

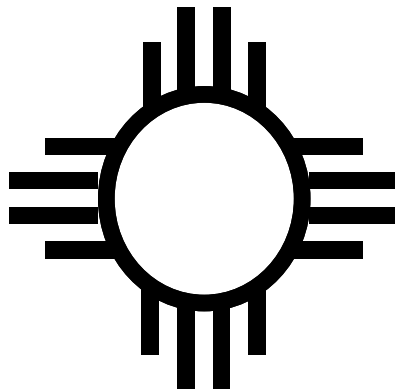
**NEW
MEXICO
REGISTER**



**Volume XVII
Issue Number 22
November 30, 2006**

New Mexico Register

Volume XVII, Issue Number 22
November 30, 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 22

November 30, 2006

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Notices of Rulemaking and Proposed Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT FAMILY SERVICES DIVISION

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

FAMILY SERVICES

NOTICE OF PUBLIC HEARING

Family Services (FS) will hold a public hearing in Santa Fe on Wednesday, January 3, 2007 from 1:00 pm - 3:00 pm. Interested parties are invited to make comments regarding CYFD's proposed rules implementing the Pre-Kindergarten Act.

The hearing will be held at the Public Employees Retirement Association (PERA) Building at 1120 Paseo de Peralta, Santa Fe, New Mexico 87501, in Apodaca Hall. The PERA building is accessible to people with disabilities. Written comments are provided the same weight as comments received during the public hearing. Documents are available in different formats to accommodate a particular disability. Anyone seeking such assistance must provide two weeks notice to receive any written material in an alternate format by calling 505-827-4033. If assistance is required to attend the hearing, please call 505-827-4033 to arrange accommodation.

The proposed rules may be accessed by contacting Karen Ziegler at 505-827-4033 or by visiting the newmexicokids.org website.

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Board of Chiropractic Examiners will hold a Rule Hearing on January 20, 2007. Following the Rule Hearing the New Mexico Board of Chiropractic Examiners Board will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Chiropractic Examiners Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the rule hearing. Portions of the regular meeting may be closed to the public while the Board is in Executive Session. The meetings will be held at the Toney Anaya

Building, Hearing Room #1, 2nd Floor, 2550 Cerrillos Road, Santa Fe, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules in NMAC 16.4 Chiropractic Practitioners - Part 1 - General Provisions and Part 10 - Continuing Education.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capital Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87505, or call (505) 476-4613 after December 1, 2006. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than December 15, 2006. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

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

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On Friday, December 15, 2006, beginning at 9:00 a.m. at the Ruidoso Convention Center, 111 Sierra Blanca Drive, Ruidoso, NM 88345, the State Game Commission will meet in Public Session to consider action as appropriate on the following: Consent Agenda for: Committee Reports; and Revocations; Game Commission Listening Session (9:15 a.m. through Noon) - Time Certain; Closed Executive Session pursuant to Section 10-15-1(H)(1), NMSA, 1978, to discuss matters related to litigation, personnel, and acquisition or disposal of real property or water rights; Notice of Commission Contemplated Action; and Land Conservation Appropriation Update and Action as Needed.

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

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

NEW MEXICO GENERAL SERVICES DEPARTMENT RISK MANAGEMENT DIVISION

NOTICE OF PUBLIC HEARING

The Risk Management Division of the New Mexico General Services Department will hold a public hearing on an amendment to rule 13.10.20.10 (B) NMAC ("General Eligibility Criteria"), which is part of 13.10.20 NMAC ("Small Employer Health Care Coverage"). The Hearing will be held at 10:00 a.m. on Wednesday, January 3, 2007, at 1100 South Saint Francis Drive, Santa Fe, New Mexico in the Risk Management Division First Floor Conference Room, Suite 1004 in the Joseph Montoya Building.

The public hearing will be conducted to receive the presentation of views from interested persons with respect to the proposed amendment to rule 13.10.20.10 (B) concerning General Eligibility Criteria for the Small Employer Health Care Coverage program that has been established pursuant to state statutory law, NMSA 1978, Section 10-7B-6.1.

Copies of the proposed rule can be obtained from:

Printed Copy
David Dayog Black, Attorney
GSD Risk Management Division
Joseph Montoya Building
1100 South Saint Francis Drive, First Floor,

Room 1004, Santa Fe, New Mexico 87505-4147

Mailing Address:

P.O. Drawer 26110, Santa Fe, New Mexico 87502-0110

(505) 827-0537 Fax (505) 827-0593

Email: david.black@state.nm.us

Electronic Copy

An electronic version of the proposed rule can also be obtained from the website for the New Mexico General Services Department Risk Management Division at: <http://www.state.nm.us/gsd/rmd/>.

Written public comments regarding the proposed action must be submitted to the attention of David Dayog Black at the above "Printed Copy" physical or mailing address, fax number, or email address. Written public comments must be received on or before 5:00 p.m. on the date of the public hearing, January 3, 2007.

If you are a person with a disability who is in need of special assistance or a reasonable accommodation to attend or participate in the public hearing, please contact Paralegal Olga Lujan at the Legal Bureau of the General Services Department's Risk Management Division at (505) 827-0551 / fax (505) 827-0593. The General Services Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at the Children Youth and Families Department, in Apodaca Hall, at 1120 Paseo de Peralta, Santa Fe, New Mexico, 87501 on January 3, 2007, from 1:00 p.m. to 3:00 p.m. The purpose of the public hearing will be to obtain input on the following rule:

Rule Number	Rule Name	Proposed Action
6.30.9 NMAC	Pre-Kindergarten Programs	Adopt new Rule to implement state funded Pre-Kindergarten Program

Interested individuals may testify at the public hearing or submit written comments to Barbara Bianchi, Education Administrator, Early Childhood Education Bureau, Public Education Department, 300 Don Gaspar, Santa Fe, NM 87501 (barbara.bianchi@state.nm.us 505-827-6574 or fax 505-476-0329). Written comments must be received no later than 5 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rule may be accessed on the Department's website (<http://ped.state.nm.us/>) or obtained from John Herrera, Administrative Assistant, Early Childhood Education Bureau, Public Education Department, 300 Don Gaspar, Santa Fe, NM 87501 (505) 827-6677.

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

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The Public Education Department ("Department"), hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on **January 5, 2007 from 10:00 am to 12:00 pm**. The purpose of the public hearing will be to obtain input on the following rule:

Rule Number	Rule Name	Proposed Action
6.30.2 NMAC	STANDARDS FOR EXCELLENCE	Amend Section 9 (IMPLEMENTATION)

The proposed amendment to Section 9 (IMPLEMENTATION) of 6.30.2 NMAC (STANDARDS FOR EXCELLENCE) will establish procedures for waiver of the requirement that a site-level EPSS (Educational Plan for Student Success) be developed by each school within a school district.

Interested individuals may testify at the public hearing or submit written comments to Dr. Karen Kay Harvey, Assistant Secretary, Quality Assurance and Systems Integration Division, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar Avenue - Room 131, Santa Fe, New Mexico 87501-2786 E-MAIL ADDRESS: Karenk.harvey@state.nm.us (telefax (505) 827-5066).

Written comments must be received no later than 5 p.m. on **January 5, 2007**. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (<http://ped.state.nm.us/>) or obtained from Annette Larkin, Executive Assistant, Quality Assurance and Systems Integration Division, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 at (505) 827-6571. The proposed rules will be made available at least thirty days prior to the hearings.

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

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF STAFF’S PETITION)
 FOR THE DOCKETING OF CASES TO) Case No. 05-00189-UT
 ADDRESS THE REQUIREMENTS OF THE)
 EFFICIENT USE OF ENERGY ACT)

and

IN THE MATTER OF A RULEMAKING)
 RELATING TO INTEGRATED RESOURCE) Case No. 06-00447-UT
 PLANS FOR ELECTRIC AND GAS)
 UTILITIES)
)

NOTICE OF PROPOSED RULEMAKING

This matter comes before the New Mexico Public Regulation Commission (“Commission”) upon the Recommended Decision, Phase II issued by Hearing Examiner William J. Herrmann on October 3, 2006.

THE COMMISSION FINDS AND CONCLUDES:

1. On April 7, 2005, New Mexico Governor Bill Richardson signed the Efficient Use of Energy Act (“the Act”). The Act requires this Commission to direct public utilities to evaluate and implement cost-effective programs that reduce energy demand and consumption. NMSA 1978, Section 62-17-5(B) (2005). Public utilities must obtain Commission approval of energy efficiency and load management programs before they are implemented. Id., Section 62-17-5(E). The Act also requires public utilities supplying electric or gas service to periodically file an integrated resource plan (“IRP”) with the Commission. Id., Section 62-17-10. IRPs shall identify the most cost-effective portfolio of resources to supply the energy needs of customers. Id.

2. On May 31, 2005, in response to a petition filed by the Commission’s Utility Division Staff, the Commission issued its Order for Workshops. The Commission ordered workshops to be held in two phases. Phase I of the workshops was for the purpose of creating guidelines to be followed by public utilities in developing energy efficiency and load management programs. Phase II of the workshop was for the purpose of developing a proposed IRP rule. Order for Workshops, ¶ 9. The Commission appointed a hearing examiner to manage the workshop process. The Commission ordered the hearing examiner, at the conclusion of the Phase II workshops, to submit a written report to the Commission, summarizing the workshop discussions, and a proposed rule if appropriate. Id., ¶ B.

3. On October 3, 2006, the Hearing Examiner issued his Phase II Recommended Decision in which he submitted proposed IRP rules, one for electric utilities (17.7.3 NMAC) and one for gas utilities (17.7.4 NMAC), for Commission issuance.

4. On October 26, 2006, Commissioner Jason A. Marks submitted his proposal that the Commission also consider inclusion of a provision concerning the effect of the standardized cost of carbon emissions credits on the development of electric utilities’ IRPs. Commissioner Marks proposed, after discussion, that a separate docket be opened to conduct a workshop to develop staged standardized carbon emissions costs, with the timing of that docket to be coordinated with the public hearing schedule in this rulemaking docket. He also proposed that language be added to the proposed rule at 17.7.3.9(G)(2)(c) NMAC, referencing any standardized cost of carbon emissions that may be determined by the Commission, as a factor to be discussed by a utility as part of its IRP filing.

5. The Hearing Examiner’s proposed rules, with the addition of the language concerning standardized carbon emissions costs, should be issued by the Commission as proposed rules. The proposed rules are attached as Exhibits 1 and 2 to this Notice of Proposed Rulemaking.

6. Upon its adoption of IRP rules, the Commission should repeal its energy conservation rules, now codified at 17.7.420 NMAC.

7. The Commission will accept written comments on the rules proposed in this Notice of Proposed Rulemaking and on the repeal of 17.7.420 NMAC from any interested person. Interested persons shall file their written comments on the proposed rule no later than November 30, 2006. Any response comments shall be filed no later than December 15, 2006. Comments suggesting changes to the proposed rules shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule shall be in legislative format. Any proposed changes to the proposed rules shall be submitted in hard copy. All pleadings, including comments and suggested changes to the proposed rule, shall bear the caption and docket number contained at the top of this Notice.

8. Written comments or written response comments shall be sent to:

Melanie Sandoval

New Mexico Public Regulation Commission
Attention: Case No. 06-00065-UT
224 East Palace Avenue, Marian Hall
Santa Fe, NM 87501
Telephone: (505) 827-6968

9. Copies of the proposed rules may be downloaded from the Commission's web site, www.nmprc.state.nm.us, under "Proposed Rulings."

10. The Commission will review all timely submitted written comments and will hold a public comment hearing on the following date and at the following time and place:

January 17, 2007 Marian Hall.
9:00 a.m. 224 E. Palace Ave.
Santa Fe, NM 87501

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

12. Any person with a disability requiring special assistance in order to participate in a hearing should contact Cecilia Rios at 827-4501 at least 48 hours prior to the commencement of the hearing.

13. Commission Rule 1.2.3.7(B) ("Ex Parte Communications") draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as "ex parte communications." In order to assure compliance with 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed. The Commission finds such date should be February 15, 2007. The setting of that record closure date will permit Commissioners and Commission Counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission's proposed rules or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

14. Copies of this Notice should be sent to all persons on the attached Certificate of Service.

IT IS THEREFORE ORDERED:

A. Case No. 06-00447-UT is created and commenced for the purpose of developing rules relating to integrated resource planning for electric and gas utilities.

B. The proposed rules, attached to this Notice of Proposed Rulemaking as Exhibit 1, is proposed for adoption as a permanent rule as provided by this Notice.

C. Initial comments on the proposed rule must be filed by November 30, 2006, and response comments must be filed by December 15, 2006.

D. The record in this case, for purposes of 17.2.3.7(B) NMAC ("Ex Parte Communications") shall be closed at 5:00 p.m. on February 15, 2007.

E. Public comment hearings shall be held as provided in this Notice of Proposed Rulemaking.

F. A copy of this Notice, including Exhibits 1 and 2, shall be mailed to all persons listed on the attached Certificate of Service. This Notice, excluding Exhibits 1 and 2, shall be published in two newspapers of general circulation in the State and in the New Mexico Register. The Commission shall provide the Notice by e-mail or facsimile transmission to any persons who so request, and shall post a copy of the proposed rules on the Commission's web site.

G. Case No. 05-00189-UT is closed.

H. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 31st day of October 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 PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

NOTICE OF INQUIRY INTO)	
ADOPTION OF STAGED)	
STANDARDIZED CARBON)	Case No. 06-00448-UT
EMISSIONS COSTS)	

NOTICE OF INQUIRY

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 Efficient Use of Energy Act (“the Act”) requires this Commission to direct public utilities to evaluate and implement cost-effective programs that reduce energy demand and consumption. NMSA 1978, Section 62-17-5(B) (2005). The Act requires public utilities supplying electric service to periodically file an integrated resource plan (“IRP”) with the Commission. Id., Section 62-17-10. IRPs shall identify the most cost-effective portfolio of resources to supply the energy needs of customers. Id.

2. In Case No. 05-00189-UT, the Commission ordered workshops to be held in two phases to consider issues raised by the Act. Phase I of the workshops was for the purpose of creating guidelines to be followed by public utilities in developing energy efficiency and load management programs. Phase II of the workshop was for the purpose of developing a proposed IRP rule. Order for Workshops, ¶ 9. The Commission ordered the hearing examiner, at the conclusion of the Phase II workshops, to submit a written report to the Commission, summarizing the workshop discussions, and a proposed rule if appropriate. Id., ¶ B.

3. On October 3, 2006, the Hearing Examiner issued his Phase II Recommended Decision in Case No. 05-00189-UT, in which he submitted proposed IRP rules, one for electric utilities (17.7.3 NMAC) and one for gas utilities (17.7.4 NMAC), for Commission issuance.

4. On October 26, 2006, in that same case, Commissioner Jason A. Marks submitted his proposal that the Commission also consider inclusion of a provision that would standardize the cost of carbon emissions in the development of electric utilities’ IRPs. Commissioner Marks proposed, after discussion, that a separate docket be opened to conduct workshops to develop staged standardized carbon emissions costs, with the timing of that docket to be coordinated with the public hearing schedule in the rulemaking docket to consider the IRP rules, Case No. 06-00447-UT. He also proposed that language be added to the proposed electric IRP rule at 17.7.3.9(G)(2)(c) NMAC, referencing any standardized cost of carbon emissions that may be determined by the Commission, as a factor to be discussed by an electric utility as part of its IRP filing.

5. The Commission has opened this docket for that purpose. In order to provide for consistent evaluation of carbon dioxide emission impacts by all utilities the Commission should hold workshops to establish the standardized cost per ton for atmospheric carbon emissions under “high,” “medium,” and “low” scenarios. These scenarios shall also include the specification of assumed effective dates for carbon pricing and phase-in schedules, if deemed appropriate. In establishing the cost scenarios, the workshops should address all relevant factors, including but not limited to the risk of future regulation, trading prices for carbon allowances in established national and international markets, and state policies regarding greenhouse gas reduction.

IT IS THEREFORE ORDERED:

A. An inquiry is hereby commenced regarding the adoption of staged standardized carbon emissions costs by the Commission.

B. In accordance with its authority pursuant to NMSA 1978, Section 8-8-14, and 17.1.2.32(C) NMAC, the Commission hereby appoints William J. Herrmann as Hearing Examiner in this case. The Hearing Examiner shall manage the workshop process, serve as moderator for the workshop sessions, and take any and all actions necessary and convenient thereto within the limits of his authority. At the conclusion of the workshop process, the Hearing Examiner shall issue a report, proposing a staged standardized carbon emissions costs rule if appropriate.

C. The issues listed in ¶ 5, above, shall be addressed in the workshops.

D. A court reporter shall record and transcribe meetings of the workshops. If the Hearing Examiner appoints subcommittees, the meetings of the subcommittees may, but need not be recorded and transcribed by a court reporter.

E. This Notice shall be mailed to all persons on the electric utility mailing list, 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.

F. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 31st day of October 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 TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

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

Motor Vehicle Code

18.19.5.12 NMAC Section 66-5-9 NMSA 1978

(Proof of Identification Number, Identity and Residency)

The proposals were placed on file in the Office of the Secretary on November 20, 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 January 31, 2007.

A public hearing will be held on the proposals on Wednesday, January 3, 2007, at 9:30 a.m. in the 1st floor auditorium of the Harold Runnels Bldg., 1190 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before January 3, 2007.

18.19.5.12 PROOF OF IDENTIFICATION NUMBER, IDENTITY AND RESIDENCY:

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

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

~~(1) The applicant's social security card, or any of the following documents containing the applicant's social security number, will provide sufficient documentary proof of the applicant's social security number: a driver's license; a government issued photo identification card; a military identification card; an identification card from an educational institution; an original employment payroll receipt; tax forms such as a W-2, W-4, W-8, W-9 or other IRS official documents; a medical card; or a statement from a financial institution.~~

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

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

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

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

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

~~C. Applicants must produce one of the following documents as proof of identity: original birth certificate;~~

~~certified copy of birth certificate; valid passport issued by country of citizenship; Indian census card; matricula consular issued by the Mexican consulate in Albuquerque; current driver's license from another state or country.~~

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

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

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

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

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

~~(a) a state issued driver's license;~~

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

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

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

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

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

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

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

~~(3) The following may be accept-~~

ed as a substitute for a social security number or ITIN:

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

(i) I-551 resident alien card;

(ii) permanent resident card;

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

(iv) I-797 notice of action.

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

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

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

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

(3) valid passport issued by country of citizenship;

(4) Indian census card;

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

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

(1) a rental agreement or purchase agreement;

(2) any original government-issued document;

(3) a utility bill;

(4) an insurance bill;

(5) a bank statement;

(6) a check book;

(7) an employment pay stub;

(8) a local property tax statement;

(9) proof of a minor child enrolled in a public or private school;

(10) a voter registration card;

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

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

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

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

(2) a bank statement;

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

(4) any original government-issued document;

(5) documents from membership in a religious organization;

(6) documents from membership in a sports organization.

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

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

**End of Notices and
Proposed Rules Section**

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Adopted Rules

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

TITLE 20 ENVIRONMENTAL PROTECTION

CHAPTER 11 ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

PART 81 ADJUDICATORY PROCEDURES- -AIR QUALITY CON- TROL BOARD

20.11.81.1 ISSUING AGENCY: Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2600.
[20.11.81.1 NMAC - N, 12/16/06]

20.11.81.2 SCOPE:

A. 20.11.81 NMAC governs the following adjudicatory proceedings of the board, which are proceedings in which the board makes final, binding determinations that directly affect legal rights:

(1) petitions for hearings on the merits before the board made by permit applicants, permittees or other persons who participated in a permitting action before the department and who are adversely affected by the permitting action, as provided by the New Mexico Air Quality Control Act, Subsection H of Section 74-2-7 NMSA 1978; and

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

B. 20.11.81 NMAC does not govern the adjudicatory proceedings of the board regarding:

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

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

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

C. Exempt: 20.11.81 NMAC does not apply to sources within

Bernalillo county that are located on Indian lands over which the board lacks jurisdiction.

[20.11.81.2 NMAC - N, 12/16/06]

20.11.81.3 STATUTORY AUTHORITY: 20.11.81 NMAC is adopted pursuant to the authority of the Air Quality Control Act, Chapter 74, Article 2 NMSA 1978, Sections 74-2-5 and 74-2-7.
[20.11.81.3 NMAC - N, 12/16/06]

20.11.81.4 DURATION: Permanent.
[20.11.81.4 NMAC - N, 12/16/06]

20.11.81.5 EFFECTIVE DATE: December 16, 2006, unless a later date is cited at the end of a section.
[20.11.81.5 NMAC - N, 12/16/06]

20.11.81.6 OBJECTIVE: The objective of 20.11.81 NMAC is to establish procedures that govern the adjudicatory proceedings of the board that are described in Subsection A of 20.11.81.2 NMAC.
[20.11.81.6 NMAC - N, 12/16/06]

20.11.81.7 DEFINITIONS: In addition to the definitions in 20.11.81 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.81 NMAC shall govern.

A. "30-day hearing procedure" means that the regulation that authorizes or requires the board to hold a hearing on the merits pursuant to 20.11.81 NMAC also requires the board to hold the hearing on the merits within 30 days of the timely filing of the petition for hearing.

B. "60-day hearing procedure" means that the regulation that authorizes or requires the board to hold a hearing on the merits pursuant to 20.11.81 NMAC also requires the board to hold the hearing on the merits within 60 days of the timely filing of the petition for hearing.

C. "Act" means the Air Quality Control Act, Chapter 74, Article 2 NMSA 1978, and its subsequent amendments and successor provisions.

D. "Applicant" means a person who has applied for or has been issued an air quality permit by the department, unless a different procedure is required by another board regulation.

E. "Board" means the Albuquerque-Bernalillo county air quality control board or its successor agency under the act.

F. "Days" means consecutive days except as otherwise specifically provided.

G. "Department" means the city of Albuquerque environmental health department, or the department's successor agency.

H. "Docket" means, when used as a noun, the list compiled by the hearing clerk, and includes all documents filed by or with the hearing clerk from the beginning to the end of the procedure authorized by 20.11.81 NMAC, but does not include the administrative record or the law of the case and, when used as a verb, also means the act of assigning an individual number to a newly-opened case or filing a document in and listing the document on the docket.

I. "Document" means any pleading, motion, response, memorandum, decision, order or other written material or tangible item that is filed or brought to or before the board for its consideration in a proceeding pursuant to 20.11.81 NMAC, but does not include the cover letter that accompanies a document transmitted for filing.

J. "Ex parte contact" means oral or other communication with a board member or a board hearing officer regarding the merits of an expected or pending petition or related proceeding if:

(1) the communication is made by a person who is not a board member, hearing clerk or hearing officer;

(2) the person communicating knows or has reason to know a petition will be or has been filed pursuant to 20.11.81 NMAC;

(3) the communication is made without all other parties being present or receiving the same communication received by the board member or board hearing officer; and

(4) the communication is intended to affect, or reasonably may be expected to affect the board member's or the hearing officer's opinion regarding the merits of the expected or pending petition or related proceeding.

K. "Hearing clerk" means the department employee designated by the director to provide staff support to the board, and is the person designated by the board to maintain the official record of the proceeding.

L. "Hearing officer" means the person who is appointed or otherwise authorized by the board to conduct a proceeding pursuant to 20.11.81 NMAC.

M. "Interested participant" means any person, other than a party, who files an entry of appearance in accordance with Paragraphs (1) and (2) of Subsection I of 20.11.81.14 NMAC.

N. "Party" means the

petitioner, the applicant if the applicant is not the petitioner, the department, and any other person granted intervenor status by the hearing officer or board following a motion.

O. "Petition" means a petition filed pursuant to Subsection H of 74-2-7 NMSA 1978 and 20.11.81 NMAC.

P. "Petitioner" means a person who files a timely petition pursuant to Subsection H of NMSA 74-2-7 and 20.11.81 NMAC.

Q. "Record proper" or "record" means all documents filed by or with the hearing clerk during the proceeding authorized by 20.11.81 NMAC, and includes:

(1) the administrative record of the permitting action filed by the department;

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

(3) minutes or a summary of minutes, or the decision or order resulting from a hearing or board meeting at which the board deliberated or acted on any procedural or substantive issue in the proceeding.

R. "Regulations" means the rules promulgated by the board, as authorized by the act.

S. "Service" means delivering to a person that 20.11.81 NMAC requires to be served a copy of a document, exhibit or pleading by personally delivering it to that person, mailing it to that person, or, if that person agrees, by sending it by facsimile or electronic transmission to that person. If a person is represented by an attorney, service shall be made on the attorney. Service by mail is complete upon mailing the document unless service is made by mail to a party who must act within a prescribed period after being served, in which case three days shall be added to prescribed period. Service by facsimile or electronic transmission is accomplished when the transmission of the document is completed or upon acknowledgement by the recipient.

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

[20.11.81.7 NMAC - N, 12/16/06]

20.11.81.8 VARIANCES: The variance procedures provided by 20.11.7 NMAC shall not apply to 20.11.81 NMAC. No variance from the requirements of 20.11.81 NMAC shall be granted, unless the board is authorized by Subsection K of 20.11.2.18 NMAC, Fees, to grant a waiver from payment of the Board hearing fee.

[20.11.81.8 NMAC - N, 12/16/06]

20.11.81.9 SAVINGS CLAUSE: The filing of 20.11.81 NMAC, Adjudicatory Procedures-Air Quality Control Board, and the filing of any amendment to 20.11.81 NMAC with the state records center and archives shall not affect any action pending for violation of a city or county ordinance, a board regulation, or a permit, and shall not affect a petition filed pursuant to 20.11.81 NMAC. Prosecution for violation of a prior statute, ordinance, part or permit shall be governed and prosecuted under the statute, ordinance, part or permit wording in effect at the time the violation was committed.

[20.11.81.9 NMAC - N, 12/16/06]

20.11.81.10 SEVERABILITY: 20.11.81 NMAC shall be liberally construed to carry out its purposes. If for any reason any section, subsection, sentence, phrase, clause or wording of 20.11.81 NMAC is held to be unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity of remaining portions of 20.11.81 NMAC.

[20.11.81.10 NMAC - N, 12/16/06]

20.11.81.11 DOCUMENTS : Documents incorporated and cited in 20.11.81 NMAC may be viewed at the Albuquerque environmental health department, Suite 3020, One Civic Plaza, 400 Marquette NW, Albuquerque, New Mexico.

[20.11.81.11 NMAC - N, 12/16/06]

20.11.81.12 GENERAL PROVISIONS:

A. Applicability of rules of civil procedure and rules of evidence: In the absence of a specific provision in 20.11.81 NMAC governing an action, the board and the board's hearing officer may look to the New Mexico Rules of Civil Procedure, NMRA 1-001 et seq., and the New Mexico Rules of Evidence, NMRA 11-101 et seq., for guidance. No provision of the rules of civil procedure shall be construed to extend or otherwise modify the authority and jurisdiction of the board.

B. Board and hearing officer powers and duties-qualification, disqualification, recusal, withdrawal:

(1) Board: The board shall exercise all powers and duties authorized and required by the act, 20.11.81 NMAC and any other board regulation if the powers and duties are not otherwise delegated by 20.11.81 NMAC to a board staff member, a hearing officer or the hearing clerk. The board or a hearing officer appointed or authorized by the board may specify procedures in addition to, or that vary from the procedures provided in 20.11.81 NMAC in order to expedite the efficient resolution of the action or to avoid obvious injustice, if the procedures do not conflict with the act

or the regulations, or prejudice the rights of any party.

(2) Hearing officer: The board may appoint a hearing officer or authorize the hearing clerk to secure one or more hearing officers to perform the functions described in Paragraph (2) of Subsection B of 20.11.81.12 NMAC. From the date a proceeding is initiated pursuant to 20.11.81 NMAC, the chair or acting chair of the board shall serve as hearing officer until another hearing officer is appointed or authorized by the board and is secured by the hearing clerk. The appointment of a hearing officer shall not prevent any board member from attending or participating in any proceeding.

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

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

(ii) a person who is disqualified as a result of a condition described in Subparagraph (a) of Paragraph (3) of Subsection B of 20.11.81.12 NMAC.

(b) Functions: The hearing officer shall exercise all powers and duties required by or delegated under the act and 20.11.81 NMAC. The hearing officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by 20.11.81 NMAC, including, but not limited to:

(i) conducting hearings pursuant to 20.11.81 NMAC;

(ii) ruling upon motions and procedural requests that do not seek final resolution of the proceeding, and issuing all necessary orders;

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

(iv) administering oaths and affirmations, examining witnesses, and admitting or excluding evidence;

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

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

(vii) filing with the hearing clerk all original documents received or generated by the hearing officer.

(c) Notice of hearing officer

assignment: If a hearing officer other than a board member is assigned as a hearing officer, the hearing clerk shall notify the parties of the name and address of the hearing officer. At the same time, the hearing clerk also shall forward to the hearing officer copies of all documents related to the petition that have been filed to date.

(3) Board member and hearing officer disqualification-recusal-withdrawal:

(a) A board member or a hearing officer shall not perform any function authorized by 20.11.81 NMAC regarding any matter in which a board member or a hearing officer:

(i) has a personal bias or prejudice concerning a party or the outcome of a proceeding;

(ii) has personal knowledge of disputed facts concerning the proceeding;

(iii) is related to a party within the third degree of relationship;

(iv) is an officer, director or trustee of a party or interested participant in the proceeding;

(v) has a financial interest in the proceeding or facility that is the subject of the proceeding or has any other conflict of interest; or

(vi) has performed prosecutorial or investigative functions in connection with a permitting action at issue in the proceeding.

(b) In making its decision regarding whether a board member or hearing officer should be disqualified or recuse himself or herself, the board and hearing officer may rely on applicable legal authority

(c) Disqualification, recusal and withdrawal:

(i) Any party, for a cause included in Subparagraph (a) of Paragraph (3) of Subsection B of 20.11.81.12 NMAC, may file a motion requesting the disqualification of a board member at any time before the final order is filed, or requesting the disqualification of a hearing officer at any time prior to the completion of the evidentiary hearing.

(ii) If a motion is filed pursuant to Paragraph (3) of Subsection B of 20.11.81.12 NMAC, and the motion asks that a board member be disqualified, then, within five days after the hearing officer and the challenged board member receive the motion, the challenged board member may respond to the motion in writing. Within 10 days after the hearing officer and the challenged board member receive the motion regarding the challenged board member, the hearing officer shall file a recommended decision. The board shall vote on the motion. However, the vote of the board shall not include the vote of the chal-

lenged board member. If the vote of the majority of a quorum of the board, not including the vote of the challenged board member, determines that the challenged board member is disqualified, the disqualified board member will not participate in the proceeding thereafter.

(iii) If a motion is filed pursuant to Paragraph (3) of Subsection B of 20.11.81.12 NMAC, and the motion asks that a hearing officer be disqualified, then, within 10 days after the hearing officer receives the motion, the hearing officer may respond to the motion in writing. The board shall vote on the motion. If the vote of the majority vote of a quorum of the board members determines that the challenged hearing officer is disqualified, the disqualified hearing officer will not participate in the proceeding thereafter, and the board may appoint, or authorize the hearing clerk to secure a replacement hearing officer.

(iv) A board member may recuse himself or herself from a hearing, and a hearing officer may withdraw as hearing officer, by filing written notice with the hearing clerk or by making a statement on the record at a hearing or meeting of the board. In making a decision regarding whether to recuse or withdraw, a board member or a hearing officer may rely on applicable legal authority.

C. Recording of hearings: All hearings on the merits shall be recorded by a court reporter unless otherwise directed by the board. If a hearing will be tape recorded but a party prefers to have the hearing recorded by a court reporter in another manner, then, before the hearing, the party requesting the alternate method of reporting shall pay the court reporter for the services or make satisfactory payment arrangements with the court reporter. If a hearing is recorded by a court reporter, the recording of the court reporter approved by the board or the hearing officer, or arranged by the hearing clerk will be the sole official recording of the hearing. If a transcription is made by the court reporter, then the person who requested the transcription shall pay the court reporter. Payment for the transcription shall include payment for delivery of the original transcription to the hearing clerk. The hearing clerk shall make the transcription part of the record proper, which is a public record except as otherwise provided by law.

D. Participation by conference, telephone or other similar device: A member of the board may participate in a meeting of the board by means of a conference telephone or other similar communications equipment when a medical or emergency situation exists that makes it extremely difficult or impossible for the member to attend the meeting in person,

provided that each member participating by conference telephone or other device can be identified when speaking, all participants are able to hear each other at the same time, and members of the public attending the meeting are able to hear any member of the board who speaks at the meeting. A request to be present and vote by telephone or other similar device must be made by the member to the chair or acting chair of the board by the member. A board member who wishes to participate in a meeting in this manner must receive permission from the chair or acting chair of the board sufficiently in advance of the meeting so the hearing clerk can arrange for an adequate telephone hookup. The chair or acting chair shall determine whether a qualifying medical or emergency situation exists. A board member's participation by such means shall constitute presence in person at the meeting. This provision may be used only to allow a member to constitute a quorum for the purposes of choosing a hearing officer for a hearing or hearings; scheduling or rescheduling a meeting or hearing; and voting on those limited issues.

E. Ex parte contact: At no time before a petition is expected to be filed pursuant to 20.11.81 NMAC, and at no time between the filing of a petition and the final decision of the board or withdrawal of the petition or related permit action shall any person other than the hearing officer or hearing clerk have ex parte contact with a board member or the hearing officer regarding the merits of the expected or pending petition or related proceeding. This prohibition does not apply to a hearing officer's consideration of, and decision regarding a motion filed pursuant to 20.11.81 NMAC.

F. Computation and extension of time:

(1) Computation of time: In computing any period of time prescribed or allowed by 20.11.81 NMAC, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or legal city of Albuquerque or Bernalillo county holiday, in which event, the time shall be extended until the end of the next day which is not a Saturday, Sunday, or legal city of Albuquerque or Bernalillo county holiday. Whenever a party must act within a prescribed period after service upon that party, and service is by mail, three days shall be added to the prescribed period. The three-day extension does not apply to a deadline established by the act. Whenever a party must act within a prescribed period after service upon that party, and service is by facsimile or electronic transmission, no days shall be added to the prescribed period.

(2) **Extension of time:** Upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties, the hearing officer or the board, as appropriate for the stage of the proceeding at the time, may grant an extension of time for filing any document. No extension shall be granted regarding a deadline established by the act or an applicable regulation, except the petitioner may waive the deadline for holding the hearing by the deadline established by the act or an applicable regulation.

G. Documents; filing, service, form and examination:

(1) **Filing of documents:** Except as otherwise provided, a party filing a document shall file the original and nine copies with the hearing clerk and shall serve a copy thereof upon the hearing officer, the board's legal counsel, and all other parties. If the hearing officer is also a board member, the party shall serve the document upon the board chair. All documents shall be filed at least five days (for a 30-day hearing procedure) or seven days (for a 60-day hearing procedure) before the hearing at which the hearing officer or the board will consider the matter. A certificate of service with the following heading or "caption", completed appropriately, shall accompany each filed document.

STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION FOR
A HEARING ON THE MERITS REGARDING
AIR QUALITY PERMIT NO. ____
[Name of Petitioner:] _____,
Petitioner

(2) **Service of documents:** Except as otherwise provided, all documents may be served personally, by facsimile or by express or first class mail. Delivery receipts shall be kept as proofs of service, and shall be produced immediately upon the request of the hearing officer, the board or an opposing party.

(3) **Form of documents:** Unless otherwise provided by order of the hearing officer or the board, all documents, except exhibits, shall be prepared on 8 1/2 x 11-inch white paper, printed double-sided if feasible, and, where appropriate, the first page of every document shall contain the caption or heading required by Paragraph (1) of Subsection G of 20.11.81.12 NMAC.

(4) **Documents issued by board or hearing officer:** All documents issued by the board or hearing officer shall be filed with the hearing clerk. The hearing clerk shall promptly serve copies of the docu-

ments upon all parties and interested participants.

(5) **Examination of documents filed-cost:**

(a) **Examination allowed:** Subject to the provisions of law restricting the public disclosure of confidential or other exempt or protected information, during normal business hours any person may inspect and copy any document filed in any proceeding filed pursuant to 20.11.81 NMAC. Inspection shall be allowed consistent with the requirements of the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 through 14-2-12, and may be limited as provided by the Air Quality Control Act, NMSA 1978, Sections 74-2-1 through 74-2-17. The hearing clerk shall make the appropriate documents available for inspection and copying.

(b) **Cost of duplication:** The cost of duplicating documents or tapes filed in any proceeding shall be borne by the person seeking the copies. If the requested documents are available in an electronic format, the department will provide a copy by electronic transmission without charge, or the documents will be copied onto a CD, DVD, or other electronic media, if provided by the requester, without charge.

H. Motions:

(1) **General:** All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion, and state the relief sought. Each written motion shall be accompanied by an affidavit, certificate or other evidence relied upon, and shall be filed and served as required by Paragraphs (1) and (2) of Subsection G of 20.11.81.12 NMAC.

(2) **Unopposed motions:** An unopposed motion shall state that the concurrence or agreement of all other parties was obtained. The party that filed the motion shall submit to the hearing officer for review a proposed order that has been approved by all parties.

(3) **Opposed motions:** Any opposed motion shall state either that concurrence or agreement of all other parties was sought and denied, or why concurrence was not sought. A memorandum brief in support of an opposed motion may be filed with the motion.

(4) **Response to motions:** Any party upon whom an opposed motion is served shall have 10 days (for a 30-day hearing procedure) or 15 days (for a 60-day hearing procedure) after service of the motion to file a response. Any other party who fails to file a timely response shall be deemed to have waived any objection to the granting of the motion.

(5) **Reply to response:** The moving party may submit, but is not required to submit a reply to any response within five days (for a 30-day hearing procedure), or 10

days (for a 60-day hearing procedure) after service of the response.

(6) **Decision regarding motions:**

All motions may be decided by the hearing officer, in the hearing officer's sole discretion, without a hearing. Within five days (for a 30-day hearing procedure) or 10 days (for a 60-day hearing procedure) after being served with a copy of the motion, a party upon whom service has been made may file a written request asking that a hearing be held. However, the hearing officer shall refer all motions that would effectively dispose of the petition to the board for a decision.

(7) **The hearing officer may refer any motion to the board for decision.** A procedural motion may be ruled upon before the expiration of the time for response. Any response regarding the procedural motion received after the decision is made shall be treated as a request for reconsideration of the ruling.

[20.11.81.12 NMAC - N, 12/16/06]

20.11.81.13 [Reserved]

20.11.81.14 **PREHEARING PROCEDURES:**

A. Initiation of petition hearing; filing and content of petition: A petition for a hearing on the merits shall be initiated by filing a petition as required by Paragraph (1) of Subsection G of 20.11.81.12 NMAC. The petitioner shall:

(1) sign the petition under oath or affirmation and attest to the truth of the information contained therein; and

(2) file the original and nine copies of the petition with the board and serve a copy of the petition on the department.

B. Petition requirements and contents-fee:

(1) **Filing fee.** At the time the petition is filed, the petitioner shall pay the board hearing fee required by 20.11.2 NMAC.

(2) **Timing and contents:** A petition shall:

(a) be filed with the board within 30 consecutive days from the date notice is given of the permitting action taken by the department, and regarding which the petition objects;

(b) state the petitioner's name, address, telephone number, and if available, facsimile number, cellular telephone number and other contact information;

(c) either state in what manner the petitioner participated in the permitting action that was pending before the department and how the petitioner is adversely affected by the permitting action taken by the department, or cite a board regulation other than 20.11.81 NMAC that authorizes the petitioner to request a hearing on the

merits pursuant to 20.11.81 NMAC, and state how, under the other regulation, the petitioner qualifies for a hearing on the merits conducted pursuant to 20.11.81 NMAC;

(d) if a permitting action is being challenged, identify the specific permitting action appealed from, specify the portions of the permitting action to which petitioner objects, and state the factual and legal basis of petitioner's objections to the permitting action taken by the department;

(e) state the remedy petitioner is seeking, the legal basis for the remedy, and how granting the remedy is within the air quality jurisdiction of the board; and

(f) attach a copy of the permitting action or other action regarding which petitioner is filing a petition.

