.

S. Labeling of all master microfilm roll containers ~~shall include the following information:~~

(1) All master microfilm roll containers shall contain the following minimum information:

~~(1)~~ (a) name and address of the custodial agency;

~~(2)~~ (b) date filmed;

~~(3)~~ (c) identification of the first and last document on the roll of film;

(d) identification of the inclusive dates of the oldest and the most recent document by month, date and year;

~~(4)~~ (e) records series names and corresponding records retention and disposition schedule item number;

~~(5)~~ (f) disposition trigger date (i.e., date file closed, date contract terminated, etc.);

~~(6)~~ (g) name and address of the entity producing the roll of film; and

~~(7)~~ (h) roll number.

(2) Master microfilm rolls that do not contain the required information on the label shall be returned to the agency for re-labeling. If SRCA is required to ship the master microfilm rolls back to the agency, the custodial agency shall be responsible for the shipping costs.

T. Microfilm targets. The following targets shall be used to be in compliance with this rule:

(1) Statement of intent and purpose. Statement of intent and purpose contains the following information:

(a) authority under which microfilming is being done;

(b) name of the agency for which the microfilming is being done;

(c) statement that the records microfilmed are the actual records of the

agency, and that the records were created as part of the normal course of business;

(d) statement that it is the policy of the agency to microfilm specified records as part of the normal course of business, and (when applicable) that the backlog shall be microfilmed as part of a conversion process to maintain a valid and cost efficient record keeping program;

(e) statement that it is the policy of the agency to microfilm specified records to maintain as the legal copy of record in lieu of paper, and that the paper records are destroyed after microfilming in accordance with all requirements of the Public Records Act; and

(f) name, title, and signature of records custodian or microphotography program manager.

(2) Certification plaque:

(a) certification plaque A ~~will~~ shall be filmed on the first and last image of a filmstrip; and

(b) certification plaque B ~~will~~ shall be filmed on single image filmstrips, such as aperture cards.

(3) Resolution target. An original chart shall be utilized for filming.

(4) Density target. A 20lb. bond sheet of paper shall be utilized for filming.

(5) Start of roll target. Start of roll target shall contain the following information:

(a) roll number;

(b) name of agency and office to which the records belong;

(c) record(s) or file(s) being microfilmed;

(d) date of filming;

(e) name of camera operator; and

(f) description of first record image on the roll of film.

(6) End of roll target. End of roll target shall contain the following information:

(a) roll number;

(b) name of agency and office to which the records belong;

(c) record(s) or file(s) being microfilmed;

(d) date of filming and name of camera operator; and

(e) description of last record image on the roll of film.

U. Microfilm image sequence and spacing. The following image sequence and spacing shall be used:

(1) Start of roll:

(a) film leader;

(b) a single statement of intent and purpose;

(c) a single resolution target;

(d) a single density target;

(e) a single start of roll target; and

(f) four spaces.

(2) Record images. Source documents are to be filmed between the start and

end of roll targets.

(3) End of roll:

(a) four spaces;

(b) a single end of roll target;

(c) a single density target;

(d) a single resolution target;

(e) a single statement of intent and purpose; and

(f) film trailer.

V. The agency shall maintain an index for the purpose of tracking all microphotography records. The index shall identify individual records by relevant use and criteria.

(1) Indexing requirements shall vary from agency to agency, and, within an agency document type by document type. An indexing schema shall take into consideration compliance with freedom of information laws. Indexing requirements include:

(a) Data elements required for search and retrieval shall be defined by each submitting agency for each record series. Access requirements of current and future end-users shall be considered.

(b) Objective coding elements are those identifiers that do not require subjective assessment. Examples of objective coding elements include document date, document type, author, recipient, etc.

(2) Indexing retrieval software. Where an automated index is selected, the software used to search the index and to display index records found shall address user interface issues.

W. All master negative microfilm shall be stored off-site (for security purposes) for the full period prescribed by the agency's records retention and disposition schedule.

