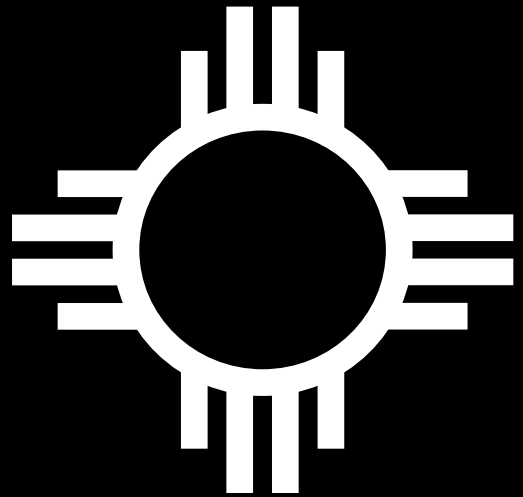


**NEW
MEXICO
REGISTER**

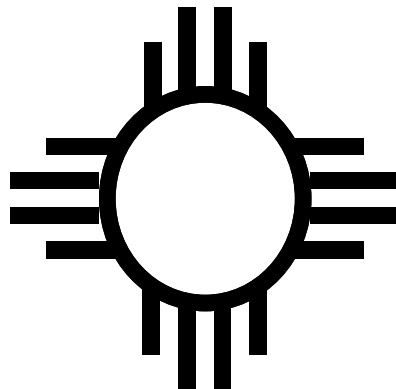


**Volume XVII
Issue Number 15
August 15, 2006**

New Mexico Register

Volume XVII, Issue Number 15

August 15, 2006



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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2006

COPYRIGHT © 2006
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XVII, Number 15

August 15, 2006

Table of Contents

Notices of Rulemaking and Proposed Rules

Agriculture, Department of	
Notice of Hearing	743
Counseling and Therapy Practice Board	
Rule Hearing and Regular Board Meeting	743
Cultural Affairs, Department of	
Arts Division	
Notice of Hearing on Proposed Rules Governing the New Mexico Arts Division	743
Museum of Natural History and Science	
Notice of Public Hearing	743
Energy, Minerals and Natural Resources Department	
Forestry Division	
Notice of Public Hearing on Amendments to the New Mexico Endangered Plant Species List	744
Game Commission	
State Game Commission Public Meeting and Rule Making Notice	744
Human Services Department	
Medical Assistance Division	
Notice of Public Hearing: Multi-Systemic Therapy (MST).	744
Notice of Public Hearing: Dental Services.	745
Public Education Department	
Notice of Public Hearing	745
Public Records, Commission of	
Notice of Regular Meeting and Notice of Rulemaking	746
Public Safety, Department of	
Training and Recruiting Division - Law Enforcement Academy	
Notice NM Law Enforcement Academy Board Meeting and Public Hearing.	746
Racing Commission	
Notice of Rulemaking and Public Hearing.	746
Real Estate Appraisers Board	
Legal Notice	747
Sentencing Commission	
Notice of Public Hearing	747
Taxation and Revenue Department	
Notice of Hearing and Proposed Rules	747

Adopted Rules

Effective Date and Validity of Rule Filings

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

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

Chiropractic Examiners, Board of		
16.4.1 NMAC	A	Chiropractic Practitioners - General Provisions 749
16.4.3 NMAC	A	Requirements for Licensure by Examination. 749
16.4.4 NMAC	A	Licensure Without Examination 750
16.4.18 NMAC	A	Practice Procedures. 750

Engineer, Office of the State

SE 66-1,			
Articles 1-15,			
1-15.1, 1-15.2,			
1-15.3, 1-15.4,			
1-15.5, 1-15.7,			
1-15.8 and 1-16	R	Rules and Regulations Governing Drilling of Wells and Appropriation and Use of Ground Water in New Mexico	751
19.27.5 NMAC	N	The Use of Public Underground Waters for Household or Other Domestic Use in Accordance With Section 72-12-1.1 NMSA	751

Environmental Improvement Board

20 NMAC 1.1	R	Rulemaking Procedures - Environmental Improvement Board	757
20 NMAC 1.2	R	Adjudicatory Procedures - Environmental Improvement Board	757
20.1.1 NMAC	N	Rulemaking Procedures - Environmental Improvement Board	757
20.1.2 NMAC	N	Adjudicatory Procedures - Environmental Improvement Board	761
20.1.8 NMAC	N	Environmental Improvement Board Open Meetings	768

Game and Fish, Department of

19.31.6 NMAC	N	Waterfowl	768
--------------	---	---------------------	-----

Public Regulation Commission

17.11.18 NMAC	A	Interconnection Facilities and Unbundled Network Elements	775
---------------	---	---	-----

Regulation and Licensing Department

Financial Institutions Division

12.18.7 NMAC	N	Terms and Conditions of Payday Loan Agreements	782
--------------	---	--	-----

Taxation and Revenue Department

3.6.5 NMAC	A	Classification of Property	785
------------	---	--------------------------------------	-----

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

The *New Mexico Register*
 Published by
 The Commission of Public Records
 Administrative Law Division
 1205 Camino Carlos Rey
 Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

Notices of Rulemaking and Proposed Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

Notice of Hearing

Curry and Roosevelt Cotton Boll Weevil Control District will hold a public hearing under the Cotton Boll Weevil Control Act, 76-6A-1 to 76-6A-16, NMSA 1978, to reduce the assessment currently collected from cotton producers to support cotton boll weevil control within the Curry and Roosevelt district.

The hearing will be held at the Cooperative Extension Service office located at 705 East Lime Street, Portales, New Mexico, beginning at 10 a.m. on September 6, 2006. Written statements in support or opposition, signed by the submitting person, will be accepted if received prior to 5:00 p.m. on September 6, 2006. Written statements, inquiries, or requests for copies of the rule should be directed to Mr. Kevin Breshears, 1698 S. Roosevelt Road 13, Portales, New Mexico 88130.

NEW MEXICO COUNSELING AND THERAPY PRACTICE BOARD

Rule Hearing

Notice is hereby given that the New Mexico Counseling and Therapy Practice Board will convene a Rule Hearing on Thursday, August 24, 2006. The hearing will begin at 2:00 p.m. at the Nativo Lodge, Conference Room, 6000 Pan American Freeway NE, Albuquerque, NM. The purpose of this hearing is to hear public testimony and comments regarding the recommended proposed rules changes.

Regular Board Meeting

Notice is hereby given that the New Mexico Counseling and Therapy Practice Board will convene a Regular Board Meeting on Friday, August 25, 2006. The Regular Board Meeting will begin 10:00 a.m. at the Nativo Lodge, Conference Room, 6000 Pan American Freeway NE, Albuquerque, NM.

Persons desiring to present their views may appear in person at said time and place or send their written comments to the Board Office at P.O. Box 25101, Santa Fe, NM, 87504. Copies of the proposed changes may be requested by mail or by contacting

the Board Office at (505) 476-4610.

The Board may go into closed session during the meeting to discuss licensing and disciplinary matters as permitted by the Open Meetings Act. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the board administrator at (505) 476-4610 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the board administrator if a summary or other type of accessible format is needed.

NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS ARTS DIVISION

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

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

The proposed regulations update the New Mexico Arts Commission bylaws. The proposed definition changes will be discussed, and comments taken at a public hearing to be held on September 27, 2006. New Mexico Arts Commission definition updates, section 4.12.1.7 NMAC, will be heard between 9:00 am and 9:30 am. The hearing will be held at the New Mexico Arts offices, conference room #241 located at The Bataan Memorial Building – Department of Cultural Affairs, at 407 Galisteo St., Santa Fe, NM. Copies of the proposed regulations may be obtained before the meeting at the New Mexico Arts Division offices listed above or by contacting Virginia Castellano at 505/827-6490 or by e-mail virginia.castellano@state.nm.us. The notice of the public hearing will be posted on NMA website www.nmarts.org under "Breaking News" beginning August 25, 2006.

Interested persons may submit written comments to the New Mexico Arts Division at

PO Box 1450, Santa Fe, NM 87504-1450 or e-mail comments regarding the funding programs to virginia.castellano@state.nm.us to be received by 8:00 am September 27, 2006. Written comments shall suggest specific reasons for any suggested amendments or comments and include any proposed amendatory language.

If any interested person has a disability and requires some accommodation in attending the public hearing or to have the rules communicated to them, please submit a written request identifying the disability and the type of accommodation needed to Virginia Castellano before September 1, 2006. If accommodation is not requested in advance we cannot guarantee the availability of accommodation on-site.

NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS MUSEUM OF NATURAL HISTORY AND SCIENCE

NEW MEXICO MUSEUM OF NATURAL HISTORY AND SCIENCE NOTICE OF PUBLIC HEARING September 15, 2006 11 a.m. - 12 p.m.

At the
New Mexico Museum of Natural History
and Science
A Division of the Department of Cultural
Affairs
State of New Mexico

MUSEUM CONFERENCE ROOM
1801 Mountain road NW
Albuquerque, NM 87104
(505) 841-2823

For consideration of adoption of Museum, DynaTheater, Planetarium and Virtual Voyages admissions fees increase.

Proposed changes:

Museum, DynaTheater and Planetarium admissions fees for Adults changed to \$7 from \$6; Seniors (60+) changed to \$6 from \$5; Children (3 - 12) changed to \$4 from \$3.

Virtual Voyages Simulator ride: Adults changed to \$7 from \$4; Seniors (60+) changed to \$6 from \$4; and Children (3 -12) remain the same \$4.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, an any other form of auxiliary aid or service to attend or

participate in the public hearing, please contact Marlene Tanner before September 6, 2006 by calling (505) 841-2823 or TTY 841-2878.

**NEW MEXICO ENERGY,
MINERALS AND NATURAL
RESOURCES
DEPARTMENT
FORESTRY DIVISION**

**Notice of Public Hearing on
Amendments to the
New Mexico Endangered Plant Species
List
September 1, 2006**

The Energy, Minerals and Natural Resources Department will hold a public hearing at **1:00 P.M. on Friday, September 1, 2006** in the Energy, Minerals and Natural Resources Department, Porter Hall, Wendell Chino Building, 1220 South St. Francis Blvd, Santa Fe, NM. The hearing will conclude at 3:00 P.M. or after the last person who has signed up to make comments by 1:30 P.M. has made them.

The Energy, Minerals and Natural Resource Department will conduct a hearing on proposed amendments to the list of state endangered plant species contained in 19.21.2 NMAC under authority of the New Mexico Endangered Plant Species Act. This rule amendment would add Wright's marsh thistle and Chihuahua scurfpea to the list of endangered plants and delete Lloyd's hedgehog cactus and Scheer's hook-spine cactus from the list. Copies of the proposed rule amendment and narrative may be obtained from the Forestry Division web site at <http://www.nmforestry.com>, or by contacting Robert Sivinski at (505) 476-3347 or robert.sivinski@state.nm.us.

All interested parties may participate in the hearing and will be given an opportunity to submit relevant evidence, data, views and arguments, orally or in writing. Anyone wishing to submit written comments may do so at the hearing, or prior to the hearing via email to robert.sivinski@state.nm.us or via mail to the State Forester, C/O Robert Sivinski, Forestry Division, P.O. Box 1948, Santa Fe, NM 87504. No statements will be accepted after the conclusion of the hearing.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the meeting, please contact Robert Sivinski at least one week prior to the meeting or as soon as possible. Public documents can be provided in various accessible forms. Please contact Robert Sivinski at 476-3347, through Relay New Mexico at 1-800-659-1779 Voice or 1-800-

659-8331 TTY, if a summary or other type of accessible form is needed.

**NEW MEXICO GAME
COMMISSION**

**STATE GAME COMMISSION
PUBLIC MEETING AND RULE
MAKING NOTICE**

On Thursday, August 24, 2006, beginning at 9:00 a.m. at the State Capitol Building, Room 321, Santa Fe, NM 87503, the State Game Commission will meet in Public Session to consider action as appropriate on the following: Consent Agenda for: Committee Reports, and Revocations; Fiscal Year 2006 Depredation Report; Approval of Fiscal Year 2008 Operating and Capital Project Budget Request; General Public Comments (Comments Limited to 3 Minutes); River Otter Restoration Feasibility Report; 2006 Biennial Review of New Mexico Threatened and Endangered Wildlife; Update on Development of all Big Game and Associated Rules for the 2007-2008 and 2008-2009 License Years; Six-Month Update of the Project to Restore Rio Grande Cutthroat Trout to the Costilla Watershed; Proposed Shooting Preserve Application, 19.35.3, NMAC, and Sections 17-3-42, 1978, for the Blue Springs Hunting Preserve; Potential 2007 Legislative Session Initiatives; Department Interaction with National Forest/National Grassland Transportation Planning; Closed Executive Session, pursuant to Section 10-15-1(H)(1), NMSA, 1978, to discuss matters related to litigation, personnel, and acquisition or disposal of real property or water rights, or matters related to the determination of sending "Notice of Commission Contemplated Action" for outfitter and/or guide registration to any identified individual(s) that may have violated their Professional Code of Conduct as per 19.30.8, NMAC; and Use of Land Conservation Appropriation Funds for Acquisition of Property in Valencia County. If in the Commission's determination an individual shall be served notice, he/she will be afforded an administrative hearing following 19.31.2, NMAC; and Notice of Commission Contemplated Action.

The following rules are opened for public comment and consideration by the Commission:

* Change Manner and Method Rule 19.31.10, NMAC, to Allow the Use of Gas-Powered Motors on Lake Roberts and Bear Canyon Reservoir; and

* Proposed Changes to Commission-owned Properties Rule (19.34.3, NMAC) Allowing the Director to Restrict Use when Necessary; and

* Amend 19.3.6, NMAC, List of New Mexico Threatened and Endangered Species per Biennial Review.

A copy of the agenda or any of the affected rules can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504 or on the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Shirley Baker at (505) 476-8030. Please contact Ms. Baker at least 3 working days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please contact Shirley Baker if a summary or other type of accessible form is needed.

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 2:30 p.m. on August 31, 2006, at the New Mexico State Library, Room 2022 (1205 Camino Carlos Rey), Santa Fe, New Mexico. The subject of the hearing will be **Multi-Systemic Therapy (MST)**.

The Medical Assistance Division (MAD) proposes to create policy 8.322.6 NMAC, Multi-Systemic Therapy (MST). MST is currently a part of the Children, Youth and Families Department (CYFD) service delivery package and is modeled on empirical data and evidence-based interventions that target specific behaviors with individualized behavioral interventions. MST provides an intensive home/family and community-based treatment for individuals who are at risk of out-of-home placement or are returning home from placement, and their families. In addition, it reflects the current emphasis of New Mexico's state agencies on 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 services and limitations, the providers and practitioners, and the reim-

bursement methodology.

Interested persons may submit written comments no later than 5:00 p.m., August 31, 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/register.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 HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 10:00 a.m., on September 14, 2006, at the State Personnel building, large conference room (2600 Cerrillos Road), Santa Fe, New Mexico. The subject of the hearing will be Dental Services.

The Medical Assistance Division is proposing to make the following amendments to the dental program policy:

To allow for one additional clinical oral examination by a second dental provider for recipients under twenty-one (21) years of age, assuring access to needed dental services for low-income children.

To allow for one oral prophylaxis service per recipient every six (6) months for recipients twenty-one (21) years of age or older who have developmental disabilities. This would have the effect of increasing the number of individuals with special needs who are able to receive preventive dental services.

Interested persons may submit written comments no later than 5:00 p.m., September 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/register.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 PUBLIC EDUCATION DEPARTMENT

New Mexico Public Education Department

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at 10:00 AM to Noon on Tuesday, September 19, 2006 in Mabry Hall at the Public Education Department at 300 Don Gaspar Avenue, Santa Fe, New Mexico. The purpose of the public hearing will be to obtain input on the following rules:

Rule Number	Rule Name	Proposed Action
6.2.4 NMAC	THE ALTERNATIVE LICENSURE REVIEW PANEL	Amend rule
6.20.3 NMAC	PROCEDURES FOR THE PAYMENT OF SETTLEMENT AGREEMENTS	Amend rule
6.60.3 NMAC	ALTERNATIVE LICENSURE	Amend rule
6.60.7 NMAC	EDUCATOR LICENSURE APPLICATION FEE	Amend rule
6.60.9 NMAC	LICENSURE REQUIREMENTS, CODE OF ETHICAL RESPONSIBILITY OF THE EDUCATION PROFESSION	Amend rule
6.64.10 NMAC	COMPETENCIES FOR ENTRY-LEVEL BILINGUAL EDUCATION TEACHERS	Amend rule
6.66.2 NMAC	[CERTIFIED (]LICENSED[)] SCHOOL INSTRUCTOR CONTRACT	Amend rule
6.66.3 NMAC	[CERTIFIED (]LICENSED[)] SCHOOL ADMINISTRATOR CONTRACT	Amend rule
6.66.4 NMAC	REQUIREMENTS FOR SABBATICAL LEAVE AND SABATTICAL LEAVE CONTRACTS	Amend rule
6.67.2 NMAC	GOVERNING NOTICE OF REEMPLOYMENT OR TERMINATIN OF LICENSED SCHOOL INSTRUCTORS	Amend rule

6.67.3 NMAC	TERMINATION OR DISCHARGE OF LICENSED SCHOOL PERSONNEL WHEN REDUCTION IN PERSONNEL IS REQUIRED	Amend rule
6.69.4 NMAC	PERFORMANCE EVALUATION SYSTEM REQUIREMENTS FOR TEACHERS	Amend rule

Interested individuals may testify at the public hearing or submit written comments to Ms. Jo Lynn Gallegos, Executive Administrative Assistant, Educator Quality Division, Public Education Department, 444 Galisteo, Suite A, Santa Fe, New Mexico 87501 (jolynn.gallegos@state.nm.us) (telefax (505) 827-3525). Written comments must be received no later than 5:00 PM on September 19, 2006. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (<http://ped.state.nm.us/>) or obtained from Ms. Gallegos at (505) 827-3582 or as indicated in the preceding paragraph. The proposed rules will be made available at least thirty days prior to the hearings.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the meeting are asked to contact Ms. Gallegos as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The NM Commission of Public Records has scheduled a regular meeting for Thursday, August 24, 2006, at 9:00 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM 87507. Pursuant to the New Mexico Open Meetings Act, Section 10-15-1(H)(2) NMSA 1978, a portion of the meeting may be closed to discuss a limited personnel matter. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Darlene A. Torres-Vigil at 476-7902 by August 18, 2006. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

NOTICE OF RULEMAKING

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

Repeals

- 1.18.521 NMAC ERRDS, Energy, Minerals and Natural Resources Dept.
1.19.3 NMAC LGRRDS, Office of the County Clerk

Replacements

- 1.18.521 NMAC ERRDS, Energy, Minerals and Natural Resources Dept.
1.19.3 NMAC LGRRDS, Office of the County Clerk

**NEW MEXICO
DEPARTMENT OF PUBLIC
SAFETY
TRAINING AND RECRUITING
DIVISION
Law Enforcement Academy**

**NOTICE
NM LAW ENFORCEMENT
ACADEMY
BOARD MEETING AND PUBLIC
HEARING**

The New Mexico Law Enforcement Academy Board will hold a Board Meeting to include a Public Hearing, on Wednesday, September 27, 2006 beginning at 9:00 a.m., located at the Albuquerque Police Departmental, 5412 2nd Street NW, Albuquerque, New Mexico. The Public Hearing will include Rule 10.29.7.1 NMAC '2006-2007 In-Service Training Requirements'. The proposed change will include the language, "two (2) hours training in length concerning the

detection, investigation and reporting of a crime motivated by hate."

Copies of proposed plans, standards, requirements, or rules may be obtained by calling (505) 827-9255. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Gil Najjar, (505) 827-9265, as soon as possible. Public documents can be provided in various accessible formats.

Please contact Suzanne Vigil, (505) 827-9255 or Gil Najjar, (505) 827-9265 if additional information is needed.

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, August 23, 2006. The public session will begin at 9:00 o'clock a.m. on Wednesday, August 23, 2006. The Commission will consider adoption of proposed amended rule for incorporation into the Rules Governing Horse Racing in New Mexico No. 15.2.5.8 NMAC (regarding coupled entries.)

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: July 31, 2006

NEW MEXICO REAL ESTATE APPRAISERS BOARD

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Real Estate Appraiser Board will hold a Rule Hearing on September 14, 2006 and will convene at 9:00 am. Following the Rule Hearing the New Mexico Real Estate Appraiser Board will convene a regular meeting to adopt the rules and take care of regular business. The meetings will be held at the Regulation and Licensing Department, 5200 Oakland Ave NE, Albuquerque, NM.

If you would like a copy of the proposed changes you may access the website at www.rld.state.nm.us after August 15, 2006 to get a draft copy. In order for Board members to review the comments in their meeting packets prior to the meeting, public comments must be received in writing no later than August 21, 2006. Persons wishing to present their comments at the hearing will need to bring (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4611 at least two weeks prior to the meeting or as soon as possible.

Mary James, Administrator
PO Box 25101- Santa Fe, New Mexico
87504

NEW MEXICO SENTENCING COMMISSION

The New Mexico Sentencing Commission ("Commission") hereby gives notice that the Commission will conduct a public hearing at the New Mexico State Bar Association, 5121 Masthead NE,

Albuquerque, New Mexico on August 18, 2006, from 9:30 a.m. until approximately 1:00 p.m. The purpose of the public hearing will be to conduct a regular Commission meeting. During that meeting, the Commission will obtain input on a proposed rule regarding collection and analysis of criminal and juvenile justice data by the Commission.

Interested persons may submit written comments no later than 5:00 p.m., August 18, 2006, to Michael Hall, J.D., Executive Director, 2808 Central Avenue SE, Albuquerque, New Mexico 87106. Interested persons may also testify at the public hearing on August 18, 2006. All written and oral testimony will be considered prior to issuance of the final rule.

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 Commission meeting, program or services, please contact the New Mexico Sentencing Commission toll-free at 1-888-466-2552. The Commission's office phone number in Albuquerque is 277-3494. The Commission requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the proposed rule are available for review on the Commission website at <http://www.nmsc.state.nm.us> or by sending a self-addressed stamped envelope to the New Mexico Sentencing Commission, 2808 Central Avenue SE, Albuquerque, NM 87106.

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:

Gross Receipts and Compensating Tax Act

3.2.241.10 NMAC Section 7-9-93 NMSA 1978

(Receipts of Health Care Practitioners From Managed Health Care Providers and Health Care Insurers Pursuant to Contract With Independent Practice Associations)

The proposals were placed on file in the Office of the Secretary on July 26, 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 October 16, 2006.

A public hearing will be held on the proposals on Thursday, September 21, 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 September 21, 2006.

3.2.241.10 RECEIPTS OF HEALTH CARE PRACTITIONERS FROM MANAGED HEALTH CARE PROVIDERS AND HEALTH CARE INSURERS PURSUANT TO CONTRACT WITH INDEPENDENT PRACTICE ASSOCIATIONS:

A. For purposes of Section 7-9-93 NMSA 1978, an "independent practice association" means an entity which acts as an administrative intermediary between health care practitioners and other managed health care providers or health care insurers. Independent practice associations generally contract with health care practitioners, other managed health care providers and health care insurers. In order for receipts of a health care practitioner to be deductible under Section 7-9-93 NMSA 1978, each health care practitioner contracted with the independent practice association must be qualified to receive reimbursement from each managed health care provider and health care insurer contracted with the independent practice association subject to limitations and a fee schedule established by the independent practice association and agreed to by both parties through their individual contracts with the independent practice association. Thus, a single contract between a health care practitioner and an independent practice association eliminates the need for the individual contracts between the health care practitioner and the independent practice association's other managed health care providers and health care insurers. Receipts from payments by other managed health care providers and health care insurers to health care practitioners pursuant to the parties' contracts with an independent practice association and that are otherwise deductible under Section 7-9-93 NMSA 1978 are deductible. Receipts from payments by independent

practice associations to health care practitioners are deductible under Section 7-9-93 NMSA 1978.

B. Example: A health care practitioner contracts with an independent practice association. The health care practitioner bills and receives payment through the independent practice association from a health care insurer that is also contracted with the independent practice association. The health care insurer is registered in New Mexico. Even though the health care practitioner does not have a direct contract with the health care insurer, he or she may deduct payments he or she receives for services that are otherwise deductible under Section 7-9-93 NMSA 1978 because he or she has contracted with the independent practice association.

C. Example: A health care practitioner contracts with an independent practice association. The health care practitioner bills the managed health care provider or health care insurer that the independent practice association has contracted with. The managed care provider or health care insurer makes payment to the independent practice association according to its contract with the independent practice association. The independent practice association then makes payment to the health care practitioner according to its contract with the health care practitioner. The receipts of the health care practitioner are deductible pursuant to Section 7-9-93 NMSA 1978.

[3.2.241.10 NMAC - N, 4/29/05; A, 5/31/06; 3.2.241.10 NMAC - N, XXX]

**End of Notices and
Proposed Rules Section**

Adopted Rules

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.1 NMAC, Section 7, effective 8/30/06.

