

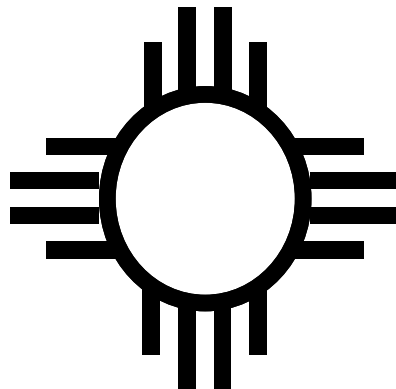
**NEW
MEXICO
REGISTER**



Volume XVII
Issue Number 19
October 16, 2006

New Mexico Register

**Volume XVII, Issue Number 19
October 16, 2006**



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

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New Mexico Register

Volume XVII, Number 19

October 16, 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A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered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 November 8, 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 a proposal to amend 20.11.2 NMAC, *Fees*, and to incorporate any newly-adopted amendments to 20.11.2 NMAC into the New Mexico State Implementation Plan for air quality (SIP), as described below.

The proposed changes to the Fees regulation will be limited to the following:

Amendments to Section 20.11.2.18 NMAC, *Fee Schedule*, that would reduce the (filing) fee amount required by Subsection K of 20.11.2.18 NMAC, *Board Hearing Fees*, which currently requires that: "Any person who requests a hearing before the board to challenge the issuance of a permit, the terms of a permit or permit modification, the department's refusal to issue a permit, or the department's determination of a source classification or fee calculation for a fugitive dust control permit shall be charged a fee of \$1,000.00, unless the \$1000.00 fee for the hearing process is determined by the board at a hearing to impose an undue economic burden on the petitioner." The proposed amendments would reduce this (filing) fee from \$1000.00 to \$125.00. The proposed amendments to Subsection K of 20.11.2.18 NMAC would also repeal the language that currently allows for a waiver of this (filing) fee if the Board determined that imposing this fee would be "an undue economic burden". Further clarification will be achieved through a proposal to change the term "fee", to the more accurate term "filing fee", within Subsection K of 20.11.2.18 NMAC.

Following the public hearing, the Air Board is expected to hold its regular monthly meeting at which the Air Board is expected to consider adopting these proposed amendments to 20.11.2 NMAC, *Fees*, and to

incorporate any newly-adopted amendments to 20.11.2 NMAC into the SIP.

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 (NOI) before 5:00 pm on Wednesday November 1, 2006 to: Attn: November Hearing Record, Mr. Neal Butt, 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 November 1, 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 nbutt@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 or by phone (505) 768-2660.

NOTICE FOR PERSON WITH DISABILITIES: 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 agen-

das 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 ECONOMIC DEVELOPMENT DEPARTMENT

OPEN MEETING NOTICE

Chairman, Eric Griego announced that notice is hereby given that the Industrial Training Board will convene regular board meetings for October 20, 2006 and November 13, 2006 as scheduled below. During the October 20, 2006 meeting, the Industrial Training Board or JTIP Board will hold public comment to discuss revising recapture provisions to the JTIP policies and the Film Multi-Media Development Training Program (Title 5, Chapter 5, Part 50). During the November 17, 2006 regular meeting, the Industrial Training board will convene and may revise recapture provisions to JTIP policies and Film Multi-Media Development Training Program policies discussed at the October 20, 2006 meeting.

Friday, October 20, 2006 Meeting

LOCATION: Santa Fe Business Incubator

3900 Paseo Del Sol
Santa Fe, NM 87507
(505) 424-1140

TIME: 9:00 a.m. - 1:00 p.m.

Friday, November 17, 2006 Meeting

LOCATION: Workforce Training Center
Central New Mexico Community College
5600 Eagle Rock Ave
NE (NW Corner of I-25 and Alameda)
Albuquerque, NM
87113

TIME: 9:00 a.m. - 1:00 p.m.

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

**NEW MEXICO
DEPARTMENT OF
FINANCE AND
ADMINISTRATION**

LOCAL GOVERNMENT DIVISION

**Notice of Hearing of Amendments to
Rule 2.110.2 NMAC Small Cities
Community Development Block Grants**

New Mexico Department of Finance and
Administration

The Department of Finance and Administration ("DFA") hereby gives notice that DFA will conduct a public hearing in Room 321, State Capitol Building, 415 Old Santa Fe Trail, Santa Fe, New Mexico, 87503, on November 15, 2006 at 10:00 a.m. concerning amendments to 2.110.2.7 NMAC, 2.110.11 NMAC, 2.110.17 NMAC, 2.110.18 NMAC, 2.110.19 NMAC and 2.110.26 NMAC Small Cities Community Development Block Grants (hereinafter referred to as the "CDBG Rule").

Interested individuals may testify at the public hearing or submit written comments no later than 5:00 p.m. on November 14, 2006, to the Office of the Secretary, DFA, Bataan Memorial Building, Room 180, Santa Fe, New Mexico, 87501. All written and oral testimony will be considered prior to adoption of the amendments. Copies of the text of the proposed CDBG Rule are available from Ms. Ariana Vigil, Local Government Division, Bataan Memorial Building, Santa Fe, New Mexico, 87501 or at 505-827-4975 or from the DFA internet website <http://nmdfa.state.nm.us>

These are amendments to 2.110.2.7, 2.110.11, 2.110.17, 2.110.18, 2.110.19 and 2.110.26 NMAC effective XX,XX,XXXX.

2.110.2.7 DEFINITIONS:

A. "Council" means the New Mexico community development council.

B. "Department" means the department of finance and administration.

C. "Division" means the local government division.

D. "Low and moderate income person" is a member of a household whose income would qualify as "very low income" under the Section 8 housing assistance payments program. Section 8 limits are based on 50 percent of the county median income. Similarly, CDBG moderate income is based on Section 8 "lower income" limits, which are generally tied to 80 percent of the county median income.

E. "CDBG" means the

small cities community development block grant program.

F. "Rural" means a county with a population of less than 25,000 and an incorporated municipality with a population of less than 3,000.

G. "Program income" means amounts earned by a unit of general local government or its subrecipient that were generated from the use of CDBG funds.

H. "Slum area" as used in the Community Development Law (3-60-1 to 3-60-37 NMSA 1978) means an area in which there is a predominance of buildings or other improvements which are found by the local governing body by reason of 1) dilapidation, 2) deterioration, 3) age, or 4) obsolescence, 5) inadequate provision for ventilation, light, air, sanitation or open spaces, 6) overcrowding, 7) the existence of conditions which endanger life or property, or 8) any combination of such factors, to contribute to either ill health, the transmission of disease, infant mortality, juvenile delinquency or crime, and to be detrimental to the public health, safety, morals or welfare.

I. "Blighted area" as used in the Community Development Law (3-60-1 to 3-60-37 NMSA 1978) means an area, other than a slum area, which is found by the local governing body by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty low layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivisions or obsolete platting, or the existence of conditions which endanger life or property, or any combination of such factors to substantially impair or arrest the sound growth of the municipality, retard the provision of housing accommodations or constitute an economic or social liability and is a menace to the public health, safety, morals or welfare in its present conditions and use.

J. "Units of local government": Any incorporated municipality or county.

K. "Councils of governments": A regional association of municipalities, counties and special districts formed to provide planning and other services to its member organization.

L. "Water association": Political subdivisions of the state organized under Section 3-29-1 through Section 3-29-20, NMSA 1978, the "Sanitary Projects Act" or Section 73-21-1 through Section 73-21-55, NMSA 1978, the "Water and

Sanitation District Act".

(M. "Land Grant/Meced (political subdivision of the state organized under section 49-1-1 through 49-1-23, NMSA 1978, Land Grants General Provisions).)

[2.110.2.7 NMAC - Rp 2 NMAC 110.2.7, 08-30-01 xx-xx-06]

2.110.2.11 ELIGIBLE ACTIVITIES/CATEGORIES

A. Applicants may apply for funding assistance under the following categories:

- (1) community infrastructure;
- (2) housing;
- (3) public facility capital outlay;
- (4) economic development;
- (5) emergency;
- (6) colonias;
- (7) planning.

B. Eligible activities under each of the categories are listed below.

C. Community infrastructure: Eligible activities may include, but are not limited to, the following:

- (1) real property acquisition
- (2) construction and/or rehabilitation of the following:
 - (a) water systems;
 - (b) sewer systems;
 - (c) municipal utilities;
 - (d) roads;
 - (e) streets;
 - (f) highways;
 - (g) curbs;
 - (h) gutters;
 - (i) sidewalks;
 - (j) storm sewers;
 - (k) street lighting;
 - (l) traffic control devices;
 - (m) parking facilities;
 - (n) solid waste disposal facilities.

D. Housing: Eligible activities may include, but are not limited to, the following:

- (1) real property acquisition;
- (2) rehabilitation;
- (3) clearance;
- (4) demolition and removal of privately-owned or acquired property for use or resale in the provision of assisted housing;
- (5) provision of public facilities to increase housing opportunities;
- (6) financing the repair, rehabilitation and in some cases reconstruction of privately-owned residential or other properties through either loan or grant programs;
- (7) certain types of housing modernization;
- (8) temporary relocation assistance;
- (9) code enforcement;
- (10) historic preservation activities;

(11) an average of \$30,000 in CDBG funds per home can be used on home rehabilitation/repair activities.

E. Public facility capital outlay: Eligible activities may include, but are not limited to, such items as:

- (1) real property acquisition;
- (2) construction or improvement of community centers;
- (3) senior citizen centers;
- (4) nonresidential centers for the handicapped such as sheltered workshops;
- (5) other community facilities designed to provide health, social, recreational or similar community services for residents.

F. Economic development: The economic development category is established to assist communities in the promotion of economic development and is described in detail in Section 26.

G. Emergency: The emergency fund provides funding for emergency projects which address life threatening situations resulting from disasters or imminent threats to health and safety.

(1) Applications under this category will be accepted throughout the year.

(2) An appropriate state agency must concur and provide written verification and adequate documentation with the applicant's assessment of the life threatening situation and the need for the emergency project.

(3) An applicant for emergency funding must verify that it does not have sufficient local resources to address the life threatening condition; and that other federal or state resources have been explored and are unavailable to alleviate the emergency.

H. Planning: In addition to municipalities and counties, water associations, including water and sanitation districts, (land grants) as defined in Section 2.110.2.7, Subsection L; are eligible to apply directly for planning grants only. Grant assistance from the CDBG program must be used for a comprehensive plan, if a community or county does not have a current comprehensive plan (adopted or updated within the last five years) that includes at a minimum the following:

- (1) elements:
 - (a) land use;
 - (b) housing;
 - (c) transportation;
 - (d) infrastructure;
 - (e) economic development;
 - (f) water;
 - (g) hazards; and
 - (h) implementation, a compilation of programs and specific actions to be completed in a stated sequence;

(2) development of additional elements of a comprehensive plan may include but are not limited to:

- (a) drainage;
- (b) parks, recreation and open space;
- (c) tourism;
- (d) growth management;
- (e) fiscal impact analysis;
- (f) intergovernmental cooperation;

- (g) social services;
- (h) historic preservation.
- (3) if the entity has a current comprehensive plan, it may apply for funding assistance for any of the following:

- (4) data gathering analysis and special studies;
- (5) base mapping, aerial photography, geographic information systems, or global positioning satellite studies;
- (6) improvement of infrastructure capital improvement plans and individual project plans;

- (7) development of codes and ordinances, to further refine the implementation of the comprehensive plan;

- (8) other functional or comprehensive planning activities;

- (9) related citizen participation or strategic planning processes;

- (10) applicants may apply for funding assistance throughout the year as long as funds are available;

- (11) preliminary engineering reports will follow the USDA/RUS guidelines.

I. Colonias:

(1) The colonias category is established in the amount of 10% of the annual CDBG allocation for specific activities including water, sewer and housing improvements, which are the three conditions which qualify communities for designation to be carried out in areas along the U.S. - Mexican border.

(2) Eligible applicants for the colonias setaside are municipalities and counties located within 150 miles of the U.S. - Mexico border.

(3) Colonias must be designated by the municipality or county in which it is located. The designation must be on the basis of objective criteria, including:

- (a) lack of potable water supply;
- (b) lack of adequate sewage systems;
- (c) lack of decent, safe and sanitary housing;
- (d) must have been in existence as a colonia prior to November, 1990.

(4) Appropriate documentation to substantiate these conditions must be provided along with the application for funding.

[2.110.2.11 NMAC - Rp 2 NMAC 110.2.11, 08-30-01; A, 08-13-04; A, 08-15-05, , xx-xx-06]

2.110.2.17 APPLICATION REQUIREMENTS

A. Number of applications - All eligible applicants may submit one application for CDBG funding assistance in the infrastructure, housing, public facility capital outlay, or colonias categories.

(1) Planning applicants may submit an additional application for funding.

(2) Requests for assistance from eligible applicants in the economic development, emergency and planning categories can be submitted at any time, subject to funding availability.

(3) Counties may submit multiple applications for planning grants for water associations.

B. Single purpose application -An application for CDBG funding must be limited to a project specific activity or set of activities which address a particular need in a designated target area of a unit of local government. The target area may not be the entire municipality or county.

C. Joint applications - Joint applications will be allowed when two or more eligible applicants within reasonable proximity of each other wish to address a common problem.

