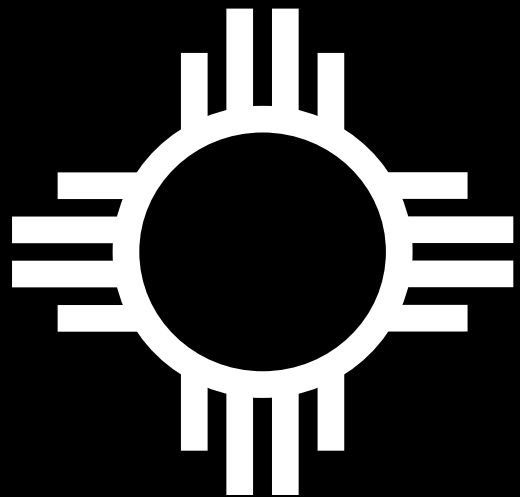


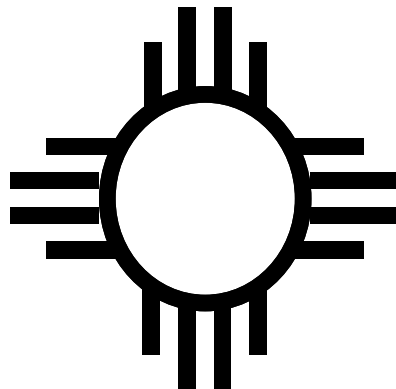
**NEW
MEXICO
REGISTER**



**Volume XVII
Issue Number 11
June 15, 2006**

New Mexico Register

**Volume XVII, Issue Number 11
June 15, 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 11

June 15, 2006

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Effective Date and Validity of Rule Filings

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

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Notices of Rulemaking and Proposed Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT JUVENILE JUSTICE DIVISION

NOTICE OF PUBLIC HEARING

The Children, Youth and Families Department, Juvenile Justice Services, will hold a formal public hearing on Monday July 17, 2006 from 1:00 p.m. to 3:00 p.m. in Room 565 on the 5th floor of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico to receive public comments regarding proposed promulgation of regulation 8.14.13 NMAC, governing the Regional Juvenile Services Grant Fund.

The proposed regulation may be obtained by contacting Richard Lindahl at 505-827-7625. Interested persons may testify at the hearing or submit written comments no later than 3:00 p.m. on July 17, 2006. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Richard Lindahl, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number: 505-476-0225.

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 Mr. Lindahl at 505-827-7625. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO CRIME VICTIMS REPARATION COMMISSION

Notice of Public Hearing

The New Mexico Crime Victims Reparation Commission (CVRC) in accordance with Section 31-22-17 NMSA 1978 will hold a public hearing to review comments and take final action on proposed regulation changes.

This hearing will take place 10:30 am, July 27, 2006 in the Conference Room at CVRC's office located at 8100 Mountain Road NE, Suite 106, Albuquerque, NM 87110.

Comments on the proposed regulations may be submitted in writing prior to the hearing or may be made verbally during the hearing.

The proposed changes will increase the amount the Commission may pay on funeral costs from \$3,500.00 to \$6,000.00. Also, an increase in reimbursement for gasoline costs,

You may obtain a copy of the proposed regulations by writing CVRC at the above address or by calling the office at 505-841-9432.

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

OPEN MEETING NOTICE

Chairman Eric Griego has announced that an Annual Retreat and Monthly Board Meeting for the Industrial Training Board will be held as scheduled:

DATE: Thursday - June 15, 2006

LOCATION:

**JTIP Annual Retreat
UNM Manufacturing Training and
Technology Center
800 Bradbury SE
Albuquerque, NM
9:00 a.m. to 12:00 p.m.**

**Lunch and afternoon session
Conference Room 231
12:00 - 5:00 p.m.**

DATE: Friday, June 16, 2006

LOCATION:

**JTIP Board Meeting
Workforce Training Center
Albuquerque Technical Vocational
Institute
5600 Eagle Rock Avenue NE
Conference Room 103
Albuquerque, NM 87113
Telephone: (505) 224-5200
10:00 a.m. to 1:00 p.m.**

**1:00 p.m. to 5:00 p.m. (Wrap Up Session
if needed)**

PURPOSE: To review the Job Training Incentive Program and the Film & Multi-Media Development Training Program's proposals, fiscal update and the Board will revise its policies (Title 5, Chapter 5, Part 50).

The Board will address and possibly take action on any other issues related to the Job Training Incentive Program and the Film Multi-Media Development Training Program.

For additional information, including a meeting agenda, please contact Therese R. Varela at (505) 827-0323. If you are disabled and require assistance, auxiliary aids and services, (Voice & TDD), and/or alternate formats in order to further your participation, please contact Cynthia Jaramillo, ADA Coordinator at (505) 827-0248. These individuals are employees of New Mexico Economic Development Department, 1100 St. Francis Dr., Santa Fe, NM 87505-4147.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold 3 separate public hearings on July 14, 2006 at the Toney Anaya Building, Rio Grande Conference Room on the 2nd floor (2550 Cerrillos Rd), Santa Fe, New Mexico.

From 9:30-10:30 a.m. the subject of the hearing will be Pregnancy Related and Family Planning Medicaid. The New Mexico Human Services Department is proposing to allow an additional income disregard in the Pregnancy Related and Family Planning Medicaid coverage groups. The additional income disregard will be an amount equal to the difference between 185% and 235% of the applicable Federal Poverty Level for the woman's assistance unit size. After this disregard, the woman's income will be compared to 185% of the Federal Poverty Level.

From 10:30-11:30 a.m. the subject of the hearing will be Medicaid Managed Care. The Medical Assistance Division is proposing amendments to the Medicaid managed care rules to reflect federal regulations and clarify language related to Medicaid managed care policy. These changes are incorporated in amendments to the Salud! managed care contracts effective July 1, 2006.

From 1:30 p.m.-2:30 p.m. the subject of the hearing will be Comprehensive Community Support Services. The Medical Assistance Division (MAD) proposes to create policy 8.315.6 NMAC, Comprehensive Community Support Services (CCSS). CCSS began as a service definition designed by a cross-agency team of Human Services Department staff and behavioral health providers, with the intention of offering a comprehensive array of services for behavioral health recipients in a community-based treatment setting. This

bundle of services is unique to behavioral health Medicaid in that it is applicable to both children and adults. It is also intended to reflect the current philosophy of New Mexico's human services state agencies concerning the benefit of evidenced-based treatment for a behavioral health consumer within his or her own community of services, providers and supports.

Refer to the proposed regulations for a complete description of the service and limitations, the providers and practitioners, and the reimbursement methodology. The following specific points may be of special interest because they are new concepts or definitions for the Medicaid program:

* Case Management for children and adults and Psychosocial Rehabilitation services for adults will now be offered by the appropriately-licensed Department of Health (DOH) or Children, Youth and Families (CYFD) agency, in accordance with the licensure requirements set forth by each agency for Community Mental Health Treatment Centers and Children's Core Service Agencies, respectively.

* The introduction of Peer Specialists and Family Specialists, as required by the New Mexico state certification program approved by the New Mexico Department of Health and Children, Youth and Families Department.

* The creation of a new provider type, the Children's Core Service Agency, through proposed Children, Youth and Families Department rules being promulgated simultaneously with this proposed Medicaid rule.

* A two-year transition period of current Case Management and Psychosocial Rehabilitation providers is to be promulgated in order to allow for providers to evolve their programs, as needed, to fit the more comprehensive array of services offered by CCSS, to participate in statewide trainings sponsored by the State and the Statewide Entity, to receive licensure by either the Department of Health or the Children, Youth and Families Department (as needed) and to engage in technical assistance offered by the Statewide Entity.

Interested persons may submit written comments no later than 5:00 p.m., July 14, 2006, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you

require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

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

NEW MEXICO RACING COMMISSION

NEW MEXICO RACING COMMISSION NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN

that a rulemaking and public hearing will be held in the Commission Conference Room, 300 San Mateo N.E., Albuquerque, New Mexico, commencing in executive session at 8:00 o'clock a.m. on Wednesday, June 21, 2006. The public session will begin at 9:00 o'clock a.m. on Wednesday, June 21, 2006. The Commission will consider adoption of proposed amended rule for incorporation into the Rules Governing Horse Racing in New Mexico No. 16.47.1.8 NMAC (regarding licenses.)

Copies of the proposed rule may be obtained from Julian Luna, Agency Director, New Mexico Racing Commission, 300 San Mateo N.E., Suite 110, Albuquerque, New Mexico 87108, (505) 841-6400. Interested persons may submit their views on the proposed rules to the commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the commission of such needs at least five days prior to the meeting.

Julian Luna
Agency Director

Dated: May 30, 2006

NEW MEXICO REGULATION AND LICENSING DEPARTMENT FINANCIAL INSTITUTIONS DIVISION

NEW MEXICO FINANCIAL INSTITUTIONS DIVISION

NOTICE OF FINANCIAL INSTITUTIONS DIVISION PROPOSED RULE

The Financial Institutions Division is proposing a rule regarding terms and conditions of payday loan agreements. Copies of the proposed rule are available on the Financial Institutions Division website, <http://www.rld.state.nm.us/fid/index.htm>, or by calling 505-476-4885. Any person wishing to comment on the proposed rule may do so via e-mail to PDR.RLD@state.nm.us or in writing to William J. Verant, Director, Financial Institutions Division 2550 Cerrillos Road 3rd Floor, Santa Fe, New Mexico 87505. All comments must be received in the Financial Institutions Division office no later than 5 p.m. (MDT) June 30, 2006.

Comments suggesting changes to the proposed rule shall state and justify the particular reasons for the suggested changes and should include all specific language necessary or appropriate to effectuate the changes being suggested.

TITLE 12 TRADE, COMMERCE AND BANKING CHAPTER 18 LOAN COMPANIES PART 7 TERMS AND CONDITIONS OF PAYDAY LOAN AGREEMENTS

12.18.7.1 ISSUING AGENCY: Financial Institutions Division of the Regulation and Licensing Department.
[12.18.7.1 NMAC - N, 07/31/06]

12.18.7.2 SCOPE: Small Loan licensees conducting payday loan business in the state of New Mexico.
[12.18.7.2 NMAC - N, 07/31/06]

12.18.7.3 STATUTORY AUTHORITY: Section 58-15-11 NMSA 1978.
[12.18.7.3 NMAC - N, 07/31/06]

12.18.7.4 DURATION: Permanent.
[12.18.7.4 NMAC - N, 07/31/06]

12.18.7.5 EFFECTIVE DATE: July 31, 2006 unless a different date is cited at the end of a section.
[12.18.7.5 NMAC - N, 07/31/06]

12.18.7.6 OBJECTIVE: The objective of this part is to establish regulations governing the conduct of small loan licensees who enter into payday lending agreements.

[12.18.7.6 NMAC - N, 07/31/06]

12.18.7.7 DEFINITIONS:

A. "Consumer" means a person who enters into a payday loan agreement and receives the loan proceeds in New Mexico.

B. "Debit authorization" means an authorization signed by a consumer to electronically transfer or withdraw funds from an account for the specific purpose of repaying a payday loan.

C. "Director" means the director of the financial institutions division of the regulation and licensing department.

D. "Division" means the financial institutions division of the regulation and licensing department.

E. "Installment loan" means a loan that is to be repaid in a minimum of four successive substantially equal payment amounts to pay off a loan in its entirety with a period of no less than one hundred twenty days to maturity.

F. "Payday loan" means a loan in which the licensee agrees in writing to defer presentment of a consumer's check or debit authorization until the consumer's next payday or another date agreed to by the licensee and the consumer and:

(1) includes any advance of money or arrangement or extension of credit whereby the licensee, for a fee, finance charge or other consideration:

(a) accepts a dated instrument from a consumer or an authorization signed by a consumer to transfer or withdraw funds from an account for the specific purpose of repaying a payday loan;

(b) agrees to hold a dated instrument for a period of time prior to negotiating or depositing the instrument; or

(c) pays to the consumer, credits to the consumer's account or pays another person on behalf of the consumer the amount of an instrument actually paid or to be paid pursuant to the New Mexico Small Loan Act of 1955; but

(2) does not include:

(a) an overdraft product or service offered by a banking corporation, savings and loan association or credit union; and

(b) installment loans.

G. "Payday loan product" means a payday loan, a renewed payday loan or a payment plan as described in 12.18.7.12 NMAC.

H. "Person" includes an individual, copartner, association, trust, corporation and any other legal entity.

I. "Renewed payday loan" means a loan in which a consumer

pays in cash the administrative fee payable under a payday loan agreement and refinances all or part of the unpaid principal balance of the existing payday loan with a loan from the same licensee. A "renewed payday loan" includes a loan in which a consumer pays off all or part of an existing payday loan with the proceeds of a payday loan from the same licensee.

[12.18.7.7 NMAC - N, 07/31/06]

12.18.7.8 REQUIREMENTS FOR PAYDAY LOANS:

A. No licensee shall make a payday loan to a consumer if the total amount of the loan, including principal and administrative fees, will, when combined with the principal amount of all of the consumer's other outstanding payday loans, exceed twenty-five percent of the consumer's gross monthly income. Each licensee who provides payday products shall ensure full compliance with this section no later than November 1, 2006.

B. Without affecting the rights of a consumer to prepay a payday loan or renewed payday loan at any time without additional cost or penalty:

(1) no payday loan or renewed payday loan shall have a stated term of less than fourteen days nor more than thirty-five days; and

(2) there shall be a scheduled pay date for the consumer within the term of the payday loan or renewed payday loan.

C. Any payday loan or renewed payday loan shall include a provision granting the consumer the right to rescind the transaction by returning in cash, or through certified funds, one hundred percent of the amount advanced by a licensee for a payday loan or renewed payday loan no later than 5:00 p.m. on the first day of business conducted by the licensee following the execution of the agreement. If a consumer exercises the right of rescission pursuant to this subsection, no fee for the rescinded transaction shall be charged to the consumer, and the licensee shall not charge or impose on the consumer a fee for exercising the right of rescission pursuant to this subsection. If this section is applicable, any fee collected by a licensee shall be returned in full to the consumer.

D. Any payday loan made within seven days of the maturity date of a prior payday loan or renewed payday loan, by the same licensee, shall automatically be treated as either:

(1) a renewal if the loan has not previously been renewed or has only been renewed once; or

(2) a payment plan if the loan has been renewed twice.

E. A consumer shall be permitted to make payments in any amount on a payday loan product at any time before

maturity without additional fees. A payment received by a licensee shall first be applied to administrative fees owed with any remaining amount to be applied to principal.

F. After each payment is made, in full or in part, on a payday loan product, the licensee shall give to the person making the payment a signed, dated receipt showing the amount paid, the amount credited toward administrative fees and principal, and the balance due on the loan.

G. A check written by a consumer for a payday loan product shall be payable to the order of the licensee.

H. The licensee shall provide the consumer, or each consumer if there is more than one, with copies of the payday loan product agreement in Spanish or English prior to the consummation of the loan. Consumers shall have the option to decide which language version of the agreement they wish to receive.

I. A payday loan product agreement shall not be renewed, refinanced or extended without the written consent of the consumer.

J. Licensees making payday loans shall provide the consumer with an information brochure in English or Spanish. Consumers shall have the option to decide which language version of the brochure they wish to receive.

K. A licensee shall collect on payday loans in default in a professional, fair and lawful manner. A licensee who complies with the requirements and prohibitions set forth in 15 USC 1692c - 1692f of the federal Fair Debt Collections Practices Act shall be deemed to have operated in a professional, fair and lawful manner.

[12.18.7.8 NMAC - N, 07/31/06]

12.18.7.9 PAYDAY LOAN PRODUCTS - PERMITTED CHARGES:

A. A licensee shall not charge or receive from a consumer, directly or indirectly, fees or charges except as provided in this section.

B. Upon the execution of a new payday loan, the licensee may impose an administrative fee of fifteen dollars and fifty cents (\$15.50) per one hundred dollars (\$100) of principal, which fee is fully earned and nonrefundable at the time a payday loan agreement is executed unless a payday loan is rescinded pursuant to Subsection C of 12.18.7.8 NMAC and which is payable in full at the end of the term of the payday loan.

C. Upon the execution of an agreement to renew a payday loan, the licensee may impose an administrative fee of fifteen dollars and fifty cents (\$15.50) per one hundred dollars of principal, which

fee is fully earned and payable at the end of the term of the renewed payday loan and nonrefundable at the time a renewal agreement for a payday loan is executed unless a renewed payday loan is rescinded pursuant to Subsection C of 12.18.7.8 NMAC.

D. A licensee shall not charge a consumer interest on the outstanding principal or fees owed on a payday loan product.

E. If there are insufficient funds to pay a check or other type of debit on the date of presentment by the licensee, a licensee may charge a borrower a fee not to exceed fifteen dollars (\$15.00). Only one fee may be collected by a licensee on a check or debit. Late fees or delinquency charges shall not be allowed. A check or debit request shall not be presented to a financial institution by the lender for payment more than one time unless the consumer agrees to one additional presentation or deposit.

[12.18.7.9 NMAC - N, 07/31/06]

12.18.7.10 PAYDAY LOAN PRODUCTS - PROHIBITED ACTS: A licensee shall not:

A. threaten or intimidate a consumer or threaten to use or request the use of criminal process in this or another state to collect on a payday loan product;

B. use a device or agreement that would have the effect of charging or collecting more fees, charges or interest than allowed by law or regulation by entering into a different type of transaction with the consumer that has that effect;

C. require or permit a consumer to enter into a new payday loan to pay an existing payday loan in whole or in part, when that existing loan can be renewed or is eligible for a payment plan pursuant to 12.18.7.12 NMAC;

D. charge a fee to cash a check representing the proceeds of a payday loan product;

E. assign or attempt to assign a consumer's personal check to a third party unless for collection purposes;

F. use or attempt to use the check written by the consumer for a payday loan product as security for purposes of a state or federal law;

G. require a consumer to provide multiple checks or multiple debit authorizations in amounts less than the total amount of the payday loan or renewal loan (e.g., five \$20.00 checks instead of one \$100 check for a \$100 loan);

H. accept collateral for a payday loan product other than the consumer's check or debit authorization or require a consumer to provide a guaranty from another person for a payday loan product;

I. include any of the fol-

lowing provisions in a payday loan product agreement:

(1) a hold harmless clause;

(2) a confession of judgment clause or power of attorney;

(3) an assignment of or order for payment of wages or other compensation for services;

(4) a waiver of claims for punitive damages;

(5) a provision in which the consumer agrees not to assert a claim or defense arising out of the contract;

(6) a waiver of a provision of the New Mexico Small Loan Act of 1955 or the rules promulgated pursuant to the New Mexico Small Loan Act of 1955;

(7) a waiver of the right to renew a payday loan or enter into a payment plan; or

(8) a waiver of any rights secured by New Mexico law including but not limited to the New Mexico Uniform Arbitration Act;

J. make a payday loan product contingent on the purchase of insurance or other goods or services;

K. take a check, instrument or form in which blanks are left to be filled in after execution of the check, instrument or form;

L. offer, arrange, act as an agent for or assist a third party in any way in the making of a payday loan product unless the third party complies with all applicable federal and state laws and regulations;

M. knowingly enter into a payday loan product with a consumer who lacks the capacity to consent;

N. use an agency agreement or partnership agreement as a scheme or contrivance to circumvent these rules or provisions of the New Mexico Small Loan Act of 1955; for the purposes of this subsection:

(1) "agency agreement" means any agreement between in-state entities and a banking corporation, savings and loan association or credit union operating under the laws of the United States or of any state whereby the in-state agent holds a predominant economic interest in the revenues generated by a payday loan or renewed payday loan made to New Mexico residents; and

(2) "partnership agreement" means any agreement between in-state entities and a banking corporation, savings and loan association or credit union operating under the laws of the United States or of any state whereby the in-state partner holds a predominant economic interest in the revenues generated by a payday loan or renewed payday loan made to New Mexico residents;

O. finance or refinance all or any portion of any fees permitted in

12.18.9 NMAC.

[12.18.7.10 NMAC - N, 07/31/06]

12.18.7.11 RENEWED PAYDAY

LOANS: During the term of the loan, on or before the due date (maturity) of the loan, and up to 14 days after the due date of the loan, if the loan has not been repaid in full, the licensee must offer the consumer the opportunity to renew the consumer's payday loan. The consumer, at his or her sole discretion, has the right to renew the payday loan up to two times. The term of the renewed payday loan shall include a scheduled pay date for the consumer.

[12.18.7.11 NMAC - N, 07/31/06]

12.18.7.12 PAYDAY LOANS PAYMENT PLANS:

A. During the term of the loan, on or before the due date (maturity) of the loan, and up to 28 days after the due date of the second renewed payday loan, if the loan has not been repaid in full, the licensee must offer the consumer the opportunity to enter into a payment plan. The consumer may elect, and a licensee shall permit, entry into a payment plan for the unpaid principal balance of the renewed payday loan.

B. To be eligible to enter into a payment plan, a consumer must first pay the administrative fee for the renewed payday loan as set forth in Section 12.18.7.9. No fees, charges or interest may be charged on the loan in a payment plan.

C. A payment plan must provide for:

(1) a minimum of 130 (one hundred and thirty) days for the repayment of the unpaid principal balance of a renewed payday loan; and

(2) relatively equal installment payments based upon the consumer's schedule of pay periods.

[12.18.7.12 NMAC - N, 07/31/06]

12.18.7.13 PAYDAY LOANS - WAITING PERIOD:

A. A licensee shall not make a payday loan to a consumer qualifying pursuant to the provisions of Subsection B of this section until at least seven calendar days have passed since the consumer completed all payment obligations pursuant to a payday loan product.

B. The provisions of Subsection A of this section shall apply to a consumer who within the prior twelve months:

(1) has had payment obligations under one or more payday loan products for sixty or more consecutive days; or

(2) has had payment obligations under one or more payday loan products for ninety or more days in the aggregate.

[12.18.7.13 NMAC - N, 07/31/06]

12.18.7.14 PAYDAY LOANS - VERIFICATION:

A. Before entering into a payday loan agreement with a consumer, a licensee must use a commercially reasonable method of verification to verify that the proposed loan agreement is permissible under the provisions of this rule and the New Mexico Small Loan Act of 1955.

B. No later than October 15, 2006, the director shall certify that one or more consumer reporting service databases are commercially reasonable methods of verification. The list of providers that the director has certified as providing commercially reasonable methods of verification shall be posted on the division's website and shall be mailed to each licensee by first class mail at the address of record as shown on the division's licensing files.

C. Each licensee who provides payday loan products shall ensure full compliance with Subsection A of this section no later than November 1, 2006.

D. A consumer seeking a payday loan may make a direct inquiry to the consumer reporting service to request a more detailed explanation of the basis for a consumer reporting service's determination that the consumer is ineligible for a new payday loan, and the consumer reporting service shall provide a reasonable response to the consumer.

E. In certifying a commercially reasonable method of verification, the director shall ensure the certified database:

(1) provides real-time access through an internet connection or, if real-time access through an internet connection becomes unavailable due to a consumer reporting service's technical problems incurred by the consumer reporting service, through alternative verification mechanisms, including verification by telephone;

(2) is accessible to the division, the office of the attorney general and to licensees in order to ensure compliance with this rule and the New Mexico Small Loan Act of 1955 and in order to provide any other information the director deems necessary;

(3) requires licensees to input whatever information is required by this rule;

(4) maintains a real-time copy of the required reporting information that will be available to the division upon request;

(5) provides licensees with no more than a statement that a consumer is eligible or ineligible for a new payday loan and a description of the reason for the determination; and

(6) provides adequate safeguards to ensure that consumer information contained in the database is kept strictly confidential.

F. A licensee shall update the certified database by inputting all information required under Paragraph (3) of Subsection E of this section at the time that:

(1) a payday loan is made;

(2) a payday loan is renewed;

(3) a consumer elects to enter into a repayment plan;

(4) a consumer's payday loan is paid in full; or

(5) a licensee determines a payday loan is in default.

G. A licensee may rely on the information contained in the certified database as accurate and is not subject to any penalty or liability as a result of relying on inaccurate information contained in the database.

H. In determining whether a credit reporting service should be certified as a commercially reasonable method of verification, the director will consider whether such credit reporting service is adequately capitalized, demonstrates the resources and ability to perform the services required pursuant to this section, and has appropriate surety to ensure performance of its obligations pursuant to this section and to reasonably protect claimants in the event that actions or inactions on the part of the credit reporting service results in damages to licensees or consumers.

[12.18.7.14 NMAC - N, 07/31/06]

12.18.7.15 REQUIRED DISCLOSURES WHEN MAKING PAYDAY LOANS OR RENEWED PAYDAY LOANS:

A licensee making payday loans or payday loan renewals shall provide a notice immediately above the borrower's signature on each payday loan agreement or renewed payday loan agreement in at least twelve-point bold type using the following language.

(1) "A payday loan is not intended to meet long-term financial needs.

(2) You should use a payday loan only to meet short-term cash needs.

(3) You will be required to pay additional administrative fees if you renew the payday loan rather than pay the debt in full when due.

(4) A payday loan is a high-cost loan. You should consider what other lower-cost loans are available to you.

(5) You have the right to renew your payday loan two times. If you renew a payday loan two times and cannot fully repay that loan when due, you have a right to enter into a payment plan requiring payment within a minimum of one hundred thirty days, in relatively equal installments, based upon your scheduled pay periods. If you enter into a payment plan, you will not have to pay an additional administrative fee or interest on the outstanding principal bal-

ance.

(6) You have up to 14 days after the due date of a payday loan or renewed payday loan to renew your loan, if you cannot repay the loan on the due date. You have up to 28 days after the due date of the second renewal of your payday loan to enter into a payment plan, if you cannot repay the second renewal loan on the due date.

(7) There are limits to the number of payday loans, renewals and payment plans you can have during certain periods of time. If within the prior twelve months you have had payment obligations under a payday loan or a renewal of a payday loan for sixty or more consecutive days or ninety or more days in the aggregate, you may not enter into a new payday loan until after seven calendar days have passed since you completed all payment obligations under the payday loan, payday loan renewal or payment plan."

[12.18.7.15 NMAC - N, 07/31/06]

HISTORY OF 12.18.7 NMAC:
[RESERVED]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

The New Mexico Taxation and Revenue Department proposes to adopt the following regulations:

Motor Vehicle Code

18.19.3.50 NMAC Section 66-3-10.1
NMSA 1978

(Salvage-Branded Titles - Definitions)

18.19.3.51 NMAC Section 66-3-10.1
NMSA 1978

(Salvage-Branded Titles - Stolen Vehicles)

18.19.3.52 NMAC Section 66-3-10.1
NMSA 1978

(Salvage-Branded Titles - Salvage Vehicles)

18.19.3.53 NMAC Section 66-3-10.1
NMSA 1978

(Salvage-Branded Titles - Branding of Title)

18.19.4.7 NMAC Section 66-4-2 NMSA
1978

(Definitions)

The proposals were placed on file in the Office of the Secretary on May 25, 2006. Pursuant to Section 9-11-6.2 NMSA 1978

of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about August 15, 2006.

A public hearing will be held on the proposals on Wednesday, July 19, 2006, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before July 19, 2006.

18.19.3.50 **SALVAGE-BRAND-ED TITLES - DEFINITIONS:** For the purposes of 18.19.3.50 through 18.19.3.53 NMAC:

A. "Salvage-branded title" or "salvage title" means a title issued by the motor vehicle division which title indicates the subject vehicle is a salvage vehicle; and

B. "Salvage vehicle" means a vehicle [which is:

~~(1) damaged by collision, fire, flood, accident, trespass or other occurrence to the extent that the cost of repairing the vehicle for safe operation on the highways exceeds its fair market value immediately prior to damage; or~~

~~(2) declared a total loss by an insurance company] that meets the definition of a salvage vehicle as defined in Subsection C of Section 66-1-4.16 NMSA 1978 of the Motor Vehicle Code.~~

[3/6/92, 7/19/94, 10/31/96; 18.19.3.50 NMAC - Rn & A, 18 NMAC 19.3.11.1, 9/14/00; A, XXX]

18.19.3.51 **SALVAGE-BRAND-ED TITLES - [UNRECOVERED] STOLEN VEHICLES:**

A. A salvage-branded title [must] need not be issued [to transfer title] to a stolen but unrecovered vehicle.

B. [If, subsequent to the issuance of a salvage branded title, the stolen vehicle is recovered with no or minor damage, a new title may be issued without the "salvage" brand provided that the vehicle is inspected upon its recovery by a practicing automotive mechanic who reports the result of the inspection in writing to the motor vehicle division. The inspection must cover all major components of the vehicle and must summarize the estimated cost of repair of each major system and the vehicle as a whole. If the total damage exceeds fifty

~~percent of the average value according to the official used car guide, mountain states edition published by the national automobile dealers association, or equivalent publication, for vehicles of like age, make and model at the time of recovery, then the salvage branded title will not be replaced.] If subsequent to the recovery of a stolen vehicle, it is determined that it meets the definition of a salvage or non-repairable motor vehicle as set forth in Subsection C of Section 66-1-4.16 NMSA 1978 or Subsection A of Section 66-1-4.12 NMSA 1978, the owner must follow the procedures set forth in statute or regulation for obtaining a salvage title or non-repairable certificate.~~

[3/6/92, 7/19/94, 10/31/96; 18.19.3.51 NMAC - Rn, 18 NMAC 19.3.11.2, 9/14/00; A, XXX]

18.19.3.52 **SALVAGE-BRAND-ED TITLES - SALVAGE VEHICLES:**

A. A salvage-branded title must be issued to transfer title to a salvage vehicle.

B. In determining whether a vehicle is a salvage vehicle, only costs related to returning the vehicle to a road-worthy condition shall be included as costs of repairing the vehicle. Costs which are beyond those necessary to make a damaged vehicle safely operable on the highways, such as replacing a clear windshield with a tinted one or adding racing stripes, shall be excluded. Payments not related to the repair of the vehicle, such as compensation for medical costs, car rentals, lost work time and the like, shall also be excluded. Fair market value shall be that indicated for the make and model in the national automobile dealers association used car pricing guide, or equivalent publication, exclusive of the fair market value of accessories, such as a stereo system.

C. Example: The interior of a vehicle is vandalized. A stereo system is ripped out and destroyed; the interior is set on fire. The market value of the vehicle, exclusive of the stereo, is \$1,000 prior to the incident. The stereo was worth \$1,500. Costs of restoring the interior to allow safe operation on the highways is \$800. This vehicle is not a salvage vehicle. The costs of repairing the vehicle so that it is safe to operate is \$800, which is less than the \$1,000 fair market value of the vehicle itself, exclusive of the stereo.

D. The declaration by an insurance company that a vehicle is a total loss makes [a] the vehicle a salvage vehicle or non-repairable motor vehicle regardless of the relative amounts of repair costs versus fair market value.

E. Example: If, in the preceding example, an insurance company settled claims with respect to the vehicle for

\$2,200 and declared the vehicle a total loss, the vehicle is a salvage vehicle or non-repairable vehicle, depending on the determination of the insurance company or the owner, so long as that determination is not inconsistent with statutory definitions.

[3/6/92, 7/19/94, 10/31/96; 18.19.3.52 NMAC - Rn, 18 NMAC 19.3.11.3, 9/14/00; A, XXX]

18.19.3.53 **SALVAGE-BRAND-ED TITLES - BRANDING OF TITLE:**

A. The procedures specified in 18.19.3.53 NMAC govern the transfer of title to a stolen unrecovered vehicle or to a salvage vehicle.

B. **Transfer to an insurance company:** The steps below are to be followed when the insurance company which had insured the vehicle takes title to a salvage vehicle or [an unrecovered stolen] non-repairable vehicle in exchange for a payment to the insured in accordance with the insurance contract.

(1) The insurance company or its authorized agent shall obtain the title or manufacturer's certificate of origin (MCO) for the vehicle and verify that the document is in the name of the former owner.

(2) The former owner or the former owner's authorized agent shall sign the title or MCO on the seller's release line. If a business was the former owner, the name of the business must appear with the signature of the business's owner, officer or agent.

(3) The name of the insurance company shall be entered in the purchaser section of the title or MCO.

(4) [The insurance company shall stamp the face of the title or MCO with the word "SALVAGE" in letters no less than one half inch high, at an angle of approximately 45 degrees to the text of the title or MCO. The stamp shall not cover the portion of the title or MCO which describes the vehicle.] The insurance company shall apply for a salvage title or non-repairable certificate in its name before transferring title to the vehicle.

(5) The insurance company shall submit a copy of the branded title or MCO to the motor vehicle division, together with documents explaining the reason for the branding. In the case of a salvage vehicle, a statement must be included of the costs of repair to make the vehicle safe for operation on the highways and the estimate of its fair market value immediately prior to damage. If the title was issued by a jurisdiction other than New Mexico, a copy of the title must be sent to the issuing jurisdiction with a completed "statement of loss".

C. **Transfer to person other than an insurance company:** The steps below are to be followed whenever the owner of a salvage vehicle or [an unrecovered stolen] non-repairable vehicle trans-

fers title to any person other than the insurance company which had insured the vehicle.

(1) The transferee will make reasonable efforts to verify that the title or manufacturer's certificate of origin (MCO) is properly in the name of the transferor.

(2) The transferor or transferor's authorized agent shall sign the title or MCO on the seller's release line. If a business is the transferor, the name of the business must appear with the signature of the business's owner, officer or agent.

(3) The name of the transferee shall be entered in the purchaser section of the title or MCO.

(4) If the title or MCO is not already branded with the word "SALVAGE" or "NON-REPAIRABLE", the transferor shall stamp or otherwise mark in ink the face of the title or MCO with the word "SALVAGE" or "NON-REPAIRABLE" in letters no less than one-half inch high, at an angle of approximately 45 degrees to the text of the title or MCO. The ~~stamp~~ branding shall not cover the portion of the title or MCO which describes the vehicle.

(5) If the vehicle is a non-repairable vehicle, the owner may not transfer ownership to any person who is not a licensed auto recycler.

~~(6)~~ (6) The transferor shall submit a copy of the branded title or MCO to the motor vehicle division. If the title or MCO had not previously been branded with the word "SALVAGE" or "NON-REPAIRABLE", the transferor shall submit with the title or MCO ~~documents~~ a written explanation explaining the reason for the branding ~~and, if the title was issued by a jurisdiction other than New Mexico, a copy of the title must be sent to the issuing jurisdiction with a completed "statement of loss"~~.

D. ~~[Except as provided otherwise in 18.19.3.51 NMAC, once]~~ Once a title has been salvage-branded, all subsequent transfers of title must be by salvage-branded title or non-repairable certificate.

[3/6/92, 7/19/94, 10/31/96; 18.19.3.53 NMAC - Rn & A, 18 NMAC 19.3.11.4, 9/14/00; A, XXX]

18.19.4.7 **DEFINITIONS:** As used in 18.19.4 NMAC,

A. "appellant" means the applicant for a license ~~[or temporary permit]~~ which the department refuses to issue~~;~~ or the person to whom a license has been issued which license the department proposes to cancel or suspend ~~[or the person who has been issued a temporary permit for conducting a type of business described in Section 66-4-1 NMSA 1978 the use of~~

~~which the department proposes to cancel or revoke];~~

B. "license", unmodified, means a license authorized pursuant to ~~[Section]~~ Sections 66-4-1, 66-4-1.1 or 66-4-2.1 NMSA 1978;

C. "licensee" means a person to whom a license ~~[or temporary permit]~~ has been issued for conducting a type of business described in ~~[Section]~~ Sections 66-4-1 or 66-4-1.1 NMSA 1978; and

D. "wrecker" means ~~["a wrecker of vehicles"]~~ an "auto recycler" as that term is defined in ~~[Section 66-1-4.20 NMSA 1978]~~ Section 66-1-4.1 NMSA 1978.

[9/14/96; - Rn & A, 18 NMAC 19.4.10.1, 11/30/99; 11/30/99; 18.19.4.7 NMAC - Rn & A, 18 NMAC 19.4.7, 9/14/00; A, XXX]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

The New Mexico Taxation and Revenue Department proposes to adopt the following regulation:

Property Tax Code

3.6.5.27 NMAC Section 7-36-20 NMSA 1978 **(Special Method of Valuation - Land Used Primarily for Agricultural Purposes)**

The proposals were placed on file in the Office of the Secretary on May 18, 2006. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about August 15, 2006.

A public hearing will be held on the proposals on Thursday, July 20, 2006, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before July 20, 2006.

3.6.5.27 **SPECIAL METHOD OF VALUATION - LAND USED PRIMARILY FOR AGRICULTURAL PURPOSES**

A. **AGRICULTURAL PROPERTY - BURDEN OF DEMONSTRATING USE ON OWNER:**

(1) When applying for classification of land as land used primarily for agricultural purposes, the owner of the land bears the burden of demonstrating that the use of the land is primarily agricultural. This burden cannot be met without submitting objective evidence that:

(a) the plants, crops, trees, forest products, orchard crops, livestock, captive deer or elk, poultry or fish which were produced or which were attempted to be produced through use of the land were:

- (i) produced for sale or home consumption in whole or in part; or
- (ii) used by others for sale or resale; or

(iii) used, as feed, seed or breeding stock, to produce other such products which other products were to be held for sale or home consumption; or

(b) the use of the land met the requirements for payment or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government; or

(c) the owner of the land was restoring the land to maintain its capacity to produce such products in subsequent years.

(2) A presumption exists that land is not used primarily for agricultural purposes if income from nonagricultural use of the land exceeds the income from agricultural use of the land.

(3) A homesite is not land used for agricultural purposes and is not to be valued as agricultural land pursuant to Section 7-36-20 NMSA 1978. A "homesite" as that term is used in Section 3.6.5.27 NMAC is the site used primarily as a residence, together with any appurtenant lands used for purposes related to residing on the site. It is more than the boundary of the foundation of an improvement used as a residence and includes land on which yards, swimming pools, tennis courts and similar non-agricultural facilities are located but does not include land on which agricultural facilities such as barns, pig pens, corrals, bunk houses, farm equipment sheds and outbuildings are located.

(4) Once land has been classified as land used primarily for agricultural purposes, no application for that classification is required for any succeeding year so long as the primary use of the land remains agricultural. The land will retain its status for property taxation purposes in every succeeding year as land used primarily for agricultural purposes, even if ownership

changes.

(5) When use of the land changes such that it is no longer used primarily for agricultural purposes, the owner of the land must report the change in use to the county assessor in which the land is located. A report by the owner that land classified as land used primarily for agricultural purposes in the preceding property tax year is not used primarily for agricultural purposes in the current property tax year rebuts the presumptions in Subsection A of Section 7-36-20 NMSA 1978. If subsequently use of the land again becomes primarily agricultural, the owner must apply for classification of the land as land used primarily for agricultural purposes.

(6) When the owner of the land has not reported that the use of the land is no longer primarily for agricultural purposes but the county assessor has evidence sufficient to rebut the presumptions in Subsection A of Section 7-36-20 NMSA 1978, the county assessor must change the classification of the land. In such a case the county assessor must also consider whether the penalty provided by Subsection H of Section 7-36-20 NMSA 1978 should be applied. The owner may protest the change in classification.

B. AGRICULTURAL LAND - MINIMUM SIZE: Tracts or parcels of land of less than one (1) acre, other than tracts or parcels used for the production of orchard crops, poultry or fish, are not used primarily for agricultural purposes.

C. AGRICULTURAL PRODUCTS DEFINED: The phrase "agricultural products" as it is used in Section 7-36-20 NMSA 1978 and Parts 1 through 7 of Chapter 3.6 NMAC means plants, crops, trees, forest products, orchard crops, livestock, captive deer or elk, wool, mohair, hides, pelts, poultry, fish, dairy products and honey.

D. PRODUCTION CAPACITY OF AGRICULTURAL LAND - IMPLEMENTATION OF VALUATION METHOD:

(1) The production capacity of agricultural land shall be determined by the income method of valuation based on the income derived or capable of being derived from the use of the land for agricultural purposes. If information about income amounts from the use of land for agricultural purposes is unavailable, then income shall be imputed to the land being valued on the basis of income amounts from the use of comparable agricultural lands for agricultural purposes. The comparability of the land used for purposes of imputing income shall be determined on the basis of class. The various methods of determining the class of agricultural land are described in Parts 1 through 7 of Chapter 3.6 NMAC. A determination of income from agricultural

land is not required to be restricted to income from actual production of agricultural products on the agricultural land, since the basis for determination of value is on the land's capacity to produce agricultural products.