16.4.1.7 DEFINITIONS:

A. "Chiropractic" means the science, art and philosophy of things natural, the science of locating and removing interference with the transmissions or expression of nerve forces in the human body by the correction of misalignments or subluxations of the articulations and adjacent structures, more especially those of the vertebral column and pelvis, for the purpose of restoring and maintaining health for treatment of human disease primarily by, but not limited to, adjustment and manipulation of the human structure. It shall include, but not be limited to, the prescription and administration of all natural agents in all forms to assist in the healing act, such as food, water, heat, cold, electricity, mechanical appliances, herbs, nutritional supplements, homeopathic remedies and any necessary diagnostic procedure, excluding invasive procedures, except as provided by the board by rule and regulation. It shall exclude operative surgery and prescription or use of controlled or dangerous drugs.

B. "Board" means the New Mexico board of chiropractic examiners.

C. "Chiropractic physician" includes doctor of chiropractic, chiropractor and chiropractic physician and means a person who practices chiropractic as defined in the Chiropractic Physician Practice Act.

D. "Chiropractic assistant" means a person who practices under the on-premises supervision of a licensed chiropractic physician.

E. "Advertising" means any communication whatsoever, disseminated by any means whatsoever, to or before the public or any portion thereof, with the intent of furthering the purpose, either directly or indirectly, of selling professional services, or offering to perform professional services, or inducing members of the public to enter into any obligation relating to such professional services.

F. "Chiropractic adjustment" means the application of a precisely controlled force applied by hand or by mechanical device to a specific focal point on the anatomy for the purpose of creating a desired angular movement in the skeletal joint structures in order to eliminate or decrease interference with neural transmis-

sion or to correct or attempt to correct a vertebral subluxation using, as appropriate, short lever, high velocity, low amplitude line of correction force to achieve the desired angular movement or neuromuscular reflex response.

G. "Mobilization" means a non-thrusting manual therapy involving movement of a joint within its physiological range of motion. Mobilization is a passive movement within the physiological joint space administered by a clinician for the purpose of increasing normalizing overall joint range of motion.

H. "Spinal manipulation or articular manipulation" means the application of a direct thrust or leverage to move a joint of the spine or extremity articulation to the parapsysiologic end range movement but without exceeding the limits of anatomical integrity.

I. "Vertebral subluxation" means a complex of functional, structural or pathological articular changes, or combination thereof, that compromise articular junction, neural integrity and may adversely influence organ system function or general health and well being.

J. "Impairment fee" means: that in addition to the license renewal fee, each chiropractor subject to renewal will be assessed an impairment fee to be set aside for the purpose of the impaired practitioners program.

K. "NBCE" national board of chiropractic examiners.

L. "PACE" providers of approved continuing education.

M. "Application for examination" applicants applying for licensure by examination in New Mexico who have not yet successfully completed the NBCE examinations and who would like to take the New Mexico board exam prior to completing the NBCE must apply for application by examination.

N. "Licensure by examination" applicants applying for licensure by examination in New Mexico who have taken and passed the NCBE and the board practical examination must apply for licensure by examination.

O. "Complaint/review committee" an ad hoc committee established by the board to review all complaints and applicants with background findings. Complaint/review committee shall consist of (1) one professional board member, (1) one chiropractor with an active license for 5 years in New Mexico in good standing, the board's executive director, board's compliance liaison, and board's investigator. Recommendations regarding the complaints

and licensure of the applicants will be given to the board at its next scheduled meeting.

P. "Background findings" the board may deny, stipulate, or otherwise limit a license if it is determined the applicant holds or has held a license in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is a danger to patients or is guilty of violating any of the provisions of the Chiropractic Physicians Practice Act, the Uniform Licensing Act, Impaired Health Care Providers Act. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board shall formally accept the approval of the application at the next scheduled meeting.

~~Q. "Chiropractic acupuncture" means those techniques, methods and principles of acupuncture taught in standard colleges of chiropractic that are used as a physiological therapeutic adjunct to the core chiropractic treatment methods.~~

[3/1/72, 9/18/80, 2/27/87, 3/5/93, 11/16/97, 10/31/98; 16.4.1.7 NMAC -Rn & A, 16 NMAC 4.1.7, 1/15/2005; A, 4/10/06; A, 8/30/06]

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.3 NMAC, Section 8, effective 8/30/06.

16.4.3.8 APPLICATION FOR LICENSURE BY EXAMINATION:

A. No application for licensure under the Chiropractic Physician Practice Act, Sections 61-4-1 through 61-4-17 NMSA 1978, shall be deemed complete until the board's administrator certifies that the application contains all of the following:

- (1) a completed application form;
- (2) a nonrefundable application for license by examination fee as set forth in Subparagraph (a) of Paragraph (1) of Subsection A of 16.4.1.13 NMAC payable by cashier's check or money order;
- (3) letter size, notarized copy of original chiropractic diploma;
- (4) 2" x 2" photograph attached to the application;
- (5) transcript of credits of chiropractic college;
- (6) transcripts documenting two years of pre-chiropractic, post-secondary education;
- (7) transcript from the national

board of chiropractic examiners (parts I, II, III, IV and physiotherapy exam), demonstrating a passing score;

(8) all transcripts must be sent directly from each agency to the New Mexico board;

(9) verification of licensure and good standing in any state where the applicant holds a current or inactive license must be sent directly from the state licensing agency to the New Mexico board;

(10) has had no disciplinary action imposed, nor criminal convictions enter against any chiropractic license the applicant held or holds; applicant agrees to a national practitioners databank and a federation of chiropractic licensing boards background check

(11) complete the jurisprudence exam with a score of at least 75 percent.

B. Application must be complete and shall be received by the board's administrator no less than 21 days in advance for the practical examination.

C. All applications deemed completed by the board's administrator shall be referred to the board for final consideration. The board may deny any applicant the right to take the practical examination in accordance with Sections 61-4-10 NMSA 1978 and the Uniform Licensing Act, Section 6-1-1 through 1-1-31 NMSA 1978.

D. No applicant shall be eligible to sit the practical examination until the application is complete; however, the board may waive the requirement for the board-administered examination upon proof of satisfactory completion of the examination conducted by the national board of chiropractic examiners.

E. If an applicant does not meet the minimal requirements as set forth above, applicant may, at the discretion of the board, be required to take and pass part I, II, III, IV, ~~[or]~~ physiotherapy exam, other NBCE specialty examination or the special purpose examination (SPEC) of the national boards, ~~[or any portion of the New Mexico board of chiropractic examiners practical examination,]~~ or any combination thereof.

F. The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources.
[2/27/87, 5/26/89, 9/5/91, 2/12/93, 11/16/97, 10/31/98, 1/29/99; 16.4.3.8 NMAC - Rn & A, 16 NMAC 4.3.8, 1/15/2005; A, 3/15/06; A, 8/30/06]

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.4 NMAC, Section 8, effective 8/30/06.

16.4.4.8 LICENSURE WITHOUT EXAMINATION:

A. In accordance with Section 61-4-8 NMSA 1978, of the New Mexico Chiropractic Physician Practice Act, the board may, at its discretion, issue licenses to practice chiropractic in New Mexico to doctors who provide evidence of meeting the following minimal requirements:

(1) is of good moral character and has maintained an active practice for at least seven of the last ten years prior to the filing of the application as a doctor of chiropractic in another state, territory, country or foreign jurisdiction whose licensure requirements are equal to or exceed those of New Mexico; ~~[or]~~ and

(a) is a doctor of chiropractic diploma from a council on chiropractic education accredited or board accepted equivalent chiropractic college and has served in the military services of the United States for two years or more within one year prior to application; ~~[or]~~ and

(b) is an applicant showing evidence of having passed all examinations conducted by the "NBCE".

(2) has had no disciplinary action imposed, nor criminal convictions entered against any chiropractic license the applicant held or holds; applicant agrees to a national practitioners databank and a federation of chiropractic licensing boards background check;

(3) has never been found guilty of any action which, had it been committed in New Mexico, would be grounds for disciplinary action against the license;

(4) provides national board transcripts;

(5) provides pre-chiropractic college transcripts.

B. Applicant must complete application for licensure ~~[by endorsement]~~ without examination, pay nonrefundable application fee, and should meet all other applicable requirements of New Mexico statutes pertaining to the practice of chiropractic and all other applicable provisions of the board's rules. The applicant will be required to completed the jurisprudence exam with a score of at least 75 percent.

C. If an applicant does not meet the minimal requirements of 61-4-8.B NMSA 1978, applicant may at the discretion of the board, be required to take and pass part I, II, III or IV, or the special pur-

pose examination (SPEC) of the national boards or any portion of the New Mexico board of chiropractic examiners practical examination or any combination thereof.

D. Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or the delegate of the board will review and may approve the application. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board shall formally accept the approval of the application at the next scheduled meeting.

E. The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources.

[3/22/95, 11/16/97; 10/31/98; 16.4.4.8 NMAC - Rn & A, 16 NMAC 4.4.8, 1/15/2005; A, 3/15/06; A, 8/30/06]

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.18 NMAC, Sections 6 and 9, effective 8/30/06.

16.4.18.6 OBJECTIVE: To establish practice procedures to include diagnostic procedures, meridian therapy ~~[/chiropractic acupuncture]~~, obstetrics, invasive therapeutic procedures, imaging examinations, chiropractic rehabilitation of the neuromusculoskeletal system, manipulation under anesthesia and spinal manipulation.

[11/16/97; 16.4.18.6 NMAC - Rn & A, 16 NMAC 4.18.6, 1/15/2005; A, 4/10/06; A, 8/30/06]

16.4.18.9 MERIDIAN THERAPY ~~[/CHIROPRACTIC ACUPUNCTURE]:~~

A. Chiropractors who practice ~~[chiropractic acupuncture/meridian therapy shall use those terms and shall not advertise or promote themselves publically as being doctors of oriental medicine, acupuncturists or doctors of acupuncture unless also licensed pursuant to the Acupuncture and Oriental Medicine Act Section 61-14A-1 et seq.]~~ meridian therapy must do so in conjunction with standard chiropractic adjusting and/or manipulative techniques.

B. Chiropractors who practice ~~[chiropractic acupuncture]~~ meridian therapy may not advertise or promote themselves in the media to be acupuncturists unless licensed pursuant to the Acupuncture Act.

~~[C. Chiropractors licensed by examination after 7-1-05 intending to include chiropractic acupuncture within their practice procedures must have successfully completed the chiropractic acupuncture examination administered by the NBCE.]~~

[10/30/69, 2/28/87, 9/6/91, 5/2/92, 11/16/97; 16.4.18.9 NMAC - Rn, 16 NMAC 4.18.9, 1/15/2005; A, 4/10/06; A, 8/30/06]

NEW MEXICO OFFICE OF THE STATE ENGINEER

The Office of the State Engineer is repealing the following articles, effective August 15, 2006. They will be replaced by 19.27.5 NMAC, The Use of Public Underground Waters for Household or Other Domestic Use, effective August 15, 2006.

SE-66-1, Rules and Regulations Governing Drilling of Wells and Appropriation and Use of Ground Water in New Mexico, Article 1-15, Applications Not Requiring Publication of a Notice; 1-15.1, Qualified Applicant; 1-15.2, Amount of Water; 1-15.3, Purpose of Use; 1-15.4, Multiple Residential Use; 1-15.5, Well to be Drilled for Buildings or Dwelling Units Constructed For Sale; 1-15.7, Permits Requiring Installation of a Meter; 1-15.8, Limitations Under Court Decrees; Article 1-16, Retention of Old Well for Domestic Use - Requirements, filed 7/29/83.

NEW MEXICO OFFICE OF THE STATE ENGINEER

TITLE 19 N A T U R A L RESOURCES AND WILDLIFE CHAPTER 27 UNDERGROUND WATER PART 5 THE USE OF PUBLIC UNDERGROUND WATERS FOR HOUSEHOLD OR OTHER DOMESTIC USE IN ACCORDANCE WITH SECTION 72-12-1.1 NMSA

19.27.5.1 ISSUING AGENCY: State Engineer.
[19.27.5.1 NMAC - N, 8-15-2006]

19.27.5.2 SCOPE: The requirements for the use of public underground waters in accordance with Section 72-12-1.1 NMSA.
[19.27.5.2 NMAC - N, 8-15-2006]

19.27.5.3 STATUTORY AUTHORITY: Section 72-12-1 NMSA provides that the water of underground streams, channels, artesian basins, reservoirs or lakes, having reasonably ascertain-

able boundaries, is declared to belong to the public and to be subject to appropriation for beneficial use. Section 72-12-1 NMSA further provides for the limited use of relatively small amounts of public underground waters in the irrigation of not to exceed one acre of noncommercial trees, lawn or garden, and for household or other domestic use. Section 72-12-1.1 NMSA sets out the requirements for the filing of applications and the issuance of permits for the use of public underground waters for the irrigation of not to exceed one acre of noncommercial trees, lawn or garden, and for household or other domestic use. Section 72-2-8 NMSA gives the state engineer authority to adopt regulations to implement and enforce any provision of any law administered by him.
[19.27.5.3 NMAC - N, 8-15-2006]

19.27.5.4 D U R A T I O N : Permanent.
[19.27.5.4 NMAC - N, 8-15-2006]

19.27.5.5 EFFECTIVE DATE: August 15, 2006, unless a later date is cited at the end of a section.
[19.27.5.5 NMAC - N, 8-15-2006]

19.27.5.6 OBJECTIVE: To update the existing regulations and establish new regulations for the use of public underground waters for household or other domestic use in accordance with Section 72-12-1.1 NMSA.
[19.27.5.6 NMAC - N, 8-15-2006]

19.27.5.7 DEFINITIONS: Unless defined below or in a specific section of these regulations, all other words used herein shall be given their customary and accepted meaning.

A. 72-12-1.1 domestic well permit: a permit issued for domestic use in accordance with Section 72-12-1.1 NMSA or its predecessor statutes. Included in this definition are 72-12-1.1 domestic well permits that have been adjudicated.

B. 72-12-1.1 domestic well: The point of diversion authorized under a 72-12-1.1 domestic well permit.

C. Administrative guidelines: A compilation of policies and procedures intended to provide guidance to office of the state engineer personnel for processing pending and future water rights applications in a specifically defined geographic area. The administrative guidelines shall not limit the state engineer's authority to take alternative or additional actions relating to the management of the water resources of the specifically defined geographic area as provided by New Mexico statutes, orders of the court, or the rules and regulations of the state engineer.

D. Consumptive use:

The quantity of water consumed during the application of water to beneficial use. The quantity of water beneficially consumed depends on the requirements of a particular enterprise and how it applies and consumes the water. The authorized diversion of water that is not beneficially consumed in the course of water use is not part of the allowable consumptive use allocation of the water right. The consumptive use of water by a crop (evapotranspiration) does not include depletions such as evaporation from canals, ditches or irrigated fields during surface application, transpiration by vegetation along ditches, evaporation or leakage from irrigation water pipes, evaporation of sprinkler spray and drift losses, and evaporation of runoff and seepage from irrigated fields.

E. Domestic use: The use of water for household purposes or for the irrigation of not to exceed one acre of non-commercial trees, lawn, garden, or landscaping. Drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility are included in this definition. This definition does not include the use of underground water from a well used primarily for livestock watering as provided for under Section 72-12-1.2 NMSA.

F. Domestic well management area: A bounded area overlying a stream-connected aquifer, specifically described by section, township and range, or by other land survey descriptions, that requires special water resource protection as determined by the state engineer.

G. Household: A single-family residence including outbuildings such as guesthouses, barns, and sheds.

H. Hydrologic unit: A physically definable, continuous and interconnected surface water and/or groundwater system. A hydrologic unit may consist of an aquifer, a group of interconnected aquifers, and any hydrologically connected springs, streams, rivers, lakes or other surface water bodies.

[19.27.5.7 NMAC - N, 8-15-2006]

19.27.5.8 FEE SCHEDULE: An application for permit shall be accompanied by one of the following filing fees:

A. \$125 for an application for a 72-12-1.1 domestic well permit.

B. \$75 for an application for permit for replacement 72-12-1.1 domestic well.

C. \$125 for an application for permit for supplemental 72-12-1.1 domestic well.

D. \$75 for an application for permit to repair or deepen a 72-12-1.1 domestic well.

E. \$75 for an application for permit to amend the type of domestic

use authorized under a 72-12-1.1 domestic well permit.

F. \$200 for an application for permit to transfer a valid, existing water right into a 72-12-1.1 domestic well permit pursuant to 19.27.5.10 NMAC. [19.27.5.8 NMAC - N, 8-15-2006]

19.27.5.9 APPLICATION FOR A 72-12-1.1 DOMESTIC WELL PERMIT:

The following requirements apply to applications filed for 72-12-1.1 domestic well permits. In addition to the requirements listed in this section and part, the drilling of a 72-12-1.1 domestic well and the amount and uses of water permitted are subject to such additional or more restrictive limitations imposed by a court, by lawful municipal or county ordinance, or by the state engineer, such as but not limited to by state engineer order or administrative guidelines.

A. Form - content: An application for a 72-12-1.1 domestic well permit shall be prepared on a form prescribed by the state engineer. An application shall include the following information: the name and mailing address of the applicant, the type of domestic use being applied for, the number of households to be served, the location of the proposed well, the name of the owner of the land on which the well is to be drilled, the name and license number of the well driller (if known), the proposed depth of the well, the outside diameter of the well casing, and other information the state engineer deems necessary. The state engineer may require an application to be accompanied by a deed or purchase contract and plat of survey on file with the appropriate county.

B. Well location: The well location shall be described using universal transverse mercator (NAD 83), latitude and longitude, or the New Mexico state plane coordinate system. In addition, the well location shall be described by the lot and block number of the lot where the well is to be located (if applicable). An application to drill a well on land owned by another person, the state of New Mexico, the federal government, or another entity shall be accompanied by written consent of the landowner.

C. Multiple use well: A 72-12-1.1 domestic well permit may be conditioned to allow the diversion of water from an existing well previously permitted for livestock, irrigation, or any other beneficial purpose of use other than domestic use. The diversion of water from a multiple use well made pursuant to a 72-12-1.1 domestic well permit shall be separately metered.

D. Amount of water: The drilling of a 72-12-1.1 domestic well and the amount and uses of water permitted are subject to such additional or more restric-

tive limitations imposed by a court, by lawful municipal or county ordinance, or by the state engineer, such as but not limited to by state engineer order or administrative guidelines. The maximum permitted diversion of water from a 72-12-1.1 domestic well that is not subject to additional or more restrictive limitations shall be as follows:

(1) Single household: The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted to serve one household shall not exceed 1.0 acre-foot per annum.

(2) Multiple households: The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted to serve more than one household shall not exceed 1.0 acre-foot per annum per household served. The maximum combined diversion from a 72-12-1.1 domestic well serving three or more households shall not exceed 3.0 acre-feet per annum. For a 72-12-1.1 domestic well serving multiple households, the permit holder shall file documentation with the state engineer listing the number of households being served by the well, the owner's contact information for each household being served, and a description of the legal lot of record for each household being served. A copy of a well share agreement may be filed to support the claim that the 72-12-1.1 domestic well is serving more than one household.

(3) Drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility: The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted for drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility shall not exceed 1.0 acre-foot per annum. The state engineer shall not issue a permit for this use unless the applicant demonstrates that no alternative water supply is reasonably accessible or available. Water may not be used under this type of 72-12-1.1 domestic well permit for any commercial use such as the manufacture of a product, car wash, water bottling, concrete batching, or the irrigation of crops grown for commercial sale.

(4) Transfer of a valid, existing water right into a 72-12-1.1 domestic well permit: The applicant for or the owner of a 72-12-1.1 domestic well permit may apply to transfer a valid, existing consumptive use water right into the 72-12-1.1 domestic well permit in accordance with 19.27.5.10 NMAC for the purpose of increasing the permitted diversion from the 72-12-1.1 domestic well up to a maximum of three acre-feet per annum.

E. Multiple 72-12-1.1 domestic well permits on a legal lot of record: An application for a new 72-12-1.1 domestic well permit where the proposed

point of diversion is to be located on the same legal lot of record as an operational 72-12-1.1 domestic well shall be treated as an application for a supplemental well pursuant to Subsection B of 19.27.5.11 NMAC. A legal lot of record is a parcel of land that is created in a manner consistent with the zoning and planning laws in place at the time the parcel is created.

F. 72-12-1.1 domestic well permit to accompany a house or other dwelling constructed for sale: A person or other entity planning to construct and sell a house or other dwelling may apply for a 72-12-1.1 domestic well permit to provide water to the dwelling. The permit holder may use water under a 72-12-1.1 domestic well permit for activities directly related to the construction of the dwelling only if the 72-12-1.1 domestic well permit is specifically conditioned to allow such use of water from the well. Upon sale of the house or dwelling, the permit holder shall provide the new owner notice in writing of the requirement to file a change of ownership with the state engineer for the 72-12-1.1 domestic well permit. A copy of the notice shall be filed at the office of the state engineer along with a copy of the deed or other instrument of conveyance which conveyed the land upon which the 72-12-1.1 domestic well is located. At any one time, a person or other entity may not hold more than ten 72-12-1.1 domestic well permits for a well to accompany a house or other dwelling constructed for sale. If a person or other entity holds ten or more such 72-12-1.1 domestic well permits, additional 72-12-1.1 domestic well permits will be issued as written notices are filed on existing permits that reduce the number of such permits held by the person or entity to less than ten. [19.27.5.9 NMAC - N, 8-15-2006]

19.27.5.10 APPLICATION FOR PERMIT TO TRANSFER A VALID, EXISTING WATER RIGHT INTO A 72-12-1.1 DOMESTIC WELL PERMIT - MAXIMUM DIVERSION OF WATER FROM THE 72-12-1.1 DOMESTIC WELL NOT TO EXCEED THREE ACRE-FEET PER ANNUM: The applicant for or the owner of a 72-12-1.1 domestic well permit may apply to transfer a valid, existing consumptive use water right into the 72-12-1.1 domestic well permit for the purpose of increasing the maximum diversion of underground water up to an amount of water not to exceed three acre-feet per annum. The water right to be transferred shall be from the same hydrologic unit that will be impacted by the diversion of water from the 72-12-1.1 domestic well. The determination of whether a proposed transfer of a water right is occurring within the same hydrologic unit shall be made by the office of the state engineer. For a 72-12-1.1

domestic well permit located within a domestic well management area or other geographic area specifically defined in a state engineer order or administrative guidelines, only a valid, existing consumptive use water right located within the domestic well management area or other specifically defined geographic area may be transferred.

A. Form - content:

Applications shall be prepared on a form prescribed by the state engineer. An application shall include the following information: the name and address of applicant, the pertinent state engineer file number(s), the source of water supply for the move-from point of diversion, the source of water supply for the move-to point of diversion, the priority date of the water right, the diversion amount to be retired, the consumptive use amount to be transferred, the move-from purpose of use, the legal description of the move-from place of use, the location of the move-from point of diversion, the location of move-to point of diversion, and other information the state engineer deems necessary. An application for a change in point of diversion or place or purpose of use of a water right into or out of an acequia or community ditch subject to Sections 73-2-1 through 73-2-68 NMSA or Sections 73-3-1 through 73-3-11 NMSA shall include the documentary evidence of the applicant's compliance with the requirements of Section 72-5-24.1 NMSA.

B. Well location: The description of the well location shall be made in accordance with Subsection B of 19.27.5.9 NMAC.

C. Transfer process: Consistent with the issuance of a 72-12-1.1 domestic well permit pursuant to Section 72-12-1.1 NMSA, public notice is not required nor protest allowed for an application for permit to transfer a valid, existing consumptive use water right into a 72-12-1.1 domestic well permit for the purpose of increasing the maximum diversion of underground water up to an amount of water not to exceed three acre-feet per annum. In all other respects, the application for such a transfer shall be processed in a manner consistent with Section 72-12-3 NMSA and no change may be made to the point of diversion, place of use, or purpose of use authorized under such a permit except as provided for in Subsection E of 19.27.5.11 NMAC.

[19.27.5.10 NMAC - N, 8-15-2006]

19.27.5.11 OTHER 72-12-1.1 DOMESTIC WELL PERMIT APPLICATIONS: Other 72-12-1.1 domestic well permit applications may be made only as specifically provided for in this section. Permit applications made in accordance

with this section require an existing 72-12-1.1 domestic well permit in good standing. Applications shall be prepared on a form prescribed by the state engineer and the applicant shall be the owner of record of the 72-12-1.1 domestic well permit. The description of the well location shall be made in accordance with Subsection B of 19.27.5.9 NMAC. The publication of a legal notice is not required for a permit application made in accordance with Subsection A, B, C, or D of this section. A permit issued pursuant to Subsections A, B, or C of this section for an existing 72-12-1.1 domestic well permit in good standing will not affect the maximum authorized diversion amount from the 72-12-1.1 domestic well. Because 72-12-1.1 domestic well permits are issued without public notice and opportunity for protests, the rights developed there-under are limited and no change may be made to the point of diversion, place of use, or purpose of use authorized under a 72-12-1.1 domestic well permit except as provided for in Subsection E of this section.

A. Application for permit to replace a 72-12-1.1 domestic well:

A permit from the state engineer is required to drill a replacement 72-12-1.1 domestic well. The state engineer shall require the well being replaced to be plugged or capped in accordance with the regulations of the office of the state engineer. The replacement well shall be permitted by the state engineer to serve the same authorized legal lot(s) of record and to serve the same type of domestic use as the 72-12-1.1 domestic well being replaced. An application shall include the file number of the well to be replaced, the name and mailing address of the applicant, the type of domestic use, the location of the existing well, the proposed location of the replacement well, the name of the owner of the land on which the replacement well is to be drilled, the name and license number of the well driller (if known), the proposed depth of the replacement well, the outside diameter of the replacement well casing, the reason for replacing the well, and other information the state engineer deems necessary. The state engineer may require a meter on a replacement 72-12-1.1 domestic well as a condition of the new permit.