X. An agency shall produce a minimum of one working copy of microfilm.

Y. Master microfilm that does not meet the minimum standards for the production of master microfilm specified in this section for density, resolution, targeting and spacing shall fail inspection and shall be re-filmed.

Z. An agency shall have a re-inspection program and process in place for all master microfilm produced.

[9-8-77, 5-27-79, 1-7-81, 1-13-82, 3-29-92, 4-6-92, 7-29-96, 8-24-96, 1-12-98; 1.14.2.10 NMAC - Rn, 1 NMAC 3.2.60.1.9& A, 12-29-00; A, 04-30-02; A, 07-15-03; A, 06/01/2006]

1.14.2.11 MICROFILM SYSTEM PLAN: The microfilm system plan shall address each of the elements in this section.

A. purpose of the system;

B. specific goals of the system including identification of the official copy of record;

C. record series to be microphotographed as identified in the records retention and disposition schedule;

D. system specifications;

E. schema for indexing;

F. disposition of records (source documents) microfilmed;

G. disposition plan for microfilm (masters and working copies) when legal retention has been met;

H. off-site storage location of microfilm masters;

I. system implementation date; and

J. five year review, amendments and modifications.

[1.14.2.11 NMAC - N, 12-29-00; A, 07-15-03; A, 06/01/2006]

1.14.2.12 STANDARD FOR COMPUTER OUTPUT MICROFILM (COM): To maintain the integrity of the original records and to ensure that the COM produced is an adequate substitute for the original record and serves the purpose for which such records were created and or maintained, the following standard shall be adhered to:

A. A COM system ~~will~~ shall be determined to meet the minimum standards of the New Mexico commission of public records if the combined results of the ~~consumable~~ consumables (i.e. film, chemicals, etc.) and equipment producing COM meet the standards developed and or approved by the American national standard institute (see 1.14.2.17 NMAC). The requirements of the most current revision of the standard shall prevail, unless otherwise specified in this rule.

B. An agency intending to place records on COM shall complete a COM statement of intent and purpose (form SRCA 2000-5) and submit it to the state records center for approval by the administrator.

C. The approved COM statement of intent and purpose shall be used as the target in producing COM. The state records center ~~will~~ shall maintain a copy of the statement on file.

D. Methylene blue test.

(1) Residual thiosulphate ion shall not exceed 1.4 micrograms per square centimeter as tested by the methylene blue test.

(2) Annual proof of methylene blue testing shall be submitted to the state records center and archives by the end of the fiscal year in which COM is produced.

(3) Test results shall be maintained ~~[for the retention period of the records on COM produced (until COM is eligible for destruction)]~~ until COM is eligible for destruction.

E. Master negative COM

shall have a minimum resolution of 2.8 as read on the test chart prescribed in ANSI/AIIM MS 1-1996. The COM unit shall be tested for resolution adherence each day of operation.

F. The density of master negative COM shall be no less than 1.5. The COM unit shall be tested for density adherence each day of operation.

G. Each computer output microfiche shall have an identifier image as part of the microfiche index. The image shall include title of record being filmed, creating agency, and date filmed.

H. All master negative COM shall be stored off site (for security purposes) for the full period prescribed by the agency's records retention and disposition schedule.

I. An agency shall produce a minimum of one working copy of COM.

J. Master negative film shall be inspected by state agencies or by vendors filming for agencies. Inspection shall consist of verification of the following:

- (1) targets;
- (2) indexing;
- (3) labeling;
- (4) document accountability;
- (5) density;
- (6) resolution; and
- (7) visual observation of major defects and errors.

K. Master microforms stored at the state records center are subject to audit by the state records center and archives staff at any time and shall comply with the standards set out in Subsection J of 1.14.2.12 NMAC. In the event densitometer readings by an agency or vendor consistently vary from those of the SRCA the agency or vendor shall calibrate their densitometers to correspond to readings obtained by densitometers at the state records center.

L. COM failing to pass inspection by the agency or the vendor filming for the agency shall be remastered.

M. Agencies shall inspect duplicate COM for the following:

- (1) major defects and errors;
- (2) indexing accuracy;
- (3) document accountability; and
- (4) legibility.