(1) One community will be designated to serve as the lead applicant and will be subject to administrative requirements and to the application limit requirements.

(2) However, other parties to the joint application may submit another application.

(3) Joint applications must satisfy certain federal criteria and must receive division approval prior to submitting an application for funding assistance.

(4) It should be noted that satisfying the required criteria, which is available from the division upon request, may take a significant period of time.

D. Applications limit - Applications are limited to the amount of funding necessary to complete a basic, meaningful and targeted project within a 24 month period.

(1) Applications may not exceed \$500,000 and planning applications may not exceed \$50,000.

(2) If, after conducting the required public hearing, an applicant determines that the previous year's CDBG application is still a priority, the applicant ~~may ask the council to reconsider the previous year's application~~ must submit an application in its new form.

(3) The applicant need only submit a current year's resolution, updated project budget and schedule and any other information required by division staff.

E. Threshold requirements - To encourage timely completion of projects and to maximize participation the fol-

lowing threshold requirements shall be met prior to the application deadline.

(1) All projects for the eligible activities in the categories listed in Subsections C, D, E, and I of 2.110.2.11 NMAC must be completed at the time of application. (certificate of occupancy and/or certification of operation must be in place).

(2) Audit and monitoring findings, especially in general program administration for CDBG projects, must be resolved.

(3) The following setaside categories are exempt from threshold requirement: planning, economic development, and emergency.

F. Matching requirements

- In order to assist the council in making funding resources go further and to ensure there is a local investment in applications submitted to the council for funding consideration, the following will be required.

(1) Rural applicants must provide, at a minimum, a 5% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(2) Non-rural applicants must provide, at a minimum, a 10% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(3) Consistent with Section 26 of these regulations, all applications in the economic development category must provide at least two private dollars for each dollar of CDBG funds requested.

(4) Local funds expended by eligible applicants for engineering, architectural design or environmental reviews prior to project approval can be applied towards the required match.

(5) Applicants may request a waiver of the matching requirement from the council if documentation can be provided which demonstrates the absence of local resources to meet the required match. Criteria used to recommend approval/disapproval will be as follows:

(a) the required match must exceed 5% of the applicant's general fund budget;

(b) the required match must equal or exceed the non-earmarked balance of funds in the applicant's budget.

G. Matching loan fund - In

order to assist communities who do not have the resources to comply with the matching requirement for their project, a matching fund is available to provide money at appropriate interest rates.

(1) The council will use NMCA reversions as a funding source for the loan fund.

(2) Payment schedules will be developed by the division with appropriate payment amounts and due dates.

H. Other funding commitments - If other funding is necessary to make a proposed project feasible, funding commitments or commitments subject to CDBG approval, must be in place and letters of commitments from the funding agency must be submitted with the application.

I. Water conservation and drought commitments - In order to make the state's water supplies go further and to ensure proper levels of preparations are taken locally for periodic droughts, the following is encouraged:

(1) Applicants develop, adopt and submit to the state engineer a comprehensive water conservation ordinance.

(2) Applicants develop, adopt and submit to the state engineer a drought management plan.

(3) The ordinance and plan shall be accompanied by a program for its implementation.

(a) in developing a water conservation ordinance pursuant to this section: applicants shall adopt ordinances and codes to encourage water conservation measures; they shall identify and implement best management practices in their operations to improve conservation of the resources; and

(b) applicants shall consider and incorporate into its plan if appropriate, at least the following:

(i) water-efficient fixtures and appliances, including toilets, urinals, showerheads and faucets;

(ii) low-water-use landscaping and efficient irrigation;

(iii) water-efficient commercial and industrial water-use processes;

(iv) water reuse systems for both potable and non-potable water;

(v) distribution system leak repair;

(vi) dissemination of information regarding water-use efficiency measures, including public education programs and demonstrations of water-saving techniques;

(vii) water rate structures designed to encourage water-use efficiency and reuse in a fiscally responsible manner; and

(viii) incentives to implement water-use efficiency techniques, including rebates to customers or others, to encourage the installation of water-use efficiency and reuse measures.

(c) the council shall encourage the applicant to submit a copy of its water conservation plan with applications for construction of any facility.

J. Asset management - In order to support the long term operation, maintenance, repair and replacement of sys-

tem facilities, infrastructure, public facilities, or other eligible activities the following will be required.

(1) In order to ensure water and wastewater infrastructure is managed within a strategic framework driven by program and service deliver needs, communities that implement a rate analysis based upon an asset management program will be credited in the application process for their achievement. The model for the asset management program is the EPA publication "Asset Management: A Handbook for Small Water Systems (EPA 816-R-03-0160 September 2003).

(2) For community infrastructure and public facilities, or other eligible activities an asset management plan will be required to be submitted at the time of application (EPA 816-R-03-0160 September 2003).

[2.110.2.17 NMAC - Rp 2 NMAC 110.2.17, 08-30-01; A, 08-13-04; A, 08-15-05; A, xx-xx-06]

2.110.2.18 APPLICATION PROCEDURES AND CONTENT:

The application packet provided by local government division will be used for infrastructure, housing, public facility, capital outlay, colonias, emergency categories, economic development and planning.

A. An applicant must submit an original and ~~four~~ two copies of each application to the Department of Finance and Administration, Local Government Division, Bataan Memorial Building, Suite 201, Santa Fe, New Mexico 87501, and one copy to the appropriate council of governments.

B. Applications must be received at the local government division by 5 p.m. of the designated application deadline. Applications received after that time will be returned to the applicant unprocessed.

[2.110.2.18 NMAC - Rp 2 NMAC 110.2.18, 08-30-01; A, 08-13-04; A, xx-xx-06]

2.110.2.19 APPLICATION REVIEW AND EVALUATION PROCESS

A. Upon receipt of applications, division staff will review them for eligibility, completeness, feasibility, and compliance and to ensure that all other funding necessary to make the project functional is in place. Applications that are found to be incomplete, ineligible, not feasible or do not have other funding necessary to make the project functional, will be returned to the applicant and will not be considered for funding.

B. Applications will be forwarded to ~~councils of governments and~~ appropriate state agencies for technical review and comment. Review agencies

include the environment department, energy, minerals and natural resources department, state highway and transportation department, department of health, state engineer's office, state agency on aging, economic development department, department of human services, and state fire marshal.

C. Applicants will be allowed to make presentations to the council and division staff at an official council hearing. Testimony related to the application will be presented by an official or designee of the applying entity who may be assisted by technical staff.

D. Division staff will receive comments from state agencies and councils of governments regarding specific projects.

E. The council and division have developed the following rating criteria for evaluation of CDBG applications submitted for funding consideration: infrastructure, housing, public facility, capital outlay and colonias applications.

(1) Description and need — (5 points) extent to which the project is needed. The more severe the need as documented in the application, the higher the score. Colonias applicants must provide documentation to substantiate that a majority of the following conditions exist in the project area:

- (a) lack of potable water;
- (b) lack of an adequate sewage system;
- (c) lack of safe, sanitary housing;
- (d) source documentation must also be provided.

(2) Benefit to low and moderate and appropriateness - (20 points) extent to which the CDBG application:

- (a) documents the number and percentage of low and moderate income beneficiaries, also include race and gender;
- (b) addresses the prevention or removal of slum or blighting conditions;
- (c) addresses conditions which pose a serious and immediate threat to the health and welfare of the community (for emergency applications only).

(3) Leveraging — (15 points) extent to which federal, state, and local resources, in addition to the required match, are being used by the applicant for the proposed project. The greater the leveraging, in addition to the required match, the higher the score.

(4) Citizen participation - [~~45~~ 10 points] (10 points) extent to which the applicant:

- (a) has provided opportunities for public participation in the identification of community development needs;
- (b) pledges opportunities for active citizen participation during the project,

where applicable; and;

(c) pledges opportunities for active citizen participation in the implementation of the project, where applicable.

(5) Planning - [~~15~~ 10 points] (10 points) extent to which the applicant:

(a) (3) points: Applicant has adopted a local infrastructure capital improvement plan, which has qualified for publication in the most recent local infrastructure capital improvement plan (ICIP) published prior to the CDBG application deadline.

(b) (3) points: The proposed project has qualified for publication in the most recent ICIP prior to the CDBG application deadline and applicant has selected CDBG as one of its possible funding sources.

(c) (2) points: Degree to which applicant's proposed project shows consistency with applicant's comprehensive plan.

(d) (2) points: Adopting a drought contingency plan, setting in place various drought management stages and accompanying restrictions on water use.

(e) (3) points: Adopting a water conservation ordinance, setting in place various methods for conserving potable water.

(f) (2) points: Implementing a water conservation ordinance, accompanied by evidence of exercising at least two various methods for conserving potable water.

(6) Feasibility/readiness - (20 points) extent to which the project is technically and economically feasible and ready to be implemented. (examples of actions that can be taken prior to submission of the application to receive maximum points are:

- (a) acquire necessary property;
- (b) secure professional services;
- (c) complete plans, specifications, or preliminary engineering report, etc.

(d) complete the environmental review process.

(7) Cost benefit - (10 points) number of direct beneficiaries of the project compared to the amount of funds requested. The higher the number of beneficiaries compared to the amount of funds requested, the higher the score.

(8) User fees and revenues - (10 points) What best demonstrates the rates or revenues that support the long term operation, maintenance, repair, and replacement of the system or facility?

(a) Rates developed by asset management as presented by the environmental finance committee (EFC). (10 points)

(b) rates developed by a rate analysis, excluding asset management and/or allowance for replacement of reserve funds. (5 points)

(c) rates developed by other. (1 point)

(9) Non-funded applicants - (10

points) - Applicants that were not funded in the prior year.

F. Planning criteria category

(1) Consistency (25 points): Document the degree to which the proposed planning project is consistent with the applicants current version of its comprehensive plan, its infrastructure capital improvement plan, and its planning region's consolidated plan.

(2) Appropriateness (25 points): Describe the impact the proposed project will have on at least one of the three national objectives of the CDBG program.

(3) Public involvement (25 points): Describe how the planning process will involve citizens in the preliminary identification of community needs, in the development and active participation in the planning process, and in the implementation of the plan.

(4) Implementation strategy (25 points): Describe the local commitment of resources to the planning process; commitment to adopt the plan, either by resolution, rule, policy or ordinance; and commitment to use the results of the planning process in the decision making process.

G. Economic development rating criteria is included in Section 2.110.2.26.

H. Site visits will be conducted as needed during the application review process to verify the information presented in an application.

I. Division staff will present its evaluations in high, medium and low groupings to the council at least seven days prior to the allocation meeting.

J. Because emergency, economic development, and rural planning projects are received throughout the year, formal staff rating may not be necessary if all other federal and state requirements are met and other applications are not competing for funding assistance.

[2.110.2.19 NMAC - Rp 2 NMAC 110.2.19, 08-30-01; A, 08-13-04; A, xx-xx-06]

2.110.2.26 ECONOMIC DEVELOPMENT PROGRAM GUIDELINES:

Within the context of the CDBG Program and for purposes of meeting its goals and objectives, economic development can typically be defined as improving a community's economic base by using private and public investments that provide expanded business activity, jobs, personal income and increased local revenues in a defined geographic area.

A. Goals and objectives: The state's CDBG economic development goals and objectives include:

(1) creating or retaining jobs for low- and moderate-income persons;

(2) preventing or eliminating slums and blight;

(3) meeting urgent needs;

(4) creating or retaining businesses owned by community residents;

(5) assisting businesses that provide goods or services needed by, and affordable to low - and moderate-income residents;

(6) providing technical assistance to promote any of the activities under 26.1.1 through 26.1.5 above.

B. Eligible activities:

CDBG eligible activities authorized under Sections 570.200, 570.201, 570.202, 570.203, 570.204, 570.482 and 570.483 of 24 CFR Part 570 of the federal rules and regulations governing the Community Development Block Grant Program and directly affecting the creation or retention of employment opportunities, the majority of which are made available to low and moderate income persons, may include activities which are carried out by public, private nonprofit, or private for-profit entities when such activities are appropriate.

(1) To meet the needs and objectives of the community economic development plan, a project may include; acquisition of real property, construction, reconstruction rehabilitation, or installation of public facilities, site improvements, and utilities, and commercial or industrial buildings or structures and other commercial or industrial real property improvements and planning.

(2) Grantees and nonprofit subrecipients may carry out for the purpose of economic development, a wide range of activities such as those listed in Section 570.203.

(3) The for-profit businesses, however, may carry out only the activities listed in that section and rehabilitation activities listed in Section 570.202.

C. Financing policies and techniques:

The New Mexico CDBG program, as a development tool, can provide flexibility and take greater risks in its lending policies and financing techniques. For example, the program may:

(1) offer a negotiated period for repayment of principal and interest;

(2) take greater risk than banks are traditionally prepared to take, provided substantial economic development benefits will result if the loan is granted;

(3) leverage capital by reducing risk for commercial lenders and by taking a subordinate;

(4) security/collateral position;

(5) provide more favorable rates and terms than are generally available through conventional sources.