B. Application for permit for supplemental 72-12-1.1 domestic well:

A permit from the state engineer is required to drill a supplemental 72-12-1.1 domestic well. The total combined diversion from the 72-12-1.1 domestic well and the supplemental well shall not exceed the maximum diversion amount authorized under the 72-12-1.1 domestic well permit. An application shall include the name and mailing address of the applicant, the type of domestic use, the state engineer file num-

ber, the location of the existing well, the authorized maximum diversion amount of the domestic well to be supplemented, the existing capacity of the well to be supplemented, the proposed location of the supplemental well, the name of the owner of the land on which the supplemental well is to be drilled, the name and license number of the well driller (if known), the proposed depth of the supplemental well, the outside diameter of the supplemental well casing, and other information the state engineer deems necessary. The state engineer shall require the installation of a meter on both the supplemental well and the 72-12-1.1 domestic well being supplemented as a condition of the new permit.

C. Application for permit to repair or deepen a 72-12-1.1 domestic well:

A permit from the state engineer is required to repair or deepen a 72-12-1.1 domestic well. A permit to repair a 72-12-1.1 domestic well is required for any type of repair work involving the use of a drill rig. A permit is not required for work on pumping equipment. An application shall include the state engineer file number of the 72-12-1.1 domestic well to be deepened or repaired, the name and mailing address of the permit holder, the location of the well, the name and license number of the well driller (if known), a description of the work to be performed, the proposed depth (if the application is for deepening the well), and other information the state engineer deems necessary. The state engineer may require a meter on a 72-12-1.1 domestic well to be repaired or deepened as a condition of the new permit.

D. Application for permit to amend the type of domestic use of a 72-12-1.1 domestic well permit:

A permit from the state engineer is required to amend the type of domestic use between single household, multiple household, or drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility. An application shall include the state engineer file number of the 72-12-1.1 domestic well permit, the name and mailing address of the applicant, the current authorized type of domestic use, the proposed type of domestic use, and other information deemed necessary by the state engineer. The state engineer may require a meter on a 72-12-1.1 domestic well as a condition of the new permit when the type of domestic use is changed.

E. Change point of diversion and place and purpose of use:

The point of diversion and place and purpose of use permitted under or adjudicated for a 72-12-1.1 domestic well permit may be changed only for those wells drilled prior to the date specified, and in a manner specifi-

cally authorized, in either:

(1) a water rights settlement approved by the state engineer and a court, where such settlement requires the plugging of each 72-12-1.1 domestic well for which the point of diversion is changed and prohibits the drilling of new 72-12-1.1 domestic wells within the specifically described exclusive service area; or

(2) a state engineer order issued to a mutual domestic water consumers association for the purpose of promoting the development of a regional water supply system; the mutual domestic water consumers association shall demonstrate that it has complied with all applicable laws governing its reorganization as a regional water supply system; the state engineer order shall require the plugging of each 72-12-1.1 domestic well for which the point of diversion is changed and prohibit the drilling of new 72-12-1.1 domestic wells within the exclusive service area specifically described in said state engineer order.

[19.27.5.11 NMAC - N, 8-15-2006]

19.27.5.12 CHANGE OF OWNERSHIP:

In the event of any change of ownership of a 72-12-1.1 domestic well permit the new owner shall file a change of ownership form with the state engineer in accordance with Section 72-1-2.1 NMSA. If the new owner fails to file a change of ownership in a timely manner the state engineer may cancel the 72-12-1.1 domestic well permit. The state engineer may provide written notice to a new owner of a 72-12-1.1 domestic well permit of the requirement to file change of ownership.

[19.27.5.12 NMAC - N, 8-15-2006]

19.27.5.13 ACTION OF THE STATE ENGINEER:

The state engineer shall act on all applications that are properly filed.

A. Rejection of application:

The state engineer may reject an application for a 72-12-1.1 domestic well permit when the proposed 72-12-1.1 domestic well is to be located in an area where a restriction on the use of water or the drilling of new wells has been imposed by a court. The state engineer may reject an application for a 72-12-1.1 domestic well permit when the proposed 72-12-1.1 domestic well is to be located in an area of water quality concern where a prohibition on or a recommendation against the drilling of new wells has been established by a government entity.

B. Approval of application - conditions of approval:

The state engineer may set forth conditions of approval for a 72-12-1.1 domestic well permit, which may include, but shall not be limited to the following:

(1) The casing shall not exceed 7

inches outside diameter except under specific conditions in which reasons satisfactory to the state engineer are shown.

(2) The well shall be set back a minimum of 50 feet from any existing well of other ownership.

(3) If artesian water is encountered, all rules and regulations pertaining to the drilling and casing of artesian wells shall be complied with except under specific conditions in which reasons satisfactory to the state engineer are shown.

(4) The well shall be constructed by a driller licensed in the state of New Mexico. A licensed driller shall not be required for the construction of a driven well when the outside diameter of the casing does not exceed two and three-eighths (2?) inches.

(5) Pursuant to Section 72-8-1 NMSA, the permittee shall allow the state engineer and his representatives entry upon private property for the performance of their respective duties, including access to the well for meter reading and water level measurement.

(6) The drilling of the well and amount and uses of water permitted are subject to such limitations as may be imposed by the courts or by lawful municipal and county ordinances which are more restrictive than the conditions of this permit and applicable state engineer regulations.

(7) This permit authorizes the drilling of a well to accompany a house or other dwelling being constructed for sale. Water may only be diverted for activities directly related to the construction of the dwelling that the well will serve. Upon sale of the house or dwelling, the permit holder shall provide the new owner notice in writing of the requirement to file a change of ownership with the state engineer for the 72-12-1.1 domestic well permit. A copy of the notice shall be filed at the office of the state engineer along with a copy of the deed or other instrument of conveyance which conveyed the land upon which the 72-12-1.1 domestic well is located. This condition shall automatically expire when the office of the state engineer accepts a change of ownership for filing in the name of the new owner intending to divert water from the well. No water may be diverted from the 72-12-1.1 domestic well by the new owner until a change of ownership has been recorded at the office of the state engineer.

(8) Use shall be limited strictly to household, drinking and sanitary purposes; water shall be conveyed from the well to the place of use in a closed conduit and the effluent returned to the underground so that it will not appear on the surface. No irrigation of lawns, gardens, trees or use in any type of pool or pond is authorized under this permit.

(9) The permit holder shall ensure

that a well record has been filed with the state engineer no later than twenty days after the completion of the well drilling.

(10) Any diversion of water made in excess of the authorized maximum diversion amount in any calendar year shall be repaid with twice the amount of the overdiversion during the following calendar year. Repayment shall be made by either: (a) reducing the diversion during the following calendar year from the 72-12-1.1 domestic well that is the source of the overdiversion; or (b) acquiring or leasing a valid, existing consumptive use water right in an amount equal to the repayment amount and submitting to the state engineer for his approval a plan for the proposed repayment during the following calendar year. The plan for the proposed repayment shall be on a form prescribed by the state engineer.

(11) The permit is subject to cancellation for non-compliance with the conditions of approval or if otherwise not exercised in accordance with the terms of the permit.

(12) The right to divert water under this permit is subject to curtailment by priority administration as implemented by the state engineer or a court.

(13) A 72-12-1.1 domestic well permit shall automatically expire unless the well is completed and the well record is filed with the state engineer within one year of the date of issuance of the permit.

C. Metering requirements: When a metering device is required by the state engineer on a 72-12-1.1 domestic well, the totalizing meter shall be installed before the first branch of the discharge line from the well. The meter installation shall be in accordance with the specifications adopted by the state engineer. The holder of the 72-12-1.1 domestic well permit shall file a meter installation and inspection report with the office of the state engineer, documenting the make, model, serial number, date of installation, and initial reading of the meter prior to diversion of water. Pumping records for the 3 preceding calendar months shall be submitted to the appropriate state engineer district office on or before the 10th of January, April, July, and October of each year unless a different reporting period has been established in the conditions of approval of the permit.

(1) The state engineer shall require a meter on each new 72-12-1.1 domestic well permitted:

(a) within a domestic well management area;

(b) when a metering requirement is imposed by the courts;

(c) for drinking and sanitary domestic use that is incidental to the operations of a governmental, commercial, or

non-profit facility;

(d) for multiple households domestic use;

(e) as a supplemental 72-12-1.1 well; the 72-12-1.1 domestic well being supplemented shall also require a meter; and

(f) as a multiple use well such that the diversion of water for domestic use is separately metered.

(2) The state engineer may require a meter on a new 72-12-1.1 domestic well:

(a) permitted for single household domestic use;

(b) permitted to accompany a residence or other dwelling constructed for sale;

(c) as a condition of a permit to repair or deepen a 72-12-1.1 domestic well;

(d) as a condition of a permit to amend the type of domestic use of a 72-12-1.1 domestic well permit; or

(e) as a condition of a permit to transfer a valid, existing water right to a 72-12-1.1 domestic well permit in accordance with 19.27.5.10 NMAC.

D. Well setbacks: All new 72-12-1.1 domestic wells shall be set back a minimum of 50 feet from an existing well of other ownership unless a variance has been granted by the state engineer. The state engineer may grant a variance for a replacement well or to allow for maximum spacing of the well from a source of groundwater contamination. All 72-12-1.1 domestic wells shall be set back from potential sources of contamination in accordance with the rules and regulations of the New Mexico environment department.

E. Well identification tag: The state engineer may require that a 72-12-1.1 domestic well be tagged with a well identification tag. If a well tag is required, the tag shall be affixed in plain view and the permit holder shall be responsible for maintaining the well identification tag.

F. Permit expiration: Each 72-12-1.1 domestic well permit shall be conditioned by the state engineer to require the 72-12-1.1 domestic well be completed and a well record be filed with the state engineer within one year of the date of issuance of the permit. A 72-12-1.1 domestic well permit shall automatically expire unless the well is completed and the well record is filed with the state engineer within one year of the date of issuance of the permit. No extension of time shall be granted by the state engineer, and if a 72-12-1.1 domestic well permit expires, a new permit shall be obtained and the appropriate fee paid.

G. Well record: The well driller shall keep a record of each well

drilled as the work progresses. The well driller shall file a complete well record with the state engineer and the permit holder no later than twenty (20) days after completion of the well drilling. A well log shall be filed for each hole drilled, including a drill hole that does not encounter water. It is the responsibility of the permit holder to ensure that the well record for the 72-12-1.1 domestic well has been properly filed with the state engineer.

[19.27.5.13 NMAC - N, 8-15-2006]

19.27.5.14 DOMESTIC WELL MANAGEMENT AREA: As hydrologic conditions require, the state engineer may declare all or part of a stream connected aquifer as a domestic well management area to prevent impairment to valid, existing surface water rights. The additional protection of mined aquifers is managed by the state engineer through the declaration of a critical management area and the development of administrative guidelines for the critical management area.

A. Administrative guidelines: The state engineer shall develop administrative guidelines for each declared domestic well management area. The administrative guidelines will be based on the hydrologic conditions of the domestic well management area and the valid, existing water rights located therein. The administrative guidelines shall set forth the maximum diversion amounts and other additional restrictions, including any requirement for the transfer of a valid, existing consumptive use water right, that will be conditioned on new 72-12-1.1 domestic well permits issued within the management area. Administrative guidelines for a domestic well management area and accompanying maps shall be available at each district office of the state engineer. The administrative guidelines shall also be posted on the office of the state engineer web-site (www.ose.state.nm.us).

B. Declaration of domestic well management area: The state engineer shall hold a public meeting within the geographic area of a proposed domestic well management area before he declares the area and adopts the administrative guidelines. Notice of the public meeting and a copy of the draft administrative guidelines for the domestic well management area shall be posted at the appropriate district office a minimum of 30 days prior to the date of the meeting. Notice of the public meeting and of the draft administrative guidelines will be published in a newspaper of general circulation in the area being declared once a week for three consecutive weeks, with final publication occurring not less than 10 days before the date of the public meeting. Persons who are or may be

affected by the proposed declaration of the domestic well management area may appear and comment. Written public comments on the proposed domestic well management area and the administrative guidelines shall be filed with the office of the state engineer on or before the date of the public meeting. The additional restrictions and maximum diversion amounts established for new 72-12-1.1 domestic well permits in the draft administrative guidelines shall be adopted by the state engineer on an interim basis. The interim period shall start on the day the draft administrative guidelines are posted for public inspection and shall end on the day the state engineer adopts the administrative guidelines or otherwise signs an order canceling the interim period. Any changes made to the administrative guidelines during the interim period, including a change in the geographic area of a domestic well management area, shall be applied retroactively to each new 72-12-1.1 domestic well permit issued within the domestic well management area during the interim period.

C. Amount of water: Except as otherwise provided or restricted in Paragraph (2) of Subsection C, and Subsections D and E of this section, the maximum diversion of water from a new 72-12-1.1 domestic well within a domestic well management area shall not exceed 0.25 acre-foot per annum. The state engineer may establish a maximum diversion amount for a new 72-12-1.1 domestic well in a domestic well management area that is less than 0.25 acre-foot per annum. As a condition of approval of a new 72-12-1.1 domestic well permit within a domestic well management area, the state engineer may require an applicant to transfer a valid, existing consumptive use water right to the proposed 72-12-1.1 domestic well in accordance with 19.27.5.10 NMAC.

(1) Single household: The maximum permitted diversion of water from a new 72-12-1.1 domestic well permitted to serve one household shall not exceed 0.25 acre-foot per annum.

(2) Multiple household: The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted to serve more than one household shall not exceed 0.25 acre-foot per annum per household served. The maximum combined diversion from such a 72-12-1.1 domestic well shall not exceed 3.0 acre-feet per annum. For a 72-12-1.1 domestic well serving multiple households, the permit holder shall file documentation with the state engineer listing the number of households being served by the well, the owner's contact information for each household being served, and a description of the legal lot of record for each household being served. A

copy of a well share agreement may be filed to support the claim that the 72-12-1.1 domestic well is serving more than one household.

(3) Drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility: The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted for drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility shall not exceed 0.25 acre-foot per annum. The state engineer shall not issue a permit for this use unless the applicant demonstrates that no alternative water supply is reasonably accessible or available. Water may not be used under this type of permit for any commercial use such as the manufacture of a product, car wash, water bottling, concrete batching, or irrigation of crops grown for commercial sale.

D. Transfer of a valid, existing water right to a 72-12-1.1 domestic well permit: The applicant for a new 72-12-1.1 domestic well permit or the holder of an existing 72-12-1.1 domestic well permit may apply to transfer a valid, existing consumptive use water right into the 72-12-1.1 domestic well permit in accordance with 19.27.5.10 NMAC. Only a valid, existing, consumptive use water right located within the domestic well management area may be transferred.

E. Requirement to transfer water right: As a condition of approval of a new 72-12-1.1 domestic well permit within a domestic well management area, the state engineer may require an applicant to transfer a valid, existing consumptive use water right into the 72-12-1.1 domestic well permit in accordance with 19.27.5.10 NMAC. Only a valid, existing consumptive use water right located within the domestic well management area may be transferred. The consumptive use amount transferred shall be considered as the maximum diversion amount that may be permitted from the new 72-12-1.1 domestic well. In a domestic well management area where the state engineer has established a transfer requirement, the state engineer shall reject any application for a new 72-12-1.1 domestic well permit if such application is not accompanied by an application or permit to transfer a valid, existing consumptive use water right to the proposed 72-12-1.1 domestic well.

[19.27.5.14 NMAC - N, 8-15-2006]

19.27.5.15 ENFORCEMENT: The holder of a 72-12-1.1 domestic well permit is subject to possible fines and remedial action including cancellation of the permit for any failure to comply with the terms and conditions of the 72-12-1.1 domestic well permit or any applicable provision of

19.27.5 NMAC or Chapter 72 NMSA.

A. Diversion of water in excess of the authorized maximum diversion amount: The holder of a 72-12-1.1 domestic well permit who diverts water in excess of the authorized maximum diversion amount in any calendar year shall repay twice the amount of the over-diversion during the following calendar year. Repayment shall be made by either:

(1) reducing diversions during the following calendar year from the 72-12-1.1 domestic well that is the source of the over-diversion; or

(2) acquiring or leasing a valid, existing consumptive use water right in an amount equal to the repayment amount and submitting to the state engineer for his approval a plan for the proposed repayment during the following calendar year on a form prescribed by the state engineer; such repayment water shall be derived from either:

(a) reduction of the consumptive use associated with the actual average historic use of a valid, existing water right with an irrigation purpose of use, by fallowing of a specific tract of land that has been consistently historically irrigated; or

(b) reduction of the diversion and associated historical average consumptive use of a valid water right with a purpose of use other than irrigation.

B. Active water resource management: In any stream system where the state engineer has appointed a water master, the water master shall have authority to administer all 72-12-1.1 domestic well permits. All 72-12-1.1 domestic well permits shall be subject to all applicable provisions of district specific active water resource management regulations, including all enforcement provisions.

C. Cancellation of permit: The state engineer may cancel a 72-12-1.1 domestic well permit upon failure of a permit holder to comply with any permit condition of approval or any applicable provision of 19.27.5 NMAC or Chapter 72 NMSA. The state engineer may cancel a 72-12-1.1 domestic well permit and proceed with enforcement action if a permit holder diverts water in excess of the authorized maximum amount and fails to repay the over-diversion in a time and manner acceptable to the state engineer.

[19.27.5.15 NMAC - N, 8-15-2006]

19.27.5.16 APPEAL PROCESS: In accordance with Section 72-2-16 NMSA, if, without holding a hearing, the state engineer enters a decision, any person aggrieved by the decision is entitled to a hearing, if a request for a hearing is made in writing within thirty days of receipt of notice of the decision from the state engineer. Hearings shall be held before the state engineer or his

appointed examiner pursuant to 19.25.2 NMAC. No appeal shall be taken to the district court until the state engineer has held a hearing and entered his decision in the hearing.

[19.27.5.16 NMAC - N, 8-15-2006]

19.27.5.17 LIBERAL CONSTRUCTION: This part shall be liberally construed to carry out its purpose.

[19.27.5.17 NMAC - N, 8-15-2006]

19.27.5.18 SEVERABILITY: If any portion of 19.27.5 NMAC is found to be invalid, the remaining portion of 19.27.5 NMAC shall remain in force and not be affected.

[19.27.5.18 NMAC - N, 8-15-2006]

HISTORY OF 19.27.5 NMAC:

Pre NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives. SE-66-1, Rules and Regulations Governing Drilling of Wells and Appropriation and Use of Ground Water in New Mexico, Article 1-15, Applications Not Requiring Publication and Notice - Domestic and Livestock Use - Amount; Article 1-16, Retention of Old Well for Domestic Use - Requirements, originally filed with the Supreme Court Law Library 11/1/66. Filed with the State Records Center 6/27/91.

Amendment 21 to SE-66-1, Article 1-15, Applications Not Requiring Publication of Notice; 1-15.1, Qualified Applicant; 1-15.2, Amount of Water; 1-15.3, Purpose of Use; 1-15.4, Multiple Residential Use; 1-15.5, Well to be Drilled for Buildings or Dwelling Units Constructed For Sale; 1-15.7, Permits Requiring Installation of a Meter; 1-15.8, Limitations Under Court Decrees; Article 1-16, Retention of Old Well for Domestic Use - Requirements; filed with the State Records Center 7/29/83.

History of Repealed Material:

SE-66-1, Rules and Regulations Governing Drilling of Wells and Appropriation and Use of Ground Water in New Mexico, Article 1-15, Applications Not Requiring Publication of a Notice; 1-15.1, Qualified Applicant; 1-15.2, Amount of Water; 1-15.3, Purpose of Use; 1-15.4, Multiple Residential Use; 1-15.5, Well to be Drilled for Buildings or Dwelling Units Constructed For Sale; 1-15.7, Permits Requiring Installation of a Meter; 1-15.8, Limitations Under Court Decrees; Article 1-16, Retention of Old Well for Domestic Use - Requirements, filed 7/29/83 - Repealed 8/15/2006.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

Effective 08-27-06, the New Mexico Environmental Improvement Board repeals 20 NMAC 1.1 "Rulemaking Procedures-Environmental Improvement Board" (filed 10-27-95).

Effective 08-27-06, the New Mexico Environmental Improvement Board repeals 20 NMAC 1.2 "Adjudicatory Procedures - Environmental Improvement Board" (filed 10-31-1996).

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 1 ENVIRONMENTAL PROTECTION GENERAL PART 1 R U L E M A K I N G PROCEDURES - ENVIRONMENTAL IMPROVEMENT BOARD

20.1.1.1 ISSUING AGENCY:
Environmental Improvement Board.
[20.1.1.1 NMAC - Rp, 20 NMAC 1.1.I.100,
08/27/06]

**20.1.1.2 S T A T U T O R Y
AUTHORITY:** This part is adopted pursuant to Sections 50-9-12, 74-1-9, 74-2-6, 74-3-5, 74-4-5 and 74-9-27 NMSA 1978.
[20.1.1.2 NMAC - Rp, 20 NMAC 1.1.I.101,
08/27/06]

20.1.1.3 SCOPE: This part governs the procedures in all rulemaking hearings before the board, except to the extent that this part may be inconsistent with specific procedures in governing law. In cases where this part is inconsistent with any rulemaking procedures specified in governing law, the procedures in governing law apply, rather than the procedures in this part.
[20.1.1.3 NMAC - Rp, 20 NMAC 1.1.I.102,
08/27/06]

20.1.1.4 D U R A T I O N :
Permanent.
[20.1.1.4 NMAC - Rp, 20 NMAC 1.1.I.103,
08/27/06]

20.1.1.5 EFFECTIVE DATE:
August 27, 2006, unless a later date is cited at the end of a section.
[20.1.1.5 NMAC - Rp, 20 NMAC 1.1.I.104,
08/27/06]

20.1.1.6 OBJECTIVE: The

purposes of this part are:

A. to standardize the procedures used in rulemaking proceedings before the board;

B. to encourage the participation in the hearings conducted by the board for the promulgation of regulations;

C. to make possible the effective presentation of the evidence and points of view of parties and members of the general public; and

D. to assure that board hearings are conducted in a fair and equitable manner.

[20.1.1.6 NMAC - Rp, 20 NMAC 1.1.I.105,
08/27/06]

20.1.1.7 DEFINITIONS: As used in this part:

A. "board administrator" means the department employee designated by the secretary of environment to provide staff support to the board;

B. "board" means the environmental improvement board;

C. "department" means the New Mexico environment department;

D. "document" means any paper, exhibit, pleading, motion, response, memorandum, decision, order or other written or tangible item that is filed in a proceeding under this part, or brought to or before the board for its consideration, but does not include a cover letter accompanying a document transmitted for filing;

E. "exhibit" means any document or tangible item submitted for inclusion in the hearing record;

F. "general public" includes any person attending a hearing who has not submitted a notice of intent to present technical testimony;

G. "governing law" means the statute, including any applicable case law, which authorizes and governs the decision on the proposed regulatory change;

H. "hearing officer" means the person designated by the board to conduct a hearing under this part;

I. "hearing record" means:
(1) the transcript of proceedings;
and
(2) the record proper;

J. "participant" means any person who participates in a rulemaking proceeding before the board;

K. "party" means the petitioner; any person filing a notice of intent to present technical testimony, and any person filing an entry of appearance;

L. "person" means an individual or any entity, including federal, state and local governmental entities, however organized;

M. "petitioner" means the person who petitioned the board for the reg-

ulatory change that is the subject of the hearing;

N. "record proper" means all documents related to the hearing and received or generated by the board prior to the beginning, or after the conclusion, of the hearing, including, but not limited to:

(1) the petition for hearing and any response thereto;

(2) the minutes (or an appropriate extract of the minutes) of the meeting at which the petition for hearing was considered, and of any subsequent meeting at which the proposed regulatory change was discussed;

(3) the notice of hearing;

(4) affidavits of publication;

(5) notices of intent to present technical testimony;

(6) statements for the public record;

(7) the hearing officer's report, if any;

(8) post-hearing submissions, if allowed;

(9) the audio tapes (or an appropriate extract of the tapes) of the meeting(s) at which the board deliberated on the adoption of the proposed regulatory change; and

(10) the board's decision and the reasons therefore.

O. "regulation" means any rule, regulation or standard promulgated by the board and affecting one or more persons, besides the board and the department, except for any order or decision issued in connection with the disposition of any case involving a particular matter as applied to a specific set of facts;

P. "regulatory change" means the adoption, amendment or repeal of a regulation;

Q. "service" means personally delivering a copy of the document, exhibit or pleading to the person required by this part to be served; mailing it to that person; or, if that person has agreed, sending it by facsimile or electronic transmission; if a person is represented by an attorney, service of the document shall be made on the attorney; service by mail is complete upon mailing the document; service by facsimile or electronic transmission is accomplished when the transmission of the document is completed and upon acknowledgement by designated recipient;

R. "technical testimony" means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing; and

S. "transcript of proceedings" means the verbatim record (audio tape or stenographic) of the proceedings, testimony and argument in the matter, together

with all exhibits proffered at the hearing, whether or not admitted into evidence, including the record of any motion hearings or prehearing conferences.