(2) "Income" as that term is used in Section 3.6.5.27 NMAC is generally the average for the preceding five tax years of:

(a) the amount reported for federal income tax purposes on Schedule F of the individual federal income tax return as net farm profit, excluding income and expenses not attributable to the agricultural land being valued; plus

(b) fees for rental of land or machinery less expenses relating thereto; plus

(c) the reasonable value of unpaid labor of the operator or the farm family; less

(d) the expense of depreciation on farm buildings and machinery.

(3) In lieu of calculating income in the manner set forth in Paragraph (2) of Subsection B of Section 3.6.5.27 NMAC, income may be determined by either of the following methods.

(a) Income may be determined from reference services such as the New Mexico crop and livestock reporting service, the cooperative extension service, and the agriculture departments of state universities. If a source other than the reported federal farm income, referred to in Paragraph (2) of Subsection D of Section 3.6.5.27 NMAC, is used, adjustments should be made to allow for costs allowable on the federal farm income tax return if such costs are not allowed in the income figure provided. Also, income from sources other than the federal farm income return are to be closely matched to the class of agricultural land being valued so that the income properly reflects income from the class of agricultural land being valued.

(b) The division by order may determine annual income from various classes of agricultural land based on the land's capacity to produce agricultural products. This order, if made, shall consider determinations of other governmental agencies concerning the capacity of a particular class of agricultural land to produce agricultural products. Such an order is for the purpose of implementing the valuation method prescribed by Section 7-36-20 NMSA 1978 and assuring that land classes determined to have the same or similar production capacity are valued uniformly throughout the state. This order, if issued, would be issued before the last day of the tax year preceding the year in which the annual income amounts are to be used.

(4) The capitalization rate to be used in valuing land used primarily for agricultural purposes pursuant to Section 3.6.5.27 NMAC may be set by the division

by order. This order, if made, will be issued before the last day of the tax year preceding the year in which the capitalization rate is to be used. The division shall review the capitalization rate used at least once every five tax years. In setting the capitalization rate, consideration is given to the current interest rates for government loans, federal land bank loans and production credit association loans.

(5) The capitalization rate is divided into the annual "income" per acre, except for grazing land, to arrive at the value per acre for property taxation purposes of the agricultural land being valued.

(6) "Grazing land" as that phrase is used in Section 3.6.5.27 NMAC is agricultural land which is used for the grazing of livestock. The division by order determines annually the carrying capacity of each class of grazing land by determining the number of animal units per section that the grazing land will reasonably support. In determining this carrying capacity, the division considers five sheep or goats to be the equivalent of one animal unit and one cow to be one animal unit. Classes of grazing land by counties, areas within counties, or some natural division instead of individual sections or leases are established in the order. The division investigation prior to preparation of this order includes analysis of information obtained from livestock industry representatives, the bureau of land management, the soil conservation service, the forest service, agriculture departments of state universities and the state and federal departments of agriculture. The division takes into consideration drought or natural conditions which would tend to reduce the carrying capacity of grazing land. Economic conditions, such as the market price of livestock, are not taken into consideration in determining carrying capacity of grazing land. The order referred to in this paragraph is issued before the last day of the year preceding the tax year in which it is to be used.

(7) The division, by order, determines the values per animal unit, which values reflect the net income derived or capable of being derived from the use of the land (or fractional interests in real property) used for grazing being valued for the tax year for grazing purposes. These animal unit values are applied uniformly throughout the state and are calculated in a manner so that the tax ratio is applied. This amount or these amounts shall be reviewed by the division at least once every five years. The order referred to in Paragraph (7) of Subsection D of Section 3.6.5.27 NMAC is to be issued before the last day of the tax year preceding the tax year in which it is to be used; however, this deadline may be extended by order of the director.

E. CLASSIFICATION

OF AGRICULTURAL LAND:

(1) Subsection E of Section 3.6.5.27 NMAC contains methods for classifying agricultural land, excluding grazing land as defined in the Parts 1 through 7 of Chapter 3.6 NMAC.

(2) Pursuant to Section 7-36-20 NMSA 1978, the division may issue an order dividing the land into specific agricultural land classes. If such an order is issued, it will be in accordance with the methods of classification contained in Subsection E of Section 3.6.5.27 NMAC. If such an order is not issued for a particular county or part of a county, the county assessor shall follow Subsection E of Section 3.6.5.27 NMAC in classifying agricultural land in the county.

(3) Agricultural land is classified as either:

(a) "irrigated agricultural land", which is all agricultural land receiving supplemental water to that provided by natural rainfall; or

(b) "dryland agricultural land", which is all agricultural land without a supplemental water supply.

(4) All lands that were previously irrigated or dryland meeting the preceding classifications but which are now participating in any of the various crop retirement programs such as the soil bank or acreage set-aside program sponsored by the United States department of agriculture are still to be classified as irrigated or dryland until the program expires from the subject land and clear evidence is shown that a change in land use is occurring, unless there has been a sale of the water rights, the use of which permitted irrigation.

(5) Agricultural land is classified using the following sources:

(a) The land capability classification of the soil conservation service is a rating of land according to its ability to produce permanently and the requirements of management to sustain production. It consists of eight (8) different land capability classes. Classes I through IV are considered suitable for cultivation; Classes V through VIII are considered to be not suitable for cultivation. Classes II through VIII are further modified by four (4) subclasses that are used to signify the particular kind of limitation affecting the soil. In addition, there are nine (9) land capability units which are used to indicate a special kind of condition. This system is an interpretative rating that includes not only the physical factors of soil, but the availability of water and the effects of climate. It is designed primarily for soil management and conservation practices. Each land capability description carries with it specific recommendations for farming practices that were developed by actual farming experience to offset or allow for the existing production-limiting factors of the soil.

(b) Natural land classification of soil by physiographic groups based on their general topographic, or slope, position.

(c) Classification by series and type which is the classification used in the cooperative survey of New Mexico state university and the United States department of agriculture and by the soil conservation service and which classify in a series-type grouping.

(d) Soil characteristics shown by the current New Mexico county assessor's agricultural manual.

(e) Weather data. The general weather pattern of an area is usually well known and presents no special problems. However, the possible presence of microclimatic zones should be considered. Weather data can be obtained from the national weather service, agriculture experiments stations, extension service and others connected with growing conditions.

(f) Cost and availability of water. Irrigation districts and other water suppliers boundaries can be obtained from the local conservancy district office or the New Mexico state engineer's office. The supply of water and its cost is to be considered. Electric utility companies often have information on pumping costs and related charges. District taxes, where they are charged, are to be ascertained as well as other water costs. Many areas are subject to charges related to reclamation and drainage; information on such charges must be obtained.

(g) Cropping information. Knowledge of crop production, yields, prices received, costs and cultural practices is essential to many appraisal situations.

F. IMPROVEMENTS ON AGRICULTURAL LAND - VALUATION: All improvements, other than those specified in Subsection C of Section 7-36-15 NMSA 1978, on land used primarily for agricultural purposes shall be valued separately, using the methods described in Section 7-36-15 NMSA 1978 and regulations thereunder, and the value of these improvements shall be added to the value of the land.

G. APPLICATION FORM FOR VALUATION AS AGRICULTURAL LAND:

(1) Applications by owners of land for valuation pursuant to Section 7-36-20 NMSA 1978 must be on a form which has been approved by the director of the division. The form shall contain the following requirements for information to be provided:

(a) description of the land;

(b) the use of the land during the year preceding the year for which the application is made;

(c) whether the land was held for speculative land subdivision and sale or has

been subdivided;

(d) whether the land was used for commercial purposes of a nonagricultural character;

(e) whether the land was used for recreational purposes and if so, how; and

(f) whether the land was leased and if so, who was the lessee, did he own livestock and what was the lessee's use of the property.

(2) The form, or a separate document, may also contain requirements for providing information as to the owner's farm income and farm expenses reported to the United States internal revenue service for federal income tax purposes.

H. PRODUCTION OF CAPTIVE DEER OR ELK: Land the bona fide and primary use of which is the production of captive deer or elk shall be valued as grazing land under Subsection D of this section.

I. VALUATION OF CAPTIVE DEER AND ELK: The department shall establish the value of captive elk and deer under Section 7-36-21 NMSA 1978 and 3.6.5.28 NMAC. For purposes of the department's determination:

(1) captive deer shall be valued and taxed as sheep; and

(2) captive elk shall be valued and taxed as cattle.

J. LAWFUL TAKING OF GAME.

(1) The taking of game is lawful for purposes of this subsection if it complies with the requirements of NMSA 1978, Chapter 17.

(2) The use of land for the lawful taking of game shall not be considered in determining whether land is used primarily for agricultural purposes.

(3) Any income to the landowner from the use of the landowner's land for the lawful taking of game will not be considered for purposes of Subsection A of this section or otherwise in determining whether land is used primarily for agricultural purposes.

(4) Land is used for the lawful taking of game if the landowner actively participates in the lawful taking of game on the landowner's land or authorizes other to use the landowner's land for the lawful taking of game.

K. APPLICABILITY OF LAWS 2005, CHAPTER 231. Laws 2005, Chapter 231 and Subsections H, I and J of this section apply to the Property Tax Code deadlines and provisions that occur after April 6, 2005.

[3/23/83, 12/29/94, 8/31/96, 12/31/97; 3.6.5.27 NMAC - Rn & A, 3 NMAC 6.5.27, 4/30/01; A, XXX]

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

PROTECTIVE SERVICES DIVISION

8.10.3 NMAC, Child Protective Services Investigation, filed November 1, 2005 is repealed and replaced by 8.10.3 NMAC, Child Protective Services Investigation, effective June 15, 2006.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

PROTECTIVE SERVICES DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 10 CHILD PROTEC- TIVE SERVICES PART 3 CHILD PROTEC- TIVE SERVICES INVESTIGATION

8.10.3.1 ISSUING AGENCY:
Children, Youth and Families Department,
Protective Services.

[8.10.3.1 NMAC - Rp, 8.10.3.1 NMAC,
06/15/06]

8.10.3.2 SCOPE: Protective
services employees and the general public.
[8.10.3.2 NMAC - Rp, 8.10.3.2 NMAC,
06/15/06]

**8.10.3.3 S T A T U T O R Y
AUTHORITY:** New Mexico Children's
Code, Section 32A-1-1, NMSA 1978 (Repl.
2004)
[8.10.3.3 NMAC - Rp, 8.10.3.3 NMAC,
06/15/06]

8.10.3.4 D U R A T I O N :
Permanent.
[8.10.3.4 NMAC - Rp, 8.10.3.4 NMAC,
06/15/06]

8.10.3.5 EFFECTIVE DATE:
June 15, 2006, unless a later date is cited at
the end of a section.
[8.10.3.5 NMAC - Rp, 8.10.3.5 NMAC,
06/15/06]

8.10.3.6 OBJECTIVE: To
establish guidelines for the investigation of
alleged abuse and/or neglect of children by
their parent, guardian, caretaker, other
household member, or foster care provider,
and to determine the disposition of the case.
[8.10.3.6 NMAC - Rp, 8.10.3.6 NMAC,
06/15/06]

8.10.3.7 DEFINITIONS:
A. **"Administrative**

review" means an informal process. It may
include an informal conference or may
include only a record review. The adminis-
trative review process does not create any
substantive rights for the client.

B. "Appropriate report"
is a report of child abuse and/or neglect
received by CYFD that falls within CYFD's
mandate to investigate.

C. "At risk" is a determi-
nation that there exists a high probability
that a child will suffer maltreatment in the
future.

D. "Care taker" is a per-
son responsible for and is caring for the
child, who the legal guardian has placed the
child in the care of, or who has assumed
responsibility for the care of the child in the
absence of the legal guardian.

**E. "Child in the custody
of CYFD"** means any child in the custody
of the children, youth and families depart-
ment pursuant to the New Mexico
Children's Code.

F. "Child care" is a
CYFD authorized private child care, other
than a privately arrange baby-sitting
arrangement, that is not under the control,
supervision or management of a local
school board.

G. "Collateral contact"
refers to an individual who may possess
pertinent information concerning the
alleged victim, the alleged perpetrator or
may be able to provide information concern-
ing the alleged abuse, neglect or
exploitation that would be helpful in mak-
ing an accurate investigative decision and
deposition.

H. "CYFD" refers to the
New Mexico children, youth and families
department.

**I. "Investigative deci-
sion"** means the determination of whether a
child has suffered physical abuse, emotion-
al abuse, psychological abuse or neglect, as
defined by the New Mexico Children's
Code.

J. "Emergency report"
is an appropriate report for which an inves-
tigation is initiated within 3 hours from
receipt of a report by SCI.

**K. "Exigent circum-
stances"** means when there is credible
information that a child is in need of imme-
diate protection or in immediate danger.

**L. "Emotional maltreat-
ment"** is an observable behavior, activity,
and/or words to intimidate, threaten, deride
or degrade the child that causes substantial
impairment of the child's mental or psycho-
logical ability to function.

M. "Home school" is the
operation of a home study program by a

parent as filed with the public education
department.

N. "Indian child" refers
to an unmarried person who is under the age
of eighteen years old and a member of an
Indian tribe or is eligible for membership in
an Indian tribe and the biological child of a
member of an Indian tribe.

O. "Initiation" of an
investigation is a face-to-face contact by
CYFD with the alleged victim or document-
ed diligent efforts to establish face-to-face
contact with the victim.

**P. "Investigation disposi-
tion"** is the determination of the level of
involvement, if any, of CYFD with the fam-
ily based upon an assessment of ongoing
risk to the child, the needs and strengths of
the family and the safety of the child.

Q. "Neglected child" is
defined by the New Mexico Children's
Code and includes the failure, whether
intentional or not, of the person responsible
for the child's care to provide and maintain
adequate food, clothing, medical care,
supervision, and/or education or to protect a
child from physical or sexual abuse.

**R. "New Mexico
Children's Code"** refers to Section 32A-1-
1, et. seq., NMSA 1978.

**S. "Notice of privacy
practices"** means the written or electronic
notice CYFD uses and disclosures of pro-
tected health information of the individual's
rights and CYFD's legal duties with respect
to protected health information.

**T. "Parental notice or
notification"** is an in-person or telephone
notice to the parent that his/her child will be
or has been interviewed as part of an inves-
tigation.

U. "Permission" is the
consent for the child to participate in an
investigation.

V. "Physical abuse" is
defined by the New Mexico Children's
Code, and includes the non-accidental
injury to a child, which, regardless of
motive, is inflicted or allowed to be inflict-
ed upon a child.

W. "Placement" is an out
of home residential arrangement for the care
of children in the custody of CYFD, includ-
ing: family foster care, relative foster care
and treatment foster care, or a facility such
as residential treatment center, group home,
or emergency shelter.

X. "Priority one report"
is a report for which an investigation is ini-
tiated within 24 hours from receipt of the
report by SCI.

Y. "Priority two report"
is a report for which an investigation is ini-
tiated within 5 calendar days from receipt of

the report by SCI.

Z. "Protected health information" means individually identifiable health information maintained by protective services for purposes of providing services.

AA. "Provider" refers to a person or agency providing services to a CYFD client.

BB. "Private school" is a public education department authorized school, including private childcare, other than a home school, that is not under the control, supervision or management of a local school board.

CC. "Public school" is a school that is under the control, supervision or management of a local school district or the state board of education, including charter schools.

DD. "Reasonable efforts" are the provision of services or other interventions in an attempt to address the safety and/or risk(s) factors to prevent the removal of the child from the home of the parent, guardian, or provider, return the child if removal was required, and/or finalize an alternative permanency plan if reunification is not an option.

EE. "Reunification" is a permanency plan with the goal to safely return a child to the legal and physical custody of a parent or guardian.

FF. "Safe haven" refers to the Safe Haven for Infants Act whereby a person may leave an infant with the staff of a hospital without being subject to criminal prosecution for abandonment or abuse if the infant was born within 90 days of being left at the hospital, as determined within a reasonable degree of medical certainty, and if the infant is left in a condition that would not constitute abandonment or abuse pursuant to Section 36-6-1 NMSA 1978.

GG. "Sexual abuse" is defined by the New Mexico Children's Code, and includes any incident of sexual contact involving a child that is inflicted by the person responsible for the child's care.

HH. "Substantiation" in a child abuse and/or neglect investigation means the victim(s) is under the age of 18, a caretaker/provider has been identified as the perpetrator and/or identified as failing to protect, and credible evidence exists to support the conclusion by the investigation worker that the child has been abused and/or neglected as defined by the New Mexico Children's Code. Credible evidence upon which to base a finding of substantiation includes:

- (1) caretaker admission;
- (2) physical facts/evidence;
- (3) collateral and/or witness statements/observations;
- (4) child disclosure; and/or
- (5) investigation worker observa-

tion.

II. "Unsubstantiated" means that the information collected during the investigation does not support a finding that the child was abused and/or neglected. [8.10.3.7 NMAC - Rp, 8.10.3.7 NMAC, 06/15/06]

8.10.3.8 PURPOSE OF CHILD PROTECTIVE SERVICES INVESTIGATION: The purpose of child protective services investigation is to assess safety of children who are the subjects of reports of alleged abuse or neglect. The purpose of the investigation is to collect and assess information to determine whether the incident of child abuse or neglect occurred, whether any child in the home remains at risk for continuing abuse and neglect, and to assess the need for additional protective services. Investigations will be conducted for children in the custody of their biological parents, adoptive parents, other relatives or guardians, or who are in CYFD custody. [8.10.3.8 NMAC - Rp, 8.10.3.8 NMAC, 06/15/06]

8.10.3.9 SAFETY OF THE CHILD

A. The safety of the child is the overriding concern throughout the casework relationship with the family. If the safety of the child is ever in conflict with the treatment or preservation of a family unit, the child's need for protection always takes precedence.

B. CYFD requests immediate assistance from law enforcement if necessary to assess and/or secure the safety of the child. [8.10.3.9 NMAC - Rp, 8.10.3.9 NMAC, 06/15/06]

8.10.3.10 ASSIGNMENT

A. Every accepted report is assigned to an investigation worker for investigation.

B. Emergency and priority one reports are assigned for investigation immediately upon receipt of the report in the county field office. Reports received under safe haven are assigned as emergency reports. Reports received on children in CYFD custody and in foster care or pre adoptive homes are assigned as emergency reports.

C. Priority two reports are assigned for investigation no later than 24 hours from receipt of the report in the county field office.

[8.10.3.10 NMAC - Rp, 8.10.3.10 NMAC, 06/15/06]

8.10.3.11 INITIATION: The investigation worker initiates the investigation within the time frames established by CYFD as follows:

A. Emergency reports are initiated within 3 hours of receipt of the report from the reporting source.

B. Priority one reports are initiated within 24 hours of receipt of report from the reporting source.

C. Priority two reports are initiated within 5 calendar days of receipt of report from the reporting source.

[8.10.3.11 NMAC - Rp, 8.10.3.11 NMAC, 06/15/06]

8.10.3.12 CONDUCTING INVESTIGATIONS

A. CYFD gathers the information required to determine the immediate safety and ongoing risks of harm to the child.

B. C Y F D interviews/observes the alleged child victim and all other children in the household during the investigation. The following applies based on the site at which the interview will take place:

(1) Interviews at home: Children contacted at home are interviewed only with the permission of the parent or caretaker.

(2) Interviews at public schools:
(a) public schools are required by 32A-4-5 NMSA to permit children to be interviewed concerning a CPS investigation; and

(b) parental permission is not required to interview a child at public school.

(3) Interviews at private schools or in childcare homes and facilities:

(a) a private school or childcare may deny permission for CYFD to interview the child on the facility grounds, and

(b) if permission is denied and exigent circumstances are believed to exist, the CYFD determines if law enforcement should be contacted or a court order obtained.

C. A child may be interviewed without parental notification when CYFD determines that notification could adversely affect the safety of the child about whom the report has been made or compromise the investigation. If such a determination is not made prior to interviewing a child, CYFD shall notify the parent or guardian of the child who is being interviewed. If CYFD interviews a child without the notification of the parents/guardians, CYFD notifies them of the interview within 24 hours.

D. CYFD informs all children that their participation in the interview is voluntary. Children 14 years of age and older must agree to participate in the interview even when parental permission has been given to CYFD.

E. CYFD identifies all caretakers of the child.

F. CYFD interviews the

parents/guardians, or the care provider, during the investigation.

(1) At the beginning of the investigation, or prior to beginning an interview with the parent/guardian, CYFD informs the parents/guardians of the following:

(a) that prior to any legal proceeding, any CYFD interaction with the parents/guardians, or the care provider, is voluntary;

(b) that CYFD has received a report alleging child abuse/neglect and what the allegations consist of that has led to the investigation;

(c) that only law enforcement can remove a child who is not in the custody of CYFD, if necessary to protect the child's health and safety, unless the district court issues an ex parte order allowing CYFD to remove the child;

(d) that CYFD will work confidentially with them except when it becomes necessary to work with law enforcement, the district attorney or relevant agencies; if the alleged perpetrator is licensed by CYFD or any other agency, the licensor will be notified of the allegations and the final disposition of the investigation;

(e) that information concerning the report and investigation has been entered into CYFD files;

(f) that other people may be interviewed in order to complete the investigation; and

(g) children age 14 and older may consent to an interview away from the home even when the parent does not consent.

(2) CYFD provides the notice of privacy practices to the parents/guardian no later than the first contact or, in the event of an emergency, as soon as reasonably practicable after the emergency. CYFD makes a good faith effort to document acknowledgement of receipt of the notice and documents the reasons why the acknowledgement was not obtained.

G. At the time of initial contact with the parents, guardian and/or alleged perpetrator CYFD informs him/her of the reported allegations made in a manner consistent with laws protecting the rights of the reporter.

H. CYFD interviews collateral contacts during the investigation.

I. CYFD visits the home during an investigation. This requirement may be waived in specific circumstances that include but are not limited to:

(1) the parent/guardian refuses CYFD entrance;

(2) the home has been determined to be unsafe by law enforcement and/or public health; and/or

(3) the family is homeless.

J. CYFD arranges for evaluations/examinations as required dur-

ing the investigation.

K. CYFD completes the investigation within 30 days of the report, unless an extension is secured from the supervisor. No extension may be granted unless the reasons for the extension are documented in FACTS. Extensions are not to exceed an additional 30 days after the original 30 days.

L. CYFD completes the safety assessment, risk assessment and family strengths and needs assessments tools in all investigations.

[8.10.3.12 NMAC - Rp, 8.10.3.12 NMAC, 06/15/06]

8.10.3.13 ALLEGATION OF ABUSE/NEGLECT IN FACILITIES

A. If requested by law enforcement, CYFD assists law enforcement in conducting investigations of child abuse and/or neglect in schools, facilities, or childcare homes/centers.

B. CYFD conducts a safety assessment of any child in CYFD custody placed in a facility or childcare home/center where abuse and neglect has been reported regarding a child in CYFD custody and refers to law enforcement for investigation. [8.10.3.13 NMAC - Rp, 8.10.3.13 NMAC, 06/15/06]

8.10.3.14 ALLEGATION OF ABUSE/NEGLECT IN FOSTER HOMES, TREATMENT FOSTER HOMES, AND PRE-ADOPTIVE HOMES

A. CYFD investigates abuse/neglect reports pertaining to children placed in a CYFD licensed foster home, treatment foster home, or preadoptive home.

B. CYFD notifies law enforcement and coordinates the investigation if requested.

[8.10.3.14 NMAC - Rp, 8.10.3.14 NMAC, 06/15/06]

8.10.3.15 INVESTIGATIONS INVOLVING INDIAN CHILDREN

A. CYFD is responsible for investigating child abuse and/or neglect reports involving Indian children who reside off the reservation or pueblo.

B. CYFD assists in the investigation of child abuse and/or neglect reports of children on the reservation or pueblo if requested by the Indian tribal government.

C. CYFD makes efforts to determine if the child who is subject of an investigation is an Indian child.

D. CYFD notifies the tribe of any investigations involving Indian children as required by the Indian Child Welfare Act.

[8.10.3.15 NMAC - Rp, 8.10.3.15 NMAC, 06/15/06]

8.10.3.16 SEEKING OR ACCEPTING CUSTODY OF CHILDREN, INCLUDING INDIAN CHILDREN

A. CYFD makes reasonable efforts to maintain the family unit and prevent the removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternative permanency plans in a timely manner when reunification is not appropriate or possible. CYFD documents this in the case record as well as in the affidavit for custody. In circumstances where reasonable efforts are not required to prevent a child's removal from home or to reunify the child and family, CYFD documents reasons why such reasonable efforts were not required in the case record as well as the affidavit for custody.

B. CYFD seeks custody of Indian children who are domiciled or residing off-reservation when continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

C. An Indian child who is domiciled on the reservation but temporarily located off the reservation may be removed by law enforcement from his parent or Indian custodian in order to prevent imminent physical damage or harm to the child. CYFD notifies the tribe as soon as possible and facilitates a transfer of the case to the tribe.

D. CYFD notifies parents/guardians that their child is in custody within 24 hours of the child being taken into custody.

E. CYFD makes every effort to identify and locate fit and willing relatives for consideration of placement of a child in custody that requires out of home placement.

[8.10.3.16 NMAC - Rp, 8.10.3.16 NMAC, 06/15/06]

8.10.3.17 INVESTIGATION DECISION

A. CYFD makes an investigation decision within 30 days of the report unless an extension is secured from the supervisor. No extension may be granted unless the reasons for the extension are documented in FACTS. Extensions are not to exceed an additional 30 days after the original 30 days.

B. The investigation decision includes a determination of substantiated or unsubstantiated on each of the allega-

tions in the report.

C. The investigation decision is entered in FACTS by the investigative worker after review and approval by the supervisor.

[8.10.3.17 NMAC - Rp, 8.10.3.17 NMAC, 06/15/06]

8.10.3.18 INVESTIGATION DISPOSITION

A. CYFD makes an investigation disposition within 30 days of the receipt of the report in every investigation CYFD conducts unless an extension is secured from the supervisor. No extension may be granted unless the reasons for the extension are documented in FACTS. Extensions are not to exceed an additional 30 days after the original 30 days.

B. CYFD determines the investigation disposition of the investigation based upon the service delivery matrix that considers the assessment of the child's risk of future abuse and/or neglect, the needs and strengths of the family and the safety of the child.

[8.10.3.18 NMAC - Rp, 8.10.3.18 NMAC, 06/15/06]

8.10.3.19 DOCUMENTATION

A. CYFD records all investigation assignments.

B. CYFD documents all investigations.

C. CYFD documents all investigation decisions.

D. All information obtained by CYFD in an investigation is confidential and is released only as allowed by law.

E. CYFD documents reasonable efforts made to avoid removal of the child from the home, efforts to reunify the child if removal was required and/or efforts to achieve an alternative permanency plan if reunification is not an option. Documentation is included in the case record and in the affidavit for custody.

F. CYFD documents acknowledgement of receipt of the notice of privacy practices or documents the good faith efforts made to attempt to obtain acknowledgement of receipt of the notice of privacy practices and the reasons why the acknowledgement was not obtained.

[8.10.3.19 NMAC - Rp, 8.10.3.19 NMAC, 06/15/06]

8.10.3.20 NOTIFICATION

A. CYFD notifies the parents/guardians/providers and, if appropriate, law enforcement, regulatory agencies or others who have a right to know, of the results of the investigation.

B. The results of any substantiated investigation, which is not the subject of a court action, may be reviewed

through CYFD's administrative review process.

[8.10.3.20 NMAC - Rp, 8.10.3.20 NMAC, 06/15/06]

HISTORY OF 8.10.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: SSD Rule #410.0000, Protective Services to Children, filed 11-10-81;

SSD 4.0.0, Child Protective Services - Definition and Goal Statement, filed 8-22-86;

SSD 4.0.0, Child Protective Services - Definition and Goal Statement, filed 3-28-89;

SSD 4.1.0, Child Protective Services - General Provisions, filed 8-22-86;

SSD 4.1.0, Child Protective Services - General Provisions, filed 1-29-87;

SSD 4.1.0, Child Protective Services - General Provisions, filed 6-18-87;

SSD 4.1.0, Child Protective Services - General Provisions, filed 3-28-89;

SSD 4.1.0, Child Protective Services - General Provisions, filed 9-14-89;

SSD 4.1.0, Child Protective Services - General Provisions, filed 9-18-90;

SSD 4.2.0, Child Protective Services - General Guidelines, filed 8-22-86;

SSD 4.2.0, Child Protective Services - General Guidelines, filed 3-28-89;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 8-22-86;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 11-18-87;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 6-13-88;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 3-28-89;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 3-20-90;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 9-18-90.

History of Repealed Material:

8 NMAC 10.3, Child Protective Services Investigation - Repealed 02/14/01.

8.10.3 NMAC, Child Protective Services Investigation - Repealed 07/30/04.

8.10.3 NMAC, Child Protective Services Investigation - Repealed 11/15/05.

8.10.3 NMAC, Child Protective Services Investigation - Repealed 06/15/06.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

**TITLE 3 TAXATION
CHAPTER 3 P E R S O N A L
INCOME TAXES
PART 28 SOLAR MARKET**

DEVELOPMENT TAX CREDIT

3.3.28.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department.

[3.3.28.1 NMAC - N, 7-1-06]

3.3.28.2 SCOPE: 3.3.28 NMAC applies to the application and certification procedures for administration of the solar market development tax credit.

[3.3.28.2 NMAC - N, 7-1-06]

3.3.28.3 STATUTORY AUTHORITY: These rules are established under the authority of the Laws of 2006, Chapter 93.

[3.3.28.3 NMAC - N, 7-1-06]

3.3.28.4 DURATION: Permanent.

[3.3.28.4 NMAC - N, 7-1-06]

3.3.28.5 EFFECTIVE DATE: July 1, 2006 unless a later date is cited at the end of a section.

[3.3.28.5 NMAC - N, 7-1-06]

3.3.28.6 OBJECTIVE: The objective is to establish procedures for administering the certification program for the solar market development tax credit.

[3.3.28.6 NMAC - N, 7-1-06]

3.3.28.7 DEFINITIONS:

A. "Applicant" means a New Mexico taxpayer that has installed a solar energy system and that desires to have the department certify the solar energy system pursuant to 3.3.28 NMAC so that the taxpayer may receive a state tax credit.

B. "Application package" means the application documents an applicant submits to the division for certification to receive a state tax credit.

C. "Array" means the collectors of a solar thermal system or the modules of a photovoltaic system.

D. "Balance of system" means portions of a solar energy system other than the array.

E. "Building code authority" means the construction industries division of the New Mexico regulation and licensing department or the local government agency having jurisdiction for building, electrical, and mechanical codes.

F. "Certified" or "certification" means department approval of a solar energy system, which makes the taxpayer owning the system eligible for a state tax credit.

G. "Collector" means the solar thermal system component that absorbs solar energy for conversion into heat.

H. "Collector aperture"

means the area of a solar thermal collector that absorbs solar energy for conversion into usable heat.

I. "Component" means a solar energy system's equipment and materials.

J. "Department" means the energy, minerals and natural resources department.

K. "Division" means the department's energy conservation and management division.

L. "Energy system" means an engineered system that delivers solar energy to an end use by flow of fluid or electricity caused by energized components such as pumps, fans, inverters, or controllers.

M. "Federal tax credit" means an income tax credit the United States government issues to a taxpayer for a solar energy system that meets United States government requirements.

N. "Homeowner" means a taxpayer that may obtain a permit limited to construction of single-family dwellings, private garages, carports, sheds, agricultural buildings, and fences.

O. "Innovative" means an alternative method or material that is not commercialized for use in a solar energy system.

P. "Install" or "installation" means the direct work of placing a solar energy system into service to operate and produce energy at the expected level for a system of its size.

Q. "Interconnection" means connection of a photovoltaic system operated by an electric utility customer to that utility's distribution grid system.

R. "Interconnection agreement" means an agreement allowing the applicant to interconnect a solar energy system of a specified type and size, to a suitable electric transmission or distribution line.

S. "Module" means the photovoltaic system component that absorbs sunlight for conversion into electricity.

T. "New" means the condition of being recently manufactured and not used previously in any installation.

U. "Non-residential" means a business or agricultural enterprise.

V. "OG" means operating guidelines the solar rating and certification corporation (SRCC) has or will establish, including system performance or component characteristics the SRCC defines in its directory. Operating guidelines shall be from the directory in effect on the date 3.3.28 NMAC is adopted and all successive revisions.

W. "Photovoltaic system"

means an energy system that collects or absorbs sunlight for conversion into electricity.

X. "Portable" means not permanently connected to a residence, business, or agricultural enterprise or connected to a mobile vehicle that is a part of a residence, business, or agricultural enterprise.

Y. "Solar collector" means a solar thermal collector or photovoltaic module.

Z. "Solar market development tax credit" means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.

AA. "Solar energy system" means a solar thermal system or photovoltaic system.

BB. "Solar storage tank" means a tank provided as a component in a solar thermal system that is not heated by electricity or a heating fuel.

CC. "Solar thermal system" means an energy system that collects or absorbs solar energy for conversion into heat for the purposes of space heating, space cooling, or water heating.

DD. "SRCC" means the solar rating and certification corporation.

EE. "Standard test conditions" means the environmental conditions under which a manufacturer tests a photovoltaic module for power output, which are a photovoltaic cell temperature of 25 degrees celsius and solar insolation of 1000 watts per square meter on the photovoltaic cell surface.

FF. "State tax credit" means the solar market development tax credit.

GG. "Tax credits difference" means the federal tax credit subtracted from 30 percent of the net solar energy system cost.

HH. "Tax credits sum" means the sum of the state tax credit and the federal tax credit.

II. "Taxpayer" means the owner of a solar energy system and the residence, business, or agricultural enterprise where the solar energy system is located who applies for certification of an operating solar energy system in order to receive a state tax credit.

[3.3.28.7 NMAC - N, 7-1-06]

3.3.28.8 GENERAL PROVISIONS:

A. Only a New Mexico taxpayer having purchased and installed an operating solar energy system the department has certified is eligible for a state tax credit.

B. A corporation shall not be eligible for certification of a solar energy

system the corporation owns under 3.3.28 NMAC's requirements. A corporation may install a solar energy system that complies with 3.3.28 NMAC's requirements and sell the solar energy system in a residence, business, or agricultural enterprise to a taxpayer. If by this sale the taxpayer becomes the full owner of both the solar energy system and the residence, business, or agricultural enterprise, and complies with 3.3.28 NMAC's requirements, that taxpayer is eligible for certification of that solar energy system.

C. A taxpayer owning a solar energy system the department certifies shall locate that system at the residence, business, or agricultural enterprise that taxpayer owns. The residence, business or agricultural enterprise the taxpayer owns may be rented to another entity.

D. The annual aggregate amounts of the state tax credit available to taxpayers owning certified solar energy systems is limited to \$2,000,000 for solar thermal systems and \$3,000,000 for photovoltaic systems. When the \$2,000,000 limit for solar thermal systems or the \$3,000,000 limit for photovoltaic systems is reached based on the total of taxpayers certified, the department will no longer certify taxpayers, but will accept them for future consideration in the next year, except for the last taxable year when the state tax credit is in effect. The division shall keep a record of the order of receipt of all application packages.

E. The department shall publish an annual report on the state tax credit by March 15 of the calendar year following each taxable year in which solar energy systems are certified.

F. In the event of a discrepancy between a requirement of 3.3.28 NMAC and an existing New Mexico regulation and licensing department or New Mexico taxation and revenue department rule promulgated prior to 3.3.28 NMAC's adoption, the existing rule shall govern. [3.3.28.8 NMAC - N, 7-1-06]

3.3.28.9 APPLICATION:

A. An applicant may obtain a state tax credit application form and system installation form from the division.

B. An application package shall include a completed state tax credit application form and written attachments for a solar thermal system or photovoltaic system. The applicant shall submit the state tax credit application form and any attachments required at the same time as a complete application package. An applicant shall submit one application package for each solar energy system. All material submitted in the application package shall be

capable of being provided on 8½-inch x 11-inch paper.

C. An applicant shall submit an application package to the division no later than January 15 of the calendar year immediately following the taxable year in which the state tax credit is sought to assure time for certification to be applied to that taxable year. The division shall not accept application packages after January 15 of the calendar year immediately following the last taxable year that the state tax credit is available.

D. The application package shall meet 3.3.28 NMAC's requirements. If an application package fails to meet a requirement, the department shall disapprove the application.

E. The completed application form shall consist of the following information:

(1) the taxpayer's name, mailing address, telephone number and social security number;

(2) the address where the solar energy system is located, if located at a residence, business, or agricultural facility or, a location description if located at an agricultural enterprise;

(3) the solar energy system's type and description;

(4) the date the solar energy system started continuous operation or that an upgrade to an existing system became operational, if applicable;

(5) if a contractor installed the solar energy system, the contractor's name, address, telephone number, license category and license number;

(6) acknowledgement that the homeowner installed the solar energy system; if applicable;

(7) the net cost of equipment, materials and labor of the solar energy system, excluding the expenses and income listed in 3.3.28 NMAC;

(8) a statement signed and dated by the applicant, which may be a form of electronic signature approved by the department, agreeing that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge;

(b) applicant has read the certification requirements contained in 3.3.28 NMAC;

(c) applicant understands that there are annual aggregate state tax credit limits in place for solar thermal systems and photovoltaic systems;

(d) applicant understands that the department must certify the solar energy system documented in the application package before becoming eligible for a state tax credit;

(e) applicant agrees to make any changes the department requires to the solar

energy system for compliance with 3.3.28 NMAC;

(f) applicant agrees to operate the solar energy system for a minimum of five years after department certification or, if the residential, business, or agricultural enterprise where the solar energy system is located is sold or transferred to another party within five years after the department's certification of the solar energy system, the sale or transfer agreement shall require the solar energy system's continued operation or maintenance for energy production for no less than the balance of the five-year period remaining;

(g) applicant agrees to provide for the solar energy system's regular maintenance for a minimum of five years with the applicant's own resources or through a contractor; and

(h) applicant agrees to allow the division or its authorized representative to inspect the solar energy system that is described in the application package at any time from the application package's submittal to three years after the department has certified the solar energy system, upon the division providing a minimum of five days notice to the applicant, and;

(9) a project number the division assigns to the application.

F. The application form shall request the following as optional information provided by the applicant:

(1) taxpayer's email address; and

(2) contractor's email address.

G. The application form shall include optional selections where the applicant can indicate interest in allowing the department to take the following actions:

(1) adding energy monitoring equipment to the solar energy system;

(2) conducting an analysis of solar energy system operation and performance;

(3) conducting an analysis of taxpayer's utility bill records.

H. The application package shall consist of the following information provided as attachments:

(1) a copy of a current property tax bill to the taxpayer for the residence, business, or agricultural enterprise where the solar energy system shall be located;

(2) a copy of the invoice of itemized equipment and labor costs for the solar energy system;

(3) a copy of the solar energy system's design schematic and technical specifications as described in 3.3.28 NMAC;

(4) a photographic record of the solar energy system after installation is completed;

(5) a completed system installation form;

(6) a copy of the written final

inspection approval from the building code authority or, if inspection approval cannot be obtained, the applicant shall provide the necessary information on the system installation form in place of obtaining the inspection approval;

(7) if application is for a solar thermal system, include on design schematic attachment or as separate attachments the:

(a) manufacturer or supplier of system components and their model numbers;

(b) number of collectors;

(c) collector aperture dimensions;

(d) orientation of collectors by providing the azimuth angle from true south and tilt angle from horizontal;

(e) SRCC solar collector certification identification number or, if SRCC has not certified the collector and the application package is submitted;

(i) before January 1, 2007 and collector has been manufactured regularly for a minimum of five years as of January 1, 2006, the manufacturer's collector specifications and a copy of the application for solar collector certification form submitted to the SRCC by the manufacturer or;

(ii) on January 1, 2007 or later but before January 1, 2010, a copy of the application for solar collector certification form the manufacturer has submitted to the SRCC and report status of SRCC certification process;

(f) a description of the freeze protection;

(g) a description of overheating protection;

(h) thermal storage fluid or material and its volume, if thermal storage is a part of the system and if the thermal storage does not have energy provided from a non-solar or non-renewable source;

(i) manufacturer's specifications for collectors, if collectors are unglazed;

(8) if application is for a photovoltaic system, include with design schematic or as separate attachments:

(a) manufacturer or supplier of major system components and their model numbers;

(b) number of modules;

(c) module rated direct current power output in watts under manufacturer's standard test conditions;

(d) collectors' orientation by providing the azimuth angle from true south and tilt angle from horizontal;

(e) inverter capacity in kilowatts, if an inverter is a part of the system;

(f) battery storage capacity in kilowatt-hours, if battery storage is a part of the system; and

(g) a copy of the signature and specifications pages of the fully executed

interconnection agreement with the electric utility if the photovoltaic system is interconnected to a utility transmission line or distribution system; and

(9) other information the department needs to evaluate the specific system type for certification.

