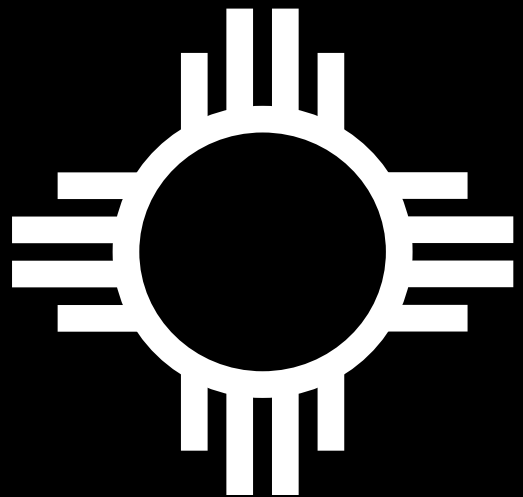


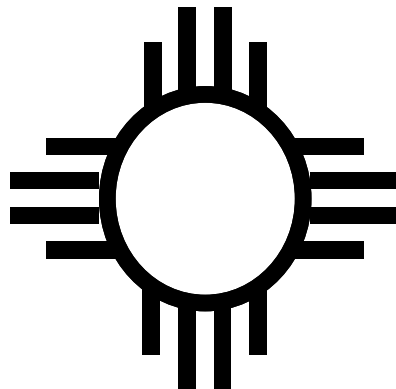
**NEW
MEXICO
REGISTER**



Volume XVII
Issue Number 24
December 29, 2006

New Mexico Register

**Volume XVII, Issue Number 24
December 29, 2006**



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

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Administrative Law Division
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New Mexico Register

Volume XVII, Number 24

December 29, 2006

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Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

NEW MEXICO GAMING CONTROL BOARD

NEW MEXICO GAMING CONTROL BOARD

NOTICE OF HEARING ON AMENDMENTS TO RULES

The New Mexico Gaming Control Board ("Board") will hold a public hearing at 9:00 a.m. on February 1, 2007, at the New Mexico Gaming Control Board, 4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113 to consider amendments for the following rules: **15.1.5 NMAC**, *Application for Licensure Under the Gaming Control Act*, **15.1.7 NMAC**, *Gaming Machines, New Games and Associated Equipment*, **15.1.8 NMAC**, *Accounting Requirements under the Gaming Control Act*, **15.1.10 NMAC**, *Conduct of Gaming under the Gaming Control Act*, **15.1.13 NMAC**, *License and Certification Renewal Requirements under the Gaming Control Act*, **15.1.24 NMAC**, *Progressive Games and Gaming Devices*

Copies of the proposed amendments are available on request to the New Mexico Gaming Control Board, 4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113, or by calling (505) 841-9733. The proposed changes are also available on our website at www.nmgcb.org. The Board can provide public documents in various accessible formats.

The hearing will be held before a hearing officer appointed by the Board. All interested parties may attend the hearing and present their views orally or submit written comments prior to the hearing. Written comments should be directed to the Gaming Control Board, 4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113.

If you are an individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, please contact Denise Leyba, Gaming Control Board, at least one week prior to the hearing at (505) 841-9733.

NEW MEXICO LIVESTOCK BOARD

NEW MEXICO LIVESTOCK BOARD

NOTICE OF RULE MAKING AND ADOPTION OF RULE HEARING AND REGULAR BOARD MEETING

NOTICE IS HEREBY GIVEN that a rule making and adoption of rule hearing and a regular board meeting will be held on Tuesday, January 16, 2007, at the New Mexico Livestock Board, 300 San Mateo NE Suite 1000, Albuquerque, New Mexico at 9:00 a.m. The Board will initiate rule changes regarding Equine Viral Arteritis (EVA) and discuss other matters of general business.

Copies of the rule can be obtained by contacting Daniel Manzanares, Executive Director, New Mexico Livestock Board, 300 San Mateo NE Suite 1000, Albuquerque, NM 87108-1500, (505) 841-6161. Interested persons may submit their views on the proposed rule to the Board at the above address and/or may appear at the scheduled hearing and make a brief verbal presentation of their view. Copies of the agenda may be obtained at New Mexico Livestock Board office or by calling (505) 841-6161.

Anyone who requires special accommodations is requested to notify the New Mexico Livestock Board office at (505) 841-6161 of such needs at least five days prior to the meeting.

NEW MEXICO BOARD OF PHARMACY

NEW MEXICO BOARD OF PHARMACY

REGULAR BOARD MEETING

NOTICE TO THE PUBLIC

The New Mexico Board of Pharmacy will convene on **January 16 & 17, 2007** at 9:00 a.m. in the **Pharmacy Board Conference Room, 5200 Oakland Ave., NE, Albuquerque, New Mexico** for the purpose of conducting a regular Board meeting.