C. Hearing delay and waiver: A petitioner may waive petitioner's right to a have the hearing begin by the deadline established by the act or applicable regulation in order to negotiate with the department or for other good reason as determined by either the hearing officer or the board, as appropriate for the stage of the proceeding. The petitioner's waiver must be filed seven days (whether for a 30-day hearing procedure or for a 60-day hearing procedure) before expiration of the deadline for beginning the hearing. The waiver will stay all deadlines established in 20.11.81 NMAC for up to an additional 30 days (whether for a 30-day hearing procedure or for a 60-day hearing procedure), as determined by the hearing officer or the board, as appropriate for the stage of the proceeding. The stay of deadlines may be extended for an additional period for good reason as determined by the hearing officer or the board, as appropriate for the stage of the proceeding.

D. Response of department: Within 15 days (for a 30-day hearing procedure) or 30 days (for a 60-day hearing procedure) after receipt of a petition filed pursuant to 20.11.81 NMAC, if a permitting action is being challenged, the department shall perform the following actions.

(1) The department shall file with the hearing clerk the administrative record of the permitting action that is the subject of the petition. Before the department files the administrative record, the parties may stipulate in writing to the portions of the record that the department will file with the board. The department shall serve only the index of the record on the other parties.

(2) The department shall deliver to the hearing clerk a list of all persons who, within the preceding 12 months, have expressed in writing to the department an interest in the facility or the permitting action that is the subject of the petition or who participated in a public information meeting or hearing on the permitting action

and who have provided a legible written name and current mailing address at the public information meeting or hearing.

(3) The department shall file an answer to the petition, responding to each objection in the petition.

E. Notice of docketing:

(1) **Docketing Notice:** As soon as practicable after receipt of a petition, the hearing clerk shall issue and serve upon the parties and each board member a notice of docketing, which shall include the caption required by Paragraph (1) of Subsection G of 20.11.81.12 NMAC, the docket number of the case, and the date the petition was received by the hearing clerk. A copy of 20.11.81 NMAC shall be included with the notice of docketing sent to the petitioner.

(2) **Untimeliness:** The hearing clerk shall docket every petition, without regard to whether it appears to be timely. However, the board or any party may move to dismiss an untimely petition.

F. Scheduling the hearing on the merits:

(1) **Hearing date:** The hearing officer shall schedule the hearing on the merits to begin no later than the deadline required by the act or applicable regulation, unless a waiver is filed by the petitioner and a stay of deadlines is granted pursuant to Subsection C of 20.11.81.14 NMAC. The waiver must be filed with the board, and served as required by 20.11.81 NMAC before the expiration of the deadline for beginning the hearing on the merits.

(2) **Scheduling order:** Unless the deadline for beginning the hearing on the merits has been waived and a stay of deadlines is granted, no later than 20 days (for a 30-day hearing procedure) or 30 days (for a 60-day hearing procedure) before the hearing begins, the hearing officer shall issue a scheduling order setting the date, time and location of the hearing. The scheduling order may include other procedural matters. Jointly or singly, and before the hearing officer issues the scheduling order, the parties may submit to the hearing officer, at least five days (for a 30-day hearing procedure) or 10 days (for 60-day hearing procedure) before the deadline for issuing the scheduling order, a request regarding the date and location of the hearing and other procedural matters, such as the assignment of a non-board-member hearing officer. At a board meeting, the hearing officer may consult with the board regarding procedural matters.

G. Public notice of hearing:

(1) **Publication:** Upon direction from the board or hearing officer, the hearing clerk shall prepare a notice of hearing setting forth the date, time and location of the hearing, a brief description of the peti-

tion, and information on the requirements for entry of appearance and for submitting a statement of intent to present evidence, and

(a) no later than 10 days (for a 30-day hearing procedure) or 15 days (for a 60-day hearing procedure) before the hearing date, send a copy of the notice of hearing, with a request for publication, to at least one newspaper of general circulation that is distributed at least weekly in Bernalillo county;

(b) no later than 10 days (for a 30-day hearing procedure) or 15 days (for a 60-day hearing procedure) before the hearing date, mail a copy of the notice of hearing to each party, to each interested participant who has filed an entry of appearance, and to each person who within the previous 12 months has expressed in writing to the department or the board an interest in the facility or permitting action that is the subject of the petition; and

(c) immediately upon receipt of an entry of appearance that is received after the initial mailing, mail a copy of the notice of hearing to each additional interested participant.

(2) **Certification:** After the notice of hearing has been distributed as required by Subsection G of 20.11.81.14 NMAC, the hearing clerk shall file with the record proper an affidavit certifying how and when notice was given and shall attach to the affidavit a copy of the notice of hearing and affidavits of publication.

H. Statement of intent to present technical evidence:

(1) **Requirement to file:** No later than 10 days (for a 30-day hearing procedure) or 15 days (for 60-day hearing procedure) days before the hearing, any person who wishes to present technical evidence at the hearing shall file with the hearing clerk and serve on all parties a statement of intent to present technical evidence.

(2) The statement of intent to present technical evidence shall include:

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

(b) a statement clarifying whether the person filing the statement supports or opposes the petition at issue;

(c) the name of each witness;

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

(e) a summary or outline of the anticipated direct testimony of each witness;

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

(g) a copy of each exhibit to be offered into evidence at the hearing on the merits.

I. Participation by persons other than parties:

(1) Interested participants; entry of appearance: No later than seven days (for a 30-day hearing procedure) or 10 days (for a 60-day hearing procedure) before the beginning of the hearing on the merits, any person who wishes to be treated as an interested participant and to cross-examine witnesses at the hearing shall file an entry of appearance with the hearing clerk and serve the entry of appearance upon all parties. For purposes of Paragraph (1) of Subsection I of 20.11.81.14 NMAC, a statement of intent to present technical evidence filed pursuant to Subsection H of 20.11.81.14 NMAC shall be considered an entry of appearance if the person has not previously filed a separate entry of appearance. The entry of appearance shall identify the person wishing to be treated as an interested participant, provide the address of the person wishing to be treated as an interested participant, and list each individual who may appear on behalf of that person.

(2) Participation by the general public; General non-technical statement: Any person who has not timely filed either an entry of appearance as an interested participant pursuant to Subsection I of 20.11.81.14 NMAC or a statement of intent to present technical evidence pursuant to Subsection H of 20.11.81.14 NMAC, may present a general non-technical statement by meeting the following conditions.

(a) Any member of the general public may testify at the hearing. No prior notification is required to present general non-technical statements in support of or in opposition to the petition. A member of the general public also may offer exhibits related to his testimony, as long as the exhibit is non-technical in nature and does not unduly repeat other testimony.

(b) A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement with the hearing clerk before the hearing begins. If a member of the general public who testified or submitted a written statement wants to receive written notice of the decision of the board, then, at the hearing at which the member of the general public testified or submitted the written statement, the member of the general public must provide the hearing clerk with a legible written name and current mailing address.

J. Pre-hearing discovery: Discovery shall be guided by the provisions of the New Mexico rules of civil procedure in effect at the time of the hearing. Formal discovery is not a right, and, therefore, is discouraged and shall only be allowed by order of the hearing officer if the following conditions exist.

(1) Grounds for discovery:

Formal discovery shall only be authorized if the hearing officer determines:

(a) the type of discovery sought will not unreasonably delay the proceeding and is not unreasonably burdensome or unreasonably expensive; and

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

(2) Order for discovery: Upon motion for discovery by a party and determination by the hearing officer that the motion should be granted, the hearing officer shall issue an order for the taking of discovery. The order shall include all terms and conditions imposed by the hearing officer.

[20.11.81.14 NMAC - N, 12/16/06]

20.11.81.15 [Reserved]

20.11.81.16 HEARING PROCEDURES:

A. Hearing on the merits:

(1) Location of the hearing on the merits: Unless otherwise ordered by the board or hearing officer, the hearing on the merits normally shall be held in the Vincent E. Griego Chambers, on the lower level of the Albuquerque-Bernalillo County Government Center located at One Civic Plaza, near the intersection of Fourth Street and Marquette Avenue NW, in Albuquerque, New Mexico, or in another adequate city of Albuquerque, county of Bernalillo, or other publicly-owned location.

(2) Postponement of hearing: No request for postponement of a hearing shall be granted unless the hearing officer or the board determines either that all parties consent or that good cause has been proved.

B. Conduct of hearing on the merits:

(1) The hearing officer shall conduct the hearing on the merits in a manner that provides a reasonable opportunity for all parties and interested persons to be heard without making the hearing unreasonably lengthy or cumbersome or burdening the record with unnecessary repetition.

(2) The hearing officer shall establish the order of testimony, except that the petitioner shall present its case first. The hearing officer may allow brief opening and closing statements.

C. Burden of persuasion: In a hearing on the merits, the petitioner has the burden of proof, the burden of going forward with the evidence and the burden of proving by a preponderance of the evidence the facts relied upon by the petitioner to justify the relief sought in the petition. Following the establishment of a prima facie case by the petitioner, any person

opposed to the relief sought in the petition has the burden of going forward with any adverse evidence and showing why the relief should not be granted.

D. Evidence:

(1) General: The hearing officer shall admit any relevant evidence, unless the hearing officer determines that the evidence is unduly repetitious, otherwise unreliable or of little probative value.

(2) Examination of witnesses: Witnesses shall be examined orally, under oath or affirmation, and may be examined by the hearing officer and members of the board. At the hearing on the merits, the board members, hearing officer, parties and interested participants shall have the right to cross-examine a witness. The hearing officer may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the direct testimony of the witness.

(3) Exhibits: All exhibits offered in evidence shall be marked with a designation identifying the person offering the exhibit, and shall be individually numbered serially. Large charts and diagrams, models and other bulky exhibits are discouraged. Exhibits should be limited to 8 1/2 X 11 inches, or be capable of being folded to that size, unless otherwise necessary for adequate presentation of evidence. Any person offering an exhibit shall provide at least an original and 15 copies for the board, the other parties and persons attending the hearing.

(4) Official notice: The hearing officer may take official notice of any matter that may be judicially noticed in the New Mexico courts. In the hearing, parties shall be given adequate opportunity to show that such facts have been erroneously noticed.

E. Objections and offers of proof:

(1) Objection: Any objection concerning the conduct of the hearing on the merits may be stated during the hearing, either orally or in writing. The party raising the objection must make a short statement of the grounds for the objection. The ruling by the hearing officer on any objection and the reasons given for the ruling shall be part of the record.

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

[20.11.81.16 NMAC - N, 12/16/06]

20.11.81.17 [Reserved]

20.11.81.18 POST-HEARING PROCEDURES:

A. Filing the transcript: Unless the board orders the hearing to be tape recorded, or recorded by other means, the hearing shall be transcribed verbatim by a court reporter. Any person, other than the board, who wants a copy of a transcript from the court reporter, shall pay the court reporter for the transcript copy. Any person, other than the board, who wants a copy of hearing tapes must arrange with the hearing clerk to have the tapes copied and shall pay for the copy of the tapes before the hearing clerk delivers the copy of the tapes to the person requesting the copy.

B. Proposed findings of fact and conclusions of law: The hearing officer may allow the record to remain open for a reasonable period of time after the conclusion of the hearing on the merits in order to allow any party or interested participant to submit proposed findings of fact and conclusions of law and a closing argument, but the hearing officer shall not allow the record to remain open solely because closing arguments will be made before the board. At the conclusion of the evidentiary hearing held by the hearing officer, the hearing officer shall state whether the parties may submit findings, conclusions and closing arguments and the deadlines for submission. All such submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied upon. After the conclusion of the evidentiary hearing before the hearing officer, no new evidence shall be presented unless specifically allowed by the hearing officer for good cause.

C. Recommended decision: If the board directs, the hearing officer shall issue a recommended decision within a period established by the board. The recommended decision shall contain the hearing officer's findings of fact, conclusions regarding all material issues of law or discretion, reasons for the recommended decision, and a proposed final order. Upon receipt of the hearing officer's recommended decision, the hearing clerk shall forward a copy to all parties and to the board. At the board's or the hearing officer's discretion, any party or interested participant may file comments regarding the hearing officer's recommended decision.

D. Deliberation and decision:

(1) Deliberation: At the end of the hearing on the merits or at a board meeting, the board shall reach a final decision on each adjudicatory matter.

(a) If allowed by the Open Meetings Act, Chapter 10, Article 15 NMSA 1978, the board may deliberate in closed session. However, any final action

must occur in an open meeting.

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

(c) If the board does not reach a decision at the hearing on the merits or at a board meeting held promptly after the hearing, then, after the hearing clerk receives the transcript, the hearing clerk shall promptly provide a copy of the transcript and exhibits to the hearing officer and to board members who did not attend the hearing and who are qualified to vote on the decision. If requested, the hearing clerk shall provide a copy of the transcript to other board members and board counsel. The hearing clerk shall notify all parties and interested participants of the availability of the transcript.

(2) Final order of the board: After the board has reached a decision regarding the petition, the board shall direct a board member, the hearing officer, the board's counsel or a party to prepare a final order.

(a) The board may approve the final order at the conclusion of the hearing on the merits if a quorum of the board members is present and a majority of the board members present votes in favor of the final order; at a meeting of the board; or, after a decision of the board, by signature of the final order by the board chair.

(b) The final order shall contain findings of fact, conclusions of law, an order based on the findings and conclusions, and a statement regarding the availability of appeal, as authorized by 74-2-9 NMSA 1978. If a recommended decision was prepared, the board may adopt, modify or set aside the recommended decision and state the board's reasons for adopting, modifying or setting aside the recommended decision.

(c) The hearing clerk shall promptly send copies of the final order to each party and interested participant, and to all other persons who have made written requests for notification of the action taken.

E. Judicial review: Judicial review of the final order shall be as provided by law. The filing of an appeal pursuant to 74-2-9 NMSA 1978 does not stay the final order, unless otherwise ordered by the board or a court, as appropriate, depending on which entity has jurisdiction at the time the stay is requested.

F. Preparation of record proper: The preparation of the record proper for an appeal or for any other reason shall be the responsibility of the hearing clerk. The appellant shall make satisfactory arrangements with the hearing clerk, including paying for copying, including transcript costs, before the hearing clerk prepares the

record proper.

[20.11.81.18 NMAC - N, 12/16/06]

20.11.81.19 [Reserved]

20.11.81.20 ALTERNATE RESOLUTION:

A. Summary procedures:

(1) Use of summary procedures:

The board may dispose of a petition after an expedited public hearing if a party makes a written request that the board decide the merits of the petition solely on legal arguments presented in written briefs and oral arguments.

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

(a) assure that public notice is given in accordance with Subsection G of 20.11.81.14 NMAC, and include in the public notice instructions for persons other than parties who wish to participate in the oral argument to submit a statement of intent equivalent to the statement provided in Paragraph (2) of Subsection H of 20.11.81.14 NMAC; and

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

(3) Decision: After an expedited hearing, the board may either decide the matter and issue a final order, or, if the board decides not to dispose of the matter, the board shall proceed with a full hearing as provided by 20.11.81.16 NMAC.

B. Withdrawal:

(1) Notice of withdrawal: At any time before a final decision is made by the board, the petitioner may withdraw the petition or the department may withdraw the permitting action that is the subject of the proceeding. Withdrawal may be accomplished by filing a notice of withdrawal with the board and serving a copy of the notice on all other parties and interested participants. Within five days (for a 30-day hearing procedure) or 10 days (for a 60-day hearing procedure) after receipt of the notice of withdrawal, a party or interested participant may file a written objection to the notice of withdrawal. If an objection is filed, the hearing officer or the board, depending on the stage of the hearing, shall rule on the notice of withdrawal.

(2) Effect of withdrawal: The

result of a notice of withdrawal that is not opposed or has been approved by the board is that:

(a) when a petitioner withdraws a petition for a hearing on the merits, the permitting action becomes final; and

(b) when the department withdraws a permitting action, the petition is vacated and the agency must issue a new permitting action within 60 days unless either the board approves a different deadline or the applicant withdraws its application. When a new permitting action occurs, a new right to file a petition for hearing on the merits is available pursuant to 20.11.81 NMAC.

C. Settlement: The board encourages the settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the act and the regulations. The parties may ask the board to stay a proceeding authorized by 20.11.81 NMAC while settlement negotiations are being held. The board may approve a settlement that modifies a permitting action only after evidence supporting such modification is presented at a public hearing. The department, however, may withdraw a disputed permitting action and take another permitting action, which will give rise to a new right to file a petition for hearing on the merits pursuant to 20.11.81 NMAC.

[20.11.81.20 NMAC - N, 12/16/06]

HISTORY OF 20.11.81 NMAC

Pre-NMAC History: None

History of Repealed Material: [Reserved]

NMAC History: [Reserved]

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.2 NMAC, Sections 6, 18, effective 12/16/06.

20.11.2.6 OBJECTIVE:

A. To implement the requirements of 74-2-7 NMSA by establishing:

(1) reasonable fees to cover the cost of reviewing and acting on any permit application received by the Department;

(2) reasonable fees to cover the cost of implementing and enforcing the terms and conditions of any permit issued by the department; and

(3) a schedule of operating permit fees consistent with Section 502(b)(3) of the Clean Air Act and the joint air quality control board ordinances.

B. To establish reasonable fees to ~~cover the~~ partially offset the administrative cost of variance procedures and permit-related administrative hearings before the board;

C. To implement the requirements of Section 507 of the federal Clean Air Act by establishing adequate funding for a small business stationary source technical and environmental compliance assistance program;

D. To establish reasonable fees to cover the administrative expenses incurred by the department in implementing and enforcing the provisions of the New Mexico Air Quality Control Act, the joint air quality control board ordinances, and the Albuquerque/Bernalillo county air quality control board regulations; and

E. 20.11.2 NMAC is permanent. A financial audit of the division shall be performed for city of Albuquerque fiscal year 2005 (July 1, 2004 through June 30, 2005). The results of the audit shall be reported to the air board during city fiscal year 2006.

[20.11.2.6 NMAC - Rp, 20 NMAC 11.02.1.6, 7/1/2001; A, 3/1/04; A, 12/16/06]

20.11.2.18 FEE SCHEDULE

A. Annual emission fees: Sources issued a registration or permit pursuant to 20.11.40 NMAC, 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, or 20.11.61 NMAC shall pay a minimum annual emission fee of \$150.00 or the annual emission fee calculated consistent with Section 20.11.2.13 NMAC, whichever is greater. The following fee pollutant rates shall be used in calculating the annual emission fee, unless otherwise listed:

(1) non-hazardous fee pollutants: \$31.00 per ton;

(2) hazardous fee pollutants (non-major sources): \$31.00 per ton;

(3) hazardous fee pollutants (major sources): \$250.00 per ton; and

(4) annual emission fees for specific source categories:

(a) auto body repair and painting: \$150.00;

(b) chromium electroplating: \$150.00;

(c) degreasers using organic solvents:

(i) non-halogenated solvents using less than 2,200 gallons of any one solvent-containing material or 5,400 gallons or more of any combination of solvent-containing materials: \$150.00; and

(ii) halogenated solvents using less than 1,200 gallons of any one solvent-containing material or 2,900 gallons or more of any combination of solvent-containing materials: \$150.00;

(d) dry cleaners (non-major): \$150.00;

(e) emergency generators: \$150.00 or \$31.00 per ton, whichever is greater;

(f) gasoline service and fleet stations: \$250 or \$31.00 per ton, whichever is greater;

(g) stand alone natural gas or distillate fueled fired boilers less than 10 million BTU used exclusively for residential, commercial or institutional heating and hot water: no charge;

(h) printing, publishing and packaging operations:

(i) sheetfed (nonheatset) offset lithography using less than 7,125 gallons of clean solvent and fountain solution additives per year: \$150.00;

(ii) nonheatset web offset lithography using less than 7,125 gallons of solvent and fountain solution additive per year: \$150.00;

(iii) heatset web offset lithography using less than 50,000 pounds of ink, cleaning solvent, and fountain solution additives: \$150.00;

(iv) screen printing using less than 7,125 gallons of total solvent used including solvent-based inks, cleaning solvents, adhesives and coatings: \$150.00;

(v) flexography (water-based or UV-cured inks, coating and adhesives) using less than 200,000 pounds total of inks, coatings and adhesives: \$150.00;

(i) soil and/or water remediation operations: \$150.00; and

(j) stationary sources with de minimis emissions: no charge.

B. Air quality application review fees for sources requiring permits pursuant to 20.11.40 NMAC or 20.11.41 NMAC:

(1) auto body repair and painting: \$500.00;

(2) dry cleaners: \$500.00;

(3) emergency generators: \$500.00;

(4) generic coating and abrasive operations: \$500.00;

(5) other fueling facilities receiving fuel by truck or rail (non-NSPS): \$1000.00;

(6) non-NSPS boilers (greater than 10 million BTU): \$500.00;

(7) printing and packaging operations: \$500.00;

(8) retail and fleet gasoline service stations: \$500.00; and

(9) soil/water remediation systems: \$1000.00.

C. Case-by-case air quality application review fees for sources requiring permits pursuant to 20.11.40 NMAC or 20.11.41 NMAC (based on a source's potential-to-emit for the single highest pollutant):

(1) proposed sources with a potential-to-emit equal to or greater than

one ton per year and less than five tons per year: \$500.00;

(2) proposed sources with a potential-to-emit equal to or greater than 5 tons per year and less than 25 tons per year: \$1,000.00;

(3) proposed sources with a potential-to-emit equal to or greater than 25 tons per year and less than 50 tons per year: \$2,000.00;

(4) proposed sources with a potential-to-emit equal to or greater than 50 tons per year and less than 75 tons per year: \$3,000.00;

(5) proposed sources with a potential-to-emit equal to or greater than 75 tons per year and less than 100 tons per year: \$4,000.00; and

(6) proposed sources with a potential-to-emit equal to or greater than 100 tons per year: \$5,000.00.

D. Federal program and state toxic air pollutant application review fees in addition to the air quality application review fees:

(1) 40 CFR 60 standards: \$1,000.00;

(2) 40 CFR 61 standards: \$1,000.00;

(3) 40 CFR 63 standards:
(a) promulgated standards: \$2,000.00;

(b) case-by-case MACT review: \$10,000.00;

(4) PSD/non-attainment review: \$5,000.00;

(5) acid rain review: \$5,000.00; and

(6) state toxic air pollutant review: \$500.00.

E. Permit modifications:

(1) P2 modifications: no charge;
(2) minor/flexible permit modifications: \$1,000.00; and

(3) major modifications: \$5,000.00;

F. Portable source relocation fee: \$250.00;

G. Administrative modifications to existing permit: \$100.00;

H. Asbestos unit (AU): \$21.00;

I. Administrative fees:

(1) Professional services fee: \$75.00 per staff hour;

(2) Photocopying and other copies of public records: as provided by the New Mexico Inspection of Public Records Act and by the applicable city of Albuquerque ordinance and administrative instruction number 1-7.

(3) Regulation compilation: \$20.00; and

(4) Public records research fee: \$50.00 per staff hour. However, the charge for copying public records shall not include

a separate charge for staff time for locating and copying the documents.

J. Variance request fees: any person who petitions for a variance shall pay a fee of \$1,500.00, unless the fee is determined by the board at a hearing to impose an undue economic burden on the petitioner.

K. Board hearing filing fees: 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 filing 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.~~] \$125.00.

[20.11.2.18 NMAC - Rp, 20 NMAC 11.02.II.2, 7/1/2001; A, 3/1/04; A, 12/16/06]

NEW MEXICO DNA IDENTIFICATION SYSTEM OVERSIGHT COMMITTEE AND ADMINISTRATIVE CENTER

This is an amendment to 10.14.200 NMAC, Sections 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13 and 16. The purpose of these changes are to effect the amending of Sections 10.14.200.1, 10.14.200.2, 10.14.200.3, 10.14.200.6 NMAC, Subsections C through V, X, Y and Z of 10.14.200.7 NMAC, Subsections A, and D through I of 10.14.200.8, Subsections B, F, G, H, J and K of 10.14.200.9 NMAC, Subsections B, C and E through I of 10.14.200.10 NMAC, Paragraphs (1) through (4) of Subsection A, Subsection B, Paragraphs (1) and (2) of Subsection C, Paragraphs (1) and (2) of Subsection D, Paragraphs (1) through (4) of Subsection E, Subsection F and Paragraphs (1) through (3) of Subsection G of 10.14.200.11 NMAC, Subsections A, B, C, F, G, and I through N of 10.14.200.12 NMAC, Section 10.14.200.13 NMAC and Subsections A through D of 10.14.200.16 NMAC all to be effective on 12/29/2006.

10.14.200.1 ISSUING AGENCY: DNA identification system oversight committee & administrative center, [~~%Albuquerque police department] c/o metropolitan forensic science center,~~ 5350 Second Street, N.W., Albuquerque, NM 87107, (505) [~~823-4634~~] 823-4200.

[3/1/1998; 10.14.200.1 NMAC - Rn, 10 NMAC 14.200.1, 5/1/2000; A, 7/1/2003; A, 12/29/2006]

10.14.200.2 SCOPE: Department of public safety, department of corrections, attorney general, state medical investigator, local, county and state New Mexico law enforcement agencies, jails and detention facilities, city of Albuquerque, covered offenders, persons arrested for certain felony offenses as specified in Paragraph (3) of Subsection D of 29-3-10 NMSA 1978.

[3/1/1998; 10.14.200.2 NMAC - Rn, 10 NMAC 14.200.2, 5/1/2000; A, 7/1/2003; A, 12/29/2006]

10.14.200.3 STATUTORY AUTHORITY: [~~Section~~] Subsection C of 29-3-10, Subsection G of 29-11A-5[~~-G NMSA 1978~~], Paragraph (6) of Subsection B of 29-16-4[~~-B.6 NMSA 1978~~], Subsection B of 29-16-5[~~-B NMSA 1978~~] and Subsection E of 29-16-5[~~-E~~] NMSA 1978.

[3/1/1998; 10.14.200.3 NMAC - Rn, 10 NMAC 14.200.3, 5/1/2000; A, 7/1/2003; A, 7/1/2005; A, 12/29/2006]

10.14.200.6 OBJECTIVE: To establish a DNA identification system for covered offenders, persons arrested for certain felony offenses as specified in Paragraph (3) of Subsection D of 29-3-10 NMSA 1978, unidentified persons and unidentified human remains. To facilitate the use of DNA records by local, state and federal law enforcement agencies in the identification, detection or exclusion of persons in connection with criminal investigations, the registration of sex offenders required to register pursuant to the provisions of the Sex Offender Registration and Notification Act and to facilitate the use of DNA records by local, state and federal law enforcement agencies and the state medical investigator in the identification of unidentified persons or unidentified human remains pursuant to the DNA Identification Act.

[3/1/1998; 10.14.200.6 NMAC - Rn, 10 NMAC 14.200.6, 5/1/2000; A, 7/1/2003; A, 7/1/2005; A, 12/29/2006]

10.14.200.7 DEFINITIONS:

A. "Administrative center" means the law enforcement agency that administers and operates the DNA identification system and is governed by the DNA oversight committee.

B. "Analysis" means DNA profile generation.

C. "Arrestee" for purposes of DNA sample collection means any person as listed in Subsection A of 29-3-10 NMSA 1978 that is arrested for a felony offense committed as an adult and as defined by Paragraph (3) of Subsection D of 29-3-10 NMSA 1978. The qualifying arrestee offenses are:

(1) 30-2-1(A) Murder in the first degree.

(2) 30-2-1(B) Murder in the second degree.

(3) 30-2-3(A) Voluntary manslaughter.

(4) 30-2-3(B) Involuntary manslaughter.

(5) 30-2-4 Assisting suicide.

(6) 30-3A-3.1 Aggravated stalking (if second or subsequent conviction).

(7) 30-3-5(C) Aggravated battery (great bodily harm or with a firearm or explosive).

(8) 30-3-7 Injury to pregnant woman (resulting in a stillbirth).

(9) 30-3-8 Shooting at dwelling or occupied building; shooting at or from a motor vehicle (great bodily harm).

(10) 30-3-9(C) Aggravated assault upon a school employee.

(11) 30-3-9(F) Aggravated battery upon a school employee (great bodily harm or with a firearm or explosive).

(12) 30-3-9.1(D) Aggravated assault upon a sports official.

(13) 30-3-9.1(H) Aggravated battery upon a sports official (great bodily harm or with a firearm or explosive).

(14) 30-3-9.2(C) Aggravated assault upon a health care worker.

(15) 30-3-13 Aggravated assault against a household member.

(16) 30-3-14 Assault against a household member with intent to commit a violent felony.

(17) 30-3-16(C) Aggravated battery against a household member (great bodily harm or with a firearm or explosive).

(18) 30-4-1 Kidnapping (when the victim is less than eighteen years of age and the offender is not a parent of the victim).

(19) 30-4-1 Attempted kidnapping (when the victim is less than eighteen years of age and the offender is not a parent of the victim).

(20) 30-4-1 Kidnapping.

(21) 30-4-3 False imprisonment (when the victim is less than eighteen years of age and the offender is not a parent of the victim).

(22) 30-6-1(B) Abandonment of a child (death or great bodily harm).

(23) 30-6-1(D) Abuse of a child (negligent and intentional, death or great bodily harm).

(24) 30-6A-3 Sexual exploitation of children.

(25) 30-6A-3 Attempted sexual exploitation of children as defined in 30-6A-3(B), 30-6A-3(C) or 30-6A-3(D).

(26) 30-6A-4 Sexual exploitation of children by prostitution.

(27) 30-6A-4 Attempted sexual exploitation of children by prostitution.

(28) 30-7-5 Dangerous use of

explosives.

(29) 30-9-11 Criminal sexual penetration in the first, second, third or fourth degree.

(30) 30-9-11 Attempted criminal sexual penetration in the first, second or third degree.

(31) 30-9-12 Criminal sexual contact in the fourth degree.

(32) 30-9-13 Criminal sexual contact of a minor in the second, third or fourth degree.

(33) 30-9-13 Attempted criminal sexual contact of a minor in the second or third degree.

(34) 30-9-13 Solicitation to commit criminal sexual contact of a minor in the second, third or fourth degree.

(35) 30-9-14.3 Aggravated indecent exposure.

(36) 30-10-3 Incest (when the victim is less than eighteen years of age).

(37) 30-10-3 Attempted incest (when the victim is less than eighteen years of age).

(38) 30-16-1 Larceny (stolen property over \$500; livestock of any value; or firearm of any value).

(39) 30-16-2 Robbery.

(40) 30-16-3(A) Burglary (dwelling house).

(41) 30-16-3(B) Burglary.

(42) 30-16-4 Aggravated burglary.

(43) 30-17-6 Aggravated arson.

(44) 30-20A-3 Antiterrorism Act; unlawful acts.

(45) 30-22-17(B) Assault by prisoner.

(46) 30-22-22 Aggravated assault upon a peace officer.

(47) 30-22-25(C) Aggravated battery upon a peace officer (great bodily harm or with a firearm or explosive).

(48) 30-28-3 Solicitation to commit criminal sexual contact of a minor in the second, third or fourth degree.

(49) 30-47-4(D) Abuse of a resident.

(50) 30-47-5(D) Neglect of a resident.

(51) 66-8-101 Homicide by vehicle; great bodily harm by vehicle.

(52) 66-8-101.1 Injury to pregnant woman by vehicle (resulting in a stillbirth).

(53) any federal offense equivalent to the above listed New Mexico qualifying felony offenses.

[C-] D. "Buccal cell" means cells from the interior linings of the cheek and gum.

[D-] E. "CODIS" means the federal bureau of investigation's national DNA index system for storage and exchange of DNA records submitted by designated forensic DNA laboratories.

[E-] E. "Collection kit" see Subsection [M] N of 10.14.200.7 NMAC.

[F-] G. "Core loci" means the chromosomal locations designated as being required for a convicted offender profile to be considered complete by the board of the national DNA index system, and consistent with the federal DNA Identification Act of 1994 and subsequent federal laws.

[G-] H. "Covered offender" for purposes of fee assessment means any person convicted of a felony offense, committed after July 1, 1997, and as defined by [Section] Subsection D of 29-16-3[~~D~~] NMSA 1978 and as described in Paragraphs (1) through (3) of Subsection A of [Section] 29-16-6 NMSA 1978.

[H-] I. "Covered offender" for purposes of DNA sample collection means any person as defined by [Section] Subsection D of 29-16-3[~~D~~ NMSA 1978] and [Section] Subsection A of 29-16-6[~~A~~] NMSA 1978.

[I-] J. "DNA" means deoxyribonucleic acid.

[J-] K. "DNA Identification Act" means Sections 29-16-1 to 29-16-13 NMSA 1978, and any subsequent amendments or additions to these sections, the law that authorizes the DNA identification system and the DNA oversight committee.

[K-] L. "DNA identification system" means the system established pursuant to the DNA Identification Act.

[L-] M. "DNA oversight committee" means the DNA identification system oversight committee.

[M-] N. "DNA sample collection kit" means materials designed for the collection of DNA samples.

[N-] O. "FTA card" means an FTA collection card, a card of blotter paper designed for the collection of liquid biological samples or any other device designed for the collection of liquid biological samples.

[O-] P. "Head of the administrative center" means the authorized person who supervises the day-to-day operations of the administrative center.

[P-] Q. "Identification system" see Subsection [K] L of 10.14.200.7 NMAC.

[Q-] R. "In writing" means a document hand or typewritten on paper and includes the use of facsimile copies or computer requests that can be printed.

[R-] S. "Kit" see Subsection [M] N of 10.14.200.7 NMAC.

[S-] T. "Records" means the results of analysis, testing, and related information.

[T-] U. "Sample" means a sample of biological material sufficient for DNA testing.

[U-] V. "Sample collection kit" see Subsection [M] N of 10.14.200.7

NMAC.

~~[V.]~~ ~~“Sample kit”~~ see Subsection M of 10.14.200.7 NMAC.

W. “Sample profile hit” means a match of the examined loci as determined by the servicing forensic DNA laboratory.

X. “Secured” means limited and controlled access only by authorized personnel including use of protection and safety devices such as restricted space access, physical locks and keys, passwords, encryption, firewalls etc. to safeguard any and all functions of that equipment or facility.

~~[Y.]~~ ~~“Secured computer”~~ means a computer that is a stand-alone computer without remote access that is password protected, with all access audited and archived, or; a computer that is connected to a dedicated, encrypted data communications line that is password protected, with all access audited and archived.

~~[Z.]~~ ~~“System”~~ see Subsection K of 10.14.200.7 NMAC. [3/1/1998; 10.14.200.7 NMAC - Rn & A, 10 NMAC 14.200.7, 5/1/2000; A, 7/1/2003; A, 7/1/2005; A, 12/29/2006]

10.14.200.8 COLLECTION AND TRANSFER OF ~~[OFFENDER]~~ SAMPLES AND FEES:

A. ~~[Collection]~~ Routine collection of samples from a covered ~~[offenders]~~ offender shall be performed only by trained employees of the department of corrections adult prisons or probation and parole divisions, ~~[by]~~ jail or detention facility personnel, employees of the county sheriff office, members of the administrative center or persons designated by the administrative center as trained by and in coordination with the administrative center, utilizing the collection protocol approved by the oversight committee.

B. Collection and deposit of assessed fees from covered offenders shall be performed by employees of the department of corrections adult prisons and probation and parole divisions pursuant to policies and procedures established by the department of corrections.

C. The department of corrections shall be responsible for establishing policies and procedures for the collection of samples and assessed fees from covered offenders utilizing a collection protocol to be approved by the DNA oversight committee when custody is maintained by private or out-of-state, probation and parole or corrections facilities.

D. Routine collection of samples from arrestee’s shall be performed only by trained jail or detention facility personnel, members of the administrative center or persons designated by the administra-

tive center as trained by and in coordination with the administrative center, utilizing the collection protocol approved by the oversight committee.

~~[D.]~~ E. DNA sample collection kits and information on the collection, storage, and transfer of samples shall be provided at no cost by the administrative center.

~~[E.]~~ E. The routine method of sample collection shall be by buccal cell ~~[swabbing and transfer to a FTA collection card]~~ collection using the standardized sample collection kit as supplied by the administrative center. In non-routine circumstances, including a refusal by an arrestee or a covered offender, the collection shall, pursuant to Section 29-16-9 NMSA 1978:

(1) be referred to the administrative center;

(2) require a written consent or court order;

(3) consist of an appropriate, alternative sample type as designated by the administrative center or the court; and

(4) shall be collected ~~[and coordinated by trained persons designated]~~ by members of the administrative center [pursuant to Sections 29-16-3.K and 29-16-9 NMSA 1978.]; or

(5) by persons trained in the collection of the designated alternative sample type in coordination with, and as designated by, the administrative center.

~~[F.]~~ G. In the case of an arrestee who refuses to provide a DNA sample to jail or detention facility personnel upon booking as required by Subsection A of 29-3-10 NMSA 1978, the jail or detention facility personnel shall immediately document the refusal and shall immediately report the refusal to the office of the district attorney for the county where the arrest took place.

H. The determination of a persons eligibility for DNA sample collection as a qualifying arrestee or as a covered offender shall be the responsibility of the authorized collector designated in Subsection A or D of 10.14.200.8 NMAC. The determination of a person’s eligibility shall be based upon the statutory requirements for the specific collection.

I. Questions on supplies, collection[;] or packaging[;] should be directed to the administrative center.

[3/1/1998, A, 4/30/99; 10.14.200.8 NMAC - Rn, 10 NMAC 14.200.8, 5/1/2000; A, 7/1/2003; A, 7/1/2005; A, 12/29/2006]

10.14.200.9 HANDLING AND SECURITY OF SAMPLES:

A. DNA records and samples are confidential and shall not be disclosed except as authorized by the DNA oversight committee and as governed by the

DNA Identification Act.

B. All files, computer, and sample storage systems maintained by the administrative center pursuant to the DNA Identification Act shall be secured. ~~[Computers which contain personal identifying information shall be of the stand-alone variety as defined in Subsection Y of 10.14.200.7 NMAC.]~~ Access shall be limited to employees of the administrative center as authorized by the head of the administrative center pursuant to and directed by the official functions and duties stated in ~~[Section 29-16-4.B.1]~~ Paragraph (1) of Subsection B of 29-16-4 NMSA 1978, and as provided by Subparagraph (e) of Paragraph (6) of Subsection B of 29-16-4 and Subsection C of 29-16-8 NMSA 1978 and to technical repair personnel as required to maintain the system as authorized by the head of the administrative center.

C. Both state and national database searches shall be performed via secured computer systems.

D. Any person who willfully discloses, seeks to obtain or use information from the DNA identification system for purposes not authorized in these rules and in violation of Section 29-16-12 NMSA 1978 shall be subject to the penalties thereof.

E. All samples received by the administrative center for DNA analysis shall be considered potentially bio-hazardous. Universal safety precaution procedures shall be followed when handling biological samples.

F. ~~[These samples]~~ Samples shall be handled, examined, and processed one at a time to avoid possible cross-contamination from another ~~[biological]~~ sample or from the examiner.

G. All sample collection kits shall be received in a sealed condition. If the kit is not sealed upon receipt~~[-, it shall be documented and the head of the administrative center shall be notified. The]~~ the sample shall be rejected and a request for a new sample shall be made by the head of the administrative center.

H. If the documentation or certification sections are not filled out, it shall be documented and the head of the administrative center shall be notified. The decision as to whether to accept the sample or request a new sample shall be made by the head of the administrative center. ~~[The decision and the justification for that decision shall be documented.]~~

I. The FTA card envelope shall be opened to examine the FTA collection card. The person’s name on the card shall be verified with the person’s name on the subject information section of the sample collection kit. If the names do not match, the head of the administrative center

shall be notified and shall reject the sample unless the identification of the donor can be verified through fingerprint comparison.

J. Each sample shall receive a unique identifying NMDIS database number that does not include any personal identification information. The database number shall be placed on the ~~front of the~~ sample collection kit and on the FTA card.

K. The FTA card shall be returned to the FTA card envelope ~~affixed to the inside of the kit~~ and placed into secured storage until processed for analysis. [3/1/1998; 10.14.200.9 NMAC - Rn & A, 10 NMAC 14.200.9, 5/1/2000; A, 7/1/2003; A, 7/1/2005; A, 12/29/2006]

10.14.200.10 SAMPLE PROCESSING AND ANALYSIS:

A. All samples received by the administrative center for DNA analysis should be considered potentially bio-hazardous. Universal safety precaution procedures shall be followed when handling biological samples.

B. The mechanism of sample collection authorization for samples collected pursuant to ~~Section~~ Subsection B of 29-16-6 ~~(B)~~ NMSA 1978 shall be documented and a copy of that authorization maintained by the administrative center.

C. ~~These samples~~ Samples shall be handled, examined, and processed individually to avoid possible cross-contamination from another ~~biological~~ sample or from the examiner.

D. Samples tested shall follow DNA testing procedures approved by the administrative center. Remaining samples shall be returned to secured storage.