N. Disposition of originals.

(1) Prior to the final disposition of any microphotographed paper records, all requirements of this rule shall be met.

(2) Agencies shall submit a request for destruction which includes the following information:

(a) a statement that the records for destruction have been microphotographed;

(b) that the COM has been mastered in accordance to NM microphotography standards;

(c) envelope numbers;

(d) record series; and

(e) shall be signed by the records custodian for destruction approval.

(3) Agencies not required to submit a request for destruction to the ~~[NM]~~ state records center shall maintain a certificate of record destruction, which meets the requirements of the Public Records Act. This certificate shall include:

(a) a statement that the records for destruction have been placed on COM;

(b) that the COM has been mastered in accordance to NM microphotography standards;

(c) envelope numbers;

(d) record series; and

(e) shall be signed by the records custodian for destruction approval.

O. ~~[Labeling of all master microfilm roll containers shall include the following information:]~~ Labeling of all master microform containers

(1) All master microform containers shall contain the following minimum information:

~~(1)~~ (a) name and address of the custodial agency;

~~(2)~~ (b) date filmed;

~~(3)~~ (c) identification of the first and last document on the COM;

(d) identification of the inclusive dates of the oldest and the most recent document by month, date and year;

~~(4)~~ (e) record series names and corresponding records retention and disposition schedule item number;

~~(5)~~ (f) disposition trigger dates (i.e., date file closed, date contract terminated, etc.);

~~(6)~~ (g) name and address of the entity producing the ~~[roll of film]~~ COM; and

~~(7)~~ (h) envelope number.

(2) Master microform containers that do not contain the required information shall be returned to the agency for re-labeling. If SRCA is required to ship the master microform containers back to the agency, the custodial agency shall be responsible for the shipping costs.

P. The agency shall maintain an index for the purpose of tracking all microphotography records. The index shall identify individual records by relevant use and criteria.

(1) Indexing requirements shall vary from agency to agency, and, within an agency document type by document type. An indexing schema shall take into consideration compliance with freedom of information laws. Indexing requirements include:

(a) Data elements required for search and retrieval shall be defined [by each submitting agency for each record series] for each record series by the submitting agency. Access requirements of current and future end-users shall be considered.

(b) Objective coding elements [are those identifiers that do not require subjective assessment. Examples of objective coding elements include document date, document type, author, recipient, etc.] such as document date, document type, and name of author or recipient shall be identified.

(2) Indexing retrieval software [~~Where an automated index is selected, the software used to search the index and to display index records found~~] shall address user interface issues where microphotography images are stored on COM.

[11-16-82, 12-20-88, 1-19-89, 3-29-92, 7-29-92, 8-24-96; 1.14.2.12 NMAC - Rn, 1 NMAC 3.2.60.1.10 & A, 12-29-00; A, 04-30-02; A, 07-15-03; A, 06/01/2006]

1.14.2.13 COM SYSTEM PLAN: The COM system plan shall address each of the elements in this section.

A. purpose of the system;

B. specific goals of the system including the identification of the official copy of record;

C. record series to be microphotographed as identified in the records retention and disposition schedule;

D. system specifications;

E. schema for indexing;

F. disposition of records (source documents) microfilmed;

G. disposition plan for COM (masters and working copies) when legal retention has been met;

H. off-site storage location of COM masters and re-inspection program and process;

I. system implementation date; and

J. five year review, amendments and modifications.

[1.14.2.13 NMAC - N, 12-29-00; A, 07-15-03; A, 06/01/2006]

1.14.2.14 STANDARD FOR IMAGING: This section is limited in scope to the conversion of documents to digitized images suitable for storage on optical or magnetic media. The standards listed in this section are intended to maintain the integrity of the original record and to ensure that the image produced is an adequate substitute for the original record and serves the purpose for which such record was created or maintained.

A. Prior to submitting a request for approval of an imaging system an agency shall have in place a management structure for the imaging system.

B. Prior to submitting a request for approval the agency shall ensure that the proposed imaging system meets all legal requirements.