Interested persons may contact Debra Wilhite, Administrative Secretary, 5200 Oakland Ave., NE, Suite A, Albuquerque, NM 87113, (505) 222-9830 or fax (505) 222-9845, e-mail debra.wilhite@state.nm.us to receive copies of the agenda, which will be available January 6, 2007. The Board may go into executive session at any time to discuss licensee and/or personnel matters. Anyone who needs special accommodations for the meeting should contact the Board office at (505) 222-9830 as soon as possible.

Available at www.state.nm.us/pharmacy on

January 6, 2007 will be all proposed regulations, notices and tentative agenda.

The Board will notice the following for rule hearings:

- 16.19.10 NMAC - Limited Drug Clinics
- 16.19.22 NMAC - Support Personnel and Pharmacy Technicians

The Board will address:

- Approval of Applications
- Disciplinary Hearings
- Other Board Matters Including Public Requests

Published in the Albuquerque Journal and Tribune - December 15 & 16, 2006.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

CANCELLATION OF NOTICE OF PROPOSED RULEMAKING

The Public Education Department ("Department") published a Notice of Proposed Rulemaking in the New Mexico Register Volume XVII, Issue Number 22 (11/30/2006) informing of 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 was to obtain input on the following rule: 6.30.2, Standards for Excellence (amend section 9).

THE DEPARTMENT HEREBY CANCELS ITS NOTICE OF PROPOSED RULEMAKING REGARDING THE RULES LISTED. At a later date, the Department intends to initiate the rule-making process, at which time a notice of proposed rulemaking will be published and a public hearing scheduled. Questions regarding this cancellation may be referred to Dr. Karen Kay Harvey, Assistant Secretary, Quality Assurance and Systems Integration Division, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 8 7 5 0 1 - 2 7 8 6 (karenk.harvey@state.nm.us) (telephone (505) 827-6517) (telefax (505) 827-5066).

**NEW MEXICO RACING
COMMISSION****NEW MEXICO RACING
COMMISSION
NOTICE OF RULEMAKING AND
PUBLIC HEARING****NOTICE IS HEREBY GIVEN**

that a rulemaking and public hearing will be held in the Board Room, 4900 Alameda Blvd NE, Albuquerque, New Mexico, commencing in executive session at 9:00 o'clock a.m. on Thursday, January 18, 2007. The public session will begin at 10:00 o'clock a.m. on Thursday, January 18, 2007. The Commission will consider adoption of the proposed amended rules for incorporation into the Rules Governing Horse Racing in New Mexico No. 15.2.3.8 NMAC; 15.2.6.9 NMAC; 16.47.1.18 NMAC; and 16.47.1.20 NMAC (regarding stewards' authority); No. 15.2.5.11 NMAC (regarding workouts); No. 16.47.1.8 NMAC (regarding general provision/licensing); No. 16.47.1.11 (regarding owners' authorized agents); and No. 15.2.7.12 (regarding trisuperfecta pools.)

Copies of the proposed rules may be obtained from Julian Luna, Agency Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Suite A, Albuquerque, New Mexico 87113, (505) 222-0700. Interested persons may submit their views on the proposed rules to the commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

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

Julian Luna
Agency Director

Dated: December 8, 2006

**End of Notices and
Proposed Rules Section**

Adopted Rules

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.63 NMAC, Sections 2, and 11, effective 1/15/07.

20.11.63.2 SCOPE: 20.11.63 NMAC is applicable to all stationary sources of air pollutants located within Bernalillo county, which are subject to the requirements of 40 CFR Part 60, as amended in the *Federal Register* through ~~[July 1, 2004]~~ October 28, 2006.

A. Exempt: 20.11.63 NMAC does not apply to sources within Bernalillo county that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

B. Exclusions:
(1) 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters.
(2) Reserved.

C. Variances: The variance provisions of 20.11.7 NMAC, Variance Procedure, Revised Ordinances of Albuquerque 1994 Section 9-5-1-8, Bernalillo County Ordinance 94-5, Section 8, and NMSA 1978 Section 74-2-8 shall not apply to 20.11.63 NMAC or the incorporated federal standards.

[1/1/2000; 20.11.63.2 NMAC - Rn, 20 NMAC 11.63.2, 10/1/02; A, 1/1/05; A, 1/1/06; A, 1/15/07]

20.11.63.11 INCORPORATION OF FEDERAL STANDARDS: Except as otherwise provided in 20.11.63 NMAC, the New Source Performance Standards promulgated by the United States environmental protection agency, and codified at 40 CFR Part 60, including Subpart A-General Provisions thereto, as amended in the *Federal Register* through ~~[July 1, 2004]~~ October 28, 2006, are hereby incorporated into 20.11.63 NMAC.

[1/1/2000; 20.11.63.11 NMAC - Rn, 20 NMAC 11.63.11, 10/1/02; A, 1/1/05; A, 1/15/07]

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.64 NMAC, Sections 2, 11 and 12, effective 1/15/07.

20.11.64.2 SCOPE: 20.11.64 NMAC is applicable to all stationary sources of air pollutants located within Bernalillo county, which are subject to any requirements of 40 CFR Part 61 or Part 63, as amended in the *Federal Register* through ~~[July 1, 2004]~~ October 28, 2006.