D. Project requirements:

Project requirements for eligible CDBG economic development assistance include,

but are not limited to:

(1) specific employment commitments for low and moderate income residents, generally with no more than \$15,000 in CDBG funds being used for each job created or retained;

(2) ~~[the creation of jobs within a reasonable time frame, usually not more than six months from grant approval]~~ at least 51% of the jobs created/retained must be held or made available to persons of low to moderate income persons;

(3) within six (6) months of completion of the project, the grantee is required to report to LGD, documentation to reflect the total number of jobs created;

~~(4)~~ (4) a firm commitment for private financial participation in carrying out the proposed project, contingent on award of CDBG funding only, must be included with the application;

~~(5)~~ (5) a minimum leveraging ratio of 2 new private investment dollars to 1 CDBG dollar is required, {additional leveraging will enhance a project's competitiveness};

~~(6)~~ (6) an "appropriate" determination that there is a well documented need for CDBG assistance to make the project financing feasible and that the level of assistance requested is commensurate with the public benefits expected to be derived from the economic development project;

~~(7)~~ (7) evidence of project feasibility including a business plan which contains financial statements, project pro forma (cash flow projections) and specific source and intended use of all funds or assets used in the project;

~~(8)~~ (8) generally, projects that directly assist in the relocation of a business or industry from one community to another, intrastate or interstate, will be disqualified;

~~(9)~~ (9) prior to submission of an application, applicants should thoroughly review the credit worthiness of the proposed borrower and should obtain appropriate credit reports, audited financial statements, tax returns and verify collateral.

E. Program income:

The community development council has adopted a policy of strongly encouraging and, when possible, requiring applicants in the economic development category to return program income to the state for use in fostering critical economic development opportunities that occur throughout the state. By pooling program income at the state level more of an impact can be made on the overall economic conditions of the state. The Housing and Urban Rural Recovery Act which amended the Housing and Community Development Act of 1974, provides, relative to economic development, specifically the following:

(1) states may require program income to be returned to the state but local

governments must be allowed to keep program income when used for the same activity which generated the income (104(i)2);

(2) if the applicant intends to retain program income, a program income utilization plan must be submitted with the application for approval.

F. Application cycle:

Applications for economic development can be made at any time, and the division staff have thirty days to review the them.

G. Pre-application conference:

It is recommended that a preapplication conference be held prior to the submission of the final application to insure that all elements are adequately addressed. The preapplication conference will also provide an opportunity to review any new federal guidelines that may be issued which relate to economic development activities. Contact the LGD, economic development representative for information. More detailed and extensive financial and project data may be required depending on the specific project. In addition, meeting the national objective to benefit low and moderate income requires documentation certifying that the majority of the jobs go to low and moderate income persons or the majority of jobs are considered available to them. Please contact the local government division for a copy of the HUD guidelines.

H. APPLICATION REQUIREMENTS:

(These must be included along with the regular CDBG Application, and should be submitted in lieu of question #2 in the regular application.)

(1) Economic development plan:

The applicant must submit as an attachment to the application a short (5 page maximum) description of its plan for encouraging local economic development. The plan, incorporating references to the proposed project, should include a discussion of the following elements

(a) Need - What are the community's underlying economic problems? Need might include recent major industry shutdowns or extended layoffs, substantial increases in population without a corresponding increase in job opportunities, substantial population decreases due to lack of available or appropriate job opportunities, a lack of industrial diversification, the existence of large numbers of workers in the area with obsolete skills or skills for which there is no current demand, or other problems unique to the applicant's community.

(b) Goals - What is the community attempting to accomplish through its overall economic development program (not just that activity for which CDBG funding is sought)? Goals might include trying to preserve existing businesses or industries, attempting to encourage community growth, attempting to foster industrial diversification, revitalizing the central busi-

ness district, or creating complementary industries which would provide jobs in the off-season for workers now only seasonally employed.

(c) Resources - What public and private resources, both financial and technical, does the community have available to it to help carry out its economic development program? Resources may be of a wide variety. For example, does the community have a local development corporation or similar body? Has any agency organization assigned staff member(s) to work on economic development activities for a major portion of their time? Has the financial community demonstrated its willingness to participate in development activities? Is there an adequate available labor force to meet the demands of new or expanding businesses and industries? Does the community have some unique development advantages, e.g., location, transportation facilities, industrial park or other plant sites, available raw materials, abundant power supplies, employee training capabilities, a locally-administered revolving loan fund to assist growing businesses or industries, technical assistance programs to help business persons deal with marketing, management, or financial planning problems

(d) Strategy - What strategy is the community using to pursue its economic development goals? Strategy might include a description of the specific activities that have been identified as components of the community's strategy for encouraging local economic development. For example, which has been assigned first, second, and third priority? How much will each cost? What funding sources have been identified for each? What can or will the local government do to support those activities?

(e) Results - What actions has the community already undertaken to implement its economic development plan? What sources of funding were used? What were the results? Results might include a discussion of actions the community has taken to encourage development. For example, has it offered property tax reductions to new or expanding industries? Has it formed a local development corporation or prepared industrial or tourism promotion packages? What results have been achieved? How many new jobs have been created or existing jobs retained? How many new firms have begun operations in the community? How many existing firms have undertaken expansion activities?

(2) Hiring and training plan:

(a) Applicants must establish procedures for the project to ensure preferential recruitment, hiring, and training of local workers, particularly those of low and moderate income.

(b) In the event of a grant award,

the applicant's commitment to the hiring plan will be considered binding and will be incorporated by reference in the grant agreement between the local governing body and the local government division.

(3) Private sector commitments:

(a) Applicants must provide evidence of firm commitments of financial resources from the private sector.

(b) Such commitments should be binding, contingent only upon receipt of CDBG funds.

(c) Investments made or costs incurred prior to the grant application are not eligible for use as matching funds or leverage but should be referenced as related to the total project, if applicable.

(4) Public sector commitments:

(a) If public sector resources are to be involved in the proposed economic development project, applicants must demonstrate evidence of a firm commitment of public funds and/or other resources.

(b) Such commitments should be binding, contingent only upon receipt of CDBG funds to the project.

(c) Evidence may include resolutions or ordinances passed by the local governing body and other appropriate local groups.

(5) Use of CDBG funds for economic development loans (if applicable):

(a) Any project that includes a loan should provide an explanation of the proposed interest rate, terms and rationale for the proposed financing structure.

(b) Any loan made by a local governing body with CDBG funds as a part of an approved CDBG economic development project must be adequately secured.

(c) Subordinated loans may be made when justifiable and appropriate.

(d) The applicant must include a detailed description of the proposed use of program income. (principal and interest). Applicants are encouraged to designate program income to be returned to the state for future economic development setaside-eligible activities.

(6) Viability of assisted enterprises: Any for-profit entity to be assisted with CDBG funds must document that without participation of CDBG funds the proposed activity would not be feasible and that after receipt of CDBG assistance the enterprise will be viable and self-sustaining. All applicants proposing an economic development activity shall submit the following for any entity to be assisted with CDBG funds.

(a) a business plan which consists of at least a description of the history of the firm, background, and experience of the principals, organizational structure, a description of its major products or services, market area and market share, goals, and

planned expansions or changes in operations; the plan should also describe the impact the CDBG project, if funded, would have on the firm's activities;

(b) a three-year to five-year operating plan forecast (profit and loss projection); applicants may use U.S. small business administration (SBA) forms or equivalent;

(c) a monthly cash flow analysis, SBA forms or equivalent.

(d) for any existing business, the two most recent year-end financial statements, including an income statement and balance sheet.

I. RATING CRITERIA:

The selection criteria in the rating and ranking system will give priority to projects which firmly demonstrate the following: need, appropriateness, impact, and benefit to low and moderate income persons. These factors are discussed below and are intended to provide additional information. Since each application will be a unique response to particular community-specific needs, there are no "right" or "wrong" activities or solutions. The ranking of "appropriateness" (and later, of "impact") will necessarily be in part subjective, with the division taking into account not only how well each applicant addresses the problems it has defined, but also how its problems and responses compare with those of other applicants. Responses may vary considerably depending upon the size and location of the community and the type of project proposed.

(1) NEED - (200 points) - In analyzing an applicant's need for a project, the division will use statistical information provided by the New Mexico department of labor and the U.S. bureau of the census which is uniformly available for all thirty-three (33) counties. Since similar data is not accumulated at the municipal level, cities and towns will be scored with the figures for the county in which they are located. The three factors which will be considered are: the average number of unemployed persons in the county during the last calendar year; the percent of unemployment (average) in the county during the last calendar year; long-term unemployment (measured by average unemployment rates in the county for the last five calendar years).

(a) The data will be calculated and each applicant assigned a relative score.

(b) The division will consider assigning a different score in exceptional cases, where an applicant can conclusively demonstrate that the first two factors used to measure economic need are not reflective of local economic conditions (such as major recent plant closings) and the situation is substantiated by the New Mexico department of labor. A request for consideration of local economic data must be submitted with

the CDBG application. The applicant should identify sources of data and define methodologies.

(2) APPROPRIATENESS - (200 points) - Two major factors will be weighted in this ranking category: the soundness of the applicant's economic development plan and the related project for which CDBG funding is sought; the strength of the applicant's hiring and training plan for ensuring that local residents, particularly those of low and moderate income, will be hired to fill the stated number of jobs created or retained as a result of CDBG-funded activities. These two factors will be ranked as follows:

(a) Plan and program - (140 points) - Some factors which might contribute to the achievement of an "outstanding" score are:

(i) that the applicant has developed a complete, well reasoned, appropriate, and achievable plan for dealing with its total economic development needs, taking into consideration all available public and private resources and local capacity;

(ii) that the local governing body has officially adopted the economic development plan as a matter of public policy;

(iii) that the proposed project for which CDBG funding is sought is an integral part of that plan; (it need not be the first priority item identified in the overall plan if other, more appropriate, resources are available and already being used to meet higher priority items);

(iv) that the applicant has made substantial local efforts to deal with its economic development problems;

(v) that the proposed CDBG project is realistic and workable, and the job savings or creation expected to result from its implementation will occur within a reasonable time following the date of grant award;

(vi) that if income is to be generated by CDBG-funded activities, and retained locally, a plan for the use of that money has been developed and submitted with the application; this plan must include mechanisms established for administration of the funds, (if a revolving loan fund is to be established with program income, procedures must be outlined covering local application processing, time frames, approval, negotiation, pricing, packaging, servicing, etc.);

(vii) that there has been active citizen participation in the development of the economic development plan and in the selection of the CDBG project.

(b) Hiring and training plan - (60 points) - Since a primary goal of CDBG-funded economic development grants is to increase job opportunities for local residents, particularly persons of low

and moderate income, it is essential that applicants take every measure to bring about that result. Each applicant must include in its application an employment and training plan to be used in filling jobs created or saved as a result of CDBG activities. Factors which would most likely contribute to the achievement of a high score are:

(i) that the applicant's employment and training plan provides clear, complete procedures for outreach, recruitment, screening, selection, training, and placement of workers which will ensure maximum access of local residents, particularly persons of low and moderate income, to jobs created or saved by the project;

(ii) that attention has been given to necessary supportive services for trainees needing them;

(iii) that a complete training curriculum has been developed and all training resources identified;

(iv) that responsibility has been assigned for all phases of the training program;

(v) that a written agreement to follow the plan has been obtained from each firm expected to benefit directly from the program.

(3) IMPACT - (200 points) - In weighing the anticipated impact of the applicant's proposed CDBG grant activities on the community's identified problems, the following four factors will be considered and evaluated:

(a) Leverage - (50 points) - In preparing its proposed project budget, the applicant is required to identify all sources of funds to be used and the amounts to be contributed by each. To be eligible for consideration, an applicant must provide at least two private non-CDBG dollars for each dollar of CDBG funds requested (a 2:1 ratio). The non-CDBG funds may come from a variety of private sources, such as new investment by a firm to be assisted, bank loans, or local development corporation loans and debentures. Applicants will be ranked against each other. If, for instance, community A has the highest leverage ratio (\$6 of non-CDBG funds for each \$1 of CDBG funds, a 6:1 ratio) and community B has a 2:1 leverage, community A would receive the maximum score and community B and all other applicants would be relatively scored against community.

(b) CDBG dollars per job - (50 points) - The applicant is required to specify the number of permanent full-time jobs to be created or retained as a result of the requested CDBG program. In determining an applicant's score in this category, the total CDBG funds to be used (exclusive of administrative funds) will be divided by the total number of full-time jobs expected to result. NOTE: In evaluating an applicant's

job creation projections, the local government division will consider the historical relationships of sales, space, and machines to jobs. It will also look at typical ratios for the industry of which the firm to be assisted is a part. Applicants should be prepared to justify job creation claims which substantially exceed industry norms or \$15,000 per job created or retained.

(c) Type of jobs - (50 points) - Although all new or retained jobs provide some measure of economic benefit to the community, full-time, skilled or semi-skilled positions are more desirable for most workers than part-time jobs or those requiring unskilled labor. One objective of CDBG economic development activities is to foster the creation and retention of permanent, full-time employment with growth potential for persons of low and moderate income, which offers those workers an opportunity for advancement in a firm or industry. Applicants are required to indicate the percentage of jobs to be created or retained which are full-time or part-time, skilled, semi skilled, or unskilled.

