

**NEW  
MEXICO  
REGISTER**

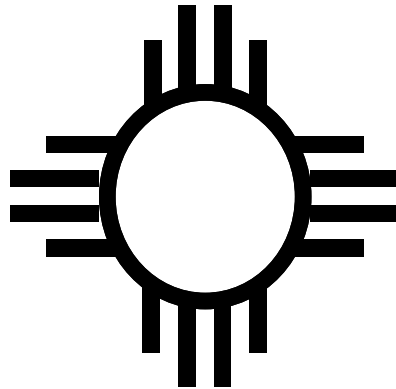


Volume XVII  
Issue Number 17  
September 15, 2006



# **New Mexico Register**

**Volume XVII, Issue Number 17  
September 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

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# New Mexico Register

Volume XVII, Number 17

September 15, 2006

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#### Effective Date and Validity of Rule Filings

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

**A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered**

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## Notices of Rulemaking and Proposed Rules

### ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

#### ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING AND REGULAR MEETING

On October 11, 2006, at 5:15 PM, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers in the basement level of the Albuquerque-Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM. The hearing will address the proposed new regulation, 20.11.81 NMAC (Part 81), entitled "Adjudicatory Procedures—Air Quality Control Board".

This new rule will establish rules of procedure for the Air Board that will govern the following:

(1) as provided by the New Mexico Air Quality Control Act, Section 74-2-7 H, I, J and K, NMSA 1978, petitions for hearings on the merits before the Air Board made by permit applicants, permittees or other persons who participated in a permitting action before the Albuquerque Environmental Health Department and who are adversely affected by the permitting action, and

(2) any other adjudicatory proceeding subject to the jurisdiction of the Air Board if an applicable Air Board regulation establishes that 20.11.81 NMAC applies to the proceeding.

This new regulation, 20.11.81 NMAC, does NOT govern the adjudicatory proceedings of the Air Board regarding:

(1) administrative enforcement actions initiated pursuant to Air Quality Control Act 74-2-12 NMSA 1978, entitled "Enforcement; compliance orders; field citations", and any administrative enforcement action that is governed by the administrative enforcement provisions of another regulation adopted by the Air Board;

(2) petitions for variance and related stays, which are governed by 20.11.7 NMAC, Variance Procedure; and

(3) adoption of, amendment to, and repeal of Air Board regulations as authorized by 74-2-6 NMSA 1978, which are to be governed by rulemaking provisions of another Air Board regulation adopted by the Air Board.

Following the public hearing, the Air Board is expected to hold its regular monthly meeting during which the Air Board is expected to consider adopting the proposed new regulation, 20.11.81 NMAC, Adjudicatory Procedures—Air Quality Control Board.

The Air Board is the federally delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Air Board to administer and enforce the Clean Air Act and the New Mexico Air Quality Control Act, and to require air pollution sources within Bernalillo County to comply with air quality standards and regulations.

Hearings and meetings of the Air Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Anyone intending to present technical testimony is asked to submit a written Notice Of Intent before 5:00 pm on Wednesday October 4, 2006 to: Attn: October Hearing Record, Ms. Margaret Nieto, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW. The Notice Of Intent shall identify the name, address, and affiliation of the person.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on October 4, 2006. These comments should include the name, address and affiliation of the individual or organization submitting the statement. Written comments may also be submitted electronically to [mnieto@cabq.gov](mailto:mnieto@cabq.gov) and should include the required name, address and affiliation of the individual or organization submitting the statement. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Mr. Neal Butt electronically at [nbutt@cabq.gov](mailto:nbutt@cabq.gov) or by phone (505) 768-2660.

**NOTICE FOR PERSON WITH DIS-**

**ABILITIES:** If you have a disability and/or require special assistance please call (505) 768-2600 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY users call the New Mexico Relay at 1-800-659-8331 and special assistance will be made available to you to review any public meeting documents, including agendas and minutes.

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT JUVENILE JUSTICE DIVISION

#### NOTICE OF PUBLIC HEARING

The Children, Youth and Families Department, Juvenile Justice Services, will hold a formal public hearing on Tuesday, October 17, 2006 from 1:30 p.m. to 3:30 p.m. in Room 565 on the 5<sup>th</sup> floor of the PERA building located at 1120 Paseo de Peralta, Santa Fe, New Mexico to receive public comments regarding a proposed amendment of regulation 8.14.11 NMAC, governing the Admission Criteria for Camp Sierra Blanca.

The proposed amendment to the regulation may be obtained by contacting Hiltona Mills at 505-827-7629. Interested persons may testify at the hearing or submit written comments no later than 3:30 p.m. on October 17, 2006. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Hiltona Mills, Juvenile Justice Services, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number: 505-827-8408.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact Mrs. Mills at 505-827-7629. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

### NEW MEXICO COUNSELING AND THERAPY PRACTICE BOARD

#### MEETING NOTICE

#### Rule Hearing

Notice is hereby given that the New Mexico Counseling and Therapy Practice Board will convene a Rule Hearing on **October**

**26, 2006.** The Rule Hearing will begin at 2:00 pm. The meeting will be held at the Nativo Lodge, 6000 Pan American Freeway NE, Albuquerque, NM 87109.

#### **Regular Board Meeting**

Notice is hereby given that the New Mexico Counseling and Therapy Practice Board will convene a Regular Board Meeting on **October 27, 2006.** Regular Board Meeting will begin at 9:00 am at the Nativo Lodge, 6000 Pan American Freeway NE, Albuquerque, NM 87109.

Persons desiring to present their views may appear in person at said time and place or send their written comments to the New Mexico Counseling and Therapy Practice Board Office at P.O. 25101, Santa Fe, NM, 87504.

The Board may go into close session during the meeting to discuss licensing and disciplinary matters as permitted by the Open Meeting 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 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 GAME COMMISSION**

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

On Thursday and Friday, September 28 and 29, 2006, beginning at 8:00 a.m. at the Tucumcari Convention Center/Fort Bascom Rm., 1500 W. Route 66, Tucumcari, NM 88401, the State Game Commission will meet in Public Session to consider action as appropriate on the following: Ethics Training Workshop (8:15 a.m. - Noon/Time Certain on 28 September); Consent Agenda for Revocations; Bureau of Land Management Briefing on Land Restoration Efforts in New Mexico; General Public Comments (Comments Limited to 3 Minutes); 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 out-

fitter and/or guide registration to any identified individual(s) that may have violated their Professional Code of Conduct as per 19.30.8, NMAC; Notice of Commission Contemplated Action; Land Conservation Appropriation Update and Action as needed; and Department Interaction with National Forest/National Grassland Transportation Planning.

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

- \* Adopt Private Land Entry and Sportsmen Enjoyment (PLEASE) Program Conservation Access Fee Exception, 19.34.7.8, NMAC;
- \* Adopt Proposed Change to the Manner and Method Rule, 19.31.10, NMAC, to Allow Use of Live Bluegill as Bain in Reservoirs;
- \* Adopt Proposed New Regulation - Civil Liability Values, 19.30.11, NMAC, for Trophy Poaching Values; and
- \* Adopt Big Game and Associated Rules for 2007-2008 and 2008-2009; Repeal 19.31.8, NMAC; 19.30.7, NMAC; 19.30.6, NMAC; 19.31.7, NMAC; Amend Manner and Method Rule, 19.31.10, NMAC; Boundary Description Rule, 19.30.4, NMAC; Hunting and Fishing Application Rule, 19.31.3, NMAC; Trapping and Furbearer Rule, 19.32.1, NMAC, and 19.32.2, NMAC; new rules will be adopted including: Bear and Cougar Rule; Barbary Sheep, Oryx and Persian Ibex Rule; Deer Rule; Elk Rule; Pronghorn, Antelope, and Javelina Rule; Turkey Rule; and Bighorn Sheep Rule.

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](http://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 HOISTING OPERATORS LICENSURE EXAMINING COUNCIL**

### **LEGAL NOTICE**

#### **Public Rule Hearing and Regular Meeting**

The New Mexico Hoisting Operators Licensure Examining Council will hold a Public Rule Hearing and regular meeting on Friday, October 13, 2006 at 1:30 p.m. at the Construction Industries Division-5200 Oakland Avenue NE-Albuquerque, NM 87113

The purpose of this is to consider 1) agenda items and discuss other business that may require action and 2) the adoption of a proposed rule change to Subsection H of Section 16.43.2.24 NMAC: Law and Safety Examination Fee of the Hoisting Operator Safety. A copy of the Agenda will be available at the office of the Executive Director prior to said meeting. Persons desiring to present their views on the proposed rule may write to request a draft copy from the Council's office at the Hoisting Program located at the above address. Persons wishing to present their comments at the hearing will need (12) copies of any comments or proposed changes for distribution to the Board and staff.

If you have any questions, or if you are an individual with a disability who wishes to attend the hearings, but you need a reader, amplifier, qualified sign language interpreter, any form of auxiliary aid or service to participate, please call Carmen Gomez, Executive Director at (505) 222-9809 at least two weeks prior to the meetings or as soon as possible.

## **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 18, 2006, in Room 2022 (Yucca Room) at the New Mexico State Library (1205 Camino Carlos Rey), Santa Fe, New Mexico. The subject of the hearing will be **Premium Assistance for Kids and Pregnant Women.**

Senate Bill 267, enacted in the 2006 Legislative Session, authorizes the Secretary of the Human Services Department to administer a state-funded



program of premium assistance for children. The program is named *Premium Assistance for Kids and Pregnant Women*. The Department is proposing to implement the program in Chapter 171 of the NMAC. Also, 8.352.2 NMAC, *Recipient Hearings* is being revised to address appeals rights for applicants and recipients of Premium Assistance for Kids.

Interested persons may submit written comments no later than 5:00 p.m., September 18, 2006, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Interested persons may also address comments via electronic mail to: [Magdalena.Romero@state.nm.us](mailto:Magdalena.Romero@state.nm.us). 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](http://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 BOARD OF  
PODIATRY**

**LEGAL NOTICE**

**Public Rule Hearing and Regular Board Meeting**

The New Mexico Board of Podiatry will hold a Rule Hearing on November 17, 2006. Following the Rule Hearing the New Mexico Board of Podiatry will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Podiatry Rule Hearing will begin at 1:00 PM and the regular meeting will convene following the rule hearing. Portions of the Regular Meeting may be closed to the public while the Board is in Executive Session. The meetings will be held at the Toney Anaya Building, 2550 Cerrillos Road, Hearing Room #1, Santa Fe, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules in NMAC 16.21 - Part 1 General Provisions, Part 2 Fees, Part 3 License By Exam, Part 4 Licensure By Reciprocity, Part 5 Temporary License and Emergency License, Part 8 Continuing Education, Part 10 Lapse of License and Reinstatement, Part 11 Disciplinary Procedures and Part 12 Management of Medical Records.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the west Capital Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87505, or call (505) 476-4613 after 10/2/06. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than 10/25/06. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4613 at least two weeks prior to the meeting or as soon as possible.

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

**NEW MEXICO 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 Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on October 16, 2006, from 1:00 p.m. to 4:00 p.m.. The purpose of the public hearing will be to obtain input on the following rules:

Rule Number	Rule Name	Proposed Action
6.10.3 NMAC	COMPLAINT PROCEDURE	Amend sections 3, 6, 7, 8, and 9 to include process for resolving complaints brought pursuant to the McKinney-Vento Education for Homeless Children and Youth Act
6.12.7 NMAC (Proposed NMAC Number)	BULLYING PREVENTION (Proposed Part Name)	Adopt new rule to address Bullying Prevention
6.12.6 NMAC	SCHOOL DISTRICT WELLNESS POLICY	Amend section 8 to include tactical emergency response plans

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Dr. Kristine M. Meurer, Director, School and Family Support Bureau, Public Education Department, 120 S. Federal Place, Room 206; Santa Fe, New Mexico 87501 ([kristine.meurer@state.nm.us](mailto:kristine.meurer@state.nm.us)) (505) 222-4748 (telefax (505) 827-1826). Information regarding the exact time and location of the auxiliary hearing will be posted on the Public Education Department’s website (<http://ped.state.nm.us/>) at least thirty days prior to the hearing.

Written comments must be received no later than 5:00 pm on October 16, 2006. However, the submission of written comments as soon as possible is encouraged.

The proposed rulemaking actions may be accessed on the Department’s website (<http://ped.state.nm.us/>) or obtained from Doris Sandoval, School and Family Support Bureau, Public Education Department, 120 S. Federal Place, Room 206; Santa Fe, NM 87501 ([doris.sandoval@state.nm.us](mailto:doris.sandoval@state.nm.us)) (505) 827-1803(telefax (505) 827-1826). 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 this meeting are asked to contact Ms. Sandoval as soon as possible. The Department requests at least ten (10) days advance notice

to provide requested special accommodations.

**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 Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on October 18, 2006 from 1:00-3:00 pm. The purpose of the public hearing will be to obtain input on the following rules:

Rule Number	Rule Name	Proposed Action
6.80.3 NMAC	Charter School Districts	Adopt new rule to implement The Charter School District Act, (Sections 22 -8E1 to 22-8E-8).

Interested individuals may testify at the public hearing or submit written comments to Charter Schools Division, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 [don.duran@state.nm.us](mailto:don.duran@state.nm.us) (telefax (505) 827-6725). Information regarding the exact time and location of the auxiliary hearing will be posted on the Public Education Department’s website (<http://ped.state.nm.us/>) at least thirty days prior to the hearing.

Written comments must be received no later than 5:00 pm on October 18, 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 Drucie Herrera, Administrative Assistant, Charter Schools Division, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 or (505) 827-6909. The proposed rules will be made available at least thirty days prior to the hearing.

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

**NEW MEXICO PUBLIC REGULATION COMMISSION  
LEGAL DIVISION**

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF REPEALING  
AND REPLACING THE COMMISSION’S  
RULES FOR THE  
STATE FIRE MARSHAL,

Docket No.  
06-00243-FM

STATE FIRE MARSHAL,

Petitioner.

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission (“Commission”) proposes to adopt replacements to the Commission’s Rules for the State Fire Marshal. This matter comes before the Commission on the Motion to Initiate Rulemaking (“Motion”) filed June 26, 2006 by John Standefer, the State Fire Marshal (“Fire Marshal”). The Fire Marshal asks the Commission to commence a proceeding to adopt replacements to the Commission’s Rules for the State Fire Marshal. The Fire Marshal attached a draft of his proposed rules to his Motion, which is attached to this

Notice of Proposed Rulemaking (“NOPR”) as Exhibit 1. Having considered the Fire Marshal’s Motion and the draft rules attached to those pleadings, and being fully advised,

THE COMMISSION FINDS  
AND CONCLUDES:

1. The State Fire Board is directed to “formulate, adopt and promulgate, and amend or revise regulations for fire prevention and safe conduct or use of public occupancies.” NMSA 1978, Section 59A-52-15. The Commission is the State Fire Board, as provided in NMSA 1978 Section 8-8-21.E.

2. The Fire Marshal’s Motion recommends changes throughout the proposed rules to: update citations to the laws throughout the rules; change from the National Fire Protection Association codes to those published by the International Code Council for fire prevention and public occupancies; create a new General Provisions rule with definitions, procedures for filing documents and applications; create a new rule on the process for obtaining certificates of fitness for the design, installation, inspection, maintenance and repair of fire protection equipment; repeal 10.25.4 NMAC, Portable Fire Extinguishers, 10.25.7 NMAC, Flammable and Combustible Liquids, and 10.25.8 NMAC, Storage of Flammable and Combustible Liquids at Farms and Isolated Sites, as they are now included in other rules; repeal 10.25.9 NMAC, Use of Public Occupancies, as it has been merged into 10.25.5 NMAC, Fire Prevention and Public Occupancy; provide a clear standard process for review of fire protection designs for new and re-modeled buildings, 10.25.5 NMAC; and provide a process for issuing licenses and permits for the sale of fireworks, 10.25.6 NMAC. The proposed amendments are so substantial as to require the repeal and replacement of the current rules.

3. The Fire Marshal has formatted the proposed rules consistent with the requirements for compilation into the New Mexico Administrative Code and, if the proposed rules are adopted, they would be contained in Title 10, Chapter 25 of the New Mexico Administrative Code.

4. The Fire Marshal’s Motion is well taken and should be granted as provided by this NOPR. The

Commission finds that it should issue the proposed rules for comment.

5. The Commission will take written comments on the rules proposed in this NOPR from any interested person. Interested persons shall file their written comments no later than on or before October 24, 2006. Comments suggesting changes to the proposed rules shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rules shall be in legislative format. A copy of the proposed rules in electronic format may be obtained from the Commission to facilitate this requirement. Any proposed changes to Exhibit 1 shall be submitted in hard copy, and the Commission strongly encourages all persons proposing such changes to file an additional copy in electronic format (3.5-inch floppy disk in Microsoft Word 95 or Microsoft Office 97 formats). The label on the floppy disk shall clearly designate the name of the person submitting the proposed changes and the docket number of this proceeding. All pleadings, including comments and suggested changes to the proposed rules, shall bear the caption and docket number contained at the top of this Notice.

6. Comments on the proposed amendments to the Rules for the State Fire Marshal shall be sent to:

Bettie Cordova  
ATTN: Proposed Rules for  
Public Safety and Law Enforcement  
New Mexico Public Regulation  
Commission  
P.O. Box 1269  
Santa Fe, NM 87504-1269  
Telephone: (505) 827-4526

7. Additional copies of the proposed rules can be obtained from:

Paul Linville  
ATTN: Proposed Rules for  
Public Safety and Law Enforcement  
New Mexico State Fire Marshal's  
Office  
P.O. Box 1269  
Santa Fe, NM 87504-1269  
Telephone: (505) 827-3734

8. The Commission will review all timely submitted written com-

ments and will hold public hearings to take oral comment regarding the proposed rules. The schedule and locations for these public hearings are as follows:

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

10. Any person with a disability requiring special assistance in order to participate in a hearing should contact Bettie Cordova at (505) 827-4526 at least 48 hours prior to the commencement of the hearing.

11. Copies of this Notice should be sent to all persons who have made a written request for advance notice and to any other person requesting service, and should be published in two newspapers of general circulation in the state and in the New Mexico Register.

IT IS THEREFORE ORDERED:

A. The amended Rules for the State Fire Marshal, attached to this NOPR as Exhibit 1, are proposed for adoption as provided by this Notice.

B. Interested persons shall file their written and/or oral comments on the proposed rules as provided in this Notice.

C. The Commission shall hold public hearings as provided in this Notice.

D. Staff of the Fire Marshal's Office shall mail a copy of this Notice, excluding Exhibit 1, to all persons who have made a written request for advance notice and to any other person requesting service. Staff shall cause this Notice to be published in two newspapers of general circulation in the state and in the New Mexico Register, shall provide the Notice by e-mail or facsimile transmission to those persons who have so requested.

E. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 31st day of August 2006.

NEW MEXICO PUBLIC REGULATION  
COMMISSION

BEN R. LUJAN, CHAIRMAN

JASON A. MARKS,  
VICE-CHAIRMAN

DAVID W. KING,  
COMMISSIONER

LYNDA M. LOVEJOY,  
COMMISSIONER

E. SHIRLEY BACA,  
COMMISSIONER

**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 Board Room, 4900 Alameda Blvd NE, Albuquerque, New Mexico, commencing in executive session at 8:00 o'clock a.m. on Thursday, September 21, 2006. The public session will begin at 9:00 o'clock a.m. on Thursday, September 21, 2006. The Commission will consider adoption of the proposed amended rules for incorporation into the Rules Governing Horse Racing in New Mexico No. 15.2.4.8 NMAC (regarding claiming races); No. 15.2.5.8 NMAC (regarding entries and nominations); No. 15.2.5.9 NMAC (regarding declarations and scratches); No. 15.2.6.9 (regarding medications and prohibited substances); and No. 16.47.1.12 (regarding jockeys.)

Copies of the proposed rules may be obtained from Julian Luna, Agency Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Albuquerque, New Mexico 87113, (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: August 28, 2006

## 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 amend the following regulation:

#### Motor Vehicle Code

18.19.5.12 NMAC Section 66-5-9 NMSA 1978

#### *(Proof of Identification Number, Identity and Residency)*

The proposals were placed on file in the Office of the Secretary on September 1, 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 November 15, 2006.

A public hearing will be held on the proposals on Thursday, October 19, 2006, at 9:30 a.m. in the 1<sup>st</sup> floor auditorium of the Harold Runnels Bldg., 1190 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 October 19, 2006.