A. Exempt: 20.11.64 NMAC does not apply to sources within Bernalillo county, that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

B. Exclusions:
(1) 40 CFR 61, Subpart B, National Emission Standards for Radon Emissions From Underground Uranium Mines;
(2) 40 CFR 61, Subpart H, National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities;

(3) 40 CFR 61, Subpart I, National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H;

(4) 40 CFR 61, Subpart K, National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants;
(5) 40 CFR 61, Subpart Q, National Emission Standards for Radon Emissions From Department of Energy Facilities;
(6) 40 CFR 61, Subpart R, National Emission Standards for Radon Emissions From Phosphogypsum Stacks;

(7) 40 CFR 61, Subpart T, National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings; and
(8) 40 CFR 61, Subpart W, National Emission Standards for Radon Emissions From Operating Mill Tailings.

C. Variances: The variance provisions of 20.11.07 NMAC, Variance Procedure, Revised Ordinances of Albuquerque 1994 Section 9-5-1-8, Bernalillo County Ordinance 94-5, Section 8 and NMSA 1978 Section 74-2-8 shall not apply to 20.11.64 NMAC or the incorporated federal standards.

[1/1/2000; 20.11.64.2 NMAC - Rn, 20 NMAC 11.64.2, 10/1/02; A, 1/1/05; A, 1/15/07]

[1/1/2000; 20.11.64.11 NMAC - Rn, 20 NMAC 11.64.11, 10/1/02; A, 1/1/05; A, 1/15/07]

20.11.64.12 INCORPORATION OF FEDERAL STANDARDS CODIFIED AT 40 CFR PART 63: Except as otherwise provided, the National Emissions Standards for Hazardous Air Pollutants for Source Categories, promulgated by the United States environmental protection agency, and codified at 40 CFR Part 63, including Subpart-A, General Provisions thereto, as amended in the *Federal Register* through ~~[July 1, 2004]~~ October 28, 2006, are hereby incorporated into 20.11.64 NMAC.

[1/1/2000; 20.11.64.2 NMAC - Rn, 20 NMAC 11.64.2, 10/1/02; A, 1/1/05; A, 1/15/07]

20.11.64.11 INCORPORATION OF FEDERAL STANDARDS CODIFIED AT 40 CFR PART 61: Except as otherwise provided, the National Emission Standards for Hazardous Air Pollutants, promulgated by the United States environmental protection agency, and codified at 40 CFR Part 61, including Subpart-A, General Provisions thereto, as amended in the *Federal Register* through ~~[July 1, 2004]~~ October 28, 2006, are hereby incorporated into 20.11.64 NMAC.

[1/1/2000; 20.11.64.11 NMAC - Rn, 20 NMAC 11.64.11, 10/1/02; A, 1/1/05; A, 1/15/07]

20.11.64.12 INCORPORATION OF FEDERAL STANDARDS CODIFIED AT 40 CFR PART 63: Except as otherwise provided, the National Emissions Standards for Hazardous Air Pollutants for Source Categories, promulgated by the United States environmental protection agency, and codified at 40 CFR Part 63, including Subpart-A, General Provisions thereto, as amended in the *Federal Register* through ~~[July 1, 2004]~~ October 28, 2006, are hereby incorporated into 20.11.64 NMAC.

[1/1/2000; 20.11.64.12 NMAC - Rn, 20 NMAC 11.64.12, 10/1/02; A, 1/1/05; A, 1/15/07]

NEW MEXICO COUNSELING AND THERAPY PRACTICE BOARD

This is an amendment to 16.27.4 NMAC Section 12, effective 1-15-07.

16.27.4.12 LICENSURE BY [CREDENTIALS] RECIPROcity:

A. A completed application as specified in 16.27.3.8 NMAC.

B. Verification (attachment A) that the applicant holds and has held a current license for five years issued by the appropriate examining board under the law of any other state or territory of the United States, the District of Columbia or any foreign nation.

C. Verification [~~directly from the national board of certified counselors (NBCC) that the applicant has taken and passed the national clinical mental health counselor examination (NCMHCE)~~] that the applicant is in good standing with no disciplinary action pending or brought

against the applicant within the past five years.

D. ~~[The applicant is required to submit an official transcript in a sealed envelope from each institution contributing to the applicant's master or doctoral degree]~~ Holds masters or doctoral degree in counseling or a counseling-related field from an accredited institution.

E. Application fee of \$75.00.

F. Applicants who do not meet the licensure by reciprocity must meet the current licensure requirements.

[16.27.4.12 NMAC - Rp 16 NMAC 16.27.9, 8 & 9, 6-15-01; A, 7-1-04; A, 2-10-06; A, 1-15-07]

NEW MEXICO COUNSELING AND THERAPY PRACTICE BOARD

This is an amendment to 16.27.6 NMAC Section 12, effective 1-15-07.