I. The completed system installation form shall include the following information:

(1) printed name of the taxpayer who is identified on the application form,

(2) printed name, title and telephone number of the contractor's authorized representative, if applicable, who approves the system installation form;

(3) printed name, title and telephone number of the building code authority's authorized representative, if applicable, who approves the system installation form;

(4) date on which solar energy system installation was complete and ready to operate;

(5) if a contractor installed the solar energy system, a statement signed and dated by the contractor's authorized representative, which may be a form of electronic signature approved by the department, agreeing that:

(a) the solar energy system was installed in full compliance with all applicable federal, state, and local government laws, regulations, codes and standards that are in effect at the time of installation;

(b) contractor has read 3.3.28 NMAC's certification requirements;

(c) the date on which the solar energy system was ready to operate;

(d) the installed solar energy system will work properly with regular maintenance; and

(e) contractor provided written operations and maintenance instructions to the applicant and posted a one-page summary of these instructions in a sheltered accessible location acceptable to the taxpayer and which is near or at the solar energy system's array or balance of system components; and

(6) a statement signed and dated by the building code authority's authorized representative, which may be a form of electronic signature approved by the department, that the solar energy system was installed in full compliance with all applicable codes or, if inspection approval by the building code authority cannot be obtained, the applicant shall provide an alternative system approval, which is a statement signed and dated by the contractor, if contractor-installed, or the homeowner, if homeowner-installed, agreeing that

(a) the contractor or homeowner asked the building code authority to conduct a final inspection of the solar energy system;

(b) written final inspection approval from the building code authority was not obtained;

(c) the building code authority did not reject the inspection approval;

(d) 30 days or more have elapsed since the contractor or homeowner asked the building code authority to conduct a final inspection; and

(e) the installed system is operating as designed and presented in the application package.

J. The division shall return an incomplete application to the applicant.

[3.3.28.9 NMAC - N, 7-1-06]

3.3.28.10 APPLICATION REVIEW PROCESS:

A. The department shall consider applications in the order received, according to the day they are received, but not the time of day. Applications received on the same day shall receive equal consideration. If the department approves applications received on the same day and the applications would exceed the overall limit of state tax credit availability, then the department shall divide the available state tax credit among those applications on a prorated, net solar energy system cost basis.

B. The department shall approve or disapprove an application package within 30 days following the application package's receipt or, if more time is required, the division shall notify the applicant of the reason and shall approve or disapprove the application within 30 days of the applicant providing additional information.

C. The division shall review the application package to calculate the state tax credit, check accuracy of the applicant's documentation, and determine whether the department certifies the solar energy system.

D. If the division finds that the application package meets 3.3.28 NMAC's requirements and a state tax credit is available, the department shall certify the applicant's solar energy system and document the taxpayer as eligible for a state tax credit. If a state tax credit is not available in the taxable year of certification of the solar energy system submitted in the application package, the division shall place the taxpayer on a waiting list for inclusion in the following taxable year, if a state tax credit remains available. The department shall provide approval through written notification to the applicant within 15 days of the solar energy system's certification. The notification shall include the taxpayer's contact information, social security number, system certification number, net solar energy system cost eligible for the state tax

credit, the state tax credit amount and waiting list status, if applicable.

E. The division shall report to the taxation and revenue department the information required to verify, process, and distribute each state tax credit by providing a copy of the department's approval notification within 15 days of certifying the solar energy system.

F. The applicant may submit a revised application package to the division. The division shall place the resubmitted application in the review schedule as if it were a new application.

G. The department shall disapprove an application that is not complete or correct or does not meet the approval criteria. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division shall place the resubmitted application in the review schedule as if it were a new application.

[3.3.28.10 NMAC - N, 7-1-06]

3.3.28.11 SAFETY, CODES AND STANDARDS:

A. Solar energy systems that the department may certify shall meet the following requirements:

(1) compliance with the latest adopted version of all applicable federal, state, and local government laws, regulations, codes and standards that are in effect at the time of application package submittal;

(2) compliance with all applicable utility company or heating fuel vendor requirements, if the system being served with a solar energy system is also served by utility electricity or a heating fuel;

(3) compliance with the building code authority's structural design requirements, as applicable to new and existing structures upon which solar energy system components may be mounted and support structures of solar energy system components;

(4) permitted and inspected by the building code authority for building, electrical, or mechanical code compliance, as applicable to the type of solar energy system installed; and

(5) a written final inspection approval obtained from the building code authority after the solar energy system's installation, as applicable to the solar energy system type, or alternative system approval as allowed by 3.3.28 NMAC.

B. The department may certify a solar energy system installed by a taxpayer who is also the homeowner of the residence at which the solar energy system is located and shall not certify a solar energy system that the owner of a non-residen-

tial facility has installed.

C. Solar thermal systems that the department may certify shall meet the following requirements:

(1) if installed at a residence by a

(a) contractor, installation by a certified mechanical journeyman who is an employee of a company holding a valid New Mexico mechanical contractor license provided, however, that an apprentice may work under a validly certified journeyman's direct supervision;

(b) homeowner, installation by that homeowner who has met all the building code authority's requirements for obtaining a homeowner's permit, including passing a written examination for plumbing work the building code authority administers;

(2) if installed at a non-residential facility, installation by a certified mechanical journeyman who is an employee of a company holding a New Mexico mechanical contractor license provided, however, that an apprentice may work under a validly certified journeyman's direct supervision; and

(3) design, permitting, and installation in full compliance with all applicable provisions of the New Mexico Plumbing Code (14.8.2 NMAC), the New Mexico Mechanical Codes (14.9.2 - 5 NMAC), the New Mexico General Construction Building Codes (14.7.2 - 8 NMAC), and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under NMSA 1978, Sections 3.17.6 and 3.18.6.

D. Photovoltaic systems that the department may certify shall meet the following requirements:

(1) if installed at a residence by a:

(a) contractor, installation by a certified electrical journeyman who is an employee of a company holding a valid New Mexico electrical contractor license provided, however, that an apprentice may work under a validly certified journeyman's direct supervision;

(b) homeowner, installation by that homeowner who has met all the building code authority's requirements for obtaining a homeowner's permit, including passing a written examination for electrical work the building code authority administers;

(2) if installed at a non-residential facility, installation by a certified electrical journeyman who is an employee of a company holding a New Mexico electrical contractor license provided, however, that an apprentice may work under a validly certified journeyman's direct supervision; and

(3) design, permitting, and installation in full compliance with all applicable provisions of the New Mexico Electrical

Code (14.10.4 NMAC) and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under NMSA 1978, Sections 3.17.6 and 3.18.6.

[3.3.28.11 NMAC - N, 7-1-06]

3.3.28.12 SOLAR COLLECTOR AND MODULE ORIENTATION AND SUN EXPOSURE:

A. A solar energy system array the department certifies shall have an azimuth angle or sun exposure reduction due to shading or other factors that results in annual energy production of the total solar energy system having a combined derating of not more than 25 percent when compared to an ideal solar energy system at the same location that has an unshaded array tilt equal to local latitude and azimuth of true south. For cases in which the combined impact of orientation and sun exposure of an array is evaluated, the applicant shall estimate a derating using a department approved method or model.

B. A taxpayer operating a solar energy system the department certifies shall take the following actions to control reduced energy production:

(1) maintain vegetation affecting shading of an array; and

(2) as much as practicable, monitor construction developments affecting shading of an array from adjacent structures and preserve sun exposure by complying with the Solar Rights Act's (Section 47-3-1 to 47-3-5 NMSA 1978) requirements.

C. A tracking array of a solar energy system that the department certifies shall have a mechanism to track the sun so that the array absorber surface consistently receives the sun's direct beam at all times when the direct beam of full sun is available, without requiring manual adjustment, except for a solar energy system having the following tracking array control features:

(1) automatic and intentional stowage of the array due to high velocity wind to avoid damage to the array and its support structure;

(2) automatic and intentional adjustment to off-direct-beam array orientations at low sun angles to optimize the solar energy system's annual energy production; or

(3) other automatic and intentional array control features that demonstrate to the department's satisfaction that the solar energy system's annual energy production is optimized.

D. A solar energy system that the department certifies shall have an array and balance of system components that are automatically controlled to collect sunlight or solar heat and deliver to an end use, without requiring manual operation.

E. It is the applicant's sole responsibility to take action or meet the Solar Rights Act's requirements, if applicable.

[3.3.28.12 NMAC - N, 7-1-06]

3.3.28.13 MINIMUM SYSTEM SIZES, SYSTEM APPLICATIONS AND LISTS OF ELIGIBLE COMPONENTS:

A. Solar energy systems or their portions that the department may certify shall meet the following requirements:

(1) be made of new equipment, components, and materials;

(2) if installed by a contractor, have a written minimum one-year warranty provided by the contractor on parts, equipment, and labor;

(3) be a complete energy system that collects, converts, and distributes solar energy to the residence, business, or agricultural enterprise it serves, unless requirements are met for expansion of an existing solar energy system or replacement of an existing solar energy system's components;

(4) if an expansion of an existing solar energy system, end use annual energy production of the new system shall be increased in comparison to the existing system by the amount of the minimum system size requirement and the contractor or homeowner shall provide a written summary of the condition of each major component of the system;

(5) if replacement of one or more components of an existing system, end use annual energy production of the new system shall be increased in comparison to the system's operation under existing conditions and the contractor or homeowner shall provide a written summary of the condition of each of the system's major components; and

(6) if a specialty or retrofit component is required for a complete solar energy system, then that component shall be included as part of the solar energy system that is eligible for department certification.

B. Solar energy systems or their portions that the department shall not certify are as follows:

(1) a system or portion of a system that uses non-solar or non-renewable sources in its operation, with the exception of the following:

(a) power necessary to provide for solar energy system components' incidental electricity needs; and

(b) non-solar or non-renewable sources that do not exceed 25 percent of the system's annual energy production;

(2) a system or portion of a system that would be present if the solar energy system was not installed;

(3) a system that increases an existing residence, business, or agricultural enterprise's average annual energy consumption;

(4) a system that is mobile and does not serve a permanent end use energy load or is not permanently located in New Mexico;

(5) a system that is not connected to a structure or foundation and does not serve a permanent end use energy load or is not permanently located in New Mexico;

(6) a system or portion of a system having one or more components not manufactured on a regular basis by a business enterprise;

(7) a system installed on a recreational vehicle;

(8) a system not serving an end use energy load; or

(9) a system or portion of a system that replaces a system or portion of a system the department has certified in a previous application for a state tax credit.

C. The department shall maintain lists of components eligible to be included as a net solar energy system cost. The lists shall be comprised of solar energy system components the department has certified, which the division shall compile on a continuing basis through the certification program. The division may refer to existing lists of components from other independent listing or certification organizations to evaluate inclusion of components on a department list. The division may remove a previously-listed component without notice if the component is not manufactured, does not comply with a code requirement, does not comply with a requirement of 3.3.28 NMAC, provides poor operational or energy performance, or other reasons supported by division evaluation. The lists of components shall include the following information, if applicable:

(1) component category;

(2) component name or type;

(3) component model number;

(4) the manufacturer's name, mailing address, telephone number, and email address;

(5) capacity, size, or other descriptor of the component;

(6) the published operational or energy performance data of the component provided by an independent listing or certification organization or, if not available, the manufacturer;

(7) date added to list; and

(8) other information necessary to describe the component.

D. The department may disapprove a system type, solar thermal collector type, photovoltaic module type, or a solar energy system component if not listed in 3.3.28 NMAC for certification or may deem it innovative, if the applicant requests in the application package.

E. Solar thermal systems that the department may certify include:

(1) the system applications of solar domestic hot water, solar space heating, solar air heating, solar process heating, solar space cooling, or combinations of solar thermal system applications listed in 3.3.28 NMAC;

(2) the collector types of flat plate, parabolic trough, and evacuated tube; and

(3) the listed component categories of collectors, pumps, fans, solar storage tanks, expansion tanks, valves, controllers and heat exchangers.

F. A solar thermal system component that the department may certify is a photovoltaic system providing power for a solar thermal system component's incidental electricity needs. The department shall not certify such a photovoltaic system as a separate solar energy system eligible for a separate state tax credit.

G. Solar thermal systems or their components that the department shall not certify are as follows:

(1) a heating system or heating system components necessary for a swimming pool or a hot tub;

(2) equipment sheds, wall preparation, cabinetry, site-built enclosures, distribution piping and associated installation costs;

(3) a building design element used for passive solar space heating, space cooling, daylighting or other environmental comfort attribute;

(4) a water quality distillation or processing system;

(5) in a combined system, the portions of the system not allowed to receive a state tax credit or for which the department shall not certify the system;

(6) systems without adequate freeze protection;

(7) systems incorporating drain down as a freeze protection method; and

(8) systems without adequate overheating protection.

H. Solar thermal systems that the department may certify shall meet the following requirements:

(1) minimum system size of 15.0 square feet of solar collector aperture area;

(2) for solar domestic hot water systems installed at a residence or business, a minimum of 50 percent of the total domestic water heating load provided by solar energy;

(3) a collector that is:

(a) listed as certified by the SRCC by OG-100 collector certification or OG-300 system certification processes or, if collector is not certified by the SRCC and application package is submitted

(i) before January 1, 2007, manufactured regularly for a minimum of five years as of January 1, 2006 and

submitted by the manufacturer to the SRCC for testing and certification; or

(ii) on January 1, 2007 or later but before January 1, 2010, submitted by the manufacturer to the SRCC for certification and is active in the SRCC certification process;

(b) if glazed, made of all-metal enclosures, absorber plates, fasteners, and fittings; aperture glazing of tempered glass; and fiberglass or polyisocyanurate insulation; or

(c) if unglazed, made of durable materials having a minimum 12 year warranty period for full replacement; and

(4) all components approved by an agency accredited by the American National Standards Institute, if available for that specific component category.

I. Photovoltaic systems that the department may certify include:

(1) the system applications of direct power without battery storage, utility grid interconnected without battery storage, utility grid interconnected with battery storage, stand-alone with battery storage, stand-alone with utility backup capability and water pumping;

(2) the flat plate module types of crystalline, poly-crystalline, or thin-film amorphous silicon;

(3) the listed component categories of modules, inverters, batteries, manufactured battery enclosures, charge controllers, power point trackers, well pumps, racks, sun tracking mechanisms, performance monitoring equipment, communications, datalogging, lightning protection; and

(4) disconnect components, safety components, standard electrical materials, and standard electrical hardware necessary for the assembly of the listed component categories into a complete, safe, and fully operational system.

J. Photovoltaic systems that the department may certify shall meet the following requirements:

(1) a minimum total array power output of 100.0 watts direct current at manufacturer's standard test conditions; and

(2) all components listed and labeled by a nationally recognized testing laboratory, if such listing is available for that specific component category.

K. Photovoltaic systems or their portions that the department shall not certify are as follows:

(1) a commercial or industrial photovoltaic system other than an agricultural photovoltaic system on a farm or ranch that is not connected to an electric utility transmission or distribution system;

(2) power equipment sheds, wall preparation, cabinetry, site-built battery enclosures, distribution wiring and associated installation costs;

(3) the drilling, well casing, storage tanks, distribution piping, distribution controls and associated installation costs of a water pumping system; and

(4) a packaged product powered by photovoltaic cells that a taxpayer purchased directly from a retail business enterprise, is not custom designed, and does not require a permit from the building code authority for installation, including but not limited to watches, calculators, walkway lights and toys.

[3.3.28.13 NMAC - N, 7-1-06]

3.3.28.14 INNOVATIVE SOLAR ENERGY SYSTEMS:

A. The department may certify an innovative solar energy system.

B. A taxpayer shall request that the department review an application package as an innovative solar energy system.

C. The division shall conduct a design review of a solar energy system when the taxpayer has requested innovative status.

D. The department may determine that a solar energy system is innovative if

(1) it does not include a system application, component, packaged system, solar thermal collector type, or photovoltaic module type that the department may certify; and

(2) the division approves the design.

E. Design approval by the division does not indicate department approval of actual system operation, energy production, or code compliance.

F. The application package of an innovative solar energy system shall include attachments in addition to those required in other sections of 3.3.28 NMAC that fully describe the solar energy system, as follows:

(1) a request for innovative status and a description of the innovative feature;

(2) a design schematic detail of each system application, component, packaged system, solar thermal collector type, or photovoltaic module type that makes the solar energy system innovative;

(3) a description of system operation; and

(4) an energy analysis of the solar energy system, including an estimate of annual energy production.

G. The department shall approve or disapprove an application package where the taxpayer has requested innovative status within 60 days following receipt of the application package.

H. Innovative solar energy systems that the department may certify shall meet all requirements of 3.3.28 NMAC, with the exception of the specific

system application, component, packaged system, solar thermal collector type, or photovoltaic module type that is to be installed.

I. The department may approve an innovative component or system for inclusion on the department's list of certified components, if that component or system has been tested, certified, approved, or listed by the applicable organization for the specific type of component or system and if such testing, certification, approval, or listing is available. Upon the department listing a component or system as certified, subsequent applicants are not required to submit that component or system as an innovative system.

[3.3.28.14 NMAC - N, 7-1-06]

3.3.28.15 CERTIFICATION:

A. The purpose of the department's certification program is to evaluate certification of complete solar energy systems for state tax credit eligibility that are comprised of components and materials that are tested, certified, approved, or listed, as applicable, by other organizations identified or referenced in 3.3.28 NMAC.

B. When a taxpayer has installed a solar energy system, submits an application package, and complies with 3.3.28 NMAC's certification requirements, then the solar energy system the taxpayer owns is eligible to receive department certification. The taxpayer shall submit a completed application package.

C. For purposes of monitoring compliance with 3.3.28 NMAC, the division or its authorized representative shall have the authority to inspect a solar energy system owned by a taxpayer who has submitted an application for certification, upon the division providing five days notice to the taxpayer.

[3.3.28.15 NMAC - N, 7-1-06]

3.3.28.16 CALCULATING THE SOLAR ENERGY SYSTEM COST:

A. A state tax credit shall be based on the equipment, materials, and labor costs of a solar energy system the department has certified.

B. The equipment, materials, and labor costs of a solar energy system the department certifies shall be documented in writing.

C. The cost of a solar energy system the department certifies shall be the net cost of acquiring the system and shall not include the following:

(1) expenses, including but not limited to:

(a) unpaid labor or the applicant's labor;

(b) unpaid equipment or materials;

(c) land costs or property taxes;

(d) costs of structural, surface protection, and other functions in building elements that would be included in building construction if a solar energy system were not installed;

(e) mortgage, lease, or rental costs of the residence, business, or agricultural enterprise;

(f) legal and court costs;

(g) research fees or patent search fees;

(h) fees for use permits or variances;

(i) membership fees;

(j) financing costs or loan interest;

(k) marketing, promotional, or advertising costs;

(l) repair, operating, or maintenance costs;

(m) extended warranty costs; and

(n) system resale costs;

(2) income, including but not limited to:

(a) payments the solar energy system contractor or other parties provide that reduce the system cost, including rebates, discounts and refunds;

(b) services, benefits or material goods the solar energy system contractor or other parties provide by the same or separate contract, whether written or verbal; and

(c) other financial incentives provided for solar energy system installation, if applicable.

E. The division shall make the final determination of the net cost of a solar energy system the department certifies pursuant to 3.3.28 NMAC.

[3.3.28.16 NMAC - N, 7-1-06]

3.3.28.17 CALCULATING THE STATE TAX CREDIT:

A. A state tax credit to a taxpayer for a solar energy system the department has certified shall not exceed:

(1) 30 percent of the net solar energy system cost; and

(2) \$9,000.

B. The total sum of the state tax credit and the federal tax credit shall not exceed 30 percent of the net solar energy system cost.

C. If a taxpayer is eligible for a federal tax credit, the amount of the federal tax credit, whether claimed or unclaimed, shall be deducted from 30 percent of the net solar energy system cost.

D. If the department certifies a solar energy system owned by a taxpayer who is not eligible for a federal tax credit, the federal tax credit shall not be deducted from 30 percent of the net solar energy system cost.

E. A taxpayer may receive both a state tax credit and a federal tax cred-

it if the taxpayer is eligible for each tax credit and the state tax credit amount is greater than the federal tax credit amount.

F. The department shall disapprove an application package if the taxpayer is eligible for a federal tax credit and the federal tax credit amount that the taxpayer may claim is equal to or greater than the state tax credit.

G. If a taxpayer is eligible for a federal tax credit, the state tax credit shall be calculated as follows:

(1) calculate 30 percent of the net solar energy system cost;

(2) calculate the tax credits difference by subtracting the federal tax credit from 30 percent of the net solar energy system cost;

(3) if calculation of the tax credits difference is:

(a) equal to or greater than \$9,000, then the state tax credit is \$9,000; or

(b) less than \$9,000 and greater than \$0, then the state tax credit is the tax credits difference; or

(c) if less than or equal to \$0, then the state tax credit is \$0;

(4) using the state tax credit of the previous calculation, calculate the tax credits sum; and

(5) make final determination of state tax credit as follows:

(a) if the tax credits sum is equal to or less than 30 percent of the net solar energy system cost, then the state tax credit remains as last calculated; or

(b) if the tax credits sum is greater than 30 percent of the net solar energy system cost, then the state tax credit is adjusted to an amount at which the tax credits sum equals 30 percent of the net solar energy system cost;

H. If a taxpayer is not eligible for a federal tax credit, the state tax credit shall be calculated as follows:

(1) calculate 30 percent of the net solar energy system cost;

(2) if the result of the previous calculation is

(a) equal to or greater than \$9,000, then the state tax credit is \$9,000; or

(b) less than \$9,000, then the state tax credit is 30 percent of the net solar energy system cost.

I. The department shall make the final determination of the federal tax credit amount that a taxpayer may claim for purposes of calculating a state tax credit pursuant to 3.3.28 NMAC.

J. The taxation and revenue department shall make the final determination of the amount of a state tax credit. [3.3.28.17 NMAC - N, 7-1-06]

3.3.28.18 CLAIMING THE STATE TAX CREDIT:

A. To claim the state tax

credit, a taxpayer owning a solar energy system that the department has certified shall submit to the taxation and revenue department a claim, which shall consist of the notification the department issued to the taxpayer, a completed claim form the taxation and revenue department has approved, and any other information the taxation and revenue department requires.

B. If the amount of state tax credit claimed exceeds the taxpayer's individual income tax liability, the taxpayer may carry the excess forward for up to ten consecutive taxable years.

C. A taxpayer who has both a carryover state tax credit and a new state tax credit derived from a certified solar energy system in the taxable year for which the return is being filed shall first apply the amount of carryover state tax credit against the income tax liability. If the amount of liability exceeds the carryover state tax credit, then the taxpayer may apply the current year credit against the liability.

D. A taxpayer claiming a state tax credit shall not claim a state tax credit pursuant to another law for costs related to the same solar energy system costs.

[3.3.28.18 NMAC - N, 7-1-06]

3.3.28.19 CONSUMER INFORMATION:

A. If a contractor installs the solar energy system, the contractor shall inform the taxpayer about system design, installation, performance, operation, and maintenance by providing the following:

(1) prior to system installation, a summary of the specific system type that meets all 3.3.28 NMAC's requirements, the system's capacity or size, and the system's estimated annual energy production;

(2) upon completion of system installation, written operation and maintenance instructions, including how to conduct simple diagnostic observations and tests to determine if the solar energy system is working properly to produce energy;

(3) upon completion of system installation, a written summary of operation and maintenance instructions on one page, posted at a sheltered accessible location acceptable to the taxpayer and which is near or at the solar energy system's array or balance of system components; and

(4) upon completion of system installation, written warranties in effect for equipment and contractor's labor, including their start and end dates and telephone, address, and website contact information, as applicable, for honoring or extending warranties.

B. If the solar energy system is a solar thermal system, the following information shall be displayed:

(1) pump or fan status by a visual indicator, as applicable;

(2) outlet temperature of the collector loop;

(3) if a liquid collector, the collector loop's pressure; and

(4) the solar storage tank's temperature, if applicable.

C. If the solar energy system is a photovoltaic system, the following information shall be displayed:

(1) for all photovoltaic systems, a visual indicator for operating status;

(2) for an electric utility interconnected system without batteries

(a) daily and cumulative energy production in kilowatt-hours alternating current of the inverter output; and

(b) instantaneous power output in kilowatts alternating current of the inverter output;

(3) for an electric utility interconnected system with batteries, a method to enable real-time evaluation of system power or energy production; and

(4) for a stand-alone system with battery storage

(a) voltage and amperes of module array; and

(b) battery storage level.

[3.3.28.19 NMAC - N, 7-1-06]

3.3.28.20 INSPECTION OF SOLAR ENERGY SYSTEMS:

A. The inspections required through the application process for certification of a taxpayer's solar energy system are:

(1) inspection by the building code authority for building, electrical, or mechanical code compliance, as applicable to the solar energy system type; and

(2) inspection for compliance with electric utility company requirements for photovoltaic systems that are interconnected to the distribution grid of that electric utility company, if applicable.

B. For purposes of monitoring solar energy systems' operation, energy production, and maintenance the department has certified, the division or its authorized representative shall have the right to inspect a solar energy system a taxpayer owns and the department has certified, within three years after the department's certification, upon the division providing a minimum of five days notice to the taxpayer. If the division determines by inspection or review of system operation documentation that a solar energy system the department has previously certified does not meet 3.3.28 NMAC's requirements, the following process shall be followed:

(1) the department shall provide written notification to the taxpayer owning the solar energy system within 15 days of

the decertification determination with recommendations for corrective action;

(2) within 30 days of taxpayer's receipt of the department's notification, the taxpayer shall provide the department with a written description of corrective action taken or justification that the solar energy system meets 3.3.28 NMAC's requirements;

(3) within 30 days of department's receipt of taxpayer's corrective action or justification description, the department shall approve or disapprove the corrective action or justification and provide written notification to the taxpayer; and

(4) if the department approves the taxpayer's corrective action or justification, the department shall provide written notification of approval to the taxpayer or, if the taxpayer's corrective action or justification is disapproved or the taxpayer takes no action in response to the original decertification determination, the department shall provide written notification to the taxation and revenue department and a copy to the taxpayer that

(a) the taxpayer's solar energy system is no longer certified;

(b) the taxpayer is not eligible for the state tax credit of the decertified system;

(c) the taxpayer is not eligible for certification of future solar energy systems and the associated state tax credits; and

(d) the taxpayer's solar energy system may be recertified by providing a written description of corrective action taken or justification that the solar energy system meets 3.3.28 NMAC's requirements, if applicable.

[3.3.28.20 NMAC - N, 7-1-06]

HISTORY OF 3.3.28 NMAC:
Pre-NMAC History: None.

History of Repealed Material:
[RESERVED]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

**TITLE 19 NATURAL
RESOURCES AND WILDLIFE
CHAPTER 30 WILDLIFE ADMIN-
ISTRATION
PART 10 NEW MEXICO
HUNTER-TRAPPER REPORTING
SYSTEM**

19.30.10.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.
[19.30.10.1 NMAC - N, 9-1-2006]

19.30.10.2 SCOPE: All New

Mexico deer, elk and furbearer hunters and trappers.

[19.30.10.2 NMAC - N, 9-1-2006]

**19.30.10.3 STATUTORY
AUTHORITY:**

17-1-14, 17-3-5, 17-3-7, and 17-3-12 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species.

[19.30.10.3 NMAC - N, 9-1-2006]

19.30.10.4 DURATION:

Permanent.
[19.30.10.4 NMAC - N, 9-1-2006]

19.30.10.5 EFFECTIVE DATE:

September 1, 2006, unless a later date is cited at the end of a section.
[19.30.10.5 NMAC - N, 9-1-2006]

19.30.10.6 OBJECTIVE:

Establishing a system to collect hunting and trapping information from persons buying deer and elk hunting licenses and trapping licenses in New Mexico.
[19.30.10.6 NMAC - N, 9-1-2006]

19.30.10.7 DEFINITIONS:

A. "Confirmation code" shall mean a unique alpha-numeric code that identifies a specific transaction of information.

B. "Department" shall mean the New Mexico department of game and fish.

C. "Hunting or trapping report" shall mean the provision of required information, as determined by the department, by any person licensed or permitted to hunt deer and elk, or hunt and trap furbearers in New Mexico, regarding their hunting or trapping activities.

D. "Landowner authorization" shall mean the document generated by the department and issued to a private landowner that authorizes the holder to purchase a specified license.

E. "Private land only deer hunters" shall mean persons that hunt deer during designated private land only hunts.

F. "Special entry hunt" shall mean hunts where hunter numbers are limited by rule and application for license or permit is required.

G. "Application" shall mean any form, approved by the department that requires an individual to supply information that may result in the issuance of a hunting or trapping license or permit.

H. "Application rejected" shall mean that applications for hunting licenses or permits may be rejected by the

department pursuant to Subsection H of 19.31.3.8 NMAC, including hunting and trapping activity reporting requirements established herein.

[19.30.10.7 NMAC - N, 9-1-2006]

**19.30.10.8 REPORTING
REQUIREMENTS FOR LICENSED
OR PERMITTED DEER AND ELK
HUNTERS:**

A. All licensed or permitted deer and elk hunters must report the results of their hunting activities, including harvest outcome, no later than February 15th annually for licenses or permits held in that license year.

B. The department shall make available to each deer and elk hunter a toll-free telephone number and a website address that can be accessed to provide reports of hunting activities.

C. Licensed or permitted deer and elk hunters who fail to report the results of their hunting activities by February 15 will have any special entry hunt application, population reduction authorization or private land authorization, submitted for the following license year, rejected.

D. Individuals licensed or permitted to hunt deer or elk, but not engaging in any hunting activity must still submit a report.

E. Upon submission of a hunting report for each species, the department shall issue the hunter a confirmation code validating a fulfillment of the reporting requirement for each species. Inclusion of a confirmation code for each license or permit subject to the reporting requirement on an application for any special entry hunt, population reduction authorization or private land authorization for the following license year will be required for the application to be considered.

F. Individuals licensed or permitted to hunt both deer and elk in the same license year must submit a report for each species using procedures specified by the department.

G. All licensed or permitted deer and elk hunters must provide their first name, last name, date of birth and the last 4 digits of their social security number at the start of the reporting procedure. All licensed or permitted "private land only" deer hunters must also provide their license number and the hunt code they selected to hunt.

[19.30.10.8 NMAC - N, 9-1-2006]

**19.30.10.9 REPORTING
REQUIREMENTS FOR LICENSED
OR PERMITTED TRAPPERS AND
FURBEARER HUNTERS:**

A. All licensed or permitted trappers and furbearer hunters must

report the results of their hunting or trapping activities no later than March 31 annually for licenses held in that license year.

B. The department shall provide each trapper and furbearer hunter with a toll-free telephone number and a website address that can be accessed to provide reports of hunting or trapping activities.

C. Licensed or permitted trappers and furbearer hunters who fail to report the results of their hunting or trapping activities by March 31 will have any special entry hunt application with an application deadline later than April 1, any population reduction authorization and any private land authorization, submitted for the following license year, rejected.

D. Individuals licensed or permitted to trap or hunt furbearers, but not engaging in any hunting or trapping activity, must still submit a report.

E. Upon submission of the hunting or trapping report, the department shall issue the hunter or trapper a confirmation code validating a fulfillment of the reporting requirement. Inclusion of a confirmation code for each license or permit subject to the reporting requirement on an application for any special entry hunt with an application deadline later than April 1, any population reduction authorization and any private land authorization submitted for the following license year will be required for the application to be considered. [19.30.10.9 NMAC, 9-1-2006]

19.30.10.10 LATE FULLFILLMENT OF REPORTING REQUIREMENT:

A. Licensed or permitted deer and elk hunters and trapper license holders who fail to report the results of their hunting or trapping activities by specified deadlines may submit their hunting or trapping report late with payment of a fee specified by the department not to exceed \$20 for each late report. Late reporting must occur prior to the annual specified deadline for any special entry hunt applications.

B. Licensed or permitted deer and elk hunters applying for special entry hunts that have a specified application deadline prior to February 15 must fulfill their reporting requirement prior to submitting application and will not need the ability to fulfill their reporting requirement late.

C. Elk hunters licensed pursuant to conversion of a landowner elk authorization who fail to report the results of their hunting activities by specified deadlines may submit their hunting or trapping report late with payment of a fee specified by the department not to exceed \$20 for each late report. Late reporting must occur prior to the annual specified deadline for

any special entry hunt applications including the conversion of any landowner authorization to a license.

[19.30.10.10 NMAC - N, 9-1-2006]

19.30.10.11 TRUTH IN REPORTING: Licensed or permitted deer and elk hunters and licensed trappers or furbearer hunters who provide false or fraudulent information regarding the results of hunting or trapping activities shall be assessed revocation points pursuant to 19.31.2 NMAC.

[19.30.10.11 NMAC - N, 9-1-2006]

19.30.10.12 WEBSITE REPORTING INCENTIVE: All deer and elk hunters who submit their hunting activity report using the website option by the established deadline of February 15 annually, may be entered in a drawing for special big game licenses or permits made available in rule and specifically designated for sportsmen participating in hunting activity reporting. All licensed trappers who submit their trapping activity report using the website option by the established deadline of March 31 will also be eligible for this drawing.

[19.30.10.12 NMAC - N, 9-1-2006]

HISTORY OF 19.30.10 NMAC:
[RESERVED]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.30.4 NMAC, Section 10, effective 6-15-2006.

19.30.4.10 WILDLIFE MANAGEMENT AREAS:

A. E.S. Barker WMA, as used herein, shall mean the Elliott S. Barker wildlife management area in GMU 55.

B. Big Hatchet WMA, as used herein, shall mean the Big Hatchet wildlife management area in GMU 26.

C. Brantley WMA, as used herein, shall mean the Brantley wildlife management area in GMU 31.

D. Colin Neblett north, as used herein, shall mean the portion of the Colin Neblett wildlife management area north of U.S. highway 64 in GMU 55.

E. Colin Neblett south, as used herein, shall mean the portion of the Colin Neblett wildlife management area south of U.S. highway 64 in GMU 54 **including an adjacent portion of the state game commission-owned property on the east side of Eagle Nest lake as designated by the posted boundary.**

F. Fort Bayard watershed, as used herein, shall mean the Fort Bayard wildlife management area in GMU

24.

G. Heartbar WMA, as used herein, shall mean the Heartbar wildlife management area bounded by a posted line enclosing a strip extending one-half mile on each side of the west fork of the Gila river from the eastern boundary of the Gila Cliff Dwellings national monument to the southern boundary of the property of the department at Little creek; to include, in T. 12 S., R. 14 W.; Sec. 26; S 1/4 NW 1/4, S 1/2 NE 1/4, S 1/2, Sec. 25; NE 1/4, NE 1/4 NW 1/4, Sec. 36; in T. 12 S., R. 13 W.; Sec. 31; S 1/2 S 1/2, Sec. 32; SW 1/4 SW 1/4, Sec. 30; in T. 13 S., R. 13 W.; NE 1/4 NE 1/4 SE 1/4, Sec. 6; NW 1/4 NW 1/4 SW 1/4, Sec. 5.

H. Huey WMA, as used herein, shall mean the W.S. Huey waterfowl management area in GMU 33.

I. Humphries WMA, as used herein, shall mean the William A. Humphries wildlife management area in GMU 4.

J. Marquez WMA, as used herein, shall mean the Marquez wildlife management area in GMU 9.

K. Rio Chama WMA, as used herein, shall mean the Rio Chama wildlife management area in GMU 4.

L. Rio de los pinos WMA, as used herein shall mean the Los Pinos wildlife management area in GMU 52.

M. Sargent WMA, as used herein, shall mean the Edward S. Sargent wildlife management area in GMU 4.

N. Seven rivers WMA, as used herein shall mean the Seven rivers waterfowl management area in GMU 31.

O. Urraca WMA, as used herein, shall mean the Urraca wildlife management area in GMU 55.

[4-1-95; 19.30.4.10 NMAC - Rn, 19 NMAC 30.4.10, 2-14-2001, A, 03-31-2003; A, 6-15-06]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.30.5 NMAC, Section 11, effective 6-15-2006.

19.30.5.11 LANDS OUTSIDE THE CORE OCCUPIED ELK RANGE

A. For private lands that are not within core occupied elk range or private lands that lay within GMUs with no designated core occupied elk range, the department may ~~use input from landowners to develop appropriate numbers and bag limits~~ **work with interested landowners to develop appropriate bag limits, weapon types, season dates and authori-**

zation numbers for private land hunting needed to achieve the desired and proper harvest within the exterior boundaries of participating ranches.

B. For public lands in GMUs with no designated core occupied elk range, the department may determine public hunting opportunities through the processes set forth in 19.31.8 NMAC.

[19.30.5.11 NMAC - N, 10-17-2005; A, 6-15-2006]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.2 NMAC, Section 9 effective 6-15-2006

19.31.2.9 POINT CATEGORIES:

A. 20-point violations:

Any person who violates one of the following listed provisions shall accumulate twenty (20) points for each violation toward the revocation of his/her license, permit, or certificate and suspension of associated privileges:

(1) illegally taking, attempting to take, killing, capturing or possessing any big game species outside of hunting season in violation of Section 17-2-7 or 17-3-33;

(2) except as otherwise provided by Sections 17-2-37 to 17-2-46, taking, possessing, transporting, exporting, processing, selling or offering for sale, or shipping any species or subspecies of wildlife listed on the state list of endangered species or the United States' list of endangered native and foreign fish and wildlife;

(3) signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application, in violation of Section 17-3-6;

(4) selling, offering for sale, offering to purchase or purchasing any game animal, game bird or protected species, in violation of Section 17-2-7;

(5) hunting with the aid of an artificial light or spotlight, in violation of Section 17-2-31;

(6) hunting elk outside the ranch boundaries for which a ranch-only license is issued or otherwise hunting elk in the wrong area, in violation of Section 17-2-7;

(7) criminal trespass, in violation of Section 30-14-1, for a minimum of three (3) years;

(8) for violations of Section 17-2-29, involving hunting or boating while intoxicated (revocation for a period of one (1) year, as prescribed by Section 17-2-30);

(9) buying of licenses, permits certificates or registration without sufficient

funds to pay for same;

(10) buying or procuring a prohibited license or registration while on revocation;

(11) flagrant violation of the provisions of any special use of wildlife permit issued by the department pursuant to Chapter 17 and its implementing regulations;

(12) any person whose name appears on a human services department certified list of obligors not in compliance with the Parental Responsibility Act;

(13) guiding and/or outfitting without being registered (17-2A-3);

(14) using an outfitter or guide license issued to another;

(15) accessory of any of the above;

(16) any person whose name appears on the wildlife violator compact certified list or has been revoked by another wildlife violator compact member state and is in accordance with 17-2-10.3.B;

(17) any resident who fails to comply with the terms of a citation including failure to appear, from a wildlife violator compact member state; however reinstatement of licenses privileges shall occur once the department receives a certified notice from the state that initiated this actions that the terms of the citation have been met;

(18) failure to remit payment for penalty assessment citation; however reinstatement of license privileges may occur once the department receives payment in full for penalty assessment fees.

B. 15-point violations:

Any person who violates one of the following listed provisions shall accumulate fifteen (15) points toward the revocation of his/her license, permit, or certificate and suspension of associated privileges:

(1) unlawful hunting in violation of Subsection (A) of 19.31.10.17 NMAC;

(2) unlawful hunting in violation of Subsection (B) of 19.31.10.17 NMAC;

C. 10-point violations:

Any person who violates one of the following listed provisions shall accumulate ten (10) points toward the revocation of his/her license, permit, or certificate and suspension of associated privileges:

(1) hunting in a closed area;

(2) exceeding the bag limit of game;

(3) using a license issued to another;

(4) illegal possession of fish;

(5) procurement or possession of additional deer license;

(6) fishing without a license;

(7) exceeding the bag limit on fish;

(8) fishing by an illegal method;

(9) illegally taking, attempting to take, killing, or capturing of any big game species during hunting season, in violation of Section 17-2-7 (1);

(10) illegal possession of any big game species during hunting season, in violation of Section 17-2-7 (2);

(11) hunting without a license.

D. 5-point violations: Any person who violates any provision of Chapter 17 and its implementing regulations, that is not specifically listed herein, shall accumulate five (5) points toward the revocation of his/her license, permit, or certificate and suspension of associated privileges except violations of Section 17-2A-3 and its implementing regulations.