#### 18.19.5.12 PROOF OF IDENTIFICATION NUMBER, IDENTITY AND RESIDENCY:

~~A. Applicants for a New Mexico permit, provisional or driver's license, other than a commercial driver's license, must provide documentary proof of their identification number, identity and residency.~~

~~B. Applicants must produce documentary proof of a social security number, individual tax identification number (ITIN), or an acceptable substitute for a social security number or ITIN.~~

~~(1) The applicant's social security card, or any of the following documents containing the applicant's social security number, will provide sufficient documentary proof of the applicant's social security number: a driver's license; a government-issued photo identification card; a military identification card;~~

~~from an educational institution; an original employment payroll receipt; tax forms such as a W-2, W-4, W-8, W-9 or other IRS official documents; a medical card; or a statement from a financial institution.~~

~~(2) The applicant's letter from the IRS issuing the ITIN, or tax forms or other IRS official documents using the applicant's ITIN, will provide sufficient documentary proof of the applicant's ITIN.~~

~~(3) The following may be accepted as a substitute for a social security number or ITIN:~~

~~(a) a valid passport issued by country of citizenship;~~

~~(b) valid documentation issued by the INS such as an I-551 "resident alien" card, I-151 "alien registration receipt" card, I-688 "temporary resident" card, or an I-797 "notice of action; or~~

~~(c) a matricula consular issued by the Mexican consulate in Albuquerque.~~

~~C. Applicants must produce one of the following documents as proof of identity: original birth certificate; certified copy of birth certificate; valid passport issued by country of citizenship; Indian census card; matricula consular issued by the Mexican consulate in Albuquerque; current driver's license from another state or country.~~

~~D. Applicants must provide two of the following documents, showing a New Mexico address for the applicant, as proof that the applicant lives in New Mexico: a rental agreement or purchase agreement; any original government-issued document; a utility bill; an insurance bill; a bank statement; a check book; an employment pay stub; a local property tax statement; proof of a minor child enrolled in a public or private school; a voter registration card; a library card; original documents from a New Mexico community service organization; original documents from a city, county, state or federal government service organization attesting to the fact that the applicant is a New Mexico resident; a matricula consular issued by the Mexican consulate in Albuquerque.~~

~~E. The motor vehicle division may require foreign nationals applying for a driver's license to provide a certified copy of their driving record with an English language translation of the certified copy from the jurisdiction where the foreign national is currently or was previously licensed.]~~

~~A. Applicants for a New Mexico permit, provisional or driver's license, other than a commercial driver's license, or an applicant for an identification card, must provide documentary proof of their identification number, identity and residency.~~

~~B. Applicants must produce documentary proof of a social security~~

~~number, individual tax identification number (ITIN), or an acceptable substitute for a social security number or ITIN.~~

~~(1) The applicant's social security card, or any of the following documents containing the applicant's social security number, will provide sufficient documentary proof of the applicant's social security number:~~

~~(a) a state issued driver's license;~~  
~~(b) a United States or state government-issued photo-identification card;~~

~~(c) a United States military identification card;~~

~~(d) an original employment payroll receipt;~~

~~(e) tax forms such as a W-2, W-4, W-8, W-9 or other IRS official documents;~~

~~(f) a United States or state government-issued medical card; or,~~

~~(g) a statement from a federally regulated financial institution.~~

~~(2) The applicant's ITIN card is sufficient proof of the ITIN.~~

~~(3) The following may be accepted as a substitute for a social security number or ITIN:~~

~~(a) one of the following documents issued by the United States citizen and immigration services:~~

~~(i) I-551 resident alien card;~~

~~(ii) permanent resident card;~~

~~(iii) I-766 employment authorization card; or,~~

~~(iv) I-797 notice of action.~~

~~(b) a matricula consular issued after February 1, 2005, by the Mexican consulate in Albuquerque or El Paso.~~

~~C. Applicants must produce one of the following documents as proof of identity:~~

~~(1) original birth certificate issued by a United States state or territory;~~

~~(2) certified copy of birth certificate issued by a United States state or territory;~~

~~(3) valid passport issued by country of citizenship;~~

~~(4) Indian census card;~~

~~(5) current driver's license from another state or country.~~

~~D. Applicants fifteen years of age or older must provide two of the following documents, showing a New Mexico address for the applicant, as proof that the applicant lives in New Mexico:~~

~~(1) a rental agreement or purchase agreement;~~

~~(2) any original government-issued document;~~

~~(3) a utility bill;~~

~~(4) an insurance bill;~~

~~(5) a bank statement;~~

~~(6) a check book;~~

(7) an employment pay stub;  
(8) a local property tax statement;  
(9) proof of a minor child enrolled in a public or private school;

(10) a voter registration card;  
(11) original documents from a New Mexico community service organization attesting to the fact that the applicant is a New Mexico resident;

(12) original documents from a city, county, state or federal government service organization attesting to the fact that the applicant is a New Mexico resident.

E. Applicants less than fifteen years of age applying for an identification card must provide one of the following documents, showing a New Mexico address for the applicant, as proof that the applicant lives in New Mexico:

(1) proof that the child is enrolled in a public or private school;

(2) a bank statement;

(3) documents from a New Mexico community service organization;

(4) any original government-issued document;

(5) documents from membership in a religious organization;

(6) documents from membership in a sports organization.

F. The motor vehicle division may require foreign nationals applying for a driver's license to provide a certified copy of their driving record with an English language translation of the certified copy from the jurisdiction where the foreign national is currently or was previously licensed.

[18.19.5.12 NMAC - N, 6/29/01; A, 6/14/02; A, 6/30/03; A, XXX]

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**End of Notices and  
Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

**This is an amendment to 16.2.1 NMAC, Section 7 and the creation of new Section 11, effective 9-25-06.**

#### 16.2.1.7 DEFINITIONS:

A. The definitions in Subsection B of 16.2.1.7 NMAC (Part 1 of the rules) are in addition to those in the act.

B. The following definitions apply to the rules and the act.

(1) "Act" is the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1 through 61-14A-22 NMSA 1978.

(2) "Animal acupuncture" is acupuncture performed on any animal other than man. Animal acupuncture is authorized under the supervision of a doctor of veterinary medicine licensed in New Mexico and only under the guidelines of the rules of the New Mexico Veterinary Practice Act (61-14-1. to 61-14-20.) and the rules of the New Mexico board of veterinary medicine. (16.25.9.15 NMAC)

(3) "Applicant" is a person who has submitted to the board an application for licensure as a doctor of oriental medicine.

(4) "Applicant for temporary licensure" is a person who has submitted to the board an application for temporary licensure as a doctor of oriental medicine.

(5) "Auricular detoxification specialist supervisor" is a doctor of oriental medicine registered with the board under the provisions of Section 18 of 16.2.16 NMAC (Part 16 of the rules).

(6) "Auricular detoxification specialist training program" is a training program approved by the board under the provisions of Section 26 of 16.2.16 NMAC (Part 16 of the rules) to train certified auricular detoxification specialists and auricular detoxification supervisors.

(7) "Auricular detoxification specialist training program trainer" is a member of the staff of an auricular detoxification specialist training program who, though not necessarily licensed or certified by the state, shall be deemed to be a certified auricular detoxification specialist only for the purposes of and only for the duration of the auricular detoxification specialist training program.

(8) "Bioidentical hormones" are hormones that are chemically identical to, or are analogues of hormones found in living entities or that have substantially identical physiological functions as hormones found in living entities.

(9) "Biomedical diagnosis" is a diagnosis of a person's medical status based on the commonly agreed upon guidelines of conventional biomedicine as classified in the most current edition or revision of the international classification of diseases, 9th revision, clinical modification (ICD-9-CM).

(10) "Biomedicine" is the application of the principles of the natural sciences to clinical medicine.

(11) "Certified auricular detoxification specialist" is a person certified by the board under the provisions of Section 10 of 16.2.16 NMAC (Part 16 of the rules) to perform auricular detoxification techniques, including acupuncture, only on the ears, only in the context of an established treatment program and only under the supervision of an auricular detoxification supervisor registered with the board. The title may be abbreviated as CADS.

(12) "Chief officer" is the board's chairperson or his or her designee serving to administer the pre-hearing procedural matters of disciplinary proceedings.

(13) "Clinical skills examination" is a board approved, validated, objective practical examination that demonstrates the applicants entry level knowledge of and competency and skill in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine and of biomedicine.

(14) "Clinical experience" is the practice of acupuncture and oriental medicine as defined in the act, after initial licensure, certification, registration or legal recognition in any jurisdiction to practice acupuncture and oriental medicine. A year of clinical experience shall consist of not less than five hundred (500) patient hours of licensed acupuncture and oriental medical practice within a calendar year, seeing at least twenty-five (25) different patients within that year. One patient hour is defined as one clock hour spent in the practice of oriental medicine with patients.

(15) "Complainant" is the complaining party.

(16) "Complaint committee" is a board committee composed of the complaint committee chairperson and the complaint manager.

(17) "Complaint committee chairperson" is a member of the board appointed by the board's chairperson.

(18) "Complaint manager" is the board's administrator or any member of the board appointed by the board's chairperson.

(19) "Department" is the state of New Mexico regulation and licensing department.

(20) "Doctor of oriental medicine" is a physician licensed to practice

acupuncture and oriental medicine pursuant to the act and as such has responsibility for his or her patient as a primary care physician or independent specialty care physician.

(21) "Educational program" is a board approved complete formal program that has the goal of educating a person to be qualified for licensure as a doctor of oriental medicine in New Mexico, is at least four (4) academic years and meets the requirements of Section 61-14A-14 of the act and 16.2.7 NMAC (Part 7 of the rules).

(22) "Expanded prescriptive authority" is authorized by Section 61-14A-3.G(4) and (5), and 61-14A08.1 of the act and is granted to a doctor of oriental medicine who is certified by the board after fulfilling the requirements, in addition to those necessary for licensure, defined in Section 11 of 16.2.2 NMAC (Part 2 of the rules). Expanded prescriptive authority is in addition to the prescriptive authority granted all licensed doctors of oriental medicine as defined in Section 61-14A-3.G(2) of the act. Expanded prescriptive authority may be abbreviated as Rx2.

(23) "Extended prescriptive authority" is authorized by Section 61-14A-3.H(4) and (5), and 61-14A-8.1 of the act and is granted to a doctor of oriental medicine who is certified by the board after fulfilling the requirements, in addition to those necessary for licensure, defined in Section 10 of 16.2.2 NMAC (Part 2 of the rules). Extended prescriptive authority is in addition to the prescriptive authority granted all licensed doctors of oriental medicine as defined in Section 61-14A-3.G(2) of the act. Extended prescriptive authority may be abbreviated as Rx1.

(24) "Extern" is a current applicant undergoing supervised clinical training by an externship supervisor, and who has satisfied the application requirements for extern certification and who has received an extern certification issued by the board pursuant to 16.2.14 NMAC (Part 14 of the rules).

(25) "Externship" is the limited practice of oriental medicine in New Mexico by an extern supervised by an externship supervisor pursuant to 16.2.14 NMAC (Part 14 of the rules).

(26) "Externship supervisor" is a doctor of oriental medicine who has at least five years clinical experience, maintains a clinical facility and maintains appropriate professional and facility insurance, and who has satisfied the board's application requirements for an externship supervisor and has received an externship supervisor registration issued by the board pursuant to 16.2.14 NMAC (Part 14 of the rules).

(27) "Good cause" is the inability to comply because of serious accident, injury or illness, or the inability to comply because of the existence of an unforeseen, extraordinary circumstance beyond the control of the person asserting good cause that would result in undue hardship. The person asserting good cause shall have the burden to demonstrate that good cause exists.

(28) "Inactive licensee" means a licensee in good standing whose license is placed on inactive status by the board and is therefore considered an inactive license in compliance with 16.2.15 NMAC (Part 15 of the rules).

(29) "Licensee" is a doctor of oriental medicine licensed pursuant to the act.

(30) "Licensing candidate" is an applicant whose initial application for licensure as a doctor of oriental medicine has been approved by the board.

(31) "Licensure by endorsement" is a licensing procedure for the experienced practitioner who completed his or her initial education in acupuncture and oriental medicine prior to the establishment of current educational standards and who has demonstrated his or her competency through a combination of education, examination, authorized legal practice and clinical experience as defined in 16.2.17 NMAC (Part 17 of the rules). Completion of the licensure by endorsement process results in full licensure as a doctor of oriental medicine.

(32) "Limited temporary license" is a license issued under the provisions of Section 12 of 16.2.5 NMAC (Part 5 of the rules) for the exclusive purpose of teaching a single complete course in acupuncture and oriental medicine and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of such techniques by a licensed, registered, certified or legally recognized healthcare practitioner from jurisdictions other than New Mexico. A limited temporary license shall be required for any person who demonstrates, practices or performs diagnostic and treatment techniques on another person as part of teaching or assisting in the implementation of new techniques, if they are not a licensee or temporary licensee. Limited temporary licenses shall not be issued to teachers for the purpose of teaching full semester courses that are part of an approved educational program.

(33) "Live cell products" are living cells from glandular tissues and other tissues.

(34) "Natural substances" are physical matter including atoms, molecules, elements and compounds that exist in nature or are formed by natural forces, processes or entities including their constituents, preparations, concentrates, refinements, isolates, extracts, derivatives, byproducts, ligands and metabolites, and the synthetic

chemical surrogates, isomers and analogues of these. A natural substance may be the crude substance, a prepared form that renders the crude substance clinically useful, a constituent derived from the crude substance, or a synthesized chemical surrogate, isomer or analogue of the constituent. Natural substances may be classified as drugs, dangerous drugs or controlled substances as these are defined in the New Mexico Drug Device and Cosmetic Act or the Controlled Substances Act.

(35) "NCA" is a notice of contemplated action.

(36) "Office" is the physical facility used for the practice of acupuncture and oriental medicine and auricular detoxification.

(37) "Oxidative medicine" is the understanding and evaluation of the oxidation and reduction biochemical functions of the body and the prescription or administration of substances, and the use of devices and therapies to improve the body's oxidation and reduction function and health.

(38) "Post graduate educational program" is an educational program that meets the requirements of Section 61-14A-8.1 NMSA 1978 of the act and 16.2.2 NMAC (Part 2 of the board's rules).

(a) Extended prescriptive authority.

(b) Expanded prescriptive authority.

~~[(38)]~~(39) "Protomorphogens" are extracts of glandular tissues.

~~[(39)]~~(40) "Respondent" is the subject of the complaint.

~~[(40)]~~(41) "Rules" are the rules, promulgated pursuant to the act, governing the implementation and administration of the act as set forth in 16.2 NMAC (Title 16 - Occupational and Professional Licensing, Chapter 2 - Acupuncture and Oriental Medicine).

~~[(41)]~~(42) "Supervised clinical observation" is the observation of acupuncture and oriental medical practice, in actual treatment situations under appropriate supervision.

~~[(42)]~~(43) "Supervised clinical practice" is the application of acupuncture and oriental medical practice, in actual treatment situations under appropriate supervision.

~~[(43)]~~(44) "Supervision" is the coordination, direction and continued evaluation at first hand of the student in training or engaged in obtaining clinical practice and shall be provided by a qualified instructor or tutor as set forth in 16.2.7 NMAC (Part 7 of the rules). No more than four (4) students shall be under supervision for supervised clinical practice and no more than four (4) students shall be under supervision for supervised clinical observation by a qualified instructor at any time.

~~[(44)]~~(45) "Temporary licensee" is a doctor of oriental medicine who holds a temporary license pursuant to the act, Section 61-14-12 and 16.2.5 NMAC (Part 5 of the rules).

~~[(45)]~~(46) "Treatment program" is an integrated program that may include medical and counseling services for disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency that is located at a fixed location or in a mobile unit and approved by the board under the provisions of Section 28 of 16.2.16 NMAC (Part 16 of the rules).

[11-3-81...7-1-96; N, 8-31-98; A, 2-17-00; 16.2.1.7 NMAC - Rn & A, 16 NMAC 2.1.7, 8-13-01; A, 4-4-02; A, 3-2-03; A, 02-15-05; A, 9-25-06]

**16.2.1.11 DISASTER OR EMERGENCY PROVISION:** Doctors of oriental medicine, educational programs and auricular detoxification specialists currently licensed and in good standing or otherwise meeting the requirements for New Mexico licensure in a state which a federal disaster has been declared may apply for licensure in New Mexico under 16.2.1.11 NMAC during the four months following the declared disaster. The application for emergency provisional licensure shall be made to the board and shall include:

A. an application under this provision shall be made to the board that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number accompanied by proof of identity, which may include a copy of drivers license, passport or other photo identification issued by a governmental entity; and the applicants signature on the affidavit made part of the application form; and

B. an affidavit attesting to the consequences suffered by the applicant as a result of the federal disaster; and

C. evidence of completion of requirements specified in 16.2.3, 16.2.4, 16.2.7, 16.2.10, and 16.2.16 NMAC (Parts 3, 4, 7, 10 and 16 of the board's rules); if the applicant is unable to obtain documentation from the federal declared disaster area or as a result of the declared federal disaster the board may accept other documentation in lieu of the forms required under 16.2.3, 16.2.4, 16.2.7, 16.2.10, and 16.2.16 NMAC (Parts 3, 4, 7, 10 and 16 of the board's rules); the board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving licensure; and

D. exceptions may be made for good cause; and

E. an affidavit certifying



that all the documents submitted with the application are true and accurate or are faithful copies of the original; and

E. nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.2.3, 16.2.4, 16.2.7, 16.2.10, and 16.2.16 NMAC (Parts 3, 4, 7, 10 and 16 of the board's rules); and

H. the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine.

[16.2.1.11 NMAC - N, 9-25-06]

## NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.8 NMAC, Section 12 and the creation of new Section 13, effective 9-25-06.

### 16.2.8.12 EXPIRED LICENSE:

A. If a licensee has not renewed his or her license, including all continuing education requirements specified in 16.2.9.8 NMAC (Section 8 of Part 9 of the rules) within the sixty (60) day grace period provided by Section 61-14A-15 NMSA 1978, the license is expired and that licensee shall not practice oriental medicine until their expired license is renewed. For an expired license, if a properly completed application for license renewal is received at the board office within one year of the last regular renewal date, the license shall be renewed if all the requirements of late license renewal during the sixty day grace period provided by Section 61-14A-15 NMSA 1978 are completed, in addition to the requirements of 16.2.8.11 NMAC (Section 11 of Part 8 of the rules), and the licensee also pays the fee for expired license renewal specified in 16.2.10 NMAC (Part 10 of the rules). For each licensee whose license has expired, the board shall notify the licensee by return receipt mail sent to the address on record that the license has expired and shall notify the licensee that he or she must not practice oriental medicine until the license is renewed. This notification shall also contain an explanation of the procedures and fees for renewing the license and the consequences of not renewing the license. The board is responsible for sending the notification by return receipt mail in a timely manner to the address on record for the licensee and for maintaining a record of all such notifications sent including the return receipt documents. The board is not responsible for verifying that the return receipt was returned by the post office to the board, for further follow up to verify that the notification was received or

to locate and notify a licensee who has changed address without properly notifying the board of the new address. The licensee is responsible for notifying the board of the correct current address and of any address changes. Any former licensee, after being properly notified as described above, who fails to renew his or her expired license by the next July 31 annual license renewal date after the notification [~~within one year of that licensee's last regular renewal date~~] shall be required to apply as a new applicant except that there shall be a limited licensure reinstatement period as defined in 16.2.8.13 NMAC (Section 13 of Part 8 of the rules).