16.27.6.12 LICENSURE BY [CREDENTIALS] RECIPROCITY:

A. Submit a completed application per 16.27.3.8 NMAC.

B. Verification on (attachment A) that the applicant holds and has held a current license for five years issued by the appropriate examining board under the law of any other state or territory of the United States, the District of Columbia or any foreign nation.

C. Verification ~~[directly from the American association of marriage and family therapy that the applicant is a current clinical member of the American association for marriage and family therapy (AAMFT)]~~ that the applicant is in good standing with no disciplinary action pending or brought against the applicant within the past five years.

D. ~~[The applicant is required to submit an official transcript in a sealed envelope from each institution contributing to the applicant's master or doctoral degree]~~ Holds masters or doctoral degree in marriage and family therapy, counseling or a counseling-related field from an accredited institution.

E. Application fee of \$75.00.

F. Applicants who do not meet the licensure by reciprocity must meet the current licensure requirements.

[16.27.6.12 NMAC - Rp 16 NMAC 27.9.8&9, 6-15-01; A, 7-1-04; A, 2-10-06; A, 1-15-07]

NEW MEXICO COUNSELING AND THERAPY PRACTICE BOARD

This is an amendment to 16.27.7 NMAC Sections 8, 10, 11, 13 and 14 effective 1-15-07.

16.27.7.8 APPROPRIATE SUPERVISION:

~~[A. Appropriate supervision.]~~

~~[(+)]~~ A. Supervision must be provided by a licensed professional clinical mental health counselor (LPCC), licensed marriage and family therapist (LMFT), licensed art therapist (LPAT), licensed psychologist, licensed psychiatrist, or licensed independent social worker (LISW). Appropriate supervisors must have education and experience in art therapy.

~~[(2)]~~ B. It is the responsibility of the individual seeking supervision to assure the supervision is acceptable for the level of licensure.

~~[(3)]~~ Client contact and supervision hours prior to being licensed will not be acceptable for licensure.

~~B. Supervised practicum/internship: Each student must be required to successfully complete supervised practicum as follows:~~

~~(1) at least six hundred (600) hours of supervised art therapy practice;~~

~~(2) at least 300 hours of supervised practice in which the student must be working directly with clients in individual, group, or family setting;~~

~~(3) the balance of the supervised hours must include discussion of student work with the supervisor(s) and related activities including, but not limited to, case review record keeping, preparation, and staff meetings.~~

~~C. Supervision: Supervision may take place on or off site.~~

~~(1) Art therapy supervision~~

~~(a) Individual supervision: For every ten (10) hours of client contact, there must be one (1) hour of supervision by a registered art therapist (ATR). In New Mexico, a licensed professional art therapist (LPAT) or a qualified licensed professional art therapist (LPAT) or a qualified licensed professional in a related discipline with at least a master's degree.~~

~~(b) Group supervision: The ratio of eight (8) students to one (1) supervisor may not be exceeded for group supervision for every ten (10) hours of client contact.~~

~~(2) Agency supervision: For every ten (10) hours of related activity, there must be one (1) hour of supervision by either a registered art therapist (ATR, in New Mexico, a licensed professional art therapist (LPAT)~~

~~or a qualified professional in a related discipline with at least a master's degree.]~~

~~[16.27.7.9 NMAC - Rp 16 NMAC 27.1.7.5, 6-15-01; A, 7-1-04; A, 2-10-06; A, 1-15-07]~~

16.27.7.10 APPLICANTS FOR LICENSURE: AS A PROFESSIONAL ART THERAPIST (LPAT) MUST POSSESS THE FOLLOWING QUALIFICATIONS AND PROVIDE THE REQUIRED DOCUMENTATION WITH THE APPLICATION: A licensed professional art therapist (LPAT) must possess the following qualifications and provide the required documentation with the application:

A. Age requirement. Be at least 21 years of age.

B. Applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics.

C. Education requirements. Holds ~~either~~ a masters degree in art therapy, counseling or counseling related field from an accredited or nationally approved art therapy program with a total of no less than forty eight (48) graduate semester hours or seventy-two (72) quarter graduate hours in the art therapy core curriculum as defined in 16.27.7.11 NMAC:

(1) a master's or doctoral degree from an accredited or nationally approved art therapy program that includes seven hundred hours of supervised internship experience from an accredited institution;

~~[(2) a masters degree in counseling or a counseling related field; that includes a minimum of twenty four (24) semester hours or thirty six (36) quarter hours of sequential course work in the history, theory, and practice of art therapy and has completed seven hundred hours of supervised internship experience from an accredited institution; the board may approve on a case by case basis applicants who have a master's degree or a doctoral degree from non-accredited institutions; or]~~

~~[(3)]~~ (2) a masters degree in a counseling related field, and completed a minimum of twenty-four (24) semester hours or thirty-six (36) quarter hours in an art therapy certified program from an accredited institution or a nationally approved American art therapy association program.