[20.1.1.7 NMAC - Rp, 20 NMAC 1.1.I.106, 08/27/06]

20.1.1.8 - 20.1.1.106
[RESERVED]

20.1.1.107 POWERS AND DUTIES OF BOARD AND HEARING OFFICER:

A. Board: The board shall exercise all powers and duties prescribed under this part and not otherwise delegated to the hearing officer or the board administrator.

B. Hearing officer: The board shall designate a hearing officer for each hearing who shall exercise all powers and duties prescribed or delegated under this part. The hearing officer may be a member of the board. The hearing officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial consideration of issues arising in proceedings governed by this part, including, but not limited to:

- (1) conducting hearings under this part;
- (2) taking, admitting or excluding evidence, examining witnesses and allowing post-hearing submissions;
- (3) making such orders as may be necessary to preserve decorum and to protect the orderly hearing process;
- (4) if requested by the board, preparing and filing a report of the hearing, with recommendations for board action;
- (5) requesting parties to file original documents with the board administrator; and
- (6) requesting a party to submit a proposed statement of reason in support of the board's decision.

[20.1.1.107 NMAC - Rp, 20 NMAC 1.1.I.107, 08/27/06]

20.1.1.108 LIBERAL CONSTRUCTION: This part shall be liberally construed to carry out their purpose.

[20.1.1.108 NMAC - Rp, 20 NMAC 1.1.I.108, 08/27/06]

20.1.1.109 SEVERABILITY: If any part or application of this part is held invalid, the remainder of this part, or their application to other persons or situations, shall not be affected.

[20.1.1.109 NMAC - Rp, 20 NMAC 1.1.I.109, 08/27/06]

20.1.1.110 GENERAL PROVISIONS - COMPUTATION OF TIME:

A. Computation of time: In computing any period of time prescribed or allowed by this part, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or legal state holiday, in which event the time is extended until the end of the next day, which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service upon him, and service is by mail, three days is added to the prescribed period. The three-day extension does not apply to any deadline under the act.

B. Extension of time: the board or hearing officer may grant an extension of time for the filing of any document upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties.
[20.1.1.110 NMAC - N, 08/27/06]

20.1.1.111 GENERAL PROVISIONS - RECUSAL: No board member shall participate in any action in which his or her impartiality of fairness may reasonably be questioned, and the member shall recuse himself or herself in any such action by giving notice to the board and the general public by announcing this recusal on the record. In making a decision to recuse himself or herself, the board member may rely upon the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 through 10-16-18, the Financial Disclosures Act, NMSA 1978, Sections 10-16A-1 through 10-16A-8, or any other relevant authority.
[20.1.1.111 NMAC - N, 08/27/06]

20.1.1.112 GENERAL PROVISIONS - EX PARTE DISCUSSIONS: At no time after the initiation and before the conclusion of a proceeding under this part, shall the department, or any other party, interested participant or their representatives discuss ex parte the merits of the proceeding with any board member or the hearing officer. [20.1.1.112 NMAC - N, 08/27/06]

20.1.1.113 - 20.1.1.199
[RESERVED]

20.1.1.200 DOCUMENT REQUIREMENTS - FILING AND SERVICE OF DOCUMENTS:

A. The filing of any document as required by this part shall be accomplished by delivering the document to the board administrator and the board legal counsel.

B. Any person filing any document shall:

(1) provide the board administrator with the original and nine (9) copies of the document;

(2) if the document is a notice of intent to present technical testimony filed by any person other than the petitioner, serve a copy thereof on the petitioner;

(3) any document filed pursuant to this part shall be filed with the board administrator at least fifteen (15) days before any meeting at which the board will consider the document. If the document is a motion seeking an order from the hearing officer in a rules hearing, the motion must also be served at the same time with the hearing officer and the board legal counsel.

C. Whenever this part requires service of a document, service shall be made by delivering a copy to the person to be served by mailing it, or, if that person has agreed, by sending it by facsimile or by electronic transmission to that person. Agreement to be served by facsimile or electronic transmission may be evidenced by placing the person's facsimile number or email address on a document filed pursuant to this part. Service shall also be made upon the board's legal counsel. If a person is represented by an attorney, service of the document shall be made on the attorney. Service by mail is complete upon mailing the document. Service by facsimile or electronic transmission is accomplished when the transmission of the document is completed and acknowledged by designated recipient.

D. The petitioner and any person who has filed a timely notice of intent to present technical testimony under this part may inspect all documents that have been filed in a proceeding in which they are involved as participants. Such inspection shall be permitted in accordance with the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 through 14-2-12. The board administrator shall notify by email the petitioner and all persons who have filed a timely notice of intent to present technical testimony whenever any document is filed in a proceeding under this part. Any such person who does not provide an email address shall instead be notified by mail.

E. All documents filed under this part shall be made available for inspection upon request and shall, to the extent possible, be made available on the department's website.

F. The board administrator shall provide copies of all documents to each board member at least seven days before the meeting at which the board will consider the documents. With regard to those documents filed in conjunction with any rules hearing, the hearing officer may make exception to this requirement.

[20.1.1.200 NMAC - Rp, 20 NMAC

1.1.II.200, 08/27/06]

20.1.1.201 EXAMINATION OF DOCUMENTS FILED:

A. Examination allowed: Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any rulemaking proceeding before the board. Such documents shall be made available by the board administrator, as appropriate.

B. Cost of duplication: The cost of duplicating documents shall be borne by the person seeking copies of such documents.

[20.1.1.201 NMAC - Rp, 20 NMAC 1.1.II.201, 08/27/06]

20.1.1.202 - 20.1.1.299 [RESERVED]

20.1.1.300 PREHEARING PROCEDURES - PETITION FOR REGULATORY CHANGE:

A. Any person may file a petition with the board to adopt, amend or repeal any regulation within the jurisdiction of the board.

B. The petition shall be in writing and shall include a statement of the reasons for the regulatory change. The petition shall cite the relevant statutes that authorize the board to adopt the proposed rules and shall estimate the time that will be needed to conduct the rules hearing, if at all possible. A copy of the entire rule, including proposed regulatory change, indicating any language proposed to be added or deleted, shall be attached to the petition. The entire rule and its proposed changes shall be submitted to the board in redline fashion, and shall include line numbers. Any document that does not include all the items required to be in a petition shall be returned to the petitioner along with a copy of these rules and a check-off list of required items, and the petitioner will be asked to resubmit his petition in the form required by these rules.

C. The board shall determine, at a public meeting occurring at least fifteen (15) days and no later than sixty (60) days, after receipt of the petition, whether or not to hold a public hearing on the proposal. Any person may respond to the petition either in writing prior to the public meeting or in person at the public meeting.

D. If the board determines to hold a public hearing on the petition, it may issue such orders specifying procedures for conduct of the hearing, in addition to those provided by this part, as may be necessary and appropriate to fully inform the board of the matters at issue in the hear-

ing or control the conduct of the hearing. Such orders may include requirements for giving additional public notice, holding pre-hearing conferences, filing direct testimony in writing prior to the hearing, or limiting testimony or cross-examination
[20.1.1.300 NMAC - Rp, 20 NMAC 1.1.III.300, 08/27/06]

20.1.1.301 NOTICE OF HEARINGS:

A. Unless otherwise allowed by governing law and specified by the board, the board shall give public notice of the hearing at least sixty (60) days prior to the hearing. Public notice shall include publication in at least one newspaper of general circulation in the state, publication in the New Mexico register, and such other means of providing notice as the board may direct or are required by law.

B. The board shall make reasonable efforts to give notice to persons who have made a written request to the board for advance notice of regulatory change hearings. Requests for such notice shall be addressed to the board administrator, and shall designate those areas of board activity which are of interest.

C. Public notice of the hearing shall state:

(1) the subject, including a description of the proposed regulatory change, time and place of the hearing;

(2) the statutes, regulations and procedural rules governing the conduct of the hearing;

(3) the manner in which persons may present their views or evidence to the board;

(4) the location where persons may secure copies of the proposed regulatory change; and

(5) if applicable, that the board may make a decision on the proposed regulatory change at the conclusion of the hearing.

[20.1.1.301 NMAC - Rp, 20 NMAC 1.1.III.301, 08/27/06]

20.1.1.302 TECHNICAL TESTIMONY:

A. Any person, including the petitioner, who intends to present technical testimony at the hearing shall, no later than fifteen (15) days prior to the hearing, file a notice of intent to present technical testimony. The notice shall:

(1) identify the person for whom the witness(es) will testify;

(2) identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background;

(3) if the hearing will be conduct-

ed at multiple locations, indicate the location or locations at which the witnesses will be present;

(4) summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;

(5) include the text of any recommended modifications to the proposed regulatory change; and

(6) list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

B. The hearing officer may enforce the provisions of this section through such action as he deems appropriate, including, but not limited to, exclusion of the technical testimony of any witness for whom a notice of intent was not timely filed. If such testimony is admitted, the hearing officer may keep the record open after the hearing to allow responses to such testimony.

[20.1.1.302 NMAC - Rp, 20 NMAC 1.1.III.302, 08/27/06]

20.1.1.303 ENTRY OF APPEARANCE:

Any person who is or may be affected by the proposed regulatory change may file an entry of appearance as a party. The entry of appearance shall be filed no later than fifteen (15) days before the date of the hearing on the petition.

[20.1.1.303 NMAC - N, 08/27/06]

20.1.1.304 PARTICIPATION BY GENERAL PUBLIC:

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

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

[20.1.1.304 NMAC - Rp, 20 NMAC 1.1.III.303, 08/27/06]

20.1.1.305 LOCATION OF HEARING:

Unless otherwise provided by governing law, the board may hold hearings on proposed regulatory changes of statewide application in Santa Fe or within any area of the state substantially affected by the proposed regulatory change, and shall hold hearings on proposed changes of local application within the area affected by the proposal.

[20.1.1.305 NMAC - Rp, 20 NMAC 1.1.III.304, 08/27/06]

20.1.1.306 PARTICIPATION BY CONFERENCE TELEPHONE OR OTHER SIMILAR DEVICE:

A. A member of the board may participate in a meeting or hearing of the board by means of a conference telephone or other similar communications equipment, when it is otherwise difficult or impossible for the member to attend the meeting or hearing in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting or hearing are able to hear any member of the board who speaks at the meeting or hearing. A board member's participation by such means shall constitute presence in person at the meeting or hearing. A board member who wishes to participate in a rules hearing in this manner must receive permission from the hearing officer sufficiently in advance of the rules hearing so as to permit the board administrator to arrange for adequate telephone hookup.

B. A witness may participate in a rules hearing of the board by means of a telephone conference or other similar communications equipment when an emergency or circumstances make it impossible for the witness to attend the hearing in person. A witness who wishes to participate in a rules hearing in this manner must receive permission from the hearing officer sufficiently in advance of the rules hearing. No witness may participate in a rules hearing by telephone conference unless he makes a request sufficiently in advance of the rules hearing so as to permit the board administrator to arrange for an adequate telephone hookup. Each witness participating by telephone must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the hearing must be able to hear any witness who speaks during the hearing.

[20.1.1.306 NMAC - Rp, 20 NMAC 1.1.III.305, 08/27/06]

20.1.1.307 - 20.1.1.399
[RESERVED]

20.1.1.400 HEARING PROCEDURES - CONDUCT OF HEARINGS:

A. The rules of civil procedure and the rules of evidence shall not apply.

B. The hearing officer shall conduct the hearing so as to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome, or burdening

the record with unnecessary repetition. The hearing shall proceed as follows.

(1) The hearing shall begin with an opening statement from the hearing officer. The statement shall identify the nature and subject matter of the hearing and explain the procedures to be followed.

(2) The hearing officer may allow a brief opening statement by any person who wishes to make one.

(3) Unless otherwise ordered, the petitioner shall present its case first.

(4) The hearing officer shall establish an order for the testimony of other participants. The order may be based upon notices of intent to present technical testimony, sign-in sheets and the availability of witnesses who cannot be present for the entire hearing.

(5) If the hearing continues for more than one day, the hearing officer shall provide an opportunity each day for testimony from members of the general public. Members of the general public who wish to present testimony should indicate their intent on a sign-in sheet.

(6) The hearing officer may allow a brief closing argument by any person who wishes to make one.

(7) At the close of the hearing, the hearing officer shall determine whether to keep the record open for written submittals in accordance with 20.1.1.404 NMAC. If the record is kept open, the hearing officer shall determine and announce the subject(s) on which submittals will be allowed and the deadline for filing the submittals.

C. If the hearing is conducted at multiple locations, the hearing officer may require the petitioner's witnesses to summarize their testimony or be available for cross-examination at each location. Other participants are not required to testify at more than one location, and the hearing officer may prohibit a witness from testifying at more than one location.

[20.1.1.400 NMAC - Rp, 20 NMAC 1.1.IV.400, 08/27/06]

20.1.1.401 TESTIMONY AND CROSS-EXAMINATION:

A. All testimony will be taken under oath or affirmation which may be accomplished in mass or individually.

B. The hearing officer shall admit any relevant evidence, unless the hearing officer determines that the evidence is incompetent or unduly repetitious. The hearing officer shall require all oral testimony be limited to the position of the witness in favor of or against the proposed rule.

C. Any person who testifies at the hearing is subject to cross-examination on the subject matter of his or her direct testimony and matters affecting his or her credibility. Any person attending the hearing is entitled to conduct such cross-

examination as may be required for a full and true disclosure of matters at issue in the hearing. The hearing officer may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

[20.1.1.401 NMAC - Rp, 20 NMAC 1.1.IV.401, 08/27/06]

20.1.1.402 EXHIBITS:

A. Any person offering an exhibit shall provide at least an original and twenty (20) copies for the board and for persons attending the hearing.

B. All exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially. If a person offers multiple exhibits, he shall identify each exhibit with an index tab or by other appropriate means.

C. Large charts and diagrams, models and other bulky exhibits are discouraged. If visual aids are used, legible copies shall be submitted for inclusion in the record.

[20.1.1.402 NMAC - Rp, 20 NMAC 1.1.IV.402, 08/27/06]

20.1.1.403 TRANSCRIPT OF PROCEEDINGS:

Unless specified by the board, a verbatim transcript shall be made of the hearing. The cost of the original transcript of the proceeding and of providing a copy for each board member shall be borne by the petitioner.

[20.1.1.403 NMAC - Rp, 20 NMAC 1.1.IV.403, 08/27/06]

20.1.1.404 POST-HEARING SUBMISSIONS:

The hearing officer may allow the record to remain open for a reasonable period of time following the conclusion of the hearing for written submission of additional evidence, comments and arguments, and proposed statements of reasons. The hearing officer's determination shall be announced at the conclusion of the hearing. In considering whether the record will remain open, the hearing officer shall consider the reasons why the material was not presented during the hearing, the significance of the material to be submitted and the necessity for a prompt decision.

[20.1.1.404 NMAC - Rp, 20 NMAC 1.1.IV.404, 08/27/06]

20.1.1.405 HEARING OFFICER'S REPORT:

If the board directs, the hearing officer shall file a report of the hearing. The report shall identify the issues addressed at the hearing, explain the testimony and make a recommendation for board action, and shall be filed with the board administrator within the time specified by the board. The board administrator shall promptly notify each participant that

the hearing officer's report has been filed and shall provide a copy of the report upon request.

[20.1.1. 405 NMAC - Rp, 20 NMAC 1.1.IV.405, 08/27/06]

20.1.1.406 DELIBERATION AND DECISION:

A. If a quorum of the board attended at the hearing, and if the hearing notice indicated that a decision might be made at the conclusion of the hearing, the board may immediately deliberate and make a decision on the proposed regulatory change.

B. If the board does not reach a decision at the conclusion of the hearing, the board administrator, following receipt of the transcript, will promptly furnish a copy of the transcript to each board member that did not attend the hearing and, if necessary, to other board members, board counsel and the hearing officer. Exhibits provided to those persons at the time of the hearing need not be supplied again.

C. The board shall reach its decision on the proposed regulatory change within sixty (60) days following the close of the record or the date the hearing officer's report is filed, whichever is later.

D. If, during the course of its deliberations, the board determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed regulatory change, the board may, consistent with the requirements of due process, reopen the hearing for such additional evidence only.

E. The board shall issue its decision on the proposed regulatory change in a suitable format, which shall include its reasons for the action taken.

F. The board's written decision is the official version of the board's action, and the reasons for that action. Other written or oral statements by board members are not recognized as part of the board's official decision or reasons.

[20.1.1.406 NMAC - Rp, 20 NMAC 1.1.IV.406, 08/27/06]

20.1.1.407 NOTICE OF BOARD ACTION:

The board administrator shall provide notice of the board's action to each of the participants, and to all other persons who have made a written request to the board for notification of the action taken.

[20.1.1.407 NMAC - Rp, 20 NMAC 1.1.IV.407, 08/27/06]

20.1.1.408 - 20.1.1.499

[RESERVED]

20.1.1.500 APPEALS AND STAYS - APPEAL OF REGULATIONS:

A. Appeal of any regulato-

ry change by the board shall be taken in accordance with governing law.

B. The appellant shall serve a copy of the notice of appeal on the board and on each participant.

C. The appellant shall be responsible for preparation of a sufficient number of copies of the hearing record at the expense of appellant.

D. Unless otherwise provided by governing law, the filing of an appeal shall not act as a stay of the regulatory change being appealed.

[20.1.1.500 NMAC - Rp, 20 NMAC 1.1.V.500, 08/27/06]

20.1.1.501 STAY OF BOARD REGULATIONS:

A. Any person who is or may be affected by a rule adopted by the board may file a motion with the board seeking a stay of that rule or regulatory change. The motion shall include the reason for, and the legal authority supporting, the granting of a stay. The movant shall file the motion at least fifteen (15) days before the meeting at which the board will consider the motion. The movant shall serve the motion for a stay as provided by this part, and shall further serve all participants in the rulemaking proceeding.

B. Unless otherwise provided by governing law, the board may grant a stay pending appeal of any regulatory change promulgated by the board. The board may only grant a stay if good cause is shown after a motion is filed and a hearing is held.

C. In determining whether good cause is present for the granting of a stay, the board, upon at least a two-thirds (2/3) vote of the members voting shall consider:

(1) the likelihood that the movant will prevail on the merits of the appeal;

(2) whether the moving party will suffer irreparable harm if a stay is not granted;

(3) whether substantial harm will result to other interested persons; and

(4) whether harm will ensue to the public interest.

D. If no action is taken within sixty (60) days after filing of the motion, the board shall be deemed to have denied the motion for stay.

[20.1.1.501 NMAC - Rp, 20 NMAC 1.1.V.501, 08/27/06]

HISTORY OF 20.1.1 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records, state records center and archives under:

EIB 93-1, Rules of Procedure for Environmental Improvement Board

Regulation Hearings, filed 1/21/93.

History of Repealed Material: 20 NMAC 1.1, Rulemaking Procedures - Environmental Improvement Board (filed 10/27/95) repealed 08/27/06.

Other History:

EIB 93-1, Rules of Procedure for Environmental Improvement Board Regulation Hearings (filed 1/21/93) was renumbered, reformatted, amended and replaced by 20 NMAC 1.1, Rulemaking Procedures - Environmental Improvement Board, effective 11/30/95.

20 NMAC 1.1, Rulemaking Procedures - Environmental Improvement Board (filed 10/27/95) was renumbered, reformatted, and replaced by 20.1.1 NMAC, Rulemaking Procedures - Environmental Improvement Board, effective 08/27/06.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 20 ENVIRONMENTAL PROTECTION

CHAPTER 1 ENVIRONMENTAL PROTECTION GENERAL

PART 2 ADJUDICATORY PROCEDURES - ENVIRONMENTAL IMPROVEMENT BOARD

20.1.2.1 ISSUING AGENCY:

Environmental Improvement Board.
[20.1.2.1 NMAC - Rp, 20 NMAC 1.2.I.100, 08/27/06]

20.1.2.2 SCOPE:

A. This part governs the following adjudicatory proceedings of the environmental improvement board:

(1) proceedings for the granting of variances, or for the appeal from permitting actions, pursuant to the Air Quality Control Act, Sections 74-2-7(H) and 74-2-8 NMSA 1978 ("petition hearings"); and

(2) any other adjudicatory proceedings under the jurisdiction of the board to which the board applies this part.

B. Uniform Licensing Act proceedings: Subparts I, III and IV of this part [now 20.1.2.1 through 20.1.2.7 NMAC, and 20.1.2.106 through 20.1.2.113 NMAC; 20.1.2.200 through 20.1.2.208 NMAC; and 20.1.2.400 through 20.1.2.405 NMAC] apply to any board adjudicatory proceedings conducted under the Uniform Licensing Act, Sections 61-1-1 NMSA 1978 et seq., ("ULA"), including proposed denial, suspension or revocation of certificates held or applied for under the Medical Radiation Health and Safety Act, Section 61-14E-11 NMSA 1978 ("ULA hearings").

Any conflict between this part and the ULA shall be resolved in favor of the ULA.

[20.1.2.2 NMAC - Rp, 20 NMAC 1.2.I.101, 08/27/06]

20.1.2.3 STATUTORY

AUTHORITY: This part is adopted under the authority of the Air Quality Control Act, Sections 74-2-5, 74-2-7 and 74-2-8 NMSA 1978; the Medical Radiation Health and Safety Act, Section 61-14E-5 NMSA 1978; and the Environmental Improvement Act, Section 74-1-8 NMSA 1978, as amended.

[20.1.2.3 NMAC - Rp, 20 NMAC 1.2.I.102, 08/27/06]

20.1.2.4 DURATION:

Permanent.

[20.1.2.4 NMAC - Rp, 20 NMAC 1.2.I.103, 08/27/06]

20.1.2.5 EFFECTIVE DATE:

August 27, 2006, unless a later date is cited at the end of a paragraph.

[20.1.2.5 NMAC - Rp, 20 NMAC 1.2.I.104, 08/27/06]

20.1.2.6 OBJECTIVE:

The objective of this part is to establish procedures that govern the adjudicatory proceedings of the environmental improvement board.

[20.1.2.6 NMAC - Rp, 20 NMAC 1.2.I.105, 08/27/06]

20.1.2.7 DEFINITIONS: GENERAL:

As used in this part. Terms defined in act or regulations: Terms defined in the act or regulations and not defined in this part are used consistent with the meanings given in the act or regulations.

A. "Act" means, as the context requires:

(1) the Air Quality Control Act, Chapter 74, Article 2 NMSA 1978, and its subsequent amendments and successor provisions;

(2) the Medical Radiation Health and Safety Act, Chapter 61, Article 14E NMSA 1978, and its subsequent amendments and successor provisions; and

(3) any other statute that includes authority for adjudicatory proceedings before the board when the board applies this part to such proceedings.

B. "Applicant" means the person who is the holder of, or the applicant for, the permit to which an appeal petition applies.

C. "Board" means the environmental improvement board or its successor agency under the act.

D. "Department" means the New Mexico environment department or its successor agency under the act.

E. "Board administrator" means the department employee designated

by the secretary of environment to provide staff support to the board, and, further, is the person designated by the board to maintain the official record of the proceeding.

F. "Hearing officer" means the person designated under this part or appointed by the board to conduct a proceeding under this part.

G. "Interested participant" means any person, other than a party, who files an entry of appearance in accordance with Subsection A of 20.1.2.207 NMAC.

H. "Party" means the petitioner, the applicant if different from the petitioner, the department, any person who is entitled, and who timely requests, to be heard under the ULA or any person who is permitted to intervene in the particular hearing pursuant to NMRA 1-024.

I. "Petition" means a variance petition filed pursuant to Section 74-2-8(D) NMSA 1978, or an appeal petition filed pursuant to Section 74-2-7(H) NMSA 1978.

J. "Petitioner" means any person who files a timely petition.

K. "Record proper" means all documents filed by or with the board administrator during the proceeding and also includes:

(1) the verbatim record of the hearing (transcript or tapes, as applicable) and all exhibits offered into evidence at the hearing, whether or not admitted;

(2) for an appeal petition proceeding, the administrative record of the department; and

(3) minutes, or an appropriate extract of minutes, of any board meeting where the board deliberated or acted on any procedural or substantive issue in the proceeding.

L. "Regulations" means any rules promulgated by the board to implement the act.

M. "Service" means personally delivering a copy of the document, exhibit or any pleading to the person required by these rules to be served; mailing it to that person, or, if that person agrees, by sending it by facsimile or electronic transmission. If a person is represented by an attorney, service of the document shall be made on the attorney. Service by mail is complete upon mailing the document; service by facsimile or by electronic transmission is accomplished when the transmission of the document is completed or upon acknowledgement by the recipient.

N. "Technical evidence" means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.

O. "ULA hearing" means a proceeding conducted by the board under

the Uniform Licensing Act, Sections 61-1-1 NMSA 1978 et seq.

[20.1.2.7 NMAC - Rp, 20 NMAC 1.2.I.108, 08/27/06]

20.1.2.8 - 20.1.2.105

[RESERVED]

20.1.2.106 APPLICABILITY OF RULES OF CIVIL PROCEDURE AND RULES OF EVIDENCE:

In the absence of a specific provision in this part governing an action, the board may look to the New Mexico Rules of Civil Procedure, NMRA 1-001 et seq., and the New Mexico Rules of Evidence, NMRA 11-101 et seq., for guidance. Any reference to the rules of civil procedure shall not be construed to extend or otherwise modify the authority and jurisdiction of the board under the act.