B. If a doctor of oriental medicine certified for expanded or extended prescriptive authority does not complete all expanded (Rx2) or extended prescriptive authority (Rx1) continuing education requirements specified in 16.2.9.9 NMAC (Section 9 of Part 9 of the rules) within the sixty (60) day grace period, the expanded or extended prescriptive authority certification is expired and that licensee shall not be certified for expanded or extended prescriptive authority until the continuing education is completed. Provided that all other renewal requirements have been received by the board, such a licensee shall continue to be licensed as a doctor of oriental medicine and is authorized for that scope of practice but shall not be authorized for the expanded or extended prescriptive authority scope of practice. For an expired expanded or extended prescriptive authority certification, if a properly completed application for license renewal, including proof of completion of the required expanded or extended prescriptive authority continuing education, is received at the board office within one year of the last regular renewal date, the expanded or extended prescriptive authority shall be renewed if all the requirements of late license renewal during the sixty day grace period provided by Section 61-14A-15 NMSA 1978 are completed, in addition to the requirements of 16.2.8.11 NMAC (Section 11 of Part 8 of the rules), and the licensee also pays the fee for expired license renewal specified in 16.2.10 NMAC (Part 10 of the rules). For each licensee whose expanded or extended prescriptive authority certification has expired, the board shall notify the licensee by return receipt mail sent to the address on record that the expanded (Rx2) or extended (Rx1) prescriptive authority certification has expired and shall notify the licensee that he or she must not practice those areas authorized by the expanded (Rx2) or extended (Rx1) prescriptive authority certification until the expanded (Rx2) or extended (Rx1) prescriptive authority certification is renewed. This notification shall also contain an explanation of the procedures and fees for renew-

ing the expanded (Rx1) or extended (Rx2) prescriptive authority certification and the consequences of not renewing the expanded (Rx1) or extended (Rx2) prescriptive authority. The board is responsible for sending the notification by return receipt mail in a timely manner to the address on record for the licensee and for maintaining a record of all such notifications sent including the return receipt documents. The board is not responsible for verifying that the return receipt was returned by the post office to the board, for further follow up to verify that the notification was received or to locate and notify a licensee who has changed address without properly notifying the board of the new address. The licensee is responsible for notifying the board of the correct current address and of any address changes. Any licensee, after being properly notified as described above, who fails to renew, including completion of any required continuing education, his or her expired expanded (Rx2) or extended (Rx1) prescriptive authority certification by the next July 31 annual license renewal date after the notification [~~within one year of that licensee's last regular renewal date~~] shall be required to apply as a new applicant for expanded or extended prescriptive authority certification except that there shall be a limited expanded (Rx1) or extended (Rx2) prescriptive authority certification reinstatement period as defined in 16.2.8.13 NMAC (Section 13 of Part 8 of the rules).

C. The board may, on an individual basis, renew a license that has expired for more than one year if the former licensee can demonstrate good cause as defined in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).

D. The board shall report to the New Mexico board of pharmacy any expired license that was previously held by a doctor of oriental medicine who is certified for the expanded prescriptive authority (Rx2) or the extended prescriptive authority (Rx1) and shall report to the New Mexico board of pharmacy any renewed or reinstated license of a doctor of oriental medicine who is certified for the expanded prescriptive authority (Rx2) or the extended prescriptive authority (Rx1).

[16.2.8.12 NMAC - Rp, 16.2.8.12 NMAC, 02-15-05; A, 9-25-06]

### 16.2.8.13 LIMITED REINSTATEMENT OF AN EXPIRED LICENSE:

A. There shall be a limited reinstatement period effective immediately and until July 31, 2007 for any licensee whose license expired after July 31, 2001 and was not renewed, whereby such a licensee may reinstate his or her license by submitting the following to the board on or

before July 31, 2007:

(1) the requirements of 16.2.8.10 NMAC (Section 10 of Part 8 of the rules); and

(2) payment of the fee for late license renewal specified in 16.2.10 NMAC (Part 10 of the rules); and

(3) payment of the fee for expired license renewal specified in 16.2.10 NMAC (Part 10 of the rules); and

(4) payment of the license renewal fee specified in 16.2.10 NMAC (Part 10 of the rules) for each and every past year that the license was not in effect; and

(5) satisfactory proof as determined by the board of completion of any continuing education requirements established by the board in 16.2.9.8 NMAC (Section 8 of Part 9 of the rules) and, if appropriate, 16.2.9.9 NMAC (Section 9 of Part 9 of the rules) for all past years that the license was expired and for which continuing education was required.

**B.** A former licensee who was certified for the expanded prescriptive authority (Rx2) or extended prescriptive authority (Rx1) and whose license has expired shall have that certification reinstated along with his or her license reinstatement if he or she provides satisfactory proof as determined by the board of completion of any continuing education requirements established by the board in 16.2.9.9 NMAC (Section 9 of Part 9 of the rules) for all past years that the license was not in effect and for which continuing education was required, along with all requirements for license reinstatement defined in this section 16.2.8.13 NMAC (Section 13 of Part 8 of the rules).

**C.** A former licensee whose license has expired is prohibited from practicing acupuncture and oriental medicine in New Mexico during the period his or her license was expired and may only resume practice if and when the reinstated license is received by the former licensee from the board.

**D.** Nothing in this section 16.2.8.13 NMAC (Section 13 of Part 8 of the rules) shall preclude the board from initiating an investigation or disciplinary action based on alleged misconduct or violations of the act or rules pursuant to the provisions of the act, the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq and 16.2.12 NMAC (Part 12 of the rules) against a former licensee for actions during the period that the former licensee's license was expired. Any former licensee who applies for reinstatement under the provisions of 16.2.8.13 NMAC (Section 13 of Part 8 of the rules) agrees to waive the statute of limitations of Section 16-1-3.1(A) NMSA 1978 and consents to board jurisdiction over any behavior or conduct that occurred during the period the license was

expired. The board may deny an application for reinstatement based on any conduct occurring during the period the license was expired and two years immediately preceding the date of expiration, without regard to the limitations on actions.

**E.** The provisions of 16.2.8.13 NMAC shall not apply to any former licensee who has an active complaint pending before the board, is under investigation or is facing disciplinary proceedings by the board or has had a disciplinary action taken against his or her license by any jurisdiction while his or her license was expired.

**F.** An applicant for license reinstatement whose application for license reinstatement has been denied shall be given an opportunity for a hearing pursuant to the provisions of the act and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.

**G.** The board shall notify all previous licensees whose licenses expired and who fall within the time parameters defined in this section 16.2.8.13 NMAC (Section 13 of Part 8 of the rules) by return receipt mail sent to the last address on record of the limited license reinstatement period with an explanation of the requirements and instructions for requesting an application. The board shall also post a notice of the limited license reinstatement period in the newsletter of the state professional association and a national monthly acupuncture and oriental medicine news-magazine.

**H.** The board authorizes only one limited license reinstatement period. Any former licensee, whose license has expired, and who fails to reinstate his or her expired license by July 31, 2007 shall be required to apply as a new applicant.

[16.2.8.13 NMAC - N, 9-25-06]

## NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

**This is an amendment to 16.2.9.8 NMAC, effective, 9-25-06.**

### 16.2.9.8 CONTINUING EDUCATION:

**A.** A doctor of oriental medicine shall complete continuing education in oriental medicine equivalent to that required by the national certification commission for acupuncture and oriental medicine (NCCAOM). A doctor of oriental medicine shall submit to the board at the time of license renewal either of the following:

- (1) proof of continuing NCCAOM recertification in oriental medicine, acupuncture or Chinese herbology; or
- (2) proof of completion of 15

hours [of] annually of NCCAOM [equivalent] approved continuing education courses [approved by the board; the board shall annually audit a random ten (10) percent of continuing education documentation to determine the validity of the documentation.]

**B.** The board shall annually audit a random ten (10) percent of continuing education documentation to determine the validity of the documentation.

**[B-]C.** A doctor of oriental medicine who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.

**[C-]D.** A doctor of oriental medicine shall maintain an understanding of the current act and rules and shall complete, with a score of 100 percent correct answers, an open book jurisprudence examination covering the act and the rules that contains at least ten (10) questions and shall submit this to the board at the time of license renewal.

[16.2.9.8 NMAC - Rp 16 NMAC 2.9.8, 12-1-01; A, 10-1-03; A, 02-15-05; A, 9-25-06]

## NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

**This is an amendment to 16.2.10.9 NMAC, effective 9-25-06.**

### 16.2.10.9 FEES CHARGED:

**A.** All fees shall be paid by check, certified check or money order in US funds unless otherwise specified by rule.

**B.** No fees paid to the board shall be refunded.

**C.** The board shall charge the following fees:

(1) application for licensure: [~~\$500.00;~~] \$525.00;

(2) application for reciprocal licensure: \$750.00;

(3) application for licensure by endorsement: \$800.00;

(4) application for temporary licensure: [~~\$300.00;~~] \$330.00;

(5) application for limited temporary licensure: [~~\$75.00;~~] \$100.00;

(6) clinical skills examination, not including the cost of any nationally recognized examinations: [~~\$450.00;~~] \$500.00;

(7) annual license renewal: [~~\$200.00;~~] \$225.00;

(8) late license renewal: [~~\$100.00;~~] \$200.00;

(9) expired license renewal: [~~\$200.00;~~] \$300.00;

(10) temporary license renewal: \$100.00;

(11) application for a new annual approval or renewal of approval of an educational program, including the same program offered at multiple campuses: [~~\$400.00;~~] \$450.00;

(12) late renewal of approval of an educational program: [~~\$200.00;~~] \$225.00;

(13) application for single instance approval of an educational program: [~~\$200.00;~~] \$225.00;

(14) application for extended prescriptive authority certification: [~~\$100.00;~~] \$125.00;

(15) application for expanded prescriptive authority certification: [~~\$100.00;~~] \$125.00;

(16) application for externship supervisor registration: [~~\$200.00;~~] \$225.00;

(17) application for extern certification: [~~\$200.00;~~] \$225.00;

(18) continuing education provider course approval application: \$50.00;

(19) auricular detoxification specialist certification application: \$50.00;

(20) auricular detoxification specialist certification renewal: \$30.00;

(21) auricular detoxification specialist certification late renewal: \$20.00;

(22) auricular detoxification specialist supervisor registration application: \$50.00;

(23) auricular detoxification specialist supervisor registration renewal: \$30.00;

(24) auricular detoxification specialist supervisor registration late renewal: \$20.00;

(25) auricular detoxification specialist training program approval application: \$100.00;

(26) auricular detoxification specialist training program approval renewal: \$50.00;

(27) treatment program approval application: \$100.00;

(28) administrative fee for application for approval of extended or expanded prescriptive authority course: [~~\$100.00;~~] \$200.00;

(29) renewal of extended or expanded prescriptive authority course: \$200.00;

(30) administrative fee for inactive license application: [~~\$100.00;~~] \$125.00;

[~~(30)~~](31) administrative fee for inactive license renewal: [~~\$35.00;~~] \$100.00;

[~~(31)~~](32) administrative fee for inactive license reinstatement application: [~~\$100.00;~~] \$125.00;

[~~(32)~~](33) administrative fee for each duplicate license: [~~\$25.00;~~] \$30.00;

[~~(33)~~](34) administrative fee for a

single transcript or diploma from the former international institute of Chinese medicine, per copy: \$50.00;

[~~(34)~~](35) administrative fees to cover the cost of photocopying, electronic data, lists and labels produced at the board office.

[11-3-81...7-1-96; A, 5-15-99; A, 2-17-00; 16.2.10.9 NMAC - Rn, 16 NMAC 2.10.10, 10-22-00; A, 1-1-01; A, 8-13-01; A, 3-2-03; A, 02-15-05; A, 9-25-06]

## NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

**This is an amendment to 16.2.16.10 and 16.2.16.17 NMAC, effective, 9-25-06.**

### 16.2.16.10 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST CERTIFICATION APPLICATION:

Upon approval of a certified auricular detoxification specialist application that fulfills the requirements listed below, the board shall issue a certified auricular detoxification specialist certification that will be valid until July 31 following the initial certification. In the interim between regular board meetings, whenever a qualified applicant for certified auricular detoxification specialist certification has filed his or her application and complied with all other requirements of this section, the board's chairman or an authorized representative of the board may grant an interim temporary certified auricular detoxification specialist certification that will suffice until the next regular meeting of the board. In no event shall the applicant begin the practice of auricular detoxification until the certified auricular detoxification specialist certification or interim temporary certified auricular detoxification specialist certification is issued by the board. The application requirements for certified auricular detoxification specialist certification shall be receipt of the following by the board:

A. the auricular detoxification specialist certification application fee specified in 16.2.10 NMAC (Part 10 of the rules); and

B. an application for certified auricular detoxification specialist certification that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number if the applicant has one; and

C. two (2) passport-type photographs of the applicant taken not more than six months prior to the submission of the application; and

D. a copy of the applicant's high school diploma or high school

general equivalency diploma (GED);

E. a copy of the applicant's certificate of successful completion of a board approved auricular detoxification specialist training program; and

F. the name of the auricular detoxification supervisor registered with the board who will supervise the applicant if known; and

G. an affidavit as provided on the certified auricular detoxification specialist application form as to whether the applicant:

(1) has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, the practice of auricular detoxification, the provision of medical or counseling services for disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings; or

(2) has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, the practice of auricular detoxification, the provision of medical or counseling services for disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice; or

(3) has been convicted of a felony in any jurisdiction, including any finding of guilt by a court or jury, or any plea of guilty, or any plea of nolo contendere or no contest, or plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred; or

(4) is in arrears on a court-ordered child support payment; or

(5) has violated any provision of the act or the rules; and

H. an official license history, which is a certificate from each jurisdiction stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice any profession, including health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine

Practice Act; and

I. an affidavit as provided on the certified auricular detoxification specialist application form certifying that all documents submitted with the form are true and faithful copies of the original; and

J. an affidavit as provided on the certified auricular detoxification specialist application form certifying a record free of convictions for drug or alcohol related offenses for at least two consecutive years before the submission of the certified auricular detoxification specialist application; and

K. an affidavit as provided on the certified auricular detoxification specialist application form stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection G of 16.2.16.10 NMAC (Section 10 of Part 16 of the rules) may be subject to disciplinary action at any time, including denial, suspension or revocation of certification, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17; and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq.; and

(2) an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of certification, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.; and

(3) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of auricular detoxification; and

(4) the certified auricular detoxification specialist certification must be renewed annually by July 31; and

(5) if the relationship with the auricular detoxification specialist supervisor terminates for any reason, to continue working, the certified auricular detoxification specialist must arrange to be supervised by another auricular detoxification specialist supervisor and notify the board within five (5) working days; and

(6) the applicant must notify the board within ten (10) days if the applicant's address changes; and

(7) the board may refuse to issue, or may suspend, or revoke any license, ~~[extern certification or externship supervisor registration]~~ certified auricular detoxification specialist certification or auricular detoxification specialist supervisor registration in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA

1978, for reasons authorized in Section 61-14A-17 NMSA 1978 of the act and clarified in 16.2.12 NMAC (Part 12 of the rules); and

L. an affidavit as provided on the certified auricular detoxification specialist application form stating that the applicant understands that a certified auricular detoxification specialist is authorized to perform only the following, for the purpose of treating and preventing alcoholism, substance abuse or chemical dependency and only within a board approved treatment program that demonstrates experience in disease prevention, harm reduction, or the treatment or prevention of alcoholism, substance abuse or chemical dependency; and

(1) auricular acupuncture detoxification using the five auricular point national acupuncture detoxification association (NADA) procedure and/or other board approved auricular procedures; and

(2) the application to the ear of simple board approved devices that do not penetrate the skin using the five auricular point national acupuncture detoxification association (NADA) procedure or other board approved auricular procedure and that the board approved devices that do not penetrate the skin are: seeds, grains, stones, metal balls, magnets and any small sterilized, spherical object that is non-reactive with the skin; and

M. an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the translator certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant.

[16.2.16.10 NMAC - N, 02-15-05; A, 9-25-06]

**16.2.16.17 A U R I C U L A R DETOXIFICATION SPECIALIST SUPERVISOR REQUIREMENTS AND RESPONSIBILITIES:**

A. The auricular detoxification specialist supervisor shall:

(1) be a licensed doctor of oriental medicine; and

(2) demonstrate experience in auricular detoxification by providing:

(a) a resume and three (3) references; or

(b) NADA certification; and

~~(2)~~(3) be registered with the board as an auricular detoxification specialist supervisor; and

~~(3)~~(4) supervise no more than thirty (30) certified auricular detoxification specialists; and

~~(4)~~(5) be accessible for consultation directly or by telephone to a certified auricular detoxification specialist under his or her supervision; and

~~(5)~~(6) directly visit each certified auricular detoxification specialist under his or her supervision at the treatment program site at intervals of not more than six (6) weeks; and

~~(6)~~(7) be responsible for having each certified auricular detoxification specialist under his or her supervision require each patient to complete a written, signed consent form outlining the responsibilities of the certified auricular detoxification specialist, the nature of the treatment, expected outcomes, and the scope and limits of practice; and

~~(7)~~(8) ensure that the certified auricular detoxification specialist is following a board approved treatment protocol; and

~~(8)~~(9) notify the board in writing, within five (5) days working days, when a certified auricular detoxification specialist enters into a supervisory relationship with the auricular detoxification specialist supervisor or the supervisory relationship is terminated; and

B. an auricular detoxification specialist supervisor shall be responsible for the delivery of competent, professional services and ensuring that patient consents are obtained; and

C. the auricular detoxification specialist supervisor shall terminate the supervisory relationship if the auricular detoxification specialist supervisor has the reasonable belief that the certified auricular detoxification specialist has violated the act or the rules; in such case the auricular detoxification specialist supervisor shall notify the board and the certified auricular detoxification specialist's employer, in writing, within five (5) working days that the supervisory relationship is terminated and give in writing the reasons for the termination.

[16.2.16.17 NMAC - N, 02-15-05; A, 9-25-06]

## NEW MEXICO EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.1 NMAC, Sections 9 and 16, effective 9-15-2006.

### 2.82.1.9 BOARD MEETINGS:

A. The New Mexico educational retirement board shall hold regular bimonthly meetings on the second Friday in the months of February, April, June, August, October and December at 9:00 a.m. Meeting notices shall be made in accordance with the Open Meetings Act and the Open Meetings Resolution adopted by the board. The director shall mail to the board members a tentative agenda at least eight (8) working days prior to each meeting. Committee meetings shall be scheduled as directed by the chairperson of each committee. The board may change or alter its meeting date, time and/or place by board action and the director shall note the change in the minutes. board special meetings may be held in accordance with state law at the call of the chairperson, majority of board members or director.

B. Four members of the board shall constitute a quorum at any regular or special meeting.

C. Notice shall be given at least eight (8) days in advance of any regular meeting scheduled by the board at its last meeting. Notice shall be given at least three (3) days in advance of any special meeting called by the chairman or any three members of the board. Notice requirements as set herein are complied with if notice of the time, date, and place and instructions for obtaining a tentative agenda is disseminated to all local administrative units and filed with the governor's office for dissemination to the media.

D. Board members may attend and participate in any regular or special board meeting by telephone or other electronic device only if:

(1) the member cannot attend the meeting due to an emergency or unforeseen circumstance;

(2) the member's voice can clearly be heard by everyone in attendance of the meetings and the member clearly identifies themselves before speaking or participating in a vote;

(3) the member has not attended regular meetings electronically more than once in a rolling twelve month period;

(4) no more than two members who otherwise qualify for participation under this section may do so at the same meeting; and

(5) the member otherwise complies with the Open Meetings Act.

[6-30-99; 2.82.1.9 NMAC - Rn, 2 NMAC 82.1.9, 11-30-2001; A, 9-15-2006]

### 2.82.1.16 CONDUCT OF BUSINESS:

A. The business affairs of the board shall be conducted by the director within the authority outlined by the Educational Retirement Act and rules and procedures of the educational retirement board.

B. On behalf of the educational retirement board, the director of the educational retirement is hereby authorized to execute vouchers, (and delegate others to execute vouchers), buy and sell, or assign, or otherwise acquire or dispose of stocks, bonds, notes, or other securities held by the board, and execute such other documents as may be necessary to the administration of the Educational Retirement Act.

C. Interpretation of law by formal opinion of the attorney general shall not be obtained until the director has first obtained approval of the board. The director may, however, obtain advice, either oral or written, from the attorney general as the need may arise.