D. Experience requirements: ~~[One thousand client contact hours of postgraduate face to face experience under appropriate supervision beyond the requirements in Paragraphs (1), (2) and (3) of Subsection C of this section.]~~

(1) A minimum of two years post-graduate professional art therapy experience;

(2) Evidence of having participated in a total of three thousand (3,000) hours of postgraduate clinical client contact and one hundred (100) hours of appropriate face-to-face postgraduate supervision. Seven hundred (700) clinical client contact hours may be from the applicant's internship or practicum.

E. Application fee of \$75.00. [16.27.7.10 NMAC - Rp 16 NMAC 27.6.8, 6-15-01; A, 7-1-04; A, 2-10-06; A, 1-15-07]

16.27.7.11 ART THERAPY CORE CURRICULUM: Means a curriculum for training art therapists that includes a minimum of forty-five (45) graduate hours or sixty (60) quarter hours of graduate level coursework and consists of the following areas of graduate studies. [~~60 graduate semester credits may be required for licensure or clinical education standards in some states.~~] According to the national standards, a sequential course of study must include the following components:]

A. History of art therapy: A minimum of 3 semester hours or 4 quarter hours of graduate coursework. Course content deals with origins, historical development, and major theoretical trends in art therapy.

B. Theories of art therapy: A minimum of 3 semester hours or 4 quarter hours of graduate coursework. Included in the course content are differentiation of art therapy from other mental health and educational professions, major theories, and practical applications.

C. Techniques in art therapy: A minimum of 3 semester hours or 4 quarter hours of graduate coursework which explores various art therapy techniques and interventions. The coursework may examine art therapy processes and approaches appropriate for different diagnostic and presenting problems based on the DSM IV criteria and/or art based assessments.

D. Application of art therapy with different populations in a variety of treatment settings: A minimum of 3 semester hours or 4 quarter hours of graduate coursework which examines the therapeutic relationship in working with various client populations using art therapy. The coursework may examine individual, group, conjoint, and family art therapy as it applies to child, adolescent, and adult populations.

E. Art therapy assessment: A minimum of 3 semester hours or 4 quarter hours of graduate coursework which introduces clinical diagnostic profiles and criteria as it applies to the art image.

F. Ethical and legal issues of art therapy practice: A minimum of 3 semester hours or 4 quarter hours of gradu-

ate coursework which explores the philosophical origins and clinical application of professional ethics.

G. Standards of practice in art therapy: A minimum of 3 semester hours or 4 quarter hours of graduate coursework designed to review art therapy practice procedures and case consultation. The coursework may include therapeutic processes, legal considerations, licensure requirements, self care, and case collaborations.

H. Cultural diversity issues relevant to art therapy practice: A minimum of 3 semester hours or 4 quarter hours of graduate coursework which studies the practice of art therapy in the context of cultural diversity. Content includes assessment, therapeutic strategies, and creative interventions appropriate for different cultural populations.

I. Thesis or written and oral comps.

J. Related core curriculum: The remaining graduate coursework includes psychopathology and diagnostics, human growth and development, group dynamics, research, and studio art to satisfy the 45-hour requirement.

[16.27.7.11 NMAC - N, 6-15-01; A, 1-15-07]

16.27.7.13 DOCUMENTATION REQUIRED FOR LICENSURE:

A. A completed application as specified in 16.27.3.8 NMAC.

B. Proof of education and experience:

(1) The applicant is required to submit an official transcript in a sealed envelope from each institution contributing to the applicant's master or doctoral degree [~~applicants educated in foreign institutions who are unable to submit certified official transcripts shall submit a statement explaining why such transcripts are not available and shall submit certified copies of the degree certificates granted, information on the curricula offered, and any other documentation requested by the board; and] a total of no less than forty-five (45) semester hours or seventy two (72) quarter hours.~~

(2) A statement from each supervisor in a sealed envelope on a form provided by the board (attachment B) verifying the applicant's supervised experience and setting forth the nature and extent of such supervision must be submitted with the application; the statement shall verify that the applicant's performance was in accordance with adequate counseling and therapy standards of practice; if a supervisor's statement is not available, the applicant may submit documentation explaining why the supervisor's statement is not available and sworn affidavits from other individuals ver-

ifying that supervision took place and describing the nature and the extent of the supervision.

(3) Documentation of [~~required~~] three thousand (3000) client contact hours and one hundred (100) hours of appropriate face-to-face supervision [~~additional documentation of client contact hours must be provided to the board upon request;~~].

(4) Attachment E, listing only specific graduate coursework. A course syllabus and actual course catalogue descriptions for all courses must be included (applies only to applicants who hold counseling or counseling related field degree).

(5) Documentation of the applicant's licensure, registration or certification status must be submitted on application attachment form A, which must be sent directly to the board by the jurisdiction in which the applicant is licensed, certified, or registered.

(6) Application fee of \$75.00. [16.27.7.13 NMAC - Rp 16 NMAC 27.6.10, 6-15-01; A, 7-1-04; A, 2-10-06; A, 1-15-07]

16.27.7.14 LICENSURE BY [CREDENTIALS] RECIPROCIITY:

A. Submit a completed application per 16.27.3.8 NMAC.

B. [~~Documentation~~] Verification (attachment A) that the applicant holds and has held a current license for five years issued by the appropriate examining board under the law of any other state or territory of the United States, the District of Columbia or any foreign nation.