C. Prior to submitting a request for approval of an imaging system the agency shall prepare a risk assessment for each record series which includes the value of the records to the state and the public, and shall assess alternative record storage systems on at least a benefits and usage basis, prior to implementation. The implementation and use of the imaging system shall not limit or hinder public access to public records. Imaging systems shall provide access which is equivalent, or better than, that provided by the previous record storage system.

D. The imaging system shall be an open system. Variants from an open system, such as proprietary hardware, software or formats, shall require justification.

E. Media life expectancy issues.

(1) Life expectancy rating of any media to be employed by an imaging system used for keeping of public records shall correspond to, and not be less than, the retention period of the records, unless otherwise approved.

(2) Where the life expectancy of media is shorter than retention periods of records imaged, migration shall be addressed as a part of the submitted plan for approval. The migration plan shall provide for review of the hardware and software at least every five years. Where it has been determined that the media are not readable by current off-the-shelf equipment, the agency shall provide for migration to current, generally accessible media. This includes the accessibility of the index as well as accessibility of documents.

F. The agency shall verify completeness of image capture. Verification shall be completed before the mastering of an optical or magnetic disk.

G. The agency shall test disks for readability. During production each disk shall be tested for readability. In addition, every year a representative sample of stored disks shall be tested in order to early detect any deterioration.

H. Based upon the value of the records being imaged, the agency shall provide adequate system security and audit functions in accordance with the Performance Guidelines for the Legal Acceptance of Public Records, 1.13.70 NMAC.

I. Scanned images shall meet the following standards.

(1) Scanning resolution shall be 300 DPI optical minimum, for text.

(2) Photographic records and other halftone records shall have a scanning

resolution at least equal to the original.

(3) Resolution shall be adequate to duplicate all details of each document in order for that document to qualify as a true copy. Engineering, surveying and other records, the usage of which requires precise measurement, shall be imaged at a sufficiently high resolution to provide for that measurement.

(4) Digitized images shall be legible for all purposes for which the original records might be used. All characters in digitized images shall be clearly formed and fully recognizable without regard to their surrounding contexts.

J. Image and media formats.

(1) Images shall be in a standard image format such as Group IV TIFF or BMP. Compression of images for storage is acceptable if the output resolution requirements for use are met. GIF and JPEG are acceptable compressed formats. Plain black and white "two level" images shall not be converted to JPEG; at least 16 gray levels are necessary before JPEG is a useful gray scale image.

(2) Where optical media is used, file and directory structures shall be compliant with ISO 9660 - High Sierra Level 1 - eight dot three file naming, limited nested subdirectories. Any variance shall be justified.

(3) Where optical media are used for permanent records storage, they shall be of the highest quality available. Any variance shall be justified.

~~K. Labeling (volume identifiers). Labeling schema for optical disks shall clearly identify:~~

~~(1) agency name;~~

~~(2) mastering date; and~~

~~(3) the overall content of the optical disk, independent of any index that may be contained on the disk itself.]~~

K. Labeling of all master optical media stored at the state records center and archives.

(1) All master optical disc containers shall contain at a minimum the following information:

(a) name and address of the custodial agency;

(b) date mastered;

(c) identification of the first and last document on the disc;

(d) identification of the inclusive dates of the oldest and the most recent document by month, date and year;

(e) records series names and corresponding records retention and disposition schedule item number;

(f) disposition trigger dates (i.e., date file closed, date contract terminated, etc.);

(g) name and address of the entity producing the disc; and

(h) disc or other identification number.

(2) Master optical media that do not contain the required information on the label shall be returned to the agency for re-labeling. If SRCA is required to ship the master optical media back to the agency, the custodial agency shall be responsible for the shipping costs.

(3) For optical media not stored at the SRCA the labeling shall consist of:

(a) agency name;

(b) mastering date; and

(c) the overall content of the optical disk, independent of any index that may be contained on the disk itself.

L. The agency shall maintain an index for the purpose of tracking all microphotography records. The index shall identify individual records by relevant use and criteria.