(d) Overall economic impact - (50 points) - The applicant must discuss both the direct and indirect effects the CDBG program is expected to have on the community's economy. Some of the factors which will be considered in evaluating impact are:

(i) the size of the additional payroll expected to be generated for the jobs created or retained by the program;

(ii) the total number of jobs to be created or retained;

(iii) whether the firm to be assisted is a primary industry (producing goods or services mainly to be sold outside the area or state, thereby importing dollars into the community and state);

(iv) whether local property tax revenues will be significantly increased as a result of the proposed business start-up, expansion, retention, etc.;

(v) the applicant demonstrating the greatest positive impact will be scored highest. All other applicants will be ranked correspondingly;

(vi) when applications have been scored in all four categories (leverage, dollars per job, types of jobs, and overall economic impact), those scores will be totaled.

(4) BENEFIT TO LOW AND MODERATE INCOME PERSONS - (200 points)

(a) This ranking criterion assesses the extent to which persons of low and moderate income will directly benefit from the expenditure of CDBG grant funds. To determine this score, the number of jobs to be created or retained and made available to low and moderate income persons will be divided by the total number of jobs to be

created or retained as a result of the CDBG program.

(b) The highest score will receive up to a maximum of 200 points and all other applicants will be scored accordingly.

(c) To be eligible for consideration a project must demonstrate that it will benefit principally persons of low and moderate income.

[2.110.2.26 NMAC - Rp 2 NMAC 110.2.26, 08-30-01; A, xx-xx-06]

NEW MEXICO BOARD OF PHARMACY

NEW MEXICO BOARD OF PHARMACY

REGULAR BOARD MEETING

NOTICE TO THE PUBLIC

The New Mexico Board of Pharmacy will convene on **November 2 & 3, 2006** at 9:00 a.m. in the **Pharmacy Board Conference Room, 5200 Oakland Ave., NE, Albuquerque, New Mexico** for the purpose of conducting a regular Board meeting.

Interested persons may contact Debra Wilhite, Administrative Secretary, 5200 Oakland Ave., NE, Suite A, Albuquerque, NM 87113, (505) 222-9830 or fax (505) 222-9845, e-mail debra.wilhite@state.nm.us to receive copies of the agenda, which will be available October 20, 2006. The Board may go into executive session at any time to discuss licensee and/or personnel matters. Anyone who needs special accommodations for the meeting should contact the Board office at (505) 222-9830 as soon as possible.

Available at www.state.nm.us/pharmacy on October 20, 2006 will be all proposed regulations, notices and tentative agenda.

The Board will notice the following for rule hearings:

- 16.19.4. NMAC - Pharmacist
- 16.19. 7 NMAC - Hospital Pharmacies
- 16.19.10 NMAC - Limited Drug Clinics
- 16.19.20.69 NMAC - Controlled Substances
- 16.19.22 NMAC - Support Personnel and Pharmacy Technicians
- 16.19.26 NMAC - Pharmacists Prescriptive Authority - Vaccines

Published in the Albuquerque Journal and Tribune - September 30th and October 1st, 2006.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

NOTICE OF INQUIRY INTO TIME-BASED RATES AND ADVANCED METERING

Case No. 06-00391-UT

NOTICE OF INQUIRY, REQUIRING WHITE PAPERS AND SCHEDULING WORKSHOPS

THIS MATTER comes before the New Mexico Public Regulation Commission ("Commission") on its own motion. Being fully advised in the premises,

THE COMMISSION FINDS AND CONCLUDES:

1. The federal Energy Policy Act of 2005 ("EPAAct") was signed into law on August 8, 2005. Section 1252 of the EPAAct requires state commissions to consider several new federal standards that have been added to Title I of the Public Utility Regulatory Policies Act ("PURPA") and make specific determinations as to whether implementation of the standards is appropriate. This Notice of Inquiry ("NOI") pertains to the Time-Based Metering and Communications ("Advanced Metering") standard under Section 1252 of EPAAct and to its requirements relating to time-based rates. Advanced Metering, along with appropriate time-based rate structures may:

Empower customers by providing information and choices about their energy

usage;

Enhance transmission and distribution efficiency of utilities;

Enhance opportunities to make effective use of distributed generation and renewable sources of energy; and Improve customer service.

2. The EPAAct requires that each state regulatory authority conduct an investigation and determine whether it is appropriate for electric utilities "to provide and install time-based meters and communications devices for each of their customers which enable such customers to participate in time-based pricing rate schedules and other demand response programs." The EPAAct requires state commissions to investigate Advanced Metering and make their final determinations no later than August 8, 2007. In addition, the EPAAct purports to require retail utilities to offer time-based rates upon request to all customer classes no later than February 7, 2007, and requires states to make a determination in this regard by the same date.

3. It will be more effective to consider the time-based rate requirements of EPAAct in conjunction with a detailed inquiry into Advanced Metering. Therefore, the Commission finds that a final determination on time-based rate issues should be made on or before August 8, 2007.

4. In order to meet the requirements of EPAAct, and more importantly, to study how Advanced Metering and time-based rates can benefit New Mexico consumers and utilities, the Commission finds it should open a Notice of Inquiry docket.

5. In this docket, the Commission should schedule a series of workshops to investigate the adoption of Advanced Metering and time-based rate standards in New Mexico. The Commission should hold a Technical Workshop with presentations from interested parties on industry developments and national trends and considerations.

6. The Commission should also require New Mexico utilities to prepare and file white papers detailing their existing programs and plans, as well as an analysis of the potential benefits to the utility and its customers from implementation of the technologies and rate concepts discussed at the first workshop. Utility white papers should be presented and discussed at a second workshop.

Technical Workshop

7. On November 20, 2006, at Marian Hall, 240 E. Palace Avenue, Santa Fe, New Mexico, the Commission shall conduct a Technical Workshop with presentations from interested parties on industry developments and national trends and considerations. Utility Division Staff shall work with interested parties to prepare a specific agenda. Topics to be addressed should include:

- Status report on EAct proceedings across the United States;
- Overviews of Advanced Metering (including intelligent grid infrastructure) technologies, including terminologies, benefits, and implementation concerns;
- Demand response opportunities;
- How to leverage investment in Advanced Metering to support time-based rates.

Utility White Papers and Presentations

8. No later than December 15, 2006, each electric utility under the jurisdiction of the Commission, including investor owned utilities and rural electric cooperatives, shall file white papers in this docket discussing how the utility can utilize Advanced Metering and time-based rates to improve customer service and utility operations and lower costs. Utility White Papers should address current and planned activities, as well as medium and long-term challenges and opportunities. Specific topics to be discussed may include:

- Smart metering
 - Advanced metering systems;
 - Meter data management and other back office software and integration;
 - Demand response programs.

- Time-based Rate Schedules
 - Time-of-Use Rates;
 - Real-Time Pricing;
 - Hourly Pricing;
 - Critical Peak Pricing;
 - Critical Peak Rebates;
 - Credits for Interruptible Peak Load;
 - Optimal On-peak and Off-peak hours;

- Benefits of Time-Based Rates
 - To End-Use Customers;
 - To Utility.

- Impact to utility's marginal costs of providing service

- Integrated Demand and Grid Management

How technologies can be used to help customers manage their bills in the face of higher rates

- Residential;
- Commercial.

- System Benefits
 - Identification of potential and appropriate timeframes;
 - Identification of measures/actions that are cost effective.

- Energy Efficiency Programs
 - How Advanced Metering can promote and complement energy efficiency programs.

- Load Shaping
 - Opportunities;
 - Cost of incentives to customers.

Short term considerations in implementing Advanced Metering and Time-Based Rates, including measures that can be taken to reduce risk in deploying Advanced Metering and Time-Based Rates

Considerations associated with deploying Advanced Metering in rural areas of New Mexico where advanced telecommunications infrastructure is less likely to be avail-

able

Long term considerations in implementing Advanced Metering and Time-Based Rates

Any societal benefits not accruing to specific End-Use Customers or the Utility, e.g., reduced theft

Appropriate incentives to utilities to encourage investment in Advanced Metering

Cost Recovery Mechanisms;

Cost-effectiveness in the implementation of the available technology (ies).

New Mexico Advanced Metering Utility Workshop

9. On January 8, 2007, the Commission shall hold a workshop at which time utilities shall present their White Papers and provide an opportunity for discussion with Staff and other interested parties. The Commission anticipates requesting Staff to prepare a report on the Workshops and White Papers, along with recommendations to the Commission for the promulgation of rules or other action, as appropriate. The Commission further anticipates establishing a period to receive comments in response to Staff's recommendations.

10. The Commission will issue a further procedural schedule for post-workshop proceedings as appropriate at such time as the scope of the report is more readily ascertained.

IT IS THEREFORE ORDERED:

A. An inquiry is hereby commenced regarding Advanced Metering as provided in this Notice of Inquiry, to determine, based on input from New Mexico utilities and other interested parties, whether the Commission should promulgate rules or take other appropriate action in response to Section 1252 of EAct of 2005. The Commission shall make its determination on or before August 8, 2007, as provided by that statutory section.

B. On November 20, 2006, at Marian Hall, 240 E. Palace Avenue, Santa Fe, New Mexico, the Commission shall conduct a Technical Workshop with presentations from interested parties on industry developments and national trends and considerations. Utility Division Staff shall work with interested parties to prepare a specific agenda. Topics to be addressed should include:

Status report on EPA Act proceedings across the United States;

Overviews of Advanced Metering (including intelligent grid infrastructure) technologies, including terminologies, benefits, and implementation concerns;

Demand response opportunities;

How to leverage investment in Advanced Metering to support time-based rates.

C. No later than December 15, 2006, each electric utility under the jurisdiction of the Commission, including investor owned utilities and rural electric cooperatives, shall file white papers in this docket discussing how the utility can utilize Advanced Metering and time-based rates to improve customer service and utility operations and lower costs. Topics to be addressed are listed in paragraph 8, above.

D. On January 8, 2007, the Commission shall hold a workshop at which time utilities shall present their White Papers and provide an opportunity for discussion with Staff and other interested parties.

E. Additional procedural dates will be established by further order of the Commission.

F. This Notice shall be mailed to all persons on the utility mailing list, to all Indian Nations in the state, to the General Services Department of the State of New Mexico, to AARP, and to any other person requesting service, and should be published in one newspaper of general circulation in the state and in the New Mexico Register. This Notice shall be provided by email or by facsimile transmission to those persons who have so requested.

G. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 26th day of September 2006.

NEW MEXICO PUBLIC REGULATION
COMMISSION

BEN R. LUJAN, CHAIRMAN

JASON MARKS, VICE CHAIRMAN

**DAVID W. KING,
COMMISSIONER**

**LYNDA M. LOVEJOY,
COMMISSIONER**

E. SHIRLEY BACA, COMMISSIONER

NEW MEXICO 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 Mezzanine, Zia Park, 2901 West Millen Dr., Hobbs, New Mexico, commencing in executive session at 8:30 o'clock a.m. on Thursday, October 19, 2006. The public session will begin at 9:30 o'clock a.m. on Thursday, October 19, 2006. The Commission will consider adoption of the proposed amended rules for incorporation into the Rules Governing Horse Racing in New Mexico No. 15.2.4.9 NMAC (regarding starter allowances) and No. 16.47.1.10 NMAC (regarding trainers testing.)

Copies of the proposed rules may be obtained from Julian Luna, Agency Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Suite A, Albuquerque, New Mexico 87113, (505) 222-0700. 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: September 27, 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 adopt the following regulation:

Tax Administration Act

3.1.12.13 NMAC Section 7-1-17.1
NMSA 1978

(Collection of Community Debt Against a Spouse or Former Spouse)

The proposals were placed on file in the Office of the Secretary on October 2, 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 December 14, 2006.

A public hearing will be held on the proposals on Monday, November 20, 2006, at 10:00 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before November 20, 2006.

3.1.12.13 COLLECTION OF COMMUNITY DEBT AGAINST A SPOUSE OR FORMER SPOUSE: The secretary or secretary's delegate may decline to bring an action or proceeding to collect community debt against a spouse or former spouse where to do so would be inequitable.

A. In the case of community debt arising from a jointly-filed return, the secretary or secretary's delegate shall follow determinations made by the Internal Revenue Service (IRS) pursuant to 26 U.S.C. Section 6015. Where relief is granted in writing by the IRS, the spouse who received such relief may provide a copy of the IRS's determination and request that the secretary or secretary's delegate cease any collection activity against that spouse or former spouse to the extent such relief was allowed by the IRS. The secretary or secretary's delegate may decline to pursue collection activity against a spouse or former spouse for community debt while an application for such relief is pending before the IRS, but the failure of the spouse or former spouse to seek or obtain such relief from the IRS shall not preclude the secretary or secretary's delegate from declining to bring an action or proceeding against a spouse or former spouse for collection of a community debt where to do so would be inequitable.

B. In the case of a community debt arising from the conduct of a business within the state, including taxes col-

lected under the combined reporting system, the secretary or secretary's delegate shall consider the following facts and circumstances when determining whether to bring an action or proceeding to collect community debt:

(1) Did the spouse or former spouse participate in the conduct of the business, including responsibility for payment of taxes and other debts?

(2) Did the spouse or former spouse have knowledge of the tax liability at the time that liability arose?

(3) Was the spouse or former spouse given an opportunity to participate in the business decisions of the household during the periods when the debt arose?

(4) Did the spouse or former spouse have a meaningful opportunity to contest the assessment of tax at the time the assessment was made?

(5) Has the spouse or former spouse cooperated with the department in collection and compliance efforts?