C. [~~Documentation: that the applicant is a current registered art therapists, board certified (ATR-BC) by the art therapy credential board.~~] Verification that the applicant is in good standing with no disciplinary action pending or brought against the applicant within the past five years.

D. [~~The applicant is required to submit an official transcript in a sealed envelope from each institution contributing to the applicant's master or doctoral degree.~~] Holds masters or doctoral degree in counseling or a counseling-related field from an accredited institution.

E. Application fee of \$75.00.

F. Applicants who do not meet the licensure by reciprocity must meet the current licensure requirements.

[16.27.7.14 NMAC - Rp 16 NMAC 27.9.8&9, 6-15-01; A, 7-1-04; A, 2-10-06; A, 1-15-07]

**NEW MEXICO
COUNSELING AND
THERAPY PRACTICE
BOARD**

This is an amendment to 16.27.14 NMAC Section 8, effective 1-15-07.

16.27.14.8 TEMPORARY LICENSES:

A. Will be granted to individuals meeting all requirements except the prescribed examination. The temporary license will be valid no more than sixty days after the results of the next examination become available. The temporary license of an individual shall automatically expire upon failure to take or to pass the required examination and cannot be reissued. (The temporary license must be returned to the board office). Individuals practicing under a temporary license shall not provide supervision.

B. A temporary license will be granted for a period not to exceed six months or for a period of time necessary for the board to ensure that the applicant has met licensure requirements as set out in that act.

C. Effective July 1, 2006, the board will grant a temporary license once the applicant has met the licensure requirements. If the applicant fails the first (1st) exam, the board will reschedule the applicant to re-take the examination and will re-issue a second temporary license. If the applicant fails the exam a second (2nd) time, the board may re-issue a third temporary license. The applicant must provide proof of registration on a tutorial class. The board will not issue more than three (3) temporary licenses.

[16.27.14.8 NMAC - Rp 16 NMAC 27.15.8, 6-15-01; A, 7-1-04; A, 2-10-06; A, 1-15-07]

**NEW MEXICO ENERGY,
MINERALS AND NATURAL
RESOURCES
DEPARTMENT
STATE PARKS DIVISION**

**TITLE 18 TRANSPORTATION
AND HIGHWAYS
CHAPTER 17 NAVIGATION AND
BOATING
PART 4 BOATING SAFETY
EDUCATION**

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

[18.17.4.1 NMAC - N, 1/01/07]

18.17.4.2 SCOPE: This part applies to persons born on or after January 1, 1989 who operate a motorboat on the state's waters, motorboat rental and leasing businesses and boating safety course providers.

[18.17.4.2 NMAC - N, 1/01/07]

18.17.4.3 STATUTORY AUTHORITY: NMSA 1978, Section 66-12-18.1 directs the energy, minerals and natural resources department, state parks division to adopt safe boating education rules.

[18.17.4.3 NMAC - N, 1/01/07]

18.17.4.4 DURATION:
Permanent.

[18.17.4.4 NMAC - N, 1/01/07]

18.17.4.5 EFFECTIVE DATE:
January 1, 2007, unless a later date is cited at the end of a section.

[18.17.4.5 NMAC - N, 1/01/07]

18.17.4.6 OBJECTIVE: This part's objective is to set forth rules that require motorboat operators born on or after January 1, 1989 to have and present evidence of successful completion of an approved course on safe boating and prohibit motorboat rental and leasing businesses from renting or leasing a motorboat to persons born on or after January 1, 1989 who cannot present evidence of successful completion of an approved course on safe boating, unless the rental agent provides instructions to the authorized operator of the rented or lease motorboat concerning the motorboats' safe operation. This part also requires motorboat rental and leasing businesses to maintain certain rental or lease records.

[18.17.4.6 NMAC - N, 1/01/07]

18.17.4.7 DEFINITIONS:

A. "Approved course provider" means a division-approved person or organization that provides a NASBLA approved and state certified boating safety course and exam.

B. "Boater education card" means a division-issued document certifying that the person named on the document has established proof of competency and is authorized to operate a boat in New Mexico.

C. "Boating safety course" means a NASBLA approved division-certified course of instruction that concludes with an examination containing at least 50 questions including a minimum of 10 specific questions about New Mexico boating laws.

D. "Certificate" means a boating education safety certificate issued

by the United States power squadrons, United States coast guard auxiliary, the division or other approved course provider as evidence of successful completion of a boating safety course or correspondence internet course.

E. "Correspondence internet course" means a boating safety course and examination the division or approved course provider offers on the internet that allows individuals who are unable to participate in person in a boating safety course a means providing proof of competency. The exam shall be composed of at least 50 questions on boating plus a minimum of 10 specific questions that cover laws and other issues pertaining to boating in New Mexico. The exam shall be randomly selected from a database with a minimum of 150 questions; and questions shall address each of the key areas of general boat information, national and New Mexico specific boating laws, boat operation, preparation and trailering, legal requirements and boating emergencies.