(1) Indexing requirements will vary from agency to agency, and, within an agency document type by document type. An indexing schema shall take into consideration compliance with freedom of information laws. Indexing requirements include:

(a) Data elements required for search and retrieval shall be defined ~~[by each submitting agency for each record series]~~ for each record series by the submitting agency. Access requirements of current and future end-users shall be considered.

(b) Objective coding elements ~~[are those identifiers that do not require subjective assessment. Examples of objective coding elements include document date, document type, author and recipient]~~ such as document date, document type, and name of author or recipient shall be identified.

(2) Indexing retrieval software ~~[where an automated index is selected, the software used to search the index, to display index records found, and to display related images]~~ shall address user interface issues where microphotography images are stored on optical disks. Software used to access the index and images shall be included with the optical disk as a self-contained package and shall be consistent with licensing restrictions stipulated by the software vendor, if any.

M. Documents from different record series may be imaged on a single medium (magnetic disk, optical disk, etc.) provided destruction dates coincide, or the disposition plan provides for the maintenance of the media for the longest retention period of any record on the media.

N. Page counts in physical files shall be verified in the scanned versions and certified as complete prior to mastering or writing the optical disk. The certification of completeness shall be kept on file by the agency.

O. Expungement issues.

(1) The system capability to expunge (obliterate all traces of images and their related index entries) shall be required in some instances. The potential for expungement orders shall be addressed in the plan.

(2) When expungement of records is necessary, the plan shall provide for the remastering of all media that have been modified.

(3) When expungement of records is necessary, the plan shall provide for all index records and related image files to be obliterated from the database and the image file storage, and from all backup media.

P. Imaging systems shall meet the imaging standards developed by ANSI and enumerated in section 1-14-2-17 NMAC. If not, adequate justification must be provided. The requirements of the most current revision of the standard shall prevail, unless otherwise specified in this rule.

Q. Facility issues.

(1) Imaging systems shall not be operated in environments with high levels of airborne particles. At a minimum, control of airborne particles from source documents shall be addressed in the imaging system plan.

(2) Imaging systems shall be operated in environments with appropriate controlled access and physical security in conformity with the Performance Guidelines for the Legal Acceptance of Public Records, 1.13.70 NMAC.

(3) Imaging systems shall be operated in environments with adequate temperature and humidity controls.

R. New imaging system applications shall be backward compatible with pre-existing applications, or, where they are not, a migration plan for pre-existing images and indexes shall be provided, or dual systems shall be run until the records retention periods for all pre-existing imaged records have expired.

[7-29-96, 8-24-96, 1-12-98; 1.14.2.14 NMAC - Rn, 1 NMAC 3.2.60.1.11 & A, 12-29-00; A, 07-15-03; A, 06/01/2006]

1.14.2.15 IMAGING SYSTEM

MANAGEMENT: To ensure the reliability and accuracy of image systems and processes, agencies shall specifically address each of these management structure components.

A. Policies and procedures shall be implemented that define proper management, maintenance and use of the system. Policies and procedures shall provide detailed information on the imaged records throughout their entire life cycle. Such procedures shall include but are not limited to:

(1) the steps leading up to the

conversion of records;

(2) the methods for storage of the records;

(3) plans for disaster recovery, including plans for redressing tampering and deterioration of records;

(4) steps involved in the retrieval and disposition of records;

(5) staff roles and responsibilities;

(6) staff maintenance of operation logs and run schedules to document reliability of the system;

(7) monitoring, controlling, and verifying the accuracy and integrity of imaged records;

(8) designing, implementing, and documenting quality control;

(9) attesting to the accuracy and validity of records at the time they are created or updated;

(10) developing and following systematic steps for data entry;

(11) retaining any specially written program used to extract data from a system and producing labels for media containing electronic records that identify the exact title, creating program unit, date, purpose, source, and destination of records;

(12) documenting any problems and resolution of problems including documenting any delays in data entry by keeping records of the date the original source documents were created and the date the data were entered, and keep records of any unusual delay in producing output;

(13) documenting that procedures are being followed;

(14) maintaining records for inspection and audit for the full retention period required by law; and

(15) documenting the methods for ensuring that the imaged and converted records shall be accessible, useable, and understandable.