E. Guide and outfitter:

Any registered outfitter or guide who violates provisions of Section 17-2A-3 and its implementing regulations not already addressed in this section shall be assessed points towards the revocation or suspension of their guide and/or outfitting registration as follows: Guides and outfitters shall be afforded a hearing before the assessment of points.

(1) Failure to provide signed contract pursuant to Subsection A of 19.30.8.11 NMAC (5pts)

(2) Failure to provide sufficient guides pursuant to Subsection B of 19.30.8.11 NMAC (10pts)

(3) Failure to supervise pursuant to Subsection C of 19.30.8.11 NMAC (10pts)

(4) Misconduct pursuant to Subsection D of 19.30.8.11 NMAC (20pts)

(5) Unregistered services pursuant to Subsection E of 19.30.8.11 NMAC (10pts)

(6) Failure to report illegal activity pursuant to Subsection F of 19.30.8.11 NMAC (5pts)

(7) Failure to comply with and convicted of any local, state, or federal laws pursuant to Subsection G of 19.30.8.11 NMAC (10pts)

(8) Willfully allowing client misconduct pursuant to Subsection I of 19.30.8.11 NMAC (10pts)

(9) Breach of contract pursuant to Subsection J of 19.30.8.11 NMAC (10pts).

(10) Violation of conditions of registration pursuant to Subsection K of 19.30.8.11 NMAC (20pts).

(11) An outfitter knowingly (unlawfully) using an unregistered guide (10pts).

F. Landowner contracts and agreements: Landowner: Any landowner who breaches or violates the conditions of any landowner sportsman system (LOSS) agreement/contract entered into with the department of game and fish

shall be assessed points towards the revocation or suspension of their landowner permits as follows. Landowners shall be afforded a hearing before the assessment of points.

(1) Unit-wide option antelope: Failure to grant free, unrestricted and equal access, (to include vehicle access) to the ranch named on the contract only for the purpose of hunting antelope, to the licensed hunters, and some that may be accompanied with their outfitters/guides. The licenses must be valid for the same coded hunt and same management unit as the licenses authorized by the land owners contract. Hunters must carry written permission from a department representative to move to another ranch. (20 points)

(2) Denying licensed public antelope hunters assigned to the ranch by the department, some who may be accompanied with their registered outfitter, free, unrestricted and equal access, (to include vehicle access) to the ranch for the purpose of hunting antelope. (20 points)

(3) Unit-wide option elk: Failure to grant free, unrestricted and equal access, including vehicular access, for the sole purpose of hunting elk to any legally licensed person and their companions during all corresponding public hunt periods with their sporting arms and bag-limit restrictions in the same unit as the ranch. (20 points)

(4) Discriminating against those with whom he/she negotiates for the use of the private land licenses on the basis of race, color, religion, sex and origin. (20 points)

(5) Failure to provide reasonable access to include keys and /or combinations, if necessary, to locked gates for department personnel during the entire hunt periods for elk and antelope for the purpose to record biological data and enforce laws and regulations. (20 points)

(6) Providing false documentation, records or falsifying a landowner hunting agreement/contract in any manner. (20 points)

(7) Failure of the landowner, manager or lessee to inform the department of any changes in ownership, acreage and/or address changes, etc. (5 points) [4-1-95, 10-31-98, 11-14-98, 1-29-99; 19.31.2.9 NMAC - Rn & A, 19 NMAC 31.2.9, 12-14-01; A, 05-15-02; A, 9-30-02; A, 6-15-2006]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.3 NMAC, Sections 9 and 11 effective 6-15-2006.

19.31.3.9 PRIVATE LAND - PRONGHORN ANTELOPE AND ELK

LICENSES:

A. No application deadline: Private land licenses for elk and pronghorn antelope will be issued without an application deadline.

B. Issuance of licenses: Licenses will be issued, in person or by mail, out of the Santa Fe, Albuquerque, Las Cruces, Roswell, and Raton offices.

C. Maximum number of licenses: Licenses will be issued only up to the number of licenses allotted for each ranch and only to persons who submit a properly completed form and the appropriate fees.

D. [No] Authorizations issued: [No] Authorizations for elk licenses [shall] may be issued to landowners in game management units where [~~specific limits to licenses are not set~~] no core occupied elk range is designated and to landowners whose private property lays outside of the designated core occupied elk range pursuant to Subsection A of 19.30.5.11 NMAC.

E. Pronghorn antelope landowner system:

(1) The deadline for new landowner sign-ups and changes to existing data is February 1.

(2) Sign-up requirements: Landowners wanting to apply for private land pronghorn antelope authorizations must submit: 1) warranty deed of the property; 2) most recent tax receipt for the property; 3) a map which outlines and provides the boundary locations of the property.

(3) All signed pronghorn antelope hunt contracts must be received in the Santa Fe office by June 8.

F. Private land elk license allocation: The private land elk license allocation system may be found in 19.30.5 NMAC.

[19.31.3.9 NMAC - Rp, 19.31.3.9 NMAC, 12-30-04; A, 6-15-06]

19.31.3.11 RESTRICTIONS:

A. One license per big game species per year: It shall be unlawful for anyone to hold more than one permit or license for any one big game species during the current license year unless otherwise allowed by rule.

B. Valid dates of license or permit: All permits or licenses shall be valid only for the specified dates, legal sporting arms, bag limit and area. Except that a permit or license will be valid on the contiguous deeded land of private property that extends into an adjacent GMU or AMU, that is open to hunting for that species, when the license holder is in possession of current, valid written permission from the appropriate landowner. This exception shall only apply when the adjacent unit has the same restrictions as to

weapon type, bag limit, season dates and license availability.

C. Rocky Mountain bighorn sheep - once-in-a-lifetime hunts:

It shall be unlawful for anyone to apply for a Rocky Mountain bighorn sheep license if one has previously held a license to hunt Rocky Mountain bighorn sheep in New Mexico, including the youth-only bighorn hunt. However, a person that has received the youth-only license is allowed to apply for the regular once-in-a lifetime bighorn hunts as long as they are eligible. Exception: An applicant is eligible to submit a bid for the special bighorn auction and raffle licenses whether or not he/she has previously held a license to hunt Rocky Mountain or desert bighorn sheep in New Mexico.

D. Desert bighorn sheep - once-in-a-lifetime: It shall be unlawful for anyone to apply for a desert mountain bighorn sheep license if one has previously held a license to hunt desert mountain bighorn sheep in New Mexico. Exception: An applicant is eligible to submit a bid for the special bighorn auction and raffle licenses whether or not he/she has previously held a license to hunt Rocky Mountain or desert bighorn sheep in New Mexico.

E. [RESERVED]

F. Ibex - once-in-a-lifetime: It shall be unlawful for anyone to apply for a once in a lifetime ibex license if he/she ever held a once in a lifetime license to hunt ibex. Youth ibex hunts, year-round off-mountain hunts, and hunts for female or immature (FIM) ibex, as designated in 19.31.8 NMAC, are not once-in-a-lifetime hunts.

G. Oryx - once-in-a lifetime: It shall be unlawful, beginning April 1, 1993, for anyone to apply for an oryx license if he/she ever held a "once-in-a-lifetime" license to hunt oryx. Exception: Depredation population reduction oryx hunts, youth oryx hunts and incentive hunts are not once-in-a-lifetime hunts.

H. Valle Vidal (as described in Subsection A of 19.30.4.11 NMAC):

(1) It shall be unlawful for anyone to apply for a license to hunt bull elk on the Valle Vidal if he/she has ever held a license allowing them to take a bull elk on the Valle Vidal since 1983. This restriction applies to all licenses valid for a bag limit of mature bull (MB), either sex (ES) or mature bull/antlerless (MB/A). It shall be unlawful for anyone to apply for a license to hunt antlerless elk on the Valle Vidal if he/she has ever held a Valle Vidal elk license valid for a bag limit of antlerless since 1983. Either sex (ES) or mature bull/antlerless (MB/A) shall not be considered as an "antlerless" license for this restriction. Persons who have held a Valle Vidal elk

license through any incentive program are exempt from this restriction.

(2) It shall be unlawful to hunt bear on the Valle Vidal except for properly licensed bear hunters that possess a Valle Vidal elk hunting muzzleloader, bow, or rifle license and only during the dates of the elk hunt specified. Use of dogs shall not be allowed for bear hunting on the Valle Vidal.

I. Transfer of permits or licenses: The director may grant the transfer of a hunting license or permit once it has been determined that a licensee or their official representative provides written, verifiable information indicating the licensee has; died, sustained an injury or life-threatening illness, or has been subject to deployment by the United States military that prohibits the licensee from hunting. When a transfer of a license results in a higher license fee due to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit.

J. Refunds: The director may grant the refund of a hunting license once it has been determined that a licensee or their official representative provides written, verifiable information indicating the licensee has; died, sustained an injury or life-threatening illness, or has been subject to deployment by the United States military that prohibits the licensee from hunting.

K. Donation of permits or licenses: Upon written request from a licensee or their official representative, the director may grant the donation of a hunting license for transfer to a person who has been qualified through a nonprofit wish-granting organization. The donor of the license shall not be eligible for a refund of license or application fees. When a transfer of a license results in a higher license fee due to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit. The state game commission must approve any nonprofit wish-granting organizations that identify and submit recipients for donated licenses or permits. However, any once-in-a-lifetime licensee may be re-instated as eligible to participate in future drawings for the same species and hunt type if the licensee donated his or her license to an individual qualified by an approved nonprofit wish granting organization. Donation of a once-in-a-lifetime license will not prohibit the donor from applying for and receiving another license for the same species and restrictions in the future.

L. More than one application: It shall be unlawful to submit more than one application per species for any license issued through a special drawing, unless otherwise permitted by regulation. Exception: An individual may apply for

both a population reduction hunt on public or private land and a special drawing hunt. However, an applicant shall follow the application procedures outlined in 19.31.3.8 NMAC.

M. Deer hunts: It shall be unlawful for any person who is issued a deer hunting permit:

(1) to hunt with any sporting arms type other than that for which his/her deer permit is validated;

(2) to hunt during any season other than that for which his/her deer permit is validated;

(3) to hunt in any GMU other than that for which his/her deer permit is validated;

(4) to hunt deer on public land in any GMU with a private land deer permit, except in conjunction with this subsection, if it is on state land where there is a valid agreement for unitizing state leased and privately owned or leased lands; or

(5) to hunt private property without possessing a valid deer permit, the proper deer license and written permission.

N. Handicapped fishing or handicapped general hunting license qualifications: To hold a handicapped fishing or handicapped general hunting license, the individual must be a resident of New Mexico and must show proof of a severe disability by reason of one or more physical disabilities resulting from amputation, arthritis, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, muscular dystrophy, musculoskeletal disorders, neurological disorders, paraplegia, quadriplegia and other spinal cord conditions, sickle cell anemia, and end-stage renal disease, or who has a combination of permanent disabilities which cause comparable substantial functional limitation. Reasonable accommodation will be made, relating to these licenses, upon request.

O. Mobility impaired (MI) deer, elk or antelope license qualifications: To hold a mobility impaired deer, elk or antelope license, a person must submit verifiable documentation on the proper department form that is attested to by a certified medical physician that the individual has a mobility restriction which limits their activity to a walker, wheelchair, or two crutches, or severely restricts the movement in both arms or who has a combination of permanent disabilities which cause comparable substantial functional limitation and then obtain department approval for MI hunt eligibility.

(1) Every person qualified as MI shall have their card/eligibility expire 48 months from the department's approval date or issuance date, whichever is later, and must resubmit their application and obtain department approval as required above prior to being eligible to apply for any MI hunt.

(2) All current MI card holders shall have their card expire on March 15, 2007 and must resubmit on the proper department form and obtain department approval prior to being eligible to apply for MI designated hunt codes.

P. One deer permit per year: It shall be unlawful for anyone to hold more than one deer permit during the current license year.

Q. Youth hunts: Only applicants who have not reached their 18th birthday by the opening day of the hunt are eligible to apply for or participate in a youth only hunt. Applicant for firearm hunts must provide hunter education certificate number on application.

R. Bear entry hunt: It shall be unlawful to hunt bear in designated wildlife areas without having a valid bear entry permit and a valid license in the hunter's possession. Bear entry hunters shall be allowed to hunt any other bear hunt provided they have a valid license and tag.

S. An individual making license application shall supply the department on the appropriate form with all required personal information including, but not limited to name, address, date-of-birth, last four digits of his/her social security number prior to an application form being processed or a license being awarded.

T. It shall be unlawful to hunt pheasant in Valencia county without possessing a valid pheasant permit, the proper license and written permission.

(1) Exception: A hunter with a Valencia county pheasant north hunt or south hunt area permit is not required to have written permission for these specific hunt areas.

(2) It is unlawful for a hunter that successfully draws a Valencia county pheasant north hunt or south hunt to hunt any other area or property outside of the designated hunt area in Valencia county that same season.

U. GMU 4 and 5A private land only hunts: Deer hunt applicants in GMUs 4 and 5A must obtain a special application from landowner. GMU 4 and 5A landowners may be required to provide proof of land ownership to obtain special application forms.

V. Military only hunts: Applicants must be full time active military and proof of military status must accompany application.

W. Penalty assessments: When a person is issued a penalty assessment citation for fishing without a license or hunting small game without a license, the citation will serve as a special permit for that specific activity for fifteen (15) calendar days. The person must remit the prescribed penalty amount indicated on the face of the citation within thirty (30) days of

the date of citation issuance.

[19.31.3.11 NMAC - Rp, 19.31.3.11 NMAC, 12-30-04; A, 6-30-05; A, 9-30-05; A, 10-31-05; A, 3-31-06; A, 6-15-06]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an emergency amendment to 19.31.4 NMAC, Section 11, effective May 31, 2006.

19.31.4.11 DAILY BAG AND POSSESSION LIMITS:

A. Trout

(1) Waters with reduced bag limit:

No person shall fish waters regulated for reduced limits while having in excess of that limit in possession.

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

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

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

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

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

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

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

imately 1/2 mile above the confluence of the Mora river (Mora-Pecos) upstream to approximately 1/4 mile above the bridge crossing at Cowles; In Rio Arriba county: a posted portion of the Chama river approximately 2.9 miles within the boundaries of the Rio Chama wildlife and fishing area; In Catron county: a posted portion of Gilita creek from the Gila wilderness boundary downstream approximately 5 miles to its confluence with Snow creek; In Rio Arriba county: a posted portion of the Rio de los Pinos from USFS Boundary 24 at the junction of forest road 284 and 87A, 2.5 miles upstream to the private property boundary; In Taos county: a posted portion of Red River from the confluence of Goose creek 1 mile upstream.

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

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

stream on the Valle Vidal (Vermejo tract - Carson national forest).

(d) In Colfax county: on a posted section of the Cimarron river from the lower end of Tolby campground downstream approximately 1.4 miles to the first bridge of N.M. 64 the daily bag limit shall be 1 fish and no more than one fish may be in possession.

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

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

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

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

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

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

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

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

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

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

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

B. Warm-water fishes:

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

(1) striped bass 3 fish;

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

(3) walleye 5 fish;

(4) crappie 20 fish;

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

(6) northern pike 10 fish;

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

(8) yellow perch 30 fish;

(9) all other warm-water game

species 20 fish.

C. The following exception shall apply:

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

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

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

(4) In Eddy county, the Pecos river beginning at the north boundary of Brantley wildlife management area to Brantley reservoir dam including Brantley reservoir, all fish caught must immediately be released, except during official fishing tournaments during which fish may be held in a live well until they are weighed and measured, on site, and then immediately released back into the lake.

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

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.10 NMAC, Section 20, effective 6-15-2006.

19.31.10.20 AREAS CLOSED TO HUNTING, FISHING AND TRAPPING:

The following areas shall remain closed to hunting, fishing, and trapping, except as permitted by regulation.

A. Sugarite canyon state park.

B. Rio Grande wild and scenic river area, including the Taos valley overlook.

C. All wildlife management areas.

D. Valle Vidal area.

E. Sub-Unit 6B (Valles Caldera national preserve)

[4-1-95; 1-29-99; 19.31.1.20 NMAC - Rn, 19 NMAC 31.1.20, 4-14-2000; 19.31.10.20 NMAC - Rn, 19.31.1.20 NMAC, 9-29-00; A, 10-11-02; A, 4-1-05; A, 6-15-06]

NEW MEXICO GENERAL SERVICES DEPARTMENT RISK MANAGEMENT DIVISION

TITLE 13 INSURANCE CHAPTER 10 HEALTH INSURANCE PART 20 SMALL EMPLOYER HEALTH CARE COVERAGE

13.10.20.1 ISSUING AGENCY: General Services Department - Risk Management Division. [13.10.20.1 NMAC - N, 7/1/2006]

13.10.20.2 SCOPE:
A. This rule applies to all persons/businesses participating in the program offered in the state of New Mexico through the risk management division of the general services department.
B. This rule applies to the calculation and collection of premiums to be charged to all participants in the program.

[13.10.20.2 NMAC - N, 7/1/2006]

13.10.20.3 STATUTORY AUTHORITY: This rule is adopted pursuant to Section 10-7B-6(B) NMSA 1978 which, among other things, authorizes the risk management division to promulgate regulations to implement the provisions of Section 10-7B-6.1 NMSA 1978.

[13.10.20.3 NMAC - N, 7/1/2006]
 [Note: According to the notes contained in the annotated 2005 cumulative supplement to Section 10-7B-6.1 NMSA 1978, "Laws 2005, Ch. 305, Section 7, effective July 1, 2005, adds a temporary provision which provides that by January 1, 2010, the superintendent of insurance shall promulgate rules to allow participating small employers and persons and dependents eligible pursuant to this act to participate in the coverage afforded pursuant to the Health Insurance Alliance Act and recommend statutory changes to the Health Insurance Alliance Act as may be needed."]

13.10.20.4 DURATION: This rule will terminate on or before July 1, 2010 as provided by the duration and effective date terms of a future replacement rule to be promulgated by the superintendent on or before January 1, 2010 pursuant to the temporary provision contained in Laws 2005, Chapter 305, Section 7. [13.10.20.4 NMAC - N, 7/1/2006]

13.10.20.5 EFFECTIVE DATE: July 1, 2006, unless a later date is cited at the end of a section. [13.10.20.5 NMAC - N, 7/1/2006]

13.10.20.6 OBJECTIVE: The

purpose of this rule is to implement small employer health care coverage as provided by Section 10-7B-6.1 NMSA 1978. [13.10.20.6 NMAC - N, 7/1/2006]

13.10.20.7 DEFINITIONS: As used in this rule:

A. "director" means the director of the risk management division of the general services department;

B. "group benefits act" means the state of New Mexico statutory law defined in Section 10-7B-1 NMSA 1978;

C. "GSD" means the New Mexico general services department;

D. "program" means small employers insurance program;

E. "small employer" means a person having for-profit or non-profit status that employs an average of fifty or fewer persons over a twelve-month period; and

F. "superintendent" means superintendent of insurance as defined by Section 59A-1-12 NMSA 1978. [13.10.20.7 NMAC - N, 7/1/2006]

13.10.20.8 ADMINISTRATION: As to any of the following administration actions, GSD may delegate, by the terms of a valid joint powers agreement or other legal process, the duties of the administration of the program to another state agency determined by GSD to be capable of administering the program, or GSD may delegate those duties to a third-party administrator pursuant to the procedures required by the New Mexico procurement code.

A. Insurance coverage may be procured, as authorized by Section 15-7-3 (A) (2) NMSA 1978 and by utilizing existing procurement code procedures, by entering into an agreement with a small employer, as authorized by Section 10-7B-6.1 (A) NMSA 1978, to voluntarily purchase health care coverage offered pursuant to the group benefits act for persons and dependents eligible through the small employer. The director shall undertake such other activities as are necessary or proper to carry out the provisions and purposes of the program. The director may employ such persons, firms or corporations to perform such administrative or other functions as are necessary for the operations of the program.

B. As authorized by Section 10-7B-6.1 (B), the director may enter into agreements with an association, cooperative or mutual alliance representing small employers to provide outreach and assistance for small employers to voluntarily purchase health care coverage offered pursuant to the group benefits act for persons and dependents eligible through the small employer.

C. The director shall only permit voluntary purchase of health care coverage by small employers if the small employer has not offered health care coverage to persons and dependents eligible through a small employer for a period of at least twelve months prior to enrollment in the coverage offered pursuant to the group benefits act, not inclusive of a government sponsored health benefit program.

D. The following administrative procedures shall be taken:

(1) program design standards shall be established to include the types, extent, nature and description of coverages; specific eligibility and enrollment rules (including, but not limited to, effective dates of coverage, coverage options, payroll deductions, change of status situations, coverage changes, reinstatements, termination of coverage and refunds) for participation by small employers, their employees and the dependents of the employees; the deductibles; the premium rates to be charged; the amount of reserves necessary to be retained to ensure an actuarially sound plan; and all other matters reasonably necessary to carry on or administer the program; and the director shall establish the program plan design, either by recommendation to the director or on the director's own determination, to incorporate elements deemed appropriate by the director, by regulation or by letter of administration prepared with the advice of the group benefits committee as provided by Section 10-7B-6 (B) NMSA 1978;

(2) the director shall procure contracts with health care providers for the program pursuant to the terms of Subsection A of 13.10.20.8 NMAC either by recommendation to or on the director's own determination;

(3) either upon recommendation to or on the director's own determination, agreements with small employers shall be entered to voluntarily purchase health care coverage offered pursuant to the group benefits act for persons and dependents eligible through the small employer, as authorized by Sections 15-7-3 (A) (1) and 10-7B-6.1 (A) NMSA 1978;

(4) information about the program shall be disseminated to interested and eligible small employers and their employees;

(5) orientation of new employees and continued communication with ongoing employees in the program shall be conducted; and

(6) accurate record keeping, including insurance files, claim files, and files for eligible participants shall be kept and maintained.

[13.10.20.8 NMAC - N, 7/1/2006]

13.10.20.9 FUNDING:

A. Creation of a Separate Account.

(1) A separate account shall be maintained for small employers that voluntarily elect to purchase health care coverage offered pursuant to the group benefits act to provide separate accounting, payment and private funding of health care coverage for small employers.

(2) The funds in the small employers account shall be maintained separately in actuarially sound condition as evidenced by an annual written certification of a qualified actuary, including verification that the premiums charged are actuarially sound in relation to the benefits provided. This certification shall be filed with the superintendent.

(3) The director shall ensure that the administration and operation of the program is in accordance with the applicable federal and state requirements and regulations for such funds.

B. Premiums/Fees.

(1) The fund may accept private funding for health care coverage for small employers.

(2) The premium for each insurer shall be determined by the director.

(a) Each year, the director shall determine the premium for those eligible participants in this program, being premiums less administrative expense allowances, pool expenses and claim expense losses for the year taking into account investment income and other appropriate gains and losses.

(b) The premiums charged shall be actuarially sound in relation to the benefits provided.

(3) A one time sign-up fee may be charged by the director for each small employer eligible to participate in the coverage offered by this program. This fee may be refunded to the participating small employer after three years of program participation, and if the small employer account has generated enough revenues to support such a refund without jeopardizing the actuarially sound condition of the account.

[13.10.20.9 NMAC - N, 7/1/2006]

13.10.20.10 GENERAL ELIGIBILITY CRITERIA: To participate in the program, participants must be:

A. employed by a New Mexico based small employer; and

B. the small employer may not have offered health care coverage to persons and dependents for a period of at least twelve months prior to enrollment in the coverage offered under the program, not inclusive of a government sponsored health benefit program.

[13.10.20.10 NMAC - N, 7/1/2006]

13.10.20.11 PROGRAM TRANSITIONING:

A. This rule is repealed effective July 1, 2010.

B. By January 1, 2010, the director, in coordination with the superintendent and the New Mexico health insurance alliance shall coordinate the promulgation of a rule to replace 13.10.20 NMAC to allow participating small employers and persons and dependents eligible for the program to participate in the coverage afforded pursuant to the Health Insurance Alliance Act.

C. By January 1, 2010, the director, in coordination with the superintendent and the New Mexico health insurance alliance shall recommend statutory changes to the health insurance alliance act, as may be needed for the successful transition of eligible participants from the program to the coverage afforded pursuant to the Health Insurance Alliance Act.

[13.10.20.11 NMAC - N, 7/1/2006]

History of 13.10.20 NMAC: [RESERVED]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

This is an amendment to 8.200.510 NMAC, Section 12, which will be effective on July 1, 2006. The Medical Assistance Division amended the subsections by changing the deduction amounts.

8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT): Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

<u>DEDUCTION</u>	<u>AMOUNT</u>
A. Personal needs allowance for institutionalized spouse	[\$54] \$57
B. Basic community spouse monthly income allowance standard	[\$1,604]

\$1,650

(CSMIA)

(CSMIA standard minus income of community spouse = deduction

C. * Excess shelter allowance for allowable expenses for ~~[\$885]~~ \$839
community spouse

D. ** Extra maintenance allowance

E. Dependent family member $1/3 \times$ (CSMIA - dependent member's income)

F. Non-covered medical expenses

G. * The allowable shelter expenses of the community spouse must exceed ~~[\$482]~~

\$495 per month

for any deduction to apply.

H. ** To be deducted, the extra maintenance allowance for the community spouse

must

be ordered by a court of jurisdiction or a state administrative hearing officer.

I. **MAXIMUM TOTAL:** The maximum total of the community spouse monthly income allowance and excess shelter deduction is \$2,489.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.12 NMAC - Rn, 8 NMAC 4.MAD.510.2 & A, 1-1-01, 7-1-01; A, 1-1-02; A, 7-1-02; A, 1-1-03; A, 7-1-03; A, 1-1-04; A, 7-1-04; A, 1-1-05; A, 7-1-05; A, 1-1-06; A, 7-1-06]

NEW MEXICO MEDICAL BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS PART 17 MANAGEMENT OF MEDICAL RECORDS

16.10.17.1 ISSUING AGENCY.

New Mexico Medical Board hereafter called the board.

[16.10.17.1 NMAC - N, 7/1/06]

16.10.17.2 SCOPE.

This part governs the use management of medical records that are created and maintained as part of the practice of a physician who has physical possession or ownership of the records.

[16.10.17.2 NMAC - N, 7/1/06]

16.10.17.3 STATUTORY AUTHORITY.

These rules are promulgated pursuant to and in accordance with the Medical Practice Act, sections 61-6-1 through 61-6-35 NMSA 1978.

[16.10.17.3 NMAC - N, 7/1/06]

16.10.17.4 DURATION.

Permanent

[16.10.17.4 NMAC - N, 7/1/06]

16.10.17.5 EFFECTIVE DATE.

July 1, 2006, unless a later date is cited at the end of a section.

[16.10.17.5 NMAC - N, 7/1/06]

16.10.17.6 OBJECTIVE.

This part establishes requirements and procedures for management of medical records.

[16.10.17.6 NMAC - N, 7/1/06]

16.10.17.7 DEFINITIONS.

A. "Medical record"

means all information maintained by a physician relating to the past, present or future physical or mental health of a patient, and for the provision of health care to a patient. This information includes, but is not limited to, the physician's notes, reports and summaries, and x-rays and laboratory and other diagnostic test results. A patient's complete medical record includes information generated and maintained by the physician, as well as information provided to the physician by the patient, by any other physician who has consulted with or treated the patient, and other information acquired by the physician about the patient in connection with the provision of health care to the patient.

B. "Psychotherapy notes"

means notes recorded in any medium by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest if the individual's medical record. Psychotherapy notes exclude information that is found in the medical record, including medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis and progress to date. To meet the definition of psychotherapy notes, the information must be separated from the rest of the individual's medical record.

[16.10.17.7 NMAC - N, 7/1/06]

16.10.17.8 RELEASE OF MEDICAL RECORDS.

Physicians must provide complete copies of medical records to a patient or to another physician in a timely manner when legally requested to do so by the patient or by a legally designated representative of the patient. This should occur

with a minimum of disruption in the continuity and quality of medical care being provided to the patient. If the medical records are the property of a separate and independent organization, the physician should act as the patient's advocate and work to facilitate the patient's request for records.

A. Medical records may not be withheld because an account is overdue or a bill for treatment, medical records, or other services is owed.

B. A reasonable cost-based charge may be made for the cost of duplicating and mailing medical records. A reasonable charge is not more than \$15 for the first 15 pages, and \$0.10 per page thereafter. Patients may be charged the actual cost of reproduction for electronic records and record formats other than paper, such as x-rays. The board will review the reasonable charge periodically. Physicians charging for the cost of reproduction of medical records shall give consideration to the ethical and professional duties owed to other physicians and their patients.

C. Psychotherapy notes must be maintained separately from the patient's medical record, and may be withheld from the patient. The patient does not have the right to read, amend or have a copy of psychotherapy notes. Release of psychotherapy notes to other health care providers requires express authorization from the patient.

[16.10.17.8 NMAC - N, 7/1/06]

16.10.17.9 CLOSING, SELLING, RELOCATING OR LEAVING A PRACTICE.

Due care should be taken when closing or departing from a practice to ensure a smooth transition from the current physician to the new treating physician. This should occur with a minimum of disruption in the continuity and quality of medical care being provided to the patient. Whenever possible, notification of patients is the responsibility of the current treating physician.

A. Whenever possible, active patients and patients seen within the previous three years must be notified at least 30 days before closing, selling, relocating or leaving a practice.

B. Whenever possible, patients should be notified within at least 30 days after the death of their physician.

C. Notification shall be through a notice in newspaper in the local practice area, and should include responsible entity/agent name of contact to obtain records or request transfer of records, telephone number and mailing address. To reach a maximum number of patients, the notification must run a minimum of two times per month for three months. In addition to a notice in the newspaper, notification may also be through an individual let-

ter to the patient's last known address. Notification shall also be sent to the board.

D. A physician or physician group should not withhold patient lists or other information from a departing physician that is necessary for notification of patients.

E. Patients of a physician who leaves a group practice must be notified the physician is leaving, notified of the physician's new address and offered the opportunity to have their medical records transferred to the departing physician at his new practice.

F. When a practice is sold, all active patients must be notified that the physician is transferring the practice to another physician or entity who will retain custody of their records and that at their written request the records (or copies) will be sent to another physician or entity of their choice.

[16.10.17.9 NMAC - N, 7/1/06]

16.10.17.10 RETENTION, MAINTENANCE AND DESTRUCTION OF MEDICAL RECORDS.

A. Improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records constitutes a violation of 61-6-15.D(33). Physicians must provide every patient with a written copy of their policy or their employer's policy for medical record retention, maintenance and destruction.

B. Written medical record policy shall include:

(1) responsible entity/agent name of contact to obtain records or request transfer of records, telephone number and mailing address;

(2) how the records can be obtained or transferred;

(3) how long the records will be maintained before they are destroyed; and

(4) cost of obtaining copies of records, and of recovering records/transferring records.

C. Physicians must retain medical records that they own for at least 2 years beyond what is required by state insurance laws and by medicare and medicaid regulations. Medical records for patients who are minors must be retained for at least 2 years beyond the date that the patient is 18 years old.

D. The board adopts the ethical standards for medical record retention and maintenance set forth in the latest published version of the "code of medical ethics current opinions with annotations" of the council on ethical and judicial affairs of the American medical association. Physicians have an obligation to retain patient records which may reasonably be of value to a patient. Beyond the time frame

established in subsection B (above), medical considerations are the primary basis for deciding how long to retain medical records. In deciding whether to keep certain parts of the record, an appropriate criterion is whether a physician would want the information if he or she were seeing the patient for the first time. For example, operative notes, chemotherapy records and immunization records must remain part of the patient's chart.

E. Destruction of medical records must be such that confidentiality is maintained. Records must be destroyed by shredding, incinerating (where permitted) or by other method of permanent destruction.

F. A log must be kept of all charts destroyed, including the patient's name and date of record destruction.

[16.10.17.10 NMAC - N, 7/1/06]

History of 16.10.17 NMAC: [Reserved]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.2 NMAC, Sections 7, 9, 10, 11, 12, 14, 15, and 16, Effective July 1, 2006. Section 17 is new.

16.10.2.7 DEFINITIONS.

A. "Board approved school" means a medical school that has been approved by the liaison committee on medical education, composed of the American medical association and the association of American medical colleges, has a liaison council on medical education (LCME)-approved curriculum or equivalent for graduates of Canadian schools, is on the approved list of the California state medical board, or has been approved by the board.

B. "Board approved training program" means a program approved by the accrediting council on graduate medical education of the American medical association (ACGME), the royal collage of physicians and surgeons of Canada (RCPSC), or a residency program located within an ACGME approved institution that has been approved by the board.

C. "HSC" means the hospital services corporation, a New Mexico corporation, and a credential verification organization certified by the national commission on quality assurance (NCQA).

D. "FCVS" means the federation credential verification service of the federation of state medical boards.

E. "Major disaster" means a declaration of a major disaster by the federal emergency management agency (FEMA).

F. "Nationwide criminal history record," information concerning a

person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information in other states."

G. "Nationwide criminal history screening," a criminal history background investigation of an applicant for licensure by examination or endorsement through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant."

[F.]H. "Telemedicine" means the practice of medicine across state lines as defined in the Medical Practice Act, Section 61-6-6, K NMSA 1978.

[16.10.2.7 NMAC - Rp 16 NMAC 10.2.7, 4/18/02; A, 1/20/03, A, 10/7/05; A, 12/30/05; A, 7/1/06]

16.10.2.9 MEDICAL LICENSE BY EXAMINATION.

A. Prerequisites for licensure. Each applicant for a license to practice as a medical doctor in New Mexico must possess the following qualifications:

(1) graduated and received a diploma from a board approved school, completed a program determined by the board to be substantially equivalent to a U.S. medical school, based on board review of an evaluation by a board approved credential evaluation service, or is a graduate of a medical school located outside the United States who successfully completes two years or more of an approved postgraduate training program at an institution located in New Mexico prior to December 30, 2007;

(2) successfully passed one of the examinations or combinations of examinations defined in 16.10.3 NMAC; and

(3) completed two years of postgraduate training or been approved by the board in accordance with the provisions of Section 61-6-11, B NMSA 1978;

(4) when the board has reason to believe that an applicant for licensure is not competent to practice medicine it may require the applicant to complete a special competency examination or to be evaluated for competence by other means that have been approved by the board; and

(5) a qualified applicant who has not been actively and continuously in practice for more than 2 years prior to applica-

tion may be required to successfully complete a special examination or evaluation such as, but not limited to, the SPEX (special purpose examination), the PLAS (post-licensure assessment system of the federation of state medical boards), or specialty re-certification.

B. Required documentation for all applicants. Each applicant for a license must submit the required fees as specified in 16.10.9.8 NMAC and the following documentation:

(1) a completed signed application [~~signed and notarized~~] with a passport-quality photo taken within the previous 6 months; applications are valid for 1 year from the date of receipt by the board;

(2) verification of licensure in all states or territories where the applicant holds or has held a license to practice medicine, or other health care profession; verification must be received directly from the other state board(s), and must attest to the status, issue date, license number, and other information requested and contained on the form; this information will be provided by HSC for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board;

(3) two recommendation forms from physicians, chiefs of staff or department chairs or equivalent with whom the applicant has worked and who have personal knowledge of the applicant's character and competence to practice medicine; the recommending physicians must have personally known the applicant and have had the opportunity to personally observe the applicant's ability and performance; forms must be sent directly to the board from the recommending physician; this information will be provided by HSC for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board;

(4) verification of all work experience and hospital affiliations in the last five years, if applicable, not to include postgraduate training; this information will be provided by HSC for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board;

(5) a copy of all ABMS specialty board certifications, if applicable; this information will be provided by HSC for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board; and

(6) the board may request that applicants be investigated by the biographical section of the American medical association, the drug enforcement administration, the federation of state medical boards, the national practitioner data bank, and other

sources as may be deemed appropriate by the board;

(7) applicants who are not United States citizens must provide proof that they are in compliance with the immigration laws of the United States.

C. Additional documentation for applicants using the FCVS.

Applicants are encouraged to use the FCVS as once a credential file is created future applications for medical licensure will be streamlined. However, application through FCVS is not required. Applicants using the FCVS must submit a completed application to the FCVS, who will provide primary source documentation to the board. Only the documents required in Subsection B of 16.10.2.9 are required in addition to the FCVS report.

D. Additional documentation for applicants using HSC.

(1) status report of ECFMG certification sent directly to the board from ECFMG, if applicable;

(2) copy of ECFMG interim letter documenting additional postgraduate training for international medical graduates applying through the fifth pathway process, if applicable;

(3) certified transcripts of exam scores as required in 16.10.3 NMAC sent directly to the board from the testing agency;

(4) proof of identity may be required; acceptable documents include birth certificate, passport, naturalization documents, and visas.

E. Additional documentation for applicants applying directly to New Mexico and not using FCVS or HSC.

(1) verification of medical education form with school seal or notarized, sent directly to the board from the school;

(2) transcripts sent directly to the board from the medical school;

(3) status report of ECFMG certification sent directly to the board from ECFMG, if applicable;

(4) copy of ECFMG interim letter documenting additional postgraduate training for international medical graduates applying through the fifth pathway process, if applicable;

(5) postgraduate training form sent to the board directly from the training program;

(6) certified transcripts of exam scores as required in 16.10.3 NMAC sent directly to the board from the testing agency; and

(7) proof of identity may be required; acceptable documents include birth certificate, passport, naturalization documents, and visas;

(8) certified copies of source documents obtained directly from another state

licensing jurisdiction who has the original document on file will be accepted in lieu of original documents when the originals cannot be obtained for a valid cause.

F. Licensure process.

Upon receipt of a completed application, including all required documentation and fees, the applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board and must present original documents as requested by the board. The initial license will be issued following completion of any required interview, and/or approval by a member or agent of the board.

G. Initial license expiration. Medical licenses shall be renewed on July 1 following the date of issue. Initial licenses are valid for a period of not more than thirteen months or less than one month. [16.10.2.9 NMAC - N, 5/1/02; A, 1/20/03; A, 7/1/03; A, 4/3/05; A, 10/7/05; A, 7/1/06]

16.10.2.10 MEDICAL LICENSE BY ENDORSEMENT.

A. Prerequisites for licensure. Each applicant for a license to practice as a medical doctor in New Mexico by endorsement must be of good moral character, hold a full and unrestricted license to practice medicine in another state, and possess the following qualifications:

(1) have practiced medicine in the United States or Canada immediately preceding the application for at least three years;

(2) be free of disciplinary history, license restrictions, or pending investigations in all jurisdictions where a medical license is or has been held;

(3) graduated from a board approved school or hold current educational commission for foreign medical graduates (ECFMG) certification; and

(4) current certification from a medical specialty board recognized by the American board of medical specialties (ABMS).

B. Required documentation for all applicants. Each applicant for a license must submit the required fees as specified in 16.10.9.8 NMAC and the following documentation:

(1) a completed signed application [~~signed and notarized~~] with a passport-quality photo taken within the previous 6 months; applications are valid for 1 year from the date of receipt by the board;

(2) verification of licensure in all states or territories where the applicant holds or has held a license to practice medicine, or other health care profession; verification must be received directly from the other state board(s), and must attest to the status, issue date, license number, and other information requested and contained on the form;

(3) two recommendation forms from physicians, chiefs of staff or department chairs or equivalent with whom the applicant has worked and who have personal knowledge of the applicant's character and competence to practice medicine; the recommending physicians must have personally known the applicant and have had the opportunity to personally observe the applicant's ability and performance; forms must be sent directly to the board from the recommending physician; this information will be provided by HSC for applicants using that service, or directly to the New Mexico medical board;

(4) verification of all work experience and hospital affiliations in the last five years, if applicable, not to include postgraduate training; this information will be provided by HSC for applicants using that service, or directly to the New Mexico medical board;

(5) a copy of all ABMS specialty board certifications, if applicable; this information will be provided by HSC for applicants using that service, or directly to the New Mexico medical board; and

(6) the board may request that applicants be investigated by the biographical section of the American medical association, the drug enforcement administration, the federation of state medical boards, the national practitioner data bank, and other sources as may be deemed appropriate by the board;

(7) applicants who are not U.S. citizens must provide proof that they are in compliance with the immigration laws of the United States.

C. Licensure process. Upon receipt of a completed application, including all required documentation and fees, the applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board and must present original documents as requested by the board. The initial license will be issued following completion of any required interview, and/or approval by a member or agent of the board.

D. Initial license expiration. Medical licenses shall be renewed on July 1 following the date of issue. Initial licenses are valid for a period of not more than thirteen months or less than one month. [16.10.2.10 NMAC - N, 1/20/03; A, 7/1/03; A, 4/3/05; A, 10/7/05; A, 7/1/06]

16.10.2.11 TELEMEDICINE LICENSE.

A. Prerequisites for licensure. Each applicant for a telemedicine license must be of good moral character and hold a full and unrestricted license to practice medicine in another state or territory of the United States.