E. Five percent of all samples tested shall consist of samples with a known DNA profile and shall be presented to the analyzing laboratory in a "blind" fashion to ensure proficiency and to act as a quality assurance measure. Results of these analyses are to be evaluated with the corresponding offender or arrestee samples. Should any resultant "blind" sample's DNA profile not match the expected known result for that sample, an error rate is to be calculated by the administrative center and be presented to the analyzing laboratory and to the oversight committee.

~~E.~~ **E.** The genetic markers analyzed shall consist of those contained in commercial analysis kits approved by the DNA oversight committee and approved by the board of the national DNA index system, having been selected for identification and statistical purposes only.

~~F.~~ **G.** Excess extracted or amplified arrestee and offender DNA shall be destroyed within thirty (30) days after completion of analysis.

~~G.~~ **H.** Excess DNA collected or extracted pursuant to ~~Section~~ Subsection C of 29.16.2 ~~(C)~~ NMSA 1978 shall be retained by the administrative center, the analyzing laboratory or the submitting agency at the discretion of the submitting agency. Excess amplified DNA generated pursuant to ~~Section~~ Subsection C of 29.16.2 ~~(C)~~ NMSA 1978 shall be destroyed within thirty (30) days after completion of analysis.

~~H.~~ **L.** No written ~~reports~~ letters of notification shall be released on any specific DNA sample except as authorized by the DNA Identification Act and these rules.

[3/1/1998; 10.14.200.10 NMAC - Rn & A, 10 NMAC 14.200.10, 5/1/2000; A, 7/1/2003; A, 7/1/2005; A, 12/29/2006]

10.14.200.11 ACCESS TO DNA SAMPLE INFORMATION, RECORDS AND SAMPLES:

A. Access to or disclosure of DNA records and samples collected shall be authorized only in the following circumstances:

(1) when used as statistical or research information, and only when all personal identification is removed; or^[7]

(2) for identification, comparison, and investigative purposes, to local, state, and federal law enforcement agencies and the state medical investigator in response to official inquiries as authorized by Section^[s] 29-16-2 ~~(NMSA 1978)~~ and Subsection B of 29-16-8 ~~(B)~~ NMSA 1978 and these rules; or^[7]

(3) in order to minimize duplicate sample collection and testing to local, state and federal law enforcement agencies, the corrections department, jails and detention facilities as provided by Subparagraph (e) of Paragraph (6) of Subsection B of 29-16-4 and Subsection C of 29-16-8 NMSA 1978; or^[7]

~~(3)~~ (4) pursuant to court order.

B. Access to the DNA identification system shall be consistent with the DNA identification act and only by:

(1) authorized law enforcement agencies and the state medical investigator ~~shall be~~ through their servicing forensic DNA laboratory or by direct written request to the head of the administrative center; or

(2) authorized law enforcement agencies, the corrections department, jail and detention facilities through secure electronic methods established by the administrative center.

C. DNA records and samples.

(1) All requests for information on DNA records or requests for DNA samples, other than those intended to minimize duplicate sample collection and testing or

accessed through the secure electronic methods established by the administrative center, shall be submitted in writing to the administrative center.

(2) The head of the administrative center shall verify the validity of all written requests prior to releasing any DNA related information or ~~(DNA)~~ samples pursuant to the DNA Identification Act.

(3) A copy of the request and resulting action shall be placed with the original sample records.

(4) A separate file shall be established where copies of all requests and resulting actions shall be kept.

D. DNA database searches.

(1) All requests for searches of or through the administrative center DNA database computers, other than those intended to minimize duplicate sample collection and testing or accessed through the secure electronic methods established by the administrative center, shall be submitted in writing to the administrative center.

(2) The head of the administrative center shall verify the validity of all written requests pursuant to the DNA Identification Act, prior to initiating any database searches or releasing information from such searches and shall reject inappropriate or invalid requests. ~~[Such decisions may be appealed to the DNA oversight committee.]~~

(3) A copy of the request and resulting action shall be placed with the original sample records.

(4) A separate file shall be established where copies of all requests and resulting action shall be kept.

E. Database hits.

(1) If a DNA [sample] profile [hit] match should occur against the DNA profile from an unknown forensic sample, an unidentified person or unidentified human remains, a reanalysis of the stored DNA sample shall be performed, if possible, to verify the generated profile.

(2) A written ~~report~~ letter of notification indicating the ~~[match] hit~~ shall be forwarded to the requesting agency through their servicing laboratory or directly by the head of the administrative center. Release of personal identifying information shall be made only after compliance with Subsection ~~(C)~~ D of 10.14.200.11 NMAC.

(3) Should a profile match not be confirmed ~~[or if a hit does not occur],~~ a written ~~report~~ letter of notification to that effect shall be forwarded to the requesting agency through their servicing laboratory or directly by the head of the administrative center.

(4) All written ~~reports~~ letters of notification that possess an original signature shall be kept by the administrative center. Copies of ~~reports~~ letters of notification that possess an original signature will be

distributed as deemed appropriate by the head of the administrative center. As required, a certified copy of a ~~[report]~~ letter of notification that possesses an original signature will be distributed as deemed appropriate by the head of the administrative center.

F. Only DNA records that directly relate to the identification characteristics of individuals shall be collected and stored in the ~~[state]~~ DNA identification system database. The information contained in the DNA identification system database shall not be collected, stored, or released for the purpose of obtaining information about physical characteristics, traits, or predisposition for a disease or mental illness or behavior and shall not serve any purpose other than those specifically allowed by the DNA Identification Act.

G. CODIS.

(1) ~~[Upon the initiation of CODIS, the]~~ The administrative center will contribute data obtained from the DNA identification system to CODIS.

(2) The information maintained and accessed by CODIS shall adhere to the procedures, rules and regulations established by the board of the national DNA index system and the FBI for CODIS access.

(3) Both state and national CODIS searches shall be performed via secured computer systems.

[3/1/1998; 10.14.200.11 NMAC - Rn & A, 10 NMAC 14.200.11, 5/1/2000; A, 1/23/2002; A, 7/1/2003; A, 7/1/2005; A, 12/29/2006]

10.14.200.12 EXPUNGEMENT OF INFORMATION:

A. A person may request expungement of his arrestee or offender DNA sample and DNA records from the DNA identification system on the following grounds:

(1) that the conviction that led to the inclusion of ~~[his]~~ the offender DNA sample and DNA records in the DNA identification system has been reversed; or

(2) that the arrest that led to the inclusion of the arrestee DNA sample and DNA records in the DNA identification system has resulted in a felony or misdemeanor charge that has been resolved by a dismissal with or without prejudice, nolle prosequi, the successful completion of a pre-prosecution diversion program or a conditional discharge, misdemeanor conviction or acquittal; or

(3) that the arrest that led to the inclusion of the arrestee DNA sample and DNA records did not result in a felony charge being filed within one year of the date of arrest.

B. The head of the admin-

istrative center shall expunge a person's arrestee or offender DNA sample and DNA records from the DNA identification system when the person provides the administrative center with the following materials:

(1) ~~[A]~~ a written request for expungement of ~~[his]~~ the sample and DNA records[-]; and

(2) ~~[A]~~ for offender samples and DNA records, a certified copy of a court order or mandate that reverses the conviction that led to the inclusion of ~~[their]~~ the sample and DNA records in the DNA identification system; or

(3) for arrestee samples and DNA records, a certified copy of the dismissal with or without prejudice, nolle prosequi, conditional discharge, misdemeanor conviction or acquittal or, documentation certifying the successful completion of a pre-prosecution diversion program or, a sworn affidavit that the arrest that led to the inclusion of the sample has not resulted in a felony charge being filed within one year of the date of arrest.

C. Before expungement of an arrestee or offender DNA sample[-] the administrative center shall, within thirty (30) days of the receipt of the request for expungement, request that an independent review of the ~~[court order shall]~~ submitted materials be conducted by the attorney general's office. The attorney general shall confirm or reject the expungement request, or request a reasonable extension of time for the review of the request from the administrative center, in writing within ~~[thirty (30)]~~ forty five (45) days from the receipt of the ~~[written]~~ request for review by the attorney general's office. If no action is taken and there is no request for an extension of the review by the attorney general after ~~[thirty (30)]~~ forty five (45) days from the receipt of the request for review, expungement shall automatically occur.

D. A person may request expungement of his DNA sample and DNA records from the missing persons DNA identification system at any time.

E. The head of the administrative center shall expunge a person's sample and DNA records from the missing persons DNA identification system when the person provides the administrative center with the following materials.

(1) A written request for expungement of his sample and DNA records.

(2) A certified copy of a court order overturning any original search warrant or court order that led to the inclusion of his sample and DNA records in the missing persons DNA identification system, if applicable.

F. Before expungement of a DNA sample collected for the missing persons DNA identification system, a

review of the mechanism of sample collection authorization shall be conducted by the administrative center. The administrative center shall confirm or reject the expungement request in writing within thirty (30) business days from the receipt of the written request by the administrative center.

G. Requests for a review extension and the rejection of requests for expungement shall not be made without cause.

H. Should a request for expungement be rejected, the written notification shall include information as to the reason for rejection and that the rejection may be appealed to the oversight committee.

I. The administrative center shall not expunge a person's sample or DNA records from the DNA identification system if the person has a prior felony conviction or a pending felony charge for which collection of a sample is authorized pursuant to the provisions of the DNA Identification Act.

~~[H]~~ **J.** When a person's sample and DNA records are expunged from the DNA identification system, the head of the administrative ~~[center]~~ center shall ensure that the person's sample and DNA records are expunged from CODIS within ~~[sixty (60)]~~ thirty (30) days after confirmation of the expungement request.

~~[J]~~ **K.** Written confirmation of expungement shall be sent to the requesting party and a record of the confirmation as well as all expungement related correspondence and checklists shall be securely kept solely by the head of the administrative center.

L. Expungement related confirmation, correspondence and checklists shall not list any results of DNA testing or the NMDIS database number and if such items do contain these identifiers the identifiers shall be obliterated.

M. All items kept pursuant to Subsection K of 10.14.200.12 NMAC shall be destroyed not less than six months, nor greater than seven months, from the date of the expungement confirmation being sent to the requesting party.

N. For purposes of this section, expungement means the complete destruction of all samples, records, personal identification and information concerning that person.

[3/1/1998; 10.14.200.12 NMAC - Rn, 10 NMAC 14.200.12, 5/1/2000; A, 7/1/2003; A, 12/29/2006]

10.14.200.13 [RESERVED] OPERATION AND OVERSIGHT OF THE ADMINISTRATIVE CENTER:

A. The joint powers agreement required in Section 29-16-4

NMSA 1978 shall:

(1) provide for the general terms of the operation and administration of the administrative center; and

(2) define the relationship between the department of public safety and the law enforcement agency or unit that administers and operates the DNA identification system; and

(3) be read and interpreted consistent with the provisions of these rules and the DNA Identification Act.

B. Personnel staffing.

(1) Staffing for the administrative center, to include the head of the administrative center, shall be selected by the law enforcement agency or unit that administers and operates the DNA identification system following the agency or unit's standard hiring policies.

(2) In the event of a vacancy of the position held by the head of the administrative center, the law enforcement agency or unit that administers and operates the DNA identification system shall notify the oversight committee chairperson of the vacancy and coordinate the inclusion of one or more oversight committee members for the selection interviews.

(3) The head of the administrative center shall meet or exceed the educational and experience requirements of a technical leader or a CODIS administrator as required by the FBI's quality assurance standards.

(4) All analysts shall meet or exceed the educational and experience requirements of an analyst as required by the FBI's quality assurance standards.

C. Funding of positions.

(1) All positions funded by the DNA identification system shall be for the execution of the duties listed in Subsection B of 29-16-4 NMSA 1978 and for the benefit of the DNA identification system.

(2) The creation of any full-time or permanent, DNA identification system funded staff positions by the law enforcement agency or unit that administers and operates the DNA identification system shall be approved by the oversight committee prior to the hiring process.

(3) The utilization of part-time or temporary, DNA identification system funded staff positions shall be at the discretion of the head of the administrative center, however any such positions shall be limited in duration and maintained only for such time as their specific need exists.

D. Authority of the head of the administrative center.

(1) The head of the administrative center is authorized to make all reasonable administrative decisions as are required to comply with the duties listed in Subsection B of 29-16-4 NMSA 1978, these rules, the operational procedures of the board of the national DNA index system and the FBI's

quality assurance standards.

(2) The head of the administrative center shall abide by all decisions of the oversight committee.

E. General strategic plan.

(1) The head of the administrative center shall present a general strategic plan to the oversight committee in the first quarter of each calendar year, for approval by the committee.

(2) Should significant changes to the strategic plan, the operations or processes of the administrative center be necessary during the interim period, those changes shall require the prior approval of the oversight committee.

F. Authority of the administrative center over forensic laboratories with respect to their participation in CODIS.

(1) The administrative center shall have "stop work" authority over forensic laboratories. This authority shall not be exercised without cause.

(2) Forensic laboratories shall utilize and provide any documents as designed by, or otherwise required by, the administrative center.

(3) Forensic laboratories shall abide by all policies and procedures established by the administrative center.

(4) Forensic laboratories shall abide by all federal and New Mexico laws, rules and standards as shall be enacted.

[3/1/1998; 10.14.200.13 NMAC - Rn, 10 NMAC 14.200.13, 5/1/2000; A, 12/29/2006]

10.14.200.16 MISCELLANEOUS PROVISIONS:

A. Savings Clause. These rules shall be read and interpreted consistent with the provisions of the DNA Identification Act. If a topic is not addressed in these rules [and regulations], reference shall be made to the DNA Identification Act.

B. Annual Review. [The] These rules shall be reviewed on, at least, an annual basis by the DNA oversight committee.

C. Purpose and Intent. The purpose and intent of these rules is to fully implement the provisions of Sections 29-3-10, 29-16-1 et seq. and 29-11A-1 et seq. NMSA 1978. These rules are governed by the Uniform Statute and Rule Construction Act, Section 12-2A-1 et seq. NMSA 1978. These rules rely on the primary text of each statute and the common and technical use of the language in each statute.

D. Spokesperson. The chairperson of the DNA oversight committee, or designee, shall be empowered to act as the official spokesperson on behalf of the DNA oversight committee and the administrative center.

[3/1/1998; 10.14.200.16 NMAC - Rn, 10 NMAC 14.200.16, 5/1/2000; A, 7/1/2003; A, 12/29/2006]

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

This is an amendment to 19.21.2 NMAC Sections 1, 3, 5, 6, 7, 9, 10, 11, 12, 13, 14, and 15 and has also been renumbered and reformatted from 19 NMAC 21.2, "Endangered Species List and Collection Permits" (filed 08/17/95) to 19.21.2 NMAC, "Endangered Species List and Collection Permits", effective 11/30/06.)

19.21.2.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Forestry [~~and Resources Conservation~~] Division.

[10/29/85, 12/23/91, 8/31/95; 19.21.2.1 NMAC - Rn & A, 19 NMAC 21.2.1, 11/30/06]

19.21.2.3 STATUTORY AUTHORITY: Section 75-6-1 NMSA 1978 directs the energy, minerals and natural resources department (department) to investigate all plant species in the state for the purpose of establishing a list of endangered plant species. It also authorizes the department to prohibit the taking of endangered species, with the exception of permitted scientific collections or propagation and transplantation activities that enhance the survival of endangered species. The forestry [~~and resources conservation~~] division (state forester) is the department secretary's designated representative [~~of the department secretary~~] for the purposes of endangered plant investigations and for issuing collection and transplantation permits.

[10/29/85, 12/23/91, 8/31/95; 19.21.2.3 NMAC - Rn & A, 19 NMAC 21.2.3, 11/30/06]

19.21.2.5 EFFECTIVE DATE: August 31, 1995, unless a later date is cited at the end of a section.

[10/29/85, 12/23/91, 8/31/95; 19.21.2.5 NMAC - Rn & A, 19 NMAC 21.2.5, 11/30/06]

19.21.2.6 OBJECTIVE: Native plant resources contribute to the economic, ecological, and aesthetic well-being of New Mexico citizens. [~~The objective of Part 1 of Chapter 21~~] This part's objective is to prevent the extinction or extirpation of native plant species in the state of New Mexico. It establishes the criteria for the recognition of endangered plant species and a list of plant

species perceived, by the department, to be endangered within the state. This part also prescribes rules and permitting requirements for taking endangered plants during scientific investigations or propagation and transplantation activities that enhance survival. [8/31/95; 19.21.2.6 NMAC - Rn & A, 19 NMAC 21.2.6, 11/30/06]

19.21.2.7 DEFINITIONS:

- A. "Population site" means an area of occurrence of a particular species.
- B. "Specimen" means the physical parts or a plant in its entirety, taken from a population site for the purpose of scientific study.
- C. "Taking" means the removal, with the intent to possess, transport, export, sell, or offer for sale any of the plants listed in [Section 9 of this Part] 19.21.2.9 NMAC, from the places in the state of New Mexico where they naturally grow.
- D. "Voucher specimen" means an identifiable and representative specimen taken by a botanical collector from a population site for the purpose of documenting that site as occupied habitat. It should be accompanied by pertinent information on location, habitat, collector, date taken, and any other notes the collector can present concerning the population site. [10/29/85, 12/23/91, 8/31/95; 19.21.2.7 NMAC - Rn & A, 19 NMAC 21.2.7, 11/30/06]

19.21.2.9 LIST OF NEW MEXICO STATE ENDANGERED PLANT SPECIES: The following list of plants constitutes the New Mexico state endangered plant species list. Listed are the plant's scientific name, its common name, and the criterion for inclusion by the [paragraph numbers in Section 8] subsection in 19.21.2.8 NMAC:

<u>Aliciella formosa (Aztec gilia)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
Allium [goodingii] <u>gooddingii</u> ([Gooding's] <u>Goodding's</u> onion)	Subsection B of 19.21.2.8 NMAC
Amsonia tharpii (Tharp's bluestar)	Subsection B of 19.21.2.8 NMAC
Argemone pleiacantha subsp. pinn atisecta (Sacramento prickle -poppy)	Subsection A of 19.21.2.8 NMAC
Astragalus humillimus (Mancos milkvetch)	Subsection A of 19.21.2.8 NMAC
[Peniocereus greggi] <u>Peniocereus greggii</u> (night-blooming [Cereus] <u>cereus</u>)	Subsection B of 19.21.2.8 NMAC
Cirsium v inaceum (Sacramento Mountain <u>s</u> thistle)	Subsection A of 19.21.2.8 NMAC
<u>Cirsium wrightii</u> (Wright's marsh thistle)	<u>Subsection B of 19.21.2.8 NMAC</u>
Cleome multicaulis (slender spiderflower)	Subsection B of 19.21.2.8 NMAC
Coryphantha scheeri var. scheeri ([Scheeri's] <u>Scheer's</u> pincushion cactus)	Subsection B of 19.21.2.8 NMAC
[Coryphantha scheeri var. uncinata (Scheer's Hook - spine Cactus)]	Subsection B of 19.21.2.8 NMAC
<u>Cylindropuntia viridiflora (Santa Fe cholla)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
[Cyrtopodium calceolus] <u>Cyrtopodium parviflorum</u> var. pubescens (golden lady's slipper)	Subsection B of 19.21.2.8 NMAC
Echinocereus fendleri var. kuenzleri (Kuenzler's hedgehog cactus)	Subsection A of 19.21.2.8 NMAC
[Echinocereus lloydii (Lloyd's Hedgehog Cactus)]	[Subsection A of 19.21.2.8 NMAC]
Erigeron hessii (Hess' fleabane)	Subsection B of 19.21.2.8 NMAC
Erigeron rhizomatus (Zuni fleabane)	Subsection A of 19.21.2.8 NMAC
Eriogonum gypsophilum (gypsum wild buckwheat)	Subsection A of 19.21.2.8 NMAC
Escobaria dunc anii (Duncan's pincushion cactus)	Subsection B of 19.21.2.8 NMAC
Escobaria organensis (Organ Mountain pincushion cactus)	Subsection B of 19.21.2.8 NMAC
Escobaria sneedii var. leei (Lee's pincushion cactus)]	Subsection A of 19.21.2.8 NMAC
Escobaria sneed ii var. sneedii (Sneed's pincushion cactus)	Subsection A of 19.21.2.8 NMAC
Escobaria villardii (Villard's pincushion cactus)	Subsection B of 19.21.2.8 NMAC
[Gilia Formosa (Aztec Gilia)]	Subsection B of 19.21.2.8 NMAC
Hedeoma todsenii (Todsens pennyroya l)	Subsection A of 19.21.2.8 NMAC
Helianthus paradoxus ([Puzzle] <u>Pecos</u> sunflower)	Subsection [B]A of 19.21.2.8 NMAC
Hexalectris nitida (shining coralroot)	Subsection B of 19.21.2.8 NMAC
Hexalectris spicata (crested coralroot)	Subsection B of 19.21.2.8 N MAC
Ipomopsis sancti -spiritus (Holy Ghost ipomopsis)	Subsection A of 19.21.2.8 NMAC
Lepidospartum burgessii (gypsum scalebroom)	Subsection B of 19.21.2.8 NMAC
Lilium philadelphicum (wood lily)	Subsection B of 19.21.2.8 NMAC
Mammillaria wrightii var. wi lcoxii (Wilcox pincushion cactus)	Subsection B of 19.21.2.8 NMAC
Opuntia arenaria (sand prickly pear)	Subsection B of 19.21.2.8 NMAC
[Opuntia viridiflora (Green -flowered Cholla)]	Subsection B of 19.21.2.8 NMAC
Pediocactus knowltonii (Knowlton's cactus)	Subsection A of 19.21.2.8 NMAC
<u>Pediomelum pentaphyllum (Chihuahua scurfpea)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
Polygala rimulicola var. mescalerorum (San Andres milkwort)	Subsection B of 19.21.2.8 NMAC
Puccinellia parishii (Parish's alkali grass)	Subsection B of 19.21.2.8 NMAC
Sclerocactus cloveriae subsp. brackii (Brack's cactus)	Subsection B of 19.21.2.8 NMAC
Sclerocactus mesae -verdae (Mesa Verde cactus)	Subsection A of 19.21.2.8 NMAC
Spiranthes magnicamporum (lady tresses orchid)	Subsection B of 19.21 .2.8 NMAC

[10/29/85, 12/23/91, 8/31/95; 19.21.2.9 NMAC - Rn & A, 19 NMAC 21.2.9, 11/30/06]

19.21.2.10 PERMITS:

- A. [~~Permits~~] The state forester may issue permits to take state endangered plant species[~~may be issued by the state forester~~]

for the purpose of conducting scientific studies that enhance understanding for the distribution of, or conditions required for survival of, endangered plant species; or for propagation or transplantation activities that enhance the survival of endangered plant species.

B. ~~[Permits will only be issued]~~ The state forester shall only issue permits to individuals. No one may operate under the authority of another's permit.

C. Each person applying for a permit must demonstrate sufficient expertise to carry out the permitted activities in a competent manner. The following information may be used to support the request for a permit: education in botany or related area, field experience, collection numbers, accessions into a recognized herbarium, publications, and recommendations from recognized authorities.

D. The permittee's signature on the permit will acknowledge willingness to comply with all applicable laws, regulations, and permit conditions.

E. ~~[A]~~ The permittee shall carry a copy of the permit ~~[must be carried by the permittee]~~ at all times during the collection and transportation of endangered species.

F. A permit does not give the bearer authority to take federally threatened or endangered plants. Taking of these species also requires a federal permit issued by the U.S. fish and wildlife service.

G. A permit does not extend to the permittee the privilege to trespass or enter on lands without the owner's permission ~~[of the owner]~~. The permittee should contact the appropriate management agency or landowner before beginning studies or taking specimens on federal, state, or private lands.

H. A state permit to take, propagate, or transplant the endangered plant species listed in ~~[Section 9 of this Part]~~ 19.21.2.9 NMAC is not required for federal employees working within the lands of their jurisdiction, nor for activities within tribal reservations.

[10/29/85, 12/23/91, 8/31/95; 19.21.2.10 NMAC - Rn & A, 19 NMAC 21.2.10, 11/30/06]

19.21.2.11 SCIENTIFIC INVESTIGATIONS:

A. ~~[A]~~ The state forester may issue a permit to take endangered plants for scientific studies ~~[may be issued]~~ if the studies will generate new knowledge in the genetic, anatomical, chemical, morphological, life history, or in other relevant areas of research enhancing the understanding of the conditions required for the survival of the endangered species.

B. Known population sites will be provided with the permit when the

permittee requires them for the permitted study. The permit will contain any special parameters for the taking.

C. ~~If [specimens are taken] the permittee takes any specimens, the permittee shall deposit~~ at least one voucher specimen ~~[shall be deposited]~~ at either the university of New Mexico herbarium or New Mexico state university herbarium.

D. When possible, the investigator shall take specimens in such a way as to not reduce the population (e.g. take a single stem from an herbaceous perennial, leaving the root intact, or other methods appropriate to the particular species).

E. ~~[Taking may be prohibited]~~ The state forester may prohibit taking in some known locations where survival is especially precarious.

[10/29/85, 12/23/91, 8/31/95; 19.21.2.11 NMAC - Rn & A, 19 NMAC 21.2.11, 11/30/06]

19.21.2.12 VOUCHER SPECIMENS:

A. ~~[A]~~ The state forester may issue a permit to take endangered plant voucher specimens during botanical inventories and environmental surveys ~~[may be issued]~~ for the purposes of species verification and documentation of population sites.

B. Taking specimens for the sole purpose of exchange with other herbaria is prohibited.

C. The collection of voucher specimens shall make no long-term detrimental effect on the population. ~~[A]~~ The permittee may take a maximum of three specimens ~~[may be taken]~~, if the population is sufficient. If the population is very small and the taking of a single individual is detrimental, then the permittee may take only a fragment of an individual for voucher purposes ~~[may be taken]~~.

D. ~~[A]~~ The permittee shall deposit at least one specimen of the three taken from each locality ~~[shall be deposited]~~ at the university of New Mexico herbarium or New Mexico state university herbarium.

~~[Duplicates may be sent]~~ The permittee may send duplicates to the western New Mexico university herbarium, government agency collections within New Mexico, or herbaria in other states that are formally listed in index herbariorum. The label affixed to each specimen ~~[will]~~ shall contain information on collection location, description of the habitat, collector's name, date of collection, and estimated size of the population.

E. To assist in the identification and preservation of endangered plant species in New Mexico, permittees shall report all permitted collections of voucher specimens ~~[shall be reported]~~ to the state forester by ~~[31]~~ December 31 of each year. The report shall contain the voucher speci-

men label information and the ~~[place(s)]~~ place or places of deposition of specimens. [10/29/85, 12/23/91, 8/31/95; 19.21.2.12 NMAC - Rn & A, 19 NMAC 21.2.12, 11/30/06]

19.21.2.13 PROPAGATION AND TRANSPLANTATION:

A. ~~[Permits]~~ The state forester may issue a permit to take endangered plants to propagate or transplant ~~[may be issued]~~ when evidence is presented that the activity will enhance ~~[the survival capability of that particular species]~~ that particular species' survival capability.

B. ~~[Permits]~~ The state forester may issue a permit to transplant endangered species (not including federally listed taxa) ~~[may be issued]~~ when such species occur on areas of land use conversion.

C. ~~[Permits]~~ The state forester may issue a permit for transplantation ~~[will be issued by the state forester]~~ upon approval of a proposal ~~[submitted by the applicant]~~ the applicant submits outlining the need for such transplantation, the method to be employed, the site to which the plants will be taken for transplantation, and the qualifications of the person carrying out the transplantation.

[10/29/85, 12/23/91, 8/31/95; 19.21.2.13 NMAC - Rn & A, 19 NMAC 21.2.13, 11/30/06]

19.21.2.14 PERMIT REVOCATION:

Prohibited activities that shall render a collection permit invalid and may cause the permittee to be subject to prosecution under applicable federal and state laws include: taking of specimens of endangered plant species outside the scope of the permit's provisions ~~[of the permit]~~, failure to deposit a voucher specimen in a designated New Mexico herbarium, taking specimens under permit for commercial use, providing false information on the permit application, or allowing ~~[use of the permit by someone else]~~ someone else to use the permit.

[10/29/85, 8/31/95; 19.21.2.14 NMAC - Rn & A, 19 NMAC 21.2.14, 11/30/06]

19.21.2.15 PROTECTION AND PENALTIES:

A. The taking of plants listed in ~~[Section 9 of this Part]~~ 19.21.2.9 NMAC, other than taking under valid permit issued by the state forester, is hereby prohibited.

B. Pursuant to Section 75-6-1 NMSA 1978, violation of ~~[this Part]~~ 19.21.2 NMAC is a misdemeanor punishable by a fine of not less than ~~[three hundred dollars (\$300)]~~ \$300.00, nor more than ~~[one thousand dollars (\$1,000)]~~ \$1000.00 or imprisonment for a term of not more than

~~[one hundred twenty (120)]~~ 120 days or both.

C. Any law enforcement officer may seize any plants taken, transported, exported, processed, sold, or offered for sale or shipped in violation of 19.21.2 NMAC.

[10/29/85, 12/23/91, 8/31/95; 19.21.2.15 NMAC - Rn & A, 19 NMAC 21.2.15, 11/30/06]

NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.100.4 NMAC, Sections 1, 2, 3, 5, 6, 8 and 9, effective 11/30/06. This rule was also renumbered and formatted to comply with current NMAC requirements.

5.100.4.1 ISSUING AGENCY:

~~[Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico 87501, Telephone: 505/827-7383] New Mexico Higher Education Department.~~
[9/30/96; 5.100.4.1 NMAC - Rn & A, 5 NMAC 100.4.1, 11/30/06]

5.100.4.2 SCOPE:

Provisions of Part 4 of Chapter 100 outline the requirements for membership to and responsibilities of the advisory ~~[council]~~ committee.
[9/30/96; 5.100.4.2 NMAC - Rn & A, 5 NMAC 100.4.2, 11/30/06]

5.100.4.3 STATUTORY AUTHORITY:

The Post-Secondary Educational Institution Act (~~[Section 21-23-6C NMSA 1978]~~ Section 21-23-6.2 (9) NMSA 1978) authorizes the ~~[New Mexico commission on higher education ("commission")]~~ New Mexico higher education department ("department") to establish and maintain an advisory ~~[council for proprietary]~~ committee for private post-secondary education.
[2/27/85; 6/29/92; 5.100.4.3 NMAC - Rn & A, 5 NMAC 100.4.3, 11/30/06]

5.100.4.5 EFFECTIVE DATE:

June 29, 1992, unless a later date is cited at the end of the section ~~[or paragraph]~~.
[9/30/96; 5.100.4.5 NMAC - Rn & A, 5 NMAC 100.4.5, 11/30/06]

5.100.4.6 OBJECTIVE:

A. Responsibilities: The advisory ~~[council for proprietary education ("council")]~~ committee for private post-secondary education ("committee") shall advise the ~~[commission on higher education ("commission")]~~ department in administering state or federal law, rules, and regulations governing private, ~~[proprietary]~~ post-

secondary institutions operating in the state of New Mexico.

B. General principles to guide the advisory ~~[council]~~ committee.

(1) The ~~[council]~~ committee shall advise the ~~[commission]~~ department regarding the adequacy of and changes needed in law, rule, regulation, or administrative procedures pertaining to the operation of ~~[proprietary]~~ private post-secondary institutions providing educational programs within the state of New Mexico or having paid representatives in the state of New Mexico.

(2) The ~~[council]~~ committee shall assist staff of the ~~[commission]~~ department in reviewing ~~[proprietary]~~ private post-secondary institutions applying for permission to operate or continue operation in the state of New Mexico and in assuring that these institutions maintain high quality programs and operations.

(3) The ~~[council]~~ committee shall report to the ~~[commission]~~ department at least once each year regarding the status of ~~[proprietary]~~ private post-secondary education in the state of New Mexico and any recommendations for improving the quality and operation of ~~[proprietary]~~ private post-secondary institutions.
[2/27/85; 6/29/92; 5.100.4.6 NMAC - Rn & A, 5 NMAC 100.4.6, 11/30/06]

5.100.4.8 MEMBERSHIP:

A. The ~~[council]~~ committee shall be composed of ~~[eight]~~ members appointed by the ~~[commission]~~ department and serving at the discretion of the ~~[commission]~~ department.

B. ~~[Six members]~~ Members shall be representatives of ~~[proprietary]~~ private post-secondary institutions, chosen to reflect the diversity of institutions operating within the state, including degree-granting and non-degree-granting institutions, accredited and non-accredited institutions, and primarily-academic and primarily-vocational institutions. ~~[Proprietary]~~ Private post-secondary institutions shall be consulted in selection of their representatives, however, appointment and service shall be at the discretion of the ~~[commission]~~ department.

C. No less than two members shall represent public interests. They shall be representative of the general public with particular interest in post-secondary education. Appointment and service shall be at the discretion of the ~~[commission]~~ department.

D. ~~[Council]~~ Committee members shall serve two year staggered terms or until their successors are appointed. A member may be reappointed for successive terms.

E. No institution shall have more than one representative among

the members of the ~~[council]~~ committee.

E. No institution that is designated in another state as an institution offering fraudulent or substandard education shall have a representative appointed to the committee.

[2/27/85; 6/29/92; 7/15/97; 5.100.4.8 NMAC - Rn & A, 5 NMAC 100.4.8, 11/30/06]

5.100.4.9 OPERATION:

A. Operation and work of the ~~[council]~~ committee shall be coordinated by staff of the ~~[commission]~~ department. The ~~[council]~~ committee shall organize itself as it deems appropriate, at a minimum designating a chairperson to collaborate with ~~[commission]~~ department staff in arranging meetings, other operations, and reports of the ~~[council]~~ committee.

B. The ~~[council]~~ committee may form ad hoc work groups composed of any persons it deems appropriate, to help fulfill its responsibilities.

C. The assistance of the ~~[council]~~ committee in reviewing ~~[proprietary]~~ private post-secondary institutions and/or in performing on-site visits shall be upon request of staff of the ~~[commission]~~ department.

D. The ~~[council]~~ committee may request of staff of the ~~[commission]~~ department a special review of any ~~[proprietary]~~ private post-secondary institution that the ~~[council]~~ committee believes may be operating at variance with laws, rules, or regulations governing ~~[proprietary]~~ private post-secondary institutions.

E. When assisting staff of the ~~[commission]~~ department in reviewing ~~[proprietary]~~ private post-secondary institutions, members of the ~~[council]~~ committee shall avoid involving themselves in actions in which they have a conflict of interest or that would otherwise have the appearance of impropriety. For example, a member representing a ~~[proprietary]~~ private post-secondary institution shall avoid participation in a review of or visit to an institution that is a direct competitor for students, defined as an institution offering a similar program of instruction within the same community.

[2/27/85; 6/29/92; 5.100.4.9 NMAC - Rn & A, 5 NMAC 100.4.9, 11/30/06]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

8 NMAC 4.PAC.400, Recipient Policies, filed 1-20-98 is repealed and replaced by 8.280.400 NMAC, Recipient Policies, effective 12-1-06. Also, 8 NMAC 4.PAC.000 will be repealed effective 12-1-06.

8 NMAC 4.PAC.500, Income and Resource Standards, filed 1-20-98 is repealed and replaced by 8.280.500 NMAC, Income and Resource Standards, effective 12-1-06.

8 NMAC 4.PAC.600, Benefit Description, filed 1-20-98 is repealed and replaced by 8.280.600 NMAC, Benefit Description, effective 12-1-06.

8.NMAC 4.MAD.777, Pre-PACE Pilot Project Services, filed 1-20-98 is repealed and replaced by 8.315.2 NMAC, Program of All-Inclusive Care for the Elderly (PACE), effective 12-1-06.

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 280 MEDICAID ELIGIBILITY - PROGRAM OF ALL INCLUSIVE CARE FOR THE ELDERLY (PACE)
PART 400 RECIPIENT POLICIES

8.280.400.1 ISSUING AGENCY: New Mexico Human Services Department. [8.280.400.1 NMAC - Rp, 8 NMAC 4.PAC.000.1, 12-1-06]

8.280.400.2 SCOPE: The rule applies to the general public. [8.280.400.2 NMAC - Rp, 8 NMAC 4.PAC.000.2, 12-1-06]

8.280.400.3 STATUTORY AUTHORITY: The New Mexico Medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 et seq. NMSA 1978 (Repl. Pamp. 1991). [8.280.400.3 NMAC - Rp, 8 NMAC 4.PAC.000.3, 12-1-06]

8.280.400.4 DURATION: Permanent [8.280.400.4 NMAC - Rp, 8 NMAC 4.PAC.000.4, 12-1-06]

8.280.400.5 EFFECTIVE DATE: December 1, 2006, unless a later date is cited at the end of a section. [8.280.400.5 NMAC - Rp, 8 NMAC 4.PAC.000.5, 12-1-06]

8.280.400.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the Medicaid program.

[8.280.400.6 NMAC - Rp, 8 NMAC 4.PAC.000.6, 12-1-06]

8.280.400.7 DEFINITIONS: [RESERVED]

8.280.400.8 [RESERVED]

8.280.400.9 PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE) - CATEGORIES 081, 083, AND 084: Certain populations meeting financial, non-financial, and medical criteria can receive acute and long-term care services in the community. These services are funded by Medicaid on a capitated basis. [8.280.400.9 NMAC - Rp, 8 NMAC 4.PAC.400, 12-1-06]

8.280.400.10 BASIS FOR DEFINING THE GROUP: Applicants/recipients must live in certain designated zip codes within New Mexico. A PACE recipient cannot concurrently receive other Medicaid home and community-based services. A PACE recipient may be placed in a qualifying nursing facility upon a medical doctor's orders and continue to participate in PACE. Upon disenrollment from PACE, a former PACE recipient may receive institutional care (IC) Medicaid services as long as the individual meets all IC Medicaid eligibility requirements. PACE recipients can concurrently receive QMB, SLIMB, or SSI. For PACE applicants/recipients who receive supplemental security income (SSI) benefits no further verification of income, resources, citizenship, age, disability, or blindness is required. [8.280.400.10 NMAC - Rp, 8 NMAC 4.PAC.402, 12-1-06]

8.280.400.11 SPECIAL RECIPIENT REQUIREMENTS: Applicants/recipients must be fifty-five (55) years of age or older. Applicants/recipients must be determined blind or disabled if under the age of 65 years.

A. To be considered blind, an applicant/recipient must have central visual acuity of 20/200 or less with corrective lenses or must be considered blind for practical purposes. To be considered disabled, an applicant/recipient must be unable to engage in any substantial gainful activity, because of any medical determinable physical, developmental, or mental impairment which has lasted, or is expected to last, for a continuous period of at least twelve (12) months. If a determination of blindness or disability has not been made, the income support division worker will submit medical reports to the disability determination unit.

B. Level of care requirements must be met in addition to all other requirements. An applicant/recipient must

be eligible for institutional (nursing home) level of care as determined by the state Medicaid agency. An institutional level of care must be recommended for the applicant/recipient by a physician licensed to practice medicine or osteopathy in the state of New Mexico. Institutions are defined as acute care hospitals, nursing facilities (either high NF or low NF) as defined by Medicaid regulations) and intermediate care facilities for the mentally retarded (ICF-MRs). Level of care determinations are performed by the medical assistance division (MAD) utilization review contractor. [8.280.400.11 NMAC - Rp, 8 NMAC 4.PAC.420, 12-1-06]

8.280.400.12 RECIPIENT RIGHTS AND RESPONSIBILITIES:

An applicant/recipient is responsible for establishing his eligibility for Medicaid. As part of this responsibility, the applicant/recipient must provide required information and documents or take the actions necessary to establish eligibility. Failure to do so must result in a decision that eligibility does not exist.

[8.280.400.12 NMAC - Rp, 8 NMAC 4.PAC.430, 12-1-06]

8.280.400.13 REPORTING REQUIREMENTS: A Medicaid applicant/recipient, PACE provider and/or any other responsible party must report any changes in circumstances which may affect the applicant/recipient's eligibility within ten (10) days of the date of the change to the county income support division (ISD) office. These changes include but are not limited to: changes in income, resources, living arrangements, marital status, non-receipt of services or PACE enrollment/disenrollment status. The income support division worker must evaluate the effect of the change and take any required action as soon as possible; however, the action must take effect no later than the end of the month following the month in which the change took place.