D. Any final decision of the director may be appealed by any affected party. All appeals must comply with the following appeals procedure:

~~(1) Filing for a request for hearing—A request for an appeals hearing must be initiated by the affected party by filing a request for a hearing, within thirty (30) days of notice of the director's final decision, by delivering a written request for such a hearing to ERB's administrative offices. Filing occurs when the request is received at ERB's offices, provided, however, that where a request for hearing is properly addressed with sufficient postage and mailed at least three (3) days before the expiration of the thirty (30) day period within which to request a hearing, filing will be deemed timely if received by ERB, notwithstanding that receipt by ERB may occur after the thirty (30) day period.~~

~~(2) Failure to request a hearing—If the affected party does not request a hearing in the manner as described in 2.82.1.16(D)(1) NMAC, the decision of the director shall be final and no further right of appeal exists.~~

~~(3) Notice of hearing—Upon receipt of a request that meets the requirements of 2.82.1.16(D)(1) NMAC, ERB shall set a hearing no later than sixty (60) days from the receipt of the request for hearing and send a notice by certified mail to the affected party. This notice shall include the time and place for the hearing, and inform the party that he or she must attend the hearing in person, must submit a list of all witnesses and send ERB any and~~

~~all documents and displays within ten (10) days of the scheduled hearing if he or she wants such witnesses and documents to be considered in the appeal. The notice shall also state that the affected party may be represented by counsel or by themselves at the hearing. Such notice will be mailed to the affected party at least twenty (20) days prior to the date of the hearing. Witnesses not identified, and documents not submitted to ERB by the affected party within the ten (10) day period will not be considered at the hearing.~~

~~(4) The hearing—The hearing will be held by the administrative appeals panel, appointed annually by the chairman of the board and shall consist of not less than three board members. The hearing will be open to the public. Notice shall be given in the manner required by the Open Meetings Act. The rules of evidence do not apply. The panel may, in their discretion exclude incompetent, irrelevant or unduly repetitious evidence. The affected party will present their position, either with or without counsel, by oral or written statement. Failure to appear at the hearing shall result in the director's decision deemed final. A record of the proceedings shall be made either by tape recording or by using a court reporter. The panel may recommend to uphold or overturn the director's decision or may continue the hearing to a future date, if, in the panel's discretion, more evidence is needed to render a decision.~~

~~(5) Recommended decision—The panel will issue to the board its recommended decision, based upon the record, including a findings of fact and conclusions of law, which will be filed at the ERB's offices and a copy mailed to the affected party by certified mail within fifteen (15) days of the decision. Disputes or disagreements to the recommended decision may be filed at ERB offices with supporting briefs within thirty (30) days from the issuance of the recommended decision. Such filed disputes or disagreements shall include the precise reasons for the dispute or disagreement and shall be based solely on evidence contained in the hearing record. Any dispute or disagreement not made in the manner required by this rule is waived. The panel may submit a response to the disputes or disagreements within fifteen (15) days of the filing of such disputes or disagreements. The recommended decision of the panel will be reviewed at the next regular board meeting scheduled to occur after the running of the periods for exceptions and responses.~~

~~(6) Decision of the board—The board will consider only the panel's recommended decision, disputes or disagreements to the recommended decisions and responses to them, if any. Where circumstances~~

warrant, the board, may review all or a portion of the hearing record. The board will not consider any additional oral arguments, evidence or affidavits not contained in the hearing record. All deliberations and final decisions of the board must occur in open session. The board may uphold or overturn the recommendation of the panel, may remand the matter to the panel for further findings, or may modify the recommendation of the panel, but may modify only after a review of the hearing record. Within ten (10) days of the decision, the board will notify the affected party of its decision. The decision of the board is final.]

(1) The appeal shall be initiated by receipt by ERB of a notice of appeal within ninety (90) days of the date of the letter in which the member received notice of the director's final decision. The notice of appeal must state the reasons for claiming the denial is improper. If the claimant fails to submit a notice of appeal as provided herein, the initial denial of any claim shall constitute the final order of the board.

(2) The appeal shall be heard by a hearing officer designated to represent the board unless otherwise provided by the board or board rules.

(3) Procedure.

(a) ERB's office of general counsel will establish internal procedures for processing appeals, within the parameters set by this rule.

(b) Discovery and evidence.

(i) Following the filing of an appeal, the parties must submit to the hearing officer, with a copy to the other parties, including ERB, at least fifteen (15) days prior to the scheduled hearing, any documentary evidence he or she may wish to present for consideration at the de novo hearing. The hearing officer may grant a request for extension of time to submit documentary evidence for good cause, if such extension is not prejudicial to another party. This documentary evidence shall include all documents that will be introduced as exhibits at the hearing. Failure to comply with the requirements of this paragraph may result in the consideration of the appeal without the documentary evidence.

(ii) At the same time documentary evidence is due to be submitted, ERB may, but is not required to file a written response to claimant's notice of appeal.

(iii) Upon written request of any party, the parties shall provide to the other parties the names and addresses of persons that may be called as witnesses at the hearing.

(iv) Pre-hearing discovery permitted by the rules of civil procedure for the district courts in New Mexico shall be allowed as authorized by the hearing officer. Upon the request of any party in

writing, the hearing officer may authorize depositions.

(v) Upon request, the claimant shall provide to the attorney for the board authorizations for the release of records regarding the claimant's employment (whether self-employed or as an employee or an independent contractor).

(vi) The rules of evidence do not apply, but the hearing officer may admit all relevant evidence, which in the opinion of the hearing officer, is the best evidence most reasonably obtainable, having due regard to its necessity, competence, availability and trustworthiness. Such evidence shall be given the weight the hearing officer deems appropriate.

(vii) The hearing officer may, upon good cause shown, remand the matter back to the director for reconsideration.

(c) Hearing.

(i) A hearing shall be held within sixty (60) days of receipt of the notice of appeal unless the parties mutually agree to an extension of time and the extension is approved in writing by the hearing officer. The parties shall be given at least thirty (30) days written notice of the scheduled hearing.

(ii) The board's authority to administer oaths is delegated to the hearing officer for the purpose of conducting the hearing.

(iii) The parties have the right to present argument and evidence orally, to present or cross-examine witnesses, and to be accompanied by counsel.

(iv) Failure of the claimant or his or her representative to appear at the hearing, without prior approval from the hearing officer, shall result in automatic final denial of any claims previously asserted.

(v) If the claimant or his or her representative requests rescheduling of a hearing so late that additional costs are incurred, any additional costs incurred shall be assessed against the claimant.

(d) Burden of persuasion. Unless otherwise established by law, the claimant has the burden of proving by a preponderance of the evidence the facts relied upon to show he or she is entitled to the benefit denied.

(e) Record. The hearing shall be recorded by a certified court reporter, and copies of all evidence offered shall be maintained by the association for a period of not less than five (5) years. Any party desiring a copy of the transcript of the proceedings shall be responsible for paying the cost, if any, of preparing such copy. The appellant shall make arrangements with ERB for the preparation of transcripts for appeal to the district court.

(f) Recommended decision.

(i) The hearing officer's recommended decision shall be based upon the evidence adduced at the hearing and shall be issued by the hearing officer within sixty (60) days following the close of the record.

(ii) The hearing officer shall propose findings of fact and conclusions of law as part of the recommended decision to the board.

(g) Exceptions to recommended decision.

(i) The parties to a proceeding may file with the board exceptions to the hearing officer's recommended decision within fifteen (15) days of the date of issuance of the recommended decision. Upon the written request of a party, and for good cause shown, the hearing officer may extend the time to file exceptions.

(ii) Copies of such exceptions and any briefs shall be served on all parties and the hearing officer, and a statement of such service shall be filed with the exceptions.

(iii) Exceptions to a hearing officer's recommended decision shall cite the precise substantive or procedural issue to which exceptions are taken and shall be based only on the evidence and arguments presented at the hearing.

(iv) Any exception not specifically made shall be considered waived. Any exception that fails to comply with the foregoing requirements may be disregarded.

(v) The hearing officer may file with the board a response to any exceptions filed within fifteen (15) days of the date of filing of the exceptions and shall serve copies on all parties.

(4) Final action by the board.

(a) The board shall consider the hearing officer's recommended decision, exceptions and any supporting briefs to the recommended decision, and the hearing officer's response to the exceptions, if any. The board may review all of the record made before the hearing officer.

(b) The board shall not consider any additional oral argument, evidence or affidavits not in the record before the hearing officer, or pleadings not filed in accordance with these rules.

(c) The board may request that the hearing officer be present at the time the board reviews a recommended decision issued by a hearing officer and may discuss the recommended decision with the hearing officer. The board members may also discuss the recommended decision among themselves and with legal counsel to the board.

(d) The board's final action shall be rendered no later than 180 days from the date of the hearing officer's recommended decision. Board members who need addi-

tional time to review the record before taking final action may request of the board chair that additional time for review be given. If additional time is requested, the deadline for the board's final action shall be extended for one month.

(e) Ex parte communication with board members or hearing officers concerning a decision that is on appeal is prohibited.

(f) The board may remand a recommended decision to the hearing officer for additional findings, conclusions, clarification and/or the taking of additional evidence. Such a remand shall restart the time frames contained in this rule.

(g) The board shall approve, disapprove or modify the recommended decision, and shall enter a final order concerning the matter being appealed. The board may modify the proposed conclusions of law based on the proposed findings of fact. If the board wishes to modify the proposed findings of fact, it may do so only after review of the record before the hearing officer. The board shall provide a reasoned basis for changing the hearing officer's recommendation.

E. The rules and procedures of the educational retirement board may be amended or expanded in the following manner:

(1) At any regular meeting, the board may request the director to prepare amendments or new rules for action at a subsequent meeting of the board.

(2) The director may, at any time, propose amendments or new rules for action at any meeting of the board.

(3) Any proposed amendment or new rule shall be drafted by the director and sent to each board member with the agenda for the meeting at which the proposal will be considered, and all proposed rule changes will be sent to all administrative units, within a reasonable time, prior to being considered by the board.

F. Interest rates that are to be set by the board under the Educational Retirement Act may be changed at any meeting of the board but shall at a minimum be set at a board meeting held in the final fiscal quarter of the year.

[6-30-99; 2.82.1.16 NMAC - Rn & A, 2 NMAC 82.1.16, 11-30-2001; A, 7-15-2003; A, 9-15-2006]

## NEW MEXICO EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.2 NMAC, Section 11, effective 9-15-2006.

### 2.82.2.11 EMPLOYEES EXCLUDED FROM COVERAGE:

A. Any person enrolled as a student in any of the administrative units outlined in Subsection A of 2.82.2.8 NMAC, and who is also employed by the administrative unit in which he is enrolled, shall be considered a student and not eligible for either "regular" or "provisional" membership under the ERA, except that members of the faculty or full-time staff, who may be incidentally enrolled in classes, shall not be affected by this rule. Under no circumstances shall graduate assistants, teaching fellows, or students in positions of similar nature, be considered eligible for coverage under the ERA. This includes any and all participation in the teacher enhancement program or participation in similar graduate programs.

B. Any person whose full time equivalency is .25 or less, and who is not a covered employee of another local administrative unit, shall not be covered for contribution purposes. Any person employed on the effective date of this rule and who is currently covered under the act shall continue to be covered for the duration of that employment.

(1) An ERA retiree may return to employment (includes "substitution") and earn up to [~~\$10,000, adjusted by the annual change in the consumer price index of the previous calendar year, beginning with the fiscal year which starts on July 1, 2002~~] \$15,000 per fiscal year or the amount possible under the .25 or less FTE provision, whichever is greater, without effect to the retirement benefit if:

(2) In the event a retired member enters into an agreement which provides for or actually has earnings in excess of the above limits, the retirement benefit will be suspended for the duration of the employment, and the member will be returned to an active status.

C. Any employee engaged on a day-to-day basis to replace another employee who is temporarily absent shall be considered a "substitute" and shall not be covered under the ERA. An employee engaged to fill a vacant position (including a position vacated by an extended leave of absence) is not considered a "substitute" and must be covered under ERA.

D. Independent contractors who perform services for administrative units on a fee basis are not eligible for

membership under the ERA as a result of having performed such service, and sums paid for such service shall not be covered for contributory purposes. To be classified as an independent contractor a person must meet at least the following criteria:

(1) registered with the New Mexico department of taxation and revenue to pay gross receipts tax;

(2) contract must have been bid in accordance with the State Procurement Code;

(3) the person is not eligible for fringe benefits afforded regular employees of the local administrative unit and is not paid through the unit's payroll system;

(4) consultants must meet the criteria for an independent contractor established by FICA;

(5) the board shall provide each local administrative unit with employee vs. independent contractor (IC) determination form for their use;

(6) the board shall further reserve the right to examine such completed forms and copies of contracts or other agreements that exist between employers and individuals for the purpose of determining the relationship.

E. All students enrolled in any public school, grade 1-12.

F. Employees who have a portion of their salaries paid through the Comprehensive Employment and Training Act (Public Law 95-524), shall not be covered for contributions on that portion except those employees who have vested.

[6-30-99; 2.82.2.11 NMAC - Rn, 2 NMAC 82.2.11, 11-30-2001; A, 10-31-2002; A, 9-15-2006]

## NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

STATE PARKS DIVISION

This is an emergency amendment to 18.17.2 NMAC, Section 11 to be effective 09-15-06.

**18.17.2.11 PROHIBITED OPERATIONS:** The operator of every vessel operating on the waters of this state shall not engage the vessel in prohibited activities nor allow passengers to engage in activities prohibited by [~~this regulation~~] 18.17.2 NMAC or the Boat Act.

A. **Riding the foredeck and gunwales of vessels:** Except when casting off, mooring or when otherwise necessary, no vessel operator shall allow any person to ride or sit on the gunwales or on the bow of a vessel when under way, unless

the vessel is equipped with adequate guard rails designed to prevent a person from slipping under or rolling over the rail. No person shall sit on a seat back while the vessel is underway or allow his/her legs to hang overboard at any time.

**B. Trolling:** Trolling or drift fishing is prohibited within 150 feet of any marina, boat ramp or courtesy dock.

**C. Speed:**

(1) All vessels shall be operated at a speed no greater than is reasonable or proper according to conditions prevailing at the time of operation.

(2) All vessels shall be operated at speeds controlled as necessary to avoid swamping or collision with any watercraft or person.

(3) No-wake speeds shall be observed by all vessels operating within 150 feet of launch ramps, docks, mooring lines, beached or anchored vessels within 150 feet of shore, swimmers, fishermen and areas designated for "no-wake" boating. Exception to no-wake operation: under adverse weather conditions, a vessel may maintain the minimum speed necessary to maintain a safe course.

**D. Overloading:** No vessel operator shall carry more people on board than the number stated on a vessel's capacity plate or as computed by multiplying the vessel's length times its width and dividing by 15.

**E. Pollution:** No person shall deposit or discharge liquid or solid waste or other refuse into the waters of this state.

**F. Buoys, water marking system:** No person shall anchor from, deface or relocate a buoy placed by the division for the purpose of aiding navigation.

**G. Operation while under the influence of alcohol or controlled substances:** No person shall operate any motorboat or vessel, nor use any water skis, surfboard or similar device, while under the influence of alcohol and/or any controlled substance.

**H. Age restriction:** No person under the age of 13 shall operate a motorboat unless under the onboard supervision of an adult.

**I. Use of airborne devices prohibited:** No person, while being towed by a watercraft, shall use any device, except for parasail, for the purpose of becoming airborne over the waters of this state. No person while operating a watercraft shall tow any person using a device, except for a parasail, for the purpose of becoming airborne over the waters of this state.

[7/17/67...12/31/96; 5/31/97; 18.17.2.11 NMAC - Rn & A/E, 18 NMAC 17.2.11, 9/15/06]

## NEW MEXICO HIGHER EDUCATION DEPARTMENT

### TITLE 5 POST-SECONDARY EDUCATION CHAPTER 55 PUBLIC POST-SECONDARY EDUCATION GENERAL PROVISIONS PART 4 DUAL CREDIT

**5.55.4.1 ISSUING AGENCY:** New Mexico Higher Education Department [5.55.4.1 NMAC - N, 09/15/06]

**5.55.4.2 SCOPE:** This rule applies to all public high schools, including charter schools. [5.55.4.2 NMAC - N, 09/15/06]

**5.55.4.3 STATUTORY AUTHORITY:** Section 9-25-8 NMSA. [5.55.4.3 NMAC - N, 09/15/06]

**5.55.4.4 DURATION:** Permanent [5.55.4.4 NMAC - N, 09/15/06]

**5.55.4.5 EFFECTIVE DATE:** September 15, 2006, unless a later date is cited at the end of a section. [5.55.4.5 NMAC - N, 09/15/06]

**5.55.4.6 OBJECTIVE:** The purposes of dual credit are: (i) to increase opportunities for high school students, and (ii) to increase efficient use of instructional staff, facilities, equipment, student support services and technical advisory committees at both the secondary and postsecondary levels; and thereby to increase the overall quality of instruction and learning available through secondary schools. [5.55.4.6 NMAC - N, 09/15/06]

**5.55.4.7 DEFINITIONS:**  
A. "Dual credit program" refers to a program that allows high school students to enroll in college courses in postsecondary institutions prior to high school graduation, giving them enrichment opportunities and first-hand experiences with the requirements of college level work. Dual credit students receive both high school and college credit simultaneously pursuant to Article XII, Section 6 of the Constitution of New Mexico and the Public Education Department Act.

B. "Postsecondary institution" refers to a public postsecondary educational institution operating in the state, including a community college, branch community college, technical-vocational institute, learning center and four-year educational institution in the state. [5.55.4.7 NMAC - N, 09/15/06]

### 5.55.4.8 IMPLEMENTATION:

A. Dual credit courses may be taken as elective high school credits.

B. Dual credit courses may satisfy high school core courses when the department standards and benchmarks are met as verified by the department, and curriculum is aligned to meet postsecondary requirements.

C. Final grades for all students must be delivered to the high school by the end of the high school semester and/or the date of high school graduation for all high schools.

D. Dual credit for both academic and career technical courses requires an executed dual credit agreement between the public school district and the postsecondary institution. The dual credit agreement must address the following components and must be signed by the public school district and the postsecondary institution.

(1) Name of school district.  
(2) Name of postsecondary institution.

(3) What are your methods of qualifying students for dual credit courses?

(4) If placement tests are used as a qualifying method for enrollment in dual credit courses, which tests are utilized?

(5) How will all students and parents be informed about dual credit and how students can participate in dual credit?

(6) What kind of counseling is provided to help students/parents in deciding about participation in a dual credit program by the high school and the postsecondary institution?

(7) What are the applicable requirements for awarding of credit by the high school and postsecondary institution respectively?

(8) How will you demonstrate student awareness of academic requirements of the course?

(9) How will you demonstrate student awareness of the scheduling requirements of the course?

(10) What are the responsibilities of the student relative to successful participation and completion in a dual credit course/program?

(11) How will the secondary and postsecondary institution provide support services such as tutoring, career counseling/guidance, and special services?

(12) What is the schedule for the transfer of tuition and fees by the public school district to the postsecondary institution for dual credit students?

(13) How will the school district handle textbooks, supplies, etc., for dual credit students?

(14) How will the school district



fund and schedule the transportation of students between secondary and postsecondary campuses in accordance with guidelines and definitions of the school transportation bureau?

(15) Who is liable for dual credit secondary students and their behavior while they are on the campus of the postsecondary institution for the purpose of attending class(es)?

(16) What are the approved courses for dual credit and are these courses part of an articulated program of study? If yes, does the student receive college credit for these courses?

(17) How will the postsecondary institution record dual credit(s) on student transcripts?  
[5.55.4.8 NMAC - N, 09/15/06]

**History of 5.55.4 NMAC:** [Reserved]

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

**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 171 PREMIUM ASSISTANCE FOR KIDS AND PREGNANT WOMEN (CATEGORY 071)**  
**PART 400 RECIPIENT POLICIES**

**8.171.400.1 ISSUING AGENCY:** Human Services Department  
[8.171.400.1 NMAC - N/E, 8-31-06]

**8.171.400.2 SCOPE:** This rule applies to the general public.  
[8.171.400.2 NMAC - N/E, 8-31-06]

**8.171.400.3 STATUTORY AUTHORITY:** New Mexico Statutes Annotated, 1978 (Chapter 27, Article 2-12) authorizes the human services department to administer a program of medical or premium assistance for children and pregnant women ineligible for federally funded public assistance. The premium assistance for kids program will be designated for purposes of this regulation as category 071.  
[8.171.400.3 NMAC - N/E, 8-31-06]

**8.171.400.4 DURATION:** Permanent.  
[8.171.400.4 NMAC - N/E, 8-31-06]  
[The medical or premium assistance program is operated subject to the availability of funding.]

**8.171.400.5 EFFECTIVE DATE:** August 31, 2006, unless a later date is cited at the end of the section.  
[8.171.400.5 NMAC - N/E, 8-31-06]

**8.171.400.6 OBJECTIVE:** The objective of premium assistance for kids is to reduce the number of uninsured New Mexicans by providing state funds toward the purchase of comprehensive health insurance products to children up to the age of twelve, and children up to the age of eighteen if part of a sibling group that includes a child up to the age of twelve, who are ineligible for public assistance under the act.  
[8.171.400.6 NMAC - N/E, 8-31-06]

**8.171.400.7 DEFINITIONS:**  
A. **Action:** The denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, modification, or termination of a previously authorized service; the denial, in whole or in part, of payment for a service; or a failure to provide a service in a timely manner. An untimely service authorization constitutes a denial and is thus considered an action.

B. **Administrative hearing:** An evidentiary hearing conducted so that evidence can be presented.

C. **Certification of comprehensive health plan:** The process by which the human services department (HSD) certifies an insurance plan as a comprehensive plan eligible for participation in the premium assistance program.