[20.1.2.106 NMAC - Rp, 20 NMAC 1.2.I.106, 08/27/06]

20.1.2.107 CONSTRUCTION, SEVERABILITY, SAVINGS CLAUSE:

This part shall be liberally construed to carry out its purposes. If any part or application of this part is held invalid, the remainder of this part, or its application to other persons or situations, shall not be affected. This part does not apply to petitions filed prior to the effective date of this part, except as stipulated to by the parties to such proceeding.

[20.1.2.107 NMAC - Rp, 20 NMAC 1.2.I.107, 08/27/06]

20.1.2.108 [RESERVED]

20.1.2.109 POWERS AND DUTIES OF THE BOARD AND HEARING OFFICER:

A. Board: The board shall exercise all powers and duties as prescribed under the act, the regulations and this part and not otherwise delegated to a staff member, the hearing officer or the board administrator. The board may specify procedures in addition to or that vary from those provided in this part in order to expedite the efficient resolution of the action or to avoid obvious injustice, so long as such procedures do not conflict with the act, the ULA or the regulations or prejudice the rights of any party.

B. Hearing officer: The board may appoint one or more hearing officers to perform the functions described in Paragraph (2) of Subsection B of 20.1.2.109 NMAC. From the date a proceeding is initiated under this part, the chair of the board shall serve as hearing officer, until such time as another hearing officer is appointed. The board or the board chair may appoint another hearing officer. The appointment of a hearing officer does not preclude the board members from attending

or participating in the proceeding.

(1) Qualifications: A hearing officer may be an independent contractor, board counsel or a member of the board and shall not be:

(a) an employee of the department, unless employed by the department as a hearing officer;

(b) a person who has a personal bias or prejudice concerning a party, or has personal knowledge of disputed facts concerning the proceeding, or is related to a party within the third degree of relationship, or has a financial interest in the proceeding; or

(c) a person who has performed prosecutorial or investigative functions in connection with the licensing or permitting action at issue in the hearing.

(2) Functions: The hearing officer shall exercise all powers and duties prescribed or delegated under the act or this part. The hearing officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by this part, including, but not limited to:

(a) conduct hearings under this part;

(b) rule upon motions and procedural requests that do not seek final resolution of the proceeding and issue all necessary orders;

(c) issue subpoenas, as authorized by law, for the attendance and testimony of witnesses and the production of documentary evidence;

(d) administer oaths and affirmations, examine witnesses, and admit or exclude evidence;

(e) require parties to attend conferences for the settlement or simplification of issues, or the expedition of proceedings;

(f) impose sanctions, subject to review by the board, on parties and interested participants who cause undue delay and fail to cooperate with the board;

(g) file original documents with the board administrator.

C. Notice of hearing officer assignment: If a hearing officer, other than a board member, is assigned, the board administrator shall notify the parties of the name and address of the hearing officer. The board administrator shall also, at that time, forward to the hearing officer copies of all documents filed to date.

D. Participation by conference, telephone or other similar device: A member of the board may participate in a meeting or hearing of the board by means of a conference telephone or other similar

communications equipment when it is otherwise difficult or impossible for the member to attend the meeting or hearing in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting or hearing are able to hear any member of the board who speaks at the meeting or hearing. A board member's participation by such means shall constitute presence in person at the meeting or hearing. A board member who wishes to participate in a permit hearing in this manner must receive permission from the hearing officer sufficiently in advance of the permit hearing so as to permit the board administrator to arrange for an adequate telephone hookup.

[20.1.2.109 NMAC - Rp, 20 NMAC 1.2.I.109, 08/27/06]

20.1.2.110 EX PARTE DISCUSSIONS: At no time after the initiation and before the conclusion of a proceeding under this part, shall the department, any other party, interested participant or their representatives discuss ex parte the merits of the proceeding with any board member or the hearing officer. This prohibition does not preclude a hearing officer from considering and acting upon any motion filed pursuant to this part.

[20.1.2.110 NMAC - Rp, 20 NMAC 1.2.I.110, 08/27/06]

20.1.2.111 GENERAL PROVISIONS - COMPUTATION AND EXTENSION OF TIME:

A. Computation of time: Time shall be calculated in accordance with the Uniform Statute and Rule Construction Act, NMSA 1978, Section 12-2 A-7. In computing any period of time prescribed or allowed by this part, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which event the time is extended until the end of the next day which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service upon him, and service is by mail, three (3) days is added to the prescribed period. The three-day extension does not apply to any deadline under the act.

B. Extension of time: The board or hearing officer may grant an extension of time for the filing of any document upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties.

[20.1.2.111 NMAC - Rp, 20 NMAC

1.2.I.111, 08/27/06]

20.1.2.112 GENERAL PROVISIONS - DOCUMENTS: FILING, SERVICE, FORM AND EXAMINATION:

A. As used in this section, "document" means any pleading, motion, response, memorandum, decision, order or other written material filed in a proceeding under this part, but does not include a cover letter accompanying a document transmitted for filing.

B. Filing of documents: Except as otherwise provided, a party filing documents shall file the originals and eight (8) copies with the board administrator and shall serve copies thereof upon the hearing officer, the board legal counsel, and all other parties. If there is no hearing officer the party shall serve the document upon the board chair. All documents shall be filed at least fifteen (15) days before the hearing at which the board will consider the matter. A certificate of service, as shown in Appendix A, (20.1.2.600 NMAC) shall accompany each filed document.

C. Service of documents: Except as otherwise provided, all documents may be served personally, by express or first class mail, or, if the person agrees, by facsimile or by electronic transmission.

D. Form of documents: Unless otherwise provided by this part or by order of the hearing officer, all documents, except exhibits, shall be prepared on 8 1/2 x 11-inch white paper, printed double-sided, if possible, and where appropriate, the first page of every document shall contain a heading and caption as illustrated in Appendix A, (20.1.2.600 NMAC).

E. Documents issued by board or hearing officer: All original documents issued by the board or hearing officer shall be filed with the board administrator. The board administrator shall promptly serve copies of the documents upon all parties and interested participants.

F. Examination of documents filed:

(1) Examination allowed: Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any proceeding. Inspection shall be permitted in accordance with the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 through 14-2-12, and may be limited by the Environmental Improvement Act, NMSA 1978, Section 74-2-11. Documents subject to inspection shall be made available by the board administrator, as appropriate.

(2) Cost of duplication: Unless waived by the department, the cost of duplicating documents or tapes filed in any pro-

ceeding shall be borne by the person seeking the copies.

[20.1.2.112 NMAC - Rp, 20 NMAC 1.2.I.112, 08/27/06]

20.1.2.113 MOTIONS:

A. General: All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion and state the relief sought. Each motion shall be accompanied by an affidavit, certificate or other evidence relied upon and shall be served as provided by 20.1.2.112 NMAC.

B. Unopposed motions: An unopposed motion shall state that the concurrence of all other parties was obtained. The moving party shall submit a proposed order approved by all parties for the hearing officer's review.

C. Opposed motions: Any opposed motion shall state either that concurrence was sought and denied, or why concurrence was not sought. A memorandum brief in support of such motion may be filed with the motion.

D. Response to motions: Any party upon whom an opposed motion is served shall have fifteen (15) days after service of the motion to file a response. A non-moving party failing to file a timely response shall be deemed to have waived any objection to the granting of the motion.

E. Reply to response: The moving party may, but is not required to, submit a reply to any response within ten (10) days after service of the response.

F. Decision: All motions shall be decided by the hearing officer without a hearing, unless otherwise ordered by the hearing officer sua sponte or upon written request of any party. The hearing officer shall refer any motion that would effectively dispose of the matter, and may refer any other motion to the board for a decision. A procedural motion may be ruled upon prior to the expiration of the time for response; any response received thereafter shall be treated as a request for reconsideration of the ruling. The hearing officer shall file all original documents with the board administrator.

G. Recusal: No board member shall participate in any action in which his or her impartiality or fairness may reasonably be questioned, and the member shall recuse himself or herself in any such action by giving notice to the board and the general public by announcing this recusal on the record. In making a decision to recuse himself or herself, the board member may rely upon the Governmental Conduct Act, NMSA 1978, Sections 10-16A-1 through 10-16A-8, The Uniform Financial Disclosure Act or any other relevant legal authority.

[20.1.2.113 NMAC - Rp, 20 NMAC

1.2.I.113, 08/27/06]

20.1.2.114 - 20.1.2.199 [RESERVED]

20.1.2.200 PREHEARING PROCEDURES - INITIATION OF PETITION HEARING: A petition hearing shall be initiated by the filing of a variance petition or an appeal petition. The petitioner shall:

A. sign the petition under oath or affirmation and attest to the truth of the information contained therein; and

B. file the original and eight (8) copies of the petition with the board and serve a copy on the department. [20.1.2.200 NMAC - Rp, 20 NMAC 1.2.II.200, 08/27/06]

20.1.2.201 VARIANCE PETITION:

A. Contents: A variance petition shall comply with Subsection B of 20.2.1.114 NMAC.

B. Response of the department: The department shall review each variance petition and, within sixty (60) days after receipt of the petition, file a recommendation with the board to grant, grant with conditions or deny the variance request. The recommendation shall include reasons and a copy shall be served on the petitioner by certified mail and on any other party or interested participant.

C. Hearing requirement: If the department recommends granting the variance request, or any part of the variance request, with or without conditions, the board shall hold a hearing on those requests recommended for approval. If the department recommends denial of all or part of the variance request, the board shall only hold a hearing on the variances recommended for denial if the petitioner files a request for hearing within fifteen (15) days after receipt of the department's recommendation. If a timely request for hearing is not filed, the recommended denial shall become a final action of the board and shall not be subject to review.

D. Timing of hearing: If a hearing on a variance petition is required, the hearing shall be held within ninety (90) days after the later of the filing of a department recommendation to grant a variance or the filing of a request for hearing by the petitioner, as applicable.

[20.1.2.201 NMAC - Rp, 20 NMAC 1.2.II.201, 08/27/06]

20.1.2.202 APPEAL PETITION:

A. Timing and contents: An appeal petition shall:

(1) be filed with the board within thirty (30) days from the date notice is given of the permitting action;

(2) identify the petitioner, and certify that the petitioner has standing under the act to file the petition;

(3) identify the permitting action appealed from, specify the portions of the permitting action to which petitioner objects and generally state the objections; and

(4) attach a copy of the permitting action.

B. Hearing delay: A petitioner may delay a hearing to negotiate with the department by waiving in the petition the right to a hearing within sixty (60) days. The waiver will stay all other deadlines under this part for sixty (60) days; the stay may be extended by a stipulated or unopposed motion. Any such stipulated or unopposed motion must be filed with the board, and served as required by this part, at least fifteen (15) days before the expiration of the sixty (60) day period.

C. Response of department: The department shall, within thirty (30) days after receipt of an appeal petition:

(1) file with the board the administrative record of the permitting action which is the subject of the petition; the department shall serve only the index to the record on other parties; the parties may stipulate that only the relevant portions of the record be filed with the board;

(2) deliver to the board administrator a list of all persons who have expressed in writing an interest in the facility or the permitting action that is the subject of the petition or who participated in a public hearing on the permitting action; and

(3) file an answer to the petition responding to each objection in the petition. [20.1.2.202 NMAC - Rp, 20 NMAC 1.2.II.202, 08/27/06]

20.1.2.203 NOTICE OF DOCKETING:

A. Docketing notice: The board administrator shall, as soon as practicable after receipt of a petition, issue and serve upon the parties, each board member, and the board legal counsel a notice of docketing, containing the caption and docket number of the case, and the date upon which the petition was received by the board administrator. A copy of this part shall be included with a notice of docketing sent to a petitioner or applicant.

B. Untimeliness: The board administrator shall docket any petition, without regard to whether it appears to be timely; but the board or any party may move to dismiss an untimely petition.

[20.1.2.203 NMAC - Rp, 20 NMAC 1.2.II.203, 08/27/06]

20.1.2.204 SCHEDULING THE HEARING:

A. Hearing date: The

hearing shall be scheduled to begin no later than sixty (60) days after the date an appeal petition was received, or for a variance petition, within the sixty (60) day period set forth in Subsection D of 20.1.2.201 NMAC, unless a stipulated or unopposed motion is filed requesting that the ninety day deadline be waived. The stipulated or unopposed motion must be filed with the board, and served as required by this part, at least fifteen (15) days prior to the expiration of the sixty (60) day deadline.

B. Scheduling order: Unless the sixty (60) day hearing deadline has been waived, the hearing officer shall, no later than forty-five (45) days prior to the hearing deadline, issue a scheduling order setting the date, time and location of the hearing. The order may include other procedural matters. The parties may, jointly or singly, submit to the hearing officer, at least fifteen (15) days prior to the deadline for the issuance of the scheduling order, a request regarding the date and location of the hearing and other procedural matters, such as the assignment of a non-board member hearing officer. The hearing officer may consult with the board on procedural matters at a board meeting.

[20.1.2.204 NMAC - Rp, 20 NMAC 1.2.II.204, 08/27/06]

20.1.2.205 PUBLIC NOTICE OF HEARING:

A. Publication: The board administrator shall, upon direction from the board or hearing officer, prepare a notice of hearing setting forth the date, time and location of the hearing, a brief description of the petition, and information on the requirements for entry of appearance and statement of intent to present evidence, and:

(1) no later than thirty (30) days prior to the hearing date, send copies, with requests for publication, to at least one newspaper of general circulation in the state, and to at least one additional newspaper published or distributed at least weekly in the county where the facility is located;

(2) mail a copy to each interested participant who has filed an entry of appearance, and to each person who participated in the department's permitting proceeding or who has expressed, in writing to the department or the board, an interest in the facility or permitting action that is the subject of the petition; and

(3) immediately upon receipt of an entry of appearance that is received after the initial mailing, mail a copy to such interested participant and participant in the department's permitting proceeding.

B. Certification: After the notice of hearing has been distributed in accordance with this section, the board administrator shall file an affidavit certifying how and when notice was given with a

copy of the notice of hearing and affidavits of publication attached.

[20.1.2.205 NMAC - Rp, 20 NMAC 1.2.II.205, 08/27/06]

20.1.2.206 STATEMENT OF INTENT TO PRESENT TECHNICAL EVIDENCE:

A. Requirement to file: Any person who wishes to present technical evidence at the hearing shall, no later than fifteen (15) days prior to the hearing, file a statement of intent.

B. Content: The statement of intent to present technical evidence shall include:

(1) the name of the person filing the statement;

(2) indication of whether the person filing the statement supports or opposes the petition at issue;

(3) the name of each witness;

(4) an estimate of the length of the direct testimony of each witness;

(5) a list of exhibits, if any, to be offered into evidence at the hearing; and

(6) a summary or outline of the anticipated direct testimony of each witness.

[20.1.2.206 NMAC - Rp, 20 NMAC 1.2.II.206, 08/27/06]

20.1.2.207 PARTICIPATION BY PERSONS OTHER THAN PARTIES:

A. Interested participants: Entry of appearance: Any person who wishes to be treated as an interested participant and to cross-examine witnesses at the hearing shall file and serve upon all parties an entry of appearance at least fifteen (15) days prior to the hearing. For purposes of this subsection, a statement of intent to present evidence filed under 20.1.2.206 NMAC shall be considered an entry of appearance if the person has not previously filed a separate entry of appearance. The entry of appearance shall identify the person wishing to be treated as an interested participant and any individual who may appear on behalf of that person.

B. Participation by the general public: Any person who has not timely filed either an entry of appearance or a statement of intent to present evidence may present a general non-technical statement as follows.

(1) Any member of the general public may testify at the hearing. No prior notification is required to present general non-technical statements in support of or in opposition to the petition. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is non-technical in nature and not unduly repetitious of the testimony.

(2) A member of the general public who wishes to submit a written statement

for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to or at the hearing.

[20.1.2.207 NMAC - Rp, 20 NMAC 1.2.II.207, 08/27/06]

20.1.2.208 DISCOVERY: For a ULA hearing, discovery shall be governed by the provisions of the ULA. For other board adjudicatory proceedings, formal discovery is not a right, and therefore, formal discovery is discouraged and shall only be allowed by order of the hearing officer under the following procedures:

A. Grounds for discovery: Discovery shall only be permitted upon a determination by the hearing officer that:

(1) the type of discovery sought will not unreasonably delay the proceeding and is neither unreasonably burdensome nor unreasonably expensive; and

(2) the information to be obtained is relevant and is not otherwise reasonably obtainable, may be lost, or may become unavailable.

B. Order for discovery: Upon motion for discovery by a party and determination by the hearing officer that such motion should be granted, the hearing officer shall issue an order for the taking of such discovery together with the conditions and terms thereof.

[20.1.2.208 NMAC - Rp, 20 NMAC 1.2.II.208, 08/27/06]

20.1.2.209 - 20.1.2.299 [RESERVED]

20.1.2.300 HEARING PROCEDURES - HEARING:

A. Location of the hearing: Unless otherwise ordered by the board or hearing officer, the hearing shall be in Santa Fe.

B. Postponement of hearing: No request for postponement of a hearing shall be granted, except upon consent of all parties or for good cause shown.

[20.1.2.300 NMAC - Rp, 20 NMAC 1.2.III.300, 08/27/06]

20.1.2.301 CONDUCT OF HEARING:

A. The hearing officer shall conduct the hearing so as to provide a reasonable opportunity for all interested persons to be heard without making the hearing unreasonably lengthy or cumbersome or burdening the record with unnecessary repetition.

B. The hearing officer shall establish the order of testimony, except that the party with the burden of persuasion shall present its case first. The hearing officer may allow brief opening or closing statements.

[20.1.2.301 NMAC - Rp, 20 NMAC

1.2.III.301, 08/27/06]

20.1.2.302 BURDEN OF PERSUASION: In a petition hearing, the petitioner has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to justify the relief sought in the petition. Following the establishment of a prima facie case by the petitioner, any person opposed to the relief sought in the petition has the burden of going forward with any adverse evidence and showing why the relief should not be granted.

[20.1.2.302 NMAC - Rp, 20 NMAC 1.2.III.302, 08/27/06]

20.1.2.303 EVIDENCE:

A. General: The hearing officer shall admit any relevant evidence, unless the hearing officer determines that the evidence is unduly repetitious, or otherwise unreliable or of little probative value. The department shall formally move into evidence the administrative record filed by the department pursuant to Subparagraph (a) of Paragraph (3) of Subsection C of 20.1.2.200 NMAC. In a ULA hearing involving the suspension or revocation of a license, rules of privilege shall be applicable to the same extent as in proceedings before the courts of this state.

B. Examination of witnesses: Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in this part or by the hearing officer. The board members, hearing officer, parties and interested participants shall have the right to cross-examine a witness. The hearing officer may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the witness' direct testimony.

C. Exhibits: All exhibits offered in evidence shall be marked with a designation identifying the person by whom the exhibit is offered, and numbered serially in the sequence in which offered. Large charts and diagrams, models and other bulky exhibits are discouraged. Exhibits should be limited to 8 1/2 x 11 inches, or be capable of being folded to that size, unless otherwise necessary for adequate presentation of evidence. Any person offering an exhibit shall provide at least an original and twenty (20) copies for the board and for persons attending the hearing.

D. Official notice: Official notice may be taken of any matter that may be judicially noticed in the New Mexico courts. In a ULA hearing, parties shall be given adequate opportunity to show that such facts are erroneously noticed.

[20.1.2.303 NMAC - Rp, 20 NMAC 1.2.III.303, 08/27/06]

20.1.2.304 OBJECTIONS AND

OFFERS OF PROOF:

A. Objection: Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the hearing officer on any objection and the reasons given for it shall be part of the record.

B. Offer of proof: Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded and what such evidence would have proven. The offer of proof for excluded documents or exhibits shall consist of the insertion in the record of the documents or exhibits excluded.

[20.1.2.304 NMAC - Rp, 20 NMAC 1.2.III.304, 08/27/06]

20.1.2.305 - 20.1.2.399

[RESERVED]

20.1.2.400 POST-HEARING PROCEDURES - FILING THE TRANSCRIPT:

Unless the board orders the hearing to be tape recorded, the hearing shall be transcribed verbatim. Any person, other than the board, desiring a copy of a transcript must order a copy from the court reporter. Any person, other than the board, desiring a copy of hearing tapes must arrange copying with the board administrator at their expense.

[20.1.2.400 NMAC - Rp, 20 NMAC 1.2.IV.400, 08/27/06]

20.1.2.401 PROPOSED FINDINGS AND CONCLUSIONS:

The hearing officer may allow the record to remain open for a reasonable period of time after the conclusion of the hearing to allow any party or interested participant to submit proposed findings of fact and conclusions of law and closing argument. The hearing officer's determination shall be announced at the conclusion of the hearing. All such submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on. No new evidence shall be presented unless specifically allowed by the hearing officer.

[20.1.2.401 NMAC - Rp, 20 NMAC 1.2.IV.401, 08/27/06]

20.1.2.402 RECOMMENDED

DECISION: If the board directs, the hearing officer shall issue a recommended decision within a period established by the board. The recommended decision shall contain the hearing officer's findings of fact; conclusions regarding all material

issues of law or discretion, as well as reasons therefor; and a proposed final order. Upon receipt of a recommended decision, the board administrator shall forward a copy to all parties and to the board. At the board's discretion, the board may allow any party or interested participant to file comments regarding the recommended decision. [20.1.2.402 NMAC - Rp, 20 NMAC 1.2.IV.402, 08/27/06]

20.1.2.403 DELIBERATION AND DECISION:

A. Deliberation: The board shall reach a final decision on each adjudicatory matter at a public meeting. If allowed by the Open Meetings Act, Sections 10-15-1 NMSA 1978 et seq., the board may deliberate in closed session; however, any final action must occur in an open meeting.

(1) If a quorum of the board attended the hearing and the hearing notice indicated that the board may act at the conclusion of the hearing, the board may immediately deliberate and act on the matter.

(2) If the board does not reach a decision at the hearing, the board administrator shall, following receipt of the transcript, promptly provide copies to board members who did not attend the hearing and, if requested, to other board members, board counsel and the hearing officer. The board administrator shall also notify all parties and interested participants of the availability of the transcript.

(3) In a ULA hearing, the board shall leave the record open to receive any advice and recommendation required by the act. The board shall reach its decision within the time period established by the ULA.

B. Order: After reaching a decision, the board shall direct a member, its counsel or a party to prepare a final order. The board may approve the order at a meeting or direct the board chair to sign the order.

(1) The final order shall contain findings of fact, conclusions of law, an order based on the findings and conclusions, and a statement as to the availability of judicial review. If a recommended decision was prepared, the board may adopt, modify or set aside the recommended decision and provide reasons therefor.

(2) In a ULA hearing, if the board takes any action specified in the ULA against the licensee, the final order shall specify that the licensee shall bear all costs of the proceeding.

(3) The board administrator shall promptly send copies of the final order to each party and interested participant, and to all other persons who have made written requests for notification of the action taken. [20.1.2.403 NMAC - Rp, 20 NMAC 1.2.IV.403, 08/27/06]

20.1.2.404 JUDICIAL REVIEW:

Judicial review of the final order shall be as provided by law. The filing of an appeal does not stay the final order, unless otherwise ordered by the board or a court.

[20.1.2.404 NMAC - Rp, 20 NMAC 1.2.IV.404, 08/27/06]

20.1.2.405 PREPARATION OF RECORD PROPER:

The preparation of the record proper for an appeal or for any other reason shall be the responsibility of the hearing clerk. The appellant shall make satisfactory arrangements, including copying or transcript costs, with the board administrator.

[20.1.2.405 NMAC - Rp, 20 NMAC 1.2.IV.405, 08/27/06]

20.1.2.406 - 20.1.2.499 [RESERVED]**20.1.2.500 ALTERNATE RESOLUTION - SUMMARY PROCEDURES:**

A. Use of summary procedures: The board may dispose of a petition after an expedited hearing if a party requests that the merits of the petition be decided solely on legal arguments presented in written briefs and oral arguments.

B. Expedited hearing: If the hearing officer determines that the request has a likelihood of success and could fairly expedite the resolution of the proceeding, the hearing officer may allow the parties and interested participants to brief the issue and present oral arguments at an expedited hearing, and then present the issue to the board for a decision. If an expedited hearing is conducted, the hearing officer shall:

(1) assure that public notice is given in accordance with 20.1.2.205 NMAC and include in the public notice instructions for persons other than parties who wish to participate in the oral argument to submit a statement of intent equivalent to the statement provided in 20.1.2.206 NMAC; and

(2) allow the public to attend the expedited hearing, but may limit presentations at the hearing to oral arguments by parties and interested participants on the specific issue before the board.

C. Decision: After an expedited hearing, the board may decide to either dispose of the matter and issue a final order, or decide not to dispose of the matter and proceed with a full hearing under this part.

[20.1.2.500 NMAC - Rp, 20 NMAC 1.2.V.500, 08/27/06]

20.1.2.501 WITHDRAWAL:

A. Notice of withdrawal: A petitioner may withdraw a petition, or the

department may withdraw the permitting action which is the subject of the proceeding, at any time prior to a decision by the board by filing a notice of withdrawal with the board and serving the notice on all other parties and interested participants. A party or interested participant may file a written objection to the notice within ten (10) days after receipt. If an objection is filed, the board shall rule on the notice.

B. Effect of withdrawal: An effective notice of withdrawal under this section results in the following:

(1) when a petitioner withdraws an appeal petition, the permitting action becomes final;

(2) when a petitioner withdraws a variance petition, the petitioner is barred from petitioning for the same variance without permission from the board; and

(3) when the department withdraws a permitting action, the appeal petition is vacated and the agency must issue a new permitting action within sixty (60) days, unless either the board approves a different time period or the applicant withdraws its application; upon issuance of a new permitting action, the right to file a new appeal petition under the act is available.