[8.280.400.13 NMAC - Rp, 8 NMAC 4.PAC.450, 12-1-06]

HISTORY OF 8.280.400 NMAC:

History of Repealed Material:

8 NMAC 4.PAC.400, Recipient Policies, filed 1-20-98 - Repealed effective 12-1-06.

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 280 MEDICAID ELIGIBILITY - PROGRAM OF ALL INCLUSIVE CARE FOR THE ELDERLY

**(PACE)
PART 500 INCOME AND
RESOURCE STANDARDS**

8.280.500.1 ISSUING AGENCY:
New Mexico Human Services Department.
[8.280.500.1 NMAC - Rp, 8 NMAC
4.PAC.000.1, 12-1-06]

8.280.500.2 SCOPE: The rule
applies to the general public.
[8.280.500.2 NMAC - Rp, 8 NMAC
4.PAC.000.2, 12-1-06]

**8.280.500.3 STATUTORY
AUTHORITY:** The New Mexico medi-
caid program is administered pursuant to
regulations promulgated by the federal
department of health and human services
under Title XIX of the Social Security Act,
as amended and by the state human serv-
ices department pursuant to state statute. See
Section 27-2-12 et seq. NMSA 1978 (Repl.
Pamp. 1991).

[8.280.500.3 NMAC - Rp, 8 NMAC
4.PAC.000.3, 12-1-06]

8.280.500.4 DURATION:
Permanent
[8.280.500.4 NMAC - Rp, 8 NMAC
4.PAC.000.4, 12-1-06]

8.280.500.5 EFFECTIVE DATE:
December 1, 2006, unless a later date is
cited at the end of a section.
[8.280.500.5 NMAC - Rp, 8 NMAC
4.PAC.000.5, 12-1-06]

8.280.500.6 OBJECTIVE: The
objective of these regulations is to provide
eligibility policy and procedures for the
medicaid program.
[8.280.500.6 NMAC - Rp, 8 NMAC
4.PAC.000.6, 12-1-06]

8.280.500.7 DEFINITIONS:
[RESERVED]

8.280.500.8 [RESERVED]

**8.280.500.9 NEED DETERMINA-
TION:** Eligibility for PACE is determined
prospectively. Applicants/recipients must
meet, or expect to meet, all financial eli-
gibility criteria in the month for which a
determination of eligibility is made. Ap-
plicants for and recipients of medicaid
through PACE must apply for, and take all
necessary steps to obtain, any income or
resources to which they may be entitled.
Such steps must be taken within thirty (30)
days of the date the human services depart-
ment (HSD) furnishes notice of the poten-
tial entitlement. Failure or refusal to apply
for and take all necessary steps to determine
eligibility for other benefits after notice is

received results in an applicant/recipient
becoming ineligible for medicaid.

A. Applicants/recipients
who have elected a lower VA payment do
not need to reapply for veteran's adminis-
tration improved pension (VAIP) benefits.

B. Crime victims are not
required to accept victim's compensation
payments from a state-administered fund as
a condition of medicaid eligibility.

[8.280.500.9 NMAC - Rp, 8 NMAC
4.PAC.500, 12-1-06]

**8.280.500.10 RESOURCE STAN-
DARDS:** See 8.281.500.10 NMAC and all
following subsections.

[8.280.500.10 NMAC - Rp, 8 NMAC
4.PAC.510, 12-1-06]

**8.280.500.11 APPLICABLE
RESOURCE STANDARDS:** An appli-
cant/recipient is eligible for medicaid on the
factor of resources if countable resources do
not exceed two thousand dollars (\$2,000).
See 8.281.500.11 NMAC.

[8.280.500.11 NMAC - Rp, 8 NMAC
4.PAC.511, 12-1-06]

**8.280.500.12 COUNTABLE
RESOURCES:** See 8.281.500.12 NMAC.
[8.280.500.12 NMAC - Rp, 8 NMAC
4.PAC.512, 12-1-06]

**8.280.500.13 RESOURCE
EXCLUSIONS:** See 8.281.500.13
NMAC.

[8.280.500.13 NMAC - Rp, 8 NMAC
4.PAC.513, 12-1-06]

**8.280.500.14 ASSET TRANS-
FERS:** See 8.281.500.14 NMAC for regu-
lations governing transfers of assets. All
provisions pertaining to transfers under
institutional care medicaid apply to trans-
fers under PACE with the exception of the
penalty for transfers without fair return.
The penalty for transfers of assets without
fair return for PACE applicants/recipients is
ineligibility for medicaid under PACE.

[8.280.500.14 NMAC - Rp, 8 NMAC
4.PAC.515, 12-1-06]

8.280.500.15 TRUSTS: See
8.281.500.15 NMAC.

[8.280.500.15 NMAC - Rp, 8 NMAC
4.PAC.517, 12-1-06]

**8.280.500.16 RESOURCE STAN-
DARDS FOR MARRIED COUPLES:** See 8.281.500.16 NMAC for spousal
impoverishment methodology used in the
determination of eligibility for married
applicants/recipients with a spouse in the
home who began receiving PACE services
on or after September 30, 1989. A resource
assessment is completed as of the first

moment of the first day of the month in
which the level of care is approved.

[8.280.500.16 NMAC - Rp, 8 NMAC
4.PAC.518, 12-1-06]

**8.280.500.17 DEEMING
RESOURCES:** Not applicable to PACE.

[8.280.500.17 NMAC - Rp, 8 NMAC
4.PAC.519, 12-1-06]

8.280.500.18 INCOME: An appli-
cant/recipients gross countable monthly
income must be less than the maximum
allowable monthly income standard. See
8.281.500.18 NMAC.

[8.280.500.18 NMAC - Rp, 8 NMAC
4.PAC.520, 12-1-06]

**8.280.500.19 INCOME STAN-
DARDS:** See 8.281.500.19 NMAC.

[8.280.500.19 NMAC - Rp, 8 NMAC
4.PAC.521, 12-1-06]

**8.280.500.20 UNEARNED
INCOME:** See 8.281.500.20 NMAC.

[8.280.500.20 NMAC - Rp, 8 NMAC
4.PAC.522, 12-1-06]

8.280.500.21 DEEMED INCOME:
See 8.281.500.21 NMAC.

[8.280.500.21 NMAC - Rp, 8 NMAC
4.PAC.523, 12-1-06]

8.280.500.22 DISREGARDS: See
8.281.500.22 NMAC.

[8.280.500.22 NMAC - Rp, 8 NMAC
4.PAC.525, 12-1-06]

**8.280.500.23 MEDICAL CARE
CREDIT:** There are medical care credits in
PACE only when a PACE recipient enters a
nursing facility. See 8.281.500.23 NMAC.
[8.280.500.23 NMAC - Rp, 8 NMAC
4.PAC.530, 12-1-06]

HISTORY OF 8.280.500 NMAC:

History of Repealed Material:
8 NMAC 4.PAC.500, Income and Resource
Standards, filed 1-20-98 - Repealed effec-
tive 12-1-06.

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

**TITLE 8 SOCIAL SERVICES
CHAPTER 280 MEDICAID ELIGI-
BILITY - PROGRAM OF ALL INCLU-
SIVE CARE FOR THE ELDERLY
(PACE)**

**PART 600 BENEFIT DESCRIP-
TION**

8.280.600.1 ISSUING AGENCY:
New Mexico Human Services Department.

[8.280.600.1 NMAC - Rp, 8 NMAC 4.PAC.000.1, 12-1-06]

8.280.600.2 SCOPE: The rule applies to the general public.

[8.280.600.2 NMAC - Rp, 8 NMAC 4.PAC.000.2, 12-1-06]

8.280.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 et seq. NMSA 1978 (Repl. Pamp. 1991).

[8.280.600.3 NMAC - Rp, 8 NMAC 4.PAC.000.3, 12-1-06]

8.280.600.4 DURATION: Permanent

[8.280.600.4 NMAC - Rp, 8 NMAC 4.PAC.000.4, 12-1-06]

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

[8.280.600.5 NMAC - Rp, 8 NMAC 4.PAC.000.5, 12-1-06]

8.280.600.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the medicaid program.

[8.280.600.6 NMAC - Rp, 8 NMAC 4.PAC.000.6, 12-1-06]

8.280.600.7 DEFINITIONS: [RESERVED]

8.280.600.8 [RESERVED]

8.280.600.9 BENEFIT DESCRIPTION: An applicant/recipient who is eligible for PACE is eligible for specified services available under the program. See specific program policy sections for covered services.

[8.280.600.9 NMAC - Rp, 8 NMAC 4.PAC.600, 12-1-06]

8.280.600.10 BENEFIT DETERMINATION: Application for PACE is made using the "application/redetermination of eligibility for medical assistance of aged, blind, and disabled individuals" (form MAD 381) and is registered on the ISD2 system. Applications must be acted upon and notice of approval, denial, or delay sent out within forty-five (45) days of the date of application. The applicant/recipient may complete the form himself, or receive help from a relative, friend, guardian, or other designated representative. To avoid a conflict of interest, a PACE provider must not

complete the application nor be a designated representative.

[8.280.600.10 NMAC - Rp, 8 NMAC 4.PAC.620, 12-1-06]

8.280.600.11 INITIAL BENEFITS: An application for PACE can be approved when all factors of eligibility have been met and the individual is enrolled in the program. The effective date for PACE enrollment is the first day of the calendar month following the signing of the enrollment agreement (if all financial, non-financial, and medical eligibility criteria are met and an approved level of care (LOC) is in place). Applicants determined to be ineligible for PACE are notified of the reason for the denial and provided with an explanation of appeal rights. Applicants determined to be eligible for PACE are notified of the approval.

[8.280.600.11 NMAC - Rp, 8 NMAC 4.PAC.623, 12-1-06]

8.280.600.12 ONGOING BENEFITS: A complete redetermination of eligibility must be performed annually by the income support division worker for each open case.

A. **Regular reviews:** The annual redetermination includes contact with the applicant/recipient or his representative to review financial and non-financial eligibility.

B. **Additional reviews:** Additional reviews are scheduled by the income support division worker depending upon the likelihood that the applicant's/recipient's income, resources or medical condition will change. The following are examples of frequently encountered changes, which affect eligibility:

(1) social security cost-of-living increases;

(2) VA cost-of-living increases;

(3) rental income may be sporadic and require review every three (3) months; and

(4) level of care review.

[8.280.600.12 NMAC - Rp, 8 NMAC 4.PAC.624, 12-1-06]

8.280.600.13 RETROACTIVE BENEFITS: Retroactive coverage is not available in the PACE program.

[8.280.600.13 NMAC - Rp, 8 NMAC 4.PAC.625, 12-1-06]

8.280.600.14 CHANGES IN ELIGIBILITY: If the recipient ceases to meet any of the eligibility criteria, the case is closed following provision of advance notice as appropriate. See 8.200.430 NMAC for information about notices and hearing rights.

A. **Non-provision of PACE services:** To be eligible for PACE,

an applicant/recipient must receive PACE services. If PACE services are no longer being provided and are not expected to be provided for at least a full calendar month, the recipient is ineligible for the program and the case must be closed after appropriate notice is provided.

B. **Admission to an acute care or nursing facility:** If a PACE recipient enters an acute care or nursing facility, he still remains eligible. A PACE recipient may be disenrolled from the program either voluntarily or involuntarily. If disenrollment occurs, a new application for institutional care medicaid is not required in the following circumstances: the former PACE recipient is in an acute care or nursing facility; he continues to meet all eligibility criteria for institutional care medicaid; or the periodic review on the PACE case is not due in either the month of disenrollment or the following month.

C. **Reporting changes in circumstances:** The primary responsibility for reporting changes in the recipient's circumstances rests with the recipient and/or representative. At the initial eligibility determination and all on-going eligibility redeterminations, the ISS must explain the reporting responsibilities requirement to the applicant/recipient and/or representative and document that such explanation was given. In the event that PACE services should cease, the PACE provider must immediately notify the income support division office by telephone of that fact. The telephone call is to be followed by a written notice to the ISS.

D. **Disenrollment:** A PACE recipient loses medicaid eligibility under this program when he is either voluntarily or involuntarily disenrolled. The PACE provider must inform the ISD office when disenrollment occurs. A **one time only** reinstatement will be allowed if the individual continues to meet all financial, non-financial and medical eligibility criteria. Reinstatement is subject to availability of positions and redetermination of medicaid eligibility. A PACE recipient may voluntarily disenroll at any time. Involuntary disenrollment occurs when any of the following situations exist:

(1) recipient moves out of PACE service area;

(2) recipient is a person with decision-making capacity who consistently does not comply with the individual plan of care and poses a significant risk to self or others;

(3) recipient experiences a breakdown in the physician or team relationship such that the PACE provider ability to furnish services to either the recipients or other recipients is seriously impaired;

(4) recipient refuses services and/or is unwilling to meet conditions of participation as they appear in the enroll-

ment agreement;

(5) recipient refuses to provide accurate financial information, provides false information or illegally transfers assets;

(6) recipient is out of the PACE service area for more than one calendar month (unless other arrangements have been made);

(7) recipient is enrolled in PACE that loses its contract or licenses which enables it to cover health care services;

(8) recipient fails to meet the financial or non-financial criteria; or

(9) recipient ceases to meet the level of care at any time.

[8.280.600.14 NMAC - Rp, 8 NMAC 4.PAC.630, 12-1-06]

HISTORY OF 8.280.600 NMAC:

History of Repealed Material:

8 NMAC 4.PAC.600, Benefit Description, filed 1-20-98 - Repealed effective 12-1-06.

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

**TITLE 8 SOCIAL SERVICES
CHAPTER 314 LONG TERM CARE SERVICES - WAIVERS
PART 6 MI VIA HOME AND COMMUNITY-BASED SERVICES WAIVER**

8.314.6.1 ISSUING AGENCY: New Mexico Human Services Department. [8.314.6.1 NMAC - N, 12-1-06]

8.314.6.2 SCOPE: The rule applies to the general public. [8.314.6.2 NMAC - N, 12-1-06]

8.314.6.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See NMSA 1978 27-2-12 et. seq. (Repl. Pamp. 1991). [8.314.6.3 NMAC - N, 12-1-06]

8.314.6.4 DURATION: Permanent. [8.314.6.4 NMAC - N, 12-1-06]

8.314.6.5 EFFECTIVE DATE: December 1, 2006, unless a later date is cited at the end of a section. [8.314.6.5 NMAC - N, 12-1-06]

8.314.6.6 OBJECTIVE: The objective of these regulations is to provide policies for the service portion of the New Mexico medicaid program. These policies describe eligible providers, eligible participants, covered services, non-covered services, utilization review, and provider reimbursement. [8.314.6.6 NMAC - N, 12-1-06]

8.314.6.7 DEFINITIONS: [RESERVED]

8.314.6.8 MISSION STATEMENT: The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of medicaid-eligible individuals by furnishing payment for quality health services at levels comparable to private health plans. [8.314.6.8 NMAC - N, 12-1-06]

8.314.6.9 MI VIA HOME AND COMMUNITY-BASED SERVICES WAIVER (MV HCBSW): To help New Mexican waiver recipients receive necessary services in a cost-effective manner, the human services department/medical assistance division (HSD/MAD) has obtained a home and community-based services waiver (HCBSW). The mi via waiver provides self-directed home and community-based services to eligible HCBS waiver recipients who are disabled or elderly (D&E), developmentally disabled (DD), medically fragile (MF), those diagnosed with acquired immunodeficiency syndrome (AIDS), and those diagnosed with certain brain-injuries (BI). (See section 2176 if the Omnibus Budget Reconciliation Act of 1981, codified at 42 CFR 441.300 Subpart G.) The goal of the mi via waiver (MVW) is to provide a home and community-based alternative to institutional care that facilitates greater participant choice, direction and control over services and supports that are identified in the participant's individualized service and support plan (SSP), purchased within an agreed upon individual budgetary allotment (IBA), and delivered by service providers or vendors chosen by the participant. The MVW IBA is the annual budget amount available to each participant, which can be utilized to purchase flexible combinations of services, supports and goods. The MVW participant works with a consultant to develop and implement the SSP and in accordance with the mi via service standards. This part describes MVW eligible participants, eligible providers, covered waiver services, non-covered services, utilization review and provider reimbursement. [8.314.6.9 NMAC - N, 12-1-06]

8.314.6.10 SUPPORTS FOR

SELF-DIRECTION:

A. Consultant contractor agency (CCA): The consultant contractor agency hires individual consultants to assist individual mi via participants. The consultant provides the following services:

(1) assist the participant with understanding mi via by sharing information regarding the range and scope of choices, options, rights, risks, and responsibilities associated with self-direction;

(2) assist the participant during development of the SSP;

(3) assist the participant during development of the individual budget; and

(4) complete quality assurance activities as follows:

(a) ensure that all applicable procedures related to the plan and budget development occur;

(b) monitor implementation of the plan;

(c) communicate with the financial management agent to monitor appropriate use of the authorized budget, according to the SSP;

(d) support the participant in developing and implementing the individual quality assurance plan;

(e) support the participant in revising the SSP and budget, as indicated, to meet the participant's changing needs; and

(f) contact the participant at least four (4) times per year, including two (2) face to face contacts.

B. Financial management agent (FMA): Based on the participant's individual SSP and budget, the FMA:

(1) must verify that individuals are eligible for medicaid, MVW services or other health insurance prior to the provision of goods or services;

(2) set up an individual account;

(3) make expenditures that follow the authorized budget, including processing and paying invoices for goods and services approved in the service plan;

(4) handle all payroll functions on behalf of participants who hire service providers and other support personnel, including:

(a) collecting and processing timesheets of support workers;

(b) processing payroll, withholding, filing and payment of applicable federal, state and local employment-related taxes and insurance;

(c) answering inquiries and solving problems related to the FMA's responsibilities;

(d) receiving and disbursing funds for the payment of participant-directed services under an agreement with the medicaid agency and ALTSD;

(e) execute and hold medicaid provider agreements as authorized under a

written agreement with the medicaid; and

(f) track and report on income, disbursements and balances of participant funds, including providing the participant with a monthly report of expenditures and budget status, and the state with a quarterly and annual documentation of expenditures. [8.314.6.10 NMAC - N, 12-1-06]

8.314.6.11 ELIGIBLE PROVIDERS:

A. Eligible independent providers, including non-licensed homemaker/companion workers provider agencies and vendors, must be approved by the financial management agent (FMA). The designee of the two MVW state-operating agencies, aging and long-term services department, elderly and disabilities services division (ALTSD/EDSD) which operates the MVW for the D&E, AIDS and BI populations; and the department of health, developmental disabilities support division (DOH/DDSD), which operates the MVW for the DD and MF populations. Eligible providers and vendors must also execute an approved medicaid provider participation agreement with the FMA. In order to be approved as a provider or vendor, independent providers, agencies, or vendors must meet the following conditions set forth in these regulations and submit an enrollment packet for approval to the FMA containing the completed medicaid mi via provider agreement application.

B. Individual providers, provider agencies or vendors are employed by the MVW participant under the following conditions.

(1) Employed individuals and vendors must be qualified and follow the general contract provisions.

(2) All professional providers are required to follow the licensing regulations set forth by their profession, as applicable. This includes, but is not limited to licensed registered nurses (RN), licensed practical nurses (LPN), social workers, physical therapists (PT), physical therapy assistants (PTA), occupational therapists (OT), certified occupational therapy assistants (COTA), and speech language pathologists (SLP), counselors, psychologists, etc. Refer to the New Mexico board of licensure for information regarding applicable licensure.

(3) Pass a criminal background check performed pursuant to 7.1.9 NMAC and in accordance with NMAC 1978 Section 29-17-1 of the Caregivers Criminal History Screening Act.

(4) Relatives/legal guardians, except legally responsible individuals (e.g., parents of minor children or spouses) may be hired and paid for waiver services. Payment is made to participant's relative, legal guardian or attorney-in-fact for serv-

ices when the relative/legal guardian is qualified to provide the service. The services must be identified in the SSP, and the participant or his representative is responsible for verifying that services have been rendered by completing, signing and submitting documentation, including the timesheet, to the FMA. There are no specific limits on the amount of services furnished by a relative or legal guardian.

(5) Legally responsible individuals, (e.g., the parent [biological or adoptive] of a minor child [under age 18] or the guardian of a minor child) who must provide care to the child, or a spouse of a MVW participant, may be hired and paid for waiver services under extraordinary circumstances in order to assure the health and welfare of the participant and avoid institutionalization.

(a) Extraordinary circumstances include the inability of the legally responsible individual to find other qualified, suitable caregivers when the legally responsible individual would otherwise be absent from the home and, thus, the caregiver must stay at home to ensure the participant's health and safety.

(b) Legally responsible individuals may not be paid for any services that they would ordinarily perform in the household for individuals of the same age who did not have a disability or chronic illness.

(c) Hiring of legally responsible individuals must be approved by the aging and long term services department (ALTSD) prior to submission of the SSP and budget to the utilization review contractor.

C. Once enrolled, providers and vendors receive a packet of information including medicaid MVW program policies, billing instructions, and other pertinent material from the FMA, ALTSD/EDSD or DOH/DDSD, as appropriate. Providers are responsible for ensuring that they have received these materials and for updating them as new materials are received from the state.

D. **Qualifications of participant-delegated goods and services providers:** Goods and services providers are typical vendors in the community, according to the goods, services and supports needed.

E. **Qualifications of homemaker/companion providers:** Homemaker/companion services may be provided by independent homemaker/companion providers or personal care agencies.

(1) Individual homemaker/companion workers must possess the following qualifications:

- (a) be 18 years of age;
- (b) demonstrate the capacity to perform required tasks;
- (c) be able to communicate suc-

cessfully with the participant; and

(d) pass a criminal background check.

(2) The mi via participant or representative evaluates the homemaker/companion worker's training needs, provides or arranges for training, as needed, and supervises the worker. Training expenses will be paid by the participant with the agreed upon individual budgetary allotment if the participant cannot provide the training directly to the homemaker/companion and there is no other means available for the training.

F. **Qualifications of adult day health providers:** Adult day health must be licensed by DOH as an adult day care facility pursuant to 7.13.2 NMAC and meet all requirements and regulations set forth by DOH as an adult day health center pursuant to 7.13.2 NMAC.

G. **Qualifications for community living service providers:** There are three types of community living services: family living, supported living and independent living. Community living service providers must meet all qualifications set forth by the DOH/DDSD, developmentally disabled waiver (DDW) definitions and service standards and be accredited by an approved organization in accordance with the DDS accreditation policy.

(1) **Family living service providers** for adults must meet the qualifications for staff set forth by the DOH/DDSD, DDW service definitions and standards.

(2) **Supported living service providers** must meet the qualifications for residential facility staff set forth by the DOH/DDSD, DDW service definitions and standards.

(3) **Independent living service providers** must meet the qualifications for residential facility staff set forth by the DOH/DDSD, DDW service definitions and standards.

H. **Qualifications of adult day habilitation providers:** Adult day habilitation providers must meet all qualifications set forth by the DOH/DDSD, DDW service definitions and standards and be accredited by an approved organization in accordance with the DDS accreditation policy.

I. **Qualifications of supported employment providers:** Individual supported employment, customized supported employment and group supported employment providers must meet all qualifications set forth by the DOH/DDSD, DDW service definitions and standards and be accredited by an approved organization in accordance with the DDS accreditation policy.

J. **Qualifications of respite providers:** Respite services may be

provided by eligible homemaker/companion providers; licensed registered or licensed practical nurses; or hospital, nursing facility, or ICF/MR providers, as appropriate.

K. Qualifications of assisted living providers: Assisted living providers must be licensed as an adult residential care facility by DOH pursuant to 7.8.2 NMAC, and meet all the requirements and regulations set forth by DOH as an adult residential care facility pursuant to 7.8.2 NMAC *et seq.*

L. Qualifications of behavior support consultation providers: Behavior support consultation providers must meet all qualifications set forth by the DOH/DDSD, DDW definitions and service standards.

(1) Providers of behavior support consultation services must possess qualifications in at least one of the following areas: licensed psychiatrist, licensed clinical psychologist, licensed psychologist associate, (masters or Ph.D. level), a licensed independent social worker (LISW), licensed master social worker (LMSW), licensed professional clinical counselor (LPCC), licensed professional counselor (LPC), licensed psychiatric nurse (MSN/RNCS), licensed marriage and family therapist (LMFT), or licensed practicing art therapist (LPAT).

(2) Providers of behavior support consultation must maintain a current New Mexico licensure with their professional field licensing body.

M. Qualifications of environmental modification providers: Environmental modification providers must possess an appropriate plumbing, electrician, or contractor license.

N. Qualifications of emergency response providers: Emergency response providers must comply with all laws, rules and regulations of the New Mexico state corporation commission for telecommunications and security systems.

O. Qualifications of community access providers: Community access providers must meet all qualifications set forth by the DOH/DDSD DDW service definitions and standards and be accredited by an approved organization in accordance with the DDSD accreditation policy.

P. Qualifications of private duty nursing providers for adults: Direct nursing services are provided by individuals who are currently licensed as registered or practical nurses by the New Mexico state board of nursing.

Q. Qualifications of extended state plan skilled therapy providers for adults: Physical and occu-

pational therapists, speech/language pathologists, and physical therapy assistants must possess a therapy license in their respective field from the New Mexico regulation and licensing department. Certified occupational therapy assistants must possess an occupational therapy assistant certification from the New Mexico regulation and licensing department. Speech clinical fellows must possess a clinical fellow license from the New Mexico regulation and licensing department.

R. Qualifications of extended state plan skilled therapy providers for children: Physical and occupational therapists, speech/language pathologists, and physical therapy assistants must possess a therapy license in their respective field, from the New Mexico regulation and licensing department. Certified occupational therapy assistants must possess an occupational therapy assistant certification from the New Mexico regulation and licensing department. Speech clinical fellows must possess a clinical fellow license from the New Mexico regulation and licensing department.

S. Qualifications of nutritional counseling providers for adults: Nutritional counseling providers must be registered as dietitians by the commission on dietetic registration of the american dietetic association.

T. Qualifications of intensive case management providers: Intensive case management providers must have the skills and abilities necessary to perform case management services and possess the following qualifications:

(1) one year clinical experience related to the target population; and

(2) licensed social worker, as defined by the New Mexico board of social work examiners; or

(3) licensed registered nurse, as defined by the New Mexico board of nursing; or

(4) bachelor's degree in social work, counseling, nursing, special education, or closely related field.

[8.314.6.11 NMAC - N, 12-1-06]

8.314.6.12 PROVIDER RESPONSIBILITIES:

The financial management agent (FMA), which reimburses providers who furnish services to mi via medicaid recipients must comply with all medicaid participation requirements, maintain records which are sufficient to fully disclose the extent and nature of services provided to recipients and comply with random and targeted audits conducted by HSD, ALTSD or its audit agent. The department or its designee will seek recoupment of funds from providers when audits show inappropriate billing for services. Providers

who furnish services to mi via medicaid recipients and bill the FMA must comply with all medicaid FMA participation requirements. See 8.302.1 NMAC, *General Provider Policies*.

[8.314.6.12 NMAC - N, 12-1-06]

8.314.6.13 ELIGIBLE

RECIPIENTS: The MVW program is limited to the number of federally authorized unduplicated recipient (UDR) positions and program funding to individuals who have received an allocation for BI, DD, MF, D&E, or AIDS waiver services; and to individuals who meet an institutional level of care (LOC) criteria and financial criteria as determined by HSD. Individuals who are institutionalized, hospitalized, or receive personal care option (PCO) services are eligible only for consultant services that are required to coordinate the transition of services to the MVW. See 8.290.400.10 NMAC, *Basis for Defining the Group*. Eligible recipients must meet specific requirements for the DD, MF, D&E, AIDS waiver and brain injury populations, respectively, to be eligible for MV waiver services, as follows.

A. Developmental disability: Individuals who have a severe chronic disability, other than mental illness, that:

(1) is attributable to a mental or physical impairment, including the result of trauma to the brain, or a combination of mental and physical impairments;

(2) is manifested before the person reaches the age of twenty-two years;

(3) is expected to continue indefinitely;

(4) results in substantial functional limitations in three or more of the following areas of major life activity:

(a) self-care;

(b) receptive and expressive language;

(c) learning;

(d) mobility;

(e) self-direction;

(f) capacity for independent living; and

(g) economic self-sufficiency;

(5) reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other support and services that are of life-long or extended duration and are individually planned and coordinated;

(6) have mental retardation or a specific related condition; related conditions are limited to cerebral palsy, autism (including asperger syndrome), seizure disorder, chromosomal disorders (e.g. downs), syndrome disorders, inborn errors of metabolism, and developmental disorders of brain formation; and

(7) who require intermediate care facility for the mentally retarded (ICF/MR) level of care.

B. Medically fragile:

Individuals who have been diagnosed with a medically fragile condition before reaching age 22, and who:

(1) have a development disability or developmental delay, or who are at risk for developmental delay;

(2) have a medically fragile condition defined as a chronic physical condition which results in a prolonged dependency on medical care for which daily skilled (nursing) intervention is medically necessary and is characterized by one or more of the following:

(a) life-threatening condition, characterized by reasonably frequent periods of acute exacerbation, which requires frequent medical supervision and/or physician consultation, and which, in the absence of such supervision or consultation, would require hospitalization;

(b) frequent, time-consuming administration of specialized treatments which are medically necessary; or dependence on medical technology such that without the technology a reasonable level of health could not be maintained; examples include, but are not limited to, ventilators, dialysis machines, enteral or parenteral nutrition support and continuous oxygen; and

(3) require ICF/MR level of care.

C. Disabled and elderly:

Individuals who are elderly (age 65 or older), or persons with a disability (blind or disabled) as determined by the disability determination unit utilizing social security disability guidelines, who require nursing facility LOC and either reside in the community, are institutionalized, or are at risk of institutionalization.

D. AIDS: Individuals who have been diagnosed as having acquired immunodeficiency syndrome (AIDS) or AIDS-related conditions (ARC) and who require hospital or nursing facility level of care.

E. Brain-injured:

Individuals (through age 64) with an injury to the brain of traumatic or acquired origin resulting in total or partial functional disability or psychosocial impairment or both. Additional criteria include:

(1) the term applies to open and closed head injuries caused by: an insult to the brain from an outside physical force, anoxia, electrical shock, shaken baby syndrome, toxic and chemical substances, near-drowning, infections, tumors, or vascular lesions;

(2) BI may result in either temporary or permanent, partial or total impairments in one or more areas including, but not limited to: cognition, language, memo-

ry, attention, reasoning, abstract thinking, judgment, problem solving, sensory perceptual and motor abilities, psychosocial behavior, physical functions, information processing, and speech;

(3) the term "brain injury" does not apply to brain injuries that are congenital, degenerative, induced by birth trauma or neurological disorders related to the aging process, or chemically caused brain injuries that are a result of habitual substance abuse; the BI participant must have a documented BI diagnosis, as listed in the international classification of disease (ICD 9) codes which can be obtained from ALTSD or HSD/MAD; and

(4) individuals who require nursing facility level of care.

[8.314.6.13 NMAC - N, 12-1-06]

8.314.6.14 Participant

Responsibilities: Mi via participant responsibilities are as follows:

A. assist with applying for mi via eligibility, including your medical and financial eligibility;

B. develop a plan and budget;

C. follow plan and budget;

D. report on how things are going and let someone know if help is needed;

E. work with consultant;

F. work with financial agent;

G. arrange to get the goods needed and paid for;

H. hire, manage and fire employees;

I. maintain records;

J. follow the mi via self-directed waiver guidelines; and

K. appropriately use state funds.

[8.314.6.14 NMAC - N, 12-1-06]

8.314.6.15 COVERED WAIVER

GOODS AND SERVICES: MVW covers goods and services for a specified and limited number of waiver recipients as a cost-effective alternative to institutionalization. The program is limited to the number of federally authorized unduplicated recipient positions and program funding.

A. Participant-delegated goods and services: Goods or services are designed to enhance opportunities to achieve outcomes related to living arrangements, relationships, inclusion in community activities and employment. Goods and services must meet the following requirements:

(1) be designed to meet the participant's functional, medical or social needs and advances the desired outcomes identified in the service and support plan (SSP); and

(2) unless otherwise stated herein, be contained in an allowable category of the new MVW service standards.

B. Homemaker/companion services:

Homemaker/companion services are provided on an episodic or continuing basis that enable participants to accomplish tasks that they would normally do for themselves if they did not have a disability. The services are not intended to replace supports available from a primary caregiver. Children who receive homemaker/companion services through the state plan, including EPSDT program or Medicaid school-based services, would not be able to purchase duplicate homemaker/companion services through mi via. The types of assistance include:

(1) personal care (e.g., hygiene/grooming, bathing, showering, dressing, shaving, oral care, nail care, perineal care, toileting); bowel and bladder elimination; non-invasive catheter care and colostomy care; skin care; support for the self-administration of medication; mobility assistance (e.g., ambulation, transfer);

(2) assistance with therapeutic activities or an individualized exercise program;

(3) meal preparation (e.g., preparation, eating or feeding supports);

(4) minor maintenance of assistive devices (e.g., changing batteries on a communication board, routine cleaning of equipment) and minor wheelchair maintenance;

(5) household services (e.g. mopping, dusting, vacuuming, bed making, changing linen, laundry, cleaning bathroom, cleaning the kitchen area);

(6) support services that promote participants' independence (e.g., accompaniment or assistance with transportation, shopping, errands, translating/interpreting);

(7) mobility training including the use of public transportation services;

(8) activities of daily living to support the individual in the work place or at the site of community inclusion activities;

(9) visual monitoring and support of the individual at the worksite or community inclusion site due to a condition that interferes with the maintenance of a job due to behavioral or medical issues, or health and safety concerns;

(10) support services that promote participant access to employment areas;

(11) support services to encourage participants to integrate therapy plans as appropriate in work and community settings;

(12) non-medical transportation to enable recipients to gain access to waiver and other community services, activities, and resources; and

(13) chore services (e.g. intermit-

tent major household tasks that must be performed seasonally or in response to some natural or other period event including: outdoor activities such as yard work and snow shoveling; indoor activities such as window washing; cleaning of attics/basements; cleaning carpets, rugs and draperies; refrigerator/freezer defrosting; and the necessary cleaning of vehicles, wheelchairs and other adaptive equipment or home modifications).

C. **Adult day health services:** Adult day health services are generally provided for two or more hours per day on a regularly scheduled basis (one or more days per week), by a licensed adult day health facility that offers health and social services to assist participants to achieve optimal functioning. Nursing services and skilled maintenance therapies (physical, occupational and speech) may be provided within the adult day health setting. Transportation to and from the facility is not included in the rate for this service.

D. **Community living services:** Community living services are individually tailored supports that assist participants with the acquisition, retention, or improvement of skills related to living independently in the community. Supports include: adaptive skill development, assistance with activities of daily living, community inclusion, transportation, adult educational supports, and social and leisure skill development. Services include: personal care; assistance with money management; maintaining social, spiritual and individual relationships; reminding, observing, and monitoring medication and pharmacy needs; providing assistance with self-administration of medication and medication administration, including the use of certified medication aides; nutritional counseling; and assistance to participants who require a wheelchair for mobility and need physical assistance for bathing, dressing, and transfers. Homemaker/companion services cannot be provided to individuals who receive community living services.

(1) Community living services include three types of living arrangements.

(a) **Supported living services** are typically provided in a home setting of four (4) or fewer residents and must be available up to 24 hours-a-day.

(b) **Family living services** may be furnished by a companion, surrogate, foster, or natural family member who meets the requirements and is approved to provide family living services in the individual's home or the home of the family living services provider. Substitute care is a component of family living services that provides relief for the paid caregiver and must be provided in accordance with DDS DDW definitions and standards.

(c) **Independent living services** are designed to increase or maintain the participant's skills and independence and promote self-advocacy. Independent living services are for people who need less than 24-hour staff support per day. Services include 24-hour on-site response capability to meet a participant's scheduled or unpredictable needs and to provide supervision, safety and security.

(2) Community living services must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

(3) Payment for community living services does not include the cost of room and board, the cost of building maintenance, upkeep and improvement, other than such costs for modifications or adaptations to a residence required to assure the health and welfare of residents.

E. **Adult day habilitation services** are intended to provide meaningful day and individualized activities that support the participant's definition of a meaningful day. Adult day habilitation services enable the participant to increase or maintain their capacity for independent functioning and decision-making.

(1) Adult habilitation services consist of a daily program of functional and meaningful activities that assist with acquisition, retention, or improvement in self-help, socialization and adaptive skills that take place in a non-residential setting, separate from the participant's private residence or other residential living arrangement. Adult day habilitation services include:

(a) participation in adult education;

(b) identification of community resources and connections;

(c) development of pre-vocation skills;

(d) opportunities to pursue hobbies and recreation/leisure or other interests;

(e) transportation during adult day habilitation services;

(f) personal care and activities of daily living;

(g) assistance with self-administration of medication, reminding/observing/monitoring of medication and pharmacy needs, and medication administration, including the use of certified aides;

(h) nursing oversight and direct care;

(i) integration of therapy plans; and

(j) nutritional counseling.

(2) Adult habilitation services must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

F. **Supported employ-**

ment services: Supported employment services consist of intensive, ongoing supports that enable disabled participants to perform job duties in a work setting.

(1) Supported employment is conducted in a variety of settings, where persons without disabilities are employed. Supported employment activities are designed to increase or maintain the participant's skill and independence, and may include:

(a) career exploration;

(b) career enhancement;

(c) job development;

(d) job placement;

(e) on-the job training and support;

(f) self-employment;

(g) job coaching;

(h) job site analysis;

(i) skills training;

(j) benefits counseling;

(k) employer negotiations;

(l) co-worker training;

(m) vocational assessment;

(n) arrangement of transportation;

(o) medication administration;

(p) nursing support while at the work place;

(q) integration of therapy plans;

(r) assistance with the use of assistive devices and medical equipment; and

(s) personal care activities.

(2) Supported employment consists of individual supported employment, self-employment and group supported employment models.

(a) **Individual supported employment** offers one-to-one support to participants placed in jobs in the community and support is provided at the work site as needed for the individual to learn and perform the job. Participants must have the opportunity for integration into work settings where most of the people in the work setting are not disabled. Individual supported employment may include competitive jobs in the public or private sector, and self-employment. The service delivery model for individual supported employment includes a job coach, and job developer.

(i) The job coach provides: training, skill development and employer consultation that an individual may require while learning to perform specific work tasks on the job; co-worker training; job site analysis; situational and/or vocational assessments and profiles; integration of therapy plans related to the workplace; education of the individual and co-workers on rights and responsibilities; medication administration; and benefits counseling.

(ii) The job developer

provides: initial development of an employment action plan; job development activities; employer negotiations and job restructuring; job sampling; and placement in a job related to the individual's desired outcomes.

(b) **Self-employment services** assist the individual to gain self-employment or engage in other entrepreneurial initiatives. The service delivery model for self-employment services includes a business consultant. The business consultant assists the individual with:

(i) development of a business plan;

(ii) identification and procurement of business loans and other financial resources;

(iii) marketing, advertising, obtaining a business license, permits, tax registration and other legal requirements for a business enterprise; and

(iv) banking services, financial management and the development and maintenance of information management systems necessary for business operations.

(c) **Group supported employment** provides onsite supervision of individuals working as a group (two or more individuals with one job coach) in community-based employment settings.

(3) Supported employment services are provided in accordance with the DOH/DDSD DDW service definitions and standards.

G. **Respite care services:** Respite is a flexible family support service. The primary purpose of respite is to provide support to the individual and give the primary, unpaid caregiver time away from their duties.

(1) Respite services include:

(a) assistance with routine activities of daily living (e.g., bathing, toileting, preparing or assisting with meal preparation and eating);

(b) enhancing self-help skills;

(c) providing opportunities for leisure, play and other recreational activities;

(d) assisting the individual to enhance self-help skills, leisure time skills and community and social awareness;

(e) providing opportunities for community and neighborhood integration and involvement; and

(f) providing opportunities for the individual to make his own choices with regard to daily activities.

(2) Respite services may be provided in the individual's home, the provider's home, in a community setting of the family's choice (e.g. community center, swimming pool, and park), at a center in which other individuals are provided care, or in an institution, as necessary.

(3) Respite services cannot be provided in conjunction with supported or independent living. Respite may be provided to individuals in family living, but the service may not be billed for the same time period as family living.

H. **Assisted living:** A residential service that includes personal care and supportive services (homemaker, chore, attendant services, meal preparation), including companion services; medication oversight (to the extent permitted under state law), 24-hour, on-site response capability to meet scheduled or unpredictable participant needs and to provide supervision, safety and security.

(1) Services also include social and recreational programming. Coverage does not include 24-hour skilled care or supervision or the cost of room or board.