B. Management shall plan for the provision and maintenance of adequate facilities that ensure the converted and stored records shall be accessible, useable and understandable.

C. Management shall plan for document and test procedures for scanning and indexing records prior to implementation.

D. Management shall provide for formal instruction and training in system operation and maintenance, including image input, process and retrieval. Training and support programs shall be put in place to ensure that staff understands the policies and procedures.

E. Management shall establish controls that monitor the accuracy and authenticity of data, the continued reliability of hardware and software, and the integrity and security of the system. [see 1.13.70 NMAC Performance Guidelines for

the Legal Acceptance of Public Records]

F. Management shall establish controls that provide for the testing of procedures to ensure that the procedures accomplish their purpose.

G. Management shall ensure that the proposed imaging system provides adequate information to fulfill the requirements of state and federal law.

H. Management shall ensure that the imaging process or system can be shown to be trustworthy in producing accurate results.

I. Management shall ensure that the system creates or compiles records in the normal course of business to support the described function or activity.

J. Management shall ensure that the system preserves information over time in identical or functionally equivalent form to the original information.

K. Management shall ensure that records are kept in an understandable form and insure that they can be made accessible within a reasonable amount of time, and within the time established by law through the creation and implementation of a re-inspection process or program.

L. Management shall ensure that the records are organized in a manner that facilitates retrieval.

M. Management shall determine if special equipment has to be provided to display the records or to print copies of them.

[1.14.2.15 NMAC - N, 12-29-00; A, 06/01/2006]

1.14.2.16 IMAGING SYSTEM PLAN. The imaging system plan submitted to the administrator for approval shall address all the items in this section.

A. System description.

(1) The general purpose of the system including the identification of the official copy of record.

(2) The specific goals of system.

(3) The affected records series including record series name, records retention and disposition schedule number, retention period and valuation assessment.

(4) The technical description of the system, including:

(a) for hardware, the technical specifications for servers including, but not limited to, storage capacity, CPU(s), memory, redundancy, connectivity, related in put and out put devices such as scanner types (flatbed, planetary, etc.) as well as workstation configuration, and printers. For software, operating system and version, back up application and scheme, primary imaging application and version, including, but not limited to, data structure, indices, content, data dictionaries, enhancement algorithms, and compression techniques; and date of

installation or proposed installation, upgrades, replacements, and conversions;

(b) system documentation, including, but not limited to, database entity relationship diagrams, general system architecture, network topology and protocols; security devices including bio-metrics;

(c) storage media master, including the off-site storage location of digital master(s), type and longevity such as MTBF;

(d) storage media working copy;

[and] (e) backup process with data restoration and system recovery plan; and (f) re-inspection plan and process.

(5) System security specifications including but not limited to, audit trails, intrusion detection, and disaster recovery.

(6) Plan for public access and finding aids.

(7) System's expected implementation date.

(8) System's expected life span.

B. Management control. The plan shall provide a description of management policies and procedures required by 1.14.2.15 NMAC, including but not limited to operating procedures, including methods for scanning or entering data; revising, updating, or expunging records; indexing; backing up disks, tapes, etc.; testing the readability of records; applying safeguards to prevent tampering and unauthorized access to protected information; and carrying out the disposition of original records.

C. Disposition of records.

(1) For disposition of original records created from 1950 to present, refer to 1.13.30 NMAC Destruction of Public Records and Non-Records.

(2) Original records of the state from 1912 to 1950, the American territorial, the Mexican Republic, and the Spanish colonial periods shall be transferred to the SRCA after the imaging and verification process is complete.

(3) For disposition of imaged records (masters and working copies), whose legal retention has been met, refer to 1.13.30 NMAC Destruction of Public Records and Non-Records.

D. Five year review, amendments and modifications.

(1) The agency shall submit to the administrator a review of their existing imaging system at least every five years. Included in the review shall be all of the management requirements of 1.14.2.15 NMAC.