B. Required documenta-

tion. Each applicant for a telemedicine license must submit the required fees as specified in 16.10.9.8 NMAC and the following documentation.

(1) ~~[Completed application, signed and notarized]~~ A completed signed application, with a passport quality photo taken within 6 months. Applications are valid for 1 year from the date of receipt.

(2) Verification of licensure in all states where the applicant holds or has held a license to practice medicine, or other health care profession. Verification must be received directly from the other state(s) board, and must attest to the status, issue date, license number, and other information requested and contained on the form.

(3) Applicants who have had previous disciplinary or other action against them may be required to meet with the entire board. The board may, in its discretion, issue a license to practice medicine across state lines if it finds that the previous disciplinary or other action does not indicate that the physician is a potential threat to the public.

C. Licensure process.

Upon receipt of a completed application, including all required documentation and fees, board staff will request and review an AMA physician profile and federation of state medical boards board action databank search. When the application is complete the secretary-treasurer or board designee will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved.

D. Initial license expiration. Telemedicine licenses shall be renewed on July 1 following the date of issue. Initial licenses are valid for a period of not more than thirteen months or less than one month.

E. Exemption from licensure requirements are defined in Section 61-6-17 of the Medical Practice Act and include a physician licensed to practice under the laws of another state who acts as a consultant to a New Mexico licensed physician on an irregular or infrequent basis not to exceed ten patients per year.

[16.10.2.11 NMAC - Rp 16 NMAC 10.2.13, 4/18/02; 16.10.2.11 NMAC - Rn & A, 16.10.2.10 NMAC; 1/20/03; A, 4/3/05; A, 7/1/06]

16.10.2.12 POSTGRADUATE TRAINING LICENSE.

A postgraduate training license is required for all interns, residents, and fellows enrolled in board approved training programs within the state. Individuals enrolled in board approved training programs outside of New Mexico may apply for a postgraduate training license as a pre-requisite to obtaining a New Mexico public service license.

A. Prerequisites for licensure. Each applicant for a postgraduate training license must possess the following qualifications:

(1) graduated from a board approved school or completed a program determined by the board to be substantially equivalent to a U.S. medical school, based on board review of an evaluation by a board approved credential evaluation service;

(2) passed part I of the USMLE; and

(3) be of good moral character.

B. Required documentation. Each applicant shall submit the required fee as specified in 16.10.9.8 NMAC and complete the board-approved application.

(1) Applicants enrolled at the university of New Mexico health science center must submit an application through the office of graduate medical education for review before it is forwarded to the board for review and approval.

(2) Applicants enrolled at a board approved training program outside New Mexico must submit the postgraduate training license application directly to the board.

(3) A copy of the official examination results must be attached to each application.

C. Licensure process. Upon receipt of a completed signed application and fee, the secretary-treasurer or board designee will review the application and may approve the license. The applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board.

D. License expiration: Postgraduate training licenses are valid for no longer than one year, but may be renewed for a period not to exceed eight years or completion of the residency, whichever is shorter, and as long as the license holder is enrolled in a board approved training program. Postgraduate training licenses may be renewed prior to expiration.

[16.10.2.12 NMAC - Rp, 16 NMAC 10.2.14, 4/18/02; 16.10.2.12 NMAC - Rn, 16.10.2.11 NMAC, 1/20/03; A, 10/7/05; A, 7/1/06]

16.10.2.13 PUBLIC SERVICE LICENSE.

A resident physician may apply for a public service license, which enables him to practice medicine outside the training program. The resident physician must be continuing in the board approved training program.

A. Prerequisites for licensure. Each applicant for a public service license shall have graduated from an approved medical school, passed all required examinations as defined in 16.10.3 NMAC, and completed one year of post-

graduate training. In addition, the applicant shall have completed an application for licensure including all required documentation required in 16.10.2.9.B through 16.10.2.9.E as applicable. Other requirements include:

(1) written approval from his training program director;

(2) a postgraduate training license issued by the New Mexico medical board;

(3) a resident physician with one-year postdoctoral training may only apply for a public service license when he is under the direct supervision of a New Mexico physician or when employed in a medically underserved area;

(4) if a physician is not being supervised directly, there must be procedures in place for a licensed New Mexico physician to review, on at least a quarterly basis, prescriptions written and dispensed for controlled substances and operative procedures performed.

B. Required documentation. Each applicant for a public service license shall submit the required fee as specified in 16.10.9.8 NMAC and the following documentation:

(1) ~~[completed application, signed and notarized]~~ a completed signed application, with a passport quality photo taken within the previous 6 months; applications are valid for 1 year from the date of receipt;

(2) letter of approval from the training program director.

C. Licensure process. Upon receipt of a completed application, including all required documentation and fees, the applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board and must present original documents as requested by the board. The initial license will be issued following completion of any required interview, and/or approval by a member or agent of the board.

D. License expiration. Public service licenses shall be renewed annually on September 1 as long as the applicant remains eligible.

[16.10.2.13 NMAC - Rp, 16 NMAC 10.3.9, 4/18/02; 16.10.2.13 NMAC - Rn & A, 16.10.2.12 NMAC, 1/20/03; A, 7/1/03; A, 4/3/05; A, 7/1/06]

16.10.2.14 TEMPORARY TEACHING, RESEARCH, AND SPECIALIZED DIAGNOSTIC AND TREATMENT LICENSES. The secretary-treasurer or board designee may issue a temporary license to physicians licensed in other states or jurisdictions for the purpose of teaching, conducting research, performing specialized diagnostic and treatment procedures, implementing new technology, or for physician educational purposes in

New Mexico on a temporary basis under the supervision of a New Mexico licensed physician. The following provisions apply:

A. Prerequisites for licensure. The applicant must:

(1) be otherwise qualified to practice medicine in New Mexico;

(2) hold an unrestricted license in another state or country;

(3) submit the name of the sponsoring or associating physician(s), who must be actively licensed in New Mexico.

B. Required documentation:

(1) specific program or protocol of work planned;

(2) address of sponsoring institution or organization where the work will be performed;

(3) an affidavit from the sponsoring physician attesting to the qualifications of the applicant and the purpose of the functions or medical procedures the applicant will perform;

(4) verification of licensure in state or jurisdiction where physician is practicing; and

(5) a license fee as set forth in 16.10.9 NMAC.

C. Licensure process. Upon receipt of a completed signed application, including all required documentation and fees, board staff will request and review an AMA physician profile and federation of state medical boards board action databank search. When the application is complete the secretary-treasurer or board designee will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved or if there are any actions or restrictions on any license held in another state or jurisdiction.

D. The applicant may perform only those functions listed in the application. The supervising physician must notify the board and obtain approval prior to any change in the activities of the temporary license holder.

E. The duration of a temporary teaching, research, or specialized diagnostic and treatment license shall not exceed three months, provided however that the license may be renewed up to three times upon payment of appropriate fees and written justification for the plan remaining in effect. After the third renewal of a temporary license the physician shall re-apply under the provisions of this rule.

[16.10.2.14 NMAC - Rp, 16 NMAC 10.3.8, 4/18/02; 16.10.2.14 NMAC - Rn, 16.10.2.13 NMAC, 1/20/03; A, 10/7/05; A, 7/1/06]

16.10.2.15 YOUTH CAMP OR SCHOOL LICENSES. The secretary-treasurer or board designee may approve a

temporary license for physicians to provide temporary medical services to organized youth camps or schools. Youth camp or school licenses are issued for a period not to exceed three months. Practice under the temporary license shall be limited to enrollees, leaders and employees of the camp or school. Applicants must be qualified for licensure in New Mexico and shall submit the following documentation:

A. completed signed application with a passport-quality photograph, taken within the previous 6 months, attached;

B. verification of current unrestricted license from state or jurisdiction where applicant is currently practicing or licensed;

C. verification of D.E.A. permit; and,

D. a temporary license fee as set forth in 16.10.9.8 NMAC.

E. Licensure process. Upon receipt of a completed application, including all required documentation and fees, board staff will request and review an AMA physician profile and federation of state medical boards board action databank search. When the application is complete the secretary-treasurer or board designee will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved or if there are any actions or restrictions on any license held in another state or jurisdiction.

[16.10.2.15 NMAC - Rn, 16.10.2.14 NMAC, 1/20/03; A, 10/7/05; A, 7/1/06]

16.10.2.16 PROVISIONS FOR PHYSICIAN LICENSURE DURING A DECLARED DISASTER. The board will make accommodations for physicians who have been impacted by a major disaster. Based on the nature of the disaster, the extent of the damage, and the number of individuals and institutions that have been affected, the board may waive documentation requirements for any new or pending applications when the disaster delays or prohibits the procuring of the required documents. The board may also waive any required fees for applications submitted after the major disaster. The board will determine the length of time the emergency provisions will be in effect for each major disaster that results in applications for a federal emergency license.

A. Federal emergency license by examination. Physicians currently licensed in a state in which a major disaster has been declared may be issued a federal emergency license in New Mexico. The board may waive specific documentation required in Subsection B through E of 16.10.2.9 NMAC if the applicant is unable to obtain the documentation from individu-

als or institutions located in the disaster area. Nothing in this provision shall constitute a waiver of the requirements for licensure contained in Subsection A of 16.10.2.9 NMAC.

B. Federal emergency license by endorsement. Physicians currently licensed in a state in which a major disaster has been issued a federal emergency license in New Mexico. The board may waive specific requirements of Subsection B of 16.10.2.10 NMAC if the applicant is unable to obtain the documentation from individuals or institutions located in the disaster area. Nothing in this provision shall constitute a waiver of the requirements for licensure contained in Subsection A of 16.10.2.10 NMAC. The following requirements will apply to applicants under this provision:

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

(2) the board will consider the required three years of practice experience to be met through any combination of postgraduate medical education and actual work experience;

(3) the board may waive any requirements for recommendation forms or verification of work experience forms;

(4) other required verification will be obtained online by board staff to include: current licensure status, national practitioners data bank, federation of state medical board disciplinary database, American medical association records of education and postgraduate training, and the records of the American board of medical specialties to confirm board certification status.

C. License expiration. Initial federal emergency licenses shall be valid for not less than three months or more than fifteen months. Licenses shall be renewed on July 1 following the date of issue, pursuant to 16.10.7 NMAC. The board reserves the right to request additional documentation, including but not limited to recommendation forms and work experience verification forms prior to approving license renewal. At the time a federal emergency license is approved for renewal it will be transferred to a full medical license.

[16.10.2.16 NMAC - N/E, 9/22/05; A, 12/30/05; A, 7/1/06]

16.10.2.17 NATIONWIDE CRIMINAL HISTORY SCREENING. All applicants for initial licensure in any category in New Mexico are subject to a state and national criminal history screening at their expense. All applicants must submit

two (2) full sets of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee at the time of application.

A. Applications for licensure will not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.

B. Applications will be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

C. If the criminal background screening reveals a felony or a violation of the Medical Practice Act, the applicant/licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

D. Criminal background checks completed at the request of a medical board in another state within one year prior to the date of application will be accepted in lieu of a new criminal background screening.

[16.10.2.17 NMAC - N, 7/1/06]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.7 NMAC, Sections 7, 9 and 18, Effective July 1, 2006

16.10.7.7 DEFINITIONS:

A. **"Inactive"** means a license placed in a non-working status at the request of a physician not currently practicing in New Mexico.

B. **"Retired"** means a license that has been withdrawn from active or inactive status at the physician's request. A retired license cannot be used to practice medicine in New Mexico and a retired license may not subsequently be reinstated.

C. **"Statewide criminal history record."** information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized database of the department of public safety or the repositories of criminal history information in municipal jurisdictions."

D. **"Statewide criminal history screening."** a criminal history background investigation of a licensee applying for licensure renewal through the use of social security number and date of birth submitted to the department of public safety and resulting in the generation of a

statewide criminal history record for that licensee."

~~[C]~~**E.** **"Suspended for non-payment"** means a license that has not been renewed by September 30 of the expiration year. A license that has been suspended for nonpayment is not valid for practice in New Mexico.

~~[D]~~**F.** **"Voluntarily lapsed"** means a license that is not renewed at the request of the physician.

[16.10.7.7 NMAC - N, 4/18/02; A, 4/3/05; A, 7/1/06]

16.10.7.9 RENEWAL PROCESS: To avoid additional penalty fees, a completed renewal application, accompanied by the required fees and documentation must be submitted through the online renewal system, post-marked or hand-delivered on or before July 1 of the renewal year.

A. All renewal applications will be subject to a statewide criminal history screening. Renewal applications will be processed pending the completion of the statewide criminal history screening and may be granted while the screening still pending.

B. If the statewide criminal background screening reveals a felony or a violation of the Medical Practice Act, the licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

[16.10.7.9 NMAC - N, 4/18/02; A, 4/3/05; A, 7/1/06]

16.10.7.18 REINSTATEMENT PROCESS: All applicants approved for reinstatement must pay the renewal fee indicated in 16.10.9.8 NMAC. Applicants with a license that has been placed on inactive status are not required to pay any additional fees. Applicants for reinstatement whose license has been suspended for non-payment or voluntarily lapsed must pay the reinstatement fee indicated in 16.10.9.8 NMAC in addition to the renewal fee. Reinstatement licenses are issued for a period not less than 24 months or more than 36 months from the date of approval.

A. All reinstatement applications will be subject to a statewide criminal history screening. Reinstatement applications shall be processed pending the completion of the statewide criminal history screening and may be granted while the screening still pending.

B. If the statewide criminal background screening reveals a felony or a violation of the Medical Practice Act, the licensee will be notified to submit copies of legal documents and other related

information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

[16.10.7.18 NMAC - N, 4/18/02; A, 4/3/05; A, 7/1/06]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.9 NMAC, Sections 8 and 9, Effective July 1, 2006.

16.10.9.8 PHYSICIAN FEES:

A. Application fee of \$250 for applicants providing source documentation through FCVS or HSC.

B. Application fee of \$400 for applicants applying to the board and not using the federation credential verification service.

C. Triennial license renewal fee of \$300 plus a triennial fee to support the impaired physicians program of \$100.

D. Temporary license fee for a temporary camp or school license of \$25.

E. Temporary license fee for a temporary teaching/research license of \$100.

F. Processing fee of \$25 for placing a license on inactive status.

G. Late fee of \$100 for all physicians who renew their license to active status, or provide required documentation after June 30 but no later than August 15 of the year of expiration.

H. Late fee of \$150 for physicians who renew their licenses to active status, or provide required documentation between August 16 and October 1 of the year of expiration.

I. Reinstatement fee of \$200, for reinstatement of a suspended license, which shall be in addition to other fees due and payable to the board.

J. Duplicate license fee of \$30.

K. Duplicate renewal certificate fee of \$15.

L. Postgraduate training license fee of \$10.

M. Public service license fee of \$50 annually.

N. Biennial application fee of \$100 for a physician supervising a pharmacist clinician.

O. Telemedicine initial licensing and triennial renewal fee of \$300.

P. Nationwide criminal history screening fee of \$24 per screening.

Q. Statewide criminal history fee of \$7 per screening.

[16.10.9.8 NMAC - Rp 16 NMAC 10.9.8.1, 7/15/01; A, 5/1/02; A, 7/14/02; A, 1/20/03; A, 4/3/05; A, 7/1/06]

16.10.9.9 PHYSICIAN ASSISTANT FEES:

A. Application fee of \$100.

B. Biennial renewal of licensure fee of \$100.

C. Change of primary supervising physician fee of \$25.

D. Late fee of \$25 for physician assistants who renew their license, or provide required documentation, after March 1 but by April 15 of the renewal year.

E. Late fee of \$50 for physician assistants who renew their license, or provide required documentation, between April 15 and May 30 of the renewal year.

F. Fee of \$25 for placing a physician assistants license on inactive status.

G. Renewal fee of \$75 for physician assistants renewing their license on, or prior to, August 31, 2004 for a license that is valid until March 1, 2006.

(1) A late fee of \$25 will be charged for licenses renewed after August 31, 2004 but no later than October 15, 2004.

(2) A late fee of \$50 will be charged for licenses renewed between October 15, 2004 and November 30, 2004.

H. Nationwide criminal history screening fee of \$24 per screening.

I. Statewide criminal history fee of \$7 per screening.

[16.10.9.9 NMAC - Rp 16 NMAC 10.9.8.2, 7/15/01; A, 8/6/04; A, 7/1/06]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.15 NMAC, Section 7, 9, 10 and 16, Effective July 1, 2006.

16.10.15.7 DEFINITIONS:

A. "AAPA" means American academy of physician assistants.

B. "Alternate supervising physician" means a physician who holds a current unrestricted license, is a cosignatory on the notification of supervision, agrees to act as the supervising physician in the supervising physician's absence and is approved by the board.

C. "Interim permit" means a document issued by the board that allows a physician assistant to practice pending completion of all licensing requirements.

D. "Nationwide criminal history record," means information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including con-

victions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information in other states."

E. "Nationwide criminal history screening," means a criminal history background investigation of an applicant for licensure by examination or endorsement through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant."

~~D~~E. "NCCPA" means national commission on certification of physician assistants.

~~E~~G. "Oral communication" means in person, telephonically, by two-way radio, by email or other electronic means.

~~F~~H. "Scope of practice" means duties and limitations of duties placed upon a physician assistant by their supervising physician and the board; includes the limitations implied by the field of practice of the supervising physician.

I. "Statewide criminal history record," means information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized database of the department of public safety or the repositories of criminal history information in municipal jurisdictions."

J. "Statewide criminal history screening," means a criminal history background investigation of a licensee applying for licensure renewal through the use of social security number and date of birth submitted to the department of public safety and resulting in the generation of a statewide criminal history record for that licensee."

~~G~~K. "Supervising physician" means a physician who holds a current unrestricted license, provides a notification of supervision, assumes legal responsibility for health care tasks performed by the physician assistant and is approved by the board.

~~H~~L. "Emergency supervising physician" means a physician who is responsible for the operations of a team or group of health professionals, including physician assistants, who are responding to a major disaster.

~~I~~M. "Major disaster"

means a declaration of a major disaster by the federal emergency management agency (FEMA).

[16.10.15.7 NMAC - Rp 16 NMAC 10.15.7, 7/15/01; A, 10/7/05; A, 12/30/05; A, 7/1/06]

16.10.15.9 LICENSURE PROCESS. Each applicant for a license as a physician assistant shall submit the required fees and following documentation:

A. A completed application for which the applicant has supplied all information and correspondence requested by the board on forms and in a manner acceptable to the board. Applications are valid for 1 year from the date of receipt.

B. Two letters of recommendation from physicians licensed to practice medicine in the United States or physician assistant program directors, or the director's designee, who have personal knowledge of the applicant's moral character and competence to practice. Letters of recommendation must be sent directly to the board from the individual recommending the applicant.

C. Verification of licensure in all states where the applicant holds or has held a license to practice as a physician assistant, or other health care profession. Verification must be sent directly to the board from the other state board(s). Verification must include a raised seal; attest to current status, issue date, license number, and all other related information.

D. Verification of all work experience in the last five years, if applicable, provided directly to the board.

~~**D.**~~**E.** All applicants may be required to personally appear before the board or the board's designee for an interview and must present original documents, as the board requires. The initial license will be issued following completion of any required interview, and/or approval by a member or agent of the board.

~~**E.**~~**E.** The initial license is valid until March 1 of the year following NCCPA expiration.

~~**F.**~~**G.** License by endorsement from New Mexico board of osteopathic examiners. Applicants who are currently licensed in good standing by the New Mexico board of osteopathic examiners may be licensed by endorsement upon receipt of a verification of licensure directly from the New Mexico board of osteopathic examiners, a supervising physician form signed by the M.D. who will serve as supervising or alternate supervising physician, and a fee of \$25.00.

H. All applicants for initial licensure as a physician assistant are subject to a state and national criminal history screening at their expense. All applicants

must submit two (2) full sets of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee at the time of application.

(1) Applications for licensure will not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.

(2) Applications will be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

(3) If the criminal background screening reveals a felony or a violation of the Medical Practice Act, the applicant/licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

(4) Criminal background checks completed at the request of a medical board in another state within one year prior to the date of application will be accepted in lieu of a new criminal background screening.

[16.10.15.9 NMAC - N, 7/15/01; A, 10/5/03; A, 8/6/04; A, 10/7/05; A, 7/1/06]

16.10.15.10 INTERIM PERMITS

A. ~~[Are issued to eligible applicants who have completed the application process and complied with all other requirements except certification by the NCCPA.]~~ Interim permits are issued to eligible applicants who have completed the application process and complied with all other licensure requirements except certification by the NCCPA.

B. Physician assistants not currently certified by NCCPA have a one-time grace period of one-year from the date of graduation from a program approved by ARC-PA or its successor agency to become certified.

C. Interim permits expire at the end of the one year grace period. Upon expiration of the interim permit the physician assistant may no longer practice, but may reapply upon NCCPA certification. [16.10.15.10 NMAC - N, 7/15/01; A, 10/5/03; A, 8/6/04; A, 7/1/06]

16.10.15.16 LICENSE EXPIRATION, RENEWAL, CHANGE OF STATUS

A. Physician assistant licenses expire on March 1 of the year following NCCPA expiration. ~~[Licenses not renewed by March 1 of the expiration year are considered expired.]~~ To avoid additional penalty fees, a completed renewal application, accompanied by the required fees, proof of current NCCPA certification and

other documentation must be submitted through the online renewal system, post-marked or hand-delivered on or before March 1 of the expiration year.

~~**B.** A completed renewal application, post marked on or before March 1 of the renewal year, shall include the required fees as defined in 16.10.9.9 NMAC, and proof of current NCCPA certification.]~~

~~**C.**~~**B.** The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to ~~[make]~~ assure the board has accurate address information and to make a timely request for the renewal application if one has not been received prior to license expiration.

~~**D.**~~**C.** Renewal applications postmarked or hand-delivered after March 1 but prior to ~~[May 30 shall be subject to late penalties as defined in 16.10.9.9 NMAC]~~ April 15 must be accompanied by the completed renewal application, proof of current NCCPA certification, the renewal fee and late fee indicated in 16.10.9.9 NMAC.

D. Renewal applications postmarked or hand-delivered on or after April 16 but prior to May 30 must be accompanied by the completed renewal application, proof of current NCCPA certification, the renewal fee and late fee indicated in 16.10.9.9 NMAC.

~~**E.** Unless a complete renewal application is received by the board office, or post marked, before May 30, the license shall be summarily suspended.~~

~~**F.** At the time of license renewal a physician assistant may request a status change. A license that is placed on inactive status requires payment of a fee as defined in 16.10.9.9 NMAC.]~~

E. A physician assistant who has not passed the NCCPA six year recertification exam prior to the date of license expiration may apply to the board for an emergency deferral of the requirement. A designee of the board may grant deferrals of up to one year.

(1) A physician assistant who is granted an emergency deferral shall pay the renewal fee and additional late fee indicated in 16.10.9.9 NMAC.

(2) The license of a physician assistant who is granted an emergency deferral shall expire two years after the original renewal date, regardless of the duration of the emergency deferral.

E. The board shall summarily suspend on May 30 of the renewal year the license of any physician assistant who has failed within ninety days after the license renewal date to renew their license, to change the license status, to pay all required fees, to comply with NCCPA certification requirements, to provide required

documentation, or to request an emergency deferral.

G. At the time of license renewal a physician assistant may request a status change.

(1) A license that is placed on inactive status requires payment of a fee as defined in 16.10.9.9 NMAC. A license in inactive status is not valid for practice in New Mexico but may be reinstated in accordance with the provisions of 16.10.15.16 NMAC.

(2) On request, a license may be placed on retired status. There is no charge for this change in status. A retired license is not valid for practice in New Mexico and such license may not subsequently be reinstated. A physician assistant with a retired license who chooses to reinstate the license must re-apply as a new applicant.

(3) A physician assistant may inform the board that he does not wish to renew an active license to practice in New Mexico and will voluntarily allow the license to lapse. There is no charge for this change to inactive status. A voluntarily lapsed license is not valid for practice in New Mexico but may be reinstated in accordance with the provisions of 16.10.15.16 NMAC.

[G.]H. Re-instatement within two years. An inactive or suspended license may be placed on active status upon completion of a renewal application in which the applicant has supplied all required fees and proof of current NCCPA certification.

[H.]L. Re-instatement after two years. An inactive or suspended license may be placed on active status upon completion of a re-instatement application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board. Applicants may be required to personally appear before the board or the board's designee for an interview.

J. All renewal and reinstatement applications will be subject to a statewide criminal history screening.

(1) Renewal and reinstatement applications will be processed pending the completion of the statewide criminal history screening and may be granted while the screening still pending.

(2) If the statewide criminal background screening reveals a felony or a violation of the Medical Practice Act, the licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

[16.10.15.16 NMAC - N, 7/15/01; A 10/5/03; A, 8/6/04; A, 7/1/06]

NEW MEXICO OFF-HIGHWAY MOTOR VEHICLE SAFETY BOARD

TITLE 18 TRANSPORTATION AND HIGHWAYS

CHAPTER 15 OFF-HIGHWAY MOTOR VEHICLE SAFETY

PART 2 OFF-HIGHWAY MOTOR VEHICLE SAFETY BOARD OPEN MEETINGS

18.15.2.1 ISSUING AGENCY: Off-highway Motor Vehicle Safety Board. [18.15.2.1 NMAC - N, 06-15-06]

18.15.2.2 SCOPE: Persons interested in and affected by actions of the off-highway motor vehicle safety board. [18.15.2.2 NMAC - N, 06-15-06]

18.15.2.3 STATUTORY AUTHORITY: 10-15-1 NMSA 1978 ("Open Meetings Act"). 66-3-1018 NMSA 1978 provides that the off-highway motor vehicle safety board has the authority to establish rules and regulations that it may deem necessary to carry out certain purposes of Chapter 66 NMSA 1978 and other acts pertaining to off-highway vehicles. [18.15.2.3 NMAC - N, 06-15-06]

18.15.2.4 DURATION: Permanent. [18.15.2.4 NMAC - N, 06-15-06]

18.15.2.5 EFFECTIVE DATE: June 15, 2006, unless a later date is cited at the end of a section. [18.15.2.5 NMAC - N, 06-15-06]

18.15.2.6 OBJECTIVE: To establish rules pursuant to the "Open Meetings Act," constituting reasonable public notice of off-highway motor vehicle safety board meetings and actions. [18.15.2.6 NMAC - N, 06-15-06]

18.15.2.7 DEFINITIONS: "Emergency meeting" is a meeting called to address unforeseen situations demanding immediate action to protect the health, safety and property of citizens or to protect the public body from substantial financial loss. [18.15.2.7 NMAC - N, 06-15-06]

18.15.2.8 OPEN MEETINGS:

A. Reasonable notice: Reasonable notice shall be given, as hereinafter provided, of all meetings defined as a quorum of the off-highway motor vehicle safety board meeting for the purpose of discussing or adopting any proposed regulation, rule or resolution, or at which formal action will occur.

(1) Annual meeting to determine

reasonable notice: The annual meeting to determine what is reasonable notice for meetings, as required by Section 10-15-1D, shall be held at a board meeting each year. At that meeting, the board shall take action either to continue or amend its existing practice as contained herein.

(2) Notice of each regularly scheduled meeting and meetings at which rule makings may occur: At least 10 days in advance of each regularly scheduled meeting, notice will be sent to local newspapers, radio stations, wire services, television stations and New Mexico tourism department website. These notices shall contain the date, time, and place of the meeting and information on how a copy of the agenda may be obtained. The notices shall specify both the open and closed portions of the meeting pursuant to Section 10-15-1 of the "Open Meetings Act."

(3) Notice of each special meeting: At least three days in advance of each special meeting, notice will be sent to local newspapers, radio stations, wire services, television stations and New Mexico tourism department website. These notices shall contain the date, time, and place of the meeting and information on how a copy of the agenda may be obtained. The notices shall specify both the open and closed portions of the meeting pursuant to Section 10-15-1 of the "Open Meetings Act."

(4) Notice of emergency meetings: Notwithstanding any other provision of this regulation, the chairman of the off-highway motor vehicle safety board may call on the board to consider any unforeseen and urgent matter that demands immediate board action. Notice in such emergency shall be given at least 24 hours in advance of such meeting and shall be by telephone to the associated press and, if time permits, via news release faxed or hand delivered to at least one daily newspaper of general circulation in the state.

(5) Telephone participation: Board members may choose to participate in properly noticed emergency meetings of the board by telephone or other similar communications equipment, but only when attendance in person is difficult or impossible. Each board member participating by telephone or other similar equipment must be identified when speaking, all board members must be able to hear each other at the same time and hear any speaker, and members of the public attending the meeting must be able to hear any board member.

B. Correspondence with interested parties: Prior to each regularly scheduled meeting, correspondence announcing the date, time, and place of the meeting, information on how a copy of the agenda may be obtained, and specifying both the open and closed portions of the meeting, shall be sent to agencies, organiza-

tions, groups, or individuals who have requested such notice.

C. Agenda availability and changes:

(1) Agenda availability: the agenda for each meeting will be made available to the public from the New Mexico Tourism Department, 491 Old Santa Fe Trail, Santa Fe, New Mexico 87501 at least 24 hours in advance of each meeting.

(2) The proposed agenda for any meeting is subject to change as deemed necessary by the chairman of the off-highway motor vehicle safety board. However, such changes may not be made less than 24 hours in advance of any meeting, and the final agenda, incorporating any such changes, will be made available to the public at least 24 hours in advance of the meeting from the office of the director.

[18.15.2.8 NMAC - N, 06-15-06]

HISTORY OF 18.15.2 NMAC:
[RESERVED]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.4 NMAC Section 11, effective 06-30-06.

16.19.4.11 CONSULTANT PHARMACIST:

A. DUTIES AND RESPONSIBILITIES

(1) To abide by the code of ethics of the American Society of Consultant Pharmacists. Must be qualified to practice as a consultant pharmacist and is to be aware of all federal and state drug laws, rules and regulations related to pharmacy services, and to provide the facility with current information pertaining to drug service.

(2) Ensure that drugs are handled in the facility in which he/she is the consultant pharmacist, in a manner that protect the safety and welfare of the patient.

(3) Set the policy and procedures in the facility as related to all facets of drug handling and distribution; these policies and procedures to be reviewed and updated on an annual basis.

(4) To visit the facility, commensurate with his duties, as specified by Board regulations relative to the facility or by written contract with the administration of the facility not inconsistent with Board regulations.

(5) His/her primary goal and objective shall be the health and safety of the patient, and he/she shall make every effort to assure the maximum level of safety and efficacy in the provision of pharmaceutical services.

(6) The consultant pharmacist shall not condone or participate in any transaction with any practitioner of another health profession, or any other persons whosoever under which fees are divided, or rebates or kickbacks paid or caused to be paid, or which may result in financial exploitation of patients or their families in connection with the provision of drugs and medication or supplies or pharmaceutical services.

B. CONSULTANT PHARMACIST SERVING SKILLED NURSING FACILITIES AND INTERME- DIATE CARE FACILITIES - UPPER LEVEL CARE - LONG TERM CARE FACILITIES BY ANY OTHER TITLE:

(1) The consultant pharmacist's agreement with the facility shall include but is not limited to the following duties and responsibilities.

(a) Serve as a member of appropriate committees, and attend these meetings.

(b) Development of the Drug Control Procedures Manual.

(c) Monitor on a routine basis all aspects of the total drug distribution system - to be accomplished in a manner designed to monitor and safeguard all areas of the drug distribution system.

(d) Maintain active pharmacist status registration in the state.

(e) Assume responsibility for the destruction or removal of unwanted dangerous drugs and any controlled substances as prescribed by law and regulations.

(f) Maintain a log of all visits and activities in the facility indicating dates and other pertinent data; such logs are to be available to inspection by state drug inspectors upon request.

(g) Furnish and replenish emergency drug supply in acceptable containers. Maintain a log of use and replacement of drugs in the emergency tray.

(h) Make routine inspections of drug storage areas, patient health records, and review drug regimen of each patient at least once a month. Report irregularities, contraindication, drug interactions, etc., to the medical staff.

(i) Provide or make arrangements for provision of pharmacy services to the facility on a 24-hour 7 days a week basis, including stat orders.

(j) Provide in-service training of staff personnel as outlined in the procedures manual.

(k) Meet all other responsibilities of a consultant pharmacist as set forth in the Board regulations and federal or state laws and which are consistent with quality patient care.

(l) The contract consultant pharmacist to a SNF or ICF facility, that is

required to review patients' drug regimen as set forth in Subparagraph h of Paragraph 1 of Subsection B of 16.19.4.11 NMAC, who is under contract as sole supplier of unit-doses/state of the art medications, shall be exempt from charges of Unprofessional Conduct under Paragraph 10 of Subsection B of 16.19.4.9 NMAC.

(m) The consultant pharmacist to a SNF or ICF facility who delivers drugs in a unit-dose system, approved by an agent of the Board, which is a tightly sealed, unopened, individual dose, shall be exempt from the requirements of 16.19.6.14 NMAC, Prohibition of Resale of Drugs. The regulation shall not prohibit the return to the pharmacy stock, where partial credit may be given in accordance with any federal or state law or regulation, to the patient for such medication, when the physician discontinues the drug therapy, the patient expires or for any other reason, other than an outdated drug.

(n) Customized Patient Medication Packages; In lieu of dispensing one, two, or more prescribed drug products in separate containers or standard vial containers, a pharmacist may, with the consent of the patient, the patient's care-giver, the prescriber, or the institution caring for the patient, provide a customized patient medication package. The pharmacist preparing a patient medication package must abide by the guidelines as set forth in the current edition of the U.S. Pharmacopoeia for labeling, packaging and record keeping.

(o) Repackaging of Patient Medication Packages; In the event a drug is added to or discontinued from a patient's drug regimen, when a container within the patient medication package has more than one drug within it, the pharmacist may repackage the patient's patient medication package and either add to or remove from the patient medication packaged as ordered by the physician. The same drugs returned by the patient for repackaging must be reused by the pharmacist in the design of the new patient medication package for the new regimen, and any drug removed must either be destroyed, returned to the DEA or returned to the patient properly labeled. Under no circumstances may a drug within a container of a patient medication package which contains more than one drug be returned to the pharmacy stock.

(p) Return of Patient Medication Package Drugs.

(i) Patient medication package's with more than one drug within a container: Patient medication packages with more than one drug within a container may not under any circumstances be returned to a pharmacy stock.

(ii) Patient Medication Package's with only one drug within a con-

tainer: 1 Non-Institutional: A patient medication package stored in a non-institutional setting where there is no assurance of storage standards may not be returned to pharmacy stock. 2 Institutional: A patient medication package stored in an institutional setting where the storage and handling of the drugs are assured and are consistent with the compendia standards may be returned to the pharmacy stock provided the following guidelines are followed: (1) the drug is to be kept within the patient medication package and it is to remain sealed and labeled until dispensed; (2) the expiration date of drug shall become 50% of the time left of the expiration for the drug; (3) no Schedule II drugs may be returned to inventory; and (4) proper record keeping for the addition of other scheduled drugs into inventory must be done.

(2) When a consultant pharmacist enters into a written contractual agreement with a facility to which he/she will provide service.

(a) The consultant pharmacist whose practice is not in the immediate vicinity of the facility for which he has entered into a written service agreement, shall have a written agreement with a local pharmacist to be available on any emergency basis. The consultant pharmacist shall be responsible for the proper training and instruction of such local pharmacist. Said local pharmacist shall be known as a "co-consultant". The vendor shall be responsible for the safety and efficacy of back-up pharmaceutical services he provides.

(b) A copy of these agreements must be filed with the Board of Pharmacy and the facility. Any termination of such agreement shall be reported in writing, within ten (10) days, of termination to the Board and to the administrator.

(c) Should a local pharmacist (co-consultant) not be available, the consultant pharmacist must provide an alternative procedure approved by the Board. If the consultant is also the vendor, then such alternative procedure must reasonably assure rapid delivery of drugs; medical supplies and pharmacy service to the facility.

C. CONSULTANT PHARMACIST - CLINIC ULTANT

(1) The consultant pharmacist providing services to a clinic shall.

(a) Assume overall responsibility for clinic pharmacy services, for clinic pharmacy supportive personnel, and for procedures as outlined in the procedures manual, including all records of drugs procured, administered, transferred, distributed, repackaged or dispensed from the clinic.

(b) Assume responsibility for the destruction or removal of unwanted or outdated dangerous drugs, including controlled

substances, as required by laws and regulations.

(c) Develop the pharmacy services procedures manual for the clinic establishing the system for control and accountability of pharmaceuticals.

(d) Provide in-service education and training to clinic staff, as applicable.

(e) Report in writing to the Board within ten (10) days, any termination of services to the clinic. Report in writing to the Board the names and places of employment of any pharmacy technicians under the supervision of the consultant pharmacist.

(f) Comply with all other provisions of Part 10, Limited Drug Clinics, as applicable to the individual clinic facility.

(g) The consultant pharmacist shall personally visit the clinic on the minimum basis described in subparagraphs (a) through (c) [(i) through (iii)] to ensure that the clinic is following set policies and procedures. Visitation schedules are as follows.

(i) Class A clinics shall have the on-site services of a consultant pharmacist for the dispensing or distribution of dangerous drugs. The consultant pharmacist shall comply with Paragraphs 4, 5 and 7 of Subsection A of 16.19.4.17 NMAC of this regulation.

(ii) Class B clinics shall have the services of a consultant pharmacist as listed below: 1. Category 1 clinics shall be visited by the consultant pharmacist at least bi-monthly. 2. Category 2 clinics shall be visited by the consultant pharmacist at least monthly. 3. Category 3 clinics shall be visited by the consultant pharmacist at least bi-weekly.

(iii) Class C clinics shall be visited by the consultant pharmacist at least every three months.

(h) The consultant pharmacist shall review the medical records of not less than 5% of a Class B clinics patients who have received dangerous drugs (as determined by the dispensing or distribution records) since the consultant pharmacist's last visit. Such review shall be for the purpose of promoting therapeutic appropriateness, eliminating unnecessary drugs, and establishing the medical necessity of drug therapy, by identifying over-utilization or under-utilization, therapeutic duplication, drug-disease contraindications, drug-drug contraindications, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, appropriate medication indication, and/or clinical abuse/misuse. Upon recognizing any of the above, the consultant pharmacist shall take appropriate steps to avoid or resolve the problem which shall, if necessary, include consultation with the prescriber.

(i) The consultant pharmacist shall maintain a log or record of all visits and activities in the clinic. Such record shall

include a log of all medical records reviewed, along with a record of all consultant pharmacist interventions and/or consultations. This log or record shall be available for inspection by state drug inspectors upon request.

(2) A clinic may petition the Board for an alternative visitation schedule as set forth in R of 16.19.10.11 NMAC.

D. CONSULTANT PHARMACISTS SERVING CUSTODIAL CARE FACILITIES:

(1) Custodial Care Facility as used in this regulation includes: Any Facility which provides care and services on a continuing basis, for two or more in-house residents, not related to the operator, and which maintains custody of the residents' drugs.

(2) Any facility which meets the requirements outlined in Paragraph 1 of Subsection D of 16.19.4.11 NMAC of this section shall be licensed by the Board of Pharmacy, engage a consultant pharmacist, whose duties and responsibilities are indicated in Paragraph 3 of Subsection D of 16.19.8.11.A NMAC.

(3) Procurement of drugs or medications for residents will be on the prescription order of a licensed physician - written or by oral communication, which order shall be reduced to writing by the pharmacist as required by law. Refills shall be as authorized by the physician. When refill authorization is indicated on the original prescription, a refill for a resident may be requested by the administrator of the licensed facility or his designee by telephone to the consultant pharmacist, or the providing pharmacy.

(4) The administrator or a designated employee of the facility will sign a receipt for prescription drugs upon delivery.

(5) All prescription drugs will be stored in a locked cabinet or room and the key will be assigned to a designated employee or the administrator as indicated in the procedures manual.

(6) Proper storage as stipulated in the official compendium USP/NF will be the responsibility of the licensed facility.

(7) Records - the consultant pharmacist shall be responsible for the following records:

- (a) incoming medications - including refills;
- (b) record of administration;
- (c) waste or loss; This accountability record shall be maintained on a patient log, on forms provided to the consultant pharmacist by the Board of Pharmacy.

(8) All prescription containers shall be properly labeled as required in 16.19.11 NMAC. No bulk containers of legend drugs will be kept on the premises.