(2) Nursing and skilled therapy services are incidental, rather than integral, to the provision of assisted living services. If services are provided by third parties, they must be coordinated with the assisted living provider.

(3) Participants who access this service cannot utilize *mi* via personal care/homemaker, environmental modifications, emergency response, or adult day health services.

I. **Behavior support consultation:** Behavior support consultant services consist of functional support assessments, positive behavioral support plan development, and training and support coordination for an individual related to behaviors that compromise an individual's quality of life. Factors that compromise an individual's quality of life include behaviors that: interfere with forming and maintaining relationships, integrating into the community, or completing activities of daily living; or pose a health and safety risk to the individual or others.

(1) Behavior support consultation:

(a) informs and guides the participant's service and support providers toward understanding the factors contributing to the individual's behavior; these factors include:

(i) genetic and genomic predisposition;

(ii) developmental and physiological compromises;

(iii) residual impact of abuse and trauma;

(iv) co-occurring developmental disabilities and mental illnesses;

(v) communicative intent; and

(vi) environmental issues.

(b) identifies support strategies to ameliorate contributing factors with the intention of enhancing functional capaci-

ties, adding to service provider competency to predict, prevent and respond to interfering behavior and to reduce interfering behavior(s);

(c) supports effective implementation based on a comprehensive functional assessment and subsequent service and support plan (SSP);

(d) collaborates with medical and ancillary therapies to promote coherent and coordinated services addressing behavioral issues, and to limit the need for psychotherapeutic medications; and

(e) monitors and adapts support strategies based on the response of the individual and his service and support providers.

(2) Based on the individual's SSP, services are delivered in an integrated/natural setting or in a clinical setting.

(a) **Integrated support model:** Strategic prevention and intervention support activities within the behavior support consultant's scope of service are a usual and vital aspect of all interactions between the individual and the service and support providers as opposed to discrete, separate individual treatment or therapy. The prevention and intervention support activities are provided within the natural settings of an individual's life (such as home, day habilitation site, vocational site, community locations, or at the SSP meetings).

(b) **Non-integrated support activities:** Support interventions provided at a behavior support consultant's office or any location that an individual would not otherwise visit, if they did not have an appointment with the behavior support consultant.

(3) Behavior support consultation services must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

J. **Environmental modification services:** Environmental modification services include the purchase or installation of equipment, or making physical adaptations to an individual's residence that are necessary to ensure the health, welfare and safety of the individual or enhance the individual's level of independence.

(1) Adaptations include the installation of ramps and grab-bars; widening of doorways or hallways; installation of specialized electric and plumbing systems to accommodate medical equipment and supplies; lifts or elevators; modification of bathroom facilities (roll-in showers, sink, bathtub, and toilet modifications, water faucet controls, floor urinals and bidet adaptations and plumbing); turnaround space adaptations; specialized accessibility, safety adaptations/additions; trapeze and mobility tracks for home ceilings; automatic door openers/doorbells; voice-activated, light-activated, motion-activated and electronic

devices; fire safety adaptations; purchase and installation of air filtering devices, heating or cooling adaptations; glass substitute for windows and doors; modified switches, outlets or environmental controls for home devices; and alarm and alert systems or signaling devices.

(2) All services shall be provided in accordance with applicable federal, state and local building codes.

(3) The environmental modification provider must: ensure proper design criteria are addressed in planning and design of the adaptation; provide or secure licensed contractor(s) or approved vendor(s) to provide construction or remodeling services; provide administrative and technical oversight of construction projects; provide consultation to family members, waiver providers and contractors concerning environmental modification projects to the individual's residence; and inspect the final environmental modification project to ensure that the adaptations meet the approved plan submitted for environmental adaptation.

(4) Environmental modifications are managed by professional staff available to provide technical assistance and oversight to environmental modification projects.

(5) Excluded are improvements to the home that are of general utility and are not of direct medical or remedial benefit to the participant. Modifications designed to add to the total square footage of the home are excluded from this benefit except when necessary to complete an adaptation.

K. Emergency response services: Emergency response services provide an electronic device that enables a participant to secure help in an emergency at home and avoid institutionalization. The participant may also wear a portable "help" button. The system is connected to the participant's phone and programmed to signal a response center when a "help" button is activated. The response center is staffed by trained professionals. Emergency response services include:

(1) installing, testing and maintaining equipment;

(2) training participants, caregivers and first responders on use of the equipment;

(3) twenty-four (24) hour monitoring for alarms;

(4) checking systems monthly or more frequently, if warranted by electrical outages, severe weather, etc.; and

(5) reporting participant emergencies and changes in the participant's condition that may affect service delivery.

L. Community access services: Community access services are skilled interventions that involve training of

participants and community members, ongoing assessment of the community's social environment, and the development and implementation of strategic, individualized habilitation activities. Services are designed to promote maximum participation in community life, support individuals in achieving their desired outcome, promote self-advocacy, and enhance a participant's ability to control his environment through focused teaching of adaptive skills, self-help and socialization skills. Services are provided in integrated settings with persons who are not disabled.

(1) Community access services include:

(a) development of a community resource action plan within the service and support plan (SSP) that identifies available community resources and considers the individual's needs and desires related to community access;

(b) facilitation of inclusion of individual within a community group or volunteer organization;

(c) opportunities for the participant to join formal/informal associations, community groups; and

(d) provide opportunities for inclusion in a broad range of community settings.

(2) Community access services provide:

(a) opportunities to pursue social and cultural interests;

(b) choice-making;

(c) medication administration;

(d) nutritional counseling;

(e) volunteer time in the community and opportunities to engage in meaningful social roles;

(f) assisting participants to develop social roles valued by non-disabled members of the community; and

(g) assisting with the development of natural supports within integrated settings.

M. Private duty nursing for adults: Private duty nursing services include activities, procedures, and treatment for a physical condition, physical illness or chronic disability. Services include: medication management, administration, teaching, aspiration precautions, feeding tube management, gastrostomy and jejunostomy, skin care, weight management, urinary catheter management, bowel and bladder care, wound care, health education, health screening, infection control, environmental management for safety, nutrition management, oxygen management, seizure management and precautions, anxiety reduction, staff supervision, and behavior and self-care assistance.

N. Extended state plan skilled therapy services for adults:

Skilled therapy services include physical therapy, occupational therapy or speech language therapy. Services are provided when state plan skilled therapy services are exhausted. Adults on the mi via waiver would access therapy services under the state plan only for acute and temporary conditions that are expected to improve significantly in a reasonable and generally predictive period of time. Therapy services focus on maintenance, community integration, socialization and exercise, or enhance support and normalization of family relationships.

(1) **Physical therapy:** Diagnosis and management of movement dysfunction and the enhancement of physical and functional abilities. Physical therapy addresses the restoration, maintenance and promotion of optimal physical function, wellness and quality of life related to movement and health. Physical therapy include activities that:

(a) increase, maintain or reduce the loss of functional skills; and/or

(b) treat a specific condition clinically related to an individual's developmental disability; and/or

(c) support the individual's health and safety needs; and/or

(d) identify, implement, and train on therapeutic strategies to support the individual and their family or support staff consistent with the individual's service and support plan (SSP) desired outcomes and goals.

(2) **Occupational therapy:** Diagnosis, assessment and management of functional limitations intended to assist adults to regain, maintain, develop and build skills that are important for independence, functioning and health.

(a) Occupational therapy services typically include:

(i) customized treatment programs to improve one's ability to perform daily activities;

(ii) comprehensive home and job site evaluations with adaptation recommendations;

(iii) skills assessments and treatment;

(iv) assistive technology recommendations and usage training; and

(v) guidance to family members and caregivers.

(b) Occupational therapy services are designed to:

(i) increase, maintain or reduce the loss of functional skills; and/or

(ii) treat specific conditions clinically related to an individual's developmental disability; and/or

(iii) support the individual's health and safety needs; and/or

(iv) identify, imple-

ment, and train therapeutic strategies to support the individual and their family or support staff consistent with the individual's SSP desired outcomes and goals.

(3) **Speech and language pathology:** Diagnosis, counseling and instruction related to the development and disorders of communication including speech fluency, voice, verbal and written language, auditory comprehension, cognition, swallowing dysfunction, oral pharyngeal or laryngeal, and sensor motor competencies.

(a) Speech language pathology is also used when an individual requires the use of an augmentative communication device.

(b) Services are designed to:

(i) improve or maintain the individual's capacity for successful communication or to lessen the effects of individual's loss of communication skills; and/or

(ii) improve or maintain the individual's ability to eat foods, drink liquids, and manage oral secretions with minimal risk of aspiration or other potential injuries or illness related to swallowing disorders;

(iii) identify and implement therapeutic strategies and train the individual and their family or support staff consistent with the individual's SSP desired outcomes and goals;

(iv) incorporate therapy goals; and

(v) be delivered in an integrated natural setting, clinical setting or in a group.

(4) **Individual integrated therapy model:** Interventions provided by a licensed therapist within the natural setting of an individual's life (such as home, day habilitation site, vocational site, community locations or at SSP planning meetings). This model does not include services provided in an isolated, non-integrated manner unless a direct skilled therapy services is provided and applied to a functional activity/routine in collaboration with a caregiver during the same session.

(5) **Individual clinical model:** Interventions provided by a licensed therapist in a clinic setting such as a therapy clinic or therapist's office or services delivered in an isolated, non-integrated manner. A clinical setting would include any location that an individual would not otherwise visit if they did not have a therapy appointment.

(6) **Group integrated therapy model:** Integrated therapy services delivered in a group with a ratio of two (2) or three (3) individuals to one therapist designed to benefit the individuals involved. The purposes may include, but are not limited to teaching caregivers strategies and techniques for supporting several individuals to participate in an activity/routine that naturally occurs with small groups

(in the home, day habilitation site, vocational site or community location) or to teach and practice opportunities for physical and communication interaction in a small group context. The context of the group must reflect the context of a naturally occurring activity/ routine, i.e., yoga group instruction; social interaction; leisure activity; etc.

(7) **Group clinical model:** Therapy services that are delivered in a clinical setting in a group with a ratio of three (3) or two (2) individuals to one therapist that are designed to benefit the individuals involved. Purposes may include, but are not limited to, teaching individual strategies and techniques to participate in an activity/routine that naturally occurs with small groups, including physical and verbal interactions. A clinical setting would include any location an individual would not otherwise visit if they did not have a therapy appointment.

O. **Extended state plan skilled therapy services for children:** Skilled therapy services include physical therapy, occupational therapy or speech language therapy. Services are provided when state plan skilled therapy services are exhausted and when services are not available through an individual education plan of a medicaid school-based program. Mi via allows participants, under twenty one (21) years of age to receive therapy services that focus on community integration, socialization and exercise, or that enhance support and normalization of family relationships.

(1) **Physical therapy:** Services delivered by a licensed physical therapist to provide the following:

(a) physical therapy interventions to promote participation in recreation and/or community integration activities as defined in the MVW service standards;

(b) adaptation of exercise equipment;

(c) training for family members or other support persons to promote ongoing fitness of the child;

(d) assessment for appropriate environmental modifications in the home as described in mi via waiver service standards;

(e) recommending equipment, and/or techniques, and/or therapy interventions to increase family/caregiver ability to provide support for the child's comfort and convenience or to increase the independence of the individual in non-medically related daily life activities;

(f) interventions for children with swallowing disorders to prevent aspiration in accordance with the team approach described in DOH aspiration prevention policy and procedures, as appropriate to the therapist's scope of practice;

(g) coordination with other therapists

serving the child through EPSDT, and/or the medicaid school-based services program, and/or with other disciplines; and

(h) associated evaluation, assessment and training of child, family and/or other caregivers related to above activities.

(2) **Occupational therapy:** Services delivered by a licensed occupational therapist to provide the following:

(a) occupational therapy interventions to promote participation in recreation or community integration activities as defined in the MVW service standards;

(b) adaptation of exercise equipment and associated training for family members or other support persons to promote ongoing fitness of the child;

(c) assessment for appropriate environmental modifications in the home as described in the MVW service standards;

(d) recommending equipment, and/or techniques, and/or therapy interventions to increase family/caregiver ability to provide support for the child's comfort and convenience or to increase the independence of the individual in non-medically related daily life activities;

(e) interventions for children with swallowing disorders to prevent aspiration in accordance with the team approach described in DOH aspiration prevention policy and procedures, as appropriate to the therapist's scope of practice;

(f) coordination with other therapists serving the child through EPSDT, and/or the medicaid school-based services program, and/or with other disciplines; and

(g) associated evaluation, assessment and training of child, family or other caregivers related to above activities.

(3) **Speech language pathology:** Services delivered by a licensed speech language pathologist to provide the following:

(a) speech language interventions to promote participation in recreation and/or community integration activities as defined in the mi via waiver service standards;

(b) interventions for children with swallowing disorders to prevent aspiration in accordance with the team approach described in DOH's aspiration prevention policy and procedures, as appropriate to the therapist's scope of practice;

(c) recommending equipment, and/or techniques, and/or therapy interventions to increase family/caregiver ability to facilitate communication or to increase the independence of the individual in non-medically related daily life activities;

(d) coordination with other therapists serving the child through EPSDT, and/or the medicaid school-based services program, and/or other disciplines; and

(e) associated evaluation, assessment and training of child, family or other caregivers related to above activities.

(4) Based upon therapy goals, services may be delivered in integrated natural setting, clinical setting and/or in a group.

(a) **Individual integrated therapy model:** Interventions within the licensed therapist's scope of service when provided within the natural settings of an individual's life (such as home, day habilitation site, vocational site, community locations or at SSP planning meetings). This model does not include services provided in an isolated, non-integrated manner unless a direct skilled therapy services is provided and applied to a functional activity/routine in collaboration with a caregiver during the same session.

(b) **Individual clinical model:** Interventions within the licensed therapist's scope of service when provided in a clinic setting such as a therapy clinic or therapist's office or when services are delivered in an isolated, non-integrated manner. A clinical context would include any location that an individual would not otherwise visit if they did not have a therapy appointment. This unit is also used for the following therapy activities:

- (i) development of individual specific therapy treatment plan;
- (ii) development of support plans;
- (iii) development of guidelines to caregivers;
- (iv) development of mealtime procedural programs;
- (v) report writing;
- (vi) clinic/office-based assistive technology fabrication; and
- (vii) phone consultation.

(c) **Group integrated therapy model:** Integrated therapy services delivered in a group with a ratio of two (2) or three (3) individuals to one therapist designed to benefit the individuals involved due to a group context. The purposes may include, but are not limited to teaching caregivers strategies and techniques for supporting several individuals to participate in an activity or routine that naturally occurs with small groups (in the home, day habilitation site, vocational site or community location), or to teach and practice opportunities for physical and communication interaction in a small group context. The context of the group must reflect the context of a naturally occurring activity/routine i.e., yoga group instruction, social interaction, leisure activity, etc. One therapist can bill for no more than three individuals regardless of the number of participants.

(d) **Group clinical model:** Therapy services delivered in a clinical setting, in a group with a ratio of two (2) or three (3) individuals to one therapist

designed to benefit the individuals involved due to a group context. Purposes may include, but are not limited to teaching individuals strategies and techniques to participate in an activity/routine that naturally occurs with small groups, or to teach and practice opportunities for physical and communication interaction in a small group context. A clinical setting would include any location an individual would not otherwise visit, if they did not have a therapy appointment. Individuals receiving physical, occupational or speech language therapy services through the state plan, including EPSDT program or medicaid school-based services, would not be able to purchase duplicate therapy services through mi via.

P. **Nutritional counseling services for adults:** Nutritional counseling services include assessment of the participant's nutritional needs, development and/or revision of individuals nutritional plan, counseling and nutritional intervention, and observation and technical assistance related to implementation of the nutritional plan.

Q. **Intensive case management services:** Intensive case management is a skilled service that assists participants with care coordination, including services such as:

- (1) access to and coordination among primary, preventive and chronic care providers;
- (2) crisis intervention and planning;
- (3) staff training;
- (4) training related to health maintenance and safety;
- (5) end of life directives;
- (6) family mediation;
- (7) mi via participants may wish to delegate some management of their care to a skilled-level case manager;
- (8) intensive case management services may assist participants with the identification of and linkage to community resources and activities that are beyond the scope of medicaid services including recreational, social and educational activities;
- (9) intensive case management services must be included in the individual participant's service and support plan and budget, along with other purchased services; and
- (10) intensive case management services are distinct waiver services, purchased by the participant, and not related to the consultant's support role.

[8.314.6.15 NMAC - N, 12-1-06]

8.314.6.16 NON-COVERED SERVICES: Only the services listed as covered waiver services are covered under the MVW program. Medicaid state plan services may be available to waiver recipi-

ents through the regular medicaid program. Goods and services that are available to the recipient through another source are not covered under the MVW program. Experimental goods and services are not covered. Goods and services are not covered if such provision would violate federal and state statutes and regulations. Medicaid state plan services are subject to the limitations and coverage restrictions that exist for other medicaid services. See 8.301.3 NMAC, *General Noncovered Services*, for an overview of non-covered services. Medicaid does not cover room and board as waiver service or ancillary services. [8.314.6.16 NMAC - N, 12-1-06]

8.314.6.17 SERVICE AND SUPPORT PLAN (SSP) AND INDIVIDUAL BUDGETARY ALLOTMENT (IBA):

Based on the individual budgetary allotment determined by the state, an individualized service and support plan (SSP) and associated budget are developed at least annually by the participant in collaboration with the participant's consultant and others that the participant invites to be part of the process. The consultant serves in a supporting role to the participant, assisting the participant to understand mi via, and with developing and implementing the SSP and budget. The SSP and budget are developed and implemented in accordance with the mi via service standards and submitted to the state's utilization review contractor for final approval.

A. **SSP components:** The SSP contains:

- (1) the waiver services that are furnished to the participant, the projected amount, frequency and duration, and the type of provider who furnishes each service;
- (2) other services needed by the participant regardless of funding source, including state plan services;
- (3) informal supports that complement waiver services in meeting the needs of the participant;
- (4) methods for coordination with state plan services and other public programs;
- (5) methods for addressing health care needs, when relevant to the participant;
- (6) methods for monitoring implementation, determining life satisfaction, measuring quality and making continual improvement;
- (7) information, resources or training needed by the participant and service providers;
- (8) methods to address the participant's health and safety, such as 24-hour emergency and back-up services; and
- (9) individual budget.

B. **Individual budgetary allotment (IBA):** Each participant's annu-

al IBA is determined by the state as follows:

(1) for mi via participants transferring from the AIDS, D&E, DD or MF waiver, the IBA is the sum of waiver paid claims incurred by the participant during a twelve (12) month date-of-service period, beginning with the most recent sixteen (16) months of service minus the first four (4) months of service to ensure that claims have been paid; from the twelve (12) month sum, the annual budget is calculated by subtracting case management expenditures and calculating ninety (90) percent of the remainder;

(2) for participants with no prior waiver cost experience, the annual budget will be calculated based on algorithms developed by the state for recipients of the same waiver population (AIDS, D&E, DD, MF) with similar characteristics as the mi via participant;

(3) for mi via participants with BI category, the IBA is based on the mean average expenditure for individuals with brain injuries across all waivers, less case management, and calculating ninety (90) percent of the remainder; or

(4) an individual can request an adjustment to the budget, based on their needs; changes are initiated through the consultant and submitted to the state for consideration.

C. SSP and budget review criteria: The following SSP and budget review criteria shall be applied per mi via service standards as follows:

(1) services, supports and goods identified in the SSP can be approved if they enhance opportunities to achieve outcomes related to living arrangements, relationships, inclusion in community activities and work so long as the services or items meet the following requirements:

(a) the service or item is designed to meet the participant's functional, medical or social needs and advances the desired outcomes in his SSP;

(b) the service or item is documented in the SSP;

(c) the service or item is not prohibited by federal and state statutes and regulations, including the state's procurement code; and

(d) one or more of the following additional criteria are met:

(i) the service or item would increase the participant's functioning related to the disability;

(ii) the service or item would increase the participant's safety in the home environment; or

(iii) the service or item would decrease dependence on other medicaid-funded services.

(2) services, supports and goods that cannot be covered include:

(a) services covered by the state

plan, medicare, other third-parties, including education, home-based schooling and vocational services; or available through another source;

(b) services, supports or goods provided to or benefiting persons other than the individual participant;

(c) room and board;

(d) personal items and services not related to the disability;

(e) experimental goods/services;

and

(f) vacation expenses.

D. SSP and budget supports: The participant is assisted by the consultant and financial management agent in development and implementation of the SSP and budget, as specified in the mi via service standards.

E. Submission for approval: The utilization review contractor must approve the SSP and budget. The utilization review contractor must approve certain changes in the SSP and budget, as specified in the mi via service standards and in accordance with 8.302.5 NMAC, *Prior Authorization and Utilization Review*.

F. Quality assurance and quality improvement: Multiple mechanisms are utilized in the quality assurance and improvement system, as specified in the mi via service standards, that include the shared roles of the participant, providers, consultant, FMA and state, for assuring that participants' functional needs are satisfied, approved funds are used appropriately, and the quality of the mi via program is continually improving.

[8.314.6.17 NMAC - N, 12-1-06]

8.314.6.18 PRIOR AUTHORIZATION AND UTILIZATION REVIEW: All medicaid services, including services covered under this medicaid waiver, are subject to utilization review for medical necessity and program requirements. Reviews may be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior Authorization and Utilization Review*.

A. Prior authorization: Services, supports and goods specified in the SSP and the associated budget require prior authorization from MAD or its designee. The SSP must specify the type, amount and duration of services. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

B. Eligibility determination: To be eligible for MVW program services, medicaid recipients must require the (LOC) of services provided in an intermediate care facility for the mentally retarded (ICF-MR) for participants identified as DD and MF, in a nursing facility for partic-

ipants identified as D&E, AIDS, and BI. Prior authorization of services does not guarantee that individuals are eligible for medicaid.

C. Reconsideration: The CCA can request a re-review or a reconsideration. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions*.

[8.314.6.18 NMAC - N, 12-1-06]

8.314.6.19 REIMBURSEMENT:

A. The consultant contractor agency (CCA) and financial management agency (FMA) must submit claims for reimbursement to the MMIS contractor for processing.

B. Claims must be billed per the billing instructions. Reimbursement to service providers and vendors under mi via is made, as follows:

(1) once enrolled with the FMA, MVW service providers receive instructions and documentation forms necessary for claims processing;

(2) MVW service providers must submit claims for reimbursement to the mi via FMA contractor for processing; claims must be filed per the billing instructions provided by the FMA;

(3) participants and MVW service providers must follow all medicaid FMA billing instructions; and

(4) reimbursement to providers of MVW services is made at a predetermined reimbursement rate negotiated by the participant with the provider and approved by the utilization review contractor, but at no time can the total expenditure for services exceed the participant's IBA.

C. Reimbursement may not be made directly to the participant, either to reimburse the participant for expenses incurred or enable the participant to directly pay a service provider.

[8.314.6.19 NMAC - N, 12-1-06]

HISTORY OF 8.314.6 NMAC:
[RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 315 OTHER LONG TERM CARE SERVICES PART 2 PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)

8.315.2.1 ISSUING AGENCY:
New Mexico Human Services Department.
[8.315.2.1 NMAC - Rp, 8 NMAC 4.MAD.000.1, 12-1-06]

8.315.2.2 SCOPE: The rule applies to the general public.
[8.315.2.2 NMAC - Rp, 8 NMAC 4.MAD.000.2, 12-1-06]

8.315.2.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 et seq. NMSA 1978 (Repl. Pamp. 1991).
[8.315.2.3 NMAC - Rp, 8 NMAC 4.MAD.000.3, 12-1-06]

8.315.2.4 DURATION: Permanent
[8.315.2.4 NMAC - Rp, 8 NMAC 4.MAD.000.4, 12-1-06]

8.315.2.5 EFFECTIVE DATE: December 1, 2006, unless a later date is cited at the end of a section.
[8.315.2.5 NMAC - Rp, 8 NMAC 4.MAD.000.5, 12-1-06]

8.315.2.6 OBJECTIVE: The objective of these regulations is to provide policies for the service portion of the New Mexico medicaid program. These policies describe eligible providers, covered services, noncovered services, utilization review, and provider reimbursement.
[8.315.2.6 NMAC - Rp, 8 NMAC 4.MAD.000.6, 12-1-06]

8.315.2.7 DEFINITIONS: [RESERVED]

8.315.2.8 MISSION STATEMENT: The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of medicaid-eligible individuals by furnishing payment for quality health services at levels comparable to private health plans.
[8.315.2.8 NMAC - Rp, 8 NMAC 4.MAD.002, 12-1-06]

8.315.2.9 PACE PROGRAM SERVICES: The New Mexico medicaid program (medicaid) pays for medically necessary health services furnished to eligible recipients, including services furnished in nursing facilities. To help New Mexico recipients receive necessary services, the New Mexico medical assistance division (MAD) pays for capitated and community-based services through the PACE program. This project provides a complete package of acute, long term care, personal care and social services to a frail population that meets nursing facility clinical criteria. See

Section 9412(b) of the federal Omnibus Budget Reconciliation Act of 1986 and Section 1915(a) of the Social Security Act. This part describes the following: eligible providers, services for recipients who are nursing home eligible, covered services, service limitations, and reimbursement methodology.
[8.315.2.9 NMAC - Rp, 8 NMAC 4.MAD.777, 12-1-06]

8.315.2.10 ELIGIBLE PROVIDERS:

A. The eligible provider will have a professional services agreement (PSA) with the human services department. The provider will also meet the following conditions:

(1) be licensed and certified by the licensing and certification bureau of the department of health (DOH) to meet conditions as a diagnostic and treatment center;

(2) participate in the MAD utilization review process and agree to operate in accordance with all policies and procedures of that system; and

(3) meet and comply with the centers for medicare and medicaid services (CMS) requirements for full provider status for PACE organizations.

B. Once enrolled, the provider will receive a packet of information, including medicaid program policies, utilization review instructions, and other pertinent material from MAD. The provider is responsible for ensuring receipt of these materials and for updating as new materials are received from MAD.

[8.315.2.10 NMAC - Rp, 8 NMAC 4.MAD.777.1, 12-1-06]

8.315.2.11 PROVIDER RESPONSIBILITIES:

A. The provider who furnishes services to medicaid recipients will comply with all specified medicaid participation requirements. See 8.302.1 NMAC, *General Provider Policies*. The provider will verify that individuals are eligible for medicaid, medicare, or other health insurance at the time services are furnished. The provider will verify whether or not an individual is self-pay at the time services are provided. The provider will maintain records which are sufficient to fully disclose the extent and nature of the services provided to recipients. See 8.302.1 NMAC, *General Provider Policies*. The provider will provide the coordination which will enable the client to utilize PACE as the single source for primary care. This will assist the enrollee in the coordination of care by specialists.

B. **Outreach and marketing:** The provider will have a written plan which accomplishes the following outreach

and marketing objectives.

(1) Strategies of how prospective participants are provided adequate program descriptions.

(a) The program descriptions shall be written in a culturally competent format at a language level understandable by the participant (sixth grade). The format should be sensitive to the culture and language common to the service area.

(b) Program descriptions should include the services available through the program. The services include, but are not limited to, the following: enrollment and disenrollment, procedures to access services, after hours call-in system, provisions for emergency treatment, restrictions against using medical providers and/or services not authorized by the interdisciplinary team, and any other information necessary for prospective participants to make informed decisions about enrollment. Prior to enrollment, each participant will be informed of what individualized initial assessment and treatment plan has been developed by the interdisciplinary team.

(2) Development of outreach and enrollment materials (including marketing brochures, enrollment agreements, website and disenrollment forms). These materials should be submitted in draft form to MAD for approval prior to publication. Distribution prior to approval is prohibited.

(3) Submit an active and ongoing marketing plan, with measurable enrollment objectives and a system for tracking its effectiveness. The plan shall also include, but not be limited to, the sequence and timing of promotional and enrollment activities and the resources needed for implementation.

(4) Ensure that prohibited marketing activities are not conducted by its employees or its agents. Prohibited practices are:

(a) discrimination of any kind while maintaining the PACE program requirements;

(b) statements or activities that could mislead or confuse potential participants, or misrepresent the contractor, CMS, or the state medicaid agency;

(c) inducing enrollment through gifts or payments; the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation; in addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks; and

(d) subcontracting outreach efforts to individuals or organizations whose sole responsibility involves direct contact with elderly to solicit enrollment.
[8.315.2.11 NMAC - Rp, 8 NMAC 4.MAD.777.2, 12-1-06]

8.315.2.12 ELIGIBLE RECIPIENTS: Medicaid recipients who meet the eligibility requirements as stated in the medical assistance division eligibility manual may be eligible to participate in the PACE program.

[8.315.2.12 NMAC - Rp, 8 NMAC 4.MAD.777.3, 12-1-06]

8.315.2.13 COVERED SERVICES: The PACE program is a partially capitated, community-based service program. The PACE program will ensure access to a comprehensive benefit package of services to a frail population that meets nursing facility clinical criteria. The provider will provide all medicaid services that are included in a capitated rate. Medicare covered services will be reimbursed through a medicare capitated rate. The provider will provide medicare-eligible PACE participants with all medicare services that are included in the medicare capitated rate. Effective January 1, 2006, upon the implementation of medicare part D prescription drug coverage, pharmacy costs for PACE medicare beneficiaries are covered by the medicare capitated rate. Pharmacy costs for medicaid only recipients would be covered by the medicaid only capitated rate.

A. Adult day health center: The focal point for coordination and provision of the majority of the PACE program services is the adult day health center. The adult day health center will include a primary care clinic and areas for therapeutic recreation, restorative therapies, socialization, personal care and dining. The center shall include the following areas:

- (1) examination room(s);
- (2) treatment room(s);
- (3) therapy room(s);
- (4) dining room(s);
- (5) activity room(s);
- (6) kitchen;
- (7) bathroom(s);
- (8) personal care room(s);
- (9) administrative office(s);
- (10) counseling office(s);
- (11) pharmacy/medication room;

and

- (12) laboratory;

B. Interdisciplinary team: The interdisciplinary team is a critical element of the PACE program. The ongoing process of service delivery in this model requires the team to identify participant problems, determine appropriate treatment objectives, select interventions and evaluate efficiencies of care on an individual participant basis. The interdisciplinary team is composed of, but not limited to, the following members: Primary care physician, nurse, dietician, social worker, physical therapist, occupational therapist, speech therapist, recreational therapist or coordinator, day health center supervisor, home care

liaison, health workers/aides, and drivers. Some of the interdisciplinary team members may be project staff and some may be contracted positions. All members must meet applicable state licensing and certification requirements and provide direct care and services appropriate to participant need.

C. Benefit package: The benefit package includes the following:

(1) a service delivery system that ensures prompt access to all covered services, including referral protocols, approved by the interdisciplinary team;

(2) access to medical care and other services, as applicable, twenty four (24) hours per day, seven (7) days a week, three hundred sixty five (365) days per year; all care and services shall be available and shall be provided at such times and places, including the participants home or elsewhere, as are necessary and practical;

(3) access to an acute and comprehensive benefit package of services, including, but not limited to:

(a) interdisciplinary assessment and treatment planning;

(b) social work services;

(c) nutritional counseling; see MAD-758, *Nutrition Services* [8.324.9 NMAC];

(d) recreational therapy;

(e) meals;

(f) restorative therapies, including physical therapy, occupational therapy and speech therapy, see MAD-767, *Rehabilitation Service Providers* [8.325.8 NMAC];

(g) home care (personal care, nursing care and disposable medical supplies), see MAD-768, *Home Health Services* [8.325.9 NMAC];

(h) transportation, see MAD-756, *Transportation* [8.324.7 NMAC];

(i) drugs and biologicals; effective January 1, 2006, pharmacy costs are reimbursed by medicare for medicare beneficiaries; pharmacy costs for medicaid-only recipients are reimbursed by medicaid through the medicaid-only capitated rate; see 8.324.4 NMAC, *Pharmacy Services*, and Subsection D of 8.310.2.12 NMAC, *Medical Services Providers*;

(j) prosthetics, medical supplies and durable medical equipment, corrective vision devices such as eyeglasses and lenses, hearing aids, dentures and repairs and maintenance for these items; see 8.324.8 NMAC, *Prosthetics and Orthotics*; 8.310.6 NMAC, *Vision Care Services*; 8.324.6 NMAC, *Hearing Aids and Related Evaluations*; 8.310.7 NMAC, *Dental Services*; 8.324.5 NMAC, *Durable Medical Equipment and Medical Supplies*; MAD-768, *Home Health Services*;

(k) behavioral health services, 8.310.8 NMAC, *Mental Health Professional Services* and 8.315.3 NMAC,

Psychosocial Rehabilitation Services;

(l) nursing facility services which include, but are not limited to, the following: semi-private room and board, physician and skilled nursing services, custodial care, personal care and assistance, biologicals and drugs, physical, speech, occupational and recreational therapies, if necessary, social services, and medical supplies and appliances, see MAD-731, *Nursing Facilities* [8.312.2 NMAC]; MAD-722, *Outpatient Psychiatric Services and Partial Hospitalization* [8.311.4 NMAC]; MAD-767, *Rehabilitation Service Providers* [8.325.8 NMAC]; 8.324.4 NMAC, *Pharmacy Services*; Subsection D of 8.310.2.12 NMAC, *Medical Services Providers*; 8.324.5 NMAC, *Durable Medical Equipment and Medical Supplies*; and

(m) urgent care services.

(4) coordinating access for the following services:

(a) primary care services including physician and nursing services;

(b) medical specialty services, including but not limited to: anesthesiology, audiology, cardiology, dentistry, dermatology, gastroenterology, gynecology, internal medicine, nephrology, neurosurgery, oncology, ophthalmology, oral surgery, orthopedic surgery, otorhino-laryngology, plastic surgery, pharmacy consulting services, podiatry, psychiatry, pulmonary disease, radiology, rheumatology, surgery, thoracic and vascular surgery, urology; see 8.301.2 NMAC, *General Benefit Description*; 8.310.2 NMAC, *Medical Services Providers*; MAD-721 *Hospital Services* [8.311.2 NMAC]; 8.310.5 NMAC, *Anesthesia Services*; 8.324.6 NMAC, *Hearing Aids and Related Evaluations*; 8.310.7 NMAC, *Dental Services*; and 8.310.6 NMAC, *Vision Care Services*;

(c) laboratory and x-rays and other diagnostic procedures; see MAD-751, *Laboratory Services* [8.324.2 NMAC];

(d) acute inpatient services, including but not limited to, the following: ambulance, emergency room care and treatment room services, semi-private room and board, general medical and nursing services, medical surgical/intensive care/coronary care unit as necessary, laboratory tests, x-rays and other diagnostic procedures, drugs and biologicals, blood and blood derivatives, surgical care, including the use of anesthesia, use of oxygen, physical, speech, occupational, and respiratory therapies, and social services; see 8.301.2 NMAC, *General Benefit Description*; MAD-721, *Hospital Services*; 8.324.8 NMAC, *Prosthetics and Orthotics*; 8.324.10 NMAC, *Ambulatory Surgical Center Services*; and 8.310.5 NMAC, *Anesthesia Services*; MAD-751, *Laboratory Services* [8.324.2 NMAC]; 8.324.4 NMAC,

Pharmacy Services; Subsection D of 8.310.2.12 NMAC, *Medical Services Providers*; MAD-767, *Rehabilitation Service Providers* [8.325.8 NMAC]; and

(e) hospital emergency room services.

(5) in-area emergency care; all medicaid reimbursable emergency services included in the capitated rate will be reimbursed by the PACE program to a non-affiliated provider when these services are rendered within the PACE program geographic service area; these emergency services will be reimbursed by the PACE program only until such time as the participant's condition permits travel to the nearest PACE program-affiliated facility;

(6) out-of-area emergency care that is provided in, or en route to, a hospital or hospital emergency room, in a clinic, or physicians office, or any other site outside of the PACE program service area; covered services included in the capitation rate will be paid by the PACE program when rendered in and out-of-area medical emergency, but only until such time as the participants condition permits travel to the nearest PACE program-affiliated facility.

[8.315.2.13 NMAC - Rp, 8 NMAC 4.MAD.777.4, 12-1-06]

8.315.2.14 NON COVERED SERVICES:

A. The following services are not the responsibility of the provider or medicaid:

(1) any medicaid capitated or fee-for-service benefit which has not been authorized by the multidisciplinary team;

(2) in inpatient facilities, private room and private duty nursing, unless medically necessary, and non-medical items for personal convenience, such as telephone charges, radio, or television rental;

(3) cosmetic surgery unless required for improved functioning of a malformed part of the body resulting from an accidental injury or for reconstruction following mastectomy;

(4) experimental medical, surgical or other health procedures or procedures not generally available;

(5) care in a government hospital (veterans administration, federal/state hospital) unless authorized;

(6) service in any hospital for the treatment of chronic, medically uncomplicated drug dependency or alcoholism; and

(7) any services rendered outside of the United States.

B. The participant will be financially responsible for any of the above-mentioned services.

[8.315.2.14 NMAC - Rp, 8 NMAC 4.MAD.777.5, 12-1-06]

8.315.2.15 TREATMENT PLANS:

A. Prior to enrollment, an initial assessment and treatment plan for each participant is developed by the interdisciplinary team.

B. Each participant will be reassessed by the interdisciplinary team on a semi-annual basis and informed about a new treatment plan.

C. The enrollee, enrollees family, or representative shall be included in the initial assessment, treatment plan and semi-annual reassessment of the treatment plan.

[8.315.2.15 NMAC - Rp, 8 NMAC 4.MAD.777.6, 12-1-06]

8.315.2.16 ENROLLMENT OF PARTICIPANTS:

A. The effective date for the recipients enrollment in the program is the first day of the calendar month following the signing of the enrollment agreement, if an approved level of care (LOC) and all financial and non-financial eligibility criteria have been approved by the income support division (ISD).

B. The potential participant signs an enrollment agreement which includes, but is not limited to, the following information:

(1) enrollment and disenrollment data that will be collected and submitted to the department, including, but not limited to, the following:

(a) social security number;

(b) health insurance claim number (HIC);

(c) last name, first name, middle initial;

(d) date of birth;

(e) address of current residence;

(f) assigned ISD office address;

(g) medicare number (part A and/or part B) for medicare beneficiaries;

(h) medicaid number; and

(i) effective date of enrollment in the PACE program;

(2) benefits available, including all medicare and medicaid covered services, and how services are allocated or can be obtained from the PACE program provider, including, but not limited to:

(a) appropriate use of the referral system;

(b) after hours call-in system;

(c) provisions for emergency treatment;

(d) hospitals to be used; and

(e) the restriction that enrollees may not seek services or items from medicaid and medicare providers without authorization from the interdisciplinary team;

(3) participant premiums and pro-

cedures for payment, if any; this includes the medical care credit if the participant enters a nursing home;

(4) participant rights, grievance procedures, conditions for enrollment and disenrollment and medicare and medicaid appeal processes;

(5) participants obligation to notify the PACE program provider of a move or absence from the providers service area;

(6) procedures to assure that applicants understand that all medicaid services must be received through the PACE program provider (the "lock-in" provision);

(7) procedures for obtaining emergency services and urgent care;

(8) statements that the PACE program provider has a program agreement with CMS and the state medicaid agency that may be subject to periodic renewal, and that termination of that agreement may result in termination of enrollment in the PACE program; statement that the PACE program provider and the state medicaid agency enter into a contract, which must be periodically renewed, and that failure to renew the contract may result in termination of enrollment in the PACE program;

(9) participants authorization for the disclosure and exchange of information between CMS, its agent, the state medicaid agency and the PACE program provider; and

(10) participant's signature and date.

C. Once the participant signs the enrollment agreement, the participant receives the following:

(1) a copy of the enrollment agreement;

(2) participant/provider contract and/or evidence of coverage, if this is different from the enrollment agreement;

(3) a PACE program membership card; and

(4) an emergency sticker to be posted in the participants home in case of emergency.

D. The provider will inform the participant and the ISD office when enrollment is completed.

E. Enrollment and services continue unless eligibility of recipient changes or until the participant either voluntarily disenrolls or involuntary disenrollment occurs as described below.

[8.315.2.16 NMAC - Rp, 8 NMAC 4.MAD.777.7, 12-1-06]

8.315.2.17 DISENROLLMENT OF PARTICIPANTS:

All voluntary and involuntary disenrollments will be documented and available for review by the state medicaid agency. The provider will inform the ISD office when a participant is being

disenrolled either voluntarily or involuntarily. Disenrollment is effective by the first day of the second calendar month following the date in which enrollment has changed.