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

G. "Division" means the energy, minerals and natural resources department, state parks division.

H. "Dockside safety checklist" means a division-provided document that consists of selected facts about New Mexico boating laws that a rental or livery agent that rents or leases motorboats for a period that does not exceed 30 days shall provide to each authorized motorboat operator of a leased or operated motorboat, which each authorized motorboat operator shall read and sign.

I. "Equivalency exam" means a division-created exam containing at least 50 questions on boating plus a minimum of 10 specific questions that cover laws and other issues pertaining to boating in New Mexico, which is intended to provide experienced boaters with an opportunity to meet the minimum boating education safety standard without taking boating safety course.

J. "Minimum standard of boating safety education competency" means a division-established proficiency standard, based on NASBLA standards, that determines whether an applicant for a boating education card has successfully completed a boating safety or correspondence internet course or an equivalency exam.

K. "Motorboat" means any vessel propelled by machinery, whether or not machinery is the principal source of propulsion, but does not include a vessel that has a valid marine document issued by the United States bureau of customs or any federal agency successor thereto; motorboat includes any vessel propelled or designed to

be propelled by sail and that does not have a valid document issued by a federal agency, but does not include a sailboard or windsurf board.

L. "NASBLA" means the national association of state boating law administrators.

M. "Operate" or "Operating" means to navigate or otherwise control a motorboat's movement including control of the motorboat's propulsion system.

N. "Operator" means the person who navigates or is otherwise in control or in charge of the motorboat's movement, including control of the motorboat's propulsion system.

O. "Person" means an individual, partnership, firm, corporation, association, joint venture or other entity.

P. "Proof of competency" means evidence of having met the minimum standard for boating safety education competency as determined by the division.

Q. "Rental agent" means the owner, or an employee of or person authorized to act for the owner, of a business that rents or leases motorboats for a period not exceeding 30 days.

R. "Rental motorboat" means a motorboat owned by a person that rents or leases motorboats for a period not exceeding 30 days and for which there is a written and signed rental, charter or lease agreement for the motorboat.

S. "Replacement boater education card" means a boater education card the division provides to a person who the division has already issued a boater education card and who has applied for the replacement of a boater education card that has been lost, damaged, stolen or otherwise needs replacement.

T. "Vessel" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water.

U. "Waters of the state" means any waters within the state's jurisdiction.

[18.17.4.7 NMAC - N, 1/01/07]

18.17.4.8 BOATER EDUCATION CARD:

A. A person born on or after January 1, 1989 who operates a motorboat on the state's waters shall possess a division-issued boater education card and have it onboard the motorboat during its operation unless the person:

(1) possesses and has onboard the motorboat a valid marine operator license issued by the United States coast guard that covers the motorboat being operated;

(2) is legally operating a motorboat that is exempt from vessel registration requirements and applicable rules and is

being used for law enforcement or official government business;

(3) is not a New Mexico resident and possesses and has onboard the motorboat a current boater education card or certificate issued by another state or country whose requirements meet NASBLA minimum standards;

(4) has purchased the motorboat within the prior 30 days, and possesses and has onboard the motorboat the bill of sale or motorboat registration that documents the purchase date; or

(5) is renting a motorboat for a period not exceeding 30 consecutive days, is an authorized operator of the rental motorboat and has reviewed and received the information listed in Subsection B of 18.17.4.13 NMAC from the rental agent.

B. A person that has successfully completed a boating safety course or correspondence internet course may use a boating education safety certificate in lieu of a division-issued boater education card for up to 45 days from the certificate's date of issue if the certificate is onboard the motorboat during operation.

C. A person that has moved to New Mexico may use a boater education card, certificate or other document issued by another state or country in lieu of a division-issued boater education card for up to 45 days after moving to New Mexico to operate a motorboat if the original certificate, card or document is onboard the motorboat during operation.

[18.17.4.8 NMAC - N, 1/01/07]

18.17.4.9 BOATER EDUCATION REQUIREMENTS: A person required to possess a boater education card shall meet the following minimum standards:

A. successful completion of a boating safety course with a passing score of at least 80 percent on a written test administered by the course instructor at the course's conclusion;

B. successful completion of a correspondence internet course with a passing score of at least 80 percent on the self administered test;

C. possession of a certificate, card or other document issued by another state or country whose requirements meet NASBLA minimum standards;

D. successful completion of an equivalency exam with a passing score of at least 80 percent;

E. possession of a United States coast guard motorboat operator's license; or

F. possession of a license to operate a vessel issued by the United States coast guard for maritime personnel pursuant to 46 CFR Part 10, as may be

amended, or a maritime certificate issued by the Canadian government.