(9) Consultant pharmacist shall

include in the procedures manual the name of individual(s) responsible for the assistance with the medication.

(10) It shall be the responsibility of the pharmacist to give proper training/instruction to the person(s) at the facility who have day-to-day responsibility for receipt and administration of medications to resident when adverse reactions, special diet, or any other information relative to the administration of a drug is needed by the staff.

(11) The consultant pharmacist shall be required to maintain a patient profile on each individual, if applicable to the facility and individual.

(12) The consultant pharmacist shall visit the facility no less than once a quarter or more often, commensurate with patient drug regimen and shall be available in emergencies, when needed. A log shall be maintained indicating all visits to the facility and noting any activities or irregularities to be recorded or reported. This log shall be available for state drug inspectors' review upon request.

(13) The consultant shall be responsible for the preparation of a procedures manual outlining procedures for the receipt, storage, record keeping, maintenance of patient profiles, administration and accountability of all legend drugs and procedures for the removal and destruction of unwanted, unused, outdated or recalled drugs - controlled substances shall be handled pursuant to state and federal regulations.

E. Limited reuse of pharmaceuticals for dispensation by consultant pharmacists in correctional facilities; no drug that has been dispensed pursuant to a prescription and has left the physical premises of the facility licensed by the board shall be dispensed or reused again except the re-labeling and reuse of pharmaceuticals may be permitted in the following situations: in a correctional facility, licensed by the board, under the following circumstances dangerous drugs, excluding controlled substances, may be re-used:

(1) the patients must reside in the same facility;

(2) the reused medication must have been discontinued from the original patient's drug regimen;

(3) the drug was never out of the possession of the licensee "keep on person pharmaceuticals may never be reused";

(4) the drugs were originally dispensed in packaging that is unopened, single-dose or tamper-evident containers;

(5) the patient receiving the re-labeled medication must have a valid prescription/order for the medication that is

to be reused;

(6) repackaging and re-labeling may only be completed on site by the consultant pharmacist designated for that facility.

F. The consultant pharmacist must maintain records at the facility for three years containing the following information:

(1) date when the re-labeling occurred;

(2) the name and ID of the patient for whom the medication was originally intended for and the date in which it was discontinued from his or her drug regimen;

(3) the name and ID of the patient who will receive the reused medication;

(4) the name, strength and amount of the medication being reused;

(5) the name of pharmacist re-labeling the medication;

(6) pursuant to 16.19.10.11 NMAC the pharmacist must label the reused pharmaceutical and maintain a dispensing log for all such re-issued pharmaceuticals and the expiration date for such re-issued drugs shall be no greater than 50 percent of the time remaining from the date of repackaging until the expiration date indicated on the original dispensing label or container.

[08-27-90; 16.19.4.11 NMAC - Rn, 16 NMAC 19.4.11, 03-30-02; A, 06-30-06]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.6 NMAC Sections 7, 9, 22, 23, and addition of new Section 25, effective 06-15-06.

16.19.6.7 DEFINITIONS:
{RESERVED}

A. "Contracted" means having a written agreement (to include" business associate agreements" as required by federal law) between parties to ensure the authenticity and prescribing authority of each prescriber transmitting prescriptions, sufficient security to prevent the fraudulent creation or alteration of prescriptions by unauthorized parties, and assurance that "network vendors" or electronic prescription transmission intermediaries involved in the transmission and formatting of the prescription can provide documentation of chain of trust of who has had access to prescription content. Electronic prescription transmissions by non "contracted" parties will be invalid.

B. "Electronically Transmitted Prescriptions" means com-

munication of original prescriptions, refill authorizations, or drug orders, including controlled substances to the extent permitted by federal law, from an authorized licensed prescribing practitioner or his or her authorized agent directly or indirectly through one or more "contracted" parties to the pharmacy of the patient's choice by electronic means including, but not limited to, telephone, fax machine, routers, computer, computer modem or any other electronic device or authorized means.

C. "Electronic Signature" means an electronic sound, symbol or process attached to or logically associated with a prescription record.

D. "Network Vendor" means prescription transmission intermediary "contracted" by business associate agreements with appropriate parties involved, including point of care vendors, pharmacy computer vendors, pharmacies, to transmit the prescription information only having access to the prescription content to make format modification to facilitate secure and accurate data transmission in a format that can be received and deciphered by the pharmacy.

E. "Point of Care Vendor" means an entity contracted with a prescriber to generate or transmit electronic prescriptions authorized by a practitioner directly to a pharmacy or to a "contracted" intermediary or "network vendor", who will ultimately transmit the prescription order to a patient's pharmacy of choice. Vendor must provide an unbiased listing of provider pharmacies and not use pop-ups or other paid advertisements to influence the prescriber's choice of therapy or to interfere with patient's freedom of choice of pharmacy. Presentation of drug formulary information, including preferred and non-preferred drugs and co-pay information if available, is allowed.

F. "Prescriber" means a licensed practitioner who generates a prescription order and assumes responsibility for the content of the prescription.

[16.19.6.7 NMAC - Rp, 16 NMAC 19.6.7, 03-30-02; A, 06-30-06]

16.19.6.9 PHARMACIST-IN-CHARGE:

A. The term "pharmacist-in-charge" means a pharmacist licensee in the state of New Mexico who has been designated pharmacist-in-charge pursuant to New Mexico Statute Section 61-11-15. Failure to perform any of the following duties will constitute a violation of 61-11-20(A)(1). It shall be the duty and responsibility of the pharmacist-in-charge consistent

with the regulations governing professional conduct and in compliance with all applicable laws and regulations:

(1) to establish for the employees of the pharmacy, **written** policies and procedures for procurement, storage, compounding and dispensing of drugs;

(2) to supervise all of the professional employees of the pharmacy;

(3) to supervise all of the non-professional employees of the pharmacy in so far as their duties relate to the sale and storage of drugs;

(4) to establish and supervise the method and manner for the storing and safekeeping of drugs;

(5) to establish and supervise the record keeping system for the purchase, sale, possession, storage, safekeeping and return of drugs;

(6) to notify the board immediately upon his knowledge that his service as pharmacist-in-charge have been or will be terminated;

(7) inform the board in writing, within 10 days, of the employment or termination of any pharmacy technician; the information shall include name and location of pharmacy, name of employee, social security number, and date of hire or termination;

(8) to complete the New Mexico board of pharmacy self assessment inspection form as provided by the board and to submit the signed and dated form with the pharmacy renewal application to the board office.

B. Every licensed pharmacy will be under continued daily supervision of a registered pharmacist who shall have direct control of the pharmaceutical affairs of the pharmacy.

C. Upon termination of the pharmacist-in-charge each pharmacy owner shall immediately designate a successor pharmacist-in-charge and immediately notify the state board of pharmacy of such designation. The owner shall request the license application form to be completed by the successor pharmacist-in-charge and filed with the board within 10 days. The failure to designate a successor pharmacist-in-charge and notify the board of such designation shall be deemed a violation of Section 61-11-15, Pharmacy Act.

[16.19.6.9 NMAC - Rp, 16 NMAC 19.6.9, 03-30-02; A, 06-30-06]

16.19.6.22 COMPUTERIZED PRESCRIPTION INFORMATION:

A. Computers for the storage and retrieval of prescription information do not replace the requirement that a prescription written by a practitioner or telephoned to the pharmacist by a practitioner and reduced to ~~writing~~ **hardcopy** be retained as permanent record. Computers

shall be maintained as required by the Pharmacy Act; the Drug, Device, and Cosmetic Act; the Controlled Substance Act; and the board of pharmacy regulations.

B. The computer shall be capable of producing a printout of prescription information within a 72 hour period on demand, with certification by the practitioner stating it is a true and accurate record. Requested printouts include: patient specific; practitioner specific; drug specific; or date specific reports. The printout shall include:

(1) the original prescription number;

(2) the practitioner's name;

(3) full name and address of patient;

(4) date of issuance of original prescription order by the practitioner and the date filled;

(5) name, strength, dosage form, quantity of drug prescribed;

(6) total number of refills authorized by the practitioner;

(7) the quantity dispensed is different than the quantity prescribed, then record of the quantity dispensed;

(8) in the case of a controlled substance, the name, address and DEA registration number of the practitioner and the schedule of the drug;

(9) identification of the dispensing pharmacist; computer-generated pharmacist initials are considered to be the pharmacist of record unless overridden manually by a different pharmacist who will be the pharmacist of record.

C. **Permanent records of electronic prescriptions, transmitted directly over approved secure electronic prescribing networks or other board approved transmissions standards, do not have to be reduced to hardcopy provided the following requirements are met.**

(1) Electronic prescription information or data must be maintained in the original format received for ten years.

(2) Documentation of business associate agreements with "network vendors", electronic prescription transmission intermediaries and pharmacy software vendors involved in the transmission and formatting of the prescription who can provide documentation of chain of trust of who has had access to prescription content is available.

(3) Reliable backup copies of the information are available and stored in a secure manner as approved by the board.

(4) All elements required on a prescription and record keeping requirements are fulfilled including identification of the dispensing pharmacist of

record.

D. Electronically archived prescription records of scanned images of indirect written or faxed prescriptions are permitted provided the following requirements are met:

(1) images of scanned prescriptions are readily retrievable and can be reproduced in a manner consistent with state and federal laws within a seventy-two hour period;

(2) the identity of the pharmacist approving the scanned imaging and of the pharmacist responsible for destroying the original document after three years is clearly documented;

(3) the electronic form shows the exact and legible image of the original prescription;

(4) the original paper prescription document must be maintained for a minimum of three years and the electronic image of the prescription for ten years;

(5) the prescription is not for a controlled substance except as allowed by federal law;

(6) reliable backup copies of the information are available and stored in a secure manner as approved by the board;

(7) all elements required on a prescription and record keeping requirements are fulfilled including identification of the dispensing pharmacist of record.

E. Electronic records of prescriptions and patient prescription records may be stored offsite on secure electronic servers provided the following requirements are met:

(1) records are readily retrievable;

(2) all Health Insurance Portability and Accountability Act and board of pharmacy patient privacy requirements are met;

(3) reliable backup copies of the information are available and stored in a secure manner as approved by the board.

[16.19.6.22 NMAC - Rp, 16 NMAC 19.6.22, 03-30-02; A, 06-30-06]

16.19.6.23 PRESCRIPTIONS:

A. A valid prescription is an order for a dangerous drug given individually for the person for whom prescribed, either directly from the prescribing practitioner to the pharmacist, or indirectly by means of a written order signed by the practitioner. **Signed by the practitioner includes handwritten signature, stamped or printed images of the practitioners handwritten signature or electronic signature as defined in Paragraph (1) of Subsection F of 16.19.6.23 NMAC.** Every prescription **record** shall contain ~~on its face~~ the name and address of the prescriber, the name and address of the patient,

the name and strength of the drug, the quantity prescribed, directions for use ~~and~~, the date of issue, **and preferably the diagnosis or indication.**

B. A prescription may be prepared by a secretary or agent, i.e., office nurse under supervision, for the signature of the practitioner and where applicable; a prescription may be communicated to the pharmacist by an employee or agent of the registered practitioner. The prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulation.

C. Prescription information received from a patient, **other than a signed written prescription from a practitioner**, has no legal status as a valid prescription. A pharmacist receiving such prescription information must contact the prescribing physician for a new prescription.

D. Exchange of prescription information between pharmacies for the purpose of refilling is authorized under the following conditions only.

(1) The original prescription entry shall be marked in the pharmacy computer system. Pharmacies not using a computer shall mark the hard copy.

(2) The prescription shall indicate that it has been transferred and pharmacy location and file number of the original prescription.

(3) In addition to all information required to appear on a prescription, the prescription shall show the date of original fillings as well as the number of valid refills remaining.

(4) Transfer of controlled substances Schedules III, IV, and V shall not be allowed electronically **except as permitted by federal law**. Any manual transfer must be within any rule adopted by the federal DEA under Title 21 CFR 1306.26.

E. ~~[Facsimile]~~ **Fax** Machines: ~~[Facsimile]~~ **Fax** prescription means a valid prescription which is transmitted by an electronic device which sends an exact image **of a written prescription signed by the practitioner** to a pharmacy. The prescribing of controlled substances ~~[listed in Schedule II, III, or IV by facsimile machine must comply with 16.19.6.23.E.(1) through 16.19.6.23.(5). And 16.19.20.42.A through 16.19.20.42.F.]~~ **by fax must comply with all state and federal laws**. No pharmacist may dispense a drug solely on the basis of a prescription received by ~~[facsimile]~~ **fax** except under the following circumstances:

(1) the pharmacist shall exercise professional judgment regarding the accuracy and authenticity of the prescription consistent with existing federal and state statutes and regulations;

(2) the original ~~[facsimile]~~ **fax**

prescription ~~[(or a legible copy) must be maintained by the pharmacy in numerical order for a period of three years from the date the prescription was originally filled.]~~ **shall be printed and stored in the pharmacy as required by state and federal law and board rules, and may serve as the record of the prescription;**

(3) the ~~[facsimile]~~ **fax** prescription shall include name and ~~[facsimile]~~ **fax** number of the pharmacy, the prescriber's phone number, for verbal confirmation, time and date of transmission, as well as any other information required by federal and state statute or regulation;

(4) in institutional practice, the ~~[facsimile]~~ **fax** machine operator must be identified by a statement in the facility policy and procedures manual;

(5) the receiving ~~[facsimile]~~ **fax** machine must be physically located in a restricted area to protect patient confidentiality;

(6) electronically generated prescriptions may be transmitted directly to the pharmacy via telephone lines or indirectly through one or more "contracted" parties via valid "network vendors" directly to a pharmacy's fax machine;

(7) electronically generated prescriptions faxed from a practitioner's office computer shall include the prescriber's name, phone and fax number, time and date of transmission as well as any other information required by federal and state statutes or regulation;

(8) electronically generated prescriptions faxed from a practitioner's "contracted" "point of care vendor" directly to the pharmacy must include the name and phone number of the "point of care vendor";

(9) "point of care vendors", "network vendors" or other prescription transmission intermediaries not compliant with the requirements of this section will be considered an invalid source;

(10) the pharmacist shall exercise professional judgment regarding the accuracy and authenticity of prescriptions consistent with federal and state statutes and regulations; in the absence of unusual circumstances requiring further inquiry, the pharmacy and each of its associated pharmacists is entitled to rely on the accuracy and authenticity of electronically transmitted prescriptions from a "point of care vendor" or "network vendor" which has not been prohibited by the board.

F. E l e c t r o n i c
Transmission of Prescriptions

~~[(1) electronic transmissions of prescriptions means the electronic transmission of prescriptions for dangerous drugs, excluding controlled substances, via com-~~

~~puter modem or other similar electronic devices.]~~

~~[(2) electronic signature means a unique security code or other identifier which specifically identifies and authenticates the signatory for the purposes of secure electronic data transmission.]~~

~~[(3)](1) Requirements for electronically transmitted prescriptions or drug orders, [excluding] **including** controlled substances **as permitted by federal law**.~~

(a) The receiving computer or other similar electronic **device used to view the prescription** shall be located within the pharmacy or pharmacy department **with only authorized personnel having access**.

(b) The electronically transmitted prescription or drug order shall contain all information required by state and federal law **including the prescriber's name, address and phone number, time and date of transmission**.

(c) The prescribing practitioner's electronic signature, or other secure method of validation shall be provided with the electronically transmitted prescription or drug order.

(d) ~~[A written or printed copy of the prescription or drug order shall be prepared and maintained as required by state laws and regulations.]~~ **The electronically transmitted prescriptions may serve as the hard copy record of the prescription so long as the electronically transmitted prescription information can be stored in the original format as when received and is readily retrievable so as to comply with federal and state recordkeeping requirements.**

~~[(e)] [The electronically transmitted prescription or drug order shall be marked "Electronically Transmitted Prescription" or "ETP"]~~

~~[(f)](e) The electronic transmission of a prescription or drug order shall maintain patient confidentiality with no [unauthorized] intervening person or other entity [controlling, screening, or otherwise having access to it.] **accessing or altering the prescription content. The accessing or altering prohibition does not include format modification for transmission purposes by approved secure electronic prescribing networks.**~~

~~[(g)](f) [ETP] **Electronically transmitted prescriptions or drug orders** shall be sent only to the pharmacy of the patient's choice.~~

~~[(h)] [The ETP shall identify the transmitter's telephone number. The time and date of transmission, and the pharmacy intended to receive the transmission.]~~

~~[(i)] [ETP's shall be transmitted only by authorized prescriber or the prescriber's agent and shall include the prescriber's electronic signature.]~~

~~[(j)] [Electronic transmission of Schedule II controlled substances for emergency dispensing shall conform to 16.19.20.47.]~~

(2) "Point of care vendors", "network vendors" or other prescription transmission intermediaries not compliant with the requirements of this section will be considered an invalid source.

(3) The pharmacist shall exercise professional judgment regarding the accuracy and authenticity of prescriptions consistent with federal and state statutes and regulations. In the absence of unusual circumstances requiring further inquiry, the pharmacy and each of its associated pharmacists is entitled to rely on the accuracy and authenticity of electronically transmitted prescriptions from a "point of care vendor" or "network vendor" which has not been prohibited by the board.

G. Transmission of prescriptions to answering machines and electronic voice recording devices. Prescription information retrieved by a pharmacist from an answering machine or voice recording device from an authorized practitioner or approved agent is considered to be a direct transmission of a prescription order.

[G.]H. Confidentiality of patient records and prescription drug orders.

(1) Confidential information. As provided in 61-11-2.D, confidential information in the patient record, including the contents of any prescription or the therapeutic effect thereof or the nature of professional pharmaceutical services rendered to a patient; the nature, extent, or degree of illness suffered by any patient; or any medical information furnished by the prescriber, may be released only as follows:

(a) pursuant to the express written consent or release of the patient or the order of direction of a court;

(b) to the patient or the patient's authorized representative;

(c) to the prescriber or other licensed practitioner then for the patient;

(d) to another licensed pharmacist where the best interest of the patient require such release;

(e) to the board or its representative or to such other person or governmental agencies duly authorized by the law to receive such information; a pharmacist shall utilize the resources available to determine, in the professional judgment of the pharmacist, that any person requesting confidential patient information pursuant to this rule are entitled to receive that information;

(f) in compliance with Health Insurance Portability and Accountability Act regulations regarding protected health information.

(2) Exceptions. Nothing in this

rule shall prohibit pharmacists from releasing confidential patient information as follows:

(a) transferring a prescription to another pharmacy as required by the provision of patient counseling;

(b) providing a copy of a [~~non-refillable~~] **non-refillable** prescription to the person for whom the prescription was issued which is marked "For Information Purposed Only";

(c) providing drug therapy information to physicians or other authorized prescribers for their patients;

(d) as required by the provision of patient counseling regulations.

[16.19.6.23 NMAC - Rp 16 NMAC 19.6.23, 03-30-02; A, 06-30-06]

16.19.6.25 CENTRALIZED PRESCRIPTION DISPENSING: The purpose of these regulations is to provide mandatory standards for centralized prescription dispensing by a retail or nonresident pharmacy.

A. Definitions as used in this section.

(1) "Centralized prescription dispensing" means the dispensing or refilling of a prescription drug order by a retail or nonresident pharmacy.

(2) "Dispensing" as defined in the NMSA, Section 61-11-2(1), and pursuant to 61-11-21(C) dispensing is limited to a registered pharmacist.

B. Operational standards and minimum requirements.

(1) A retail pharmacy may out-source prescription drug order dispensing to another retail or nonresident pharmacy provided the pharmacies:

(a) have the same owner or;

(b) have entered into a written contract or agreement which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations; and

(c) share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to dispense or process a prescription drug order.

(2) The pharmacist-in-charge of the dispensing pharmacy shall ensure that:

(a) the pharmacy maintains and uses adequate storage or shipment containers and shipping processes to ensure drug stability and potency; such shipping processes shall include the use of appropriate packaging material and/or devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process; and

(b) the dispensed prescriptions are shipped in containers which are sealed in a manner as to show evidence of opening or tampering.

(3) A retail or nonresidential dispensing pharmacy shall comply with the provisions of 16.19.6 NMAC and this section.

C. Notifications to patients.

(1) A pharmacy that out-sources prescription dispensing to another pharmacy shall:

(a) prior to out-sourcing the prescription, notify patients that their prescription may be outsourced to another pharmacy; and

(b) prior to outsourcing the prescription, give the name of that pharmacy or if the pharmacy is part of a network of pharmacies under common ownership and any of the network of pharmacies may dispense the prescription, the patient shall be notified of this fact; such notification may be provided through a one-time written notice to the patient or through the use of a sign in the pharmacy; and

(c) if the prescription is delivered directly to the patient by the dispensing pharmacy upon request by the patient and not returned to the requesting pharmacy, the pharmacist employed by the dispensing pharmacy shall ensure that the patient receives written notice of available counseling; such notice shall include days and hours of availability and his or her right to request counseling and a toll-free number from which the patient or patient's agent may obtain oral counseling from a pharmacist who has ready access to the patient's record; for pharmacies delivering more than 50% of their prescriptions by mail or other common carrier, the hours of availability shall be a minimum of 60 hours per week and not less than 6 days per week; the facility must have sufficient toll-free phone lines and personnel to provide counseling within 15 minutes.

D. Prescription labeling.

(1) The dispensing pharmacy shall:

(a) place on the prescription label the name and address or name and pharmacy license number of the pharmacy dispensing the prescription and the name and address of the pharmacy which receives the dispensed prescription;

(b) indicate in some manner which pharmacy dispensed the prescription (e.g., filled by ABC pharmacy for XYZ pharmacy); and

(c) comply with all other prescription labeling requirements.

E. Policies and Procedures.

(1) A policy and procedure manual as it relates to centralized dispensing shall be maintained at both pharmacies and be approved by the board or its' agent and be available for inspection. Each pharmacy is required to maintain only those portions of the policy and procedure manual that relate to that pharmacy's operations. The manual shall:

(a) outline the responsibilities of each of the pharmacies;

(b) include a list of the name, address, telephone numbers, and all license/registration numbers of the pharmacies involved in centralized prescription dispensing; and

(c) include policies and procedures for:

(i) notifying patients that their prescription may be outsourced to another pharmacy for centralized prescription dispensing and providing the name of that pharmacy;

(ii) protecting the confidentiality and integrity of patient information;

(iii) dispensing prescription drug orders when the filled order is not received or the patient comes in before the order is received;

(iv) complying with federal and state laws and regulations;

(v) operating a continuous quality improvement program for pharmacy services designated to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care and resolve identified problems;

(vi) procedure identifying the pharmacist responsible for each aspect of prescription preparation including, but not limited to, the drug regimen review, the initial electronic entry, any changes or modifications to the prescription record or patient profile, and the final check of the completed prescription;

(vii) identify the pharmacist responsible for counseling the patient pursuant to the requirements of 16.19.4.16 NMAC; and

(viii) annually reviewing the written policies and procedures and documenting such review.

F. Records.

(1) Records may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(a) the records maintained in the alternative system contain all of the information required on the manual record; and

(b) the data processing system is capable of producing a hard copy of the record upon request of the board, its' representative, or other authorized local, state, or federal law enforcement or regulatory agencies within 48 hours.

(2) Each pharmacy shall comply with all the laws and rules relating to the maintenance of records and be able to produce an audit trail showing all prescriptions dispensed by the pharmacy and each pharmacist's or technician's involvement.

(3) The requesting pharmacy shall maintain records which indicate the date:

(a) the request for dispensing was transmitted to the dispensing pharmacy; and

(b) the dispensed prescription was received by the requesting pharmacy, including the method of delivery (e.g., private, common, or contract carrier) and the name of the person accepting delivery.

(4) The dispensing pharmacy shall maintain records which indicate:

(a) the date the prescription was shipped to the requesting pharmacy;

(b) the name and address where the prescription was shipped; and

(c) the method of delivery (e.g., private, common, or contract carrier).

[16.19.6.25 NMAC - N, 06-30-06]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.20 NMAC Sections 53 and 69, effective 06-30-2006.

16.19.20.53 DISPENSING WITHOUT PRESCRIPTION:

A. A controlled substance listed in Schedule V and a substance listed in Schedules II, III, or IV *which is not a prescription drug* as determined by FDA and the Drug and Cosmetic Act, may be dispensed by a pharmacist without a prescription provided:

(1) such dispensing is made by a pharmacist or registered pharmacist intern and not by a non-pharmacist employee;

(2) not more than eight (8) ounces of any controlled substance containing opium, nor more than 48 dosage units is dispensed at retail to the same person in any given 48 hour period;

(3) not more than four (4) ounces of any other controlled substance or more than 24 dosage units may be dispensed at retail to the same person in any given 48 hour period;

(4) the purchaser is at least 18 years of age;

(5) the pharmacist requires every purchaser of such substance, not known to him to furnish suitable identification (including proof of age where appropriate);

~~[B-]~~(6) a bound record book for dispensing such substances is maintained requiring the signature and address of the purchaser, the name and quantity of the controlled substance purchased, the date of each purchase and the name or initials of the pharmacist who dispensed the substance; the book shall contain a statement on each page where purchaser is required to sign, stating no purpose of such substance has been made within the given 48 hour period at another pharmacy and the purchaser shall be made aware of such statement before signing the record.

B. Exempt pseudoephedrine product.

(1) Any pseudoephedrine containing product listed as a Schedule V Controlled Substance in Paragraph (2) of Subsection B of 16.19.20.69 NMAC shall be dispensed, sold or distributed only by a licensed pharmacist, pharmacist intern, or a registered pharmacy technician.

(2) Unless pursuant to a valid prescription, a person purchasing, receiving or otherwise acquiring the compound, mixture or preparation shall:

(a) produce a driver's license or other government-issued photo identification showing the date of birth of the persons;

(b) sign a log after reading the purchaser statement for pseudoephedrine receipt or other program or mechanism indicating the date and time of the transaction, name of the person, address, driver's license number or government issued identification number, name of the pharmacist, pharmacist intern or pharmacy technician conducting the transaction, the product sold and the total quantity, in grams or milligrams, of pseudoephedrine purchased; this log will be only for exempt pseudoephedrine products and shall be kept separate from all other records; the log is to be produced in a way that a customer's personal information is not available to other purchasers;

(c) be limited to no more than 3.6 grams per day or more than a total of 9 grams of a product, mixture or preparation containing pseudoephedrine within a thirty-day period.

(3) Pseudoephedrine purchaser statement must state in addition to any federal requirements "I have not purchased more than 3.6 grams today or more than a total of 9 grams of pseudoephedrine as a single entity or in a combination with other medications in the last 30 days. Entering false state-

ments or misrepresentations in this log-book may subject me to criminal penalties."

(4) Prices charged for compounds, mixtures, and preparations that contain pseudoephedrine shall be monitored. The board may adopt rules to prevent unwarranted price increases as a result of compliance with this section.

[16.19.20.53 NMAC - Rp 16 NMAC 19.20.22, 07-15-02; A, 06-30-06]

16.19.20.69 SCHEDULE V: [~~Shall consist of the Drugs and Other Substances By Whatever Official Name, Common or Usual Name, Chemical Name or Brand Name Designated, Listed in this Section: Narcotic drugs containing non narcotic active medicinal ingredients. Any compound, mixture or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone.~~]

A. Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone.

~~[A.](1)~~ Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

~~[B.](2)~~ Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

~~[C.](3)~~ Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

~~[D.](4)~~ Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

~~[E.](5)~~ Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

~~[F.](6)~~ Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

~~[G. Pyrovalerone.]~~

B. Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the

following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers.

(1) Pyrovalerone.

(2) Pseudoephedrine as a drug that includes any compound, mixture, or preparation that contains any detectable quantity of pseudoephedrine, its salts or its optical isomers, or salts of its optical isomers. Pursuant to 30-31-10.C the following substances are excluded from Schedule V controlled substances: pseudoephedrine products in liquid form including liquid filled gel caps.

[16.19.20.69 NMAC - Rp 16 NMAC 19.20.28(4), 07-15-02; A, 06-30-05; A, 06-30-06]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.28 NMAC Sections 1, 7, 8, 9 and adding new Section 11, effective 06/30/06.

16.19.28.1 ISSUING AGENCY: Regulation and Licensing Department - Board of Pharmacy. [~~Albuquerque, NM 87102, (505) 841-9102.~~]

[16.19.28.1 NMAC - N, 12-01-2003; A, 06/30/06]

16.19.28.7 DEFINITIONS:

A. "Board" means the New Mexico board of pharmacy, herein referred to as the board.

B. "Optometry Act" means NMSA 1978 Section 61-2-1 through 61-2-18 (1995 Repl. Pam.), herein referred to as the Optometry Act or Section 61-2-1 et seq.

C. "Contact lens prescription" means a prescription that shall explicitly state that it is for contact lenses; specify the lens type; include all specifications for the ordering and fabrication of the lenses; include the date of issue, the name and address of the patient and the name and address of the prescriber; and indicate a specific date of expiration, which shall be twenty-four months from the date of the prescription, unless, in the professional opinion of the prescriber, a longer or shorter expiration date is in the best interest of the patient.

D. "Replacement contact lens prescription" means a prescription prepared by a licensed optometrist containing the information specified in this section and written expressly for the purpose of providing lenses that have already been properly fitted.

E. "Contact lens" means any contact lens for which state law requires a prescription.

F. "Dispensing facility" means the building or structure for which contact lens are stored, shipped or distributed from.

G. "Seller/dispenser" means one who is in the business of the sale or distribution of contact lenses.

[16.19.28.7 NMAC - N, 12-01-2003; A 06/30/06]

16.19.28.8 REGISTRATION:

A. A person who is not a licensed optometrist or a licensed physician shall not sell or dispense a contact lens to a resident of this state unless he is registered with the board of pharmacy.

B. Pharmacies, hospitals and clinics licensed by the board are exempt from this regulation.

C. Registration will be submitted ~~on~~ **in** forms provided by the board with the appropriate fee attached as a check or money order.

D. Fees for registration are listed in 16.19.12 NMAC.

E. Period of registration is for two years with renewals due by the last day of the expiration month listed on the registration.

E. Refer to NMSA 1978, Section 61-11-14F for application requirements.

[16.19.28.8 NMAC - N, 12-01-2003; A, 06/30/06]

16.19.28.9 POLICY MANUAL:

A policy manual containing at a minimum the information listed below shall be submitted with the registration application. **The initial manual, must be approved by the board and any subsequent changes or modifications require prior approval of the board or its agent.**

A. A contact lens may not be sold, dispensed, or distributed to a patient in this state by a seller of contact lenses unless one of the following has occurred:

(1) the patient has given or mailed the seller an original, valid, unexpired written contact lens prescription;

(2) the prescribing licensed optometrist has given, mailed or transmitted by facsimile transmission a copy of a valid, unexpired written contact lens prescription to a seller designated in writing by the patient to act on the patient's behalf; or

(3) the prescribing licensed optometrist has orally or in writing verified the valid, unexpired prescription to a seller designated by the patient to act on his behalf.

B. The prescription contains all the information necessary for the replacement contact lens prescription to be properly dispensed, including the:

(1) lens manufacturer;

- (2) type of lens;
- (3) power of the lens;
- (4) base curve;
- (5) lens size;
- (6) name of the patient;
- (7) date the prescription was given to the patient;

(8) name and office location of the licensed optometrist who writes the replacement contact lens prescription; and

(9) expiration date of the replacement contact lens prescription.

C. A person other than a licensed optometrist or physician who fills a contact lens prescription shall maintain a record of that prescription for ~~five~~ three years.

D. Security requirements: restricting access, to all lenses and patient health records, to authorized personnel only.

E. Storage requirements: The registrant must have policies and procedures for maintaining the proper storage conditions for contact lenses. The lenses must be stored at the licensed location.

[16.19.28.9 NMAC - N, 12-01-2003; A, 06/30/06]

16.19.28.11 VIOLATION PENALTIES: Any person who violates any of the provisions of this part shall be subject to the provisions of the New Mexico Uniform Licensing Act.

[16.19.28.11 NMAC - N, 06/30/06]

NEW MEXICO BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS

This is an amendment to 16.39.1 NMAC Sections 1, 3, 8, 9, 12, 14, 16 and 17, effective 7/01/2006.

16.39.1.1 ISSUING AGENCY: State Board of Licensure for Professional Engineers and Professional Surveyors, ~~4010 Marquez Place~~ 4001 Office Court Drive, Suite 903, Santa Fe, NM ~~87505~~ 87507, telephone no. (505) 827-7561
[16.39.1.1 NMAC - Rp, 16 NMAC 39.1.1, 1/01/2002; A, 7/01/2006]

16.39.1.3 STATUTORY AUTHORITY: NMSA 1978, Section 61-23-10 (B) prescribes that "The board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation

of its procedures, meeting records, examinations and the conduct thereof. The board ~~also~~ shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors[-] that are not exclusive to the practice of engineering or exclusive to the practice of surveying." 16.39.1 NMAC applies to both engineering and surveying.

[16.39.1.3 NMAC - Rp, 16 NMAC 39.1.3, 1/01/2002; A, 7/01/2006]

16.39.1.8 THE BOARD:

A. The name of this board shall be the state board of licensure for professional engineers and professional surveyors hereinafter referred to as the "board".

B. The headquarters of the board shall be at Santa Fe, New Mexico.

C. The official seal of the board shall be an embossed circular seal one and three-quarter inches in diameter consisting of two concentric circles; the outer circle to be one and three-quarter inches in diameter. The inner circle is to be one and one-quarter inches in diameter. The inner circle shall contain the seal of the state of New Mexico and the words, "State of New Mexico." The words, "Board of Licensure for Professional Engineers and Professional Surveyors", shall be contained between the two concentric circles.

D. The fiscal year of the board shall be July 1, through June 30 of the following calendar year.

[16.39.1.8 NMAC - Rp, 16 NMAC 39.1.8, 1/01/2002; A, 7/01/2006]

16.39.1.9 MEMBERS OF THE BOARD: Members of the board are not employees within the meaning of that term under the Governmental Conduct Act [-] ~~The members of the Board are subject to the other provisions of the Act.;~~ however, they are public officers; therefore the Governmental Conduct Act applies to all board members.

[16.39.1.9 NMAC - Rp, 16 NMAC 39.1.9, 1/01/2002; A, 7/01/2006]

16.39.1.12 DUTIES OF THE BOARD, OFFICERS OF THE BOARD, AND THE EXECUTIVE DIRECTOR:

A. The board shall act as a whole in all administrative, financial and personnel matters and any other activity not specifically related to the practices of engineering or surveying.

B. The board shall appoint an executive director who shall serve as an exempt employee at the pleasure of the board.

C. The chair of the board shall preside at all meetings; shall appoint all committees; shall sign all certificates of ~~registration~~ licensure, vouchers and other

official documents; and shall otherwise perform all duties pertaining to the office of the chair.

D. The vice-chair of the board shall, in the absence or incapacity of the chair, exercise the duties and shall possess all the powers of the chair.

E. The secretary of the board shall co-sign all certificates of licensure.

F. The executive director shall perform and/or supervise the following for the board and professional engineering and professional surveying committees:

(1) conduct and care for all correspondence in the name of the board, the professional engineering committee and the professional surveying committee;

(2) record and file all applications, certificates of licensure, examinations, licenses and revocations for both professional engineering and professional surveying committees;

(3) possess the official seal and affix same to all official documents upon order of the chair of the board;

(4) keep a record of all meetings of the board and committees and maintain a proper account of the business of the board; a draft of the meetings' minutes shall be mailed to each member for comment within two weeks after each meeting with a final copy to be typed and furnished to each board member at the next meeting for final approval and recording;

(5) receive and account for all funds and transfer same to state treasurer within twenty-four hours of receipt; only those invoices and vouchers for expenditures included in the board's approved operating budget shall be approved and signed by the executive director; approved vouchers and invoices shall be transmitted to the department of finance and administration; a tabulation of each financial transaction is to be maintained on a quarterly basis and submitted to the board at the next scheduled meeting for its information and approval; these tabulations are to be made part of the board's minutes;

(6) present to the board at the first meeting of the fiscal year a report as of the preceding June 30th, of the transactions of the board during the preceding fiscal year, and a complete statement of the receipts and expenditures of the board, and upon being approved by the board, shall be included in the annual report and submitted to the governor;

(7) gather information and if necessary conduct interviews of applicants for licensure to insure that applications are sufficiently and accurately completed;

(8) schedule and arrange for the administration of written examinations provided for in ~~said~~ the Engineering and

Surveying Practice Act, content of which having been approved by the board or respective professional engineering or professional surveying committees; when requested by the applicant, the director shall make reasonable accommodations for the testing of an applicant with a certified disability in accordance with the provisions of the Americans with Disabilities Act and who meets the minimum qualifications in the Engineering and Surveying Practice Act and these rules; when necessary qualified assistance, approved by the board, may be retained for conduct of examinations;

(9) prepare the roster and supplemental roster in accordance with Section 61-23-13; include in the roster and supplement only the names of those engineering interns and surveying interns who have been enrolled during that fiscal year;

(10) ~~Mail copies of the~~ maintain a current roster [and Supplemental Roster to each] on the board's website and make available in hard copy to a licensee if requested; file a copy with the secretary of state and other required agencies, and furnish copies to the public upon request and payment of a fee as determined by the board and in accordance with the Inspection of Public Records Act;

(11) report to and inquire of the national council of examiners for engineering and surveying violations of state engineering and surveying laws;

(12) furnish to the press and state engineering and surveying societies lists of newly qualified licensees and enrolled engineering interns or surveying interns;

(13) distribute one week in advance of each meeting, copies of the agenda of the meeting to each member of the board;

(14) distribute twice in each fiscal year a newsletter regarding board actions and items of interest to licensees;

(15) direct investigations of any alleged violations or infringements of the Engineering and Surveying Practice Act; a written report covering status of protest actions and alleged violations shall be presented to the appropriate committee at each meeting; this may be in the form of appropriate commentary recorded in the minutes, supported by a separate file on the case; when necessary, qualified assistance, approved by the board, may be retained for conduct of investigations;

(16) file formal disciplinary actions upon approval by the board with the appropriate jurisdiction for prosecution of alleged violations of the act and/or the board's rules.

[16.39.1.12 NMAC - Rp, 16 NMAC 39.1.12, 1/01/2002; A, 7/01/2006]

16.39.1.14 PROCEDURES AT BOARD MEETINGS AND COMMIT-

TEE MEETINGS:

A. The order of business may be as follows:

(1) board meetings

- [(+) (a) approval of agenda
- [(+) (b) approval of minutes
- [(+) (c) reports of committees
- [(+) (d) communications
- [(+) (e) old business
- [(+) (f) new business
- [(+) (g) complaints and viola-

tions

- [(+) (h) adjournment

(2) committee meetings

- [(+) (a) approval of agenda
- [(+) (b) approval of minutes
- [(+) (c) reports of sub-commit-

tees

- [(+) (d) communications

- [(+) (e) old business

- [(+) (f) new business

- [(+) (g) complaints and viola-

tions

- [(+) (h) applications

- [(+) (i) adjournment

B. *Roberts' rules of order*

shall generally govern the procedure of the board and committee meetings except as otherwise provided for in ~~[the Regulations and Rules of Procedure]~~ Title 16, Chapter 39 of the New Mexico administrative code or the Engineering and Surveying Practice Act.

C. Board members may participate in a meeting of the board or committees by means of a telephone conference or similar communications equipment and participation by such means shall constitute presence in person at the meeting. Participation by telephone may only occur when it is difficult or impossible for board members to attend.

[16.39.1.14 NMAC - Rp, 16 NMAC 39.1.14, 1/01/2002; A, 7/01/2006]

16.39.1.16 FEES:

A. A fee will be assessed to process an application for a license to practice, for enrollment as an engineering intern or surveying intern, and for examinations.

B. Examination fees shall be paid ~~[no later than four (4) weeks]~~ on or before the date specified by the board prior to the date of the scheduled examination. Said fees are earned fees and are not refundable if the applicant should fail to appear for the examination.

C. Renewal and application fees are earned fees and are not refundable.

D. All fees shall be set by the board. Changes in renewal fees, application fees, and examination fees shall become effective as designated by the board.

[16.39.1.16 NMAC - Rp, 16 NMAC

39.1.16, 1/01/2002; A, 7/01/2006]

16.39.1.17 STATUS OF ~~[REGISTRATION]~~ LICENSURE:

A. Retired status - a licensee shall become eligible for retired status with a waiver of renewal fees after meeting all the following qualifications:

(1) retired from active practice;

(2) at least 60 years of age; and

(3) have been a licensee for a continuous period of 20 years, at least 10 of which must have been in New Mexico.