A. Voluntary disenrollment: A participant may begin the process of voluntary disenrollment at any time during the month. The provider shall use the most expedient process allowed by medicaid and medicare procedures while ensuring a coordinated disenrollment date. Until enrollment is terminated, the participants are required to continue using the PACE program services and remain liable for any premiums. The provider shall continue to provide all needed services until the date of termination.

B. Involuntary disenrollment: A participant may be involuntarily disenrolled if the participant:

(1) moves out of the PACE program service area;

(2) is a person with decision-making capacity who consistently does not comply with the individual plan of care and poses a significant risk to self or others;

(3) experiences a breakdown in the physician or team participant relationship such that the PACE program provider's ability to furnish services to either the participant or other participant(s) is seriously impaired;

(4) refuses services and/or is unwilling to meet conditions of participation as they appear in the enrollment agreement;

(5) refuses to provide accurate financial information, provides false information or illegally transfers assets;

(6) is out of the PACE program provider service area for more than thirty (30) days (unless arrangements have been made with the PACE program provider);

(7) is enrolled in a PACE program that loses its contracts and/or licenses which enable it to offer health care services;

(8) ceases to meet the financial or non-financial criteria; and

(9) ceases to meet the level of care (LOC) at any time.

[8.315.2.17 NMAC - Rp, 8 NMAC 4.MAD.777.8, 12-1-06]

8.315.2.18 APPROPRIATE REFERRAL FOR OTHER SERVICES:

A. The provider will assist a participant who either voluntarily or involuntarily disenrolls from the PACE program to apply for other possible services, including medicare or private-pay services; and,

B. The provider will work with the state medicaid agency to ascertain the individuals potential eligibility for other medicaid categories.

[8.315.2.18 NMAC - Rp, 8 NMAC 4.MAD.777.9, 12-1-06]

8.315.2.19 PROVISIONS FOR REINSTATEMENT OF PARTICIPANTS TO THE PACE PROGRAM:

There are no restrictions placed on a former participant's reinstatement into the PACE program, if the former participant continues to meet financial, non-financial and medical eligibility criteria.

[8.315.2.19 NMAC - Rp, 8 NMAC 4.MAD.777.10, 12-1-06]

8.315.2.20 REDETERMINATION:

The ISD office will conduct a redetermination at least annually of all financial and non-financial criteria, per the standards of the medicaid eligibility requirements. See Subsection A of 8.280.600.12 NMAC, *Ongoing Benefits, Regular Reviews*. LOC is determined by the department's utilization review contractor.

[8.315.2.20 NMAC - Rp, 8 NMAC 4.MAD.777.11, 12-1-06]

8.315.2.21 PARTICIPANT RIGHTS:

The provider will have written policies and procedures for ensuring the rights of participants as well as educating the participants to the PACE program. These policies and procedures should be presented in a culturally competent format at a language level understandable by the participant or their families (sixth grade level) covering, at a minimum, the following:

A. the enrollment/disenrollment process;

B. services available through the program;

C. procedures to access services;

D. after hours call-in system;

E. provisions for emergency treatment; and

F. restrictions against using medical providers and/or services not authorized by the interdisciplinary team.

[8.315.2.21 NMAC - Rp, 8 NMAC 4.MAD.777.12, 12-1-06]

8.315.2.22 GRIEVANCE PROCEDURES:

The provider will have participant grievance procedures which provide the participants and their family members with a process for expressing dissatisfaction with the program services, whether medical or nonmedical in nature. The procedures will explain and permit an orderly resolution of informal and formal grievances. These procedures should be presented in a culturally competent format at a language level understandable by the participant or their families (sixth grade level). The procedures will:

A. ensure that all provider grievance procedures and any subsequent changes are prior-approved by MAD in

writing and included in the enrollment agreement;

B. ensure that a staff member is designated as having primary responsibility for the maintenance of the grievance procedures, review of their operation, and revision of related policies and procedures whenever necessary;

C. ensure that the grievance procedures clearly explain to participants which staff members are assigned to receive formal and informal complaints, the expected procedure, and the time frames for doing so;

D. ensure that a copy of the participant grievance procedures and complaint forms are available to participants;

E. ensure that procedures are in place for tracking, investigating, recording, resolving and appealing decisions concerning grievances made by participants or others; and

F. ensure there is no discrimination against a participant solely on the grounds the participant filed a grievance.

[8.315.2.22 NMAC - Rp, 8 NMAC 4.MAD.777.13, 12-1-06]

8.315.2.23 QUALITY ASSURANCE SYSTEM:

A. The provider will have a written plan of quality assurance and improvement which provides for a system of ongoing assessment, implementation, evaluation, and revision of activities related to overall program administration and services. The plan will:

(1) ensure that standards are incorporated into the provider policy and procedure manual; the provider standards will be based on the PACE protocol, applicable PACE standards and applicable licensing and certification criteria;

(2) ensure that goals and objectives provide a framework for quality improvement activities, evaluation and corrective action;

(3) ensure that quality indicators are objective and measurable variables related to the entire range of services provided by the PACE program provider; the methodology should assure that all demographic groups, all care settings, e.g., inpatient, the PACE program center and in-home, will be included in the scope of the quality assurance review;

(4) ensure that quality indicators are selected for review on the basis of high volume, high risk diagnosis or procedure, adverse outcomes, or some other problem-focused method consistent with the state of the art;

(5) ensure that the evaluation process and/or procedures review the effectiveness of the interdisciplinary team in its

ability to assess participants care needs, identify the participant's treatment goals, assess effectiveness of interventions, evaluate adequacy and appropriateness of service utilization and reorganize treatment plan as necessary;

(6) establish the composition and responsibilities of a quality assurance committee and an ethics committee;

(7) ensure participant involvement in the quality assurance plan and evaluation of satisfaction with services; and

(8) designate an individual to coordinate and oversee implementation of quality assurance activities.

B. The quality assurance committee will hold quarterly meetings with the provider staff, including, but not limited to, the: 1) medical director; 2) interdisciplinary team; and, 3) administrative director. The provider will prepare quarterly written status reports for review at the quality assurance committee meetings. Written status reports will include, at a minimum, a discussion of project progress, problems encountered and recommended solutions, identification of policy or management questions, and requested project plan adjustments.

[8.315.2.23 NMAC - Rp, 8 NMAC 4.MAD.777.14, 12-1-06]

8.315.2.24 D A T A GATHERING/REPORTING SYSTEM:

A. **Standardized data:** The provider will ensure the quality of the data according to MAD medium and frequency of reporting.

B. **Software:** The provider shall make no use of computer software developed pursuant to the contract, except as provided in the contract or as specifically granted in writing by the department.

[8.315.2.24 NMAC - Rp, 8 NMAC 4.MAD.777.15, 12-1-06]

8.315.2.25 FINANCIAL REPORTING: The provider is required to submit certain financial reports as follows.

A. A budgeted versus actual financial report for the current and year-to-date periods on a monthly basis forty five (45) days after the end of each month. During the first year of operation, the financial report will be submitted on a monthly basis, 45 days after the end of each month. Thereafter, this report will be submitted on a quarterly basis, 45 days after the end of each quarter. The state medicaid agency reserves the right to extend the submission of this report on a monthly basis should provider performance indicate a need for more frequent monitoring.

B. Fiscal data based on cost center accounting structure provided

by the state medicaid agency. At the twelfth month, the year-to-date summary will provide the necessary annual data.

C. Submit a cumulative report to the state medicaid agency in the form and detail described by On Lok senior health services/national PACE association. The interim cost report is due 45 days after the end of each providers fiscal quarter and covers the period from the beginning of the fiscal year through the respective quarter.

D. Submit to the state medicaid agency a cost report in the form and detail prescribed by the state medicaid program no later than 180 days after the end of the providers fiscal year.

E. Submit to the state medicaid agency a quarterly balance sheet for those PACE program providers that are separate corporate entities.

[8.315.2.25 NMAC - Rp, 8 NMAC 4.MAD.777.16, 12-1-06]

8.315.2.26 UTILIZATION

REVIEW: All medicaid services, including services covered under the PACE program, are subject to utilization review for medical necessity and program compliance. Reviews can be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior Authorization and Utilization Review*. Once enrolled, providers receive instructions and documentation forms necessary for prior authorization and claims processing.

A. **Prior authorization:** To be eligible for the PACE program, a medicaid recipient must require a nursing facility level of care (LOC). Level of care determinations are made by MAD or its designee. The plan of care (POC) developed by the recipients interdisciplinary team must specify the type, amount and duration of service. Some services specified in the POC may require prior authorization from MAD or its designee. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

B. **Eligibility determination:** Prior authorization of service does not guarantee that individuals are eligible for medicaid. Providers must verify that individuals are financially and medically eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance.

C. **Reconsideration:** Providers who disagree with prior authorization request denials or other review decisions may request a re-review and a reconsideration. See MAD-953, *Reconsideration of Utilization Review Decisions* [8.350.2 NMAC].

[8.315.2.26 NMAC - Rp, 8 NMAC 4.MAD.777.17, 12-1-06]

8.315.2.27 REIMBURSEMENT: PACE program providers must submit claims for reimbursement on the UB 92 claim form or its successor. See 8.302.2 NMAC, *Billing for Medicaid Services*. Once enrolled, providers receive instructions on documentation, billing and claims processing.

[8.315.2.27 NMAC - Rp, 8 NMAC 4.MAD.777.18, 12-1-06]

HISTORY OF 8.315.2 NMAC:

History of Repealed Material:

8 NMAC 4.MAD.777, Pre-PACE Pilot Project Services, filed 1-20-98 - Repealed effective 12-1-06.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.400 NMAC, Section 10, which will be effective on December 1, 2006. The Medical Assistance Division amended the section to include PACE services.

8.200.400.10 BASIS FOR DEFINING GROUP:

Individuals are eligible for medicaid if they meet the specific criteria for one of the eligibility categories. In New Mexico, other medical assistance programs for individuals who do not qualify for medicaid are available, such as the children's medical services program (category 007) administered by the New Mexico department of health.

A. **Assistance groups:** The HSD income support division (ISD) determines eligibility for individuals applying for medicaid.

(1) Category 002 provides medicaid for families with dependent child(ren) for individuals who meet July 16, 1996 AFDC related eligibility criteria.

(2) Category 027 provides four (4) months of medicaid if category 002 medicaid eligibility is lost due to increased child support.

(3) Transitional medicaid (category 028) extends medicaid benefits up to twelve (12) months for families who lose category 002 medicaid eligibility due to increased earnings or loss of the earned income disregard.

(4) Category 033 provides medicaid for individuals who are ineligible for category 002 medicaid due to income or resources deemed from a stepparent, grandparent, or sibling.

B. Medical assistance for women and children: ISD offices establish eligibility for medical assistance for women and children (MAWC) categories. For these categories, medicaid coverage does not depend on one or both parents being dead, absent, disabled, or unemployed. Children and pregnant women in intact families may be eligible for these medicaid categories.

(1) **Category 030:** This category provides the full range of medicaid coverage for pregnant women in families meeting AFDC income and resource standards.

(2) **Category 031:** This category provides twelve (12) months of medicaid coverage for babies born to mothers who, at the time of the birth, were either eligible for and receiving New Mexico medicaid or were deemed to have been eligible for and receiving New Mexico medicaid. To receive the full twelve (12) months of coverage, all of the following criteria must be met:

(a) The mother remains eligible for New Mexico medicaid (or would be eligible if she were still pregnant).

(b) The baby remains with the mother.

(c) Both mother and baby continue to reside in New Mexico.

(3) **Category 032:** This category provides medicaid coverage to children who are under 19 years of age in families with incomes under 235% of federal income poverty guidelines. Uninsured children in families with income between 185-235% of FPL are eligible for the state children's health insurance program (SCHIP). Certain additional eligibility criteria are applicable under SCHIP, as well as co-payment requirements. Native American children are exempt from co-payments.

(4) **Category 035:** This category provides medicaid coverage for pregnancy-related services for pregnant women and family planning services for women in families whose income is below 185% of the federal income poverty level. There is no resource test for this category.

C. Supplemental security income: Eligibility for supplemental security income (SSI) is determined by the social security administration. This program provides cash assistance and medicaid for eligible aged (category 001), blind (category 003) or disabled (category 004) recipients. ISD offices determine medicaid eligibility for individuals who are ineligible for SSI due to income or resources deemed from stepparents (category 034).

D. Medicaid extension: Medicaid extension provides medicaid coverage for individuals who lose eligibility for SSI due to a cost of living increase in social security benefits and to individuals who lose SSI for other specific reasons. Under

the "Pickle Amendment" to the Social Security Act, medicaid coverage is extended to individuals who lose SSI for any reason which no longer exists and who meet SSI eligibility criteria when social security cost-of-living increases are disregarded.

(1) Individuals who meet the following requirements may also be eligible for medicaid extension:

(a) widow(er)s between sixty (60) and sixty-four (64) years of age who lose SSI eligibility due to receipt of or increase in early widow(er)s' Title II benefits; eligibility ends when an individual becomes eligible for part A medicare or reaches age sixty-five (65);

(b) certain disabled adult children (DACs) who lose SSI eligibility due to receipt of or increase in Title II DAC benefits;

(c) certain disabled widow(er)s and disabled surviving divorced spouses who lose SSI eligibility due to receipt of or increase in disabled widow(er)s or disabled surviving divorced spouse's Title II benefit; medicaid eligibility ends when individuals become eligible for part A medicare;

(d) non-institutionalized individuals who lose SSI eligibility because the amount of their initial Title II benefits exactly equals the income ceiling for the SSI program; and

(e) certain individuals who become ineligible for SSI cash benefits and, therefore, medicaid as well, may receive up to two (2) months of extended medicaid benefits while they apply for another category of medicaid.

(2) Medicaid extension categories include individuals who are sixty-five (65) years and older (category 001), individuals who are less than sixty-five (65) years of age and blind (category 003) and individuals who are less than sixty-five (65) years of age and disabled (category 004).

E. Institutional care medicaid: ISD offices establish eligibility for institutional care medicaid. Individuals who are aged (category 081), blind (category 083) or disabled (category 084) must require institutional care in nursing facilities (NFs), intermediate care facilities for the mentally retarded (ICF-MRs), or acute care hospitals and meet all SSI eligibility criteria, except income, to be eligible for these medicaid categories.

F. Home and community-based waiver services: ISD offices establish the financial eligibility for individuals who apply for medicaid under one of the home and community based waiver programs. Individuals must meet the resource, income, and level of care standards for institutional care; however, these individuals receive services at home. The waiver programs are listed below:

(1) acquired immunodeficiency

syndrome (AIDS) and AIDS-related condition (ARC) waiver. (category 090);

(2) disabled and elderly waiver - aged (category 091), blind (category 093), disabled (category 094);

(3) medically fragile waiver (category 095); and

(4) developmental disabilities waiver (category 096).

G. Qualified medicare beneficiaries: Medicaid covers the payment of medicare premiums as well as deductible and coinsurance amounts for medicare-covered services under the qualified medicare beneficiaries (QMB) program for individuals who meet certain income and resource standards (category 040). To be eligible, an individual must have or be conditionally eligible for medicare hospital insurance (medicare part A).

H. Qualified disabled working individuals: Medicaid covers the payment of part A medicare premiums under the qualified disabled working individuals (QDs) program for individuals who lose entitlement to free part A medicare due to gainful employment (category 042). To be eligible, individuals must meet the social security administration's definition of disability and be enrolled for premium part A. These individuals must also meet certain income and resource standards. They are not entitled to additional medicaid benefits and do not receive medicaid cards.

I. Specified low-income medicare beneficiaries: Medicaid covers the payment of medicare part B premiums under the specified low-income medicare beneficiaries (SLIMB) program for individuals who meet certain income and resource standards (category 945). To be eligible, individuals must already have medicare part A. They are not entitled to additional medicaid benefits and do not receive medicaid cards.

J. Medical assistance for refugees: Low-income refugees may be eligible for medical and cash assistance. Eligibility for refugee assistance programs is determined by the ISD offices. To be eligible for cash assistance and medical coverage (category 019) or medical coverage only (category 049), a refugee must meet the income criteria for AFDC programs. Refugee medical assistance is limited to an eight (8) month period starting with the month a refugee enters the United States. Refugee medical assistance is approved only in the following instances:

(1) refugees meet the AFDC standard of need when the earned income disregard is applied;

(2) refugees meet all criteria for refugee cash assistance but wish to receive only refugee medical assistance;

(3) refugees receive a four (4) month refugee medical assistance extension

when eligibility for refugee cash assistance is lost due to earned income; or

(4) refugee spends-down to the AFDC standard of need (category 059).

K. Emergency medical services for aliens: Medicaid covers emergency services for certain nonqualified, illegal undocumented, or non-immigrant aliens who meet all eligibility criteria for one of the existing medicaid categories, except for citizenship or legal alien status. These individuals must receive emergency services from a medicaid provider and then go to an ISD office for an evaluation of medicaid eligibility. Once an eligibility determination is made, the alien must notify the servicing provider so that the claim can be submitted to MAD or its designee for a medical necessity evaluation and claim payment.

L. Children, youth, and families medicaid: Medicaid covers children in state foster care programs (category 006, category 046, category 066, category 086) and in adoption subsidy situations (category 017, category 037, and category 047) when the child's income is below the AFDC need standard for one person. Medicaid also covers children who are the full or partial responsibility of the children, youth, and families department (CYFD) such as category 060 and category 061). The eligibility determination for these categories is made by CYFD.

M. Working disabled individuals: The working disabled individuals (WDI) program (category 043) covers disabled individuals who are either employed, or who lost eligibility for supplemental security income (SSI) and medicaid due to the initial receipt of social security disability insurance (SSDI) and who do not yet qualify for medicare.

N. Breast and cervical cancer: The breast and cervical cancer (BCC) program (category 052) covers uninsured women, under the age of 65 who have been screened and diagnosed as having breast or cervical cancer, including pre-cancerous conditions by a contracted provider for the centers for disease control and prevention's national breast and cervical cancer early detection program (NBCCEDP)

O. State coverage insurance: The state coverage insurance (SCI) program (category 062) covers uninsured adults ages 19-64 who: have no other health insurance and are not eligible for other government insurance programs; have income levels up to 200% of the federal poverty limit (FPL); comply with income and eligibility requirements as specified in 8.262.400 NMAC, 8.262.500 NMAC and 8.262.600 NMAC; are employed by an employer who purchases an SCI employer group policy or who participate in an individual policy.

P. Medicare part D - low income subsidy: The subsidy program (category 048) available to individuals enrolled in part D of medicare and whose gross income is less than 150% of the federal poverty level (FPL). This subsidy helps pay the cost of premiums, deductibles, and co-payments.

Q. Program of all-inclusive care for the elderly: The program of all-inclusive care for the elderly (PACE), (categories 081, 083, and 084) covers all acute and long-term care needs of adults age 55 years or older who meet level of care requirements for medicaid nursing facility care.

[2-1-95; 1-1-97; 4-1-98; 6-30-98; 3-1-99; 8.200.400.10 NMAC - Rn, 8 NMAC 4.MAD.402 & A, 7-1-01; A, 7-1-02; A, 10-1-02; A, 7-1-05; A, 2-1-06; A, 12-1-06]

NEW MEXICO LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING

CHAPTER 30 ANIMALS AND ANIMAL INDUSTRY GENERAL PROVISIONS

PART 7 EQUINE VIRAL ARTERITIS (EVA)

21.30.7.1 ISSUING AGENCY: New Mexico Livestock Board; 300 San Mateo NE, Suite 1000; Albuquerque, New Mexico 87108; Telephone (505) 841-6161. [21.30.7.1 NMAC - N/E, 11-17-06]

21.30.7.2 SCOPE: All owners, transporters or handlers of equine or equine semen in the state of New Mexico and those that apply to bring equine or equine semen into the state for any reason. All accredited veterinarians handling EVA vaccine. [21.30.7.2 NMAC - N/E, 11-17-06]

21.30.7.3 STATUTORY AUTHORITY: Section 77-2-7, A, F, H, NMSA 1978. [21.30.7.3 NMAC - N/E, 11-17-06]

21.30.7.4 DURATION: Permanent. [21.30.7.4 NMAC - N/E, 11-17-06]

21.30.7.5 EFFECTIVE DATE: November 17, 2006, unless a later date is cited at the end of a section. [21.30.7.5 NMAC - N/E, 11-17-06]

21.30.7.6 OBJECTIVE: To establish restrictions to protect the equine industry of the state of New Mexico. Clinical disease due to EVA infection is a reportable disease to the New Mexico state veterinarian. Equine viral arteritis (EVA) is

an infectious contagious disease of horses caused by the equine arteritis virus (EAV). EVA is of special economic concern because it can result in abortion in pregnant mares, illness and death in young foals and the establishment of the carrier state in stallions. Further, to prevent the introduction of EAV and control subsequent spread of EAV within New Mexico.

[21.30.7.6 NMAC - N/E, 11-17-06]

21.30.7.7 DEFINITIONS:

A. "Accredited veterinarian" means a veterinarian approved by the deputy administrator of USDA-APHIS-VS in accordance with provisions of Part 161, Title 9, Code of Federal Regulations (CFR). An accredited veterinarian is pre-approved to perform certain functions of federal and cooperative state-federal programs.

B. "Animal and plant health inspection service (APHIS)" means the agency providing leadership in ensuring the health and care of animals and plants. The agency improves agricultural productivity and competitiveness and contributes to the national economy and public health.

C. "Approved laboratory" means a state, federal or private diagnostic laboratory that must be approved for EVA testing by the USDA-AHPIS-VS.

D. "Approved laboratory tests" means laboratory tests for the diagnosis of EVA infection that are approved by the office of the state veterinarian and USDA-AHPIS-VS.

E. "Area veterinarian in charge (AVIC)" means the veterinary official of USDA-APHIS-VS, who is assigned by the deputy administrator of VS to supervise and perform the official animal health work of APHIS in the states or states concerned.

F. "Board" means the New Mexico livestock board.

G. "Book or booking" means the contracting or scheduling of a mare to breed to a stallion by natural service.

H. "Carrier" means a clinically normal stallion that sheds EAV continuously in its semen.

I. "Certificate" means an official document issued by the chief livestock health official or a VS representative or accredited veterinarian at the point of shipment of equine. It includes all of the following:

(1) the description, including age, breed, color, sex, distinctive markings or unique and permanent forms of identification, when present (e.g. brands, tattoos, EID, scars or blemishes), of each of the restricted equine to be moved;

(2) the number of restricted equine covered by the document;

(3) the purpose for which the equine are to be moved;

(4) the points of origin and destination;

(5) the consignor; and

(6) the consignee.

J. "Certificate of veterinary inspection (CVI)" means the form issued by the state of origin that records the consignor, consignee, identity, origin, destination and health status of animals, issued by an accredited veterinarian of that state. It is commonly known as a health certificate.

K. "Chief livestock health official" means the state veterinarian of New Mexico.

L. "Commercial stallion" means a stallion that is utilized for breeding mares owned by someone other than the owner of the mare(s).

M. "Cover" means the act of breeding a stallion to a mare.

N. "Director" means the executive director of the New Mexico livestock board.

O. "Electronic identification device (EID)" means an electronic implant with a transponder, inserted into the nuchal ligament of an equid. The transponder contains an approved 15 digit number that uniquely corresponds to a specific equine

P. "Equine arteritis virus (EAV)" means the organism which causes the disease equine viral arteritis.

Q. "Equine" means any animal in the family equidae, including horses, asses, mules, ponies and zebras.

R. "Equine viral arteritis (EVA)" means an infectious communicable disease in equine.

S. "Exposed animals" means animals in the family equidae that have been exposed to EAV by reason of associating or commingling with equine known to be infected with the virus.

T. "Herd" means all animals of the family equidae, such as horses, asses or zebras: under common ownership or supervision that are:

(1) grouped on more than one or more parts of any single premises (lot, farm or ranch); or

(2) on two or more premises that are geographically separated but between which equine have been interchanged or had contact with equine from the other premises; it will be assumed that contact between animals of the family equidae on the different premises has occurred unless the owner can establish otherwise and the results of the epidemiologic investigation are consistent with the lack of contact between the premises; or

(3) on common premises, such as

community pastures or grazing association units, but owned by different persons; other groups of equine owned by the persons involved that are located on the other premises are considered to be part of a herd unless epidemiologic investigation establishes that the equine from an affected herd have not had the opportunity for direct or indirect contact with equine from that specific premises.

U. "Herd of origin" means a farm or ranch or other premises where equine were born or where they have been kept for 30 days or more before the date of shipping. For the purpose of this rule, herd of origin has the same meaning as place of origin, premise of origin, farm of origin and ranch of origin.

V. "Identification" means any modality that provides a unique and permanent identification of an individual equine.

W. "Mare" means the intact female of the equine species.

X. "Nurse mare" means a mare that has lost her foal and has adequate milk for supplementing an orphaned foal.

Y. "Official seal" means a serially numbered metal or plastic strip, consisting of a self-locking device on one end and a slot on the other end that forms a loop when the ends are engaged. An official seal is tamperproof and cannot be reused if opened. It is applies to the doors of a transport vehicle by a representative of APHIS AVIC or the chief livestock health official. A serially numbered, self-locking button that cannot be reused may be substituted for the metal or plastic strip type of seal.

Z. "Official test" means the virus neutralization test and virus isolation test (in cell culture) are the official laboratory procedures currently employed for the diagnosis of EVA infection.

AA. "Owner" means any person with the legal right of possession or having legal control over any equidae and shall include but not limited to agents, caretakers and other persons acting on behalf of that person.

BB. "Permit" means on official document (VS form 1-27 or comparable state form) issued by the chief livestock health official, federal representative or by an accredited veterinarian. The permit must accompany all EAV carrier stallions and those EVA exposed equine being moved under official seal to a specified destination.

CC. "Quarantine" means the act of placing exposed or infected animals into isolation from other animals to prevent the transmission of an infection.

DD. "Quarantined area" means a confined area under the direct supervision and control of chief livestock health official or federal animal health offi-

cial who establishes procedures for the monitoring and recording of all animals entering or leaving the area. All equine under EVA quarantine are considered to have been exposed to EAV.

EE. "Polymerase chain reaction test (PCR)" means a test to detect EAV in samples.

FF. "Reactor" means any horse, ass, mule, pony or zebra that has been subjected to an officially approved laboratory test that is confirmed positive for antibodies to EAV.

GG. "Reference laboratory" means the national reference laboratory for the serological testing of EAV infection is the diagnostic virology laboratory in Ames, Iowa, a part of USDA-APHIS-VS' National Veterinary Services Laboratories (NVSL).

HH. "Semen" means secretion or ejaculate from the reproductive organs of a stallion containing spermatozoa and seminal fluid from the accessory sex glands.

II. "Sero-conversion" means the development of neutralizing antibodies to EAV in response to natural infection with EAV or to the administration of EVA vaccine.

JJ. "Sero-negative" means a horse that has a serum neutralizing antibody titer of 1:4 to EAV using the virus neutralization test.

KK. "Sero-positive" means a horse that has a serum neutralizing antibody titer of 1:4 or greater to EAV using the virus neutralization test.

LL. "Shedder or shedding" means an equine has been determined to have EAV in its body. Specifically a term used to refer to a carrier stallion that has been determined to have EAV present in his semen and is capable of transmitting the infection to other equine through the act of breeding either by natural service or the use of artificial insemination.

MM. "Standard insemination volume" means 10 ml of semen.

NN. "Teaser stallion" means the intact male equid utilized in equine reproduction to aid in determination of estrus in a mare.

OO. "United States department of agriculture (USDA)" means, a federal agency charged with protecting American agriculture.

PP. "Vaccinated or vaccination" means an equine has been vaccinated with an approved EVA modified virus vaccine and for which the vaccination status has been kept current in accordance with the manufacturer's recommendation.

QQ. "Vaccinated sero-positive stallion" means a stallion that was sero-negative prior to receiving a vaccine for EVA that demonstrates a sero-positive

titer post vaccination.

RR. "Veterinary services (VS)" means the animal health arm of APHIS, VS protects and improves the health, quality and marketability of our nations animals, animal products and veterinary biologicals by preventing, controlling or eliminating animal disease and monitoring and promoting animal health and productivity.

SS. "VS form 1-27" means an official restriction of livestock movement. This form is issued by a regulatory veterinarian and specifies the owner, owner's address, owner's telephone, premises affected, number, breed, age, sex, positive unique individual identification and destination of animals included.

TT. "Virus isolation test" means a test to isolate EAV. This test shall be conducted by an approved laboratory.

UU. "Virus neutralization test (VN)" means an assay for determining serum neutralizing antibodies to a particular virus, in this case EAV. This test shall be conducted by an approved laboratory.

[21.30.7.7 NMAC - N/E, 11-17-06]

21.30.7.8 INCORPORATION BY REFERENCE OF FEDERAL UNIFORM METHODS AND RULES: The USDA Uniform Methods and Rules, APHIS 91-55-075 is incorporated by reference as presently in effect and subsequent revisions. [21.30.7.8 NMAC - N/E, 11-17-06]

21.30.7.9 GENERAL EVA INFORMATION:

A. All laboratory samples, pertaining to this rule, shall be submitted by an accredited veterinarian to an approved laboratory.

B. All commercial breeding stallions shall be tested for EAV prior to use as a breeding stallion or collection for artificial insemination.

C. All semen (fresh or frozen, imported semen or semen for export) from uncertified stallions shall test negative by virus isolation or PCR prior to being used for artificial insemination.

D. All commercial breeding stallions shall be tested within 180 days prior to the breeding season or sooner, if indicated.

[21.30.7.9 NMAC - N/E, 11-17-06]

21.30.7.10 COMMERCIAL BREEDING STALLIONS: All commercial breeding stallions shall be registered annually with the New Mexico livestock board, where the current EAV status shall be recorded. It is recommended that all commercial breeding stallions be permanently identified either by brands, EID, tattoos or photographs.

[21.30.7.10 NMAC - N/E, 11-17-06]

21.30.7.11 IMPORTATION OF STALLIONS:

A. No commercial breeding stallion shall be imported into New Mexico for breeding purposes unless found serologically negative to an EVA test (serum neutralization) within 30 days prior to importation or serologically negative prior to vaccination and subsequently proven not a shedder of the disease. The results of these tests must be attached to the interstate CVI.

B. Positive EAV stallions may be imported into New Mexico or moved within the state on a permit issued by the office of the state veterinarian and may be subject to quarantine. Official laboratory serum and semen culture results shall accompany the interstate CVI. In addition, the consignee shall be advised of the stallion's EAV status and consents to shipment. Imported stallions shall be registered annually with the New Mexico livestock board.

[21.30.7.11 NMAC - N/E, 11-17-06]

21.30.7.12 EXPORTATION OF EAV CARRIER STALLIONS:

Commercial stallions to be exported outside of New Mexico must have consent of the state of final destination and consent of the farm owner receiving the stallion

[21.30.7.12 NMAC - N/E, 11-17-06]

21.30.7.13 SEMEN AND EMBRYO IMPORT AND EXPORT:

A. Fresh, cooled or frozen semen shall be culture negative for EVA within 180 days or sooner of import. An official semen import certificate completed by an accredited veterinarian accompanied by the official laboratory culture test shall be sent to the office of the state veterinarian 7 days prior to the first importation of semen for the current breeding season. Fresh, cooled or frozen semen or embryos from a shedding stallion shall only be used on vaccinated or sero-positive mares. These mares shall be isolated for 21 days following insemination or implantation.

B. EVA positive semen shall only be allowed by state permit through the office of the state veterinarian. In addition, release documentation of informed consent is required from the farm owner stating they will accept EVA positive semen.

[21.30.7.13 NMAC - N/E, 11-17-06]

21.30.7.14 EVA SHEDDING STALLIONS:

A. A stallion is considered to be a shedder if any of the following apply:

(1) the virus can be cultured from his semen; or

(2) if the virus can be detected in his semen by PCR test; or

(3) if sero-negative mares sero-convert to sero-positive status following breeding or insemination.

B. A stallion known to be shedding EAV shall not be permitted to breed or be collected for artificial insemination until the state veterinarian determines that the stallion does not pose a risk of transmitting EVA. In making this determination, the state veterinarian shall consider whether the requirements of paragraphs (2) and (3) of this subsection will be complied with by the premises on which the shedding stallion is located. The following restrictions shall apply to a shedding stallion that is permitted to breed or be collected for artificial insemination:

(1) the owner or agent of an EAV shedding stallion shall notify in writing, the owner or agent of a mare booked or seeking to book a mare to that stallion which has been classified as an EAV shedder; a written copy of the booking confirmation shall be sent to the state veterinarian;

(2) a shedding stallion shall be housed, handled and bred or collected for artificial insemination in a facility isolated from non-shedding stallions;

(3) a shedding stallion shall be bred to a mare(s) that:

(a) have been vaccinated against EVA at least 21 days prior to being bred; or

(b) demonstrate an existing EVA titer from vaccination or natural exposure to EAV, if the serological EVA test was performed at least 28 days prior to date of breeding;

(c) a mare shall be isolated for 21 days after being covered by a shedding stallion.

[21.30.7.14 NMAC - N/E, 11-17-06]

21.30.7.15 SERO-POSITIVE NONSHEDDING STALLIONS:

A. A stallion may be considered to be a vaccinated sero-positive stallion if a blood sample collected within 10 days prior to administration of an approved vaccine was negative for antibodies against EAV. See 21.30.7.19 NMAC for recommended vaccination protocols.

B. It is required that a sero-positive vaccinated stallion that did not have an EVA negative test prior to vaccination comply with one of the following testing procedures to ensure that the stallion is not at risk of transmitting the virus:

(1) a standard insemination volume (10ml) of semen should be collected and either cultured for EAV or evaluated using a PCR test; or

(2) the stallion should be bred to

two mares negative for EAV antibodies; the two mares shall be isolated from other equine for 28 days and have blood collected for an EVA test 28 days after breeding or artificially inseminated from two ejaculates, separately collected;

(3) the sero-positive stallion would be considered a non-shedder if the semen culture, semen PCR or test breeding results are negative.

C. A stallion may be considered a non-vaccinated sero-positive stallion, if the stallion has sero-converted following a natural exposure to the virus. It is recommended that a non-vaccinated sero-positive stallion be tested as outlined below prior to breeding to ensure that he is not at risk of transmitting the virus:

(1) semen should be collected and either cultured for EAV or evaluated using a PCR test; or

(2) the stallion should be bred to two mares negative for EAV antibodies; the two mares shall have blood collected for an EVA test 28 days after breeding or artificially inseminated; the two mares shall remain isolated from other equine for 28 days following breeding;

(3) the sero-positive stallion would be considered a non-shedder if the semen culture, semen PCR or test breeding results are negative.

D. A stallion previously classified as a shedding stallion may be reclassified as a non-shedding stallion if the following criteria are met:

(1) during the first breeding season following the stallion's classification as a non-shedder, the first five sero-negative mares bred or artificially inseminated using semen collected from separate ejaculates from this stallion shall be test negative to a blood sample collected for an EVA test 28 days after breeding or artificial insemination;

(2) during the second breeding season, the stallion shall be bred to two mares negative for EAV antibodies that will be tested 28 days after breeding or have its semen collected and cultured negative for EAV or have the semen tested negative by PCR for EAV; if the semen culture report or PCR test and blood samples are negative for EAV, there shall not be restrictions placed on a future breeding season.

E. The final determination that a stallion is not an EAV shedder shall be made based on scientific procedures described in this section and approved by the state veterinarian. Until this determination is made, the stallion shall be considered an EAV shedder.

[21.30.7.15 NMAC - N/E, 11-17-06]

21.30.7.16 REQUIREMENTS FOR BREEDING MARES TO A SHEDDING STALLION: The following guide-

lines are required when breeding mares to a stallion shedding EAV.

A. If a sero-negative mare is to be bred to a shedding stallion for the first time:

(1) it is required that the mare be vaccinated a minimum of 21 days prior to the first breeding or artificial insemination by a EAV shedding stallion and subsequently isolated a minimum of 21 days after the breeding or artificial insemination;

(2) during isolation, the mare shall be physically separated from other equine in a separate isolation area approved by the state veterinarian or designated personnel;

(3) after the isolation period, the mare may move without restriction.

B. Mares that have been vaccinated against EAV or have been bred to an EAV shedding stallion within the previous two years may be re-bred to a shedding stallion, but should be isolated for a minimum of 21 days after breeding, as noted in Subsection A above.

C. When a mare bred to a shedding stallion is returned to the premises of origin within 21 days of breeding, it shall be in a transport vehicle or trailer by herself or with other sero-positive horses. Upon returning to the premises of origin, the transport vehicle or trailer and equipment used to move the mare must be immediately cleaned and disinfected according to procedures approved by the state veterinarian. [21.30.7.16 NMAC - N/E, 11-17-06]

21.30.7.17 ACTIONS FOR NEWLY DIAGNOSED SERO-POSITIVE STALLIONS: A stallion infected with EAV during the breeding season shall immediately cease breeding or immediately cease having semen collected for artificial insemination or semen collected and stored for future use. Since EVA is a reportable disease in the state of New Mexico, the state veterinarian must be immediately notified in the event of clinical EVA disease demonstrated by a positive laboratory test of serum or semen. An owner or agent with a mare booked or bred to a stallion that became infected with EAV during the breeding season shall be immediately notified in writing by the stallion's owner or agent, that the stallion is an EAV shedder. A copy of the written notification shall be sent to the state veterinarian. A stallion infected with EAV during the breeding season shall be classified as an EAV shedder and shall be handled according to the requirements of this rule. Following the stallions classification as a shedder, the state veterinarian may reclassify the stallion as a non-shedder in accordance with this rule. [21.30.7.17 NMAC - N/E, 11-17-06]

[21.30.7.17 NMAC - N/E, 11-17-06]

21.30.7.18 EAV EXPOSED

MARES: Veterinarians, owners, agents, handlers and transporters of equine shall refer to USDA APHIS 91-55-075, Equine Viral Arteritis, Uniform Methods and Rules and subsequent revisions.

[21.30.7.18 NMAC - N/E, 11-17-06]

21.30.7.19 EQUINE VACCINATED AGAINST EVA: Veterinarians, owners, agents, handlers and transporters of equine shall refer to USDA APHIS 91-55-075, Equine Viral Arteritis, Uniform Methods and Rules and subsequent revisions. Additionally, the following are the requirements for mares or stallions to be vaccinated with EVA vaccine in New Mexico.

A. EVA vaccine will be issued to federally accredited New Mexico licensed veterinarians by written request through the state veterinarian.

B. Testing of stallions for antibodies in blood or evidence of EAV in semen shall be submitted to an approved veterinary laboratory.

C. Stallions vaccinated for the first time against EVA shall be test negative to a blood sample collected by an accredited veterinarian prior to vaccination.

D. Stallions vaccinated for the first time against EVA shall have the EVA vaccine administered by an accredited veterinarian within 10 days after the sample collection date.

E. An official certificate documenting that the stallion has been vaccinated by an accredited veterinarian shall be sent to the state veterinarian within 7 days of the vaccination date. The original laboratory EVA test results shall accompany the certificate.

F. The EVA vaccination certificate for stallions shall be on a form prescribed by the state veterinarian.

G. All equids vaccinated for the first time against EVA shall not have direct exposure to an EVA affected animal or pregnant mare for 28 days after vaccination.

H. A vaccinated stallion shall not be used for breeding or artificial insemination within 28 days after vaccination. A vaccinated mare shall not be bred within 21 days of vaccination.