(6) Would the taxpayers have been entitled to relief under the managed audit provisions of the Tax Administration Act?

(7) Can the state protect its interests without pursuing active collection efforts against the spouse or former spouse, including collection efforts against the other spouse or former spouse?

(8) Has the spouse or former spouse benefited from the transfer of significant amounts of property from the other spouse or former spouse?

(9) Would enforcement create a particular hardship for the spouse or former spouse, for instance, loss of principal dwelling or vehicle necessary for travel to work?

(10) The age of the liabilities, including the amount of interest accrued.

C. The secretary or secretary's delegate shall weigh all applicable factors when determining whether to decline to bring an action or proceeding. No one factor shall be considered determinative.

D. Nothing in this regulation shall be construed to apply to offsets of refunds or credits to collect on community debts.

E. The secretary or the secretary's delegate has discretion to allow relief under this section. A spouse or former spouse who believes he or she is entitled to relief under this section may petition for such relief to the secretary in writing. The spouse or former spouse taxpayer has the burden of proof in establishing his or her entitlement to the relief requested. A spouse or former spouse who believes that he/she has been improperly denied relief under this Section may protest that decision under Section 7-1-24 NMSA 1978.

F. This regulation is effective for tax periods beginning on or after January 1, 2006.

[3.1.12.13 NMAC - N, XXX]

**End of Notices and
Proposed Rules Section**

Adopted Rules

NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS ARTS DIVISION

This is an amendment to 4.12.1 NMAC Section 7. This action also replaces the "New Mexico Arts - Funding Guidelines FY2007" with the "New Mexico Arts - Funding Guidelines FY2008", effective 10-16-06.

4.12.1.7 DEFINITIONS:

~~A.~~ "Aceptable ~~post-~~marks" means a legible dated postmark or receipt with the date of mailing stamped by the US postal service.

~~B.~~ "Advisory ~~panel~~" means a panel comprised of members of the public who are residents of New Mexico and other states composed of artists, arts administrators and knowledgeable community arts supporters (lay people both committed to and involved in the arts activities of their community) to serve on advisory panels. The arts commission approves advisory panel members from a panelist roster based on areas of expertise, geographic location, gender and ethnicity.

~~C.~~ "Advisory ~~panel~~ review" means the process in which all applications for funding are reviewed by the staff and determined to be complete and are then reviewed by the appropriate advisory panel. Staff selects up to nine panelists from the arts commission approved advisory panelist roster, taking into consideration panelists' areas of expertise, geographic location, gender and ethnicity. Members of the public may attend the advisory panel meetings, which are moderated by arts commissioners. Advisory panels are designed to provide objective evaluations of applications submitted to the NMA, rate all applications based on criteria specific to each program area, and provide application rankings to the planning and budget committee. The planning and budget committee uses the panel ratings, rankings and comments to make funding recommendations to the arts commission.

~~D.]A.~~ "Appeals committee" means the designate committee of the NMA commission which reviews and makes a determination regarding an appeal brought forward by a prospective applicant after the funding recommendation has been acted on by the arts commission.

~~E.]B.~~ "Appeals process" means the appeal process whereby applicants that are reviewed by a panel and have met all eligibility requirements may appeal a decision or recommendation of an advisory

panel. If an applicant believes there are grounds for an appeal following the panel review of their application, a formal letter to the executive director stating the grounds for appeal is required within thirty (30) days of receipt of funding notification if the applicant can demonstrate that the review of the application was based on criteria other than those appearing in NMA regulations or the decision was influenced by an advisory panel member or commissioner with an undisclosed conflict or interest.

~~F.]C.~~ "Application" means the written formal request for funds from NMA. An eligible application is one which is determined to be complete by staff review and is based on whether the applicant followed the published regulations, and submitted his application form and materials by the stated deadline.

~~G.~~ "Art education" means a specific education program which promotes the arts as an integral component of basic education and community life and involves cooperative planning among artists, educators, community leaders, and other to develop quality arts experiences in a variety of settings. Arts education programs incorporate the state standards and benchmarks in the arts disciplines.

~~H.~~ "Arts education projects" means arts education projects that empower teachers to use the arts in the classroom. Projects in this category involve artist/teacher teams working with either an entire grade level of teachers or a team of teachers to familiarize teachers, principals and possibly artists/arts organizations with arts integration methods and art skills. The artist/teacher team will lead fellow teachers, administrators and possibly artists/arts organizations in the creation of arts integrated lesson plans. These plans will be implemented in the classroom and evaluated through pre and post testing of the affected classroom and a control group to determine effectiveness of arts integration on learning and school reform.

~~I.~~ "Arts in social service" means arts organizations or social service organizations for arts based projects that focus on addressing social issues with a primary purpose of reaching specific populations (people who are incarcerated, homeless, abused, ill, etc.) or fosters artistic activity that encourages civic dialogues on important social issues (the environment, crime, etc.).

~~J.]D.~~ "Arts in public places/one percent for art program" means the program which is designed to administer the "Art in Public Places Act", Section 13-4A-1 NMSA 1978, which requires that one percent of construction

and renovation costs of certain public buildings be spent on the acquisition of art for those buildings; and to develop, document and promote a statewide public art collection which reflects the cultural, ethnic, and artistic diversity of New Mexico, the region and the nation. Artwork acquired through the arts in public places program are acquired for installation and display in public buildings throughout New Mexico which reflect the tastes and attitudes of the users of the buildings as well as local communities. Regulations established by NMA require that a five to eleven member committee comprised of local community members determine the type of art it wants and develop a prospectus (a call for artists). All prospectuses are published in the quarterly NMA newsletter Artspeak and are open to all artists. Works of art selected by the art selection committee must be on public display and be accessible to the general public during regular business hours.

~~K.~~ "Artistic ~~example~~" means a high quality example of artistic work that is submitted with an application.

~~L.~~ "Artist ~~residency~~" means creating programs that promote learning in and through the arts for school and community settings. Artist residencies may occur in schools or community settings. In the schools, artist residencies support artist/teacher teams educating teachers, administrators and artists in methods which provide hands on involvement in the creative process for students based on state arts education standards and which evaluate the results of the classroom activities. Residencies should be considered supplemental to a school's regular arts education program. Preference will be given to underserved schools. In communities, an artist residency should stimulate a dialogue about the importance of art within a community. Community based residencies provide hands on involvement in the creative process for residents of all ages and should include an artist working with civic and business leaders, service clubs, members of the educational system, and other community leaders.

~~M.]E.~~ "Arts commission" means same as New Mexico arts commission or commission.

~~N.~~ "Arts projects A and B" means short term one year arts projects or an organizations season. Arts projects "A" are organizations with an actual last fiscal year income of three hundred thousand dollars (\$300,000) to seven hundred forty nine thousand nine hundred ninety nine dollars (\$749,999), excluding in kind contributions. Arts projects "B" are organizations with an actual last fiscal year income of one

hundred thousand dollars (\$100,000) to two hundred ninety nine thousand nine hundred ninety nine dollars (\$299,999), excluding in kind contributions.

O. "Budget size" means actual last fiscal years income minus in kind of the applicant organization/institution.

P. "Cash match" means the cash funds (as opposed to in kind; pledged or other unrealized income) required by the applicant organization in order to receive a award from NMA. Cash match requirement is a fifty percent (50%) match by the applicant organization; at least half of the match must be cash. Organizations with an actual last fiscal year income of seven hundred fifty thousand dollars (\$750,000) or higher, excluding in kind contributions are required to have hundred percent matches; at least half of the match must be cash.

Q. "Colleges, universities, and government entities" means the funding category which supports colleges, universities, local and county governments, and Indian tribal entities for arts activities for an entire season of specific arts related projects. These organizations have an actual last fiscal year income of seven hundred fifty thousand dollars (\$750,000) or higher, excluding in kind contributions.

R. "Community arts development A & B" means community arts development "A" are organizations with an actual last fiscal year income of forty thousand dollars (\$40,000) to ninety nine thousand nine hundred ninety nine dollars (\$99,999), excluding in kind contributions. Community arts development "B" are organizations with an actual last fiscal year income of up to thirty nine thousand nine hundred ninety nine dollars (\$39,999), excluding in kind contributions.

S;J,E. "Conflict of interest policy" means the arts commission conflict of interest policy based on the Governmental Conduct Act, Section 10-16-1 through 10-16-16, NMSA 1978.

[F;]G. "Contract" means the contract between NMA and an artist, or other award recipient. NMA reserves the right to monitor all funding recipients to ensure that the terms and conditions of the contract are met.

[U. "Deadline" mean the latest date and time as specified in regulations or application by which application will be accepted by NMA as being timely submitted.

V. "Eligibility" means tax exempt nonprofit organizations, units of government, schools, universities, colleges or organizations with Indian tribal government designation in New Mexico are eligible to apply. Organizations without tax exempt nonprofit or tribal designation, or

that are not units of local government may enter into a fiscal sponsorship using a fiscal agent to apply. These organizations are eligible to apply once per fiscal year. See guidelines for other eligibility requirements.

W. "Evaluation criteria" means the criteria used to evaluate and rate all applications by the advisory panels. Evaluation criteria and sub criteria are stated in the regulations for each category.

X. "Final reports" means a final descriptive and financial report which must be submitted by all award recipients or their fiscal sponsors within thirty (30) days after the ending date stipulated in the contract. Final report instructions are included in the award contract packet. The project director prepares the report and the authorizing official reviews the report before submission. The NMA keeps twenty percent (20%) of all funds awarded until satisfactory final reports are submitted. Funding is on a reimbursement basis. Award recipients or their fiscal sponsors who fail to submit the required final report on time can result in loss of twenty percent (20%) of the contracted amount. Non receipt of required reports may jeopardize future funding from New Mexico arts.

Y. "Fiscal agent" means tax exempt non profit organizations that act as fiscal agent on behalf of an applicant.

Z. "Folk arts apprenticeships" means one on one intensive learning experiences for artists engaged in preserving traditional art forms. The master artist must demonstrate excellence in the traditional art form, and the apprentice must show a commitment to learning and carrying on the art form. A separate set of guidelines for the folk arts apprenticeship is issued.

AA. "Folk arts projects" means projects which preserve and perpetuate the traditional arts as practiced by various cultures in New Mexico. Folk arts are the traditional functional and expressive arts of people passed down informally by word of mouth or by cultural groups, family, community, occupational, ethnic or religious. Folk arts reflect the values and world views of the groups that make them.

BB. "Funding acknowledgments" means all forms of publicity, printed programs, posters, handbills, and announcements, that must prominently state: Funding is provided in part by New Mexico arts and the national endowment for the arts. Abbreviations (for example, NMA, NEA) are not acceptable. Any changes in or deviation from this wording must be approved in advance by the director of the NMA. Failure to provide this information may jeopardize present and future funding from the NMA.

CC;]H. "Governor's awards for excellence in the arts or governor's

arts awards" means the awards established in 1974 which recognize the important role that artists, crafts people, and supporters of the arts play in our state. People who receive the awards are chosen for their lifetime artistic excellence and accomplishments. Corporations and major contributors are also honored for outstanding and generous support of the arts. The commission chair appoints a selection committee who make recommendations to the governor's office which are then approved by the commission.

[DD. "Guidelines or request for proposals or regulations" means the stated requirements including forms which must be completed in order for an application to qualify as complete. Guidelines or request for proposals are published yearly which provide the established priorities of the commission, the full application process, the evaluation criteria, appeals process and the deadlines for submission and acceptable postmarks.

EE. "In kind" means a service or goods provided to an organization at no charge, which has a cash value. In kind volunteer hours are calculated at current market wages, at least federal minimum wage unless the volunteer is donating professional services, which are calculated at professional rates and should be listed as "business support".

FF. "Legal compliance requirements" means terms, conditions, and restrictions with which funding recipients are required to comply depending on the source of funding. Such requirements consist of the following, without limitations:

(1) comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and, where applicable, Title IX of the Education Amendments of 1972; Drug Free Workplace Act of 1988; Native American Graves and Repatriation Act; OMB circular A-122, Audits of States, local Governments and non-profit organizations; the Anti-Lobbying provisions of 18 U.S.C. Sec. 1913 and 31 U.S.C. Sec. 1352; and the Debarment and Suspension provisions of 45 CFR, Part 1154; Cost Principles for Nonprofit Organizations; OMB Circular A-133;

(2) compensate professional performers and related or supporting personnel at no less than prevailing minimum wage as defined by the U.S. Secretary of Labor and assure that no part of a support project will be performed or engaged in under working conditions that are unsanitary, hazardous, or dangerous to the health and safety of the employees involved;

(3) complete and sign and assurance of compliance form and a 504 compli-

ancee and ethnic participation form;

(4) submit at time of contract an IRS letter showing tax exempt non profit status, except governmental schools, colleges, universities or Indian tribal government entities.