D. **Enumeration:** The process by which the federal government assigns a social security number.

E. **Overpayments:** Erroneous payments or payment made on behalf of an individual was not eligible.

F. **Sibling group:** Siblings, including half- or step-siblings, living in the same household.  
[8.171.400.7 NMAC - N/E, 8-31-06]

**8.171.400.8 [RESERVED]**

**8.171.400.9 WHO CAN BE COVERED UNDER PREMIUM ASSISTANCE PROGRAM:** To be eligible for premium assistance for kids, the applicant must meet all eligibility criteria and must enroll in (or be enrolled in), a comprehensive health care plan for children certified by HSD.  
[8.171.400.9 NMAC - N/E, 8-31-06]

**8.171.400.10 ELIGIBILITY:** To be eligible for premium assistance for kids, the applicant must meet all eligibility criteria. Once eligibility is established, the individual enrolls in and makes premium payment to a certified comprehensive health insurance plan.  
[8.171.400.10 NMAC - N/E, 8-31-06]

**8.171.400.11 HEALTH CARE PLAN ELIGIBILITY:** In order to partici-

pate in premium assistance for kids, a health plan must be certified by HSD as a comprehensive health plan for children. An individual who is determined to be eligible for premium assistance for kids will continue to be eligible for a period of 12 months as long as health insurance enrollment continues, or until the participant(s) no longer meet(s) age criteria, moves out of state, or the participant's income changes, the information is reported to HSD, and the individual becomes eligible for medicaid or SCHIP.  
[8.171.400.11 NMAC - N/E, 8-31-06]

**8.171.400.12 ENROLLMENT:** Premium assistance for kids payments will not begin until the individual has been found eligible and enrolls in a comprehensive health plan for children certified by the department. Once the individual is enrolled and premium assistance has begun to make payments, the individual may not switch to another insurer for a period of 12 consecutive months, unless good cause to switch enrollment is established. A request to switch enrollment from one plan certified by HSD as a certified comprehensive health plan to another by an eligible premium assistance for kids participant must be submitted in writing to HSD. HSD shall review the request and determine whether good cause for the switch exists. The participant will be notified of the decision in writing within a 30 day period. The existence of good cause will be determined using the following criteria:

A. continuity of care issues;

B. family continuity;

C. administrative or data entry error in enrolling a member with a health plan; and

D. travel for primary care exceeds the following standards: urban residents shall travel no further than 30 miles to see a primary care provider (PCP); rural residents shall travel no more than 45 miles to see a PCP, and frontier residents shall travel no more than 60 miles to see a PCP; urban counties are: Bernalillo, Los Alamos, Santa Fe, and Dona Ana; frontier counties are: Catron, Harding, DeBaca, Union, Guadalupe, Hidalgo, Socorro, Mora, Sierra, Lincoln, Torrance, Colfax, Quay, San Miguel, and Cibola; rural counties are all others not listed as urban or frontier.  
[8.171.400.12 NMAC - N/E, 8-31-06]

**8.171.400.13 DISENROLLMENT:** Once a premium assistance for kids enrollee disenrolls from the certified health plan or fails to pay the non-subsidized portion of the premium, he will become ineligible for premium assistance for kids for a period of 12 months, starting with the first month in which the coverage was dropped (i.e., the

first month in which the individual has no coverage).

[8.171.400.13 NMAC - N/E, 8-31-06]

**8.171.400.14** [RESERVED]

**8.171.400.15 RESIDENCY:** To be eligible for premium assistance for kids, applicant/recipients must be living in New Mexico on the date of application or determination of eligibility and have demonstrated intent to remain in New Mexico.

A. **Establishing residence:** Residence in New Mexico is established by living in the state and carrying out the types of activities normally associated with every day life, such as occupying a home, enrolling child(ren) in school, getting a driver's license, or renting a post office box. An applicant/recipient who is homeless is considered to have met residency requirements if he intends to remain in the state.

B. **Abandonment of residence:** Residence is not abandoned by temporary absences from the state. Temporary absences occur when recipients leave New Mexico for specific purposes with time-limited goals. Residence is considered abandoned when any of the following occur:

(1) applicant/recipient leaves New Mexico and indicates that he intends to establish residence in another state;

(2) applicant/recipient leaves New Mexico for no specific purpose with no clear intention of returning;

(3) applicant/recipient leaves the state and applies for financial, food, or medical assistance in another state that makes residence a condition of eligibility; or

(4) applicant/recipient has been absent from New Mexico for more than 30 days without notification of departure to intention of returning.

[8.171.400.15 NMAC - N/E, 8-31-06]

**8.171.400.16 RESIDENCE IN A PUBLIC INSTITUTION:** An applicant/recipient who is an inmate of a public institution is not eligible for premium assistance for kids. A public institution is an institution which is the responsibility of a governmental unit and over which a governmental unit exercises administrative control.

A. Public institutions include jails, prisons, detention centers, diagnostic holding centers, the New Mexico boys and girls schools, "wilderness camps", or halfway houses and reintegration centers which are not certified to furnish medical care.

B. An individual is not considered to be living in an institution if he is placed in a detention center for a temporary period pending other arrangements appropriate to his needs. For purposes of

eligibility for premium assistance for kids, an individual who is placed in a detention center is considered temporarily absent from the home, until the 60<sup>th</sup> day, or the adjudication ends, whichever first occurs.

[8.171.400.16 NMAC - N/E, 8-31-06]

**8.171.400.17 SPECIAL RECIPIENT REQUIREMENTS:** To be eligible for premium assistance for kids, the applicant must meet the following criteria:

A. **Age:** For purposes of premium assistance for kids eligibility, the applicant must be less than 12 years of age, or less than the age of 18 if part of a sibling group that includes a child up to the age of 12.

B. **Continuing eligibility on the basis of age:** When an individual has been determined eligible based on age, he remains eligible on the condition of age until the upper age limit, as described above, is reached. An individual who exceeds the age limit during a given month is eligible for that month, unless the birthday is the first day of the month.

C. **Uninsured:** For purposes of premium assistance for kids eligibility, an applicant cannot be covered by a commercial health insurance product, medicare, or medicaid. The applicant must be ineligible for medicaid or SCHIP due to countable income, not on the basis of failure to recertify or failure to provide the necessary documentation to establish eligibility for medicaid or SCHIP. An individual with access to health care at Indian health services, veteran's administration, or through worker's compensation, is not considered to be insured by having such access.

D. **Voluntary drop of insurance:**

(1) An individual who has voluntarily dropped health insurance, or whose parent or stepparent has dropped health insurance on the child's behalf, will be ineligible for premium assistance for kids for six months, starting with the month that the health insurance was dropped (i.e., the first month of no coverage). It is not considered to be a voluntary drop if the drop was caused by: the loss of access to employer-sponsored insurance, the loss of employment, divorce, death of a spouse, geographic move, or loss of coverage as a dependent child.

(2) If the client share of the premium assistance for kids premium is not made on time and the client is disenrolled, there will be a 12 month period of ineligibility.

E. **Ineligible for medicaid or SCHIP:** To be eligible for premium assistance for kids, the applicant must either be denied for medicaid and SCHIP or be screened and found ineligible for medicaid and SCHIP.

[8.171.400.17 NMAC - N/E, 8-31-06]

**8.171.400.18 CITIZENSHIP:** See 8.200.410.11 NMAC.

[8.171.400.18 NMAC - N/E, 8-31-06]

**8.171.400.19 ENUMERATION:** In order to be eligible for premium assistance for kids, the individual must disclose his or her social security number, or apply for one if not already enumerated.

[8.171.400.19 NMAC - N/E, 8-31-06]

**HISTORY OF 8.171.400 NMAC:**  
[RESERVED]

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

**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 171 PREMIUM ASSISTANCE FOR KIDS AND PREGNANT WOMEN (CATEGORY 071)**  
**PART 500 INCOME AND RESOURCE STANDARDS**

**8.171.500.1 ISSUING AGENCY:**  
Human Services Department

[8.171.500.1 NMAC - N/E, 8-31-06]

**8.171.500.2 SCOPE:** This rule applies to the general public.

[8.171.500.2 NMAC - N/E, 8-31-06]

**8.171.500.3 STATUTORY AUTHORITY:** New Mexico Statutes Annotated, 1978 (Chapter 27, Article 2-12) authorizes the human services department to administer a program of medical or premium assistance for children and pregnant women ineligible for federally funded public assistance. The premium assistance for kids program will be designated for purposes of this regulation as category 071.

[8.171.500.3 NMAC - N/E, 8-31-06]

**8.171.500.4 DURATION:**  
Permanent.

[8.171.500.4 NMAC - N/E, 8-31-06]

[The medical or premium assistance program is operated subject to the availability of funding.]

**8.171.500.5 EFFECTIVE DATE:**  
August 31, 2006, unless a later date is cited at the end of the section.

[8.171.500.5 NMAC - N/E, 8-31-06]

**8.171.500.6 OBJECTIVE:** The objective of premium assistance for kids is to reduce the number of uninsured New Mexicans by providing state funds toward the purchase of comprehensive health insurance products to children up to the age of twelve, and children up to the age of eight-

een if part of a sibling group that includes a child up to the age of twelve, who are ineligible for public assistance under the act. [8.171.500.6 NMAC - N/E, 8-31-06]

**8.171.500.7 DEFINITIONS:** See 8.171.400.7 NMAC. [8.171.500.7 NMAC - N/E, 8-31-06]

**8.171.500.8** [RESERVED]

**8.171.500.9 INCOME DETERMINATION:** In order to determine whether or not the applicant is potentially medicaid or SCHIP eligible, the countable income of the family with which the applicant resides must be determined. Family income will be determined using the income definitions, disregards, and methodologies as described in 8.232.400 NMAC. There is no upper income limit for premium assistance for kids. Once a child is determined eligible for premium assistance for kids, the eligibility will continue for a period of 12 months, or until the participant no longer meets age criteria, moves out of state, or the participant's income changes, the information is reported to HSD, and the individual becomes eligible for medicaid or SCHIP. [8.171.500.9 NMAC - N/E, 8-31-06]

**HISTORY OF 8.171.500 NMAC:** [RESERVED]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

### TITLE 8 SOCIAL SERVICES CHAPTER 171 PREMIUM ASSISTANCE FOR KIDS AND PREGNANT WOMEN (CATEGORY 071) PART 600 BENEFIT DESCRIPTION

**8.171.600.1 ISSUING AGENCY:** Human Services Department [8.171.600.1 NMAC - N/E, 8-31-06]

**8.171.600.2 SCOPE:** This rule applies to the general public. [8.171.600.2 NMAC - N/E, 8-31-06]

**8.171.600.3 STATUTORY AUTHORITY:** New Mexico Statutes Annotated, 1978 (Chapter 27, Article 2-12) authorizes the human services department to administer a program of medical or premium assistance for children and pregnant women ineligible for federally funded public assistance. The premium assistance for kids program will be designated for purposes of this regulation as category 071. [8.171.600.3 NMAC - N/E, 8-31-06]

**8.171.600.4 DURATION:**

Permanent.

[8.171.600.4 NMAC - N/E, 8-31-06]  
[The medical or premium assistance program is operated subject to the availability of funding.]

**8.171.600.5 EFFECTIVE DATE:** August 31, 2006, unless a later date is cited at the end of the section. [8.171.600.5 NMAC - N/E, 8-31-06]

**8.171.600.6 OBJECTIVE:** The objective of premium assistance is to reduce the number of uninsured New Mexicans by providing state funds toward the purchase of comprehensive health insurance products to children up to the age of twelve, and children up to the age of eighteen if part of a sibling group that includes a child up to the age of twelve, who are ineligible for public assistance under the act. [8.171.600.6 NMAC - N/E, 8-31-06]

**8.171.600.7** See 8.171.400.7 NMAC. [8.171.600.7 NMAC - N/E, 8-31-06]

**8.171.600.8** [RESERVED]

**8.171.600.9 BENEFITS:** The premium assistance for kids benefit is premium assistance toward the purchase of a comprehensive health insurance plan that is certified by the human services department. The portion of the health insurance premium that is paid by the premium assistance for kids program is determined by the secretary of the human services department, based on available funding. [8.171.600.9 NMAC - N/E, 8-31-06]

**8.171.600.10** [RESERVED]

**8.171.600.11 ERRONEOUS RECEIPT OF PREMIUM ASSISTANCE PROGRAM BENEFITS:** Participants of the premium assistance program who failed to provide pertinent information or who provided false information regarding eligibility will be responsible for repayment of benefits that were erroneously received. [8.171.600.11 NMAC - N/E, 8-31-06]

**8.171.600.12 RIGHTS TO APPEAL:** The human services department will grant an opportunity for an administrative hearing when an applicant or recipient believes that the human services department has taken an action erroneously regarding eligibility for the premium assistance program as described in 8.352.2 NMAC. [8.171.600.12 NMAC - N/E, 8-31-06]

**HISTORY OF 8.171.600 NMAC:** [RESERVED]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an emergency to amend 8.352.2 NMAC, Sections 3, 6, 7 and 11, which will be effective on August 31, 2006. The Medical Assistance Division amended the sections to add premium assistance which is a new medical assistance program.

**8.352.2.3 STATUTORY AUTHORITY:** The New Mexico medicaid ~~[program is]~~ and medical assistance programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See NMSA 1978 27-2-12 et. seq. (Repl. Pamp. 1991). The premium assistance program is authorized by NMSA Section 27-2-12 et. seq. (Repl.Pamp. 1991). [1-1-95; 8.352.2.3 NMAC - Rn, 8 NMAC 4.MAD.000.3, 7-1-01; A/E, 8-31-06]

**8.352.2.6 OBJECTIVE:** The objective of these regulations is to provide policies for the service portion of the New Mexico medicaid ~~[program]~~ and medical assistance programs. These policies describe eligible providers, covered services, noncovered services, utilization review, and provider reimbursement. [1-1-95, 2-1-95; 8.352.2.6 NMAC - Rn, 8 NMAC 4.MAD.000.6, 7-1-01; A/E, 8-31-06]

**8.352.2.7 DEFINITIONS:**

A. "Action" means a termination, modification, reduction, or suspension of a covered service.

B. "Contractor" means a managed care organization (MCO), or HSD's utilization review contractor.

C. "Date of action" means the intended date on which a termination, modification, reduction, or suspension becomes effective.

D. "Denial" means the decision not to authorize a requested service.

E. "Hearing" or "administrative hearing" means an evidentiary hearing that is conducted so that evidence may be presented.

F. "HSD" means the human services department.

G. "MAD" means the ~~Medicaid~~ medical assistance division.

H. "Notice" means a written statement that includes what action is being taken, the reasons for the intended action, the specific regulation that requires

the action, and an explanation of the recipient's right to request a hearing, along with an explanation of the circumstances under which the service may be continued if a hearing is requested.

I. "Parties to the hearing" are the human services department (HSD) and the recipient. If the hearing issue is an MCO action, the parties are HSD, the recipient, and the MCO.

J. "Request for hearing" means a clear expression by a recipient or an authorized representative that the recipient wants the opportunity to present his or her case to a reviewing authority.

K. "State coverage insurance" SCI- health insurance flexibility and accountability waiver program for coverage of uninsured working adults.

L. "Utilization review contractor" is a contractor with the New Mexico medicaid program responsible for medical level of care reviews and medical necessity reviews for fee-for-service (not MCO) services.

M. "Premium assistance" is a premium assistance program for children and pregnant women who are ineligible for other federally and state funded public assistance programs.

[11-1-96, 1-1-00; 8.352.2.7 NMAC - Rn, 8 NMAC 4.MAD.970.1 & A, 7-1-01; A, 7-1-05; A, 3-1-06; A/E, 8-31-06]

### 8.352.2.11 HEARING PROCESS REFERENCE:

HSD has established an administrative process for medicaid and medical assistance recipients who meet the criteria described above in 8.352.2.10 NMAC. For medicaid and medical assistance eligibility appeals procedures, see 8.100.970 NMAC, *Fair Hearings*. See 8.354.2 NMAC, *PASAAR and Patient Status Hearings* for policies on administrative hearings requests by residents who believe that a nursing facility determination that they be transferred or discharged is erroneous and for requests by any recipient who believes that the state determination with regard to the preadmission and annual resident review requirements is erroneous. 8.305.12 NMAC, *Grievance Resolution* describes appeal rights and processes for SALUD! enrolled recipients. A SALUD! enrolled recipient has a two-pronged appeals process available on issues of medical services: (1) through the HSD administrative hearings process described in this section, and (2) through the grievance resolution process described in 8.305.12 NMAC. The processes may be sequential or simultaneous. An SCI program participant may appeal eligibility denials and closures through the HSD administrative hearing process. SCI enrollment and benefits issues must be addressed through the managed care

grievance/appeals process. If the benefit or enrollment issue is not resolved at the MCO grievance/appeal level, issues of MCO action may be taken to the HSD administrative hearing process. Issues of late premium payment or failure to pay the premium addressed through the MCO grievance/appeal process and not resolved at that level may be appealed to the state district court at the appellant's expense. An applicant/recipient of premium assistance may appeal eligibility determinations via the HSD administrative hearing process. [11-1-96, 1-1-00; 8.352.2.11 NMAC - Rn, 8 NMAC 4.MAD.972, 7-1-01; A, 7-1-05; A/E, 8-31-06]

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

### Notice of Repeal

1.18.521 NMAC, Executive Records Retention and Disposition Schedule for the Energy, Minerals and Natural Resources Department, is being repealed and replaced with the new 1.18.521 NMAC, Executive Records Retention and Disposition Schedule for the Energy, Minerals and Natural Resources Department, effective September 25, 2006. 1.19.3 NMAC, Local Government Records Retention and Disposition Schedule for the Office of the County Clerk, is being repealed and replaced with the new 1.19.3 NMAC, Local Government Records Retention and Disposition Schedule for the Office of the County Clerk, effective September 25, 2006. The New Mexico Commission of Public Records at their August 24, 2006 meeting repealed the current rules. The New Mexico Commission of Public Records at their August 24, 2006 meeting approved the new rules.

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

August 24, 2006

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

Mr. Lucero:

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

\* 1.18.521 NMAC ERRDS,

Energy, Minerals and Natural Resources Department,

A review of this rule shows that its impact is limited to the individual agency to which it pertain, and it is "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis for it is approved.

Sincerely,

Sandra Jaramillo  
State Records Administrator

SJ/lrl

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

### SYNOPSIS

**1.18.521 NMAC ERRDS, Energy, Minerals and Natural Resources Department**

**1. Subject matter:** 1.18.521 NMAC, Executive Records Retention and Disposition Schedule for the Energy, Minerals and Natural Resources Department. This rule is new and replaces 1.18.521 NMAC ERRDS, Energy, Minerals and Natural Resources Department an outdated re-numbered version that was filed on 6/21/2002. This records retention and disposition schedule is a timetable for the management of specific records series of the Energy, Minerals and Natural Resources Department. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the Energy, Minerals and Natural Resources Department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Energy, Minerals and Natural Resources Department.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the Energy, Minerals and Natural Resources Department. Persons

and entities normally subject to the rules and regulations of the Energy, Minerals and Natural Resources Department may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the Energy, Minerals and Natural Resources Department.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the Energy, Minerals and Natural Resources Department. Any person or entity outside the covered geographical area that conducts business with or through the Energy, Minerals and Natural Resources Department may also be affected by this rule.

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

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

**7. Effective date of this rule:** September 25, 2006.

#### **Certification**

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.521 NMAC ERRDS, Energy, Minerals and Natural Resources Department.

Alvin Garcia Date  
Assistant Attorney General

## **NEW MEXICO COMMISSION OF PUBLIC RECORDS**

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION  
CHAPTER 19 LOCAL GOVERNMENT RECORDS RETENTION AND DISPOSITION SCHEDULES (LGR-RDS)  
PART 3 LGR-RDS, OFFICE OF THE COUNTY CLERK**

**1.19.3.1 ISSUING AGENCY:** State Commission of Public Records - State

Records Center and Archives

[1.19.3.1 NMAC - Rp, 1.19.3.1 NMAC, 09/25/2006]

**1.19.3.2 SCOPE:** county clerk - local government

[1.19.3.2 NMAC - Rp, 1.19.3.2 NMAC, 09/25/2006]

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

[1.19.3.3 NMAC - Rp, 1.19.3.3 NMAC, 09/25/2006]

**1.19.3.4 DURATION:** permanent

[1.19.3.4 NMAC - Rp, 1.19.3.4 NMAC, 09/25/2006]

**1.19.3.5 EFFECTIVE DATE:** 09/25/2006, unless a later date is cited at the end of a section.

[1.19.3.5 NMAC - Rp, 1.19.3.5 NMAC, 09/25/2006]

**1.19.3.6 OBJECTIVE:** To establish a model records retention and disposition schedule for the orderly management and retirement of records created and maintained by county clerk offices.