I. A sero-negative EVA test is required prior to vaccination of intact colts between 6 and 12 months of age.

[21.30.7.19 NMAC - N/E, 11-17-06]

21.30.7.20 NURSE MARES: A nurse mare shall be:

A. sero-negative;

B. officially vaccinated against EVA in accordance with 21.30.7.19 NMAC.

[21.30.7.20 NMAC - N/E, 11-17-06]

21.30.7.21 TEASER STALLIONS: A teaser shall be officially vaccinated against EVA in accordance with 21.30.7.19 NMAC.

[21.30.7.21 NMAC - N/E, 11-17-06]

HISTORY OF 21.30.7 NMAC: [RESERVED]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY PART 7 BULLYING PREVENTION

6.12.7.1 ISSUING AGENCY: Public Education Department
[6.12.7.1 NMAC - N, 11-30-06]

6.12.7.2 SCOPE: All public schools, including charter schools, and state supported educational institutions.
[6.12.7.2 NMAC - N, 11-30-06]

6.12.7.3 STATUTORY AUTHORITY: This regulation is adopted pursuant to Sections 22-2-1 and 9-24-8 NMSA 1978.
[6.12.7.3 NMAC - N, 11-30-06]

6.12.7.4 DURATION: Permanent
[6.12.7.4 NMAC - N, 11-30-06]

6.12.7.5 EFFECTIVE DATE: November 30, 2006, unless a later date is cited at the end of a section.
[6.12.7.5 NMAC - N, 11-30-06]

6.12.7.6 OBJECTIVE: This rule establishes requirements for districts, schools and state supported educational institutions to address bullying of students by adopting and implementing policies.
[6.12.7.6 NMAC - N, 11-30-06]

6.12.7.7 DEFINITIONS:
A. "Bullying" means any repeated and pervasive written, verbal or electronic expression, physical act or gesture, or a pattern thereof, that is intended to cause distress upon one or more students in the school, on school grounds, in school vehicles, at a designated bus stop, or at school activities or sanctioned events. Bullying includes, but is not limited to, hazing, harassment, intimidation or menacing acts of a student which may, but need not be based on the student's race, color, sex, eth-

nicity, national origin, religion, disability, age or sexual orientation.

B. "Department" means the public education department.

C. "Harassment" means knowingly pursuing a pattern of conduct that is intended to annoy, alarm or terrorize another person.

D. "IDEA" means the federal Individuals with Disabilities Education Act, 20 USC Secs. 1401 and following, including future amendments.

E. "Local school board" means the governing body of a school district or charter school.

F. "School district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes.
[6.12.7.7 NMAC - N, 11-30-06]

6.12.7.8 REQUIREMENTS:

A. This section applies to local school boards, local school districts, and charter schools and governs policies to be adopted and implemented by local school districts with regards to addressing bullying.

B. Each school district and charter school shall develop and implement a policy that addresses bullying, no later than April 1, 2007.

C. Any such anti-bullying policy shall at least include, but shall not be limited to:

- (1) definitions;
- (2) an absolute prohibition against bullying;
- (3) a method to ensure initial and annual dissemination of the anti-bullying policy to all students, parents, teachers, administrators and all other school or district employees;
- (4) procedures for reporting incidents of bullying which ensure confidentiality to those reporting bullying incidents and protection from reprisal, retaliation or false accusation against victims, witnesses or others with information regarding a bullying incident;
- (5) consequences for bullying which include consideration of compliance with state and federal IDEA requirements;
- (6) consequences for knowingly making false reports pursuant to the anti-bullying policy;
- (7) procedures for investigation by administration of incidents reported pursuant to the anti-bullying policy;
- (8) a requirement that teachers and other school staff report any incidents of bullying; and
- (9) a requirement that anti-bullying is included as part of the health educa-

tion curriculum as set forth in 6.30.2.19 NMAC ("content standards - health education").

[6.12.7.8 NMAC - N, 11-30-06]

History of 6.12.7 NMAC: [Reserved]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to Section 3 (STATUTORY AUTHORITY), Section 6 (OBJECTIVE), Section 7 (DEFINITIONS) Section 8 (FILING A COMPLAINT) and Section 9 (COMPLAINTS AGAINST AN AGENCY OR CONSORTIUM OF AGENCIES) of 6.10.3 NMAC (COMPLAINT PROCEDURE), effective November 30, 2006.

6.10.3.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, and 22-9-3 NMSA 1978; 20 US Code Sections 1681 et seq; 42 US Code Section 11432(g)(1)(c), 34 Code of Federal Regulations Parts 106 and 299.

[12-31-98; 6.10.3.3 NMAC - Rn, 6 NMAC 1.5.1.3 & A, 11-30-00; A, 10-17-05; A, 11-30-06]

6.10.3.6 OBJECTIVE: This rule establishes written procedures for:

- A. receiving and resolving a complaint from an individual or organization that the public education department or an agency or consortium of agencies is violating a federal statute or regulation that applies to an applicable or covered program;
 - B. reviewing an appeal from a decision of an agency or consortium of agencies with respect to a complaint;
 - C. conducting an independent on-site investigation of a complaint if the public education department determines that an on-site investigation is necessary; ~~and~~
 - D. resolving complaints of discrimination based on sex regarding educational programs of the public education department that are alleged to be a violation of Title IX of the Education Amendments of 1972; and
 - E. resolving complaints brought pursuant to the McKinney-Vento Education for Homeless Children and Youth Act (42 USC Section 11432(g)(1)(c)).
- [12-31-98; 6.10.3.6 NMAC - Rn, 6 NMAC 1.5.1.6 & A, 11-30-00; A, 10-17-05; A, 11-30-06]
[Complaints alleging violations of statutes or regulations governing special education and related services for children with disabilities are covered under Subsection H of

6.31.2.13 NMAC.]

6.10.3.7 DEFINITIONS:

A. "Applicable program" means any of the following Elementary and Secondary Education Act (20 U.S.C. 2701 et. seq.) programs:

(1) Part A of Title I (Improving Basic Programs Operated by Local Educational Agencies);

(2) Part B of Title I (Student Reading Skills Improvement Grants);

(3) Part C of Title I (Education of Migratory Children);

(4) Part D of Title I (Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or At-Risk);

(5) Title II (Preparing, Training, and Recruiting High Quality Teachers and Principals);

(6) Language Instruction for Limited English Proficient and Immigrant Students;

(7) Title IV (21st Century Schools (other than Subpart 2 of Part A, National Programs);

(8) Title V (Promoting Informed Parental Choice and Innovative Programs) (other than Subpart 8 and Subpart 12); and

(9) Part A of Title VII (Indian, Native Hawaiian, and Alaska Native Education).

B. "Covered program" means a federal program not defined as an applicable program for which the state educational agency is required to provide a complaint procedure and for which a complaint procedure is not otherwise provided by public education department rule.

C. "Department" means the public education department.

D. "Homeless children and youth" means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

(1) children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(2) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(3) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(4) migratory children (as such term is defined in Section 1309 of the Elementary and Secondary Education Act

of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in Paragraphs (1) through (3) of this subsection.

E. "School of origin" means the school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled.

F. "LEA" means local education agency.

~~D.~~ G. "Title IX" means Title IX of the Education Amendments of 1972, codified as 20 US Code Sections 1681 et seq, which provides in part that, no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

[12-31-98; 6.10.3.7 NMAC - Rn, 6 NMAC 1.5.1.7 & A, 11-30-00; A, 10-17-05; A, 11-30-06]

6.10.3.8 FILING A COMPLAINT:

A. The department will accept and investigate complaints from organizations or individuals with respect to applicable or covered programs. The complaint must:

~~A.~~ (1) be written;

~~B.~~ (2) be signed by the complaining party or his or her designated representative;

~~C.~~ (3) contain a statement that the department or an agency or consortium of agencies has violated a requirement of a federal statute or regulation that applies to the program;

~~D.~~ (4) contain a statement of the facts on which the complaint is based and the specific requirement alleged to have been violated; and

~~E.~~ (5) in the case of Title IX, must contain a statement that the department or any of its employees, has discriminated against the complainant on the basis of sex in regard to an education program or activity operated or managed by the department given that the department is a recipient of federal financial assistance.

B. In the case of a complaint filed pursuant to the McKinney-Vento Education for Homeless Children and Youth Act relating to a dispute not resolved at the district level, the LEA shall forward the department's dispute resolution process form along with the LEA's written explanation of the school's decision to the department's homeless liaison within 5 calendar days of the LEA's final decision; The filing of these documents shall be deemed to satisfy the requirements of Paragraphs (1) through (4) of Subsection A of this section.

The parent, guardian or student may also initiate the appeal by providing copies of these documents to the department's homeless liaison.

[12-31-98; 6.10.3.8 NMAC - Rn, 6 NMAC 1.5.1.8 & A, 11-30-00; A, 10-17-05; A, 11-30-06]

6.10.3.9 COMPLAINTS AGAINST AN AGENCY OR CONSORTIUM OF AGENCIES:

A. Impartial review. Upon receipt of a complaint which meets the requirements of Section 6.10.3.8 of this rule, the department will:

(1) acknowledge receipt of the complaint in writing;

(2) provide written notice to the agency or consortium of agencies against which the violation has been alleged;

(3) conduct an impartial investigation which shall include a review of all relevant documentation presented and may include an independent on-site investigation, if determined necessary by the department;

(4) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; and

(5) review all relevant information and make an independent determination as to whether the agency or consortium of agencies is violating a requirement of an applicable federal statute or regulation.

B. Decision. A written decision, which includes findings of fact, conclusions, and the reasons for the decision and which addresses each allegation in the complaint, shall be issued by the secretary of education or designee and mailed to the parties within sixty (60) calendar days of receipt of the written complaint. In the case of a complaint filed pursuant to the McKinney-Vento Education for Homeless Children and Youth Act, the decision must be issued within thirty (30) calendar days. Such decision will further include:

(1) procedures for effective implementation of the final decision, if needed, including technical assistance, negotiations, and, if corrective action is required, such action shall be designated and the decision shall include the time line for correction and the possible consequences for continued noncompliance;

(2) a statement of the right to request the secretary of the United States department of education to review the final decision at the secretary's discretion; complaints regarding participation by private school children must be appealed to the secretary no later than thirty (30) days after the department issues its decision; an appeal regarding participation by private school children must be accompanied by a copy of the decision and a complete statement of

reasons supporting the appeal.

C. Failure or refusal to comply. If the agency or consortium of agencies fails or refuses to comply with the applicable law or regulations, and if the noncompliance or refusal to comply cannot be corrected or avoided by informal means, compliance may be effected by the department by any means authorized by state or federal statute or regulation. The department will retain jurisdiction over the issue of noncompliance with the law or regulations and will retain jurisdiction over the implementation of any corrective action required.

D. Informal resolution.

(1) Nothing herein shall preclude the availability of an informal resolution between the complainant and the agency or consortium of agencies, nor shall this rule preclude or abrogate the availability of any administrative hearing opportunities as provided for by federal statute or regulation.

(2) In the case of a complaint filed pursuant to the McKinney-Vento Education for Homeless Children and Youth Act, each district shall have a written policy for concerned parties to resolve disputes, and every effort should be made to resolve the dispute at the district level. The district level procedure must adhere to the following parameters:

(a) The dispute resolution process shall be as informal and accessible as possible and the process should be able to be initiated directly at the school of choice as well as at the district level or with the LEA homeless liaison. Every LEA is required to have a homeless liaison.

(b) When a dispute arises over school selection or enrollment, pending resolution of the dispute, the homeless child or youth must be immediately enrolled in the school in which the child or youth is seeking enrollment, and provided all services to which student is entitled.

(c) The district must create and provide a simply stated notice of rights and provide that notice of rights to the student, parent or guardian, in a language the student, parent or guardian can understand. The notice of rights shall contain:

(i) contact information for the LEA homeless liaison and the state coordinator, with a brief description of their roles;

(ii) a step by step description of how to make use of the dispute resolution process;

(iii) notice of the right to immediately enroll in the school of choice pending resolution of the dispute and notice that immediate enrollment includes full participation in all school activities;

(iv) notice of the right to obtain the assistance of advocates or

attorneys;

(v) notice of the right to appeal to the department if the district-level resolution is not satisfactory;

(vi) the timelines for resolving district and department-level appeals;

(vii) notice of the right to provide written or oral documentation to support their position; and

(viii) a simple form that parents, guardians or the student can complete and return to the school to initiate the process.

(d) The school with the dispute must provide notice of the dispute to the LEA's homeless liaison using the department's dispute resolution process form which requires the following information:

(i) school name, address, phone and fax number;

(ii) student's name, identification number, grade, and address;

(iii) parent, guardian or complaining party's name, relationship to student, address, and phone number;

(iv) whether student lives in a shelter;

(v) name of school child or youth chooses to be enrolled in pending resolution of dispute;

(vi) whether school enrolled in is school of origin;

(vii) reason for complaint;

(viii) signature of parent guardian or complaining party; and

(ix) the principal's actions on the complaint.

(e) The district will have 10 calendar days to review its initial determination and make a final decision as to the position taken.

(f) The district's final decision must be in writing and must state all factual information upon which it is based and the legal basis in support thereof. If the final decision of the district is adverse to the parent, guardian or student, the decision, along with the department's dispute resolution process form, must be forwarded by the LEA homeless liaison to the department's homeless liaison within 5 calendar days of issuing its final decision.

[12-31-98; 6.10.3.9 NMAC - Rn, 6 NMAC 1.5.1.9 & A, 11-30-00; A, 10-17-05, A, 11-30-06]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to Sections 7 (DEFINITIONS) and 8 (REQUIREMENTS) of 6.12.6 NMAC (SCHOOL DISTRICT WELLNESS POLICY),

effective November 30, 2006.

6.12.6.7 DEFINITIONS:

A. "Coordinated school health approach" means the framework for linking health and education. The focus is healthy and successful students. There are eight interactive components of coordinated school health: health education; physical education and activity; nutrition; social and emotional well-being; healthy and safe environment; health services; staff wellness; and family, school and community involvement.

B. "Family, school and community involvement" means an integrated family, school and community approach for enhancing the health and well-being of students by establishing a district school health advisory council that has the responsibility to make recommendations to the local school board in the development or revision, implementation, and evaluation of the wellness policy.

C. "Health education" means the instructional program that provides the opportunity to motivate and assist all students to maintain and improve their health, prevent disease, and reduce health-related risk behaviors. It allows students to develop and demonstrate increasingly sophisticated health-related knowledge, attitudes, skills, and practices. It meets the content standards with benchmarks and performance standards as set forth in 6.30.2.19 NMAC.

D. "Health services" means services provided for students to appraise, protect, and promote health. These services are designed to ensure access or referral to primary health care or behavioral health services or both, foster appropriate use of primary health care services, behavioral health services, prevent and control communicable diseases and other health problems, provide emergency care for illness or injury, promote and provide optimum sanitary conditions for a safe school facility and school environment, and provide educational and counseling opportunities for promoting and maintaining individual, family, and community health.

E. "Healthy and safe environment" means the physical and aesthetic surroundings and the psychosocial climate and culture of the school. It supports a total learning experience that promotes personal growth, healthy interpersonal relationships, wellness, and freedom from discrimination and abuse.

F. "Nutrition" means programs that provide access to a variety of nutritious and appealing meals and snacks that accommodate the health and nutrition needs of all students.

G. "Physical activity"

means body movement of any type which include recreational, fitness, and sport activities.

H. "Physical education" means the instructional program that provides cognitive content and learning experiences in a variety of activity areas. It provides the opportunity for all students to learn and develop the skills, knowledge and attitudes necessary to personally decide to participate in a lifetime of healthful physical activity. It meets the content standards with benchmarks and performance standards as set forth in Section 6.30.2.20 NMAC.

I. "Social and emotional wellbeing" means services provided to maintain and/or improve students' mental, emotional, behavioral, and social health.

J. "Staff wellness" means opportunities for school staff to improve their health status through activities such as health assessments, health education and health-related fitness activities. These opportunities encourage school staff to pursue a healthy lifestyle that contributes to their improved health status, improved morale, and a greater personal commitment to the school's overall coordinated school health approach.

K. "Tactical emergency response plan" means that portion of a safe school plan that details risk assessments and establishes the plans or procedures to manage an emergency event after it has occurred and includes, but is not limited to, emergency routes and staff assignments as they relate to immediate actions, delayed actions, mitigation actions, facility evacuations and facility reentry.

[6.12.6.7 NMAC - N, 02-28-06; A, 11-30-06]

6.12.6.8 REQUIREMENTS:

A. This section applies to local school boards, local school districts, and charter schools and governs policies to be implemented by local school districts with regards to student and school employee wellness.

B. Each school district and charter school shall develop and implement a policy that addresses student and school employee wellness through a coordinated school health approach.

C. Each school district and charter school shall submit the wellness policy to the public education department for approval.

(1) Sections of the wellness policy that meet the requirements set forth in Paragraphs (3), (4), (5), (6) and (11) of Subsection D and the requirements set forth in Subsection E of this section shall be submitted to the public education department on or before August 30, 2006.

(2) Sections of the wellness policy that meet the requirements set forth in

Paragraphs (1), (2), (7), (8), (9) and (10) of Subsection D of this section shall be submitted to the public education department on or before January 30, 2007.

D. The wellness policy shall include, but shall not be limited to:

(1) a planned, sequential, K-12 health education curriculum that addresses the physical, mental, emotional, and social dimensions of health and is aligned to the health education content standards with benchmarks and performance standards as set forth in 6.30.2.19 NMAC;

(2) a planned, sequential, K-12 physical education curriculum that provides the optimal opportunity for all students to learn and develop skills, knowledge and attitudes necessary to personally decide to participate in lifetime healthful physical activity and is aligned to the physical education content standards with benchmarks and performance standards as set forth in 6.30.2.20 NMAC;

(3) guidelines to provide physical activity opportunities to students before, during and/or after school;

(4) nutrition guidelines for a la carte offerings minimally meeting guidelines set forth in Subsection B of 6.12.5.8 NMAC;

(5) guidelines for school sponsored fund raisers during the normal school hours minimally meeting guidelines set forth in Paragraph (1) of Subsection C of 6.12.5.8 NMAC;

(6) guidelines for school sponsored fund raisers before and after schools hours ensuring that at least fifty percent of the offerings shall be healthy choices in accordance with the requirements set forth in Paragraph (2) of Subsection C of 6.12.5.8 NMAC;

(7) a plan addressing the behavioral health needs of all students in the educational process by focusing on students' social and emotional wellbeing;

(8) school safety plans at each school building focused on supporting healthy and safe environments and including but not necessarily limited to:

(a) prevention,

(b) policies and procedures, and

(c) ~~[emergency response]~~ tactical emergency response plan;

(9) a plan addressing the health services needs of students in the educational process;

(10) a plan addressing the staff wellness needs of all school staff that minimally ensures an equitable work environment and meets the American with Disabilities Act, Part III;

(11) a plan for measuring implementation and evaluation of the wellness policy, including the designation of one or more persons within the school district, or at each school, as appropriate, charged with

operational responsibility for ensuring that each school fulfills the district's wellness policy.

E. Family, school and community involvement. Each local board of education shall establish a district school health advisory council that consists of parent(s), school food authority personnel, school board member(s), school administrator(s), school staff; student(s); and community member(s). The school health advisory council shall have the responsibility to make recommendations to the local school board in the development or revision, implementation, and evaluation of the wellness policy consistent with this rule. The school health advisory council shall meet for this purpose a minimum of two times annually.

[6.12.6.8 NMAC - N, 02-28-06; A, 11-30-06]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.20.2 NMAC, Sections 1, 3, 5, 7, 8, 9, 10, 13, 14, 17, 20, 21, 23 and 24, effective November 30, 2006.

6.20.2.1 ISSUING AGENCY: [~~State Board of Education~~] Public Education Department

[11-01-97, 01-15-99, 09-15-99; 6.20.2.1 NMAC - Rn, 6 NMAC 2.2.1.1, 05-31-01; A, 11-30-06]

6.20.2.3 STATUTORY AUTHORITY: [~~Authority is Sections~~] This rule is adopted pursuant to Sections 9-24-8, 22-2-1, 22-2-2, and 22-8-5, NMSA 1978.

[11-01-97, 01-15-99; 6.20.2.3 NMAC - Rn, 6 NMAC 2.2.1.3, 05-31-01; A, 11-30-06]

6.20.2.5 EFFECTIVE DATE: November 1, 1997, unless a [~~different~~] later date is cited at the end of a section.

[11-01-97, 01-15-99; 6.20.2.5 NMAC - Rn, 6 NMAC 2.2.1.5, 05-31-01; A, 11-30-06]

6.20.2.7 DEFINITIONS:

A. "Budget" - A written plan of financial operation for one fiscal year to include an estimate of revenues and proposed expenditures.

B. "Department" means the public education department.

~~[B-]~~ C. "Operating budget" - The budget submitted and approved by the local board by June 20 and certified by the [~~state department of education (SDE)~~] department on or before July 1.

~~[C-]~~ D. "Fiscal year" - A twelve-month period, beginning July 1 and

ending June 30, to which the annual operating budget applies.

~~[D.]~~ E. "Fixed assets" - Land, buildings, improvements other than buildings, equipment, machinery, construction work in progress, and capital leased assets with a cost of \$500 or more. The definition of fixed assets applies to all assets purchased regardless of funding source.

~~[E.]~~ F. "GAAP" - generally accepted accounting principles.

~~[F.]~~ G. ~~["Local board" - The local board of education.]~~ "Local school board" or "board" means the governing body of a school district or charter school.

~~[G.]~~ H. ~~["School districts" - New Mexico public school districts, including charter schools, and regional education cooperatives (RECs).]~~ "School districts" means public school districts, charter schools and regional education cooperatives (RECs).

~~[H.]~~ "SDE" - ~~The state department of education.]~~

[02-03-93, 11-01-97, 01-15-99, 09-15-99; 6.20.2.7 NMAC - Rn, 6 NMAC 2.2.1.7, 05-31-01; A, 10-15-03; A, 11-30-06]

6.20.2.8 PROCEDURAL REQUIREMENTS:

A. All school districts shall account for financial transactions and develop and maintain their budgets in accordance with the Public School Code, GAAP and [SDE] department procedures for public school accounting and budgeting, which are referenced where applicable.

B. The deadlines identified in this regulation pertaining to the submittal of required reports and documents may be extended by the ~~[state superintendent]~~ secretary of education or his designee after a request has been submitted by the school district, provided the extension is not in violation of state or federal law.

C. If reporting requirements and deadlines are not met, the department may withhold funds, suspend payments or both, pursuant to 6.21.2.10 NMAC and 6.21.2.11 NMAC.

D. Business officials, serving in the capacity of a supervisor or director or manager of accounting and/or bookkeeping as mentioned in 6.63.12.8 NMAC, responsible for the preparation and presentation of all financial documentation and budget maintenance will meet the competency requirements enumerated in 6.63.12.9 NMAC.

[02-03-93, 11-01-97, 01-15-99; 6.20.2.8 NMAC - Rn, 6 NMAC 2.2.1.8, 05-31-01; A, 10-15-03; A, 11-30-06]

6.20.2.9 BUDGET PREPARATION STANDARDS:

A. Every school district

shall follow budget requirements stated in Sections 22-8-5 through 22-8-12.2, NMSA 1978, and procedures of the [SDE] department in preparing, submitting, maintaining and reporting budgetary information. Budgetary control shall be at the function level. Over-expenditure of a function shall not be allowed.

B. The proposed budget for the ensuing fiscal year shall be submitted to the [SDE] department by April 15 of each year unless extended to a later date by the ~~[state superintendent]~~ secretary of education.

C. The [SDE] department shall review the school district's projected revenues, including estimated tax production based on the most current assessed valuation from the local taxing authority and estimated cash carryover for all funds. The [SDE] department shall confer with the school district before determining where additions or reductions to the budget will be incorporated.

D. Approval of the proposed budget by the local board shall be in a public hearing held prior to June 20. The notice of public hearing for the adoption of the budget shall be published in accordance with the Open Meetings Act, Section 10-15-1 et seq. 1978, Public School Code, and local board policy. Certification of the proposed budget by the [SDE] department shall be on or before July 1. The approved and certified budget then constitutes the operating budget.

E. On or before July 31, school districts shall determine their actual cash balances in all funds and report them on the most current form prescribed by the [SDE] department. The operational subfund cash balance shall be adjusted by the amount of June credits for revenues received in that month from local school tax levy federal impact aid, and federal forest reserve, if any. The June credits shall be categorized as restricted cash balance and are unavailable for budgeting in the ensuing fiscal year. Cash balance carried forward from the previous fiscal year in the operational subfund shall not be used for salaries and benefits.

F. The operating budget and any authorized adjustments, shall be integrated into the school district's accounting system after required approvals. Encumbrances shall be used as an element of control and integrated into the budget system.

[12-08-89, 02-03-93, 11-01-97, 01-15-99, 09-15-99; 6.20.2.9 NMAC - Rn, 6 NMAC 2.2.1.9, 05-31-01; A, 11-30-06]

6.20.2.10 BUDGET MAINTENANCE STANDARDS:

A. Budget adjustment

requests shall be submitted on the most current form prescribed by the [SDE] department. The school district shall maintain a log of all budget adjustment requests to account for status, numerical sequence, and timely approval at each level. The log is to be retained for audit purposes.

B. School districts shall submit budget adjustment requests for the operating budget to the [SDE] department for budget increases, budget decreases, transfers between functional categories, and transfers from the emergency reserve account. [SDE] The department must take action on budget adjustment requests within 30 calendar days from the date of receipt by the [SDE] department or such requests will otherwise be considered approved. Expenditures shall not be made by the school district until budget authority has been established and approval received from the [SDE] department. Budget adjustments shall not be incorporated into the school district's accounting system until approval is received by the [SDE] department.

C. School districts shall submit periodic financial reports to the [SDE] department using the [SDE] department-approved format. Reporting shall be either monthly or quarterly at the discretion of the [SDE] department. The school district shall be notified of its required reporting frequency in writing by the [SDE] department. Required reporting frequency may be changed by the [SDE] department at any time during the year. Reports are due at the [SDE] department by the last working day of the month following the end of the required reporting period, unless extended to a later date by the ~~[state superintendent]~~ secretary of education.

[12-08-89, 02-03-93, 11-01-97, 01-15-99, 09-15-99; 6.20.2.10 NMAC - Rn, 6 NMAC 2.2.1.10, 05-31-01; A, 10-15-03; A, 11-30-06]

6.20.2.13 FINANCIAL STANDARDS:

A. General ledger: All school districts shall establish and maintain a general ledger in accordance with GAAP. The general ledger will be comprised of individual funds and account groups using the [SDE] department's uniform chart of accounts and shall be reconciled every fiscal year with [SDE] department records.

B. Funds and account groups: School districts shall use funds and account groups to report their financial position and operating results. Funds are classified into three broad categories: a) governmental funds, b) proprietary funds and c) fiduciary funds. There are two account groups: a) general fixed assets and b) general long-term debt.

C. Chart of accounts: All school districts shall prepare, maintain, and report budget and financial information utilizing a standard and uniform chart of accounts.

D. Basis of accounting: In accordance with GASB 34, school districts shall use a full accrual basis of accounting in preparation of annual financial statements and cash basis of accounting for budgeting and reporting.

E. Financial statements: Financial statements are the responsibility of the school district. The school district shall maintain adequate accounting records, prepare financial statements in accordance with GAAP (specifically, GASB 34), and provide complete, accurate, and timely information to the independent public accountant (IPA) as requested. If there are differences between the financial statements, school district records and [SDE] department records, the IPA should provide the adjusting entries to the school district to reconcile the report to the school district records. If the IPA prepared the financial statements, this fact must be disclosed in the notes to the financial statements. If the IPA prepared the financial statements, this fact must be disclosed in the notes to the financial statements. All efforts should be made by the school district to assist the IPA with financial statement preparation.

F. Financial and compliance audit: All school districts shall have a yearly audit performed on its financial records as required by Section 12-6-3, NMSA 1978.

G. Financial reporting: All school districts shall provide periodic financial information to the local board as prescribed by local board action. Information shall be presented at a regularly scheduled board meeting.

[12-08-89, 02-03-93, 11-01-97, 01-15-99; 6.20.2.13 NMAC - Rn, 6 NMAC 2.2.1.13, 05-31-01; A, 10-15-03; A, 11-30-06]

6.20.2.14 CASH CONTROL STANDARDS:

A. School districts shall establish and maintain a cash management program to safeguard cash and provide prompt and accurate reporting that adheres to cash management requirements of the office of management and budget (OMB) Circular A-102, and applicable state and federal laws and regulations.

B. The school district shall issue a factory pre-numbered receipt for all money received. Pre-numbered receipts are to be controlled and secured. If a receipt is voided, all copies shall be marked "VOID" and retained in the receipt book.

C. Money received and receipted shall be deposited in the bank within twenty-four (24) hours or one bank-

ing day. If the distance to the bank is considerable, or the cash collection is limited to small amounts and/or low volume and it is impractical to meet the twenty-four hour/one banking day requirement, the local board may request approval from the [SDE] department for an alternative plan. The bank deposit slip shall have the numbers from applicable receipts entered on it or attached as a reference.

D. A cash receipts journal is to be used for each fiscal year beginning July 1 and ending June 30, and is to be presented to the school district's auditor during the annual audit.

E. The school district shall verify that there is sufficient cash and budget prior to the disbursement of cash. A revenue ledger is required for each revenue code as approved in the finalized budget, and additional revenue ledgers may be added as necessary.

F. The school district shall establish a cash control ledger for each fund/subfund. Inter-fund transfers of cash among separate and distinct funds are not receipts or expenditures. Permanent transfers of previously receipted cash require local board and SIDE approval prior to the transfer. All other types of cash transfers require only local board approval.

(1) Temporary transfers of cash are to be posted as "due from" and "due to" to indicate inter-fund receivables and payables.

(2) Posting errors are not to be erased, crossed out, or in any other manner eliminated from the ledger. A separate entry is required to incorporate necessary corrections. Cross-referencing of a correcting entry to the original error should be inserted under the "description" column of the ledger.

G. Clearing accounts or pooled accounts may be used to combine more than one fund in one bank account. Clearing accounts shall reconcile to a zero balance at the end of each month. Bank reconciliations for clearing accounts shall be completed on a monthly basis.

H. A local board, through the issuance of a formal board resolution, may authorize the superintendent of schools or his/her designee to approve vouchers for payment prior to a board meeting. A summary listing of the vouchers and any additional information prescribed by the local board shall be presented at the next regular board meeting for formal approval and entry in the minutes.

I. Vouchers shall be numbered in such a manner as to provide a cross-reference between the voucher, the check, and the check register. All blank checks shall be properly safeguarded and an inventory of unused checks shall be taken periodically. Completed vouchers and sup-

porting documentation is to be placed in numerical sequence, by the month in which they were paid, and filed for future reference and annual audit.

(1) Each warrant or check issued shall have printed on its face the words, "void after one year from date". Whenever any warrant or check is unpaid for one year, the fiscal officer shall cancel it in accordance with Section 6-10-57(A), NMSA 1978.

(2) The fiscal officer shall keep a register of all canceled warrants/checks. The register shall show the number, date and amount, name of payee, fund out of which it was payable, and date of cancellation. The face amount shall revert and be credited to the fund against which the warrant/check was drawn.

J. The school district shall maintain a cash control ledger for each fund/subfund where all transactions affecting cash are recorded. Cash balances reported to the [SDE] department shall be the same as the district's cash control ledger and annual audit.

K. All bank accounts shall be reconciled on a monthly basis. Reconciled bank statements are to be reviewed by the business manager and/or assistant superintendent for business administration. The bank statement, deposit slips, and canceled checks shall be made available to the district's auditor during the annual audit.

L. The school district shall submit cash reports to the [SDE] department by the last working day of the month following the end of the reporting period, unless extended to a later date by the [state superintendent] secretary of education.

M. Petty cash funds shall be utilized only in rare instances to facilitate small payments. Petty cash funds are established by drawing a check made payable to the employee charged with responsibility for the fund. The petty cash fund shall contain cash and/or invoices totaling the full amount of the petty cash fund and is to remain at the amount originally established.

(1) Petty cash funds are to be reflected on the school district's balance sheet as cash on hand.

(2) Petty cash and change funds shall not be used to make loans to employees or for cashing checks.

(3) Petty cash may not contain more than \$100 unless more is authorized through local board action.

(4) Change funds shall be established pursuant to school district procedure.

N. School districts shall obtain a surety bond for persons who handle or manage cash or funds.

[12-08-89, 02-03-93, 11-01-97, 01-15-99, 09-15-99; 6.20.2.14 NMAC - Rn, 6 NMAC 2.2.1.14, 05-31-01; A, 11-30-06]

6.20.2.17 PURCHASING:

A. Each school district shall establish and implement written policies and procedures for purchasing which shall be in compliance with the Procurement Code, Section 13-1-21 et seq., NMSA 1978. Purchasing policies and procedures for grant funding shall comply with requirements established within the grant and the Procurement Code. An internal control structure over purchasing shall be established and maintained to assure compliance with school district policy, and state and federal regulations.

B. A school district may contract with a business which has a current price agreement with the state purchasing agent or a central purchasing office of another district, for services, construction, or items of tangible personal property without the use of competitive sealed bids or competitive sealed proposals provided that the following conditions are met:

(1) the services or construction meet the same standards and specifications as the items to be procured;

(2) the total quantity to be purchased would not exceed the quantity which may be purchased under the existing applicable price agreement;

(3) the purchase order clearly identifies the price agreement relied upon;

(4) the price agreement relied upon is available for public inspection and for inspection by auditors; and

(5) in the case of an agreement with the central purchasing office for another district, the district with the agreement being relied upon has consented in writing to such reliance.

[12-08-89, 02-03-93, 11-01-97, 01-15-99; 6.20.2.17 NMAC - Rn, 6 NMAC 2.2.1.17, 05-31-01; A, 11-30-06]

6.20.2.20 INSURANCE:

A. Each school district shall maintain adequate insurance coverage addressed in the Tort Claims Act, Section 41-4-1 et seq., NMSA 1978; the Workers' Compensation Act, Section 52-1-1 et seq., NMSA 1978; Insurance of Public Buildings, Section 13-5-1 et seq., NMSA 1978; Officers and Surety Bonds, Section 22-5-7, NMSA 1978; and the Public School Insurance Authority Act, Sections 22-2-6.1 through 22-2-6.10, NMSA 1978.

B. Surety bonds paid from the operational subfund shall be approved by the [SDE] department and filed with the secretary of the department of finance and administration pursuant to Subsection D of Section 22-5-7, NMSA, 1978 Compilation. [12-08-89, 02-03-93, 11-01-97, 01-15-99; 6.20.2.20 NMAC - Rn, 6 NMAC 2.2.1.20, 05-31-01; A, 11-30-06]

6.20.2.21 DEBT SERVICE AND BONDS:

A. A debt service fund shall be created to account for resources that will be used to service general long-term debt that is recorded in the general long-term debt account group. General long-term debt includes noncurrent bonds, as well as other noncurrent liabilities that might arise from compensated absences.

B. Debt service funds shall be established only if legally required or when resources are being accumulated to meet principal and interest payments that will be made in future periods. A single debt service fund shall be used to account for a restricted portion of a general property tax that is used to finance principal and interest payments on all general obligation bonds. Debt service funds shall be used only for the retirement of general long-term debt and for payment of county collection costs. Any funds remaining after all debts have been paid may be transferred after request for transfer has been approved by the [SDE] department and DFA pursuant to Section 6-10-43, NMSA 1978.

C. All general obligation bonds, except refunding bonds, issued under lawful authority by any school district shall be issued in accordance with Sections 6-15-3 through 6-15-8, NMSA 1978. Refunding bonds are encompassed in Sections 6-15-11 through 6-15-13, NMSA 1978.

D. In accordance with Section 6-15-9, NMSA, 1978, no bonds shall be issued or sold by any school district after the expiration of three (3) years from the date of initiation of proceedings for the election authorizing the issue, except as provided in Sections 6-15-9 supra, and 6-15-10, NMSA, 1978.

E. Arbitrage: The school district shall not earn any income on invested bond proceeds which is in excess of the amount which would have been earned if the bond proceeds had been invested at a yield equal to the yield on bonds. The school district shall prevent the issuance of tax exempt bonds for the purpose of investing the proceeds to make a profit. A long-term investment can be made only at an interest rate equal to or less than the interest paid on the tax exempt bonds.

[02-03-93, 11-01-97, 01-15-99; 6.20.2.21 NMAC - Rn, 6 NMAC 2.2.1.21, 05-31-01; A, 11-30-06]

6.20.2.23 OTHER SERVICES:

A. Food services: Food service funds are to be accounted for in the special revenue fund or the enterprise fund. All monies collected from the sale of food for the food service operation are to be accounted for in accordance with GAAP,

U.S. department of agriculture (USDA) requirements, and Section 22-13-13, NMSA 1978.

B. Legal fees: No district funds shall be used for payment of personal legal fees, including attorney's fees and costs, of any school district or charter school employee or local school board member. Any payment of legal fees must serve a clearly identifiable public interest. Personal legal fees include, but are not limited to:

(1) legal fees expended in obtaining or retaining any elected position;

(2) legal fees incurred by any employee or board member in any civil action filed by or against the employee or board member in his or her personal capacity, unless, in the case of an action against the employee or board member, the allegations are based upon acts taken by that individual in the course and scope of his or her employment or service; and

(3) legal fees incurred by any employee or board member in the defense of any criminal case, unless the charges are based upon acts taken in the course and scope of his or her employment or service.

[B.] C. Federal/state grants:

(1) Flowthrough funds: For grant money that flows through the [SDE] department, school districts shall utilize the funding for the purpose in which it was awarded. School districts shall submit complete and accurate reports required by the grant and the [SDE] department within the prescribed time. This funding shall be accounted for in accordance with GAAP, applicable federal regulations, and procedures set forth in the grant award.

(2) Direct funds: For grant money that is sent direct, school districts shall utilize the funding for the purpose in which it was awarded. School districts shall submit complete and accurate reports required by the grant within the prescribed time. This funding shall be accounted for in accordance with GAAP, applicable federal regulations, and procedures set forth in the grant award. These direct funds shall be incorporated into the school district operating budget without prior approval provided that a budget adjustment request is submitted to [SDE] the department.

[C.] D. Student activity funds (non-instructional activities): Funds set aside for non-instructional activities shall be accounted for the same as any other funding budgeted in the operational subfund. Other assets held by the school district in a trustee capacity or as an agent for school organizations are considered agency funds, shall be accounted for in accordance with GAAP, and are not required to be budgeted. The school district is responsible for the accountability of agency funds. These

funds are not considered public money for purposes of the state Procurement Code. School districts shall follow all applicable laws, rules and regulations in the disbursement of activity funds.

~~[D.]~~ E. Joint powers agreements: Accounting for joint powers agreements, entered into pursuant to the Joint Powers Agreement Act, Sections 11-1-1 through 11-1-7, NMSA 1978, shall be in accordance with the agreement.

[02-03-93, 11-01-97, 01-15-99; 6.20.2.23 NMAC - Rn, 6 NMAC 2.2.1.23, 05-31-01; A, 10-15-03; A, 11-30-06]

6.20.2.24 OTHER ADMINISTRATIVE STANDARDS:

A. Instructional materials: School districts shall be allowed credit for textbooks and supplementary instructional materials adopted by the ~~[state board of education]~~ department pursuant to the Instructional Materials Act, Section 22-15-9, NMSA 1978. Districts shall report in accordance with the Instructional Materials Act and account for instructional materials in accordance with GAAP. Audited instructional material records are the official accounting of these funds.

B. Transportation: Student transportation is provided for in Section 22-16-1 et seq., NMSA 1978. Monies allocated by the transportation unit of ~~[SDE]~~ the department shall be utilized for transportation expenditures only and accounted for in accordance with ~~[SDE]~~ department transportation regulations and GAAP.

C. Records retention/disposition: The management of school district records shall be in accordance with the Public Records Act, Section 14-3-1 et seq., NMSA 1978.

D. Open Meetings Act: School districts shall comply with the provisions of the Open Meetings Act, Section 10-15-1 supra, NMSA 1978.

[02-03-93, 11-01-97, 01-15-99; 6.20.2.24 NMAC - Rn, 6 NMAC 2.2.1.24, 05-31-01; A, 10-15-03; A, 11-30-06]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to Section 18.3.1 NMAC, Section 3 and Section 7, Subsections K, L, M, N, O, P, Q, R, S, T, U, V, W, X, effective 11-30-06.