[20.1.2.501 NMAC - Rp, 20 NMAC 1.2.V.501, 08/27/06]

20.1.2.502 SETTLEMENT: The board encourages the settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the act and regulations. The parties may request that the board stay a proceeding under this part while settlement negotiations are being held. The board may approve a settlement that modifies a permitting action only after evidence supporting such modification is presented at a hearing. The department, however, may withdraw and reissue a modified permitting action under 20.1.2.501 NMAC.

[20.1.2.502 NMAC - Rp, 20 NMAC 1.2.V.502, 08/27/06]

20.1.2.503 - 20.1.2.599 [RESERVED]**20.1.2.600****APPENDIX A****[PREFERRED FORMAT]****STATE OF NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD**

[A. Petition Hearing]

**IN THE MATTER OF THE PETITION FOR
[A VARIANCE FROM _____]
[HEARING ON AIR QUALITY PERMIT NO. ____]**

**[Name of Petitioner],
Petitioner**

[B. ULA Hearing]

NEW MEXICO ENVIRONMENT DEPARTMENT

v.

[Name of Licensee or Applicant]

[20.1.1.600 NMAC - Rp, 20 NMAC 1.2.600, 08/27/06]

HISTORY OF 20.1.2 NMAC:

Pre-NMAC History: none.

History of Repealed Material:

20 NMAC 1.2, Adjudicatory Procedures - Environmental Improvement Board (filed 10/31/1996) repealed 08/27/06.

NMAC History:

20 NMAC 1.2, Adjudicatory Procedures - Environmental Improvement Board (filed 10/31/1996) was renumbered, reformatted, and replaced by 20.1.2 NMAC, Adjudicatory Procedures - Environmental Improvement Board, effective 08/27/06.

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD**

**TITLE 20 ENVIRONMENTAL
PROTECTION
CHAPTER 1 ENVIRONMENTAL
PROTECTION GENERAL
PART 8 ENVIRONMENTAL
IMPROVEMENT BOARD OPEN
MEETINGS**

20.1.8.1 ISSUING AGENCY:
Environmental Improvement Board.
[20.1.8.1 NMAC - N, 08-27-06]

20.1.8.2 SCOPE: This part governs meetings conducted by the environmental improvement board in addition to the requirements of 20.1.1 NMAC, except to the extent that this part may be inconsistent with state law.
[20.1.8.2 NMAC - N, 08-27-06]

20.1.8.3 STATUTORY AUTHORITY: This part is adopted pursuant to Sections 50-9-12, 74-1-9, 74-2-6, 74-3-5, 74-4-5 and 74-9-27 NMSA 1978.
[20.1.8.3 NMAC - N, 08-27-06]

20.1.8.4 DURATION:
Permanent.
[20.1.8.4 NMAC - N, 08-27-06]

20.1.8.5 EFFECTIVE DATE:
08-27-06, unless a later date is cited at the end of a section.
[20.1.8.5 NMAC - N, 08-27-06]

20.1.8.6 OBJECTIVE: The objective of this part is to establish procedures for running the meeting.
[20.1.8.6 NMAC - N, 08-27-06]

20.1.8.7 DEFINITIONS:
[RESERVED]
[20.1.8.7 NMAC - N, 08-27-06]

20.1.8.8 OPEN MEETINGS RESOLUTION: The board shall annually adopt an open meetings resolution, in accordance with the Open Meetings Act.
[20.1.8.8 NMAC - N, 08-27-06]

20.1.8.9 BOARD MEMBER PARTICIPATION:

A. Pursuant to the provisions of the Open Meetings Act, a board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the board member to attend the meeting in person.

B. Each board member participating by conference telephone must

be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the meeting must be able to hear any board member who speaks during the meeting.

C. Participation by such means shall constitute presence in person at the meeting.
[20.1.8.9 NMAC - N, 08-27-06]

20.1.8.10 PROCEDURE OF BOARD MEETINGS: Robert's Rules of Order shall generally govern the procedure of the board meetings except as otherwise provided for by relevant statute or by the board rules.
[20.1.8.10 NMAC - N, 08-27-06]

20.1.8.11 ELECTION OF BOARD OFFICERS:

A. At its last regular meeting of every calendar year, the board shall elect from its members the following officers: chair, vice-chair and secretary.

B. A member shall not be elected to the same office for more than two (2) consecutive years.

C. The board shall fill a vacancy in any of these offices at its next regular meeting after the vacancy occurs.
[20.1.8.11 NMAC - N, 08-27-06]

20.1.8.12 DUTIES OF BOARD CHAIR:

A. The chair of the board shall preside at all meetings; shall appoint all committees; shall sign all certificates of registration, vouchers and other official documents; and shall otherwise perform all duties pertaining to the office of the chair.

B. 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.
[20.1.8.12 NMAC - N, 08-27-06]

20.1.8.13 DUTIES OF BOARD SECRETARY: The secretary of the board shall be responsible for insuring the timely preparation of meeting minutes and shall consult with the board administrator in responding to requests made pursuant to the Inspection of Public Records Act.
[20.1.8.13 NMAC - N, 08-27-06]

20.1.8.14 MEETING AGENDA:

A. The board chair and vice-chair shall work with the board administrator in preparing and setting the agenda for all board meetings.

B. A board member who wishes to place an item on the meeting agenda must submit a request to the board chair and vice-chair at least fifteen (15) days in advance of the meeting at which the board member wishes the matter to be

heard.

C. Any other person who wishes to place an item on the meeting agenda must submit a request in writing to the board chair and vice-chair at least twenty (20) days in advance of the meeting at which the person wishes the matter to be heard.
[20.1.8.14 NMAC - N, 08-27-06]

20.1.8.15 MEETING ATTENDANCE: Any board member failing to attend three (3) consecutive meetings after receiving proper notice shall be recommended for removal by the governor.
[20.1.8.15 NMAC - N, 08-27-06]

HISTORY OF 20.1.8 NMAC:
[RESERVED]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

**TITLE 19 NATURAL
RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND
FISHING REGULATIONS
PART 6 WATERFOWL**

19.31.6.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.
[19.31.6.1 NMAC - Rp, 19. 31.6.1 NMAC, 8-15-2006]

19.31.6.2 SCOPE: Hunters of waterfowl. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30 and 32 through 36 of Title 19.
[19.31.6.2 NMAC - Rp, 19. 31.6.2 NMAC, 8-15-2006]

19.31.6.3 STATUTORY AUTHORITY: 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico 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 mammals, birds, and fish.
[19.31.6.3 NMAC - Rp, 19. 31.6.3 NMAC, 8-15-2006]

19.31.6.4 DURATION: August 15, 2006 - March 31, 2007.
[19.31.6.4 NMAC - Rp, 19.31.6.4 NMAC, 8-15-2006]

19.31.6.5 EFFECTIVE DATE:
August 15, 2006 unless later date is cited at end of individual sections.
[19.31.6.5 NMAC - Rp, 19.31.6.5 NMAC, 8-15-2006]

19.31.6.6 OBJECTIVE :
Establishing seasons on American coot, common moorhen, common snipe, ducks, geese, sora, Virginia Rail, and setting falconry seasons.
[19.31.6.6 NMAC - Rp, 19.31.6.6 NMAC, 8-15-2006]

19.31.6.7 DEFINITIONS :
Areas, species, non-toxic shot, and possession limit defined.

A. "Adult/youth (A/Y)" as used herein, shall mean that hunt designation where the adult and youth are permitted to hunt together.

B. "Arrows" shall mean only those arrows or bolts having broadheads with steel cutting edges.

C. "Baiting" shall mean the placing, exposing, depositing, distributing, or scattering of any salt, grain, scent or other feed on or over areas where hunters are attempting to take protected game mammals or game birds.

D. "Bernardo north duck hunt area (BND)" shall mean that area north of U.S. 60 on Bernardo WMA.

E. "Bow" shall mean compound, recurve, or long bow. Sights on bows shall not project light nor magnify.

F. "Central flyway" shall mean that portion of New Mexico east of the Continental Divide, with the exception of the Jicarilla Apache Indian reservation.

G. "Crossbows" shall mean a device with a bow limb or band of flexible material that is attached horizontally to a stock and has a mechanism to hold the string in a cocked position. Sights on crossbows shall not project light nor magnify.

H. "Dark goose" shall mean Canada goose or greater white-fronted goose.

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

J. "Director" shall mean the director of the New Mexico department of game and fish.

K. "Electronic motion decoys" shall mean decoys such as spinning wing decoys that operate by electric motors or electronic controls.

L. "Established road" is defined as follows:

(1) a road, built and/or maintained by equipment, which shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures;

(2) a two-track road completely void of vegetation in the tracks which shows use prior to hunting seasons for other purposes such as recreation, mining, log-

ging, and ranching and shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures.

M. "Falconry" shall mean hunting migratory game birds using raptors.

N. "License year" shall mean the period from April 1 through March 31.

O. "Light geese" shall mean snow geese, blue phase snow geese, and Ross's geese.

P. "Light goose conservation order" shall mean those methods, bag and possession limits, and dates approved by the USFWS towards reducing over-abundant light goose populations.

Q. "Middle Rio Grande valley dark goose hunt area (MRGV)" shall mean Sierra, Socorro and Valencia counties.

R. "Migratory game bird" shall mean American coot, common moorhen, common snipe, ducks, geese, sora, and Virginia rail.

S. "Modern firearms" shall mean center-fire firearms, not to include any fully automatic firearms. Legal shotguns shall be only those shotguns capable of being fired from the shoulder.

T. "Muzzle-loader or muzzle-loading firearms" shall mean those rifles and shotguns in which the charge and projectile are loaded through the muzzle. Only blackpowder, Pyrodex or equivalent blackpowder substitute may be used. Use of smokeless powder is prohibited. Legal muzzle-loader shotguns shall be only those shotguns capable of being fired from the shoulder.

U. "Non-toxic shot" shall mean that non-toxic shot approved for use by the U. S. fish and wildlife service.

V. "North zone" shall mean that portion of the Pacific flyway north of I-40 from the Arizona-New Mexico border to the Continental Divide; and that portion of the central flyway north of I-40 from the Continental Divide to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

W. "Pacific flyway" shall mean that portion of New Mexico west of the Continental Divide including the Jicarilla Apache Indian reservation.

X. "Permanent mobility limitation" shall mean an individual that permanently has: restricted movement in both arms, or is restricted to the use of a walker, wheelchair, or two crutches to walk, or has a combination of disabilities that cause comparable substantial functional limitations. EXCEPTION: For the purposes of hunting migratory game birds from a vehicle, mobility limitation individuals are

those that have permanently lost one or both legs.

Y. "Possession limit" shall mean twice the daily bag limit except where otherwise defined.

Z. "Protected species" shall mean any of the following animals:

(1) all animals defined as protected wildlife species and game fish under Section 17-2-3 New Mexico Statutes Annotated 1978 Compilation;

(2) all animals listed as endangered species or subspecies as stated in regulation(s) set by the state game commission.

AA. "Retention" or "retain" shall mean the holding of in captivity.

BB. "South zone" shall mean that portion of the Pacific flyway south of I-40 from the Arizona-New Mexico border to the Continental Divide; and that portion of the central flyway south of I-40 from the Continental Divide to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

CC. "Unlimited" shall mean there is no set limit on the number of permits or licenses established for the described hunt areas.

DD. "Waterfowl management area" (WMA) shall mean state game commission owned or managed waterfowl management areas.

EE. "Youth" shall mean those less than 18 years of age except where otherwise defined.

FF. "Youth waterfowl hunting days" shall mean the special seasons where only those under 16 years of age may hunt ducks and geese. A supervising adult must accompany the youth hunter.

[19.31.6.7 NMAC - Rp, 19.31.6.7 NMAC, 8-15-2006]

19.31.6.8 LICENSE AND APPLICATION REQUIREMENTS:

A. License: It shall be unlawful to hunt migratory game birds without having purchased a valid license for the current license year.

(1) For the hunting of migratory game birds; valid licenses are general hunting, or general hunting and fishing, or junior general hunting, or junior general hunting and fishing, or senior or handicapped general hunting, or senior or handicapped general hunting and fishing, or small game, or non-resident small game, and temporary small game 4-day licenses. A habitat stamp is required for those hunting on US Forest Service and Bureau of Land Management properties. Hunters from 18 through 69 years of age must also purchase a habitat management and access validation except for resident 100% disabled veterans.

(2) In addition to a valid license (see Paragraph (1) of Subsection A of 19.31.5.8 NMAC) a migratory bird permit number shall be required while hunting migratory game birds.

B. Valid dates of license or permit: All permits or licenses shall be valid only for the dates, legal sporting arms, bag limit and area specified by the hunt code printed on the permit or license.

C. Applications: Applications for Bernardo WMA light goose, and Bernardo WMA youth-only waterfowl hunt permits shall be submitted on the appropriate application form.

(1) It shall be unlawful to submit more than one application per species per year. Those submitting more than one application per species will result in the rejection of all applications.

(2) A six-dollar application fee shall be required by each applicant per application submitted.

(3) Applicants may apply for a first, second and third choice of seasons. A maximum of one permit per species hunt code will be awarded to successful applicants unless otherwise specifically allowed by rule.

(4) All applications must be mailed to the Santa Fe office unless otherwise specifically allowed by rule. Applications that have been mailed and postmarked but not delivered by the deadline date will be accepted by the Santa Fe office up to 5 working days after that deadline. A person desiring a MRGV dark goose permit shall apply in person to the department in Santa Fe, Albuquerque, Raton, Las Cruces, or Roswell, or by mail to the Santa Fe office only.

(5) The deadline date for application for the Bernardo WMA youth-only waterfowl hunt permits shall be the second Saturday in September.

(a) for the Bernardo WMA youth-only waterfowl hunt permits no more than three persons may apply per application;

(b) up to two hunt choices may be awarded; and

(c) if any permits are available after the drawing, a person may submit a new application to a the department Albuquerque, Raton, Las Cruces, or Roswell office; up to 2 hunt choices may be awarded. Hunters may have a maximum of 4 Bernardo youth-only permits per license year.

(6) The deadline date for application for the Bernardo WMA light goose hunt permits shall be the first Saturday in November.

(7) No more than four persons may apply per application.

(8) Applications for permits may be returned to the sender if such applications are not on the proper form or do not

supply adequate information.

(9) If applications for permits exceed the number of available permits, as herein established, the available permits shall be allotted by means of a random public drawing in the Santa Fe office of the department of game and fish.

(10) If any permits remain after the original deadline, the director may authorize a new deadline. A person who is not awarded a permit for which he applied may submit a new application for a permit if such permits remain available.

D. 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. EXCEPTION: During the youth waterfowl hunt days only those who have not reached their 16th birthday may hunt waterfowl (see Section 19.31.6.15 NMAC). [19.31.6.8 NMAC - N, 8-15-2006]

19.31.6.9 MANNER AND METHODS FOR MIGRATORY GAME BIRDS:

A. Season and hours: Migratory game birds may be hunted or taken only during open seasons and only during the period from one-half hour before sunrise to sunset unless otherwise specifically allowed by rule.

(1) On state game commission owned or managed waterfowl management areas (WMA)s, as listed herein, hunting hours shall mean from one-half hour before sunrise to 1:00 p.m.

(2) During the light goose conservation order hunt dates, as listed herein, hunting hours shall mean from one-half hour before sunrise to one-half hour after sunset.

B. Bag limit: It is unlawful for any person to hunt for or take more than one daily bag limit allowed by regulation. There shall be no daily bag or possession limit for light geese during the light goose conservation order hunt dates.

C. Tagging:

(1) Any permit or license that permits the taking of dark geese in the MRGV; shall be issued with tags bearing the name of the species.

(2) It shall be unlawful for any licensee not to properly tag the animal as prescribed below:

(a) IMMEDIATELY after killing any dark goose in the MRGV; the licensee killing the game shall notch the proper day and month of kill from the species tag; and

(b) the tag shall be attached to the carcass of dark geese harvested in the MRGV; and the tag shall remain attached to the carcass while the carcass is in any vehicle, left unattended in the field, or while it is in camp or at a residence or other place of storage.

(3) A species tag, when attached to the carcass of legally taken game, shall authorize possession and storage for the period designated on the tag.

D. Seizure: Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcasses of any dark geese in the MRGV that are improperly tagged.

E. Use of bait: It shall be unlawful for anyone to take or attempt to take any protected species by use of baits as defined in Subsection C of 19.31.6.7 NMAC.

F. Live animals: It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any protected species.

G. Use of calling devices: It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any protected species. During the light goose conservation order hunt dates, as listed herein, electronic calling devices are allowed.

H. Killing out-of-season: It shall be unlawful to kill any protected species out-of-season.

I. Legal sporting arms and ammunition:

(1) The following are **legal sporting arms** for migratory game birds:

(a) shotguns firing shot, shotguns shall not be capable of holding no more than three shells;

(b) muzzle-loading shotguns firing shot;

(c) bows and arrows;

(d) crossbows for individuals that qualify with a permanent mobility limitation; and

(e) during the light goose conservation order hunt dates, as listed herein, shotguns capable of holding more than three shells are lawful.

(2) **Non-toxic shot** use is required for hunting:

(a) all migratory game bird species;

(b) on all state game commission owned lands; and

(c) only 25 rounds per hunter will be allowed at the blinds when participating on the Bernardo WMA light goose special permit hunts.

(3) **Use of toxic shot:** It shall be unlawful for any person hunting migratory game birds to hunt with or be in possession of any shotgun shells loaded with toxic shot.

J. Drugs and explosives: It shall be unlawful to use any form of drug on an arrow or use arrows driven by explosives.

K. Proof of species or sex: One fully-feathered wing or the head shall remain attached to each migratory

game bird taken until the bird has arrived at the personal abode of the possessor or storage facility.

L. Possession or sale of protected species: It shall be unlawful to possess, sell, or offer for sale all or part of any protected species except as provided below:

(1) **License or permit:** A person may possess protected species or parts thereof that they have lawfully taken (killed) under license or permit.

(2) **Game taken by another:** Any person may have in their possession or under their control any protected species or parts thereof that have been lawfully taken by another person, if they possess a written statement which shall be provided by the donor of the protected species, or parts thereof, and which shall contain the following:

(a) the kind and number of game parts donated;

(b) the date and county where the game was lawfully taken;

(c) the donor's name, address, and the number of the hunting license under which the game was lawfully taken; and

(d) the date and place of the donation.

(3) **Retention of live animals:** It shall be unlawful to retain protected species in a live condition except under permit or license issued by the director for the following purposes:

(a) zoos open for public display;

(b) in class A parks;

(c) in projects for scientific research and propagation;

(d) a rehabilitation permit;

(e) under a falconry permit, only those birds listed on the permit;

(f) under a scientific collection permit, one may collect and possess only those species listed on the permit; and

(g) in transit through New Mexico when the transporter can demonstrate proof of legal possession of the protected animal being transported.

(4) **Sale of game animal parts:** It shall be unlawful to sale or barter any parts or feathers from migratory game birds.

(5) **Falconry provisions for possession:** the falconry hunter shall not retain nor possess any protected species of bird taken by a raptor except those species of protected birds taken during open falconry season.

M. Release of wildlife: It shall be unlawful for any person or persons to release, intentionally or otherwise, or cause to be released in this state any mammal, bird, fish, reptile or amphibian, except domestic mammals, domestic fowl, or fish from government hatcheries, without first obtaining a permit from the department of

game and fish.

N. Use of vehicles and roads in hunting migratory game birds:

(1) **Roads:** It shall be unlawful to shoot at, wound, take, attempt to take, or kill any protected species on, from, or across any graded paved, or maintained public road and including the areas lying within right-of-way fences or 40 feet from the edge of the pavement or maintained surface, in absence of right-of-way fences.

(2) **Vehicles, boats, aircraft:** It shall be unlawful to shoot at any protected species from within a motor vehicle, power boat, sailboat, or aircraft. EXCEPTION - Migratory birds may be taken from a motor-driven boat (or other craft with attached motor) or sailboat when resting at anchor or fastened within or immediately alongside a fixed hunting blind or is used solely as a means of picking up dead birds.

(3) **Harassing protected wildlife:** It shall be unlawful, at any time, to pursue, harass, harrass, drive, or rally any protected species by use of or from a motor-driven vehicle, powerboat, sailboat, or aircraft.

(4) **Vehicle off of established road:** During the seasons established for any protected species, it shall be unlawful to drive or ride in a motor vehicle, which is driven off an established road when the vehicle bears a licensed hunter, fisherman or trapper. EXCEPTION: 1) Snowmobiles; 2) All landowners, lessees or their employees, while on their owned or leased lands in connection with legitimate agricultural activities.

(5) **Closed roads:** During the seasons established for any protected species, it shall be unlawful to knowingly occupy, drive, or cause to be driven any motor vehicle on a closed road when the vehicle bears a licensed hunter, angler or trapper.

(6) **Handicapped license:**

(a) **Shooting from a vehicle:** The holder of a handicap license is authorized to shoot at and kill protected species during their respective open seasons from a stationary motor-driven vehicle that is not on a public road or highway. The director may issue permits to shoot from a stationary vehicle to applicants who provide certification that the applicant is permanently disabled in accordance with the American Disability Act. Such certification shall be signed by an M.D. or O.D. licensed to practice in the applicant's state of residence.

(b) **Driving off established roads:** Holders of a handicap license may, with permission of the landowner, lessee, or land management agency, drive off established roads to hunt for or take migratory game birds, during open seasons.

(c) **Assistance for handicapped**

hunter: The holder of a handicapped license may be accompanied by another person to assist in reducing to possession any resident small game animal which has clearly been wounded by the licensed handicapped hunter. EXCEPTION: Persons assisting in reducing to possession any wounded migratory game birds shall be fully licensed (see Subsection A of 19.31.6.8 NMAC).

O. Lands and waters owned, administered, controlled, or managed by the state game commission:

(1) **Posting of signs:** The state game commission may prohibit, modify, condition, or otherwise control the use of areas under its control by posting of signs as may be required in any particular area.

(2) **Violating provisions of posted signs:** It shall be unlawful to violate the provisions of posted signs on areas under the control of the state game commission.

(3) **Trespass on state game commission owned lands:** It shall be unlawful to hunt, fish, camp, or trespass upon state game commission owned lands unless allowed under regulation or provided for under Subsection O of 19.31.6.9 NMAC.

(4) The **Sandia ranger district** of the Cibola national forest shall be open to archery only hunting of species listed herein during established seasons.

(5) State waterfowl areas open, species that can be hunted, and days hunting open:

[Please see Table on page 772]

(a)

DAYS OF WEEK OPEN FOR HUNTING

<u>AREA</u>	<u>SPECIES</u>	<u>SUN</u>	<u>MON</u>	<u>TUE</u>	<u>WED</u>	<u>THU</u>	<u>FRI</u>	<u>SAT</u>
Bernardo WMA (See note below) (600 feet S of US -60 and portions N of US -60; W of unit 7 drain)	Group 1*	X				X		
(600 feet S of US -60 and portions N of US -60; E of unit 7 drain)	Group 1		X		X			X
La Joya WMA (south portion of refuge)	Group 1	X				X		
La Joya WMA (north portion of refuge)	Group 1		X		X			X
Jackson lake WMA (W of NM -170)	Group 2**		X		X			X
Seven Rivers WMA (portion of Brantley WMA -- see specific closure in Paragraph (3) of Subsection A of 19.31.6.15 NMAC)	Group 2		X		X			X
Tucumcari WMA	Group 2	X			X			X
Salt lake and Charette lake WMAs	Group 2		X		X			X
McAllister lake WMA	Group 3***		X		X			X

*Group 1 Ducks, light geese, dark geese if in possession of a MRGV dark goose permit, Virginia Rail, Sora, Common moorhen, American coot, and Common snipe.

**Group 2 Ducks, geese, Virginia Rail, Sora, Common moorhen, American coot, and Common snipe.

***Group 3 Ducks, light geese, Virginia Rail, Sora, Common moorhen, American coot, and Common snipe.

Note: Bernardo WMA will be closed to all waterfowl hunting during those days scheduled for the special permit light goose hunts (see Subsection A of 19.31.6.12 NMAC) During the light goose conservation order, designated areas north of U.S. highway 60 are open and shall follow the schedule described in the table above.

(b) The wildlife management areas open during the youth waterfowl days (see section 19.31.6.15 NMAC) shall be Bernardo WMA, all portions of La Joya WMA, Seven Rivers WMA, Salt lake WMA, Charette lake WMA, McAllister lake WMA and Tucumcari WMA.

(c) Portions of the Bernardo WMA ponds north of highway U.S. 60 will be open for waterfowl hunting to groups consisting of at least one youth hunter with a supervising adult; see 19.31.6.16 NMAC).

(d) Falconry hunting for migratory game birds shall be permitted on those portions of the WMAs open to hunting during the seasons in Subsection A of 19.31.6.11 NMAC, except for Jackson lake WMA.

(e) Falconry hunting for migratory game birds shall be permitted on those portions of Jackson lake WMA open to hunting during the seasons in Section 19.31.6.11.A NMAC, including that portion east of N.M. 170.

P. Areas closed to migratory game bird hunting: The following areas shall remain closed to hunting, except as permitted by regulation.