~~GG. "Local arts councils" means a community organization that is a tax exempt organization or an agency of government or Indian tribe that provides services to artists, arts organizations, or in the field of arts education. It may also present cultural programs for its community. NMA follows the Americans for the arts definition of local arts councils to be "a community organizations or an agency of local government that supports cultural organizations, provides services to artists and arts organizations and presents arts programming to the public".~~

~~HH. "Major cultural organizations" means organizations with an actual last fiscal year income of seven hundred fifty thousand dollars (\$750,000) or higher, excluding in kind contributions~~

~~II. "New Mexico arts commission or commission or arts commission" means the fifteen (15) member body appointed by the governor pursuant to Section 18-5-4 NMSA 1998. The mission of the commission, in conjunction with NMA, is to stimulate opportunities for artists, arts organizations, and other groups for activities or projects to provide artistic or cultural services to the state, to maintain and encourage artistic excellence, and to promote awareness of and access to the arts for all of the people of New Mexico.~~

~~JJ. "New Mexico arts or NMA" means the division that is within the department of cultural affairs, a state agency. The New Mexico state legislature created the NMA and the arts commission because "the general welfare of the people of this state will be promoted by giving further recognition to the arts as a vital part of our culture and heritage and as an important means of expanding the scope of our educational program".~~

~~KK. "Panel evaluation criteria" means the factors or standards used by the NMA commission to make all funding decisions and distribute all funds fairly and equitably among art forms and across the geographic and ethnic dimensions of New Mexico. NMA expects all applicants that receive its financial assistance to represent and encourage the highest possible standards of artistic and administrative excellence. There are separate criteria for local arts councils and statewide service organizations, and partnerships. The NMA advisory panelists evaluate eligible applications according to the criteria in the current regulations.~~

~~LL. "Partnership" means~~

~~partnerships/arts enterprise projects are designed to initiate and strengthen community based economic development through three year public/private arts partnerships that benefit underserved rural or inner city communities. Such enterprises train artist and either employ or market the work for artisans in an ongoing economic development enterprise. Projects must promote wide participation and bring attention to the community's or region's cultural resources with a goal of income generation for arts organizations, artist and the general community.~~

~~MM. "K. "Planning and budget committee" means the committee of the commission which reviews comments, ratings and resulting rankings of the applications by advisory panels. The planning and budget committee convenes a public meeting to consider the recommendations of the advisory panels. The committee makes funding and other recommendations to the arts commission.~~

~~NN. "Rural" means outside Las Cruces city limits, or more than thirty highway miles from Albuquerque or Santa Fe.~~

~~OO. "Statewide service organizations" means an organization with a membership or constituency that spans the state; that offers service to artists, arts organizations or in the field of arts education; that promotes the arts through advocacy efforts or provides arts information services to the public. Organizations with a statewide membership or constituency that provide presenting activities and are not primarily service organizations should apply in another category.~~

~~PP. "Strategic plan" means the strategic plan completed every three years by the NMA resulting from extensive surveys, meetings and previous studies. Based on the strategic plan, the arts commission establishes priorities such as culturally diverse arts, folk arts, local arts councils, and rural arts, as well as arts in education and community partnerships for the arts. Available upon request from NMA.~~

~~QQ. "Staff review" means the review by NMA staff of advanced review and final applications submitted by organizations requesting funding, for eligibility, and completeness. Staff administrative notes on financial sections will be noted, as needed. Applications must be complete and typed. Incomplete applications are returned to the applicant and are not sent to advisory panels.~~

~~RR. "Technical assistance" means services for arts organizations, local arts councils, schools, local and tribal government wishing to improve the effectiveness of their organization, management, programs or services.~~

~~SS. "Traditional folk arts and folk arts apprenticeships" means those programs designed: to encourage folk arts projects; to preserve and perpetuate the traditional and contemporary arts as practiced by the state's various cultures; and to recognize and increase awareness of culturally specific and multicultural arts in New Mexico. Folk arts are the traditional functional and expressive arts passed down informally by people through word of mouth or by imitation within a specific cultural group.]~~

~~[4.12.1.7 NMAC - Rp 4.12.1.7 NMAC, 11-13-2003; A, 1-31-06; A, 10-16-06]~~

NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS ARTS DIVISION

This is an amendment to 4.12.10 NMAC, replacing the "New Mexico Arts - Folk Arts Guidelines 2006-2007" with the "New Mexico Arts - Folk Arts Guidelines 2007-2008", effective 10-16-06.

NEW MEXICO DEPARTMENT OF GAME AND FISH

TITLE 19 N A T U R A L RESOURCES AND WILDLIFE CHAPTER 30 WILDLIFE ADMIN- ISTRATION PART 11 CIVIL LIABILITY

19.30.11.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.

[19.30.11.1 NMAC - N, 10/16/2006]

19.30.11.2 SCOPE: Establishing civil liability as allowed in Chapter 17, NMSA 1978 and its accompanying rules.

[19.30.11.2 NMAC - N, 10/16/2006]

**19.30.11.3 S T A T U T O R Y
AUTHORITY:** 17-1-14, 17-1-26 and 17-2-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and establish civil liability.

[19.30.11.3 NMAC - N, 10/16/2006]

19.30.11.4 D U R A T I O N :
Permanent.

[19.30.11.4 NMAC - N, 10/16/2006]

19.30.11.5 EFFECTIVE DATE:
October 16, 2006, unless a later date is cited at the end of individual sections.

[19.30.11.5 NMAC - N, 10/16/2006]

19.30.11.6 OBJECTIVE :

Establishing civil liability value and basic regulation, rules and procedures governing the civil action by the department pertaining to civil damages recoverable by judgment. [19.30.11.6 NMAC - N, 10/16/2006]

19.30.11.7 DEFINITIONS:**A. "Antlered points"**

shall mean the total number of points counted on a continuous antler beam. To constitute a countable point, it must be distinct. A burr at the base does not constitute an antlered point.

B. "Scoring" shall mean

the method of measure adopted and utilized by Safari club international that determines the size of antlers, heads or horns of a game animal that has two antlers or two horns. If a dispute in the scoring arises, then a certified or trained scorer of the Safari club international will score the game animal in question and document their findings for the defendant and department. [19.30.11.7 NMAC - N, 10/16/2006]

19.30.11.8 CIVIL LIABILITY ABOVE TEN THOUSAND DOLLAR (\$10,000.00) VALUE:

The director is authorized to pursue civil liability for greater than ten thousand dollars (\$10,000.00) for any bighorn sheep, elk or mule deer that scores higher than the criteria established below. [19.30.11.8 NMAC - N, 10/16/2006]

19.30.11.9 CIVIL LIABILITY CIRCUMSTANCES:

A. Game animal and game bird: The director or any officer may file a civil action in any court of jurisdiction for the trophy value of a game animal or bird providing that evidence and information indicate that the game was killed or possessed out of season, taken with the aid of artificial light, taken without a proper license, exceeded the bag limit or resulted in waste of game.

B. Game fish: The director or any officer may file a civil action in any court of jurisdiction for the trophy value of a game fish providing that evidence and information indicate that the game fish was killed, taken or possessed exceeding the bag limit [19.30.11.9 NMAC - N, 10/16/2006]

19.30.11.10 TROPHY DESIGNATION AND VALUE:**A. Antelope (pronghorn):**

(1) Any 1 buck with at least one of two horns that is 14.0 inches in length is valued at two thousand dollars (\$2,000.00).

(2) Any 1 buck that has a total scoring of 70.0 points - 75.9 points is valued at four thousand dollars (\$4,000.00).

(3) Any 1 buck that has a total scoring of 76.0 points - 79.9 points is valued at six thousand dollars (\$6,000.00).

(4) Any 1 buck that has a total scoring of 80.0 points or greater is valued at eight thousand dollars (\$8,000.00).

B. Barbary sheep:

(1) Any 1 ram with at least one of two horns that is 25.0 inches to 26.99 inches in length is valued at two thousand dollars (\$2,000.00).

(2) Any 1 ram with at least one of two horns that is 27.0 inches to 28.99 inches in length is valued at four thousand dollars (\$4,000.00).

(3) Any 1 ram with a least one of two horns that is 29.0 inches or greater in length is valued at six thousand dollars (\$6,000.00).

C. Bighorn or mountain sheep:

(1) Any 1 ram, below the scoring of 150 points is valued at five thousand dollars (\$5,000.00).

(2) Any 1 ram that has a total scoring of 150 points - 180 points is valued at ten thousand dollars (\$10,000.00).

D. Deer:

(1) Any 1 mule deer buck with an inside antler spread that measures at least 20 inches is valued at two thousand dollars (\$2,000.00).

(2) Any 1 mule deer buck that has a total scoring of 150.0 points - 174.9 points is valued at four thousand dollars (\$4,000.00).

(3) Any 1 mule deer buck that has a total scoring of 175.0 points - 199.9 points is valued at six thousand dollars (\$6,000.00).

(4) Any 1 mule deer buck that has a total scoring of 200.0 points - 214.9 points is valued at ten thousand dollars (\$10,000.00).

(5) Any 1 Texas white-tailed deer buck (not Coues spp.) with an inside antler spread that measures at least 16 inches is valued at two thousand dollars (\$2,000.00).

(6) Any 1 Texas white-tailed deer buck (not Coues spp.) that has a total scoring of 125.0 points - 144.9 points is valued at four thousand dollars (\$4,000.00).

(7) Any 1 Texas white-tailed deer buck (not Coues spp.) that has a total scoring of 145.0 points - 164.9 points is valued at six thousand dollars (\$6,000.00).

(8) Any 1 Texas white-tailed deer buck (not Coues spp.) that has a total scoring of 165.0 points - 199.9 points is valued at ten thousand dollars (\$10,000.00).

(9) Any 1 Coues white-tailed deer buck with an inside antler spread that measures at least 10 inches is valued at two thousand dollars (\$2,000.00).

(10) Any 1 Coues white-tailed deer buck that has a total scoring of 85.0 points - 99.9 points is valued at four thousand dollars (\$4,000.00).

sand dollars (\$4,000.00).

(11) Any 1 Coues white-tailed deer buck that has a total scoring of 100.0 points - 114.9 points is valued at six thousand dollars (\$6,000.00).

(12) Any 1 Coues white-tailed deer buck that has a total scoring of 115.0 points - 129.9 points is valued at ten thousand dollars (\$10,000.00).

E. Elk:

(1) Any 1 bull with at least 6 antlered points on one of two sides is valued at two thousand dollars (\$2,000.00).

(2) Any 1 bull that has a total scoring of 280.0 points - 299.9 points is valued at four thousand dollars (\$4,000.00).

(3) Any 1 bull that has a total scoring of 300.0 points - 319.9 points is valued at six thousand dollars (\$6,000.00).

(4) Any 1 bull that has a total scoring of 320.0 points - 349.9 points is valued at eight thousand dollars (\$8,000.00).

(5) Any 1 bull that has a total scoring of 350.0 points - 399.9 points is valued at ten thousand dollars (\$10,000.00).

F. Ibex:

(1) Any 1 buck or billy with at least one of two horns that is 35.0 inches in length is valued at two thousand dollars (\$2,000.00).

(2) Any 1 buck or billy that has a total scoring of 70.0 points - 79.9 points is valued at four thousand dollars (\$4,000.00).

(3) Any 1 buck or billy that has a total scoring of 80.0 points - 89.9 points is valued at six thousand dollars (\$6,000.00).

(4) Any 1 buck or billy that has a total scoring of 90.0 points - 99.9 points is valued at eight thousand dollars (\$8,000.00).

(5) Any 1 buck or billy that has a total scoring of 100.0 points or more is valued at ten thousand dollars (\$10,000.00).

G. Oryx:

(1) Any 1 oryx with one of two horns at least 34 inches in length is valued at two thousand dollars (\$2,000.00).

(2) Any 1 oryx that has a total scoring of 84.0 points - 89.9 points is valued at four thousand dollars (\$4,000.00).

(3) Any 1 oryx that has a total scoring of 90.0 points - 100.9 points is valued at six thousand dollars (\$6,000.00).

(4) Any 1 oryx that has a total scoring of 101.0 or greater is valued at ten thousand dollars (\$10,000.00).

H. Headless game animal: Any 1 game animal designated in 19.30.11.10 shall be valued at their minimum trophy amount as set forth above.

I. Turkey:

(1) Any 1 tom that has at least a 10 inch or longer beard is valued at five hundred dollars (\$500.00).

(2) Any 1 tom that has at least one foot-spur that is 1 inch or greater in length is valued at five hundred dollars (\$500.00).

J. Wild Salmonidae:
Any 1 trout or salmon that has a total length of at least 20 inches is valued at one hundred fifty dollars (\$150.00).
[19.30.11.10 NMAC - N, 10/16/2006]

History of 19.30.11 NMAC:
[RESERVED]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

This is an amendment to 19.33.6 NMAC, Sections 8, effective October 16, 2006.

**19.33.6.8 THREATENED AND
ENDANGERED SPECIES OF NEW
MEXICO:**

A. MAMMALS

(1) Endangered:

(a) Arizona shrew, *Sorex arizonae*
(b) Mexican long-nosed bat,
Leptonycteris nivalis
(c) (Penasco) least chipmunk,
~~[*Tamias*] *Neotamias minimus atristriatus*~~
(d) meadow jumping mouse,
Zapus hudsonius

[~~(+)~~] (e) (Arizona) montane vole,
Microtus montanus arizonensis
[~~(+)~~] (f) gray wolf, *Canis lupus*
[~~(+)~~] (g) (desert) bighorn sheep,
Ovis canadensis mexicana

(2) Threatened:

(a) least shrew, *Cryptotis parva*
(b) southern long-nosed bat,
Leptonycteris curasoae
(c) spotted bat, *Euderma maculatum*
(d) western yellow bat, *Lasiurus xanthius*
(e) white-sided jackrabbit, *Lepus callotis*
(f) (Organ mountains) Colorado chipmunk, *Neotamias quadrivittatus australis*

(g) southern pocket gopher,
Thomomys umbrinus
(h) ~~[meadow jumping mouse,
Zapus hudsonius]~~

[~~(+)~~] American marten, *Martes americana*

(3) Listing excepts individuals and populations of the desert bighorn sheep in the Peloncillo mountains in Hidalgo county and all stock in captivity.