18.3.1.3 STATUTORY AUTHORITY: NMSA 1978 Sections 8-8-4, 65-2A-3.S and 65-2A-4.

[18.3.1.3 NMAC - Rp, SCC Rule 201.05, 12-30-02; A, 1-1-05; A, 11-30-06]

18.3.1.7 DEFINITIONS: In

addition to the definitions in NMSA 1978 Sections 24-10B-3, 65-2A-3, and 65-6-2, as used in these rules:

A. **ambulance services** means the scheduled or unscheduled compensated transportation over irregular routes of passengers in ambulances;

B. **bingo bus service** means the scheduled or unscheduled compensated transportation of passengers in motor vehicles over regular or irregular routes to and from legal gambling establishments at rates that apply to each individual passenger;

C. **cadaver** means a dead human body;

D. **charter service** means the compensated transportation of a group of persons in a motor vehicle who, pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle and driver, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin;

E. **director** means the director of the transportation division of the New Mexico public regulation commission or his designee;

F. **endorsement** means the document evidencing the amendment of a certificate or permit;

G. **facilities** includes lands, buildings, and improvements to real property owned, leased, or used in the operations of a motor carrier;

H. **FMCSA** means the federal motor carrier safety administration or any predecessor or successor agency;

I. **hazardous matter** has the meanings given in 49 CFR Section 390.5 for the terms hazardous material, hazardous substance, and hazardous waste;

J. **household goods carrier (HGC)** means a person who transports household goods;

K. **incidental carrier** means a motor carrier of persons that provides services for which the customer pays either directly or indirectly and that transports passengers in conjunction with the primary service that it provides, including but not limited to: (1) businesses that transport passengers in conjunction with services such as boating, river rafting, kayaking, canoeing, cycling, hiking, bird watching, camping, fishing, or hunting, where customers pay directly or indirectly for either the transportation or the primary service; (2) hotels and other lodging establishments that provide their customers shuttle service from airports or other locations to their places of business and from their places of business to airports or other locations, where customers pay directly or indirectly for either the transportation or the lodging; (3) private

schools and private pre-schools that provide transportation to students in conjunction with the schools' educational or extracurricular programs or activities, where customers (including students' parents) pay directly or indirectly for either the transportation or the educational or extracurricular services; (4) casinos and bingo halls that transport customers to and from their places of business where customers pay directly or indirectly for either the transportation or the primary services offered; (5) automobile dealerships that provide shuttle service to transport customers from their places of business to the customers' homes, offices or other locations where the customers pay directly or indirectly for either the transportation or the primary services offered by the dealership; the term "incidental carrier" does not include, for example, (a) automobile dealers that permit potential customers to test drive motor vehicles but do not provide shuttle service or transport customers or potential customers from point-to-point; (b) individuals such as family members or friends who transport passengers but are not engaged or employed in a paid primary service in conjunction with which the transportation services are offered; and (c) car-pools and similar arrangements where participants may share expenses such as fuel costs, but do not make payments beyond payment for such expenses.

~~[K.]~~ L. **inspection** means the examination by the commission, the motor transportation division, or other lawful entity of a motor carrier's operations, including the facilities and equipment used in connection with its operations, and all pertinent records;

~~[L.]~~ M. **limousine service** means the unscheduled compensated transportation over irregular routes of passengers in a chauffeur-driven luxury motor vehicle at the exclusive use of one individual or group at a fixed charge for the motor vehicle and chauffeur for a period of time that is not less than thirty (30) minutes by prearrangement and not by soliciting on the streets;

~~[M.]~~ N. **MTD** means the motor transportation division of the New Mexico department of public safety;

~~[N.]~~ O. **non-emergency medical transport service** means the unscheduled medically necessary transportation of passengers in a motor vehicle over irregular routes, to or from medical facilities only, at rates that apply to each individual passenger;

~~[O.]~~ P. **on duty time** has the meaning given in 49 CFR Part 395.2;

~~[P.]~~ Q. **principal place of business** means the mailing address of the motor carrier and the street address and other physical locations of a

motor carrier's business office and stationing points;

~~[Q]~~ **R. public liability insurance** means automobile bodily injury and property damage liability insurance;

~~[R]~~ **S. repossession service** means the compensated transportation of a motor vehicle lawfully seized without consent from the owner or operator;

~~[S]~~ **T. shared ride service** means the unscheduled compensated transportation of passengers to or from bus, train, or airport terminals over irregular routes in motor vehicles with a seating capacity of nine (9) or more persons at rates for each individual passenger that are generated from a grid-based zone rate structure;

~~[T]~~ **U. shuttle service** means the scheduled compensated transportation of passengers in motor vehicles over regular routes at rates that apply to each individual passenger;

~~[U]~~ **V. these rules** means the rules codified in Title 18, Chapter 3 of the New Mexico Administrative Code;

~~[V]~~ **W. tour and sightseeing service** means the scheduled or unscheduled guided compensated transportation of passengers over regular or irregular routes in motor vehicles to scenic points or other points of interest at rates that apply to each individual passenger;

~~[W]~~ **X. transfer of control** means a change in control of a motor carrier as control is defined in Paragraphs (1) through (5) of Subsection N of NMSA 1978 Section 65-2A-3;

~~[X]~~ **Y. volunteer driver** means a person who drives for an ambulance or commuter service without remuneration; the provision of or reimbursement for training, equipment, uniforms, and supplies necessary to the performance of driving duties are incidental and do not constitute remuneration for purposes of these rules.

[18.3.1.7 NMAC - Rp, SCC Rules 202.03 & 207.03, 12-30-02; A, 1-1-05; A, 11-30-06]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to Section 18.3.3.3 NMAC and Section 18.3.3.10, Subsection G, effective 11-30-06.

18.3.3.3 STATUTORY AUTHORITY: NMSA 1978 Sections 8-8-4, 65-2A-3.S, 65-2A-4, and 65-2A-18.
[18.3.3.3 NMAC - N, 12-30-02; A, 1-1-05; A, 11-30-06]

18.3.3.10 MINIMUM LIMITS OF PUBLIC LIABILITY INSURANCE:

A. Motor carriers of persons providing service in vehicles with a seating capacity of forty (40) persons or more, excluding the driver, must maintain a combined single-limit public liability insurance policy of at least three million five hundred thousand dollars (\$3,500,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.

B. Motor carriers of persons that provide service in vehicles with a seating capacity of sixteen (16) to thirty-nine (39) persons, excluding the driver, must maintain a combined single-limit public liability insurance policy of at least two million dollars (\$2,000,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.

C. Household goods carriers must maintain a combined single-limit public liability insurance policy of at least one million five hundred thousand dollars (\$1,500,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.

D. Motor carriers of persons providing service in vehicles with a seating capacity of fifteen (15) persons or less, excluding the driver, must maintain a combined single-limit public liability insurance policy of at least one million dollars (\$1,000,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.

E. Towing services, repossession services, and motor carriers of property must maintain a combined single-limit public liability insurance policy of at least seven hundred and fifty thousand dollars (\$750,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.

F. Motor carriers of property transporting hazardous matter in intrastate commerce in New Mexico must maintain the minimum levels of financial responsibility required by 49 CFR 387.9 for interstate commerce.

G. Incidental carriers must maintain a combined single limit public liability policy amount of at least two hundred and fifty thousand dollars (\$250,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.

[18.3.3.10 NMAC - Rp, SCC Rule 232.03, 12-30-02; A, 1-1-05; A, 11-30-06]

NEW MEXICO REAL ESTATE COMMISSION

16.61.15 NMAC, Continuing Education Approval of Sponsors, Courses and Instructors (filed 11-16-2005) repealed effective 1-1-2007.

NEW MEXICO REAL ESTATE COMMISSION

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS PART 7 CRIMINAL BACKGROUND CHECKS

16.61.7.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[16.61.7.1 NMAC - N, 01/01/07]

16.61.7.2 SCOPE: The provisions in Part 7 apply to Title 16, Chapter 16 and provide relevant information about criminal background check requirements for a first-time or renewal applicant for a New Mexico real estate broker's license.
[16.61.7.2 NMAC - N, 01/01/07]

16.61.7.3 STATUTORY AUTHORITY: Part 7 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978, Section 61-29-4.4.
[16.61.7.3 NMAC - N, 01/01/07]

16.61.7.4 DURATION: Permanent
[16.61.7.4 NMAC - N, 01/01/07]

16.61.7.5 EFFECTIVE DATE: 1-1-2007, unless a later date is cited at the end of a section.
[16.61.7.5 NMAC - N, 01/01/07]

16.61.7.6 OBJECTIVE: The objective of Part 7 is to ensure that first-time or renewal applicants for a New Mexico real estate broker's license are of good repute and competent to transact the business of a qualifying broker or associate broker in a manner that safeguards the interests of the public.
[16.61.7.6 NMAC - N, 01/01/07]

16.61.7.7 DEFINITIONS: Refer to 16.61.1.7 NMAC
[16.61.7.7 NMAC - N, 01/01/07]

16.61.7.8 REQUIREMENTS: All persons applying for a New Mexico real estate broker's license on or after January 1, 2007, must submit to a criminal background check as a condition of licensure and must submit documentation of having submitted to such a check from a source approved by the commission.
[16.61.7.8 NMAC - N, 01/01/07]

HISTORY OF 16.61.7 NMAC: [RESERVED]

NEW MEXICO REAL ESTATE COMMISSION

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS PART 14 EDUCATION AND TRAINING FUND

16.61.14.1 ISSUING AGENCY: New Mexico real estate commission, information to the commission real estate brokers and to public or private persons involved in, interested in, or affected by the commission's broker education programs. [16.61.14.1 NMAC - N, 01/01/07]

16.61.14.2 SCOPE: The provisions in Part 14 apply to Title 16, Chapter 16 and provide relevant information to the commission real estate brokers and to public or private persons involved in, interested in, or affected by the commission's broker education programs. [16.61.14.2 NMAC - N, 01/01/07]

16.61.14.3 STATUTORY AUTHORITY: Part 14 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA, Section 61-29-20. [16.61.14.3 NMAC - N, 01/01/07]

16.61.14.4 DURATION: Permanent [16.61.14.4 NMAC - N, 01/01/07]

16.61.14.5 EFFECTIVE DATE: 1-1-2007, unless a later date is cited at the end of a section. [16.61.14.5 NMAC - N, 01/01/07]

16.61.14.6 OBJECTIVE: The objective of Part 14 of Chapter 61 is to set forth to all affected persons the manner in which the education and training fund will be administered by the commission. [16.61.14.6 NMAC - N, 01/01/07]

16.61.14.7 DEFINITIONS: Refer to 16.61.1.7 NMAC. [16.61.14.7 NMAC - N, 01/01/07]

16.61.14.8 PROVIDERS: The New Mexico real estate commission may enter into contracts with public or private institutions or individuals to establish, continue, or expand educational programs or research programs which will benefit real estate brokers and the public in its potential dealings with real estate brokers. Priority will be given to those programs that enhance educational opportunities for New Mexico-licensed real estate associate brokers and qualifying brokers, and further the real estate commission's mission of protect-

ing the public and increasing the professional competence of real estate brokers. [16.61.14.8 NMAC - N, 01/01/07]

16.61.14.9 AMOUNTS AND TERMS OF CONTRACTS FOR EDUCATION OR RESEARCH: The amount to be paid and the duration of any contract shall be as provided for in each contract. Any amendment to a contract to increase the payment or extend the time of performance shall be at the discretion of the commission. No provision of any contract shall be construed as obligating the commission to make any payment beyond the fiscal year in which the commission enters into the contract, unless otherwise provided for in the contract. [16.61.14.9 NMAC - N, 01/01/07]

16.61.14.10 PROPOSALS: Proposals to enter into contracts for education or research with the commission will be required to contain the following:

A. a statement of the educational objective of the proposed program or research;

B. a statement of how the program will benefit associate brokers or qualifying brokers or the public who may deal with them;

C. if applicable, a detailed course outline, the number of educational hours in the program, length of course, schedule of instruction, location, and anticipated number of participants;

D. if applicable, the purpose, scope, length, and place of research work;

E. a detailed cost analysis of the entire course or project including, but not limited to such items as source(s) of other funding for the program, cost of advertising, administration, instructors, materials, and physical facilities, and fees proposed to be charged to participants;

F. if applicable, a list of instructors who may be used and their credentials;

G. any academic, real estate, or other professional credit proposed to be awarded, subject to the approval of the commission;

H. such other information as the commission may require at the time of submission of the proposal or after reviewing the proposal. [16.61.14.10 NMAC - N, 01/01/07]

16.61.14.11 COMMISSION ACTION ON PROPOSALS:

A. The commission shall act on all proposals within sixty (60) days of receipt of a written original or amended proposal and shall notify the applicant in writing of:

(1) the terms of acceptance of the

proposal;

(2) the reason or reasons for rejection of the proposal;

(3) any further information needed to accept or reject the proposal;

B. Decisions of acceptance and rejection by the commission shall be final. [16.61.14.11 NMAC - N, 01/01/07]

16.61.14.12 REPORTS: Within thirty (30) days of the end of the term of the contract or at such other time as the commission may require, the provider under contract shall provide to the commission a report of the expenditure of funds under the contract, and a written report explaining how the program benefited New Mexico real estate brokers and consumers. Whenever a contract for education or research requires that the provider conduct courses, seminars, or other educational venues, the provider shall issue to each participant who successfully completes the program a certificate of course completion that includes the participant's name, the course name, the number of approved credit hours, and whether the course is in the education or training category of approved commission courses. Within fourteen (14) days of the end of the program, the provider shall send to the commission a list of all real estate brokers who successfully completed the program. The commission may direct its employees or representatives to monitor any contracted program at any time and the providers shall be required to supply to such representatives requested reasonable data upon reasonable notice. [16.61.14.12 NMAC - N, 01/01/07]

16.61.14.13 USE OF COMMISSION NAME:

Any advertising of a program or project funded by the education and training fund must indicate that the New Mexico real estate commission underwrites a portion or all of the cost of the program. Any publication or any other educational materials produced as a result of a contract must include indication that the New Mexico real estate commission underwrites a portion or all of the cost of producing the material. All participants in any program underwritten totally or in part by the New Mexico real estate commission must be clearly and affirmatively made aware of the participation of the New Mexico real estate commission and how they may forward comments on the program to the commission. No other use of the name of the commission shall be permitted without the commission's prior approval. [16.61.14.13 NMAC - N, 01/01/07]

16.61.14.14 PRODUCT OF SERVICE - COPYRIGHT: All materials developed or acquired by a Contractor pro-

viding educational and research services funded in whole or in part by the Education and Training Fund shall become the property of the New Mexico real estate commission and shall be delivered to the Commission no later than the termination date of the contract. Nothing produced, in whole or in part, by the Contractor shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

[16.61.14.14 NMAC - N, 01/01/07]

16.61.14.15 CHANGES: No substantive changes, including schedule of programs, may be made in a program under a contract for education and research without the prior approval of the commission. The commission at a regularly scheduled meeting may make emergency changes on a temporary basis with the prior approval of the administrator of the commission subject to review and final approval. All requests for changes and authorizations of changes must be made in writing before they may be implemented.

[16.61.14.15 NMAC - N, 01/01/07]

16.61.14.16 PARTICIPANTS: Any courses offered to New Mexico licensed associate brokers and qualifying brokers which the commission has underwritten in part or in total must be made available to all persons regardless of race, color, religion, sex, handicap, familial status, national origin, age, or membership in any organization.

[16.61.14.16 NMAC - N, 01/01/07]

16.61.14.17 EXPENDITURES: Any funds not expended in the implementation of a contract for education or research shall be returned to the commission within thirty (30) days of the termination date of the contract or at such other time as the commission may require.

[16.61.14.17 NMAC - N, 01/01/07]

16.61.14.18 REVENUES: The Real Estate Education and Training Fund shall consist of an initial transfer of the balance in the Real Estate Recovery Fund in excess of the \$250,000 statutory minimum balance; legislative appropriations to the fund; fees charged by the commission for approval of real estate education sponsors, courses, and instructors; gifts, grants, donations, and bequests to the fund; and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year.

[16.61.14.18 NMAC - N, 01/01/07]

16.61.14.19 VIOLATIONS Any violation of the provisions of this part, any falsification or misrepresentation in a pro-

posal for a contract for education and research, or violation of any written agreement entered into with the commission under this part may result in a termination of the contract and the requirement that any funds paid by the commission be returned. Any provider under a contract for education and research found to have not properly accounted for or improperly expended any funds shall repay said funds plus interest at 6 percent per annum to the commission and said recipient shall be ineligible to enter into any contract for education and research with the commission until said recipient first repays the fund plus interest. Should the commission allege any violation under this rule, it shall provide the respondent with a formal hearing under the provisions of the Uniform Licensing Act.

[16.61.14.19 NMAC - N, 01/01/07]

HISTORY OF 16.61.14 NMAC:
[RESERVED]

NEW MEXICO REAL ESTATE COMMISSION

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BRO-
KERS
PART 15 APPROVAL OF
REAL ESTATE COURSES, SPON-
SORS, AND INSTRUCTORS**

16.61.15.1 ISSUING AGENCY:
New Mexico Real Estate Commission.

[16.61.15.1 NMAC - Rp, 16.61.15.1
NMAC, 1-1-2007]

16.61.15.2 SCOPE: The provisions in Part 15 of Chapter 61 apply to all real estate pre-licensing and continuing education course sponsors and instructors wishing to obtain accreditation to offer and teach real estate pre-licensing and continuing education courses to New Mexico real estate brokers.

[16.61.15.2 NMAC - Rp, 16.61.15.2
NMAC, 1-1-2007]

**16.61.15.3 STATUTORY
AUTHORITY:** Part 15 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[16.61.15.3 NMAC - Rp, 16.61.15.3
NMAC, 1-1-2007]

16.61.15.4 DURATION:
Permanent.

[16.61.15.4 NMAC - Rp, 16.61.15.4
NMAC, 1-1-2007]

16.61.15.5 EFFECTIVE DATE:
1-1-2007, unless a later date is cited at the

end of a section.

[16.61.15.5 NMAC - Rp, 16.61.15.5
NMAC, 1-1-2007]

16.61.15.6 OBJECTIVE: The objective of Part 15 of Chapter 61 is to set forth the procedures and requirements for the accreditation of real estate continuing education and pre-licensing sponsors, courses, and instructors.

[16.61.15.6 NMAC - Rp, 16.61.15.6
NMAC, 1-1-2007]

16.61.15.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.

[16.61.15.7 NMAC - Rp, 16.61.15.7
NMAC, 1-1-2007]

**16.61.15.8 EDUCATION
STEERING COMMITTEE:** The commission shall appoint an education steering committee (ESC) with the goal of upgrading and improving the real estate education program in order to carry out the commission's mission of protecting the public and increasing the professional competence of real estate brokers.

A. The committee shall meet monthly or as required for the purpose of certification reviews of real estate sponsors, courses, and instructors and shall make recommendations to the commission as to its findings.

B. The committee shall consist of at least nine members. Each member shall serve a term of three years. The commission may appoint new members. The term of a committee member may be renewed by the commission.

(1) The appointments should be made so the terms are staggered.

(2) A person who accepts an appointment to the ESC shall be committed to the appointment. An absence of two times in succession shall result in removal from the committee.

[16.61.15.8 NMAC - Rp, 16.61.15.8
NMAC, 1-1-2007]

**16.61.15.9 APPROVAL OF
EDUCATION PROGRAMS:**

A. Applications for sponsor, instructor, and course approvals shall be accompanied by the fee(s), if assessed by the commission, specified in 16.61.2.8 NMAC of the commission rules.

B. Review of Courses. The ESC shall determine if a course meets commission guidelines as to course content, structure and measurement of student proficiency, and to categorize the course into either an approved "education" course or an approved "training" course.

(1) An approved education course shall consist of courses in selling, leasing or managing residential, commercial and

industrial property; basic real estate law and practice; real estate financing including mortgages and other financing techniques; material specific to the regulatory, technical and ethical practice of real estate; and all federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure.

(2) An approved training course shall consist of offerings in personal and property protection for the broker and clients; offerings in using the computer, the internet, business calculators, and other technologies to enhance the broker's service to the public; offerings concerning professional development, customer relations skills, sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar offerings.

(3) Non-acceptable offerings shall include courses in mechanical office and business skills such as typing, speed reading, memory improvement, language report writing, offerings concerning physical well-being or personal development such as personal motivation, stress management, time management, dress-for-success, or similar offerings.

C. The ESC shall review instructor candidates:

(1) to determine the candidate's knowledge of the subject matter;

(2) to determine the candidate's ability to communicate his/her knowledge to students;

(3) to determine if the candidate uses appropriate teaching delivery skills;

(4) to determine if the candidate is honest, truthful, reputable, and competent.

D. The ESC shall review sponsor applications: to determine if the sponsor is qualified and credible.

E. Agenda and procedures for approval of sponsors, instructors, and courses.

(1) The ESC shall schedule no more than eight presentations related to applications for instructor, sponsor, or course approvals during any one meeting.

(2) Applications must be received by the education administrator in the commission office at least 30 days prior to a scheduled ESC meeting.

F. One-on-one approvals.

(1) One-on-one credit - the ESC may recommend approval of a continuing education single course offering for 12 months for a course not otherwise approved for continuing education credit. Education and/or training credit may be requested for one-on-one approved courses.

(a) The broker must complete and submit to the commission the approved one-on-one application form, the certificate of completion (if any), a cover letter giving details of the course, and all applicable fees

within 30 days of completing the course.

(b) The application form must include the applicant's name, sponsor's name, course title, date and place of course offering, number of credit hours, outline of the course, course category (education or training), and name and credentials of the instructor or speaker.

(c) Credit hours will apply only to the renewal cycle during which the course was presented and cannot be carried over into a subsequent renewal cycle.

(d) The ESC will evaluate the application and supporting documentation and make a recommendation to the commission. If the broker is able to satisfactorily demonstrate that the course will likely improve the broker's ability to better protect or serve the public and increase the broker's competence, the commission may grant the individual licensee hour-for-hour continuing education credit for the course to a maximum of ten credit hours per course. Written notice of commission approval or denial will be sent to the broker applicant.

(2) Course one-on-one credit - if a course is to be taught only one time and in one New Mexico location, and if the course has been approved for continuing education credit in a minimum of three other states, the sponsor may be granted course credit.

(a) The course sponsor shall complete and submit to the commission the approved one-on-one application form, evidence that the course is certified in at least three other states, and all applicable fees at least 60 days prior to the presentation of the course.

(b) The sponsor of the course must be able to satisfactorily demonstrate that the course meets the same standards required for approval of other New Mexico courses and instructors.

[16.61.15.9 NMAC - N, 1-2007]

16.61.15.10 APPROVAL OF SPONSORS:

A. All sponsors wishing to offer commission approved courses for credit must be approved by the commission prior to accepting students.

B. Educational institutions, proprietary schools, professional organizations or businesses wishing to become commission approved sponsors must submit a completed sponsor application form.

C. The commission will maintain a list of approved sponsors.

D. An approved sponsor shall comply with the following requirements:

(1) conduct all courses in accordance with commission rules and education policies, and in accordance with approved course content;

(2) prominently display the cur-

rent certificate of sponsorship in the main office of the sponsor as registered with the commission;

(3) prepare and provide to each student who successfully completes a pre-licensing or continuing education course, a course completion certificate showing the student name, the course name, the course number, the credit hours earned and whether the course is in the education or training category;

(a) certify no candidate as successfully completing a pre-licensing real estate course unless the student has attended at least 75% of the classroom instruction and has passed a written examination at the conclusion of the course;

(b) certify no broker as successfully completing the mandatory course unless the broker has attended at least 90% of the classroom instruction and, on or after January 1, 2007, passed a written examination at the conclusion of the course;

(c) certify no broker as successfully completing an approved continuing education course unless the broker has attended at least 90% of the classroom instruction;

(4) maintain current, complete, and accurate student records; these records shall include, but not be limited to, a record of payments made, a record of attendance, and a record of course work completed; records shall be maintained for a period of three years;

(5) permit the commission or its representative access to classes being conducted, and make available to the commission, upon request, all information pertaining to the activities of the sponsor;

(6) advertise at all times in a manner free from misrepresentation, deception or fraud; all course advertising must include the name of the commission-approved sponsor, and must specify whether the course is in the education or training category;

(7) in the event a sponsor ceases operations, the sponsor shall forward all student records to the commission for proper disposition; if the sponsor ceases operations while students are still enrolled who have not completed their program of study, the sponsor shall submit to the commission within thirty (30) days a list of students enrolled at the time of closure, the amount of tuition paid, the status of course work in progress, and all other student records;

(8) advise the commission within 30 days of changes in ownership, directorship, financial status, location or other pertinent information, and reapply for sponsorship in the event of change of majority ownership;

(9) at the end of each course, the sponsor shall collect from each student an evaluation that evaluates adherence to

course content, the effectiveness of the instructor, and other prescribed criteria; the evaluation forms shall be mailed to the commission within 10 days of the last class;

(10) renew sponsorship approval every three (3) years by submitting a sponsor renewal form to the commission;

(11) shall meet the requirements of the Americans with Disabilities Act.

E. Failure to comply with this rule may result in the loss of sponsor approval.

[16.61.15.10 NMAC - Rp, 16.61.15.9 NMAC, 1-1-2007]

16.61.15.11 APPROVAL OF COURSES:

A. Except as provided in Subsection F of 16.61.15.9 NMAC, one-on-one approvals, all pre-licensing and continuing education courses must have been approved by the commission prior to the presentation of the course.

(1) An application for approval of a new course must be submitted to the commission on the approved form with all applicable fees no less than 30 days before the presentation of the course. The application must be accompanied by all written materials to be used in the course, and a course outline in an electronic format specified by the commission. The outline becomes the property of the commission.

(2) Nationally recognized professional real estate organizations such as NAR, NAREB, AARO, and IREM, that provide national professional designations such as GRI, CRB, CRS and CCIM, shall be automatically certified for education or training credit on an hour-for-hour basis.

(a) Licensees taking these courses need only provide evidence to the commission of having completed such a course.

(b) A New Mexico sponsor is not required for these courses.

(3) Unless otherwise specified, all courses approved for pre-licensing credit by the commission are eligible for credit from the date of course approval.

B. All courses shall be offered in accordance with established commission approved course content requirements. The minimum length of a course shall be one hour. A credit hour is 50 minutes within a 60-minute period of time.

C. The commission will maintain a current list of courses that have been approved for credit. This list shall be available from the commission office and on the commission web site. All approved courses are subject to periodic review by the commission.

D. Courses submitted for approval shall have significant intellectual and/or practical content and shall meet the commission's charge of protecting the pub-

lic and increasing the professional competence of the broker.

(1) Instructor materials shall include thorough, high quality, readable, carefully prepared materials, provided to participants prior to, or at the time of, the course.

(2) Workshops, seminars, or conferences offered for credit, except as otherwise provided in this part, must be offered by an approved sponsor. All educational activities (except for distance education) shall be presented in a suitable classroom setting.

(3) If the course represents an update to a previously approved course, and new material becomes available, the instructor shall be responsible for updating the course and presenting the most current information. Significant changes to course outlines should be provided by the instructor to the commission's education administrator as they occur. If a course outline has not been updated within the last 3 years the ESC may, at its discretion, recommend to the commission that the course be removed from the list of approved courses.

E. Distance Education: For purposes of this subsection, distance education courses are those in which the instruction does not take place in a traditional classroom setting but rather through other media where teacher and student are separated by distance and/or time. Content of the courses shall consist primarily of courses in selling, leasing or managing residential, commercial and industrial property as well as courses on basic real estate law and practice.

(1) Courses using the ARELLO certification:

(a) only the delivery method will be certified by ARELLO; the subject matter of the course will be certified by the commission;

(b) education providers making application for certification based on ARELLO certification shall provide appropriate documentation that the ARELLO certification is in effect.

(2) Courses certified by the commission:

(a) the sponsor and materials, including outlines and testing materials, shall be approved by the commission;

(b) courses shall meet the course standards established in this part;

(c) courses shall have an instructor available to monitor progress and answer student questions during regularly posted hours; the sponsor must demonstrate a method for monitoring student progress, through live interaction, testing or some other method approved by the commission;

(d) the sponsor shall assure that technical assistance is available to students

as needed;

(e) the sponsor must provide for secure and accurate documentation of student identity and achievement;

(f) the sponsor shall justify the classroom hour equivalency;

(g) the course must include testing administered by the sponsor or a disinterested third party; the testing shall be adequate to demonstrate understanding or knowledge of the subject matter; the sponsor must not alter the course test parameters; the test should be administered as approved by the commission;

(h) the commission reserves the right to consider alternative certification methods and/or procedures for non-ARELLO certified distance education courses.

F. Failure to comply with this rule may result in the loss of course approval.

[16.61.15.11 NMAC - Rp, 16.61.15.10 NMAC, 1-1-2007]

16.61.15.12 APPROVAL OF INSTRUCTORS:

A. All instructors teaching real estate courses shall have been approved by the commission prior to teaching a course, except for instructors teaching courses approved for one-on-one credit, or instructors teaching courses leading to national professional designations.

(1) All instructor candidates must complete an application on the approved form with all applicable fees no less than 30 days before the presentation of a course.

(2) All instructor candidates shall complete a commission-approved instructor-training course within one year of being approved as an instructor and every three years thereafter. Instructors who fail to submit documentation of completion of the instructor-training course will not be re-certified.

(3) All instructor candidates must have high integrity and be honest, truthful, reputable and competent.

(4) Instructor candidates must be prepared to make a minimum 15-minute presentation to the ESC exhibiting their teaching skills and knowledge of the subject matter, and be prepared to answer questions.

(a) The presentation shall conform to the generally accepted principles of education as proposed by the real estate educators association.

(b) The ESC will make its recommendation to the commission to grant or deny instructor approval based on this presentation. If the application is denied, a written notice to the candidate will provide specific reasons and prescriptive measures for improvement.

B. Pre-licensing instruc-

tors.

(1) Candidates seeking approval to teach real estate law, real estate principles and practices, broker basics and brokerage office administration must have passed the New Mexico broker's examination with a minimum score of 84 within three years of having made application to the commission to become an instructor. Candidates seeking approval to teach the brokerage office administration course must have been previously approved to teach real estate law, real estate principles and practice and broker basics and have two years of experience as a qualifying broker in New Mexico or another licensing jurisdiction.

(2) Candidates shall complete an audit of each course they will be teaching and prepare teaching notes on the course of study.

C. Mandatory course instructors.

(1) Candidates seeking approval to teach the mandatory course must have passed the New Mexico broker's examination with a minimum score of 84 within six months of having made application to the commission to teach the mandatory course.

(2) Candidates must be currently approved instructors in real estate law and real estate principles and practice or certified in three or more commission-approved education courses.

(3) Candidates must attend a seminar on how to present the mandatory course, and must attend a periodic update of the course offered by the commission or its mandatory course contractor.

(4) Candidates must be prepared to make a 60-minute presentation to the ESC and answer questions.

D. Associate broker first-licensing-cycle course instructors.

(1) Instructor candidates seeking approval to teach courses for associate brokers in their first licensing cycle shall have appropriate teaching skills and be able to provide to the ESC instructor evaluations from students and sponsors indicating a superior level of teaching skills.

(2) Additionally, instructor candidates in this category shall comply with the other requirements set forth in 16.61.15.12 NMAC, Approval of Instructors.

E. Continuing education course instructors.

(1) Candidates seeking commission approval to teach approved continuing education courses shall comply with the requirements set forth in 16.61.15.12 NMAC, Approval of Instructors.

(2) Approved continuing education instructors shall comply with the following requirements:

(a) conduct all classes in accordance with commission rules and education policies;

(b) ensure that all instruction is free from misrepresentation;

(c) instruct in accordance with commission approved course content requirements;

(d) allow access to any approved class to any duly appointed representative of the commission;

(e) certify to the sponsor a true and correct record of student attendance.

F. Instructor approvals expire on December 31 of each year.

(1) Instructors shall complete a commission approved instructor training course within one year of being approved to teach pre-licensing and continuing education courses.

(2) Failure to submit documentation of completion of the instructor-training course will result in the instructor being decertified.

(3) Instructors shall have taught in the preceding year a minimum of one class in each course for which approval is sought.

G. Failure to comply with this part may result in the loss of instructor approval.

[16.61.15.12 NMAC - Rp, 16.61.15.11 NMAC, 1-1-2007]

HISTORY OF 16.61.15 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the state records center and archives under: Rule No. 7, Education: Accreditation of Sponsors/Courses/Instructors, filed 12-18-87; NMREC Rule 7, Education: Accreditation of Sponsors/Courses/Instructors, filed 10-3-94.

History of Repealed Material:

16 NMAC 61.15, Continuing Education: Accreditation of Sponsors; Courses; Instructors (filed 6-25-97) repealed 1-1-2000.

16.61.15 NMAC, Continuing Education: Approval of Sponsors, Courses, and Instructors (filed 11-30-2001) repealed 1-1-2006.

16.61.15 NMAC, Continuing Education: Approval of Sponsors, Courses, and Instructors (filed 11/16/2005) repealed 1-1-2007.

Other History:

NMREC Rule 7, Education: Accreditation of Sponsors/Courses/Instructors (filed 10-3-94) was reformatted, renumbered, and replaced by 16 NMAC 61.15, Continuing Education: Approval of Sponsors, Courses, Instructors, effective 8-15-97.

16 NMAC 61.15, Continuing Education: Accreditation of Sponsors; Courses; Instructors (filed 6-25-97) was replaced by 16 NMAC 61.15, Continuing Education: Approval of Sponsors, Courses, Instructors,

effective 1-1-2000.

16 NMAC 61.15, Continuing Education: Approval of Sponsors, Courses, and Instructors (filed 12-10-99) reformatted, amended, renumbered, and replaced by 16.61.15 NMAC, Continuing Education: Approval of Sponsors, Courses, and Instructors, effective 1-1-2002.

16.61.15 NMAC, Continuing Education: Approval of Sponsors, Courses, and Instructors (filed 11-30-2001) replaced by 16.61.15 NMAC, Continuing Education: Approval of Sponsors, Courses, and Instructors, effective 1-1-2006.

16.61.15 NMAC, Continuing Education: Approval of Sponsors, Courses, and Instructors (filed 11/16/2005) replaced by 16.61.15 NMAC, Approval of Real Estate Courses, Sponsors, and Instructors, effective 1-1-2007.

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.13 NMAC, Section 8, effective 01-01-07.

16.61.13.8 REQUIREMENTS:

The only exception to this part is that specified in Section 61-29-4.1, NMSA 1978.

A. All active and inactive associate brokers and qualifying brokers shall successfully complete thirty (30) credit hours of continuing education in courses approved by the commission during each licensing cycle.

B. Associate brokers in their first licensing cycle who were licensed as associate brokers for the first time on or after January 1, 2006, as a result of having passed the broker's examination, shall successfully complete 30 hours of courses in subject matter areas prescribed by the commission for new brokers, including the approved eight (8) hour real estate commission mandatory course. At least 10 hours must be completed by the end of year one (1), a total of 20 hours must be completed by the end of year two (2), and a total of 30 hours must be completed by the end of year three (3). Associate brokers in their first licensing cycle shall submit course sponsors' verification of successful completion of course work. ~~[Associate brokers in their first licensing cycle will be required to take courses as prescribed by the commission during their first year of licensure, pass examination administered in those first year classes, and pass an examination as prescribed by the commission as a condition of license renewal at the end of their third year of licensure.]~~ Associate brokers in their first licensing cycle will be required to pass an examination as prescribed by the commission as a condition of license renewal at the end of their third year of

licensure.

C. All associate brokers and qualifying brokers shall successfully complete the approved eight (8) credit hour real estate commission mandatory course during each licensing cycle. Of the remaining twenty-two (22) credit hours, ten (10) credit hours may be credited toward the continuing education requirement from approved training courses. At least twelve (12) credit hours must be taken from approved education courses; however, all twenty-two (22) credit hours may be taken from the list of commission-approved education courses.

D. Commission approved pre-licensing courses may count for up to ten (10) credit hours toward continuing education.

E. No commission approved continuing education course will be granted more than ten (10) credit hours of continuing education credit.

F. Continuing education credit hours cannot be carried forward to the next licensing cycle.

G. Licensees may receive four (4) approved education course credit hours during each licensing cycle for attending commission meetings, rules hearings, and disciplinary hearings.

H. Approved instructors may apply up to ten (10) credit hours during each three-year licensing cycle toward fulfillment of their own continuing education requirements for teaching commission approved courses.

[1-1-2000; 16.61.13.8 NMAC - Rn & A, 16 NMAC 61.13.8, 1-1-2002; A, 1-1-2006; A, 1-1-2007]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.19.NMAC, Section 8, effective 01-01-07.

16.61.19.8 BROKER DUTIES; DISCLOSURE: Prior to the time an associate broker or qualifying broker generates or presents any written document that has the potential to become an express written agreement, the associate broker or qualifying broker shall disclose in writing to a prospective, buyer, seller, landlord or tenant, the following list of broker duties that are owed to all customers and clients by all brokers:

A. honesty and reasonable care as set forth in the provisions of this section;

B. compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real

estate license law and the real estate commission rules, and other applicable local, state, and federal laws and regulations;

C. performance of any and all oral or written agreements made with the customer or client;

D. assistance to the broker's customer or client in completing the transaction, unless otherwise agreed to in writing by the customer or client, including:

(1) presentation of all offers or counter-offers in a timely manner;

(2) assistance in complying with the terms and conditions of the contract and with the closing of the transaction; if the broker in the transaction is not providing the service, advice or assistance described in Paragraphs (1) and (2) of Subsection D of 16.61.19.8 NMAC, the customer or client must agree in writing that the broker is not expected to provide such service, advice or assistance, and the broker shall disclose such agreement in writing to the other brokers involved in the transaction;

E. acknowledgement by the broker that there may be matters related to the transaction that are outside the associate broker's or qualifying broker's knowledge or expertise and that the associate broker or qualifying broker will suggest that the customer or client seek expert advice on these matters;

F. prompt accounting for all monies or property received by the broker;

G. Prior to the time the associate broker or qualifying broker generates or presents any written document that has the potential to become an express written agreement, written disclosure of:

(1) any written brokerage relationship the broker has with any other parties to the transaction and/or;

(2) any material interest or relationship of a business, personal or family nature that the broker has in the transaction;

(3) other brokerage relationship options available in New Mexico.

H. disclosure of any adverse material facts actually known by the associate broker or qualifying broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts do not include data from a sex offender registry or the existence of group homes;

I. maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former client's consent or is required by law;

J. unless otherwise authorized in writing, an associate broker or qualifying broker shall not disclose to their customer or client during the transaction

that their seller client or customer has previously indicated they will accept a sales price less than the asking or listed price of a property; that their buyer client or customer has previously indicated they will pay a price greater than the price submitted in a written offer; the motivation of their client or customer for selling or buying property; that their seller client or customer or their buyer client or customer will agree to financing terms other than those offered; or any other information requested in writing by the associate broker's or the qualifying broker's customer or client to remain confidential, unless disclosure is required by law.

[16.61.19.8 NMAC - Rp, 16.61.19.8 NMAC, 1-1-2004; A, 1-30-2004; A, 3-27-2004; A, 1-1-2006; A, 1-1-2006, A, 1-1-2007]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.32 NMAC, Section 8, effective 01-01-07.

16.61.32.8 A D V E R T I S E - M E N T S:

A. Every qualifying broker advertising real property for others for sale, purchase, lease, exchange, or rent, including short-term rentals or advertising real estate services, shall at a minimum, use in such advertising the trade name and New Mexico brokerage office telephone number as registered with the commission. Additional telephone numbers may be used in such advertising.

B. Associate brokers, when advertising real property for others for sale, purchase, lease, exchange or rent, or when advertising real estate services, shall include in the advertisement the trade name and the telephone number as registered with the commission of the brokerage with which they are affiliated.

C. Every broker advertising to buy, sell or exchange real property which is owned or partially owned by that broker shall indicate within the advertisement (including signs), listing contract, purchase agreement or exchange agreement that one of the parties is a broker. Disclosures using initials or symbols are not permitted.

D. When advertising real property owned by a broker and the telephone number of the brokerage is used in the advertisement, the advertisement must also include the trade name of the brokerage as registered with the commission.

E. All real estate advertising shall be a true and factual representation of the property and/or real estate services being advertised. If the qualifications, credentials, staffing or sales history of the bro-

kerage are included in the brokerage's advertising, such information shall be presented in such a manner that will not confuse or mislead the public.

F. All advertising must be in compliance with all local, state and federal laws and regulations.

G. All real estate advertising of real property for others or advertising of real estate services shall be under the direct supervision of the qualifying broker or the broker in charge.

H. These requirements apply to all forms of advertising, including but not limited to print, audio, **and** video, including audio and video recordings, computer presentations, and electronic media such as the internet [~~and~~] e-mail, **virtual office websites, and all broker web sites.**
[N, 1-1-2000; 16.61.32.8 NMAC - Rn, 16 NMAC 61.32.8, 1-1-2002; A, 1-1-2006; A, 1-1-2007]

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2006

Volume XVII	Submittal Deadline	Publication Date
Issue Number 19	October 2	October 16
Issue Number 20	October 17	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 14
Issue Number 24	December 15	December 29

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Volume XVIII	Submittal Deadline	Publication Date
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Issue Number 7	April 2	April 16
Issue Number 8	April 17	April 30
Issue Number 9	May 1	May 15
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Issue Number 23	December 3	December 14
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