(2) Prior to mastering any disks under a modified system an agency shall receive approval of a amended imaging systems plan. When an agency makes modifications to an existing imaging system, such modifications shall be incorporated into an

amended plan which shall be submitted to the administrator for approval. Examples of modifications include, but are not limited to, expansion of records series being imaged, enhancement to hardware, modification to software, change in media, and changes in procedure. No records shall be destroyed that were imaged under a modified system until the amended plan has been approved.

[1.14.2.16 NMAC - N, 12-29-00; A, 07-15-03; A, 06/01/2006]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.241 NMAC, Sections 9 through 18, effective 5/31/06.

3.2.241.9 **RECEIPTS FROM THIRD PARTY CLAIMS ADMINISTRATORS:** Payments by a third party claims administrator to a health care practitioner for health care services rendered by the practitioner within the scope of his or her practice and pursuant to a contract with a managed care company or a health insurer that are otherwise deductible under Section 7-9-93 NMSA 1978 may be deducted from gross receipts. A third party claims administrator is an entity that processes health care claims and performs related business functions for a health plan.
[3.2.241.9 NMAC - N, 4/29/05; 3.2.241.9 NMAC - N, 5/31/06]

3.2.241.10 [Reserved]
[3.2.241.10 NMAC - N, 4/29/05; A, 5/31/06]

~~[3.2.241.16]~~ 3.2.241.11 **RECEIPTS FOR ADMINISTRATIVE SERVICES NOT DEDUCTIBLE:** Receipts of a third party for administering a health insurance or medical plan are not deductible under Section 7-9-93 NMSA 1978.
[3.2.241.11 NMAC - N, 4/29/05; 3.2.241.11 NMAC - Rn, 3.2.241.16 NMAC, 5/31/06]

~~[3.2.241.9]~~ 3.2.241.12 **RECEIPTS NOT DEDUCTIBLE UNDER SECTION 7-9-93 NMSA 1978:** Receipts of a health care practitioner other than from payments by a managed health care provider or health care insurer for commercial contract services or medicare part C services provided by the health care practitioner are not deductible under Section 7-9-93 NMSA 1978. Receipts of health care practitioners not deductible under Section 7-9-93 NMSA 1978 include:

A. receipts from any payment, such as a co-payment, that is the responsibility of the patient under the managed health care plan or health insurance;

B. receipts on a fee-for-service basis; "fee-for-service" means a traditional method of paying for health care services under which health care practitioners are paid for each service rendered, as opposed to paying in accordance with a schedule of fees in a contract the health care provider has entered into with a third party;

C. receipts from providing services to medicaid patients; and

D. receipts from selling tangible personal property such as nonprescription medicine that is not incidental to the provision of a deductible service.

[3.2.241.12 NMAC - N, 4/29/05; 3.2.241.12 NMAC - Rn, 3.2.241.9 NMAC, 5/31/06]

~~[3.2.241.10] 3.2.241.13 RECEIPTS OF CORPORATE PRACTICE: [A professional corporation or unincorporated business association, may deduct under Section 7-9-93 NMSA 1978 its receipts from managed health care providers or health care insurers for commercial contract services or medicare part C services provided on its behalf by health care practitioners who own or are employed by the corporation or unincorporated business association if:~~

~~A. the professional corporation or unincorporated business association is owned exclusively by licensed health care practitioners described in Section 7-9-93 NMSA 1978; or at least eighty percent of the ownership interest of a corporation other than a professional corporation or an unincorporated business association is owned by licensed health care professional described in Section 7-9-93 NMSA 1978; and~~

~~B. the corporation or unincorporated business association is not an organization described by Subsection A of Section 7-9-29 NMSA 1978 or a hospital, hospice, nursing home, outpatient facility or intermediate care facility licensed under the Public Health Act.]~~

A corporation, unincorporated business association, or other legal entity may deduct under Section 7-9-93 NMSA 1978 its receipts from managed health care providers or health care insurers for commercial contract services or medicare part C services provided on its behalf by health care practitioners who own or are employed by the corporation, unincorporated business association or other legal entity that is not:

A. an organization described by Subsection A of Section 7-9-29 NMSA 1978; or

B. an HMO, hospital, hospice, nursing home, an entity that is solely an outpatient facility or intermediate care facility licensed under the Public Health Act.