B. Licensees shall request retired status by letter. In the event the licensee on retired status desires to return to practice, the licensee shall apply to the board, comply with the continuing professional development requirements; and if approved shall pay the appropriate fee.

C. Professional engineers and professional surveyors on "retired status" with the board may use the titles "engineer", "surveyor", "professional engineer", "professional surveyor", PE or PS after their names and shall add "(Ret.)" or "(Retired)" after such title.

D. Inactive status - a licensee shall become eligible for inactive status with a waiver of renewal fees and professional development requirements after meeting all the following qualifications:

(1) is not engaged in the respective professions (engineering or surveying) which requires licensure in this jurisdiction;

(2) have been a licensed professional engineer or surveyor in this jurisdiction for 10 consecutive years;

(3) has filed an application and application fee prescribed by the board for inactive status prior to the expiration of the license and the 60 day grace period.

E. In the event a licensee on inactive status desires to return to practice within six (6) years of acquiring inactive status, the licensee shall make proper application to the board, comply with the continuing professional development requirements (a minimum of 30 PDHs) and if approved shall pay the appropriate fee.

F. An inactive licensee who has enjoyed inactive status in excess of six (6) consecutive years may be readmitted to active practice of the profession only upon making proper application and completion of the requirements as prescribed by the board. (In the event an inactive licensee does not maintain a current license in any jurisdiction for the six previous years prior to requesting active status, that person will be required to take the principles and practice of engineering (PE) examination or the principles and practice of ~~[and]~~ surveying ~~[PLS]~~ (PS) examination.)

[16.39.1.17 NMAC - Rp, 16 NMAC 39.1.17, 1/01/2002; A, 7/01/2006]

NEW MEXICO BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS

This is an amendment to 16.39.2 NMAC Sections 1, 3, 7 and 8, effective 7/01/2006.

16.39.2.1 ISSUING AGENCY: State Board of Licensure for Professional Engineers and Professional Surveyors, ~~[4010 Marquez Place]~~ 4001 Office Court Drive, Suite 903, Santa Fe, NM ~~[87505]~~ 87507, telephone no. (505) 827-7561. [16.39.2.1 NMAC - Rp, 16 NMAC 39.2.1, 12/01/2001; A, 7/01/2006]

16.39.2.3 STATUTORY AUTHORITY: NMSA 1978, Section 61-23-10 (B) prescribes that the board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors[?] that are not exclusive to the practice of engineering or exclusive to the practice of surveying. 16.39.2 NMAC applies to both engineering and surveying. Sections 61-23-24.1 and 61-23-27.12, NMSA 1978 prescribe[s] that "The board shall implement and conduct a professional development program. Compliance and exceptions shall be established by the regulations and rules of procedure (Title 16, Chapter 39 of the New Mexico Administrative Code) of the board." [16.39.2.3 NMAC - Rp, 16 NMAC 39.2.3, 12/01/2001; A, 7/01/2006]

16.39.2.7 DEFINITIONS [RESERVED]:

A. Professional development hour (PDH) - a contact hour (nominal) of instruction or presentation -- the common denominator for other units of credit.

B. Continuing education unit (CEU) - unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in approved continuing education course.

C. College / unit semester/quarter hour - credit for course from ABET approved curriculum or other related college course approved in accordance with Subsection E of 16.39.2.8 NMAC.

D. Course/activity - any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the licensee's field of practice.

E. Dual licensee - a person

who is licensed as both a professional engineer and a professional surveyor. [16.39.2.7 NMAC - Rp, 16 NMAC 39.2.7, 12/01/2001; A, 7/01/2006] [These definitions were moved from Paragraphs (1)-(5) of Subsection C of 16.39.2.8 NMAC.]

16.39.2.8 CONTINUING PROFESSIONAL DEVELOPMENT - MANDATORY PROGRAM: The purpose of the continuing professional development requirement is to demonstrate a continuing level of professional development of professional engineers and professional surveyors.

A. Introduction - Every licensee shall meet the continuing professional development requirements of these regulations for professional development as a condition for license renewal.

B. Failure to meet requirements - Submission of professional development hours (PDHs) shall be made concurrently with license renewal; failure to meet the PDH requirements will result in rejection of renewal; and correction of the deficiency must be made by submission of the appropriate PDHs and payment of the processing fee within 1 year of renewal date.

C. Definitions — terms used in this section are defined as follows:

~~(1) professional development hour (PDH) — a contact hour (nominal) of instruction or presentation — the common denominator for other units of credit.~~

~~(2) continuing education unit (CEU) — unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in approved continuing education course.~~

~~(3) college/unit semester/quarter hour — credit for course from ABET approved curriculum or other related college course approved in accordance with 16.39.2.8.5.~~

~~(4) course/activity — any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the licensee's field of practice.~~

~~(5) dual licensee — a person who is licensed as both a professional engineer and a professional surveyor.~~ [Reserved]

D. Requirements - every licensee is required to obtain 30 professional development hours (PDH) units during a biennium, at least four of which shall be in ethics. A maximum of 10 PDH units may be earned in self-directed study. If a licensee exceeds the biennial requirement in any biennial cycle, a maximum of 15 PDH units may be carried forward into the subsequent biennium. PDH units may be earned as follows:

- (1) successful completion of college courses;
- (2) successful completion of continuing education courses;
- (3) successful completion of correspondence, televised, videotaped, and other short courses/tutorials;
- (4) presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions or conferences;

(5) teaching or instructing in ~~[16.2.8.4.1 through 16.39.2.8.4.4 above]~~ Paragraphs (1) through (4) of Subsection D of 16.39.2.8 NMAC;

- (6) authoring published papers, articles, or books;
- (7) active participation in professional or technical societies and their committees;

- (8) patents;
- (9) subscription to a technical journal or trade publication during the first twelve (12) month of the biennium reporting period;

(10) technical reviews, including articles from periodicals, books, video/audio cassettes, tutorials and other sources, which contribute to the technical or professional education or competency of the licensee;

(11) participation in civic or community activities, relevant to the engineering and surveying professions, as a speaker, instructor, presenter or panelist;

(12) successful completion of [an] ethics [exam that may be administered annually by the Board] training.

E. Units - the conversion of other units of credit to PDH units is as follows:

- (1) 1 college or unit semester hour.....45 PDH;
- (2) 1 college or unit quarter hour.....30 PDH;
- (3) 1 continuing education unit.....10 PDH;
- (4) 1 hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences.....1 PDH;
- (5) for teaching apply multiple of 2 (teaching credit is valid for teaching a course or seminar for the first time only; teaching credit does not apply to full-time faculty);
- (6) each published paper, article, or book.....10 PDH;
- (7) active participation in professional and technical societies. (Each organization).....2 PDH/yr;
- (8) each patent.....10 PDH;
- (9) 1 yr. subscription1 PDH (max 2 PDH/ biennium);

- (10) 1 hour of literature review.....PDH (max 6 PDH/biennium);
- (11) each civic or community activity.....1 PDH (max 4 PDH/biennium);
- (12) ethics ~~[Exam]~~ training~~[1 PDH (Max 1)]~~ 4 PDH/biennium).

F. Determination of credit - the board has final authority with respect to approval of courses, credit, PDH value for courses, and other methods of earning credit:

(1) credit for college or community college approved courses will be based upon course credit established by the college;

(2) credit for qualifying seminars, workshops, professional conventions, and courses/activities may be recommended by the professional societies;

(3) additional criteria for credit determination shall be included in the board policy;

G. Record keeping - licensees are charged with the responsibility of their own professional activities. The responsibility of maintaining records to be used to support credits claimed is the responsibility of the licensee. Records required include but are not limited to: 1) a log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; 2) attendance verification records in the form of completion certificates, paid receipts or other documents supporting evidence of attendance; 3) verification of subscription to a publication in the form of a paid receipt or proof of membership in a technical organization issuing a publication as a part of its membership fee; 4) a log indicating the medium used for a technical review, the subject of the review, the author or sponsoring organization, the date the review was conducted, a brief written summary of the contents of the reviewed material and the time spent on the review; and 5) the organization sponsoring a civic or community activity, the date and location of the activity, the subject of the activity and the licensee's involvement in the activity. These records must be maintained for a period of three years and copies may be requested by the board for audit verification purposes.

H. Exemptions - a licensee may be exempt from the professional development educational requirements for one of the following reasons:

(1) new licensees by way of examination or comity/endorsement shall be exempt for the first year directly following the issuance of their license; PDH requirements will be prorated for any remaining portion of the licensing period beyond one year;

(2) a licensee serving on temporary active duty in the armed forces of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a calendar year may be exempt from obtaining the professional development hours required during that year;

(3) licensees experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt; supporting documentation must be furnished to the board;

(4) licensees who have been approved for "retired status" by the board shall be exempt from the professional development hours required; in the event such a person elects to return to active practice of professional engineering or professional surveying, professional development hours must be earned before returning to active practice for the preceding biennial cycle.

I. Reinstatement - a licensee may bring an expired license to active status by obtaining all delinquent PDH units and complying with all other reinstatement requirements in the Engineering and Surveying Practice Act and the board's rules and regulations; however, if the total number required to become current exceeds 30, then 30 shall be the maximum number required;

J. Comity/out-of-jurisdiction resident - licensees who are residents of other jurisdictions shall meet the continuing professional development (CPD) requirements of this board. These requirements may be deemed satisfied when a non-resident licensee provides evidence of having met requirements for another state engineering/surveying licensing board that are equal to or exceed the requirements of this board.

K. Dual licensees - the number of PDH units required shall remain the same for persons who hold a dual license as a professional engineer and professional surveyor; holders of dual licenses are free to utilize PDH units approved for either field at their sole discretion; for persons who hold a dual license, half of the PDH units shall be in each profession.

L. Forms - all renewal applications will require the completion of a continuing education form specified by the board PDH credit claimed. The licensee must sign the continuing education form, and submit with the renewal application and fee.

[16.39.2.8 NMAC - Rp, 16 NMAC 39.2.8, 12/01/2001; A, 7/01/2006]

NEW MEXICO BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS

This is an amendment to 16.39.3 NMAC Sections 1, 3, 8, 9, 10, 11, 12 and 13, effective 7/01/2006.

16.39.3.1 ISSUING AGENCY: State Board of Licensure for Professional Engineers and Professional Surveyors, ~~[4010 Marquez Place]~~ 4001 Office Court Drive, Suite 903, Santa Fe, NM ~~[87505]~~ 87507, telephone no. (505) 827-7561. [16.39.3.1 NMAC - Rp, 16 NMAC 39.3.1, 1/01/2002; A, 7/01/2006]

16.39.3.3 STATUTORY AUTHORITY: NMSA 1978, Section 61-23-10 (B) prescribes that "The board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board ~~[also]~~ shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying. Section 61-23-10 (C) states the professional engineering committee shall adopt and promulgate rules of professional responsibility exclusive to the practice of engineering. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act. Section 61-23-19 prescribes, "The board shall provide for the proper authentication of all documents. The board shall regulate the use of seals." [16.39.3.3 NMAC - Rp, 16 NMAC 39.3.3, 1/01/2002; A, 7/01/2006]

16.39.3.7 DEFINITIONS: ~~[Board approved, four year curriculum in engineering is defined as:]~~

A. ~~Board-approved, four-year curriculum in engineering is defined as:~~

~~[A.]~~ (1) engineering curriculum accredited by the engineering accrediting commission (EAC) of the accreditation board for engineering and technology (ABET);

~~[B.]~~ (2) graduation from an engi-

neering curriculum that receives ABET accreditation within three years of the applicant's graduation;

[C-] (3) non-ABET accredited engineering degree curriculum with the minimum number of engineering credits as required in an ABET-accredited degree (32 semester or 48 quarter credit hours in math/science including 12 semester credits of calculus terminating with differential equations; 32 semester or 48 quarter credit hours of engineering science; 16 semester or 24 quarter credits of engineering design; and 16 semester or 24 quarter credits of humanities/social science);

[D-] (4) graduate degree (master or doctoral) from an engineering program where the bachelor's degree is ABET-accredited and the candidate has completed all the BS deficiencies (confirmation letter from graduate committee), even though the applicant's bachelor's degree was earned in a non-engineering program.

B. On-site wastewater engineering practice is defined as the design of septic tank systems, on-site wastewater treatment plants, leach fields, evapotranspiration fields, and similar structures that do not discharge wastewater effluent directly to a surface watercourse or stream.

[16.39.3.7 NMAC - Rp, 16 NMAC 39.3.7, 1/01/2002; A, 7/01/2006]

16.39.3.8 ENGINEERING DISCIPLINES:

A. Licensure is granted as a professional engineer and shall be so stated on the certificate. Although the Engineering and Surveying Practice Act makes no specific designation as to the disciplines of engineering practice on the certificates as issued by the board, the records and roster of the board shall indicate the discipline(s) in which the [registrant] licensee is competent to practice in accordance with this section. Only the discipline(s) of engineering for which the applicant has successfully been examined or approved by the [PE] professional engineering committee will be recorded.

B. Requests for engineering disciplines will be accepted from the following list; and the board's records and roster will be annotated with the corresponding alphabetical code:

- (1) architectural A
- (2) aeronautical B
- (3) civil C
- (4) agricultural D
- (5) electrical and computer E
- (6) network engineer F
- [6] (7) geological G
- (7) (8) chemical H
- [8] (9) industrial I
- [9] (10) mechanical M
- [10] (11) mining N

- [11] (12) metallurgical NN
- [12] (13) petroleum P
- (14) control systems Q
- [13] (15) structural R
- [14] (16) nuclear T
- [15] (17) fire protection U
- [16] (18) environmental V
- [17] (19) construction W

C. A licensee may be listed in no more than ~~two~~ three disciplines of engineering. Subsequent to initial licensure, a licensee may apply for licensure in another discipline of engineering. The licensee shall demonstrate competence in that discipline and may be required to appear before the board. Demonstration of competence may be accomplished by presenting evidence as follows:

(1) the licensee shall file a separate application for the additional discipline requested and pay an application fee for the additional application; and

(2) complete the application forms to indicate clearly the education, experience, and three (3) acceptable personal references which will substantiate proficiency in the discipline for which the licensee is applying; experience and personal references must be stated;

(3) an applicant for licensure by endorsement may initially apply for the ~~two~~ three disciplines.

D. Structural discipline - except for an applicant with a B.S. degree with a structural option and a minimum of four years of post-baccalaureate structural engineering experience, listing as a structural engineer may be obtained by having gained an acceptable engineering degree which included a minimum of 6 hours of structural design; having licensure as a professional engineer; and having four years of structural experience gained after licensure and acceptable to the board.

(1) Passing the NCEES structural tests part I & II may be substituted for two years of the required experience.

(2) A master's degree in structures may be substituted for one year of the required experience.

(3) An applicant for licensure as a structural engineer by endorsement shall meet the requirements of [~~16.39.3.8.D(1) and 16.39.3.8.D(2) above~~] Paragraphs (1) and (2) of Subsection D of 16.39.3.8 NMAC.

E. Specialty sub-disciplines - The professional engineering committee of the board may determine that the special practice of engineering within one or more of the engineering disciplines in Subsection B of 16.39.3.8 NMAC requires unique training/education and experience to adequately protect the public safety and health, and the professional engineering committee of the board shall declare this

special practice of engineering to be a specialty sub-discipline. The declaration of a specialty sub-discipline shall be based on a need identified by the state or any of its political subdivisions, availability of appropriate and timely training/education within the state of New Mexico, and the ability of the identification of a specialty sub-discipline to inform the public of the needed special practice of engineering. If the professional engineering committee of the board declares a specialty sub-discipline, after a rules hearing, the requirements for the special practice of engineering shall be included in Title 16, Chapter 39 of the New Mexico administrative code for engineering and surveying:

(1) the specialty sub-discipline rules shall specify the training/education and experience requirements to obtain certification for the special engineering practice, including provisions for equivalent training when a particular course of training/education is specified; in anticipation that more than one discipline identified in Subsection B of 16.39.3.8 NMAC will qualify for the specialty sub-discipline, the rules shall identify which engineering disciplines in Subsection B of 16.39.3.8 NMAC, are most likely to qualify for the specialty sub-discipline;

(2) the board shall maintain a list of engineers who have been certified as meeting the requirements for the specialty sub-discipline; the list shall be available to the public upon request and pursuant to the inspection of public records; the professional engineering committee of the board shall establish a form for the application to obtain a certification for the specialty sub-discipline; upon approval by the professional engineering committee of the board, the qualified licensee's name shall be added to the list of licensees having the specialty sub-discipline;

(3) a licensee's name may be removed from the list of persons certified for the specialty sub-discipline, upon determination of the professional engineering committee of the board that the licensee no longer qualifies for the certification specialty sub-discipline; such removal shall be only after the appropriate process/hearing by the professional engineering committee of the board;

(4) the failure to obtain certification for the specialty sub-discipline shall not limit the practice of engineering within any of the engineering disciplines identified in Subsection B of 16.39.3.8 NMAC, and the failure to obtain certification in the specialty sub-discipline shall not constitute practice outside the licensee's area of competence; however, the failure to obtain certification for a specialty sub-discipline and a determination by the professional engineer-

ing committee of the board of inappropriate practice of engineering within the engineering specialty may be cause for determination that the engineering practice is not within the licensee's authorized discipline, and that appropriate disciplinary action can be taken:

(5) the certification of a specialty sub-discipline shall be for a period established by the professional engineering committee of the board, but not less than two years or more than six years; renewal of the specialty sub-discipline shall be concurrent with license renewal;

(6) the professional engineering committee of the board may remove the specialty sub-discipline from the rules for engineering and surveying, after a rules hearing, upon the finding that the training/education is no longer available or that the designation of the specialty sub-discipline in no longer needed to protect the public safety and health.

E. Establishment of specialty sub-disciplines - The following specialty sub-discipline(s) for the practice of engineering are established. On-site wastewater engineering as defined in Subsection B of 16.39.3.7 NMAC.

(1) New Mexico governmental agency identifying the need for this specialty sub-discipline - New Mexico environment department.

(2) Training/education within New Mexico - a course of training/education conducted in cooperation with the New Mexico environment department and approved by the professional engineering committee of the board. The course content shall include NM laws, unique NM conditions requiring special design practice, site testing that must be performed, procedures of approval of plans and specifications, and requirements for certification of construction.

(3) The engineering disciplines in Subsection B of 16.39.3.8 NMAC that may be applicable to this specialty sub-discipline are: architectural, civil, agricultural, geological, industrial, petroleum, environmental and construction.

(4) The certification of specialty sub-discipline for on-site wastewater engineering shall expire at the end of the license renewal period that is three years after the granting of the certification for specialty sub-discipline. The certification may be renewed by submitting documentation of updated training/education.

G. Fire protection discipline - professional responsibility for professional engineers practicing fire protection engineering - the overall design of a fire protection system involves a broad range of hazards and protection schemes in the development of a workable, integrated solution to a fire system problem. This

process includes the practice of engineering as defined by Section 61-23-3(E), NMSA 1978 (New Mexico Engineering and Surveying Practice Act). This rule clarifies the practice of engineering relating to fire protection systems.

(1) Licensed professional engineers, who design fire detection, fire alarm, or fire sprinkler systems including the identification of the water source shall sign, seal and prepare all plans in accordance with the New Mexico Engineering and Surveying Practice Act, Title 16, Chapter 39 of the New Mexico administrative code as it pertains to the practice of engineering:

(a) prepare construction plans and documents that depict all required components and devices for a complete fire detection, fire alarm, and/or fire sprinkler system in accordance with the applicable codes and standards;

(b) be responsible for any change orders, additions or corrections to bring a deficient layout into compliance with the applicable national fire protection association (NFPA) standard(s) and/or applicable local or state codes.

(2) Licensed professional engineers shall specify the installation of fire detection, fire alarm and/or fire sprinkler systems. A professional engineer's responsibilities are to identify on the construction plans/design drawings and documents/specifications the following:

(a) the applicable prescriptive codes and/or standards;

(b) the specific building use and/or occupancy classification; and/or;

(c) describe the function, placement, performance and operation of the devices and components to correctly layout the system(s);

(d) sprinkler system: the density and water flow and pressure requirements of the sprinkler system design, classification of the commodities to be protected, and confirmation of the water supply, hydraulic data and preliminary hydraulic design as shown on plans and documents signed and sealed by an engineer; the plans prepared by the engineer shall include details, location and design of the fire sprinkler riser, fire department connections, test station and sprinkler head location;

(e) alarm system: appropriate building system interfaces, effect of construction on system design, selection of devices and systems, device location and spacing, control panel location, and preliminary riser diagrams as shown on plans and documents signed and sealed by an engineer.

(3) Engineering for fire detection, fire alarm, and/or fire sprinkler systems by a New Mexico licensed professional engineer shall be limited to:

(a) those engineers who have

been approved by the board to practice in the discipline of fire protection engineering, or

(b) an engineer who is competent by experience or education in designing such systems and can demonstrate continuing professional competency by attending and reporting sufficient professional development hours including, but not limited to, the fire protection codes and standards.

[16.39.3.8 NMAC - Rp 16 NMAC 39.3.8, 1/01/2002; A, 7/01/2006]

16.39.3.9 APPLICATION - ENGINEERING INTERN AND PROFESSIONAL ENGINEER:

A. Board members may not be used as references.

B. A copy of the New Mexico Engineering and Surveying Practice Act and [~~the Regulations and Rules of Procedure~~] Title 16, Chapter 39 of the New Mexico administrative code shall be [~~sent~~] provided to each applicant.

C. Applications for the fundamentals of engineering examination will be accepted from the following undergraduates: A person who has obtained at least a senior status in a board-approved four-year curriculum in engineering, or in a board-approved four-year curriculum in engineering technology that is accredited by the technical accreditation commission of the accreditation board for engineering and technology; applications may be submitted on the short form.

D. Applicants, with board-approved engineering degrees, wishing to take the fundamentals of engineering examination shall submit their application on the long application form with [~~an official college transcript mailed directly to the Board from the university~~] official transcript(s) provided directly from the university.

E. Applicants for the principles and practices of engineering examination with an accreditation board engineering and technology (ABET) accredited engineering curriculum of four years or more or equivalent as determined by the board shall have [~~four~~] a minimum of two years of post-baccalaureate experience acceptable to the [PE] professional engineering committee at the date of application and shall have passed the fundamentals of engineering examination. Applicants with an ABET accredited engineering technology degree shall have [~~six~~] a minimum of four years of post-baccalaureate experience acceptable to the [PE] professional engineering committee at the date of application and shall have passed the fundamentals of engineering examination. To satisfy the statutory requirement for board-approved engineering experience prior to licensure, a candidate with an ABET accredited engineering curriculum of four years or more or

equivalent as determined by the board shall have four years of post-baccalaureate experience acceptable to the professional engineering committee, and a candidate with an ABET accredited engineering technology degree shall have six years of post-baccalaureate experience acceptable to the professional engineering committee. After successfully completing the professional engineering examination, an applicant, if necessary to meet the licensing requirements in the New Mexico Engineering and Surveying Practice Act, shall update the application as provided by Subsection H of 16.39.3.9 NMAC.

F. Any application, to be complete, other than those referred to in Subsection C of 16.39.3.9 NMAC above, must include acceptable replies from five references, pursuant to ~~[Section 61-23-14.1(3)]~~ Section 61-23-14.1(A)(2), NMSA 1978 official transcript(s) provided directly from the university; and if applicable, verification(s) of prior examinations taken in other states.

G. No applicant will be eligible to take any examination whose application for eligibility has not been completed as set forth in Subsection F of 16.39.3.9 NMAC for professional engineering committee approval no less than ~~[eight (8)]~~ thirteen (13) weeks prior to the next scheduled examination. Once eligibility has been approved, each applicant shall then submit a second application which identifies type and location of examination desired. This second application must be completed and examination fees paid ~~[no less than four (4) weeks prior to the next scheduled examination.]~~ on or before the date specified by the board.

H. To update a professional engineer (PE) application file in relation to experience, the applicant must complete the appropriate portions of the application form and provide references acceptable to the [PE] professional engineering committee to verify each additional experience record.

~~[I. An applicant that has made three unsuccessful attempts at achieving a passing score on an examination, shall only be eligible to take the next scheduled examination after waiting a period of thirteen months. Thereafter, the applicant may take the examination no more than once each calendar year.]~~

~~[J. I. Applications for [the FE, PE] licensure or certification by examination or comity/endorsement which have been approved by the [Board] professional engineering committee shall remain valid for three years from the date of approval.~~

~~[K. J. An applicant with foreign credentials requesting licensure by examination or endorsement shall provide~~

to the professional engineering committee's satisfaction, evidence that the applicants' qualifications are equal to, or exceed those in New Mexico.

~~[H.]~~ **K.** All applicants shall also show proficiency in the English language and shall have a minimum of four years experience working in the United States under the direction of an engineer who will attest to the applicant's ability and knowledge as a competent engineer. [16.39.3.9 NMAC - Rp, 16 NMAC 39.3.9, 1/01/2002; A, 7/01/2006]

16.39.3.10 EXAMINATIONS—ENGINEERING INTERN AND PROFESSIONAL ENGINEER:

A. Regularly scheduled written examinations shall be held biannually in the spring and autumn respectively. Other examinations may be held at times and places as determined by the [PE] professional engineering committee.

B. Any applicant that fails any written examination will be notified of the next ~~[three (3) dates of]~~ available examination session[s]. A written request to retake the examination and payment of the examination fee shall be received ~~[at least four (4) weeks prior to the date of the scheduled examination]~~ on or before the date specified by the board.

C. An examinee that has ~~made three unsuccessful attempts at achieving a passing score on an examination, shall only be eligible to take the next scheduled examination after providing documentation to the board of further study in preparation of the exam.~~

~~[C.]~~ **D.** The type of examination will be disclosed to the examinee at a time to be set by the [PE] professional engineering committee. Type of examination will be one of the following:

(1) an "open book" examination shall be an examination during which the examinee may use ~~[board approved books, but shall exclude any book published as a compilation of examination items with their solutions that may have been presented in previous NCEES examinations]~~ reference material as specified by the national council of examiners for engineering and surveying;

(2) a "closed book" examination shall mean that absolutely no reference material of any shape or form may be used by the examinee except as provided by the board during the examination;

(3) the examinations given by the [PE] professional engineering committee may be "open" or "closed book" or any combination thereof;

(4) only ~~[battery operated]~~ calculators ~~[that print only to the integral display may be used for the solution of the exami-~~

~~nation problems; calculators that can print to a disc, card, tape, removable electronic chip, or similar device shall not be used]~~ specified by the national council of examiners for engineering and surveying shall be admitted in the examination room during the administration of the licensing examinations;

~~[D. Examinees who wish to review their own examinations and the grading may do so, by appointment, at the Board's office in Santa Fe, but only in the presence of a member of the office staff. No notes may be taken during the examination of the materials and neither tests nor answer sheets shall be removed from the office.]~~

E. ~~[If there is any]~~ An examinee who has a question regarding the completed examination, ~~[the examinee]~~ shall put the matter in writing to the professional engineering committee; ~~[and]~~ it will be considered at the next professional engineering committee meeting; the professional engineering committee's answer to the ~~[examinee's question will]~~ examinee shall be ~~[made]~~ in writing ~~[to the examinee]~~. [16.39.3.10 NMAC - Rp, 16 NMAC 39.3.10, 1/01/2002; A, 7/01/2006]

16.39.3.11 PRACTICE OF ENGINEERING:

A. Neither ~~[an individual]~~ a person nor ~~[any]~~ an organization shall advertise or offer to practice engineering work in a discipline of engineering unless the ~~[individual]~~ person or a member of the organization has been ~~[listed]~~ approved by the professional engineering committee in the appropriate discipline ~~[by the Board]~~ and who is legally able to bind that organization by contract.

B. Neither ~~[individuals]~~ persons nor organizations shall circumvent these rules. ~~[Hiring persons qualified to do the work only after the work has been solicited or obtained shall be in violation of these rules and regulations.]~~ Licensees or organizations may advertise for work only in those disciplines of engineering in which they are ~~[listed]~~ approved by the professional engineering committee to practice. Nothing in this section is intended to prevent the existence of an association of professionals in different disciplines.

C. In the event a question arises as to the competence of a licensee in a specific technical field which cannot be otherwise resolved to the board's satisfaction, the board shall, either upon request of the licensee or of its own volition, require the licensee to pass an appropriate examination.

D. The ~~[Board]~~ professional engineering committee will consider the use of the terms, "engineer", "engineer-

ing”, or any modification or derivative of such terms, in the title of a firm or organization to constitute the offering of engineering. The board will also consider the use of these terms or any modification or derivative of such terms in a corporation’s name or its [the] articles of incorporation or in a foreign corporation’s certificate of authority as published by the [State Corporation Commission] New Mexico public regulation commission to constitute the offering of engineering services.

[16.39.3.11 NMAC - Rp, 16 NMAC 39.3.11, 1/01/2002; A, 7/01/2006]

16.39.3.12 SEAL OF LICENSEE:

A. Each licensed professional engineer shall obtain a seal/stamp, which must appear on all design drawings, and the certification page of all specifications and engineering reports prepared by the licensee in responsible charge. Adjacent to the seal/stamp shall appear the original signature of the licensee along with the date the signature was applied. Rubber stamps signatures are not acceptable. Electronic signatures as provided by law and board’s policy shall be acceptable.

B. The seal/stamp shall be either the impression type seal, the rubber type, or a computer-generated facsimile. Computer generated seals shall be bona fide copies of the actual seal/stamp.

C. The design of the seal/stamp shall consist of three concentric circles, the outermost circle being one and one-half inches in diameter, the middle circle being one inch in diameter, and the innermost circle being one-half inch in diameter. The outer ring shall contain the words, ~~[LICENSED]~~ PROFESSIONAL ENGINEER” and the licensee’s name. The inner ring shall contain the words “NEW MEXICO”. The center circle shall contain the license number issued by the board. Any border pattern used by the manufacturer is acceptable.

D. Professional engineers who were licensed prior to the enactment of these current rules and who have maintained that license without lapse, may retain and use the seals, stamps, and wall certificates previously approved.

E. For the purposes of the Engineering and Surveying Practice Act, a licensee of this board has “responsible charge of the work” as defined in ~~[Section 61-23-3, paragraph K]~~ Section 61-23-3 (M), NMSA 1978 and may sign, date and seal/stamp plans, specifications, drawings or reports which the licensee did not personally prepare when plans, specifications, drawings or reports have been sealed only by another licensed engineer, and the licensee and/or persons directly under his personal supervision have reviewed the plans,

specifications, drawings or reports and have made tests, calculations or changes in the work as necessary to determine that the work has been completed in a proper and professional manner.

F. ~~[The board recognizes that there may be an overlap between the work of engineers and surveyors in obtaining survey information for the planning and design of an engineering project. A licensed professional engineer who has primary engineering responsibility and control of an engineering project may perform an engineering survey.]~~ The board shall recognize that there may be occasions when engineers need to obtain supplemental survey information for the planning and design of an engineering project. A licensed professional engineer who has primary engineering responsibility and control of an engineering project may perform supplemental surveying work in obtaining data incidental to that project. Supplemental surveying work may be performed by a licensed professional engineer only on a project for which the engineer is providing engineering design services. A licensed professional engineer may apply photogrammetric methods to derive topographic and other data and shall certify the work by affixing the licensee’s seal and signature.

[16.39.3.12 NMAC - Rp, 16 NMAC 39.3.12, 1/01/2002; A, 7/01/2006]

16.39.3.13 ENDORSEMENTS:

~~[A-]~~ For the purpose of New Mexico licensees by endorsement from other states, or possessions, the professional engineering committee will only recognize licensure granted by those authorities when the professional engineering committee has determined that the applicant possesses qualifications which “do not conflict with the provisions of the Engineering and Surveying Practice Act and are of standard not lower than that specified in Sections 61-23-14 and 61-23-14.1, NMSA 1978”. Conditions establishing eligibility for licensure by endorsement shall have been met at the time of initial licensure. Additionally, the applicant must have a current license in another state, the District of Columbia, a territory or a possession of the United States, or in a foreign country. Conditions for endorsement for licensure as a professional engineer shall be as follows:

(4) **A.** graduation from an approved engineering curriculum, four years of experience satisfactory to the [PE] professional engineering committee, and passing of the 8-hour fundamentals and 8-hour professional examinations; (1979 law and 1987 law);

(2) **B.** graduation from an ABET accredited engineering technology program or from an engineering or related science curriculum approved by the

committee, six years of experience satisfactory to the [PE] professional engineering committee, and passing of the 8-hour fundamentals and 8-hour professional examination (1993 law);

(3) **C.** licensure prior to July 1, 1993 by graduation from an engineering or related science curriculum other than the ones approved by the committee, eight years of experience satisfactory to the [PE] professional engineering committee, and passing of the 8-hour fundamentals and 8-hour professional examination (1979 law and 1987 law);

(4) **D.** licensure prior to July 1, 1993, by graduation from an engineering or related science curriculum, twenty years experience satisfactory to the [PE] professional engineering committee, and passing the 8-hour professional examination (1979 law and 1987 law);

(5) **E.** licensure prior to July 1, 1940, by twelve years of experience satisfactory to the [PE] professional engineering committee (1934 law);

(6) **F.** licensure prior to July 1, 1957, by graduation from an approved curriculum, and four years or more of experience satisfactory to the [PE] professional engineering committee (1935 law);

(7) **G.** licensure prior to July 1, 1957, by passing a written and oral examination designed to show knowledge and skill approximating that attained through graduation from an approved curriculum, and four years or more of experience satisfactory to the [PE] professional engineering committee (1952 law);

(8) **H.** licensure prior to July 1, 1967, by twenty-four years of experience satisfactory to the [PE] professional engineering committee, and by passing an oral examination (1957 law);

(9) **I.** licensure prior to July 1, 1967, by graduation from an approved curriculum prior to July 1, 1957, and passing the 8-hour professional examination (1957 law);

(10) **J.** licensure prior to July 1, 1979, by eight years of experience satisfactory to the [PE] professional engineering committee, and by having passed the 8-hour fundamentals and 8-hour professional examinations (1969 law);

(11) **K.** licensure prior to July 1, 1979, by thirty years of experience, the last twelve years of which must have been of outstanding nature and by having been nationally eminent among his peers (1967 law);

(12) **L.** for the purposes of endorsement, an approved engineering curriculum shall be an ABET accredited engineering curriculum of four years or more or equivalent as determined

by the board.

[16.39.3.13 NMAC - Rp, 16 NMAC 39.3.13, 1/01/2002; A, 7/01/2006]

NEW MEXICO BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS

This is an amendment to 16.39.4 NMAC Sections 1 and 3, effective 7/01/2006.

16.39.4.1 ISSUING AGENCY: State Board of Licensure for Professional Engineers and Professional Surveyors, ~~[4010 Marquez Place]~~ 4001 Office Court Drive, Suite 903, Santa Fe, NM ~~[87505]~~ 87507, telephone no. (505) 827-7561 [16.39.4.1 NMAC - Rp 16 NMAC 39.4.1, 1/01/2002; A, 7/01/2006]

16.39.4.3 STATUTORY AUTHORITY: NMSA 1978, Section 61-23-10 (B) prescribes that "The board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board ~~also~~ shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying...(C) The professional engineering committee shall adopt and promulgate rules of professional responsibility exclusive to the practice of engineering. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act." NMSA 1978, ~~[Section 61-23-10 G]~~ Section 61-23-10 (K) states "The board, in cooperation with the board of examiners for architects and the board of landscape architects shall create a joint standing committee to be known as the 'joint practice committee' ~~...~~(H)." "(L) As used in the Engineering and Surveying Practice Act, 'incidental practice' shall be defined by identical regulations of the board of licensure for professional engineers and professional surveyors and the board of examiners for architects."

[16.39.4.3 NMAC - Rp 16 NMAC 39.4.3, 1/01/2002; A, 7/01/2006]

NEW MEXICO BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS

This is an amendment to 16.39.5 NMAC Sections 1, 3, 8, 9, 10 and 11, effective 7/01/2006.

16.39.5.1 ISSUING AGENCY: State Board of Licensure for Professional Engineers and Professional Surveyors, ~~[4010 Marquez Place]~~ 4001 Office Court Drive, Suite 903, Santa Fe, NM ~~[87505]~~ 87507, telephone no. (505) 827-7561 [16.39.5.1 NMAC - Rp 16 NMAC 39.5.1, 1/01/2002; A, 7/01/2006]

16.39.5.3 STATUTORY AUTHORITY: NMSA 1978, Section 61-23-10 (B) prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board ~~also~~ shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying...(D) The professional surveying committee shall adopt and promulgate rules of professional responsibility exclusive to the practice of surveying. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act."

[16.39.5.3 NMAC - Rp 16 NMAC 39.5.3, 1/01/2002; A, 7/01/2006]

16.39.5.8 APPLICATION - SURVEYOR INTERN AND PROFESSIONAL SURVEYOR:

A. Board members may not be used as references.

B. A copy of the New Mexico Engineering and Surveying Practice Act and the ~~[Regulations and Rules of Procedure]~~ Title 16, Chapter 39 of the New Mexico Administrative Code shall be ~~[sent]~~ provided to each applicant.

C. Any application, to be complete, must include acceptable replies from references, official transcript(s) provided directly from the university; and if applicable, verification(s) of prior examinations taken in other states.

D. An applicant whose application for eligibility has not been com-

pleted as set forth in ~~[16.39.5.8 C eight (8)]~~ Subsection D of 16.39.5.8 NMAC ~~thirteen (13) weeks~~ prior to the examination will not be eligible to take any examination. Once eligibility has been approved, each applicant shall then submit a second application which identifies type and location of examination desired. This second application must be completed and examination fees paid ~~[no less than four (4) weeks prior to the next scheduled examination]~~ on or before the specified date set by the board.

E. To update an application file in relation to experience, the candidate must complete appropriate portions of the application form and provide references acceptable to the professional surveying committee to verify each additional experience record.

~~[F. An applicant that has made three unsuccessful attempts at achieving a passing score on an examination, shall only be eligible to take the next scheduled examination after waiting a period of thirteen months. Thereafter, the applicant may take the examination no more than once each calendar year.]~~

~~[G] E.~~ Applications for the ~~[PS Examination]~~ principles & practice of surveying and the fundamentals of surveying examinations which have been approved by the board shall remain valid for ~~[only one year]~~ three (3) years.

~~[H] G.~~ An applicant with foreign credentials requesting licensure by examination or endorsement shall provide to the professional surveying committee's satisfaction, evidence that the applicant's qualifications are equal to or exceed the qualifications for licensure in effect in New Mexico at the time of application. All applicants shall show proficiency in the English language and shall have a minimum of four years experience working in the United States under the direction of a licensed professional surveyor who can attest to the applicant's ability and knowledge as a competent surveyor.

[16.39.5.8 NMAC - Rp 16 NMAC 39.5.8 , 1/01/2002; A, 7/01/2006]

16.39.5.9 EXAMINATIONS—SURVEYOR INTERN AND PROFESSIONAL SURVEYOR:

A. Regularly scheduled written examinations shall be held biannually in the spring and autumn respectively. Other examinations may be held at times and places as determined by the ~~[PS]~~ professional surveying committee.

B. An applicant that fails any written examination will be notified of the next ~~[three (3) dates of]~~ available examination sessions. A written request to retake the examination and payment of the examination fee shall be received ~~[at least four (4)]~~

~~weeks prior to the date of the scheduled examination] on or before the specified date set by the board.~~

~~[C. Examinees who wish to review their own examinations and the grading may do so, by appointment, at the Board's office in Santa Fe, but only in the presence of a member of the office staff. No notes may be taken during the review of the examination materials. Neither tests nor answer sheets shall be removed from the office.]~~

C. An examinee that has made three unsuccessful attempts at achieving a passing score on an examination shall only be eligible to take the next scheduled examination after providing documentation to the board of further study in preparation of the exam.

D. [If there is any] An examinee who has a question regarding an examination [; the examinee] shall put the question in writing [and submit it] to the professional surveying committee. The question will be considered at the next professional surveying committee meeting. The committee's answer to the [examinee's question] examinee shall be [made] in writing [to the examinee].
[16.39.5.9 NMAC - Rp 16 NMAC 39.5.9, 1/01/2002; A, 7/01/2006]

16.39.5.10 PRACTICE OF SURVEYING:

A. [An individual] A person or any organization shall not advertise or offer to practice surveying work unless that [individual] person or a member of the organization is licensed by the board and is legally able to bind that organization by contract.

B. Neither [individual and] persons nor organizations shall [not] circumvent these rules. [Hiring persons qualified to do the work only after the work has been solicited or obtained shall be in violation of these rules and regulations.]