B. BIRDS

(1) Endangered:

(a) brown pelican, *Pelecanus occidentalis*
(b) aplomado falcon, *Falco femoralis*
(c) white-tailed ptarmigan,
Lagopus leucurus

(d) whooping crane, *Grus americana*

[~~(+)~~] ~~piping plover, *Charadrius melodus*~~

[~~(+)~~] (e) least tern, *Sterna antillarum*

[~~(+)~~] (f) common ground-dove,
Columbina passerina

[~~(+)~~] (g) buff-collared nightjar,
Caprimulgus ridgway

[~~(+)~~] (h) elegant trogon, *Trogon elegans*

[~~(+)~~] (i) northern beardless-tyrannulet, *Camptostoma imberbe*

[~~(+)~~] (j) (southwestern) willow flycatcher, *Empidonax traillii extimus*

[~~(+)~~] (k) thick-billed kingbird,
Tyrannus crassirostris

(l) (Arizona) grasshopper sparrow, *Ammodramus savannarum ammolagus*

(2) Threatened:

(a) neotropic cormorant,
Phalacrocorax brasilianus

(b) bald eagle, *Haliaeetus leucocephalus*

(c) common black-hawk,
Buteogallus anthracinus

(d) peregrine falcon, *Falco peregrinus*

(e) (Gould's) wild turkey,
Meleagris gallopavo mexicana

(f) ~~piping plover, *Charadrius melodus*~~

[~~(+)~~] (g) whiskered screech-owl,
Megascops trichopsis

[~~(+)~~] (h) boreal owl, *Aegolius funereus*

[~~(+)~~] (i) broad-billed hummingbird, *Cynanthus latirostris*

[~~(+)~~] (j) white-eared hummingbird, *Hylocharis leucotis*

[~~(+)~~] (k) violet-crowned hummingbird, *Amazilia violiceps*

[~~(+)~~] (l) lucifer hummingbird,
Calothorax lucifer

[~~(+)~~] (m) Costa's hummingbird,
Calypte costae

[~~(+)~~] (n) Gila woodpecker,
Melanerpes uropygialis

[~~(+)~~] (o) Bell's vireo, *Vireo bellii*

[~~(+)~~] (p) gray vireo, *vireo vicinior*

[~~(+)~~] (q) ~~(Arizona) grasshopper sparrow, *Ammodramus savannarum ammolagus*~~

(r) Baird's sparrow, *Ammodramus bairdii*

(s) yellow-eyed junco, *Junco phaeonotus*

(t) varied bunting, *Passerina versicolor*

C. REPTILES

(1) Endangered:

(a) Gila monster, *Heloderma suspectum*

(b) sand dune lizard, *Sceloporus arenicolus*

(c) gray-checked whiptail
Aspidoscelis dixonii

(d) gray-banded kingsnake,
Lampropeltis alterna

(e) Mexican gartersnake,
Thamnophis eques

(f) plain-bellied water snake,
Nerodia erythrogaster

(g) (New Mexico) ~~[ridgenose]~~
~~ridgenosed~~ rattlesnake, *Crotalus willardi obscurus*

(2) Threatened:

(a) western river cooter,
Pseudemys gorzugi

(b) Slevin's bunch grass lizard,
Sceloporus slevini

(c) canyon spotted whiptail,
Aspidoscelis burti

(d) mountain skink, *Eumeces callicephalus*

(e) green ratsnake, *Senticolis triaspis*

(f) narrow-headed gartersnake,
Thamnophis rufipunctatus

(g) western ribbonsnake,
Thamnophis proximus

(h) (mottled) rock rattlesnake,
Crotalus lepidus lepidus

D. AMPHIBIANS

(1) Endangered:

(a) Jemez mountains salamander,
Plethodon neomexicanus

(b) lowland leopard frog, *Rana yavapaiensis*

(c) mountain toad, *Bufo boreas*

(d) Great Plains narrow-mouthed toad, *Gastrophryne olivacea*

(2) Threatened:

(a) Sacramento mountain salamander, *Aneides hardii*

(b) Sonoran desert toad, *Bufo alvarius*

E. FISHES

(1) Endangered:

(a) Gila chub, *Gila intermedia*

(b) Chihuahua chub, *Gila nigrescens*

(c) roundtail chub, *Gila robusta*

(d) Rio Grande silvery minnow,
Hybognathus amarus

(e) spikedace *Meda fulgia*

[~~(+)~~] (f) Arkansas river shiner,
Notropis girardi

(g) (Pecos) bluntnose shiner,
Notropis simus pecosensis

[~~(+)~~] (h) southern redbelly dace,
Phoxinus erythrogaster

[~~(+)~~] (i) Colorado pikeminnow,
Ptychocheilus lucius

[~~(+)~~] (j) (Zuni) bluehead sucker,
Catostomus discobolus yarowii

[~~(+)~~] (k) blue sucker, *Cycleptus elongates*

[~~(+)~~] (l) Pecos gambusia,
Gambusia nobilis

(2) Threatened:

(a) Gila trout, *Oncorhynchus gilae*

- (b) Mexican tetra, *Astyanax mexicanus*
- (c) [~~Arkansas river speckled~~] ~~pepered~~ chub, *Macrhybopsis tetranema*
- [~~(d) spikedace, *Meda fulgida*~~]
- [~~(e) (Pecos) bluntnose shiner, *Notropis simus pecosensis*~~]
- [~~(+)~~] (d) suckermouth minnow, *Phenacobius mirabilis*
- [~~(+)~~] (e) loach minnow, *Tiaroga cobitis*
- [~~(+)~~] (f) gray redhorse, *Moxostoma congestum*
- [~~(+)~~] (g) Pecos pupfish, *Cyprinodon pecosensis*
- [~~(+)~~] (h) White Sands pupfish, *Cyprinodon tularosa*
- [~~(+)~~] (i) Gila topminnow, *Poeciliopsis occidentalis*
- [~~(+)~~] (j) greenthroat darter, *Etheostoma lepidum*
- [~~(+)~~] (k) bigscale logperch, *Percina macrolepida*

(3) **Listing exceptions:** Gila trout-excludes the population in McKnight creek, Grant county; Arkansas river shiner-excludes the population in the Pecos river drainage; bigscale logperch- excludes the population in the Canadian river drainage

F. CRUSTACEANS

(1) Endangered:

- [~~(+)~~] (a) Socorro isopod, *Thermosphaeroma thermophilum*
- [~~(+)~~] (b) Noel's amphipod, *Gammarus desperatus*

G. MOLLUSKS

(1) Endangered:

- (a) paper pondshell, *Utterbackia imbecillis*
- (b) Texas hornshell, *Popenaias popeii*
- (c) Koster's springsnail, *Juturnia kosteri*
- (d) Alamosa springsnail, *Pseudotryonia alamosae*
- (e) Chupadera springsnail, *Pyrgulopsis chupaderae*
- (f) Socorro springsnail, *Pyrgulopsis neomexicana*
- (g) Roswell springsnail, *Pyrgulopsis roswellensis*
- (h) Pecos assiminea, *Assiminea pecos*,
- (i) wrinkled marshsnail, *Stagnicola caperata*
- (j) shortneck snaggletooth, *Gastrocopta dalliana dalliana*
- (k) Florida mountainsnail, *Oreohelix florida*

(2) Threatened:

- (a) lake fingernailclam, *Musculium lacustre*
- (b) swamp fingernailclam, *Musculium partumeium*
- (c) long fingernailclam, *Musculium transversum*
- (d) Lilljeborg's peaclam,

- Pisidium lilljeborgi*
 - (e) Sangre de Cristo peaclam, *Pisidium sanguinichristi*
 - (f) Gila springsnail, *Pyrgulopsis gilae*
 - (g) Pecos springsnail, *Pyrgulopsis pecosensis*
 - (h) New Mexico [~~hot~~] springsnail, *Pyrgulopsis thermalis*
 - (i) star gyro, *Gyraulus crista*
 - (j) ovate vertigo, *Vertigo ovata*
 - (k) Hacheta Grande woodland snail, *Ashmunella hebardii*
 - (l) Cooke's peak woodlandsnail, *Ashmunella macromphala*
 - (m) Mineral creek mountainsnail, *Oreohelix pilsbryi*
 - (n) Doña Ana talussnail, *Sonorella todseni*
- [1-11-91, 11-15-95, 12-31-96, 8-15-98; 19.33.1.8 NMAC - Rn & A, 19 NMAC 33.1.8, 4/14/00; 19.33.6.8 NMAC - Rn, 19.33.1.8 NMAC & A, 11/30/00; A, 11/14/02; A, 1/31/05; A, 9/15/05; A, 10/16/06]

NEW MEXICO DEPARTMENT OF HEALTH

7 NMAC 29.3, Rural Primary Health Care Act (filed 11/26/1996) is hereby repealed, effective 10/16/06.

NEW MEXICO DEPARTMENT OF HEALTH

TITLE 7 HEALTH CHAPTER 29 PRIMARY AND RURAL HEALTH CARE SERVICES PART 3 RURAL PRIMARY HEALTH CARE ACT

7.29.3.1 ISSUING AGENCY: New Mexico Department of Health.

[7.29.3.1 NMAC - Rp, 7 NMAC 29.3.1, 10/16/06]

7.29.3.2 SCOPE: Rural Primary Health Care Act rules shall apply to the use of the funds by eligible programs available pursuant to the Rural Primary Health Care Act, Sections 24-1A-1 to 24-1A-4 NMSA 1978.

[7.29.3.2 NMAC - Rp, 7 NMAC 29.3.2, 10/16/06]

7.29.3.3 S T A T U T O R Y AUTHORITY: The Rural Primary Health Care Act, Sections 9-7-6(F) and 24-1A-4 NMSA 1978, as amended.

[7.29.3.3 NMAC - Rp, 7 NMAC 29.3.3, 10/16/06]

7.29.3.4 D U R A T I O N : Permanent.

[7.29.3.2 NMAC - Rp, 10/16/06]

7.29.3.5 EFFECTIVE DATE: October 16, 2006, unless a later date is cited at the end of a section.

[7.29.3.5 NMAC - Rp, 7 NMAC 29.3.5, 10/16/06]

7.29.3.6 OBJECTIVE: The objective of 7.29.3 NMAC is to establish standards and procedures for regulating programs under the Rural Primary Health Care Act. The purpose of the Rural Primary Health Care Act is to assist in the provision of primary health care services in underserved areas of the state in order to better serve the health care needs of the public. This purpose will be accomplished through, but not limited to, the following activities:

A. assist communities in the recruitment, placement, and retention of health care personnel in underserved areas of the state which includes the coordination of such effort with health professional education programs at post-secondary schools and other institutions involved in the training of health professional personnel;

B. develop plans and encourage coordination between publicly supported programs, and between public and private sector providers;

C. provide technical assistance;

D. distribute financial assistance to eligible programs in order to sustain or provide a minimum level of primary health care services; and which assist in the provision of primary health care services in underserved areas in order to better serve the health needs of the public; and

E. provide a program for enabling the development of new primary health care services and facilities.

[7.29.3.6 NMAC - Rp, 7 NMAC 29.3.6, 10/16/06]

7.29.3.7 DEFINITIONS:

A. "Act" means the Rural Primary Health Care Act, Sections 24-1A-1 to 24-1A-4 NMSA 1978.

B. "Department" means the department of health.

C. "Eligible programs" means nonprofit community based entities that provide or commit to provide primary health care services for residents of health care underserved areas and include rural health facilities and those serving primarily low income populations.

D. "Health care personnel" means health care professionals who contribute to ensuring adequate availability of primary health care services including but not limited to: licensed practical nurses, registered nurses, pharmacists, physician assistants, nurse practitioners, certified nurse midwives, primary care physicians

(family practice, general practice, pediatrics, obstetrics and gynecology, and internal medicine), dentists and dental hygienists.

E. "Health care underserved areas" (HCUA) means geographic areas where it has been determined by the department of health, through the use of indices and other standards set by the department, that sufficient primary health care is not being provided to the citizens of that area. These designations may recognize need for either general or special health care services. HCUA designations may give consideration to federally designated health professional shortage areas (HPSA) and medically underserved areas (MUA).

F. "Medically indigent" means individuals who are unable to afford all medical care that they require. This includes both those individuals below the federal poverty level not covered by medicaid, medicare or other third party health care insurance and those individuals between 100 percent and 200 percent of federal poverty levels who are not covered by any third party health insurance. Medically indigent individuals are usually expected to pay for some portion of the cost of their health care based upon the level of their income.

G. "Minimum level of primary health care services" means basic primary health care services provided to the general population by health care personnel.

H. "Nonprofit community based entities" means nonprofit organizations with an internal revenue service 501c(3) tax exempt status which have a governing board whose membership is broadly representative of the area served including consumer representatives. Nonprofit community based entities also include local governments and tribal governments. Nonprofit community based entities which are local governments, tribal governments and/or are multi-purpose or provide services in more than one HCUA, shall have local or regional primary health care advisory boards whose membership is generally representative of the area served.