[3.2.241.13 NMAC - N, 4/29/05; 3.2.241.13 NMAC - Rn & A, 3.2.241.10 NMAC,

5/31/06]

~~[3.2.241.14] 3.2.241.14 V A L I D CERTIFICATE OF COMPLIANCE REQUIRED: A person is not a "health care insurer" as defined by Section 7-9-93 NMSA 1978 if the person does not have a valid certificate of compliance issued by the public regulation commission under the New Mexico insurance code to act as an insurer, health maintenance organization, nonprofit health care plan or prepaid dental plan. Receipts of health care practitioners from persons without such a valid certificate of compliance are not deductible under Section 7-9-93 NMSA 1978.~~

~~[3.2.241.14 NMAC - N, 4/29/05; 3.2.241.14 NMAC - Rn, 3.2.241.11 NMAC, 5/31/06]~~

~~[3.2.241.12] 3.2.241.15 S E L F - INSURERS MAY BE "MANAGED HEALTH CARE PROVIDERS": If a person provides for the delivery of comprehensive basic health care services and medically necessary services to the person's employees enrolled in a self-insurance plan through contracting with selected or participating health care practitioners, that person is a "managed health care provider". Example: New Mexico state government's self-insured plan under the Group Benefits Act.~~

~~[3.2.241.15 NMAC - N, 4/29/05; 3.2.241.15 NMAC - Rn, 3.2.241.12 NMAC, 5/31/06]~~

~~[3.2.241.13] 3.2.241.16 PAYMENTS FROM WORKERS COMPENSATION: Receipts of a health care practitioner from the state of New Mexico pursuant to the Workers Compensation Act are not receipts from a managed health care provider or health care insurer and are not deductible under Section 7-9-93 NMSA 1978.~~

~~[3.2.241.16 NMAC - N, 4/29/05; 3.2.241.16 NMAC - Rn, 3.2.241.13 NMAC, 5/31/06]~~

~~[3.2.241.14] 3.2.241.17 RECEIPTS OF HEALTH CARE FACILITIES NOT DEDUCTIBLE: An organization, whether or not owned exclusively by health care practitioners, licensed as a hospital, hospice, nursing home, an entity that is solely an outpatient facility or intermediate care facility under the Public Health Act is not a "health care practitioner" as defined by Section 7-9-93 NMSA 1978. Receipts of such an organization are not deductible under Section 7-9-93 NMSA 1978.~~

~~[3.2.241.17 NMAC - Rn & A, 3.2.241.14 NMAC, 5/31/06]~~

~~[3.2.241.15] 3.2.241.18 RECEIPTS FROM "MEDIGAP" INSURANCE POLICIES NOT DEDUCTIBLE: [Payments from an insurer in accordance with a Medigap policy supplementing~~

~~Medicare coverage are not deductible under Section 7-9-93 NMSA 1978. Medigap policies are not paying for "commercial contract services" as defined by Section 7-9-93 NMSA 1978.] Payments from an insurer in accordance with a medigap policy are not deductible under Section 7-9-93 NMSA 1978. Medigap policies are not paying for "commercial contract services" as defined by Section 7-9-93 NMSA 1978. For purposes of the deduction under Section 7-9-93 NMSA 1978, a medigap policy meets the statutory definition of a "medicare supplemental policy" contained in 42 U.S.C. 1395ss(g)(1). It is a health insurance policy or other health benefit plan offered by a private entity to those persons entitled to medicare benefits and is specifically designed to supplement medicare benefits. Medigap policies do not include limited benefit coverage available to medicare beneficiaries such as "specified disease" or "hospital indemnity" coverage.~~

~~[3.2.241.18 NMAC - Rn & A, 3.2.241.15 NMAC, 5/31/06]~~

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

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