C. Nothing in this section is intended to prevent the existence of an association of professionals in different disciplines.

D. The board will consider the use of the terms, "surveyor", "surveying" or any modification or derivative of such terms, in the title of a firm or organization to constitute the offering of surveying services. The board also considers the use of these terms or any modification or derivative of such terms [solely] in a domestic corporation's [the] articles of incorporation or in a foreign corporation's certificate of authority as published by the [State Corporation Commission] New Mexico public regulation commission to constitute the offering of surveying services.

[16.39.5.10 NMAC - Rp 16 NMAC

39.5.10, 1/01/2002; A, 7/01/2006]

16.39.5.11 SEAL OF LICENSEE:

A. Each licensed professional surveyor shall obtain a seal/stamp which must be impressed on all plats, reports, etc., prepared by the licensee in responsible charge. Adjacent to the seal/stamp shall appear the original signature of the licensee along with the date the signature was applied. Rubber stamps and all facsimiles of signatures are not acceptable. Electronic signature as provided by law and board's policy shall be acceptable.

B. The seal/stamp shall be either the impression type seal, the rubber type, or a computer-generated facsimile. Computer-generated seals shall be bona fide copies of the actual seal/stamp.

C. The design of the seal/stamp shall consist of three concentric circles, the outermost one being one and one-half inches in diameter, the middle circle being one inch in diameter and the innermost circle being one-half inch in diameter. The outer ring shall contain the words, [LICENSED] "PROFESSIONAL SURVEYOR", and the licensee's name. The inner ring shall contain the words "NEW MEXICO". The center circle shall contain the license number issued by the board. Any border pattern used by the manufacturer is acceptable.

D. Professional surveyors who were licensed prior to the enactment of these current rules and who have maintained that license without lapse, may retain and use the seals, stamps, and wall certificates previously approved.
[16.39.5.11 NMAC - Rp 16 NMAC 39.5.11, 1/01/2002; A, 7/01/2006]

NEW MEXICO BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS

This is an amendment to 16.39.7 NMAC Sections 1, 2, 3 and 9, effective 7/01/2006.

16.39.7.1 ISSUING AGENCY: State Board of Licensure for Professional Engineers and Professional Surveyors, ~~[4010 Marquez Place]~~ 4001 Office Court Drive, Suite 903, Santa Fe, NM ~~[87505]~~ 87507, telephone no. (505) 827-7561
[16.39.7.1 NMAC - Rp 16 NMAC 39. 7.1, 1/01/2002; A, 7/01/2006]

16.39.7.2 SCOPE: Provisions for Part 7 apply to ~~[individuals]~~ persons certified as engineer interns[;] or surveyor

~~interns, persons licensed as, [or licensed as] professional engineers or professional surveyors, [or anyone applying for licensure as a Professional Engineer or Surveyor] applicants for either licensure or certification, and persons who engage in the business or act in the capacity of a professional engineer or professional surveyor without being licensed by the board.~~

[16.39.7.1 NMAC - Rp 16 NMAC 39.7.2, 1/01/2002; A, 7/01/2006]

16.39.7.3 STATUTORY AUTHORITY: NMSA 1978, Section 61-23-10 (B) prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of it procedures, meeting records, examinations and the conduct thereof. The board ~~[also]~~ shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying." Part 7 applies to both engineering and surveying.

[16.39.7.3 NMAC - Rp 16 NMAC 39.7.3, 1/01/2002; A, 7/01/2006]

16.39.7.9 VIOLATIONS:

A. For organizations using the words "engineering" or "surveying" in their titles or offering engineering or surveying services, the board's executive director shall write the organization, enclosing an affidavit to be completed which identifies the member of the organization who is licensed to practice in the state of New Mexico and who is legally able to bind the organization by contract. If no response to this request is received within thirty (30) days, a second letter shall be sent by certified mail, return receipt requested. If the second letter does not result in a response, the matter may be turned over to the attorney general's office for action.

B. It shall be considered "misconduct" under NMSA 1978, Sections 61-23-24 (A)(1) (2005) and 61-23-27.11(A)(1) (2005) of the Engineering and Surveying Practice Act for any engineer or surveyor to practice or offer to practice outside their field(s) of demonstrated competence or in contravention of any of the provisions of these rules. It shall also be considered "misconduct" under NMSA 1978, Sections 61-23-23.1(A) (2003) and 61-23-27.15(A) (2003) of the Engineering and Surveying Practice Act for any person to act in the capacity of a professional engineer or a professional surveyor without being licensed by the board.

C. The practice or offer to practice engineering and/or surveying by a

licensee of the board in any state, territory and/or country where the licensee is in violation of that jurisdiction's licensing requirement shall be considered to be professional misconduct which may be actionable by the board.

D. Each applicant or licensee shall notify the board, in writing, within ninety (90) days, of the imposition of any disciplinary action by any other applicable licensing board or any conviction of or entry of plea of nolo contendere to any crime under the laws of the United States, or any state, territory or county thereof, which is a felony, whether related to practice or not; any conviction of or entry of plea of nolo contendere to any crime, whether a felony, misdemeanor, or otherwise, an essential element of which is moral turpitude, or which is directly related to the practice of engineering or surveying.

E. The board shall comply with the provisions of the Parental Responsibility Act as they relate to the denial, suspension or revocation of certificates of licensure for nonpayment of child support.

[16.39.7.9 NMAC - Rp 16 NMAC 39.7.9, 1/01/2002; A, 7/01/2006]

NEW MEXICO BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS

This is an amendment to 16.39.8 NMAC Sections 1, 2, 3, and 6, effective 7/01/2006.

16.39.8.1 ISSUING AGENCY: State Board of Licensure for Professional Engineers and Professional Surveyors, [4010 Marquez Place] 4001 Office Court Drive, Suite 903, Santa Fe, NM [87505] 87507, telephone no. (505) 827-7561 [16.39.8.1 NMAC - Rp, 16 NMAC 39.8.1, 1/01/2002; A, 7/01/2006]

16.39.8.2 SCOPE: Provisions for Part 8 apply to [individuals] persons certified as engineer interns or surveyor interns, licensed as professional engineers or professional surveyors or anyone applying for certification as an engineer intern or surveyor intern or licensed as a professional engineer or professional surveyor. [16.39.8.2 NMAC - Rp, 16 NMAC 39.8.2, 1/01/2002; A, 7/01/2006]

16.39.8.3 STATUTORY AUTHORITY: NMSA 1978, Section 61-23-10 (B) prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent

with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board [also] shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying." Part 8 applies to both engineering and surveying.

[16.39.8.3 NMAC - Rp, 16 NMAC 39.8.3, 1/01/2002; A, 7/01/2006]

16.39.8.6 OBJECTIVE: The objective of Part 8 is to establish and maintain rules of professional conduct for professional engineers and professional surveyors.

[16.39.8.6 NMAC - Rp, 16 NMAC 39.8.6, 1/01/2002; A, 7/01/2006]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.60.8 NMAC, Sections 1, 3, 6, 8 and 9, effective 06-15-06.

6.60.8.1 ISSUING AGENCY: [State Board of Education] Public Education Department [06-15-98, 07-30-99; 6.60.8.1 NMAC - Rn, 6 NMAC 4.2.4.8.1, 03-31-01; A, 06-15-06]

6.60.8.3 STATUTORY AUTHORITY: Sections 22-2-1, [22-10-3.3, and 22-10-3.4] 22-2-2, 22-10A-5 NMSA 1978. [06-15-98, 11-15-99; 6.60.8.3 NMAC - Rn, 6 NMAC 4.2.4.8.3, 03-31-01; A, 06-15-06]

6.60.8.6 OBJECTIVE: This rule establishes the requirements for background checks on all initial applicants for licensure and for sharing information from employment background checks between school districts and the New Mexico [state department of public education ("SDE")] public education department ("PED"). [06-15-98, 11-15-99; 6.60.8.6 NMAC - Rn, 6 NMAC 4.2.4.8.6 & A, 03-31-01; A, 06-15-06]

6.60.8.8 REQUIREMENTS:
A. An applicant for initial educator licensure shall be fingerprinted using fingerprint cards supplied by the [SDE] PED or the equivalent electronic fingerprints. The applicant will submit the two completed fingerprint cards or equivalent electronic fingerprints to the [SDE] PED either prior to or with the initial application for educator licensure. A criminal history background record issued by either the DPS or the FBI shall be valid and may be dis-

seminated by the [SDE] PED pursuant to FBI and DPS guidelines for [one year] twenty-four months from the date of issuance entered on the criminal history background record.

B. The [SDE] PED shall not disseminate a DPS or FBI criminal history background record more than [one year] twenty-four months from the date of issuance, regardless of when an applicant for initial employment already possessing current New Mexico educator licensure is offered employment or commences employment duties for any new employer.

C. The applicant shall pay by certified check, [or] money order [to the SDE] or credit card, if authorized by the PED, a background check fee in an amount established by that agency sufficient to cover the agency's actual costs of obtaining criminal history background reports from the DPS and the FBI. [Credit card payment may be permitted if authorized by the administrator, state support section of the SDE's finance, transportation and administrative services division. Applicants should contact SDE's licensure unit to see if credit card payment is authorized.]

[06-15-98, 11-15-99; 6.60.8.8 NMAC - Rn, 6 NMAC 4.2.4.8.8 & A, 03-31-01; A, 06-15-06]

6.60.8.9 IMPLEMENTATION:

A. The [SDE] PED will not issue an educator license until the applicant's background check has been successfully completed.

B. An applicant will be notified of any information in the background check reports that could result in licensure denial, suspension, or revocation prior to the initiation of any such action by the [SDE] PED.

C. If requested by a local school board, a DPS or FBI criminal history report that is not more than [one year] twenty-four months old may be provided by the [SDE] PED to the applicant's school employer. The [SDE] PED may inform a licensure applicant's school employer, if known, of any background check information that reveals a conviction of a felony or misdemeanor of moral turpitude at the same time that the information is reported to the applicant.

D. School district officials, who in the course of their background checks of employment applicants, discover that a licensed applicant or applicant pending a license has a conviction of a felony or misdemeanor of moral turpitude that results in any kind of action against that individual, shall share that information with the [Licensure Unit of the SDE] professional licensure or educator ethics bureaus of the PED. If the applicant has education licen-

sure, the [SDE] PED will notify the license holder, and his/her current school employer, if known, of the conviction(s) following the procedures in Subsections B and C of 6.60.8.9 NMAC.

E. Applicants will be given the opportunity on the application form to disclose, explain, and provide information, including rehabilitation, related to their criminal history.

[06-15-98, 11-15-99; 6.60.8.9 NMAC - Rn, 6 NMAC 4.2.3.4.8.9 & A, 03-31-01; A, 06-15-06]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.61.4 NMAC, Sections 1, 3, 6, and 8, effective 06-15-06.

6.61.4.1 ISSUING AGENCY: [State Board of Education] Public Education Department

[11-14-98, 7-30-99; 6.61.4.1 NMAC - Rn, 6 NMAC 4.2.3.4.1, 10-31-00; A, 06-15-06]

6.61.4.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2 and [22-2-8.7] 22-10A-6, NMSA 1978.

[11-14-98; 6.61.4.3 NMAC - Rn, 6 NMAC 4.2.3.4.3, 10-31-00; A, 06-01-02; A, 06-15-06]

6.61.4.6 OBJECTIVE: This [regulation] rule governs licensure requirements in secondary education for grades 7-12 for persons seeking such licensure. It waives the requirement of this licensure for persons already holding a valid state secondary license as of June 30, 1989.

[11-14-98; 6.61.4.6 NMAC - Rn, 6 NMAC 4.2.3.4.6 & A, 10-31-00; A, 06-15-06]

6.61.4.8 REQUIREMENTS:

A. Persons seeking licensure in secondary education pursuant to the provisions of this [regulation] rule shall meet the requirements of Subsection A or Subsection B of 6.61.4.8 NMAC.

(1) bachelor's degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, the following:

(a) twelve (12) semester hours in English;

(b) twelve (12) semester hours in history including American history and western civilization;

(c) six (6) semester hours in mathematics;

(d) six (6) semester hours in government, economics or sociology;

(e) twelve (12) semester hour in science, including biology, chemistry,

physics, geology, zoology, or botany;

(f) six (6) semester hours in fine arts; and

(2) credits from a regionally accredited college or university which include twenty-four to thirty (24-30) semester hours of professional education in a secondary education program approved by the [state board of education ("state board")] public education department ("PED") including completion of the [state board's] PED's approved functional areas and related competencies in professional education; and including:

(3) a mandatory student teaching component; and

(4) twenty-four to thirty-six (24-36) semester hours in at least one teaching field such as mathematics, science(s), language arts, reading, [and social studies] or from among history, geography, economics, civics and government (or other content related areas), twelve (12) hours of which must be in upper division courses as defined by the college or university; individuals must also complete the [state board's] PED approved functional areas and related competencies in the teaching field; and

(5) in addition to the requirements specified in Subsection A, Paragraphs (1), (3), (4), (6) and (7) of 6.61.4.8 NMAC, three (3) hours in the teaching of reading for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(6) passage of all portions of the current [SBE] PED approved teacher test; and

(7) if new to the profession after June 30, 2006, or hired after the first day of school of the 2002-2003 school year and assigned to work in a title I targeted assistance program or a title I school-wide, satisfy the requirements of a highly qualified beginning secondary teacher; or

B. Possess a valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type.

[11-14-98; 6.61.4.8 NMAC - Rn, 6 NMAC 4.2.3.4.8 & A, 10-31-00; A, 06-01-02; A, 08-15-03; A, 06-15-06]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.61.5 NMAC, Sections 1, 2, 3 and 6 through 10 effective 06-15-06. The Part name was also changed.

PART 5 LICENSURE FOR GRADES PRE KINDERGARTEN THROUGH 12

6.61.5.1 ISSUING AGENCY: [State Board of Education] Public Education Department

[11-14-98; 07-30-99; 6.61.5.1 NMAC - Rn, 6 NMAC 4.2.3.5.1, 06-01-02; A, 06-15-06]

6.61.5.2 SCOPE: Chapter 61, Part 5, governs licensure in grades pre kindergarten pre K through 12, for those persons seeking such licensure.

[11-14-98; 6.61.5.2 NMAC - Rn, 6 NMAC 4.2.3.5.2, 06-01-02; A, 06-15-06]

6.61.5.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2 and [22-2-8.7] 22-10A-6, NMSA 1978.

[11-14-98; 6.61.5.3 NMAC - Rn, 6 NMAC 4.2.3.5.3 & A, 06-01-02; A, 06-15-06]

6.61.5.6 OBJECTIVE: This [regulation] rule governs licensure requirements in grades pre k-12 for those persons seeking such licensure.

[11-14-98; 6.61.5.6 NMAC - Rn, 6 NMAC 4.2.3.5.6, 06-01-02; A, 06-15-06]

6.61.5.7 DEFINITIONS:

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

B. "A highly qualified beginning pre k-12 teacher", under this rule, means a teacher who is fully qualified to teach the core academic subjects in grades pre k-12, who is new to the profession, who has pursued a standard route to licensure and who:

(1) meets the requirements for pre k-12 licensure in Subsections A or B in 6.61.5.8 NMAC, and

(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason, and

(3) has passed all applicable teacher testing requirements for licensure in 6.60.5.8 NMAC.

C. "Pre-kindergarten" means a voluntary developmental readiness program for children who have attained their fourth birthday prior to September 1.

[6.61.5.7 NMAC - N, 08-15-03; A, 06-15-06]

6.61.5.8 REQUIREMENTS:

A. Persons seeking pre k-12 licensure pursuant to the provisions of this [regulation] rule shall meet the requirements of Subsection A of 6.61.5.8 NMAC or Subsection B of 6.61.5.8 NMAC.

(1) bachelor's degree from a

regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, the following:

(a) twelve semester hours in English;

(b) twelve semester hours in history including American history and western civilization;

(c) six semester hours in mathematics;

(d) six semester hours in government, economics or sociology;

(e) twelve semester hours in science, including biology, chemistry, physics, geology, zoology, or botany;

(f) six semester hours in fine arts; and

(2) credits from a regionally accredited college or university which include twenty-four to thirty-six semester hours of professional education in an education program approved by the [state board] public education department (PED), including completion of the [state board of education's] PED approved functional areas and related competencies in professional education for grades pre k-12; and including

(a) a mandatory student teaching component; and

(b) twenty-four to thirty-six semester hours in at least one teaching field such as mathematics, science(s), language arts, reading, [and social studies] or from among history, geography, economics, civics and government (or other content related areas), twelve hours of which must be in upper division courses as defined by the college or university; individuals must also complete the PED approved functional areas and related competencies in the teaching field; and

(3) in addition to the requirements specified in Subsection A, Paragraphs (1), (2) and (4) of 6.61.5.8 NMAC, three (3) hours in the teaching of reading in subject matter content for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(4) passage of all portions of the New Mexico teacher assessments or any successor teacher examination adopted by the [SBE] PED; and

(5) if new to the profession after June 30, 2006, or hired after the first day of school of the 2002-2003 school year and assigned to work in a title I targeted assistance program or a title I school-wide, satisfy the requirements of a highly qualified beginning pre k-12 teacher; or

B. a valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type.

[11-14-98; 6.61.5.8 NMAC - Rn, 6 NMAC 4.2.3.5.8 & A, 06-01-02; A, 08-15-03; A,

06-15-06]

6.61.5.9 IMPLEMENTATION: All persons holding a valid pre k-12 New Mexico license or endorsement on June 30, 1989 shall be entitled to pre k-12 licensure. Such licensure may be further continued pursuant to [regulation(s)] rule(s) as established by the [state board of education] PED.

[11-14-98; 6.61.5.9 NMAC - Rn, 6 NMAC 4.2.3.5.9, 06-01-02; A, 06-15-06]

6.61.5.10 REFERENCED MATERIAL: Competencies for entry level pre k-12 teachers

A. Essential competencies for all areas

(1) Makes rational decisions including development and implementation of plans within the classroom or involving other areas of concern.

(2) Communicates, written and orally, to all groups in an appropriate manner, including demonstrating effective writing skills, and uses standard English skills where appropriate.

(3) Evaluates oneself in all areas of professional work.

(4) Understands how social and cultural environments affect the development and selection of various strategies and techniques used to meet the needs of the students.

(5) Responds to students as individuals.

(6) Maintains a classroom environment where individual differences are respected.

(7) Is sensitive to and knows resources available for meeting students' diverse language needs.

B. Management skills

(1) Arranges physical environment of the classroom for optimum learning.

(2) Develops and implements appropriate classroom management.

(3) Sets appropriate goals for self and students in regard to expected classroom behavior and nonacademic activities.

(4) Establishes student cohesiveness in the classroom.

(5) Acts as a good role model within the context of the individual school culture.

(6) Uses techniques which develop positive self esteem.

(7) Maintains students' involvement in appropriate tasks.

(8) Maintains documentation to insure accountability.

(9) Maintains time on task.

(10) Uses and applies appropriate conflict resolution skills.

C. Human relations

(1) Works as a member of a team.

(2) Utilizes knowledge of child and adolescent behavior.

(3) Uses appropriate public relation skills dependent on the group involved, particularly in relation to parent and community members.

(4) Communicates and uses appropriate interaction strategies with students regardless of exceptionalities.

(5) Interprets and explains data in a manner appropriate to parents and other groups.

(6) Develops and uses community and professional resources.

(7) Recognizes and reports signs of child abuse.

(8) Communicates with parents about students' achievement and progress.

(9) Recognizes impact of family life on child's ability to learn.

D. Knowledge of the profession

(1) Demonstrates knowledge of the role of the teacher which includes other responsibilities outside of the classroom.

(2) Demonstrates knowledge of teaching as a professional including the responsibilities and rights inherent in that profession, including adherence to ethical behavior as defined by state and local boards.

(3) Demonstrates awareness of professional organizations, of legal guidelines and their ramifications, and of the structure of local, state, and federal educational systems.

(4) Uses stress and time-management skills.

E. Instructional planning and implementation

(1) Organizes instruction around developmental levels of students using knowledge of learning theory and cognitive development.

(2) Uses appropriate techniques, strategies and materials to achieve the desired instructional goal.

(3) Integrates basic skills with various content areas.

(4) Carries out instructional planning, preparation, and implementation.

(5) Establishes appropriate instructional goals for the class and the individual student.

(6) Teaches concepts and applies those concepts to all subject areas.

(7) Develops and uses appropriate questioning techniques.

(8) Uses instructional techniques which will develop critical thinking for all students.

(9) Adapts curriculum to meet the needs of individual students.

(10) Uses current technology for instructional and management needs.

(11) Translates diagnostic data and prescribes sound instructional pro-

grams.

(12) Demonstrates knowledge of community and professional resources which are useful for instructional purposes.

(13) Provides alternate teaching strategies based on individual/group learning styles and the nature of the content being taught.

(14) Facilitates social, emotional, visual, and physical development.

(15) Adapts activities and materials to physical condition of students (e.g. hand dominance, vision, and hearing).

F. Assessment and evaluation of students

(1) Understands tests and measurements.

(2) Selects, uses, and interprets assessment/evaluation techniques.

(3) Interprets and explains evaluation data to various groups of people.

(4) Recognizes exceptional students and understands the referral process.

(5) Devises appropriate instructional and testing instruments.

[11-14-98; 6.61.5.10 NMAC - Rn, 6 NMAC 4.2.3.5.10, 06-01-02; A, 06-15-06]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.61.6 NMAC, Sections 2, 6, 7, and 8 effective 06-15-06. The Part Name was also changed.

PART 6 LICENSURE IN SPECIAL-EDUCATION PRE K-12

6.61.6.2 SCOPE: Chapter 61, Part 6 governs licensure in special education, grades pre k-12, for those persons seeking such licensure.

[11-14-98; 6.61.6.2 NMAC - Rn, 6 NMAC 4.2.3.6.2, 10-31-00; A, 06-15-06]

6.61.6.6 OBJECTIVE: This [regulation] rule governs licensure requirements in special education for those persons seeking such licensure.

[11-14-98; 6.61.6.6 NMAC - Rn, 6 NMAC 4.2.3.6.6, 10-31-00; A, 06-15-06]

6.61.6.7 DEFINITIONS:

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

B. "A highly qualified beginning pre k-12 special education teacher" under this rule means a teacher

who is new to the profession, has pursued a standard route to licensure and is fully qualified to teach special education students by either providing access for those students to a regular education classroom where instruction in the core academic subjects is delivered by a highly qualified regular education teacher, or being fully qualified to teach each core academic subject the special education teacher teaches, or being fully qualified to teach either language arts, mathematics or science and becoming fully qualified to teach any other core academic subjects which the teacher teaches within two years after the date of initial employment, and who:

(1) meets the requirements for pre k-12 special education licensure in Subsections A or B in 6.61.6.8 NMAC;

(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason; and

(3) has passed all applicable teacher testing requirements for licensure in 6.60.5.8 NMAC.

C. "Pre-kindergarten" means a voluntary developmental readiness program for children who have attained their fourth birthday prior to September 1. [6.61.6.7 NMAC - N, 04-29-05; A, 06-15-06]

6.61.6.8 REQUIREMENTS:

A. Persons seeking licensure in special education pursuant to the provisions of this [regulation] rule shall meet all the requirements enumerated in Subsections A or B of this section.

(1) bachelor's degree from a regionally accredited college or university and including, for those licensees or applicants first entering a college or university beginning in the fall of 1986, the following:

(a) twelve (12) semester hours in English;

(b) twelve (12) semester hours in history including American history and western civilization;

(c) six (6) semester hours in mathematics;

(d) six (6) semester hours in government, economics or sociology;

(e) twelve (12) semester hours in science, including biology, chemistry, physics, geology, zoology, or botany;

(f) six (6) semester hours in fine arts; and

(2) credits from a regionally accredited college or university which include: thirty (30) semester hours of professional education in a special education program approved by the public education department ("PED") ("department"), including completion of the department's approved functional areas and related competencies; and including

(3) a mandatory student teaching

component and at the option of the college or university, a practicum component; and

(4) twenty-four (24) semester hours in one of the following teaching fields: mathematics, science(s), language arts, reading, and social studies (or other content related areas); and

(5) in addition to the requirements specified in Subsection A of this section, six (6) hours of reading in subject matter content for those licensees or applicants who first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(6) passage of all required portions of the current New Mexico teacher test or any successor teacher test adopted by the department; and

(7) if new to the profession and hired after the first day of school of the 2003-2004 school year, satisfy the requirements of a highly qualified beginning pre k-12 special education teacher; or

B. a valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type.

[11-14-98; 6.61.6.8 NMAC - Rn, 6 NMAC 4.2.3.6.8 & A, 10-31-00; A, 06-01-02; A, 05-28-04; A, 04-29-05; A, 06-15-06]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.61.7 NMAC, Sections 1, 3, 6, 8 and 9, effective 06-15-06.

6.61.7.1 ISSUING AGENCY: [State Board of Education] Public Education Department

[11-14-98, 7-30-99; 6.61.7.1 NMAC - Rn, 6 NMAC 4.2.3.7.1, 10-13-00; A, 06-15-06]

6.61.7.3 STATUTORY AUTHORITY: Sections 22-2-1, NMSA 1978 [and], 22-2-2, NMSA 1978 and 22-10A-6(E) NMSA 1978.

[11-14-98; 6.61.7.3 NMAC - Rn, 6 NMAC 4.2.3.7.3, 10-13-00; A, 06-15-06]

6.61.7.6 OBJECTIVE: This [regulation] rule governs licensure requirements in secondary vocational-technical education for those persons seeking such licensure. It exempts those persons already holding a valid state vocational-technical education license as of June 30, 1989, from the requirements of this licensure.

[11-14-98; 6.61.7.6 NMAC- Rn, 6 NMAC 4.2.3.7.6 & A, 10-13-00; A, 06-15-06]

6.61.7.8 REQUIREMENTS:

A. Persons seeking licensure in secondary vocational-technical education pursuant to the provisions of this [regulation] rule shall meet the require-

ments of Paragraphs (1) or (2) or (3) or (4) of Subsection A of 6.61.7.8 NMAC and Subsection B of 6.61.7.8 NMAC.

(1) bachelor's degree which includes 32 credit hours of vocational-technical training related to the occupational area; or

(2) associate degree plus two (2) years work experience related to the occupational area; or

(3) certificate plus three (3) years work experience related to the occupational area; or

(4) high school diploma/(GED) plus five (5) years work experience related to the occupational area; and

B. Satisfactory demonstration of the competencies as approved by the ~~[state board of education]~~ public education department ("PED") for vocational-technical teachers within three (3) years of the date of employment. The applicant must meet this requirement through Paragraphs (1) and (2) or (3) of Subsection B of 6.61.7.8 NMAC.

(1) credits from a regionally accredited institution which include fifteen (15) semester hours of professional education which must address the ~~[state board of education's]~~ PED's secondary vocational-technical competencies in accordance with 6.61.7.10 NMAC; and

(2) a supervised classroom internship/student teaching experience which may be completed at a regionally accredited college or university or under the supervision of a local school district or private school; or

(3) a school district or private school may develop and implement a professional development plan (PDP) in lieu of the required fifteen (15) semester hours of professional education and supervised student teaching experience, which on approval of the ~~[state board of education]~~ PED, shall be used to meet licensure requirements; when appropriate and feasible, more than one school district/private school may jointly prepare a PDP for ~~[state board]~~ PED approval; the PDP must address the ~~[state board of education's]~~ PED's secondary vocational-technical competencies in accordance with 6.61.7.10 NMAC.

[11-14-98; 6.61.7.8 NMAC - Rn, 6 NMAC 4.2.3.7.8 & A, 10-13-00; A, 06-15-06]

6.61.7.9 IMPLEMENTATION: All persons holding a valid New Mexico license in vocational-technical education on June 30, 1989, shall be entitled to licensure in vocational-technical education. Such licensure may be further continued pursuant to ~~[regulation(s)] rule(s)~~ as established by the ~~[state board of education]~~ PED.

[11-14-98; 6.61.7.9 NMAC - Rn, 6 NMAC 4.2.3.7.9, 10-13-00; A, 06-15-06]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.61.8 NMAC, Sections 1, 6, 8, and 9, effective 06-15-06.

6.61.8.1 ISSUING AGENCY: ~~[State Board of Education]~~ Public Education Department [11-14-98, 07-30-99; 6.61.8.1 NMAC - Rn, 6 NMAC 4.2.3.17.1, 03-31-01; A, 06-15-06]

6.61.8.6 OBJECTIVE: This ~~[regulation]~~ rule establishes licensure requirements for those seeking to work in early childhood education, that is, with children from birth to grade 3 whether they are developing either typically or atypically. [11-14-98; 6.61.8.6 NMAC - Rn, 6 NMAC 4.2.3.17.6 & A, 03-31-01; A, 06-15-06]

6.61.8.8 REQUIREMENTS: All persons who perform instructional services in early childhood education (i.e., birth through grade 3) as defined in this rule in public schools or in those special state-supported schools within state agencies, must hold valid standard licensure in early childhood development issued by the ~~[SBE]~~ public education department ("PED").

A. Persons seeking licensure in early childhood education pursuant to the provisions of this ~~[regulation]~~ rule shall meet the following requirements:

(1) possess a bachelor's degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, the following:

(a) twelve (12) semester hours in English;

(b) twelve (12) semester hours in history including American history and western civilization;

(c) six (6) semester hours in mathematics;

(d) six (6) semester hours in government, economics, or sociology;

(e) twelve (12) semester hours in science, including biology, chemistry, physics, geology, zoology, or botany;

(f) six (6) semester hours in fine arts; and

(2) earn credits from a regionally accredited college or university which include: thirty-six to forty-two (36-42) semester hours of professional education in an early childhood education program approved by the ~~[SBE]~~ PED, including completion of the ~~[SBE's]~~ PED's approved early childhood education competencies; and

(3) earn eighteen to thirty (18-30)

semester hours of practicum and supervised field experiences beginning in the first eighteen (18) semester hours of instruction in professional early childhood education to include a mandatory student teaching component in early childhood education for one of the following age ranges: B-3, 3-5, or 5-8 with children who are developing either typically or atypically; and

(a) one-hundred fifty (150) contact hours of practicum and/or supervised field experience at a developmental stage (s) other than the stage selected for student teaching set forth in Paragraph (3) above; or

(b) evidence of three years of documented, verified, satisfactory work experiences with at least two of the age ranges set forth in paragraph (3) of Subsection A of 6.61.8.8 NMAC above at a center accredited by the national academy of early childhood programs, a postsecondary laboratory early care and education setting, or an early childhood program accredited by the ~~[SBE]~~ PED; and

(4) in addition to the requirements specified in Subsection A, Paragraphs (1), (3) and (5) of 6.61.8.8 NMAC, six (6) hours in the teaching of reading for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(5) pass all required portions of the New Mexico teacher assessment or any successor teacher examination adopted by the ~~[SBE]~~ PED; and

(6) if new to the profession after June 30, 2006, or hired after the first day of school of the 2002-2003 school year and assigned to work in a title I targeted assistance program or a title I school-wide, satisfies the requirements of a highly qualified beginning early childhood teacher; or

B. Possess valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type.

[11-14-98; 6.61.8.8 NMAC - Rn, 6 NMAC 4.2.3.17.8 & A, 03-31-01; A, 06-01-02; A, 08-15-03; A, 06-15-06]

6.61.8.9 IMPLEMENTATION: All persons who are applying for licensure in early childhood education on or before June 30, 1996, who possess a bachelor's degree and who have three years of documented successful experience during the five-year period immediately preceding the effective date of this ~~[regulation]~~ rule in the following types of programs will be entitled to licensure in early childhood education:

A. pre kindergarten - third grade elementary programs accredited by the ~~[SBE]~~ PED; or

B. early childhood special

education programs for pre-school aged children accredited by the ~~[SBE]~~ PED; or

C. community programs or agencies which are contracted through the department of health for children birth through two years of age with developmental delays or who are at risk for such delays as defined by the Individuals with Disabilities Education Act (IDEA) Part H and the New Mexico family, infant, toddler policies and procedures.

[11-14-98; 6.61.8.9 NMAC - Rn, 6 NMAC 4.2.3.17.9, 03-31-01; A, 06-15-06]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.61.10 NMAC, Sections 1, 6 and 8, effective 06-15-06.

6.61.10.1 ISSUING AGENCY: ~~[State Board of Education]~~ Public Education Department
[6.61.10.1 NMAC - N, 08-15-03; A, 06-15-06]

6.61.10.6 OBJECTIVE: This ~~[regulation]~~ rule governs licensure requirements in teaching of students with blindness and visual impairment, birth through grade 12, for persons seeking such licensure.
[6.61.10.6 NMAC - N, 08-15-03; A, 06-15-06]

6.61.10.8 REQUIREMENTS:
A. Persons seeking licensure to teach students with blindness and visual impairment pursuant to the provisions of this ~~[regulation]~~ rule shall either hold special education licensure as provided in 6.61.6.8 NMAC or meet the requirements of Subsections A and B of 6.61.10.8 NMAC.

(1) bachelor's degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, the following:

(a) twelve (12) semester hours in English;

(b) twelve (12) semester hours in history including American history and western civilization;

(c) six (6) semester hours in mathematics;

(d) six (6) semester hours in government, economics or sociology;

(e) twelve (12) semester hours in science, including biology, chemistry, physics, geology, zoology, or botany;

(f) six (6) semester hours in fine arts; and

(2) credits from a regionally accredited college or university which include twenty four to thirty-six (24-36)

semester hours of professional education in a program of studies that prepares candidates to teach blind and visually impaired students, including completion of the ~~[state board of education's]~~ public education department's (PED's) approved functional areas and related competencies in professional education; and

(3) a mandatory student teaching or practicum component; and

(4) twenty-four to thirty-six (24-36) semester hours in one teaching field such as mathematics, science(s), language arts, reading, ~~[and social studies]~~ or from among history, geography, economics, civics and government (or other social studies content related areas). Individuals must also complete the ~~[state board of education's]~~ PED's approved functional areas and related competencies in the teaching field; and

(5) in addition to the requirements specified in Subsection A, Paragraphs (1), (3), (4) and (6) of 6.61.10.8 NMAC, six (6) hours of reading for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(6) passage of all required portions of the New Mexico teacher assessments or any successor teacher examination adopted by the ~~[SBE]~~ PED; or

B. Possess a valid certificate issued by the association of educational rehabilitation of students with visual impairments for the appropriate grade level and type.

[6.61.10.8 NMAC - N, 08-15-03; A, 06-15-06]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.62.2 NMAC, Sections 1, 2, 3, 6 and 8, effective 06-15-06. The Part name was also changed.

PART 2 LICENSURE FOR EDUCATIONAL ADMINISTRATION, GRADES PRE K-12

6.62.2.1 ISSUING AGENCY: ~~[State Board of Education]~~ Public Education Department
[6/15/98; 7/30/99; 6.62.2.1 NMAC - Rn, 6 NMAC 4.2.3.18.1, 08-15-03; A, 06-15-06]

6.62.2.2 SCOPE: This rule governs licensure in educational administration, grades pre k-12, for those persons seeking such licensure.
[6/15/98; 6.62.2.2 NMAC - Rn, 6 NMAC 4.2.3.18.2, 08-15-03; A, 06-15-06]

6.62.2.3 S T A T U T O R Y

AUTHORITY: Sections 22-2-1, NMSA 1978 ~~[and]~~, 22-2-2, NMSA 1978 and 22-10A-11 NMSA 1978.

[6/15/98; 6.62.2.3 NMAC - Rn, 6 NMAC 4.2.3.18.3, 08-15-03; A, 06-15-06]

6.62.2.6 OBJECTIVE: This ~~[regulation]~~ rule governs the requirements for New Mexico licensure for persons seeking licensure in educational administration, grades pre k-12, for those persons seeking such licensure on or after July 1, 1989.

[6/15/98; 6.62.2.6 NMAC - Rn, 6 NMAC 4.2.3.18.6, 08-15-03; A, 06-15-06]

6.62.2.8 REQUIREMENTS: Persons seeking licensure in educational administration pursuant to the provisions of this ~~[regulations]~~ rule shall meet the following requirements:

A. bachelor's degree and master's degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, an apprenticeship; the apprenticeship must:

(1) be completed at a college or university with an educational administration program approved by the ~~[state board of education]~~ "PED" and consist of a minimum of 180 clock hours to include time at the beginning and end of the school year; a passing grade on the apprenticeship will verify completion of this requirement; OR

(2) be completed under the supervision of a local school superintendent or a private school official at the school and consist of a minimum of 180 clock hours to include time at the beginning and end of the school year; the local school superintendent will verify that the apprenticeship has met the ~~[state board of education's]~~ PED's adopted competencies for educational administration; such verification will be considered completion of this requirement;

B. a candidate who entered an administrator preparation program on or after April 4, 2003, must ~~[hold]~~ teach while holding a valid level [H-A] 3-A New Mexico teaching license for at least one school year; a candidate who entered an administrator preparation program prior to April 4, 2003, must hold a valid level ~~[H]~~ 2 New Mexico teaching license; and

C. eighteen semester hours of graduate credit in an educational administration program approved by the ~~[state board of education]~~ public education department (PED); the eighteen semester hour program must address the ~~[state board of education's]~~ PED's approved functional areas and related competencies in educational administration; colleges and universities may offer these hours through their educational administration, public administration, business administration, or other appropriate departments;

D. a candidate who applies for licensure in educational administration on or after the September, 2007 administration of the PED's specialty area licensure examinations shall take and pass the licensure test in administration in Paragraph (9) of Subsection B of 6.60.5 NMAC. [6/15/98; 6.62.2.8 NMAC - Rn, 6 NMAC 4.2.3.18.8 & A, 08-15-03; A, 06-15-06]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.63.2 NMAC, Sections 1, 2, 3, 6 and 8, effective 06-15-06. The Part name was also changed.

PART 2 LICENSURE FOR SCHOOL NURSES, GRADES PRE K-12

6.63.2.1 ISSUING AGENCY: ~~[State Board of Education]~~ Public Education Department.
[07-31-97; 07-30-99; 6.63.2.1 NMAC - Rn, 6 NMAC 4.2.3.1.1, 10-31-01; A, 06-15-06]

6.63.2.2 SCOPE: Chapter 63, Part 2, governs licensure for school nurses, grades pre k-12, for those persons seeking such licensure.
[07-31-97; 6.63.2.2 NMAC - Rn, 6 NMAC 4.2.3.1.2, 10-31-01; A, 06-15-06]

**6.63.2.3 S T A T U T O R Y
AUTHORITY:** Sections 22-2-1, NMSA 1978~~[and]~~, 22-2-2, NMSA 1978, and 22-10A-17 NMSA 1978.
[07-31-97; 6.63.2.3 NMAC - Rn, 6 NMAC 4.2.3.1.3, 10-31-01; A, 06-15-06]

6.63.2.6 OBJECTIVE: This ~~[regulation] rule~~ establishes the requirements for three ~~[levels] types~~ of school nurse licensure for persons seeking licensure as an associate school nurse, a professional school nurse, or a supervisory school nurse.
[07-31-97; 6.63.2.6 NMAC - Rn, 6 NMAC 4.2.3.1.6, 10-31-01; A, 06-15-06]

6.63.2.8 REQUIREMENTS:

A. Persons seeking an associate school nurse license pursuant to the provisions of this ~~[regulation] rule~~ shall meet the following requirements:

(1) associate's degree in nursing from a regionally accredited college or university or from an institution accredited by the national league of nursing or a diploma program in nursing accredited by the national league of nursing; and

(2) a valid New Mexico registered nurse license issued by the New Mexico board of nursing or any successor licensing board for nurses.

B. Persons seeking a professional school nurse license pursuant to the provisions of this ~~[regulation] rule~~ shall meet the following requirements:

(1) bachelor's degree in nursing or in a health related field from a regionally accredited college or university or from an institution accredited by the national league of nursing; and

(2) a valid New Mexico registered nurse license issued by the New Mexico board of nursing or any successor licensing board for nurses.

C. Persons seeking a supervisory school nurse license pursuant to the provisions of this ~~[regulation] rule~~ shall meet the following requirements:

(1) master's degree in nursing or in a health related field from a regionally accredited college or university or from an institution accredited by the national league of nursing; and

(2) a valid New Mexico registered nurse license issued by the New Mexico board of nursing or any successor licensing board for nurses.
[07-31-97; 6.63.2.8 NMAC - Rn, 6 NMAC 4.2.3.1.8, 10-31-01; A, 9/30/03; A, 06-15-06]

End of Adopted Rules Section

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