(1) All wildlife management areas.

(2) Rio Grande wild and scenic river area.

(3) Sub-Unit 6B (Valles Caldera national preserve).

(4) Sugarite canyon state park.

(5) Valle Vidal area.

(6) The Old McMillan lake spillway arm of Brantley lake extending from the mouth of South Seven Rivers draw north to the railroad trestle shall be closed to all hunting from January 1 through February 28.

(7) That portion of the Canadian river arm of Ute reservoir lying between lines running parallel to and 100 feet above the high-water marks on each side of the Canadian arm and extending from the San Miguel and Quay county line to a posted buoy line across Horseshoe Bend.

(8) That portion of the stilling basin below Navajo dam lying within a line starting from N. M. 511 at the crest of the bluff west of the Navajo dam spillway and running west along the fence approximately 1/4 mile downstream, southwest along the fence to N. M. 511 to the Navajo dam spillway, across the spillway, and to the crest of the bluff.

Q. Regulations pertaining to boats, other floating devices, and motors:

(1) On **Bernardo, La Joya, Salt Lake and Jackson Lake WMAs** only boats and other floating devices using no motors shall be permitted during waterfowl season.

(2) On **Tucumcari WMA**, only boats and other floating devices using electric motors or with motors that are not in use shall be permitted.

(3) On **Charette and McAllister lakes** boats and other floating devices with or without motors shall be permitted; provided, however, that boats or floating devices shall not be operated at greater than normal trolling speed.

(4) Department of game and fish personnel or persons authorized by the director of the department of game and fish may use gaso-line powered outboard motors on all lakes mentioned in this chapter while performing official duties.

R. Electronic motion decoys: It shall be unlawful to use electronic motion decoys while hunting waterfowl on those por-tions of Bernardo WMA, north of US highway 60.
[19.31.5.9 NMAC -N, 8-15-2006]

19.31.6.10 SPECIES, OPEN AREAS, SEASON DATES, AND DAILY BAG LIMITS:

A. 2006-2007 season; all dates are 2006 unless otherwise specified:

CENTRAL FLYWAY

<u>SPECIES</u>	<u>SEASON DATES</u>		<u>DAILY BAG LIMIT</u>
	<u>OPEN</u>	<u>CLOSED</u>	
Ducks: North zone:	Oct. 7 - Jan. 10, 2007		6-- which consists of no more than 5 Mallard (of which only 2 may be female Mallard); 2 Scaup; 2 Redhead; 2 Wood duck, 2 Hooded Mergansers.
Pintail and Canvasback	Oct. 7 - Nov. 14		1 Pintail; 1 Canvasback may be in the bag
South zone:	Oct. 25 - Jan. 28, 2007		Same as North zone
Pintail and Canvasback	Dec. 21 - Jan. 28, 2007		1 Pintail; 1 Canvasback may be in the bag
American coot:	Same as above Zone dates		15

Common moorhen:	Oct. 7 - Dec. 15		1
Common snipe	Oct. 7 - Jan. 21, 2007		8
Virginia Rail & Sora	Sept. 16 - Nov. 24		10 daily (singly or in the aggregate)
Dark goose: (Regular season closed in Bernalillo, Sandoval, Sierra, Socorro, and Valencia counties)	Oct. 17 - Jan. 31, 2007		4
Special MRGV season *Special permit required; See information in Section 14	Jan. 11 - Jan. 21, 2007		2 (2 per season)
Light goose:	Oct. 17 - Jan. 31, 2007		20/80 possession

PACIFIC FLYWAY

<u>SPECIES</u>	<u>SEASON DATES</u>		<u>DAILY BAG LIMIT</u>
	<u>OPEN</u>	<u>CLOSED</u>	
Ducks:	Oct. 16 - Jan. 28, 2007		7-- which consists of no more than 2 female Mallard; 2 Redhead; 2 Scaup; 1 Pintail; 1 Canvasback.
American coot and Common moorhen:	Oct. 16 - Jan. 28, 2007		12 daily (singly or in the aggregate)

Common snipe:	Oct. 7 - Jan. 21, 2007	8
Virginia Rail & Sora:	Sept. 16 - Nov. 24	10 daily (singly or in the aggregate)
Goose: North zone:	Sept. 23 - Oct. 8 and Oct. 30 - Jan. 28, 2007	3 Dark geese, 1 Light goose
South zone:	Oct. 14 - Jan. 28, 2007	2 Dark geese, 1 Light goose

B. Light goose conservation measures: Under the director's discretion the department may implement the light goose conservation measures approved by the U.S. fish and wildlife service (USFWS). Methods, bag and possession limits, and dates allowed shall be those as approved by the USFWS.

CENTRAL FLYWAY

SEASON DATES

<u>SPECIES</u>	<u>OPEN</u>	<u>CLOSE</u>	<u>DAILY BAG LIMIT</u>
Light geese	Feb. 01, 2007 - Mar. 10, 2007		No bag or possession limit

[19.31.6.10 NMAC - Rp, 19.31.6.8 NMAC, 8-15-2006]

19.31.6.11 FALCONRY SEASONS:

A. Species that can be taken, open areas, and hunting seasons; 2006-2007 season, all dates are 2006 unless otherwise specified:

(1) Duck: Central flyway seasons shall be open in the north zone - September 16 through September 24, September 30-October 1 (youth waterfowl days), and October 7 through January 10, 2007; south zone - September 16 through September 24, October 14-15 (youth waterfowl days), and October 25 through January 28, 2007. Pacific flyway seasons shall be as follows: October 7-8 (youth waterfowl days), and October 16 through January 28, 2006.

(2) Light goose: Central flyway seasons shall be open October 17 through January 31, 2007. Pacific flyway season shall be north zone - September 23 through October 8, and October 30 through January 28, 2007; south zone - October 14 through January 28, 2007.

(3) Dark goose: Central flyway seasons shall be open October 17 through January 31, 2007. Pacific flyway season shall be north zone - September 23 through October 8, and October 30 through January 28, 2007; south zone - October 14 through January 28, 2007.

(4) Common snipe: Central and Pacific flyways seasons shall be: October 7 through January 21, 2007.

(5) Common Moorhen: Central flyway season shall be: October 7 through January 21, 2007. Pacific flyway season shall be: October 16 through January 28, 2007.

(6) Sora and Virginia rails: Central and Pacific flyways seasons shall be: September 16 through December 31, 2006.

B. Daily bag limits: shall be three birds (in the aggregate) and possession limits shall be six birds (in the aggregate) as established herein.

[19.31.6.11 NMAC - Rp, 19.31.6.9 NMAC, 8-15-2006]

19.31.6.12 REQUIREMENTS AND PERMITS FOR BERNARDO LIGHT GOOSE HUNT:

A. Bernardo WMA will be open for light goose hunting by permit only on December 29, 31, and January 20 and 22.

B. Up to 32 permits at Bernardo WMA, per hunting day, will be available (except on December 29; see 19.31.6.13 NMAC below). Applications submitted for the LTG-O-102 hunt must have a minimum of one youth hunter and one hunter over 18 years of age.

C. Hunt packages for the Bernardo light goose hunts.

LTG-O-101 12/31

LTG-O-102 1/20

LTG-O-103 1/22

[19.31.6.12 NMAC - Rp, 19.31.6.12 NMAC 8-15-2006]

19.31.6.13 REQUIREMENTS AND PERMITS FOR BERNARDO YOUTH-ONLY LIGHT GOOSE HUNT: Up to 16 permits will be available for the December 29 (YLG-O-101) youth-only light goose hunt at Bernardo WMA.

[19.31.6.13 NMAC - Rp, 19.31.6.13 NMAC, 8-15-2006]

19.31.6.14 REQUIREMENTS AND PERMITS FOR THE SPECIAL MIDDLE RIO GRANDE VALLEY DARK GOOSE SEASON: Unlimited permits obtained at department offices will be available to hunt dark geese in a selected portion of the middle Rio Grande valley with a daily bag limit of two dark geese and a season limit of two dark geese.

[19.31.6.14 NMAC - Rp, 19.31.6.14 NMAC, 8-15-2006]

19.31.6.15 YOUTH WATERFOWL HUNTING DAYS:

A. Requirements for youth hunters to participate in this hunt are as follows:

(1) Youth hunters must be under 16 years old.

(2) An adult, at least 18 years old, must accompany the youth hunter in the field (the adult may not hunt ducks; but may participate in other seasons that are open on the special youth day).

(3) Only ducks and coots may be taken by the youth hunter (sandhill cranes, geese or any other waterfowl species may not be taken).

B. Season dates for youth waterfowl days:

Central flyway: North zone: September 30-October 1

South zone: October 14-15

Pacific flyway: October 7-8

C. The bag limit for youth waterfowl days shall be the same as the regular season in the respective flyways. [19.31.6.15 NMAC - Rp, 19.31.6.17 NMAC, 8-15-2006]

19.31.6.16 REQUIREMENTS AND HUNT CODES FOR THE SPECIAL BERNARDO YOUTH WATERFOWL HUNT AREA:

A. The Bernardo WMA ponds north of highway U.S. 60 will be open for waterfowl hunting to groups consisting of a minimum of a youth hunter, under 18 years of age, and a supervising adult.

B. Requirements for blind selection:

(1) Blind selection on weekdays between September 16 through December 14 and January 8-28 is on a first come basis. Once all blinds are selected, no other hunters may enter the area.

(2) Blind selection on all weekends and weekdays between December 16 through January 7, 2007 will be available by permit only (see Paragraph (5) of Subsection C of 19.31.6.8 NMAC). 2006-2007 season, hunt codes and permits available

Hunt Date	Hunt Code	No. of permits	Hunt Date	Hunt Code	No. of permits
October 14	BNY-0-101	6	December 20	BNY-0-120	6
October 15	BNY-0-102	6	December 21	BNY-0-121	6
October 28	BNY-0-103	6	December 23	BNY-0-122	6
October 29	BNY-0-104	6	December 24	BNY-0-123	6
November 4	BNY-0-105	6	December 25	BNY-0-124	6
November 5	BNY-0-106	6	December 27	BNY-0-125	6
November 11	BNY-0-107	6	December 28	BNY-0-126	6
November 12	BNY-0-108	6	December 30	BNY-0-127	6
November 18	BNY-0-109	6	January 1	BNY-0-128	6
November 19	BNY-0-110	6	January 3	BNY-0-129	6
November 25	BNY-0-111	6	January 4	BNY-0-130	6
November 26	BNY-0-112	6	January 6	BNY-0-131	6
December 2	BNY-0-113	6	January 7	BNY-0-132	6
December 3	BNY-0-114	6	January 13	BNY-0-133	6
December 9	BNY-0-115	6	January 14	BNY-0-134	6
December 10	BNY-0-116	6	January 21	BNY-0-135	6
December 16	BNY-0-117	6	January 27	BNY-0-136	6
December 17	BNY-0-118	6	January 28	BNY-0-137	6
December 18	BNY-0-119	6			

C. Bernardo WMA will be closed to waterfowl hunting during the special permit Bernardo light goose hunts on December 29, 31 and January 20, 22.

D. Designated areas open for Bernardo youth waterfowl hunts are: north of highway U.S. 60, between U.S. 60 and the posted closure areas (see Subparagraph (a) of Paragraph (5) of Subsection O of 19.31.6.9 NMAC above).

E. Use of motorized motion decoys is prohibited.

[19.31.6.16 NMAC - Rp, 19.31.6.16 NMAC, 8-15-2006]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 17.11.18 NMAC, Sections 7, 9, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, effective 08-15-06.

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES CHAPTER 11 TELECOMMUNICATIONS PART 18 INTERCONNECTION FACILITIES AND UNBUNDLED NETWORK ELEMENTS

17.11.18.1 ISSUING AGENCY: New Mexico Public Regulation Commission [17.11.18.1 NMAC - N, 1-1-01]

17.11.18.2 SCOPE: This rule applies to all telecommunications carriers

authorized by the commission to provide local exchange service in New Mexico. [17.11.18.2 NMAC - N, 1-1-01]

17.11.18.3 STATUTORY AUTHORITY: NMSA 1978 Sections 8-8-4, 8-8-15 and 63-9A-8.2. [17.11.18.3 NMAC - N, 1-1-01]

17.11.18.4 DURATION: Permanent. [17.11.18.4 NMAC - N, 1-1-01]

17.11.18.5 EFFECTIVE DATE: January 1, 2001, unless a later date is cited at the end of a section. [17.11.18.5 NMAC - N, 1-1-01]

17.11.18.6 OBJECTIVE: The purpose of this rule is to facilitate the provision of local exchange services in New Mexico by prescribing the interconnection via direct or indirect means of all providers of local exchange services and the unbundling of the networks of ILECs, and

establishing quality of service standards for wholesale services provided by ILECs. The requirements in this rule are in addition to the requirements in the federal Telecommunication Act of 1996, Pub. L. 104-104 (1996). [17.11.18.6 NMAC - N, 1-1-01]

17.11.18.7 DEFINITIONS: As used in this rule:

A. bill-and-keep arrangement means neither of two interconnecting LECs charges the other for the transport and termination of local calls that originate on the other LEC's network;

B. carrier means any person that furnishes telecommunications service to the public subject to the jurisdiction of the commission, regardless of the facilities used and regardless of whether the person relies in part or entirely on another carrier's facilities;

C. competitive local exchange carrier (CLEC) means a carrier that provides local exchange and exchange access service in its service area and is not

an ILEC;

D. element includes an ILEC's UNEs, ILEC-provided collocation and other methods of obtaining interconnection and access to UNEs, and an ILEC's transport and termination of local traffic originated by an interconnecting LEC whenever explicit reciprocal compensation charges are established;

E. embedded costs means costs an ILEC incurred in the past that are recorded in the ILEC's books of accounts;

F. forward-looking common costs means economic costs efficiently incurred in providing a group of UNEs or services (which may include all UNEs or services provided by the ILEC) that cannot be attributed directly to individual UNEs or services;

G. forward-looking cost of capital means the cost of obtaining debt and equity financing in the capital markets;

H. incumbent local exchange carrier (ILEC) means a person, or an affiliate of a person, that was authorized to provide local exchange and exchange access service in New Mexico on February 8, 1996 or a successor or assignee of such person or affiliate; a telecommunications provider will also be treated as an ILEC if the federal communications commission determines that such provider (or class or category of provider) shall be treated as an ILEC pursuant to 47 U.S.C. Section 251(h)(2);

I. interconnection means the linking of two [(2)] networks for the mutual exchange of traffic, but does not include the transport and termination of traffic;

J. local call means a local exchange service call for which the originating location (defined as the location of the NID serving the originating end user) and the terminating location (defined as the location of the NID serving the terminating end user) are located within the local calling area defined for the originating end user, including all mandatory emergency alert system ("EAS") exchanges and any optional EAS exchanges to which the originating end user subscribes;

K. local exchange carrier (LEC) means a provider of local exchange and exchange access service and includes both CLECs and ILECs;

L. network interface device (NID) means the cross-connect device used to connect loop facilities to intra-premises cabling or inside wiring at an end user's premises;

M. opportunity costs means the revenues the ILEC would have received for the sale of telecommunications services in the absence of competition from telecommunications carriers that purchase UNEs;

N. originating LEC means the LEC that serves the end user who originates a local call;

O. physical collocation has the meaning given in 47 C.F.R. Section 51.5;

P. retailing costs include the costs of marketing, billing, collection and other functions associated with offering retail telecommunications services to subscribers who are not telecommunications carriers;

Q. rural local exchange carrier (rural LEC) has the meaning given in 47 U.S.C. Section 153(37) for "rural telephone company";

R. terminating LEC means the LEC that serves the end user who receives a local call;

S. total element long run incremental cost (TELRIC) (of a UNE) means the forward-looking cost over the long run of the total quantity of facilities and functions directly attributable to, or reasonably identifiable as incremental to, a UNE, assuming the ILEC's provision of other UNEs;

T. unbundled network element (UNE) means a facility or equipment used in the provision of a telecommunications service that an ILEC must provide to any requesting telecommunications carrier on an unbundled basis, pursuant to Section 251(c)(3) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); the term includes, but is not limited to, features, functions and capabilities that are provided by means of such facility or equipment, including but not limited to, subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service;

U. virtual collocation has the meaning given in 47 C.F.R. Section 51.5.

[17.11.18.7 NMAC - N, 1-1-01; A, 08-15-06]

17.11.18.8 INTERCONNECTION OF LOCAL EXCHANGE CARRIERS: All LECs shall interconnect directly or indirectly with the facilities and equipment of other LECs for the seamless provision of local exchange service.

A. Interconnection to ILEC networks. Each ILEC shall, upon request, allow any other LEC to interconnect with its network for the purpose of providing local exchange and exchange access services. Rates, terms and conditions for interconnection shall be just, reasonable, nondiscriminatory and in accordance with the requirements of this rule.

B. Quality of interconnection. The interconnection provided by the

ILEC must be at least equal in quality to that provided by the ILEC to itself or any subsidiary, affiliate, or other party to which the ILEC provides interconnection.

C. Points of interconnection.

(1) An ILEC shall allow any other LEC to interconnect to its network at any technically feasible point.

(2) The ILEC and the requesting LEC shall negotiate meet points of interconnection. Each party shall be responsible for the costs of constructing facilities to the meet point and neither party may impose a meet point that would require one party to incur significantly greater construction costs to build to the meet point than the other party.

(3) Each LEC shall construct and maintain its facilities at the point of interconnection in accordance with accepted engineering standards and practices in the exchange carrier industry.

(4) Each terminating LEC will make available to each originating LEC all technical references to documents issued by industry standards bodies or equipment manufacturers that define the engineering specifications necessary for the originating LEC's equipment to interface with the terminating LEC's interconnection facilities.

D. Joint facilities construction and use. LECs may jointly construct interconnection facilities and apportion the cost and expense between any joint users of those facilities.

[17.11.18.8 NMAC - N, 1-1-01]

17.11.18.9 RECIPROCAL COMPENSATION: Interconnecting LECs shall establish reciprocal compensation arrangements for the transport and termination of local calls pursuant to 47 U.S.C. Section 252(d)(2), 47 C.F.R. Section 51.701-717 and the requirements of this section. All local calls, including calls used for voice communications, data communications and [for] connection to the internet or an internet services provider, shall be subject to the reciprocal compensation arrangements.

A. Interconnecting LECs may by mutual agreement establish bill-and-keep arrangements to satisfy their reciprocal compensation obligations or may negotiate explicit rates for reciprocal compensation in accordance with 47 U.S.C. Section 252 and this rule.

B. A LEC that has entered into a bill-and-keep arrangement may, [after] ninety (90) days following the effective date of such agreement, petition the commission to initiate negotiation of explicit reciprocal compensation charges. The commission shall grant such petition if the petitioning party demonstrates that the amount of local traffic handed off from one

network to the other, measured on a monthly basis, is out of balance in either direction by more than ten percent (10%) for three consecutive months.

C. If two interconnecting LECs are unable to determine mutually agreeable rates for reciprocal compensation, the commission shall establish explicit reciprocal compensation rates.

(1) The commission shall establish a reciprocal compensation rate structure that is consistent with the costs incurred by LECs for the transport and termination of local calls.

(2) If only one of the interconnecting LECs is an incumbent, then unless paragraph 3 of this subsection applies, the commission shall establish symmetrical reciprocal compensation rates (i.e., the same rates will apply to the transport and termination of traffic originating with either LEC), based on the ILEC's forward-looking economic costs, calculated as prescribed in 17.11.18.15 NMAC.

(3) If only one of the interconnecting LECs is an incumbent, the other LEC may file a cost study with the commission to demonstrate that its forward-looking economic costs for transport and termination of local calls are higher than those of the interconnecting ILEC. If the commission finds that costs for transport and termination of local calls are disparate, the commission shall establish asymmetric rates for reciprocal compensation, based on the forward-looking economic costs for transport and termination of local calls incurred by each LEC.

(4) If both interconnecting LECs are incumbents, or neither is an incumbent, the commission shall establish symmetrical reciprocal compensation rates based on the larger LEC's forward-looking economic costs, calculated as prescribed in 17.11.18.15 NMAC.

[17.11.18.9 NMAC - N, 1-1-01; A, 08-15-06]

17.11.18.10 ACCESS REQUIREMENTS:

A. To rights-of-way.

(1) A LEC shall provide to interconnecting LECs non-discriminatory access to all facility rights-of-way, conduits, ducts, poles and pole attachments, and building entrance facilities under its ownership or control, provided that the LEC requesting access has obtained all required authorizations from third-party property owners and appropriate government authorities.

(2) When two interconnecting LECs are unable to negotiate mutually acceptable terms and conditions for access to rights-of-way, the commission shall determine any unresolved matters.

B. To emergency call net-

works. All LECs shall cooperate to insure the seamless operation of emergency call networks, including 911, E-911 and 0-dialed calls.

(1) An ILEC shall allow LECs to interconnect at its E-911 tandem so that each LEC's customers may place calls to public safety answering points by dialing 911.

(2) A LEC shall not charge another LEC for any service, activity, or facility associated with the provision of 911 or E-911 services other than call transport and termination charges.

C. To telephone numbers. Each interconnecting LEC shall be responsible for contacting the ~~[North American Numbering Plan (NANP) administrator]~~ north American numbering plan administrator (NANPA) to obtain its own NXX or NXX-X codes and to initiate NXX or NXX-X assignment requests.

D. To operator services and directory assistance databases. Interconnecting LECs shall make available to each other non-discriminatory access to their databases for operator services and directory assistance.

E. To signaling networks and databases. Interconnecting LECs shall make available to each other:

(1) non-discriminatory access to their signaling systems, databases, facilities and protocols used in the routing of local and interexchange traffic, including signaling protocols used in the query of call processing databases such as 800 database service, alternate billing service (ABS) and line information data base (LIDB); and

(2) the signaling resources and information necessary for interconnecting LECs' routing of local and interexchange traffic.

[17.11.18.10 NMAC - N, 1-1-01; A, 08-15-06]

17.11.18.11 OBLIGATIONS OF ALL ILECS:

A. Dialing parity. LECs must provide dialing parity to competing providers of local exchange service and intrastate toll service so that the end users of an interconnecting carrier do not have to dial more digits than the LEC's own end users, or incur dial delays that exceed the LEC's quality of service, in order to complete local calls through the interconnected facilities.

B. Number portability. To the extent technically feasible, LECs shall provide number portability in accordance with the requirements in 47 C.F.R. 51.203.

C. Interoperability of operator services. Interconnecting LECs shall negotiate mutual agreements to ensure the interoperability of non-optional operator

services between their networks, including but not limited to the ability of operators on each network to perform such operator functions as completing collect calls, third-party calls, call screening, busy line verification calls and busy line interrupt.

D. Mutual billing and collection agreements.

(1) Interconnecting LECs shall provide each other with answer and disconnect supervision. Interconnecting LECs shall enter into mutual billing and collection agreements for the accurate and timely exchange of billing records information to support:

(a) billing end users, including the exchange of telephone number information, the use of non-proprietary calling cards and the collect billing of third-party calls to a number served by another LEC;

(b) determining intercompany settlements for local and non-local traffic; and

(c) validating the jurisdictional nature of traffic.

(2) The billing data exchanged shall be provided in accordance with national industry standards.

E. Disclosure of customer proprietary network information. Interconnecting LECs shall not disclose customer-proprietary network information to each other without the express and affirmative consent of the affected end user and shall protect customer-proprietary network information in compliance with 47 U.S.C. Section 702 and applicable federal and state rules.

[17.11.18.11 NMAC - N, 1-1-01]

17.11.18.12 INTERCONNECTION OBLIGATIONS OF ILECS:

A. Unbundling of ILEC networks.

(1) At a minimum, ILECs shall unbundle their networks to the extent required by the federal communications commission ("FCC") in 47 C.F.R. Sections 51.307 through 51.321. Nothing in this rule precludes the commission from requiring ILECs to undertake further unbundling of their networks, including further unbundling of network elements pursuant to 17.11.18.8 NMAC through 17.11.18.13 NMAC.

(2) Rates for UNEs shall be based on the ILEC's forward-looking economic costs, calculated as prescribed in 17.11.18.15 NMAC.

B. Collocation. ILECs shall provide for the collocation of equipment necessary for interconnection or access to the ILEC's UNEs, in accordance with 47 C.F.R. Section 51.323 and the requirements of this rule. An ILEC shall offer collocation pursuant to rates, terms

and conditions that are just, reasonable, and nondiscriminatory. A LEC may request either physical collocation or virtual collocation from an ILEC, and the ILEC shall provide the requested form of collocation, except that the ILEC may provide virtual collocation if the commission determines that physical collocation is not practical for technical reasons or because of space limitations.

C. Exemptions for certain rural ILECs. An ILEC that qualifies as a rural LEC shall be exempt from the requirements of 47 U.S.C. Section 251(c) and this section until it has received a request for interconnection or purchase of a UNE.

D. Procedure for termination of exemption of certain rural ILECs.

(1) A party requesting interconnection or purchase of a UNE from a rural ILEC shall submit a copy of its request to the commission.

(2) The commission shall conduct a hearing for the purpose of determining whether to terminate the rural ILEC's exemption.