I. "Patient collections" means receipts generated from patient encounters for primary health care services. Patient collections include revenues from medicaid, medicare, private insurance, Title XX, other third party sources or self pay.

J. "Primary health care advisory board" means a board, advisory to an organization's governing board, which has responsibility for consideration of and input into matters related to the provision of primary health care services in a local HCUA or regional combination of HCUA(s) being served. A majority of the advisory board shall be consumers of pri-

mary health care services.

K. "Primary health care services" are those provided at the first level of basic or general health care for an individual's health needs, including medical, dental and behavioral health diagnostic and treatment services and supportive services. Any dental or behavioral health services shall be provided in conjunction with primary medical services. Primary health care services are those provided as part of either general practice, family practice, obstetrics, gynecology, pediatrics or general internal medicine.

L. "Total revenues" means all receipts collected in support of primary health care services. Includes but not limited to: patient collections; Section 329, 330 and 340 Federal Funds, P.L. 93-638 or IHS support; Title V, X and WIC programs; other federal grants; other state grants/contracts; and local income, including city, county or other unit of government, direct grant or value of donated property or facilities. In addition, other revenues including but not limited to: gifts, cash donations or grants from private foundations, church organizations, or other sources, general operating revenues from clinic services and interest, dividends, and other income derived from certificates of deposit, saving accounts and other investments.

[7.29.3.7 NMAC - Rp, 7 NMAC 29.3.7, 10/16/06]

7.29.3.8 FUND DISTRIBUTION:

A. Duty of the department: To the extent funds are made available for the purposes of the act Section 24-1A-3.1D NMSA 1978, the department, in accordance with applicable procurement procedures, shall provide for the distribution of financial assistance to eligible programs which have applied for and demonstrated a need for assistance in order to sustain the delivery of a minimum level of primary health care services.

B. Eligibility: To receive financial assistance through Section 24-1A-3.1D NMSA 1978, of the act, an eligible program shall:

(1) be a New Mexico nonprofit community based entity with federal internal revenue service 501c(3) tax exempt status, a local government or a tribal government which provide or commits to provide primary health care services to residents of an health care underserved area (HCUA) designated for primary health care needs;

(2) have a governing board whose membership is generally representative of the HCUA(s) it serves, including consumers of the primary health care services it provides; an eligible program which is a local

government or tribal government and/or is multi-purpose or provides services in more than one HCUA shall have a local or regional primary health care advisory board whose membership is generally representative of the HCUA(s) being served; a majority of the advisory board shall be consumers of the primary health care services; the local or regional primary health care advisory board shall have opportunity for consideration of and input into the decisions regarding budgets, scope of services, payment policies and procedures, hours of operation and staffing; the eligible program shall be able to demonstrate the ability to meet the governing board and/or the advisory board requirements or have a practical plan for its establishment and implementation;

(3) have as its purpose to sustain or provide a minimum level of primary health care services as defined in Subsection D of 7.29.3.6 NMAC; services may additionally include medical support, diagnostic and treatment services, pharmacy, laboratory, radiology, preventive health services, behavioral health services, patient follow-up and/or dental and dental support services; any dental and/or behavioral health services shall be provided in conjunction with primary medical care services;

(4) have policies and procedures which assure that no person will be denied primary health care services they require because of inability to pay; these policies and procedures should address medically indigent persons below poverty not covered by third party payors and those between 100 percent and 200 percent of poverty without third party coverage; the eligible program should be able to demonstrate either the successful impact of these policies and procedures, or have a practical plan for their implementation;

(5) have billing policies and procedures which maximize patient collections, except where federal rules or contractual obligations prohibit the use of such measures; the program should be able to demonstrate either the successful impact of these policies and procedures, or have a practical plan for their implementation;

(6) have viable systems and infrastructure to deliver primary health care services including facility, staff and financial management systems;

(7) have comprehensive policies and procedures governing the primary health care operations which assure the delivery of effective, efficient and quality care; and

(8) meet other requirements as determined by the department.

C. Eligible items/uses of expenditures: Funds made available under Section 24-1A-3.1D NMSA of the act may

be used for the following types of expenditures:

(1) salaries and benefits for the employees of contractor in support of the provision of primary health care services;

(2) purchase, repair and/or maintenance of necessary medical and dental equipment;

(3) purchase of office, medical, and/or dental supplies;

(4) in-state travel to obtain training or improve coordination in order to better support or provide primary health care services;

(5) general operating expenses;

(6) programs or plans to improve the coordination, effectiveness or efficiency of the delivery of primary health care services; and

(7) contracts for medical and dental personnel services.

D. Ineligible item/uses of expenditures: Costs which are not eligible for funding under Section 24.1A-3.1.D., NMSA 1978, of the act include:

(1) land acquisition;

(2) building, construction, renovation;

(3) debt amortization;

(4) emergency medical services (EMS) including stand-by, dispatch, transport, ambulance runs, equipment and salary, fringe benefits and other costs associated with personnel to provide emergency medical services;

(5) home health care or visiting nurses services;

(6) school nurse programs;

(7) in-patient care;

(8) non-primary health care specialty care including but not limited to surgery, outpatient specialty care and long term care;

(9) freestanding services not otherwise meeting the definition of primary health care;

(10) political activity; and

(11) lobbying.

E. Distribution of financial assistance: In any state fiscal year, the distribution of financial assistance to eligible programs selected pursuant to these rules shall be determined according to the following guidelines.

(1) The award amount will be set by the department reflecting the demonstrated need of the eligible program in its proposal. The demonstrated need of an applicant will be established by the department based upon information contained in the proposal. The department reserves the right to award an amount less than the full amount of demonstrated need.

(2) In any state fiscal year, a maximum award to an eligible program for use in a single HCUA designated for primary health care needs shall not exceed an

amount greater than 10 percent of the funds made available by the department for the purposes of distribution of financial assistance under Subsection D of 7.29.3.6 NMAC of these rules, except that eligible programs which are found to have exceptional need may be funded in an amount not to exceed 15 percent of the funds available.

(3) The relative need of an eligible program for financial assistance as demonstrated in the proposal.

(4) The relative need for primary health care services of the HCUA served by the eligible program as reflected in the proposal or other department documents which demonstrate the relative need for primary health care services. Consideration will be given by the department to avoiding the funding of duplicative services and to sustain the provision of a minimum level of primary health care services by eligible organizations which demonstrate the ability to deliver and maintain quality, effective, efficient and appropriate primary health care services.

(5) The degree to which the eligible program has adequate structures and procedures to administer and deliver primary health care services, including but not limited to staffing, the ability to administer effective and appropriate primary health care services, effective and appropriate financial management systems and adequate systems to maximize patient revenues.

(6) The priority given by the department for the proposed use of the funds.

(7) Other guidelines as determined by the department.

F. Evaluation of proposals: Each proposal will be evaluated and ranked with consideration given to the following factors:

(1) the relative need of an eligible program for financial assistance to sustain or provide primary health care services in a HCUA designated for primary health care needs as demonstrated in the proposal process. Financial need will be evaluated based on several factors, including but not limited to:

(a) the applicant's dependence upon patient collections as a percentage of total revenues available to the applicant for primary health care services;

(b) the extent to which write-offs and adjustments to charges, based on appropriate sliding fee scale implementation, affect the ability of the eligible program to sustain the delivery of primary health care services to an HCUA designated for primary health care needs, as demonstrated in the proposal;

(c) the existence of fund balances which may be used by the applicant to sustain or provide a minimum level of primary

health care services in an HCUA designated for primary health care needs;

(d) the projected deficit as demonstrated in the proposal which will impact the ability to sustain or provide a minimum level of primary health care services in an HCUA designated for primary health care needs;

(e) the probable impact which any projected deficit as demonstrated in the proposal will have on the provision of primary health care in an HCUA; and

(f) other need criteria developed by the department.

(2) the relative need of the HCUA served by the applicant for primary health care services, as reflected in the proposal and measured by, including but not limited to:

(a) the severity of need within the HCUA as indicated in department documents or demonstrated in the proposal;

(b) the number and/or percentage of medically indigent population residing in the HCUA; and

(c) other need criteria developed by the department;

(3) the degree to which the applicant has adequate structure and procedures to administer and deliver primary health care services including, but not limited to, staffing, ability to administer effective and appropriate primary health care services, effective and appropriate financial management systems and adequate systems to maximize patient revenues;

(4) the priority given by the department will be for application proposals which have shown need under Subsection E of 7.29.3.9 NMAC of these rules and will be evaluated based on the following criteria, including but not limited to:

(a) proposals where state funds are critical in assuring that any basic primary health care services can be provided in an HCUA designated for primary health care needs. This could include, but not be limited to, support for compensation of providers which is needed for their recruitment and/or retention;

(b) proposals where state funds will be used to supplement the quality/quantity of basic primary health care services in an HCUA designated for primary health care needs. This could include, but not be limited to, support for compensation of providers which is needed for their recruitment and/or retention;

(c) proposals which demonstrate coordination and/or innovative relationships with those funded by the department including, but not limited to, local public health division offices, mental health programs, and substance abuse program and/or other health care services;

(d) proposals where state funds will be used to maintain or expand the com-

prehensiveness of services beyond basic primary medical services in an HCUA designated for primary health care needs. This could include, but not be limited to, support for compensation of providers which is needed for their recruitment and/or retention; and

(e) other priorities as established by the department.

(5) other factors established by the department.

G. Reports: The department will monitor the performance of the contractor(s) to ensure compliance with the intent of the act.

H. Award of contracts: The department will award contracts in accordance with the New Mexico Procurement Code and applicable department rules.

I. Protest procedure: Any offeror or contractor who is aggrieved in connection with the award process may use the protest procedure established by the New Mexico Procurement Code and applicable department rules.
[7.29.3.8 NMAC - Rp, 7 NMAC 29.3.9, 10/16/06]

7.29.3.9 NEW PRIMARY HEALTH CARE SERVICES/FACILITIES:

A. Duty of the department: To the extent funds are made available for the purposes of the act, Section 24-1A.3.1E NMSA 1978, the department shall provide a program for enabling the development of new primary health care services or facilities. The department in establishing the program for new primary health care services or facilities will give consideration to proposals for planning as well as for implementation.

B. Eligibility: To be eligible to receive funds to assist in planning for the development of primary health care services or facilities in HCUA(s) designated for primary health care needs, eligible program(s) shall:

(1) be a New Mexico nonprofit community based entity with Federal Internal Revenue Service 501c(3) tax exempt status, local government or tribal government;

(2) have a local or regional primary health care advisory board whose membership is generally representative of the HCUA(s) for which it is developing the primary health care plan; and

(3) meet other requirements as determined by the department.
[7.29.3.9 NMAC - Rp, 7 NMAC 29.3.10, 10/16/06]

7.29.3.10 PERSONNEL RECRUITMENT:

A. Duty of the department: To the extent funds are made available for the purposes of the act, Section 24-1A-3.1A NMSA 1978, the department may contract, in accordance with applicable procurement procedures, with New Mexico nonprofit entities to assist communities in the recruitment, placement, and retention of health care personnel in health care underserved areas of the state and to coordinate such effort with health professional education programs. Such efforts shall be consistent with priorities set out by the department. The department will monitor the performance of the contractor to ensure compliance with the intent of the act.

B. Eligibility: In order to contract pursuant to this part of the rules, the entity shall meet the following requirements:

(1) be a New Mexico nonprofit entity which has obtained and maintains a federal internal revenue service 501c(3) tax exempt status;

(2) have a governing board of directors which is representative of the geographic areas and ethnic populations in New Mexico and is comprised of both health care providers and consumers;

(3) have the capability to carry out the purposes of Subsection A of 7.29.3.8 NMAC of these rules, including qualified professional staff;

(4) not be a health care provider or association of health care providers; and

(5) meet other requirements as determined by the department.

C. Reports: The department will monitor the performance of the contractor(s) to ensure compliance with the intent of the act. The contractor shall submit to the department all financial and program reports required by the contract.

D. Selection of candidates: The contractor shall conduct all recruitment activities based upon the following considerations:

(1) all candidates shall be considered on an equal opportunity basis without regards to race, age, color, national origin, gender, sexual orientation, handicap or disability or religion or ethnicity; and

(2) whenever possible, emphasis will be placed upon assisting native New Mexicans, New Mexico residents and graduates from New Mexico health professional education programs in relocating to health care underserved areas.
[7.29.3.10 NMAC - Rp, 7 NMAC 29.3.8, 10/16/06]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.241 NMAC, Section 10, effective 10/16/06.

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

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

B. Example: A health care practitioner contracts with an independent practice association. The health care practitioner bills and receives payment through the independent practice association from a health care insurer that is also contracted with the independent practice association. The health care insurer is registered in New Mexico. Even though the health care practitioner does not have a direct contract with the health care insurer, he or she may deduct

payments he or she receives for services that are otherwise deductible under Section 7-9-93 NMSA 1978 because he or she has contracted with the independent practice association.

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

[3.2.241.10 NMAC - N, 4/29/05; A, 5/31/06; 3.2.241.10 NMAC - N, 10/16/06]

End of Adopted Rules Section

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