[1.19.3.6 NMAC - Rp, 1.19.3.6 NMAC, 09/25/2006]

**1.19.3.7 DEFINITIONS:**

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

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

**C. "Canvassing"** means to officially examine votes for legality.

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

**E. "Emergency paper ballot"** means paper ballots used in the primary and general elections if any voting machine becomes disabled while being used to the extent that any voter is unable to cast a vote for all the candidates or questions of his choice and have such vote recorded by the machine.

**F. "Instrument"** means a formal legal document being recorded (i.e., deed, bond, or agreement).

**G. "Lis Pendens"** means a document filed by a trustee or attorney on behalf of the foreclosing lender that starts

the foreclosure process.

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

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

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

**K. "Provisional paper ballot"** means a paper ballot used when a person is permitted to vote even though the person's original certificate of registration cannot be found in the county register or even if the person's name does not appear on the signature roster.

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

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

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

[1.19.3.7 NMAC - N, 09/25/2006]

**1.19.3.8 ABBREVIATIONS AND ACRONYMS:**

**A.** "NMAC" means New Mexico administrative code.

**B.** "NMSA" means New Mexico statutes annotated.

**C.** "USC" means United States code.

[1.19.3.8 NMAC - N, 09/25/2006]

### 1.19.3.9 INSTRUCTIONS:

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

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

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

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

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

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

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

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

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

**J.** Public records placed

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

[1.19.3.9 NMAC - N, 09/25/2006]

### 1.19.3.10-100 [RESERVED]

#### 1.19.3.101 DOCUMENT AND INSTRUMENT SYSTEM:

**A. Program:** clerk

**B. Maintenance system:** local government preference

**C. Description:** system used to track instruments recorded and documents filed by the general public. Data may include type of document, document title, document number, fee, date and time filed or recorded, change of name, contract of sale and purchase amounts, real estate contract amount, bond amounts, book and page number, instrument number, etc.

**D. Retention:** permanent

**E. Hardcopy input documents:** All documents used as input for the recorded and filed instrument system are filed in the *recorded and filed instruments* file and the *uniform commercial code statement* file. Those documents include the following: *deeds, wills, marriage licenses, liens, mortgages, uniform commercial code statements, bonds, patents, etc.*

**F. Hardcopy output documents:** Because this is a data-based system, ad hoc reports may be generated upon request or demand. When produced, these reports are forwarded to the requesting entity. Statistical reports may be created from this system.

[1.19.3.101 NMAC - Rp, 1.19.3.101 NMAC, 09/25/2006]

#### 1.19.3.102 DOCUMENT AND INSTRUMENT FILE:

**A. Program:** clerk

**B. Maintenance system:** local government preference

**C. Description:** instruments recorded or documents filed by the general public. File may include type of document, document title, document number, fee, date and time filed or recorded, uniform commercial code statement, deeds (i.e., quitclaim warranty, tax, estate, executors, commissioners, administrators, etc.), liens (i.e., federal tax, hospital, judgments, etc.), lien releases, mining claims, labor records, oil and gas leases, certificates of incorporation, transcripts of court judgments, lis pendens, military discharges, orders for change of name, continuation

certificates, contracts of sale and purchase, real estate contracts, right of way easements, assignment of contracts, notices of disclaimer, patents, power of attorneys, probate files, bonds, wills, mortgage records (i.e., mortgages, releases, real estate assignments, etc.), book and page number, instrument number, plats and maps, marriage records (i.e., marriage license applications, marriage certificates, etc.), etc.

**D. Retention:** permanent  
[1.19.3.102 NMAC - Rp, 1.19.3.102 NMAC, 09/25/2006]

#### 1.19.3.103 D O C U M E N T INSTRUMENT INDEX:

**A. Program:** clerk

**B. Maintenance system:** local government preference

**C. Description:** index that lists all instruments recorded and documents filed in the county clerk's office. Index may contain names, instrument type, instrument number, book number, page number, date and time filed, etc.

**D. Retention:** permanent  
[1.19.3.103 NMAC - Rp, 1.19.3.103 NMAC, 09/25/2006]

### 1.19.3.104-105 [RESERVED]

#### 1.19.3.106 NEWSPAPER PUBLICATIONS:

**A. Program:** clerk

**B. Maintenance system:** local government preference

**C. Description:** copy of newspapers published in the county.

**D. Retention:** permanent  
[1.19.3.106 NMAC - Rp, 1.19.3.106 NMAC, 09/25/2006]

#### 1.19.3.107 UNIFORM COMMERCIAL CODE STATEMENT FILE:

**A. Program:** clerk

**B. Maintenance system:** local government preference

**C. Description:** collateral and fixture filing of goods by commercial entities. File may include security agreement, filer name, filing type, filing number, book and page number, debtor's legal name, mailing address, type of organization, jurisdiction of organization, organizational identification number, name of additional debtors, secured party's name, alternative designation, lessee, lessor, consignee, consignor, bailee, bailor, seller, buyer, lien, description of real estate, name and address of record owner, continuations, amendments, terminations, partial releases, assignments, certification of county clerk (i.e., day, year, time, instrument number, county clerk signature, and seal etc.), etc.

**D. Retention:** five years after filing date  
[1.19.3.107 NMAC - Rp, 1.19.3.107

NMAC, 09/25/2006]

**1.19.3.108 CLERKS DAILY CASH REPORT AND ALLOTMENT FILE:**

**A. Program:** clerk  
**B. Maintenance system:** local government preference  
**C. Description:** records concerning daily fees collected for recording of instruments or filing of documents and distribution of monies. Report may include payee name, receipt number, amount paid, type of payment (i.e., cash or check), instrument type (i.e., marriage license, copies, miscellaneous, etc), daily receipt from treasurer, line item distribution (i.e., general fund, lodgers tax, etc.), etc.  
**D. Retention:** six years after close of fiscal year in which created [1.19.3.108 NMAC - Rp, 1.19.3.108 NMAC, 09/25/2006]

**1.19.3.109 CLERKS DAILY CASH REPORT AND ALLOTMENT FILE SYSTEM:**

**A. Program:** clerk  
**B. Maintenance system:** local government preference  
**C. Description:** system used to track daily fees collected for recording of instruments or filing of documents and distribution of monies. Data may include payee name, date paid, receipt number, amount paid, type of payment (i.e., cash or check), instrument type (i.e., marriage license, copies, etc), daily receipt from treasurer, line item distribution (i.e., general fund, lodgers tax, etc.), miscellaneous charges, document number, check number, cash totals, check totals, etc.  
**D. Retention:** six years after close of fiscal year to which data applies  
**E. Hardcopy input documents:** All documents used as input for the clerk's daily report and allotment system are filed in the *clerk's daily cash report and allotment file*. Some of these reports include the *clerk's receipt book*, etc.  
**F. Hardcopy output documents:** Because this is a data-based system, ad hoc reports may be generated upon request or demand. When produced, these reports are forwarded to the requesting entity. Some of these reports include clerk's daily cash report, clerk's allotment report, etc.  
 [1.19.3.109 NMAC - N, 09/25/2006]

**1.19.3.110 LIQUOR LICENSE APPLICATION FILE:**

**A. Program:** licensing  
**B. Maintenance system:** local government preference  
**C. Description:** records

concerning annual application to obtain or renew a liquor license. File may include approved application, liquor tax certificate, receipt, inspection notes, change of ownership, etc.

**D. Retention:** three years after date of last renewal  
 [1.19.3.110 NMAC - Rp, 1.19.3.110 NMAC, 09/25/2006]

**1.19.3.111 [RESERVED]**

**1.19.3.112 BUSINESS LICENSE APPLICATION FILE:**

**A. Program:** licensing  
**B. Maintenance system:** local government preference  
**C. Description:** records concerning annual application to obtain a business license. File may include license application (i.e., owner and establishment name, location, date, license fee, license number, expiration date, etc.), license type (i.e., commercial, occupational, special event, etc.), receipt, zoning codes lists, etc.  
**D. Retention:**  
 (1) **Commercial and occupational:** three years after date of application  
 (2) **Special event:** until expired  
 [1.19.3.112 NMAC - Rp, 1.19.3.112 NMAC, 09/25/2006]

**1.19.3.113-114 [RESERVED]**

**1.19.3.115 DISCLOSURE OF FINANCIAL INTEREST FORM:**

**A. Program:** clerk  
**B. Maintenance system:** local government preference  
**C. Description:** a form completed annually by county employees, appointed and elected officials disclosing any financial interest they may have in outside companies. Form may include name, address, home and work phone number, job title, name of spouse, spouse's employer, sources of income (i.e., county employees, elected officials), stocks in voting, special interests, business name, amount paid, real estate owned, board memberships, professional licenses, signature, notary, etc.  
**D. Retention:** four years after close of calendar year in which filed  
 [1.19.3.115 NMAC - Rp, 1.19.3.115 NMAC, 09/25/2006]

**1.19.3.116 DISCLOSURE FOR PERSONS ON RETAINER OR CONTRACT FORM:**

**A. Program:** finance  
**B. Maintenance system:** local government preference  
**C. Description:** a form used by individuals or businesses to disclose any financial interest in county government. Form may include contract

description, description of the type of services rendered, total amounts paid for each service rendered, signatures, etc.

**D. Retention:** six years after termination of contract  
 [1.19.3.116 NMAC - Rp, 1.19.3.116 NMAC, 09/25/2006]

**1.19.3.117 - 120 [RESERVED]**

**1.19.3.121 AFFIDAVIT OF VOTER REGISTRATION FILE:**

**A. Program:** elections  
**B. Maintenance system:** local government preference  
**C. Description:** records concerning voter registration information for the county clerk. File may include voter name, address, date and place of birth, zip code, social security number, county name, party affiliation, address changes, return mailings, voter cancellation notices, purge cards, change in voting precinct notice, old precinct number, new precinct number, registration number, undeliverable or reinstated status, statement of qualifications for voting, etc.  
**D. Retention:** six years after voter cancellation  
**E. Confidentiality:** Portions of this record may be confidential per 5 USC Section 552a (i.e., social security number).  
 [1.19.3.121 NMAC - Rp, 1.19.3.121 NMAC, 09/25/2006]

**D. Retention:** six years after voter cancellation

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

[1.19.3.121 NMAC - Rp, 1.19.3.121 NMAC, 09/25/2006]

**1.19.3.122-123 [RESERVED]**

**1.19.3.124 CERTIFIED LIST OF INELIGIBLE OR DECEASED RESIDENTS:**

**A. Program:** elections  
**B. Maintenance system:** local government preference  
**C. Description:** a certified list provided to the county clerk that lists deceased residents over the age of 18, mentally incompetent residents, and convicted felons. List may include *proclamation of mental incompetence* (i.e., name, age, sex, marital status, birthplace, date of birth, social security number, address, etc.), place and date of death of the deceased resident, certificate of fact filed by the clerk of the county wherein the convicted felon is registered, date of conviction, address, etc.  
**D. Retention:** six years after date list issued

**D. Retention:** six years after date list issued

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

[1.19.3.124 NMAC - Rp, 1.19.3.124 NMAC, 09/25/2006]

**1.19.3.125 - 126 [RESERVED]**

**1.19.3.127 NOMINATING CANDIDACY PETITION:**

**A. Program:** elections  
**B. Maintenance system:** local government preference

**C. Description:** required information that a potential candidate must obtain prior to running for office. Petition may include list of voter signatures, candidates name, precinct number, county, party affiliation, candidate's signature and mailing address, notary public information, certified copy of voter registration, vital candidate sheet, candidate declaration, etc.

**D. Retention:** until term of office for which petition filed for has expired  
 [1.19.3.127 NMAC - Rp, 1.19.3.127 NMAC, 09/25/2006]

**1.19.3.128 [RESERVED]****1.19.3.129 EXPENDITURE CONTRIBUTION REPORT:**

**A. Program:** elections  
**B. Maintenance system:** local government preference

**C. Description:** expenditures made or contributions received from individuals or entities to a candidate's campaign. Report may include name and address of the person or entity, amount of expenditure or contribution, date of expenditure or contribution, total itemized amounts, etc.

**D. Retention:** five years after term of office for which report submitted has expired  
 [1.19.3.129 NMAC - Rp, 1.19.3.129 NMAC, 09/25/2006]

**1.19.3.130 ELECTION PROCLAMATION FILE:**

**A. Program:** elections  
**B. Maintenance system:** local government preference

**C. Description:** election proclamation issued by the governor. File may include purpose of election, office to be filled, names of precinct board members, precinct to which they are appointed, address of polling place, etc.

**D. Retention:** five years after term of office for which proclamation has expired  
 [1.19.3.130 NMAC - Rp, 1.19.3.130 NMAC, 09/25/2006]

**1.19.3.131 CERTIFICATE OF VOTING MACHINE PREPARATION:**

**A. Program:** elections  
**B. Maintenance system:** local government preference

**C. Description:** records concerning voting machine certification. Certificate may include date of election,

preparation date, machine number, precinct location, protective counter number, remarks, check list, voting machine technician name and signature, county clerk name, signature and seal, etc.

**D. Retention:** 45 days after adjournment of state canvassing board  
 [1.19.3.131 NMAC - Rp, 1.19.3.131 NMAC, 09/25/2006]

**1.19.3.132-133 [RESERVED]****1.19.3.134 ELECTION DAY TROUBLE CALL LOG:**

**A. Program:** elections  
**B. Maintenance system:** local government preference

**C. Description:** a log of election day voting machine problems. Log may include name of county, precinct number, date, time, voting machine number, malfunction, cause of malfunction, name of voting machine technician, name of dispatcher, problem description, instructions given, technician dispatched, time of dispatch, signature of technician, etc.

**D. Retention:** 45 days after adjournment of state canvassing board  
 [1.19.3.134 NMAC - Rp, 1.19.3.134 NMAC, 09/25/2006]

**1.19.3.135 [RESERVED]****1.19.3.136 APPLICATION FOR ABSENTEE VOTER BALLOT:**

**A. Program:** elections  
**B. Maintenance system:** local government preference

**C. Description:** application submitted by a voter requesting absentee voter ballot for county, state and federal elections. Application may include election date, county name, type of absentee voter ballot (i.e. primary, general, school, special, etc.), name of voter, voter year of birth, physical address, unique identifier, mailing address, signature of registered voter, affidavit, current residence, previous residence, state and county, voter declaration of residence, physical address, etc.

**D. Retention:** 22 months after election to which they apply  
 [1.19.3.136 NMAC - Rp, 1.19.3.136 NMAC, 09/25/2006]

**1.19.3.137 NOTICE OF ACCEPTANCE OF ABSENTEE BALLOT APPLICATION:**

**A. Program:** elections  
**B. Maintenance system:** local government preference

**C. Description:** notice submitted by a voter requesting absentee voter ballot for county, state and federal elections. Notice may include election date, applicant's printed name, birth year, unique identifier, applicant's signature, date and

time application received in clerk's office, type of absentee application (i.e., voter, an absent uniformed services voter or overseas voter), notification of acceptance, etc.

**D. Retention:** 45 days after adjournment of state canvassing board  
 [1.19.3.137 NMAC - Rp, 1.19.3.137 NMAC, 09/25/2006]

**1.19.3.138 NOTICE OF REJECTION OF ABSENTEE BALLOT APPLICATION:**

**A. Program:** elections  
**B. Maintenance system:** local government preference

**C. Description:** notice submitted by a voter requesting absentee voter ballot for county, state, and federal elections. Notice may include election date, applicant's printed name, birth year, unique identifier, applicant's signature, date and time application received in clerk's office, type of absentee application (i.e., voter, an absent uniformed services voter or overseas voter), notification of rejection and explanation of rejection, etc.

**D. Retention:** 45 days after adjournment of state canvassing board  
 [1.19.3.138 NMAC - Rp, 1.19.3.137 NMAC, 09/25/2006]  
 [Retention on returned or undeliverable notices]

**1.19.3.139 ABSENTEE VOTER REGISTER:**

**A. Program:** elections  
**B. Maintenance system:** local government preference

**C. Description:** register concerning election records of absentee voters. Register may include county, election type, election date, date application received, date ballot sent out, time and date ballot returned, method of delivery of ballot, voter name, address, register identification number, birth year, registration status, precinct, party affiliation, type of district (i.e., senate, commission, congressional, etc.), ballot style, ballot accepted or rejected by clerk, voided or replaced, notations and certificate for elections, affidavit of nonreceipt of absentee ballot, application for presidential election, presidential ballot, etc.

**D. Retention:** three years after election to which register applies  
 [1.19.3.139 NMAC - Rp, 1.19.3.139 NMAC, 09/25/2006]

**1.19.3.140 ABSENTEE VOTER REGISTER SYSTEM:**

**A. Program:** elections  
**B. Maintenance system:** local government preference

**C. Description:** system used to track election records of absentee voters. Data may include date of election, county, election type, date application



received, date ballot sent out, time and date ballot returned, method of delivery of ballot, voter name, address, register identification number, birth year, registration status, precinct, party affiliation, type of district (i.e., senate, commission, congressional, etc.), ballot style, ballot accepted or rejected by clerk, ballot voided or replaced, notations and certificate for elections, affidavit of nonreceipt of absentee ballot, affidavit for replacement of absentee ballot, application for presidential election, presidential ballot, etc.

**D. Retention:** three years after election to which data applies

**E. Hardcopy input documents:** All documents used as input for absent voter register file system are filed in the *absentee voter register*. Those documents include the application for absentee voter registration form, ballot, etc.

**F. Hardcopy output documents:** Because this is a data-based system ad-hoc reports and forms can be generated upon demand. When produced, these reports are forwarded to the requesting entity. Documents generated by this system include blank ballots, statistical reports, etc. [1.19.3.140 NMAC - N, 09/25/2006]

#### 1.19.3.141-142 [RESERVED]

#### 1.19.3.143 CERTIFIED VOTERS INDEX LIST:

**A. Program:** elections  
**B. Maintenance system:** local government preference

**C. Description:** a list that shows voter by precinct, party and address. List may include voter's name, gender, address, zip code, party affiliation, last four digits of social security number, county, precinct number, date, page number, etc.

**D. Retention:** until superseded by new listing  
[1.19.3.143 NMAC - Rp, 1.19.3.143 NMAC, 09/25/2006]

#### 1.19.3.144 PRECINCT VOTER AND SIGNATURE ROSTER LIST:

**A. Program:** elections  
**B. Maintenance system:** local government preference

**C. Description:** a voter list by precinct. List may include county, voter name, gender, place of residence, last four digits of social security number, birth year, party affiliation, precinct of residence, voter signature, voter consecutive number, page number, date and name of election, etc.

**D. Retention:** 22 months after election to which they apply  
[1.19.3.144 NMAC - Rp, 1.19.3.144 NMAC, 09/25/2006]  
[Each index shall be certified by the county

clerk and sent to secretary of state.]

#### 1.19.3.145 [RESERVED]

#### 1.19.3.146 MONTHLY FILE MAINTENANCE LIST:

**A. Program:** elections  
**B. Maintenance system:** local government preference

**C. Description:** a list generated from the voter registration and election management system that is used to update voter information at the county clerk's office. List may include voter's name, address, party affiliation; precinct name and number; additions, deletions or changes made to the county register, etc.

**D. Retention:** one year after list created

[1.19.3.146 NMAC - Rp, 1.19.3.146 NMAC, 09/25/2006]

[The county clerk shall send copies of the list to the county chairman of the major political parties in the county.]

#### 1.19.3.147 VOTING MACHINE PERMIT:

**A. Program:** elections  
**B. Maintenance system:** local government preference

**C. Description:** permit issued to a voter at the polls. Permit may include election date, voters list number, voting machine operator, public counter number, voting machine assigned letter, etc.

**D. Retention:** 45 days after adjournment of state canvassing board  
[1.19.3.147 NMAC - Rp, 1.19.3.147 NMAC, 09/25/2006]

#### 1.19.3.148-149 [RESERVED]

#### 1.19.3.150 NOTICE OF APPOINTMENT OF PRECINCT BOARD [NME-24A]:

**A. Program:** elections  
**B. Maintenance system:** local government preference

**C. Description:** records concerning appointment of members to precinct board. Notice may include qualification of members, training received, certification by county clerk, member's oath of office, removal from the board, disqualification, refusal to serve or excusal by the county clerk for sufficient cause, etc.

**D. Retention:** two years from date of appointment

[1.19.3.150 NMAC - Rp, 1.19.3.150 NMAC, 09/25/2006]

#### 1.19.3.151-155 [RESERVED]

#### 1.19.3.156 BALLOTS:

**A. Program:** elections  
**B. Maintenance system:**

local government preference

**C. Description:** a printed and certified ballot used by voters to make decisions in elections (i.e., absentee, labels, cards, sheets, provisional paper and emergency paper, etc.). Ballot may include numbered position on ballot, physical ballot layout, office running for, names of candidates, certification of registration, occupation and post office address, bonds, constitutional amendments, propositions and other questions to be voted on, marking, casting and recording of votes, etc.