(3) In evaluating the request for interconnection or purchase of a UNE, the commission shall consider whether:

(a) the request is technically feasible; in making this determination, the commission may consider evidence brought by the requesting party concerning the provision of interconnection arrangements and UNEs by similarly situated rural ILECs in New Mexico or other states;

(b) the request is unduly economically burdensome to the rural ILEC or its customers; in making this determination, the commission may require the rural ILEC to provide an estimate of the costs of complying with the request and information on its costs and revenues beyond that included in the company's periodic reports to the commission;

(c) granting the request would be consistent with the objectives of universal service and the specific requirements of 47 U.S.C. Section 254 (exclusive of subsections (b)(7) and (c)(1)(D)); in making this determination, the commission may consider the potential benefits to end users from the provision of competitive services in the rural ILEC's service territory, as well as the potential impact of granting the request on the rural ILEC.

(4) The commission shall issue a final ruling on the request within one hundred twenty (120) days of receipt of the request.

(5) If the commission terminates a rural ILEC's exemption, it shall establish a schedule for implementing the request for interconnection or purchase of a UNE.

[17.11.18.12 NMAC - N, 1-1-01]

17.11.18.13 WHITE - PAGES

TELEPHONE DIRECTORY LISTINGS:

A. Interconnecting LECs shall ensure that all end users in their service territories have access to white-pages telephone directories and directory listing information from directory assistance operators for all listed end users in their service territories.

B. Each ILEC shall be designated the initial white-pages telephone directory provider ("white-pages provider") in its service territory and shall assume the responsibilities set forth in this section. With commission approval, a different LEC may be designated as the white-pages provider for the ILEC's service territory and may assume the responsibilities set forth in this section.

C. The white-pages provider shall cause to be published annually, in a white-pages telephone directory, the name, address, and telephone number for all listed end users within the territory served by the ILEC regardless of whether the end user subscribes to the local exchange service of the ILEC or another LEC. The white-pages provider shall publish all listings in alphabetical sequence by end user name with no distinctions made in the style, size, or format of listings supplied by CLECs and the ILEC.

(1) The white-pages provider shall not include in the white-pages directories or directory assistance databases the telephone numbers of end users who elect not to be ~~non-published~~ published.

(2) The white-pages provider shall not include in the white-pages directories end users who elect not to be ~~non-directory~~ directory listed but shall include them in the directory assistance databases.

D. The white-pages provider shall include the same directory listings information in its directory assistance database, and shall provide all interconnecting LECs with access to that database for the purpose of providing directory assistance. The white-pages provider shall update its directory assistance database to include the listing for a new customer of a CLEC within seventy-two (72) hours of receipt of the listing from the CLEC.

E. The white-pages provider shall cause each CLEC to receive ~~(+)~~ one white-pages telephone directory for each access line the CLEC serves in the ILEC's service territory. Each CLEC shall, in turn, cause one white-pages telephone directory per access line purchased to be delivered to its end users.

F. The white-pages provider shall provide space in the customer guide pages of the white-pages directory to a CLEC for the purpose of notifying customers how to reach the CLEC to request service, contact repair service, dial directo-

ry assistance, reach an account representative, request buried cable local service and contact the special needs center for customers with disabilities.

G. The white-pages provider shall provide premium listings in its white-pages telephone directory to the end users of CLECs on the same terms and conditions it offers premium listings to its own customers.

H. The white-pages provider shall provide CLECs a minimum of ninety (90) days' notice of deadlines associated with publication of the white-pages telephone directory. Each CLEC shall be responsible for ensuring it provides the white-pages provider with its directory listings information in a timely and accurate fashion. CLECs shall bear all responsibility for errors or omissions in the directory listings information provided to the white-pages provider.

I. The white-pages provider shall provide accurate and current directory listings information and updates to non-affiliated publishers of yellow-pages advertising directories in a non-discriminatory manner.

[17.11.18.13 NMAC - N, 1-1-01; A, 08-15-06]

17.11.18.14 COSTING AND PRICING STANDARDS:

A. General pricing standard. An ILEC shall offer elements to requesting LECs at rates, terms and conditions that are just, reasonable and nondiscriminatory. An ILEC shall not charge different rates for elements based on the class of customers served by the requesting LEC or the type of service provided by the requesting LEC.

B. Cost study required. An ILEC shall conduct a cost study using the methodology set forth in 17.11.18.15 NMAC and shall provide supporting documentation in accordance with 17.11.18.16 NMAC to prove to the commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element.

[17.11.18.14 NMAC - N, 1-1-01]

17.11.18.15 COSTING METHODOLOGY:

A. Formula. The forward-looking economic cost of an element shall be calculated as the sum of:

(1) the total element long-run incremental cost (TELRIC) of the element; and

(2) a reasonable allocation of forward-looking common costs.

B. Calculation of TELRIC.

(1) Least cost technology. An

ILEC shall calculate TELRIC on the basis of the most economically efficient choice of technology, or mix of technologies, in the long run, provided that such choice shall be:

(a) restricted to technologies that are currently available on the market and for which vendor prices can be obtained;

(b) consistent with the level of output necessary to satisfy current demand levels for all services using the UNE in question; and

(c) consistent with overall network design and topology requirements.

(2) Forward-looking cost of capital. In calculating the TELRIC of ~~an~~ element, an ILEC shall use the forward-looking cost of capital.

(3) Depreciation rates. In calculating forward-looking economic costs of elements, an ILEC shall use depreciation rates for capital assets that reflect changes in the economic value of those assets over time.

C. Reasonable allocation of forward-looking common costs. The commission shall consider an allocation of forward-looking common costs to an element to be reasonable if the ILEC demonstrates that:

(1) the sum of the allocation of forward-looking common costs plus the TELRIC of the element does not exceed the stand-alone costs associated with the element; in this context, stand-alone costs are the total forward-looking costs, including corporate costs, that would be incurred to produce a given element if that element were provided by an efficient firm that produced nothing but the given element; and

(2) the sum of the allocation of forward-looking common costs for all elements and services equals the total forward-looking common costs, exclusive of retailing costs, attributable to operating the ILEC's total network so as to provide all the elements and services offered.

D. Factors that may not be considered. In calculating the forward-looking economic cost of ~~an~~ element, an ILEC shall not consider embedded costs, retailing costs, opportunity costs, revenues associated with elements or telecommunications service offerings other than the element for which a rate is being established.

E. Units. The forward-looking economic cost per unit of an element equals the forward-looking economic cost of the element, calculated as prescribed in 17.11.18.15 NMAC, divided by a reasonable projection of the sum of the total number of units of the element the ILEC is likely to provide to requesting LECs and the total number of units of the element the ILEC is likely to use in offering its own services, during a reasonable measuring period.

(1) For elements an ILEC offers on a flat-rate basis, the number of units shall be the discrete number of UNEs the ILEC uses or provides (e.g., local loops or local switch ports).

(2) For elements an ILEC offers on a usage-sensitive basis, the number of units shall be the unit used to measure usage of the element (e.g., minutes of use or number of call-related database queries).

[17.11.18.15 NMAC - N, 1-1-01; A, 08-15-06]

17.11.18.16 SUPPORTING DOCUMENTATION: When an ILEC files a cost study with the commission in support of its forward-looking economic cost estimates, it must also file a complete set of supporting workpapers and source documents.

A. The workpapers must clearly and logically present all data used in developing the estimate and shall provide a narrative explanation of all formulas or algorithms applied to the data. The workpapers must allow others to replicate the methodology and calculate equivalent or alternative results using equivalent or alternative assumptions.

B. The workpapers must clearly set forth all significant assumptions and identify all source documents used in preparing the cost estimate.

C. The workpapers must be organized so that a person with expertise in analyzing forward-looking cost studies, but otherwise initially unfamiliar with the particular study, will be able to work from the initial investment, expense and demand data to the final cost estimate. The workpapers must clearly identify what each number used in developing the estimate represents.

D. The source of any data relied on in the study should be clearly identified and readily available, if not included with the workpapers.

E. Any figures expressed in terms of dollars per unit must be traceable to the original source documents containing the number of dollars and units from which the figures were calculated.

F. To the extent practicable, an ILEC shall provide all data and workpapers in ~~computer-readable form on diskettes~~ an electronic file on an electronically-formatted device using commercially available spreadsheet or database software formats. Each ~~diskette~~ electronically-formatted device must contain a "read me" or similar file that describes the contents of each file on the ~~diskette~~ device and provides an explanation of the definitions, formulas, equations and data on the ~~diskette~~ device.

G. An ILEC shall provide an index or detailed table of contents of the

workpapers and source documents.

[17.11.18.16 NMAC - N, 1-1-01; A, 08-15-06]

17.11.18.17 NEGOTIATION OF INTERCONNECTION AGREEMENTS:

Interconnecting LECs shall engage in good-faith negotiations and cooperative planning to achieve mutually agreeable interconnection arrangements pursuant to 47 U.S.C. Section 252 and the procedures set forth in this rule. An ILEC may negotiate and enter into a binding agreement for interconnection with a requesting LEC pursuant to 47 U.S.C. Section 252(a)(1), without regard to the requirements set forth in 17.11.18.8 NMAC through 17.11.18.16 NMAC.

A. Unless the negotiating parties establish a mutually agreeable date, negotiations shall be deemed to begin on the date an ILEC receives a request for interconnection from a LEC.

B. A request for interconnection shall:

(1) be in writing and be hand-delivered or sent by certified mail or facsimile;

(2) identify the initial specific issues to be resolved, the specific underlying facts and the requesting LEC's proposed resolution of each issue;

(3) include as appendices any other material necessary to support the request; and

(4) identify the person authorized to negotiate for the requesting LEC.

C. The requesting LEC may identify additional issues for negotiation without causing an alteration of the date on which negotiations are deemed to begin.

D. The ILEC from which interconnection is sought shall respond to the interconnection request no later than fourteen (14) business days from the date the request is received. The response shall:

(1) be in writing and be hand-delivered or sent by certified mail or facsimile;

(2) respond specifically to the requesting LEC's proposed resolution of each initial issue, identify the specific underlying facts upon which the response is based and, if the response is not in agreement with the requesting LEC's proposed resolution of each issue, state the responding LEC's proposed resolution of each issue;

(3) include as appendices any other material necessary to support the response; and

(4) identify the person authorized to negotiate for the responding LEC.

E. At any point during the negotiations required by this ~~subsection~~

section, a LEC may request the commission to participate in the negotiations and mediate differences arising in the course of the negotiations.

~~F. Within five (5) days of the execution of a negotiated agreement, the negotiating parties shall submit the agreement to the commission for approval.~~

~~G. The commission shall approve or reject a negotiated agreement in accordance with the standards prescribed in 47 U.S.C. Sections 252(e)(2)(A) and 252(e)(3). The commission shall issue an order approving or rejecting the negotiated agreement no later than ninety (90) days from the date of its submittal or the agreement shall be deemed approved. Upon issuance of an order approving the agreement, the agreement shall become effective either:~~

~~(1) upon the effective date indicated in the agreement; or~~

~~(2) if the agreement does not provide an effective date, immediately upon issuance of the commission's order approving the agreement.]~~

[17.11.18.17 NMAC - N, 1-1-01; A, 08-15-06]

17.11.18.18 SUBMITTAL OF AGREEMENTS TO THE COMMISSION:

A. Within sixty days of the execution of a negotiated agreement, the negotiating parties shall submit the agreement to the commission for approval.

B. A carrier submitting a negotiated interconnection agreement (or amendment to a negotiated agreement) to the commission pursuant to 47 U.S.C. Section 252(e) shall submit the original and two copies of the agreement accompanied by an original and two copies of an advice notice on the form prescribed by the commission in 17.11.18.24 NMAC or a substantially similar form. Each carrier shall sequentially number advice notices filed during each calendar year. A carrier may submit more than one agreement or amendment under a single advice notice provided that all agreements and amendments so submitted involve the same parties and are filed simultaneously.

C. The submitting carrier shall serve copies of the advice notice on the New Mexico Attorney General and shall, within five business days after filing, either:

(1) publish the advice notice once in a newspaper of general circulation in the State of New Mexico; or

(2) post and maintain the advice notice to the carrier's internet website until thirty (30) days after the subject agreement is approved or deemed approved, in which case the advice notice shall also provide the website address.

D. Within thirty (30) days after the date the advice notice is filed, any person, including the commission's telecommunications bureau staff, believing that the commission should reject an agreement filed in accordance with these procedures, or any portion thereof, may file an original and two copies of a request for rejection of the agreement or portion thereof with the Commission's Utility Division, Marian Hall, 224 East Palace Avenue, Santa Fe, New Mexico 87501. A request for rejection must state with particularity the basis for rejecting the agreement or portion thereof pursuant to 47 U.S.C. Section 252, including any violations of the standards set out in 47 U.S.C. Section 252(e)(2)(A). When it is filed with the commission, a request for rejection must be served on the contracting parties at their addresses listed in the advice notice and the New Mexico Attorney General by the person making the request. Within thirteen (13) days after the request is filed, the parties to the agreement or any other interested person may file a reply to the request.

E. Upon receipt of a request for rejection, the matter will be automatically assigned a case number and assigned on a rotating basis to a hearing examiner employed by the commission who shall preside over the proceedings and take all actions necessary and convenient thereto within the limits of the hearing examiner's authority unless otherwise ordered by the commission. The hearing examiner shall then determine whether a hearing should be held.

F. Unless the commission acts to approve or reject an agreement, an agreement submitted pursuant to this section shall be deemed approved pursuant to 47 U.S.C. Section 252(e)(4) ninety days (90) after submission.

[17.11.18.18 NMAC - N, 1-1-01; 17.11.18.18 NMAC - N, 08-15-06]

~~[17.11.18.18]~~ **17.11.18.19** **MEDIA - TION OF INTERCONNECTION AGREEMENTS:** A LEC that is unable to negotiate an interconnection agreement with an ILEC may petition the commission to mediate any unresolved issues. The LEC shall serve a copy of such petition on the parties to the negotiation. The commission ~~shall~~ may appoint a hearing ~~officer~~ examiner as a mediator.

A. Within fifteen (15) days of the filing of the petition, each party shall submit to the mediator a written statement summarizing the dispute and providing all relevant documentation concerning the unresolved issues.

B. The mediation proceeding shall be confidential. All documents exchanged and submitted during the mediation, except the parties' initial statements

and the final mediated agreement, shall be kept confidential unless the mediating parties agree to the disclosure of any such material.

C. The mediator shall not have the authority to impose a settlement on the parties but shall attempt to help them satisfactorily resolve the dispute. The mediator shall be authorized to make oral and written recommendations of resolution at any point in the mediation proceeding. In the event the mediating parties fail to reach resolution of their differences, the mediator, before terminating the mediation proceeding, shall submit to the parties a final proposed agreement. If a party does not accept the mediator's final proposed agreement, it shall advise the mediator in writing within ten (10) days of the mediator's issuance of the proposed agreement of the specific reasons for its refusal.

D. The mediation proceeding shall be terminated when:

(1) the parties have executed a mediated agreement;

(2) one or more of the parties files with the commission a written declaration that the mediation proceeding is terminated; the party must provide a detailed explanation for its decision to terminate the mediation; or

(3) the mediator files with the commission a written declaration that further efforts at mediation would be futile.

E. If the parties reach a mediated agreement, they shall submit it to the commission for approval. The mediator shall submit a report certifying that, to the best of the mediator's knowledge and belief, the agreement satisfies the standards prescribed in 47 U.S.C. Section 252(e) and all of its subparts.

F. The commission shall approve or reject the mediated agreement in accordance with the standards prescribed in 47 U.S.C. Section 252(e) and all of its subparts within thirty (30) days of its submittal. [17.11.18.19 NMAC - N, 1-1-01; 17.11.18.19 NMAC - Rn, 17.11.18.18 NMAC & A, 08-15-06]

~~[17.11.18.19]~~ **17.11.18.20** **ARBITRATION OF INTERCONNECTION AGREEMENTS:** A LEC that is unable to negotiate an interconnection agreement with an ILEC may petition the commission to arbitrate any unresolved issues.

A. To initiate arbitration, a LEC shall:

(1) file a petition with the commission not less than one hundred thirty-five (135) days nor more than one hundred sixty (160) days after the date on which its request for interconnection was received by the ILEC;

(2) provide all relevant documentation concerning the unresolved issues;

(3) provide all relevant documentation concerning the position of each party with respect to unresolved issues;

(4) provide all relevant documentation concerning any issue discussed and resolved by the parties; and

(5) on the same day it sends the petition to the commission, send a copy of the petition and documentation to the ILEC with which it has been unable to reach an agreement.

B. The ILEC may, within twenty-five (25) days after it receives the petition, respond to the LEC's petition and provide additional information to the LEC and the commission.

C. The commission shall resolve all issues presented to it within ~~[(9)]~~ nine months from the date the ILEC received the request for interconnection.

D. The commission shall approve or reject the arbitrated agreement in accordance with the standards prescribed in 47 U.S.C. Section 252(e) and all of its subparts within thirty (30) days after its submission by the parties.

[17.11.18.20 NMAC - N, 1-1-01; 17.11.18.20 NMAC - Rn, 17.11.18.19 NMAC; A, 08-15-06]

~~[17.11.18.20]~~ **17.11.18.21 STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS:** An ILEC may, pursuant to 47 U.S.C. Section 252(f), prepare and file with the commission a statement of terms and conditions for interconnection that it generally offers within New Mexico.

A. The commission shall approve, modify, or reject the statement in accordance with the requirements set forth in 47 U.S.C. Section 252(f), subsections (2)-(4).

B. The submission or approval of a statement of generally available terms and conditions shall not relieve an ILEC of its duty to negotiate the terms and conditions of an interconnection agreement pursuant to 47 U.S.C. Section 251(c)(1).

[17.11.18.21 NMAC - N, 1-1-01; 17.11.18.21 NMAC - Rn, 17.11.18.20 NMAC, 08-15-06]

~~[17.11.18.21]~~ **17.11.18.22 SUSPENSION OR MODIFICATION OF CERTAIN REQUIREMENTS FOR RURAL LECs:**

A. Interconnection obligations. A rural LEC serving fewer than ~~[(2)]~~ two percent of the aggregate subscriber lines installed nationwide may file an application with the commission for suspension or modification of the requirements of 47 U.S.C. Section 251, subsections (b) and (c), and 17.11.18.8 NMAC through 17.11.18.13

NMAC applicable to the local exchange service facilities specified in the application.

B. Costing and pricing requirements. An ILEC that qualifies as a rural LEC may file an application with the commission for suspension or modification of the requirements of 17.11.18.14 NMAC through 17.11.18.16 NMAC.

C. Standards for approval. Consistent with the public interest, convenience and necessity, the commission may grant the application to the extent and for the duration the commission deems necessary to avoid:

(1) a significant adverse economic impact on users of telecommunications services generally;

(2) imposing a requirement that is unduly economically burdensome; or

(3) imposing a requirement that is technically unfeasible.

D. Timeframe for commission action. The commission shall act upon an application within one hundred eighty (180) days of its receipt. Pending such action, the commission may temporarily suspend or modify the requirement to which the application applies with respect to the provider filing the application.

[17.11.18.22 NMAC - N, 1-1-01; 17.11.18.22 NMAC - Rn, 17.11.18.21 NMAC & A, 08-15-06]

~~[17.11.18.22]~~ **17.11.18.23 QUALITY OF SERVICE STANDARDS APPLICABLE TO ILEC INTERCONNECTION FACILITIES AND UNES:** In the event a standard for a specific interconnection facility or UNE is not prescribed in this rule, an ILEC shall meet generally accepted industry standards for that facility or UNE established by the institute of electrical and electronics engineers (IEEE), the American national standards institute (ANSI), Bellcore, or the FCC.

[17.11.18.23 NMAC - N, 1-1-01; 17.11.18.23 - Rn, 17.11.18.22 NMAC, 08-15-06]

17.11.18.24 ADVICE NOTICE FORM:

ADVICE NOTICE

[name of submitting carrier]

[ICA Advice Notice No. yy-~~nnn~~, e.g., 05-001]

[name of contracting carrier]

[Insert name of submitting carrier] gives notice to the public and the Commission of the submission of the negotiated interconnection agreement[s] described below pursuant to 47 U.S.C. Section 252(e). Notices, inquiries, protests and comments regarding

this submission should be directed to:

[insert contact information for representative of each contracting party]

Description of Agreement[s]

[Insert brief description of agreement with information such as the type of agreement, parties and general purpose, e.g., "Interconnection Agreement between Qwest Corporation and AT&T Communications of the Mountain States, Inc., providing rates, terms and conditions for interconnection, unbundled network elements, ancillary services and resale of telecommunications services."]

[If the agreement amends a previous agreement, identify the agreement that is the subject of the amendment, e.g., "The amendment modifies the interconnection agreement between the parties approved in Case No. ___, filed by Qwest Corporation with Advice Notice No. ___."]

[If applicable, add a similar description of each additional agreement or amendment between the same parties.]

Within thirty (30) days after the date of the filing of this Advice Notice, any person, including Commission Staff, believing that the Commission should reject the agreement[s] submitted with this Advice Notice or any portions thereof, must file an original and two copies of a request for rejection with the Commission's Utility Division, P.O. Box 1269, Santa Fe, New Mexico 87504. A request for rejection must state with particularity the basis for rejecting the agreement[s] or portions thereof pursuant to 47 U.S.C. Section 252, including any violations of the standards set out in 47 U.S.C. Section 252(e)(2)(A). When it is filed with the Commission, a request for rejection must be served on the contracting parties at their addresses listed above and on the New Mexico Attorney General, Post Office Drawer 1508, Santa Fe, New Mexico 87504-1508, by the person making the request. Within thirteen (13) days after the request is filed, the parties to the agreement or any other interested person may file a reply to the request.

Within five business days after the date of the filing of this Advice Notice, [insert name of submitting carrier] will cause a copy of this Advice Notice to be published in [insert name of newspaper] or post a copy of this Advice Notice to its website at [insert website address].

Respectfully Submitted,

[name of submitting carrier]

By:

[signature of representative of submitting carrier]

[printed name of representative of submitting carrier]

[title of representative of submitting carrier]

[17.11.18.24 NMAC - N, 08-15-06]

History of 17.11.18 NMAC: [RESERVED]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
FINANCIAL INSTITUTIONS
DIVISION**

**TITLE 12 TRADE, COM-
MERCE AND BANKING
CHAPTER 18 LOAN COMPANIES
PART 7 TERMS AND CON-
DITIONS OF PAYDAY LOAN AGREE-
MENTS**

12.18.7.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department.
[12.18.7.1 NMAC - N, 08/31/06]

12.18.7.2 SCOPE:

Small loan licensees conducting payday loan business in the state of New Mexico.
[12.18.7.2 NMAC - N, 08/31/06]

12.18.7.3 STATUTORY

AUTHORITY: Section 58-15-11 NMSA 1978.
[12.18.7.3 NMAC - N, 08/31/06]

12.18.7.4 DURATION:

Permanent.
[12.18.7.4 NMAC - N, 08/31/06]

12.18.7.5 EFFECTIVE DATE:

August 31, 2006 unless a later date is cited at the end of a section.
[12.18.7.5 NMAC - N, 08/31/06]

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, 08/31/06]

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 the consumer's 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, 08/31/06]

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 loan products shall ensure full compliance with this Subsection A of 12.18.7.8 NMAC no later than November 30, 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 C of 12.18.7.8 NMAC, 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 Subsection C of 12.8.7.8 NMAC 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. Each licensee who provides payday loan products shall ensure full compliance with this Subsection H of 12.18.7.8 NMAC no later than November 30, 2006.

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. Each licensee who provides payday loan products shall ensure full compliance with this Subsection J of 12.18.7.8 NMAC no later than November 30, 2006.

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, 08/31/06]

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 not more than 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 not more than 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, 08/31/06]

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 following 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 N of 12.18.7.10 NMAC:

(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, 08/31/06]

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, 08/31/06]

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 12.18.7.9 NMAC. 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, 08/31/06]

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. Each licensee who provides payday products shall ensure full compliance with this section no later than November 30, 2006.

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, 08/31/06]

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 30, 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 real time in order to ensure compliance with this rule and the New Mexico Small Loan Act of 1955 regardless of where the consumer requests a payday loan in New Mexico 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) contains a real time regulator interface that allows the division access to consumer reporting service database for required monitoring and reporting function; this includes the ability to determine consumer eligibility and reports for licensee examinations, regulatory reporting and program monitoring;

(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;

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

(7) does not allow the licensee to enter into a payday loan that would be in violation of this rule (12.18.7 NMAC);

(8) ensures that information submitted to certified database is confidential and shall not be released, or otherwise made available, to the public;

(9) demonstrates a working system to the division prior to the certification; and

(10) provider shall be a registered consumer reporting agency and be subject to the applicable rules and regulations applied by the federal trade commission under the Fair Credit Reporting Act.

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, 08/31/06]

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. Each licensee who provides payday products shall ensure full compliance with this section no later than November 30,

2006.

(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 balance.

(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, even 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, 08/31/06]

HISTORY OF 12.18.7 NMAC:
[RESERVED]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.6.5 NMAC, Section 27, effective 8/15/06.

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

A. AGRICULTURAL PROPERTY - BURDEN OF DEMON- STRATING 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 resting 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 nonagricultural 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 VAL-
UATION 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 through out 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, agricultural 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 others 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, 8/15/06]

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2006

Volume XVII	Submittal Deadline	Publication Date
Issue Number 1	January 3	January 17
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 3	April 14
Issue Number 8	April 17	April 28
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 3	July 17
Issue Number 14	July 18	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 18	September 29
Issue Number 19	October 2	October 16
Issue Number 20	October 17	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 14
Issue Number 24	December 15	December 29

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.