**D. Retention:**

**(1) State or county elections paper ballots:** 45 days after adjournment of state canvassing board if no contest or judicial inquiry made

**(2) Federal election paper ballots:** 22 months from date of any general, special or primary election

**(3) Unused emergency ballots:** precinct board will destroy upon the closing of polls

**(4) Unused absentee ballots:** at 5:00 p.m. on the Monday immediately preceding election date

**(5) Sample ballots (one copy only):** three years after election to which they apply

[1.19.3.156 NMAC - Rp, 1.19.3.156 NMAC, 09/25/2006]

#### 1.19.3.157-159 [RESERVED]

#### 1.19.3.160 MACHINE PRINTED RETURN:

**A. Program:** elections  
**B. Maintenance system:** local government preference

**C. Description:** printout of the number of votes cast for each candidate and all write in candidates. Return may include name of write in candidates, independent candidates, all votes cast, etc.

**D. Retention:** three years after election to which return applies

[1.19.3.160 NMAC - Rp, 1.19.3.160 NMAC, 09/25/2006]

#### 1.19.3.161 CANVASS OF RETURN TALLY SHEET:

**A. Program:** elections  
**B. Maintenance system:** local government preference

**C. Description:** records concerning canvassing of election results. Sheet may include election type, election date, county name, districts, candidate names, other election issues, total number of votes, tally mark square, total votes tallied, affidavit by board of canvass chairman, members' names and signatures, etc.

**D. Retention:** three years after election to which sheet applies  
[1.19.3.161 NMAC - Rp, 1.19.3.161,

09/25/2006]

**1.19.3.162 [RESERVED]****1.19.3.163 CERTIFICATE OF NOMINATION OR ELECTION FILE:****A. Program:** elections**B. Maintenance system:** local government preference**C. Description:** certificate concerning nominations in a primary or general election. File may include certificate of election for general elections, authorizing newly elected official to discharge duties of office for elected term or certificate of nomination for primary elections. Certificate may include election date, location, name of elected official, office, seal, clerk signature, etc.**D. Retention:** until replaced by new elected official or new nomination for primary election  
[1.19.3.163 NMAC - Rp, 1.19.3.163 NMAC, 09/25/2006]**1.19.3.164 OATH OF OFFICE CERTIFICATE:****A. Program:** elections**B. Maintenance system:** local government preference**C. Description:** oath of office certificate completed by all elected officials. Certificate may include county, name and signature of elected or appointed official, affidavit, name of elected office, notary seal and signature, name and signature of person administering oath, etc.**D. Retention:** one year after term ends  
[1.19.3.164 NMAC - Rp, 1.19.3.164 NMAC, 09/25/2006]**1.19.3.165 PRECINCT MAP:****A. Program:** elections**B. Maintenance system:** local government preference**C. Description:** map showing designation of precinct boundaries, representative districts and senatorial districts. Map may include state, county and municipal boundary lines, urban and nonurban precincts, written description of the precincts, etc.**D. Retention:** 10 years after map superseded  
[1.19.3.165 NMAC - Rp, 1.19.3.165 NMAC, 09/25/2006]**1.19.3.166 AFFIDAVIT OF AUTHORIZATION:****A. Program:** elections**B. Maintenance system:** local government preference**C. Description:** affidavit completed by candidates requesting information from voter file, to be used for campaign purposes only. Affidavit may include

county name candidates name, date requested, information requested, voter data, special voter list, election campaign purposes, governmental purposes, signature and address of requester, signature authorization, date material provided, signature of recipient, signature of data processor, etc.

**D. Retention:** five years after date submitted  
[1.19.3.166 NMAC - Rp, 1.19.3.166 NMAC, 09/25/2006]**1.19.3.167 [RESERVED]****1.19.3.168 PROVISIONAL BALLOT OUTER ENVELOPES:****A. Program:** elections**B. Maintenance system:** local government preference**C. Description:** completed voter affidavit for provisional or absentee ballot never received. Affidavit may include county, precinct, voter information, voters affidavit and signature, presiding judge signature, initials of chair of the county canvassing board and information why ballot was counted or not counted, etc.**D. Retention:****(1) Non federal candidates:** 45 days after adjournment of state canvassing board**(2) Federal candidates:** 22 months after election to which they apply  
[1.19.3.168 NMAC - Rp, 1.19.3.168 NMAC, 09/25/2006]**1.19.3.169 - 201 [RESERVED]****1.19.3.202 DESCENDANTS PROBATE PACKET:****A. Program:** probate**B. Maintenance system:** local government preference**C. Description:** forms and supporting documentation completed for the probate of an estate. Packet may include instructions for probate, explanation of forms, application for informal appointment of personal representative, order of informal appointment of personal representative, acceptance of appointment as personal representative, letters of testamentary, notice of informal appointment of personal representative, proof of notice, notice of known creditors, notice to creditors, inventory of assets, accounting, verified statement of the personal representative, etc.**D. Retention:** permanent  
[1.19.3.202 NMAC - Rp, 1.19.3.202 NMAC, 09/25/2006]**1.19.3.203 RECORD OF DESCENDANTS ESTATES:****A. Program:** probate**B. Maintenance system:** local government preference**C. Description:** records

concerning actions filed against an estate in probate. Record may include all heirs', their decedents' surviving spouses' names, ages, place of residence; a note of every sale of real estate made under the order of the court; money received; reason received; list of warrants issued against the county treasury, and for what reason; bonds given by personal representatives; conservators; guardians; all wills admitted to probate; etc.

**D. Retention:** permanent  
[1.19.3.203 NMAC - Rp, 1.19.3.203 NMAC, 09/25/2006]**HISTORY OF 1.19.3 NMAC:****History of Repealed Material:**

1.19.6 NMAC, LGRRDS Office of the County Clerk filed 12/07/2001 - Repealed 09/25/2006

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

This is an amendment to 14.7.2 NMAC, Section 33, effective 09-18-06.

**14.7.2.33 CHAPTER 25 GYP-SUM BOARD AND PLASTER:** See this chapter of the IBC except ~~add the following provision to-~~ as provided below.**A. Section 2510.6 Weather - resistant barrier.** See also sections 1403.2, 1405.3 and 1503.2.**B. Section 2512.1.1 On-grade floor slab.** On wood framed or steel stud construction with an on-grade concrete floor slab system, approved acrylic based exterior plaster systems and acrylic based color coats shall be applied in such a manner as to cover but not to extend below, the lath, paper, and screed. When a cement plaster stucco and cement plaster color coat is installed, and no perimeter insulation is on the exterior of a concrete or masonry foundation, the color coat shall terminate not further than 6 inches (153 mm) below finished grade. All excess plaster shall be removed from the site and no plaster material may remain on the adjoining soil or footing. The application of lath, paper and flashing or drip screeds shall comply with ASTM C 1063.

[14.7.2.33 NMAC - Rp, 14.7.2.34 NMAC, 7-1-04; A, 9-18-06]

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

This is an amendment to 14.7.3 NMAC, Section 15, effective 09-18-06.

**14.7.3.15 CHAPTER 7 WALL COVERING:**

**A. Section R701 and Section R702.** See these sections of the IRC.

**B. Section R703 Exterior Covering.** See this section of the IRC except insert the following at the end of the first paragraph of section R703.6.2: exterior finish coatings which have a current ICBO evaluation report, and applied to a concrete or masonry surface shall be installed in accordance with the manufacturer's installation instructions and are not required to comply with table 702.1(1).

**C. Section R703.6.2.1 Weep screeds** When an approved acrylic based exterior finish stucco system or acrylic based color coat is applied, a minimum 0.019 -inch (0.48 mm) (No. 26 galvanized sheet gage), corrosion-resistant weep screed or plastic weep screed, with a minimum vertical attachment flange of 3 ½ inches (89 mm) shall be provided at or below the foundation plate line on exterior stud wall in accordance with ASTM C 926. The weep screed shall be placed a minimum of 2 inches (51mm) [4 inches (102 mm) above the earth or ½ inch 13 mm [2 inches 951 mm0] above paved areas and shall be of a type that will allow trapped water to drain to the exterior of the building. The weather-resistant barrier shall la the attachment flange. The exterior lath shall lap the attachment flange of the weep screed. Weep screeds are not required under covered porches, covered patios, or when a non-acrylic based conventional cement plaster and cement plaster color coat as approved in R703.6.2 is installed.

**D. Section R703.6.2 Plaster.** See this section of the IRC except insert the following in the second paragraph of section R703.6.2. On wood frame construction with an on-grade floor slab system, approved acrylic based exterior plaster systems and acrylic based color coats shall be applied in such a manner as to cover, but not extend below, lath, paper and screed. When a cement plaster stucco and cement plaster color is installed, and no perimeter insulation is on the exterior of a concrete or masonry foundation, the color coat shall terminate not further than 6 inches (153 mm) below finished grade. All excess plaster shall be removed from the site and no plas-

ter material may remain on the adjoining soil or footing.

[14.7.3.15 NMAC - N, 7-1-04; A, 9-18-06]

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

**This is an amendment to 14.10.4 NMAC, Section 10, effective 09-18-06.**

**14.10.4.10 AMENDMENTS TO THE 2005 NATIONAL ELECTRICAL CODE.** The following amendments are made to the 2005 national electrical code. The article and section numbering is keyed to the national electrical code format.

**A. Article 110. Requirements for Electrical Installations.**

(1) 110.2 Add: Listing and labeling by a nationally recognized testing laboratory as listed by the occupation safety and health administration.

(2) Electrical wiring, equipment, or material that is not listed and labeled and a (UL) safety standard exists shall be certified by a nationally recognized testing laboratory approved by the electrical bureau.

(3) Electrical wiring, equipment, or materials that is not listed and labeled and a (UL) safety standards does not exist shall be certified by an electrical engineer licensed to practice in New Mexico. The certification will verify manufacturer's safety and performance test data of the product.

(4) 110.21. Marking of warning signs. All equipment used on circuits over 300 volts between conductors shall have a warning sign either on or adjacent to the equipment.

(5) Signs shall be made in accordance with ANSI Z535 environmental and safety signs. The language shall read:

(a) for voltages over 300 volts but less than 600 volts - install a 1" x 4" label that reads - "480 VOLTS";

(b) for voltages over 600 volts and there are exposed parts - "DANGER - HIGH VOLTAGE - KEEP OUT";

(c) warning signs shall be consistent with national electrical code articles 230.203, 370.72 (e), 620.3 (a), 665.23, 490.53, and 490.55.

(6) 110.26 (A) Working space. Add: "Disconnects that do not provide over-current, overload, short circuit, or ground fault protection are not required to maintain the dimensions of 110.26(A)(1), (A)(2) and (A)(3) where adequate space is not readily available and the disconnect is permanently labeled "Not to be opened while energized".

(7) 110.26 (E) Exception no. 2: headroom. Add: "In underground water well pump enclosures, service equipment or panelboards that do not exceed 200 amperes, operating at 250 volts or less and only feeding equipment associated with the water well enclosure, shall be permitted in spaces where the headroom is less than six and a half feet (6 ½ ft.) but greater than five feet (5 ft.) provided the enclosure is supplied with a removable lid, that when removed would allow six and a half feet (6 ½ ft.) headroom".

**B. Article 210. Branch Circuits.**

(1) 210.8(B) (6) GFCI Protection. Add: "All 15 or 20 amp receptacles installed within six(6) feet of any sink shall be GFCI protected, unless otherwise specifically allowed in the 2005 national electrical code." Add exception: Receptacles for appliances and equipment within dedicated space that in normal use is not easily moved from one place to another, and that is cord and plug connected in accordance with section 400.7(A)(6)(7)(8).

(2) 210.11 (A) (1). Number of branch circuits. Add: "In dwelling occupancies, circuits for general purpose receptacles shall be limited to a maximum of ten (10) current consuming outlets. Single and duplex receptacle outlets are considered to be one current consuming outlet. Exception: Circuits serving only lighting loads may be calculated per article 220 of the national electrical code.

(3) 210.11 (C) (1). Small appliance branch circuits - dwelling unit. Add: "Not more than four (4) current consuming outlets shall be connected to these circuits. Single and duplex receptacle outlets are considered to be one current consuming outlet. Exception: Small appliance circuits that supply only dining area receptacles may serve not more than six (6) receptacle outlets".

(4) 210.11 (C) (2). Laundry area receptacle. "This circuit shall provide supply to the laundry equipment receptacle only. This circuit shall not serve any other outlets.

(5) 210.12 (B) Dwelling unit bedrooms. Change: "All branch circuits that supply 125-volt, single-phase, 15-and 20-ampere receptacle outlets installed in dwelling unit bedrooms shall be protected by a listed arc-fault circuit interrupter(s). Exception: The location of the arc-fault circuit interrupter shall be permitted to be at other than the origination of the branch circuit in compliance with (a) and (b) below:

(a) the arc-fault circuit interrupter installed within six feet (6 ft.) of the branch circuit overcurrent device as measured along the branch circuit conductors;

(b) the circuit conductors

between the branch circuit overcurrent device and the arc-fault circuit interrupter shall be installed in a metal raceway or a cable with a metallic sheath.”

(6) 210.19 (A). General. Voltage drop. Add: “[~~Conductors for branch circuits~~] Branch circuit conductors shall be sized to prevent excessive voltage drop. The voltage drop on branch circuit conductors shall not exceed five (5) percent. [Conductors on 15 amp branch circuits, between the overcurrent protection device and the farthest outlet served, shall not exceed 75 feet for # 14 AWG copper circuit conductors, or 150 feet for # 12 AWG copper, measured along the branch circuit conductors. Conductors on 20 amp branch circuits, between the overcurrent protection device and the farthest outlet served, shall not exceed 75 feet for # 12 AWG copper, or 150 feet for # 10 AWG copper, measured along the branch circuit conductors. Branch circuits exceeding 150 feet from the overcurrent device to the farthest outlet served measured along the branch circuit conductors, shall be sized so that the voltage drop does not exceed 5%.”]”

(7) 210.19 (A) (5). One and two family dwellings. Voltage drop. Add: “For one and two family dwellings conductors for 120 volt branch circuits shall be sized to prevent excessive voltage drop. Conductors on 15 amp branch circuits, between the overcurrent protection device and the farthest outlet served, shall not exceed 75 feet for #14 AWG copper circuit conductors, or 150 feet for # 12 AWG copper, measured along the branch circuit conductors. Conductors on 20 amp branch circuits, between the overcurrent protection device and the farthest outlet served, shall not exceed 75 feet for # 12 AWG copper, or 150 feet for # 10 AWG copper, measured along the branch circuit conductors. Branch circuit conductors exceeding 150 feet from the overcurrent protection device to the farthest outlet served measured along the branch circuit conductors, branch circuits containing mixed conductor sizes or branch circuit lighting switch leg or traveler conductors shall be sized so that the voltage drop does not exceed five (5) percent. Exception: Smoke detector circuits. When calculating voltage drop conductor resistance values of 2005 NEC Chapter 9 Table 8 with either 80 percent of the maximum circuit ampacity or the known fixed load shall be used. Formula:  $VD=2LRI/1000$ , Where: VD=voltage drop, L=total length of conductor, R=resistance per NEC chapter 9 table 8, I=80 percent of maximum circuit ampacity or the known fixed load.””

(8) 210.52 (A) (2) (3). Wall Space. Add: “Exception: Free-standing cabinets designed to be used as an eating or drinking bar where stools or chairs are pulled up to a counter top which extends at

least 300 mm (1 foot) from the front of the cabinet, shall not be considered as wall space.”

~~[(7)](9)~~ 210.52 (C) (3). Peninsula counter spaces. Add: “At least one receptacle outlet shall be installed at each peninsular counter space, when the total length of the peninsular has a long dimension of six (6) feet, or greater and a short dimension of one (1) foot, or greater. A peninsular countertop is measured from the connection edge.”

~~[(8)](10)~~ 210.52 (G) Basement and garages. Add: “Receptacle outlets must be installed a minimum of eighteen (18) inches above finished floor, in attached or detached garages.”

~~[(9)](11)~~ 210.70 (A)(2)(D)&(C)(1) Lighting outlets required. Add: “At least one (1) switched lighting outlet shall be installed in all accessible attics and crawl spaces adjacent to the access point.”

~~[(10)](12)~~ 210.70 (A) (2)(E). Lighting outlets switch locations. Add: “On single family dwellings at least one wall switch, or automatic lighting control such as a motion detector shall be installed at each entrance or exit to control exterior illumination.”

#### C. Article 215. Feeders.

(1) 215.1. Scope Wiring methods for feeders: Add: “Article 334, nonmetallic-sheathed cable and article 338, service entrance cable type SER, shall be permitted to be used for feeders in dwelling units providing the cables shall not pass through or under any other occupancy. Article 340. UF cable shall be permitted to be used underground for any occupancy, and indoors only in accordance with article 334, nonmetallic-sheathed cable, providing the cable shall not pass through or under any other occupancy.”

(2) 215.2 (A) (4). Voltage drop. Add: “Feeder conductors shall be sized to prevent excessive voltage drop. The maximum voltage drop on both feeders and branch circuits at the farthest outlet of power shall not exceed eight percent (8%).”

#### D. Article 225. Outside Branch-Circuit and Feeders.

(1) 225.5 Voltage drop. Add: “Feeder conductors shall be sized to prevent excessive voltage drop. The maximum voltage drop on both feeders and branch circuits at the farthest outlet of power shall not exceed eight percent (8%).”

(2) 225.19 (A) Clearance above roofs. Exception no. 2. Delete in its entirety.

(3) 225.32 Location. Add: “The disconnecting means shall be located at a readily accessible point outside the building or structure and within thirty (30) feet and in sight of the building or structure; or within forty eight (48) inches from the point

where the feeder conductor raceway enters the building or structure.

(4) 225.32 Disconnect location. Exception no. 1. Change: “For industrial installations under single management, where documented safe switching procedures are established and maintained for disconnection, the disconnection means shall be permitted to be located elsewhere on the premises.”

#### E. Article 230. Services.

(1) 230.24 (A) Clearance above roofs. Exception no. 2: Delete in its entirety.

(2) 230.28. Service masts as supports. Add: “Where a service mast is used for the support of service drop conductors, it shall be a minimum two inch (2”) rigid metal conduit, intermediate metal conduit or comply with local utility requirements.”

(3) 230.31 (D) Voltage drop. Add: “Where the underground service lateral is customer owned, the service lateral conductors shall be sized to prevent excessive voltage drop. The maximum voltage drop on the service lateral, feeders and branch circuits at the farthest outlet of power shall not exceed eight percent (8%). Customer owned includes all non-utility owned or operated service lateral conductors.”

(4) 230.43. Wiring methods for 600 volts, nominal, or less. Change: “Service entrance conductors shall be limited to the following wiring methods: article 330 metal-clad cable, 338 service-entrance cable type USE, 342 intermediate metal conduit, 344 rigid metal conduit, 352 rigid nonmetallic conduit, 358 electrical metallic tubing, 366 auxiliary gutters, 368 busways, 370 cablebus or 376 wireways. All other methods referred to in article 230.43 are hereby deleted.”

(5) 230.54 (H) Add: “Overhead service support shall comply with the serving utility requirements or be at least six inch by six inch (6” x 6”) pressure-treated timber or equivalent round poles installed to a depth not less than four (4) feet below finish grade.”

(6) 230.70 (A) Add: “The disconnecting means for each occupant of a multiple occupancy building shall be grouped at a common location.

(7) 230.70 (A) (1). General locations of service disconnect. Amend paragraph to read as follows: “The service disconnecting means shall be located at a readily accessible point. Where the disconnecting means is located outside the building or structure the disconnect shall be associated with the meter enclosure. Where the disconnecting means enclosure is located outside the building or structure within thirty (30) feet and in sight of the building or structure it will not be considered a separate structure but will require a permanent plaque located

at the building distribution equipment stating the location of the building disconnecting means. Where the meter enclosure is located on the building or structure the service disconnecting means enclosure shall be located at a readily accessible point within forty eight (48) inches from the meter enclosure." Exception: "Bushing current transformer meter installations that are associated with the utility transformer are not required to be associated with the disconnecting means. Where the disconnecting means is located inside the building the disconnect shall be located at a readily accessible point within forty eight (48) inches from the point where the service conductor raceway enters the building or structure."

**(8) 230.72 (A) Grouping of disconnects.** Add: "All building or structure disconnects shall be grouped at one location and shall be separated by the least practical distance, not to exceed an overall distance of twenty (20) feet."

**F. Article 240. Overcurrent Protection.** 240.24 (F) Location in or on premises. Add: Overcurrent devices shall not be located in bathrooms, cupboards, pantries or similar locations which restrict ready access."

**G. Article 250 - Grounding.**

**(1) 250.32 (B) (2).** Two or more buildings, grounded conductor. Delete in its entirety.

**(2) 250.50** Grounding electrode systems. Add: "On new construction a concrete encased electrode shall be considered available and installed in compliance with NEC 250.52(A) (3). If a concrete encased electrode is not present, then at least 20 feet of No. 2 bare copper in direct contact with the earth at a depth below the earth's surface of not less than thirty (30) inches shall be installed in a continuous trench that is at least twenty (20) feet in length, augmented with a minimum of two (2), eight (8) foot grounds rods spaced a minimum of six (6) feet apart."

**(3) 250.52 (A)(5) Rod electrodes.** Add: "Copper or copper-clad grounding electrodes shall be not less than 5/8" diameter and when in direct contact with the earth it shall be copper or copper-clad."

**(4) 250.53 (C) (1) Electrode bonding jumper.** Add: "Grounding electrode bonding jumpers shall be protected from physical damage. When a bonding jumper conductor is buried to provide physical protection, a minimum cover of 24 inches shall be provided in accordance with NEC Table 300.5 column 1 all locations not specified."

**(5) 250.56 Resistance of rod and plate electrodes.** Change: "A single electrode consisting of a rod or plate shall be augmented by one additional electrode of any of the types specified by 250.52 (A) (2)

through (A) (7). Where multiple rod or plate electrodes are installed to meet the requirements of this section, they shall be not less than six (6) feet apart." Exception: A single electrode consisting of a rod or plate may be used on 200 amp or less temporary construction services.

**(4)(6) 250.66 (B) Connections** to concrete-encased electrodes. Amend paragraph to read as follows: "... the grounding electrode conductor shall not be smaller than #4 AWG copper."

**(5)(7) 250.104 (A).** Bonding metal water piping systems. Add: "The hot and cold metal water pipes shall be bonded together at an accessible location. The bonding jumper shall be No. 6 copper minimum. Non-metallic water pipe systems, which contain short sections of metal water pipes and are not likely to become energized, are not required to be bonded."

**(6)(8) 250.118.** Equipment grounding conductor. Add (15): "An equipment grounding conductor shall be installed in all branch circuit and feeder raceways on or above a roof. The equipment grounding conductor shall be sized in accordance with table 250.122."

**H. Article 290. Energy Conservation.**

**(1) 290.10.** Scope. "This article sets forth minimum requirements for the design of new buildings and structures or portions thereof and additions to existing buildings that provide facilities or shelter for public assembly, educational, business, mercantile, institutional, storage and residential occupancies designed primarily for human occupancy, by regulating their illuminating systems and equipment for effective use of energy."

**(2) 290.20.** Exempt buildings, areas, and equipment. For exemptions refer to the New Mexico energy conservation code.

**(3) 290.30.** Lighting power budget.

**(a)** The interior lighting power is the upper limit of the power to be available to provide the lighting needs in accordance with the criteria and calculation procedures specified herein, and shall include the load of lamps and ballasts.

**(b)** The interior lighting power shall not exceed the unit power density permitted by the New Mexico energy conservation code.

**(c)** In lieu of the unit power density method, the interior lighting power may be calculated in accordance with the electrical power and lighting chapter of the New Mexico energy conservation code.

**(4) 290.40** Night Sky Protection Act. Outdoor lighting shall comply with the Night Sky Protection Act.

**I. Article 300. Wiring**

**Methods.**

**(1) 300.11 (A)** Secured in place. Add: "Independent support wires shall be limited to support of flexible wiring methods from the last point of support or junction box for connections within an accessible ceiling to lighting fixtures or equipment."

**(2) 300.11 (A) (1).** Securing and supporting. This section shall apply to fire rated and non-fire rated ceiling assemblies.

**(3) 300.11 (A) (1).** Exception. Delete in its entirety.

**(4) 300.11 (A) (2).** Exception. Delete in its entirety.

**(5) 300.14.** Length of conductors at boxes. Add: "The six (6) inches shall be measured from the front edge of the box to the end of the conductor."

**J. Article 310. Conductors for General Wiring.** 310.2

**(B).** Conductor material. Add the restriction: "The use of aluminum current carrying conductors shall be of the AA-8000 series and shall be limited to no. 2 or larger for aluminum or copper-clad aluminum." Exception: The equipment-grounding conductor shall be limited to No. 4 or larger if in a listed cable assembly.

**K. Article 314. Outlet, Device Pull and Junction Boxes.** 314.27(a) Exception. Delete in its entirety.

**L. Article 334. Nonmetallic-Sheathed Cable.**

**(1) 334.10 (3)** Delete in its entirety.

**(2) 334.10(C)(3)** Type NMS. Add: "For smoke detector circuits in dwellings."

**(3) 334.12(A)(11)** Uses not permitted. Add (11): "Type NM, NMC, or NMS shall not be installed in buildings, or structures such as stores, professional offices, motels, hotels, and similar occupancies classified as commercial or industrial."

**(4) 334.12(A) (12)** Uses not permitted. Add (12): "In any multifamily dwelling or other structure exceeding three (3) floors above grade. For the purpose of this article, the first floor of a building shall be that floor that has fifty (50) percent or more of the exterior wall surface area level with or above finished grade. One additional level that is the first level and not designed for human habitation and used only for vehicle parking, storage or similar use shall be permitted."

**M. Article 340. Underground Feeder and Branch Circuit Cable.**

**(1) 340.10 (8)** Uses permitted. Add (8): "Type UF cable shall be permitted to be imbedded in adobe construction."

**(2) 340.10 (9).** Add (9): "Type UF cable, or an approved electrical raceway shall be installed on straw bale residential

construction.”

(3) 340.12 (12) Uses not permitted. Add (12): “Type UF cable shall not be installed in buildings or structures such as stores, professional offices, motels, hotels, or similar occupancies classified as commercial or industrial.”

**N. Article 352 Rigid Nonmetallic Conduit.** 352.12 (C) Uses not permitted. Add: “Schedule 40 rigid non-metallic conduit shall not be used where the raceway is exposed.”

**O. Article 348 Flexible Metal Conduit.** 348.12(1) Uses not permitted. Change: In wet locations.

**P. Article 358 Electrical Metallic Tubing.** 358.12 (7). Uses not permitted. Add: “Electrical metallic tubing shall not be permitted to be installed underground or in concrete slabs or walls, which are in contact with the earth.”

**Q. Article 394 Concealed Knob and Tube Wiring.** 394.12 Uses not permitted. Concealed knob and tube wiring shall not be permitted to be installed except by special written permission from the electrical bureau.

**R. Article 410 Luminaries.** 410.4 (D) (1) Bathtub and shower areas. Add (1): “Wall mount luminaries (fixtures) installed in bathtub or shower space shall be marked ‘suitable for wet locations’ and be ground fault circuit interruption protected.”

**S. Article 422. Appliances.** 422.9. Installation of appliance. Add: “Where an evaporative cooler is installed, a listed raceway shall be installed during rough-in from the control point to the evaporative cooler location. The raceway shall contain an equipment-grounding conductor from the control box to the junction box at the unit. The equipment grounding conductor shall be sized in accordance with table 250.122.”

**T. Article 550. Mobile Homes and Mobile Home Parks.**

(1) 550.32 (A) Mobile home service equipment. Change: “The mobile home service equipment shall be located adjacent to the mobile home and not mounted in or on the mobile home. The service equipment shall be located in sight from and not more than one hundred (100) feet from the exterior wall of the mobile home it serves. The service equipment shall be permitted to be located elsewhere on the premises, provided that a disconnecting means suitable for service equipment is located in sight from and not more than thirty (30) feet from the exterior wall of the mobile home it serves. Grounding at the disconnecting means shall be in accordance with 250.32.”

(2) 550.32 (H) Mobile home service equipment. Add (H): “A 125 volt 15 or 20 amp receptacle outlet shall be installed with ground fault circuit interruption pro-

tection at each mobile home or manufactured home service equipment, or the local external disconnecting means permitted in 550.32 (A).”

(3) 550.32 (I) Overhead service Add (I): “Overhead service support shall comply with the serving utility requirements or be at least six inch by six inch (6” x 6”) pressure-treated timber or equivalent round poles installed to a depth not less than four (4) feet below finish grade.”

**U. Article 552. Park Trailers.** 552.47(D) Calculations. Add (D): Minimum allowable demand factors. Service and feeders for park trailer sites shall be permitted to be calculated in accordance with article 550.31 for mobile homes.

**V. Article 700. Emergency Systems.** 700.1. Scope. Add: “Refer to the latest adopted edition of the building code and the NFPA-101 life safety code for exit and emergency lighting requirements.”

**W. Article 800. Communications Circuits.** 800.154 (H). Applications of listed communications wires and cables. Add (H): “Each dwelling unit telephone outlet shall have not less than 4 pairs of No. 24 AWG communication conductors. Each 4 pair cable shall serve not more than three telephone outlets. Conductors shall terminate in a listed box or on a terminal block near the electrical service or location of telephone service. Any exterior wall penetration shall be installed in a listed raceway.”

[14.10.4.10 NMAC - Rp, 14.10.4.10 NMAC, 7-1-05; A, 9-18-06]

## NEW MEXICO SECRETARY OF STATE

This is an amendment to 1.10.12 NMAC, Section 17, effective 9-15-06.

### 1.10.12.17 PAPER BALLOT TRANSFER:

**A.** If a tabulated ballot holding bin on an optical scanning voting system at an alternate location or polling place becomes full prior to the close of voting, the presiding judge and a member of the precinct board of another political party or undeclared political party affiliation shall unlock the bin, in the presence of the precinct board and transfer the contents of the bin to a locked ballot box. The precinct board shall execute a certificate of ballot transfer, prescribed by the secretary of state, that shall include the date and time of the ballot transfer and be signed by the members of the precinct board. The presiding judge shall then transfer the locked ballot box to the custody of the county clerk or a deputy county clerk who shall sign for receipt of the locked ballot box.

**B.** The deputy county

clerk delivering the locked ballot box to the custody of the county clerk shall execute a certificate of transmittal, prescribed by the secretary of state that includes the date and time of receipt of the locked ballot box from the precinct board. The county clerk or a deputy county clerk shall sign for receipt of the locked ballot box on the certificate of transmittal and secure the ballot box in accordance with 1.10.12.12 NMAC.

[1.10.12.17 NMAC - N, 9-15-06]

## NEW MEXICO SENTENCING COMMISSION

### TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT CHAPTER 14 CORRECTIONAL SERVICES PART 2 COLLECTION AND ANALYSIS OF CRIMINAL AND JUVENILE JUSTICE DATA BY THE NEW MEXICO SENTENCING COMMISSION

**10.14.2.1 ISSUING AGENCY:**  
New Mexico Sentencing Commission.  
[10.14.2.1 NMAC - N, 1/1/2007]

**10.14.2.2 SCOPE:** This rule applies to state, county and municipal agencies that possess criminal or juvenile justice data.  
[10.14.2.2 NMAC - N, 1/1/2007]

**10.14.2.3 STATUTORY AUTHORITY:** Sections 9-3-10, 9-3-10.1, 29-10-6 and 31-18-15 NMSA 1978.  
[10.14.2.3 NMAC - N, 1/1/2007]

**10.14.2.4 DURATION:**  
Permanent.  
[10.14.2.4 NMAC - N, 1/1/2007]

**10.14.2.5 EFFECTIVE DATE:**  
January 1, 2007, unless a later date is cited at the end of a section.  
[10.14.2.5 NMAC - N, 1/1/2007]

**10.14.2.6 OBJECTIVE:** The objective of this rule is to establish procedures for the commission’s collection, analysis and dissemination of criminal or juvenile justice data in the possession of agencies. The commission will use the data to support the provision of information to the executive, judicial and legislative branches of government on policy matters relating to criminal and juvenile justice.  
[10.14.2.6 NMAC - N, 1/1/2007]

**10.14.2.7 DEFINITIONS:**  
**A.** “Agency” means an executive or judicial agency in state, county or municipal government.

**B.** “Commission” means

the New Mexico sentencing commission.

C. "Data" means criminal or juvenile justice records, data and information.

[10.14.2.7 NMAC - N, 1/1/2007]

**10.14.2.8 COMMISSION RESPONSIBILITIES:** The commission shall:

A. advise the executive, judicial and legislative branches of government on policy matters relating to criminal and juvenile justice;

B. study past and current sentencing and release practices and create a statistical database for simulating the impact of various sentencing policies;

C. assess the impact of commission recommendations to modify criminal sentencing policy on the availability of and need for correctional resources and programs;

D. serve as a clearinghouse for the systematic collection, analysis and dissemination of information relating to felony offense charges, plea agreements, convictions, sentences imposed, incarceration time actually served and actual and projected inmate population in the state correctional system;

E. publish an annual, written report that specifies the average reduction in the sentence of imprisonment for serious violent offenses and nonviolent offenses, as defined in Section 33-2-34 NMSA 1978, due to meritorious deductions earned by prisoners during the previous fiscal year.

[10.14.2.8 NMAC - N, 1/1/2007]

**10.14.2.9 PROVISION OF AGENCY DATA TO THE COMMISSION:**

A. In general, an agency shall provide agreed-upon data to the commission on at least an annual basis for the immediately preceding fiscal year. The agency data shall be provided to the commission no later than October 1 following the conclusion of the immediately preceding fiscal year.

B. When the commission directs its staff to collect data for a special research project, the commission shall file a written request with the appropriate agency for the necessary data. The agency shall respond to the written request in a timely manner.

C. When possible, agency data shall be provided electronically to the commission.

[10.14.2.9 NMAC - N, 1/1/2007]

**10.14.2.10 SAFEGUARDS FOR AGENCY DATA:**

A. The commission is not

authorized to inspect data that:

(1) is privileged under the New Mexico Rules of Evidence;

(2) compromises or tends to disclose any privileged record or information;

(3) consists of reports, memoranda or other internal documents given to or communications made to a prosecutor or defense attorney in connection with the investigation, prosecution or defense of a criminal case.

B. Data provided by an agency to the commission shall have the same legal status with regard to access or release as when the data was in the possession of the agency.

C. Prior to publishing a report, the commission shall allow an agency that provided data used in the report to review the report.

D. Data provided by an agency to the commission will be reported by the commission as statistical or analytical data. Names of individuals and all other personal identifiers will be removed from commission reports.

[10.14.2.10 NMAC - N, 1/1/2007]

**10.14.2.11 BASIS OF DENIAL CONCERNING REQUESTS FOR COMMISSION DATA:**

A. The commission may deny a request for data maintained by the commission when the request is:

(1) made by an organization that gathers data from public sources and subsequently resells that data;

(2) burdensome or will hamper the operations of the commission;

(3) for data that is collected by the commission in a statistically invalid manner;

(4) for data in a format that is not maintained by the commission; or

(5) for data that is prevented by statute or court order from being released.

B. The commission may deny a request from any entity for a direct link to a commission database.

[10.14.2.11 NMAC - N, 1/1/2007]

**HISTORY OF 10.14.2 NMAC:**  
[RESERVED]

**NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

This is an amendment to 18.19.3 NMAC, Sections 50 through 53, effective 9/15/06.

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

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

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

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

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

[3/6/92, 7/19/94, 10/31/96; 18.19.3.50 NMAC - Rn & A, 18 NMAC 19.3.11.1, 9/14/00; A, 9/15/06]

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

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

B. [~~If, subsequent to the issuance of a salvage branded title, the stolen vehicle is recovered with no or minor damage, a new title may be issued without the "salvage" brand provided that the vehicle is inspected upon its recovery by a practicing automotive mechanic who reports the result of the inspection in writing to the motor vehicle division. The inspection must cover all major components of the vehicle and must summarize the estimated cost of repair of each major system and the vehicle as a whole. If the total damage exceeds fifty percent of the average value according to the official used car guide, mountain states edition published by the national automobile dealers association, or equivalent publication, for vehicles of like age, make and model at the time of recovery, then the salvage branded title will not be replaced.~~] If, subsequent to the recovery of a stolen vehicle, it is determined that it meets the definition of a salvage or non-repairable motor vehicle as set forth in Subsection C of Section 66-1-4.16 NMSA 1978 or Subsection A of Section 66-1-4.12 NMSA 1978, the owner must follow the procedures set forth in statute or regulation for obtaining a salvage title or non-repairable certificate.

[3/6/92, 7/19/94, 10/31/96; 18.19.3.51 NMAC - Rn, 18 NMAC 19.3.11.2, 9/14/00; A, 9/15/06]

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

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

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

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

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

E. Example: If, in the preceding example, an insurance company settled claims with respect to the vehicle for \$2,200 and declared the vehicle a ~~total loss~~ salvage or non-repairable vehicle, the vehicle is a salvage vehicle or non-repairable vehicle, depending on the determination of the insurance company, so long as that determination is not inconsistent with statutory definitions.

[3/6/92, 7/19/94, 10/31/96; 18.19.3.52 NMAC - Rn, 18 NMAC 19.3.11.3, 9/14/00; A, 9/15/06]

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

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

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

claim for vehicle damages.

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

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

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

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

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

C. **Transfer to person other than an insurance company:** The steps below are to be followed whenever the owner of a salvage vehicle or ~~an unrecovered stolen~~ a non-repairable vehicle transfers title to any person other than ~~the an~~ insurance company ~~which had insured the vehicle~~.

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

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

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

(4) If the title or MCO is not already branded with the word "SALVAGE" or "NON-REPAIRABLE", the transferor shall stamp or otherwise mark in ink the face of the title or MCO with the word "SALVAGE" or "NON-

REPAIRABLE" in letters no less than one-half inch high, at an angle of approximately 45 degrees to the text of the title or MCO. The ~~stamp~~ branding shall not cover the portion of the title or MCO which describes the vehicle.

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

~~(5)(6)~~ (6) The transferor shall submit a copy of the branded title or MCO to the motor vehicle division. If the title or MCO had not previously been branded with the word "SALVAGE" or "NON-REPAIRABLE", the transferor shall submit with the title or MCO ~~documents~~ a written explanation explaining the reason for the branding ~~and, if the title was issued by a jurisdiction other than New Mexico, a copy of the title must be sent to the issuing jurisdiction with a completed "statement of loss"]~~.

D. ~~Except as provided otherwise in 18.19.3.51 NMAC, once~~ Once a title has been salvage-branded, all subsequent transfers of title must be by salvage-branded title. Once a non-repairable vehicle certificate has been issued for a vehicle, the motor vehicle division shall not issue further ownership certificates for that vehicle.

[3/6/92, 7/19/94, 10/31/96; 18.19.3.53 NMAC - Rn & A, 18 NMAC 19.3.11.4, 9/14/00; A, 9/15/06]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 18.19.4 NMAC, Section 7, effective 9/15/06.

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

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

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

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

D. "wrecker" means [a



~~“wrecker of vehicles”~~ an “auto recycler”  
as that term is defined in [~~Section 66-1-4.20 NMSA 1978~~] Section 66-1-4.1  
NMSA 1978.  
[9/14/96; - Rn & A, 18 NMAC 19.4.10.1,  
11/30/99; 11/30/99; 18.19.4.7 NMAC - Rn  
& A, 18 NMAC 19.4.7, 9/14/00; A,  
9/15/06]

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**End of Adopted Rules Section**

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**Other Material Related to Administrative Law**

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**NEW MEXICO  
COMMISSION OF PUBLIC  
RECORDS  
HISTORICAL RECORDS  
ADVISORY BOARD**

Commission of Public Records  
New Mexico State Records Center &  
Archives  
1205 Camino Carlos Rey  
Santa Fe, New Mexico 87505

**NOTICE OF REGULAR MEETING**

A regular meeting of the New Mexico Historical Records Advisory Board has been scheduled for Friday, September 29, 2006 at 9:00 A.M. The meeting will be held in the Council Chambers of Santa Rosa City Hall, which is an accessible facility, located at 141 S. 5<sup>th</sup> Street, Santa Rosa, NM 88435. 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 meeting, please contact Gail Packard at the State Records Center and Archives 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 Gail Packard at 505-476-7956 at the State Records Center and Archives for documents. A copy of the proposed agenda may be obtained at the State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87507.

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**End of Other Related  
Material Section**

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## SUBMITTAL DEADLINES AND PUBLICATION DATES

**2006**

<b>Volume XVII</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 3	January 17
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 3	April 14
Issue Number 8	April 17	April 28
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 3	July 17
Issue Number 14	July 18	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 18	September 29
Issue Number 19	October 2	October 16
Issue Number 20	October 17	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 14
Issue Number 24	December 15	December 29

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.