[18.17.4.9 NMAC - N, 1/01/07]

18.17.4.10 COURSE PROVIDER ACCREDITATION:

A. To become an approved course provider persons shall apply with the division's Santa Fe office on a division-approved form that includes the course provider's name, address and phone number; the names of all instructors; the dates the provider would offer the course; proposed course content, and whether the provider will offer the course in person or on the internet as well as documentation that NASBLA has approved the proposed course. The division shall deny or approve the application within 30 days after its receipt, or if the division requires more time it shall notify the applicant of the reason and shall approve or reject the application as soon as possible.

B. In approving a course provider the division shall:

(1) follow the NASBLA process for course review and approval and shall review each course the person proposes to provide;

(2) require the person or organization use the NASBLA testing standards for exam questions;

(3) require the person or organization use the division-created question pool that meets NASBLA examination questions standards and covers New Mexico state boating laws and rules; and

(4) require the person or organization to meet any additional requirements the division may have regarding the course presentation, course marketing, examination process, or data security.

[18.17.4.10 NMAC - N, 1/01/07]

18.17.4.11 APPLICATION FOR A BOATER EDUCATION CARD:

A. To apply for a boater education card, a person shall submit to the division Santa Fe office a completed application that includes:

(1) the applicant's name, address, phone number, date of birth, applicant's signature and other information the division may need to process the application; and

(2) proof of competency document, containing the applicant's name, which shall include one of the following:

(a) a copy of the original certificate issued by the United States power squadrons, United States coast guard auxiliary, the division or other approved course provider;

(b) evidence that the applicant has successfully passed an equivalency exam;

(c) a Canadian pleasure craft

operator's card;

(d) a copy of the original certificate, card or other official document issued by another state or country whose requirements meet NASBLA minimum standards;

(e) a copy of an original United States coast guard motorboat operator's license, either valid or expired;

(f) a copy of a valid license to operate a vessel issued by the United States coast guard for maritime personnel pursuant to 46 CFR Part 10, as may be amended, or a maritime certificate issued by the Canadian government.

B. If the applicant does not have the original certificate or other document establishing proof of competency, the applicant may submit a signed notarized statement from the course provider or issuing agency stating that the applicant has successfully completed a boating safety course or internet correspondence course or passed an equivalency exam or possesses one of the documents listed in Subparagraphs (c) through (f) of Paragraph (2) of Subsection A of 18.17.4.11 NMAC.

C. The division may require the applicant to present the original document establishing proof of competency to the division for inspection if the copy accompanying the application is illegible or if the division has concerns about the document's authenticity.

[18.17.4.11 NMAC - N, 1/01/07]

18.17.4.12 REPLACEMENT BOATER EDUCATION CARD:

A. A person may request a replacement boater education card from the division if the person:

(1) has legally changed his or her name; or

(2) has had his or her boater education card lost, stolen or destroyed.

B. To obtain a replacement boater education card, the person shall provide the division with the boater education card number and an affidavit stating the circumstances that led to the loss or destruction of the original boater education card or proof of name change such as a court order or marriage license along with a replacement fee of \$10.

[18.17.4.12 NMAC - N, 1/01/07]

18.17.4.13 RENTAL AGENTS: A person in the business of renting or leasing motorboats for a period not exceeding 30 days shall:

A. ensure that a person born on or after January 1, 1989 and who will rent or be an authorized operator of the rental motorboat meet the requirements in 18.17.4.8 NMAC and not rent the motorboat or allow the person to be an authorized operator if the person does not meet those requirements;

B. provide each authorized operator of the rental motorboat instructions regarding the motorboat's safe operation, which shall include the dockside safety checklist that includes such information as a sail/float plan, emergency preparedness, pre-departure maintenance check, required equipment check, handling/loading specifications and weather forecast and a summary of the statutes and rules governing the motorboat's operation;

C. ensure that each person who rents the motorboat and all authorized operators:

(1) review, initial and sign the dockside safety checklist in the rental agent's presence before they operate the rental motorboat; and

(2) retain the issued copy of the dockside safety checklist onboard while operating the rental motorboat; and

D. maintain rental or lease records for three years that include the name and age of each person who is authorized to operate the rental motorboat and the rental period.

[18.17.4.13 NMAC - N, 1/01/07]

HISTORY OF 18.17.4 NMAC: [RESERVED]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT STATE PARKS DIVISION

This is an amendment to 18.17.2 NMAC, Sections 2, 3 and 5 through 17. This amendment is to be effective 1/01/07.

18.17.2.2 SCOPE: This part applies to ~~[all]~~ persons using vessels in the waters of New Mexico.

[12/21/89; 12/31/96; 18.17.2.2 NMAC - Rn, 18 NMAC 17.2.2, 9/15/06; A, 1/01/07]

18.17.2.3 STATUTORY AUTHORITY: ~~NMSA 1978~~, Section 66-12-18 ~~[NMSA 1978]~~ authorizes the state parks division to promulgate regulations to carry into effect the provisions of the Boat Act, ~~NMSA 1978~~, Sections 66-12-1 *et seq.* ~~[NMSA 1978]~~.

[12/31/96; 12/31/98; 18.17.2.3 NMAC - Rn, 18 NMAC 17.2.3, 9/15/06; A, 1/01/07]

18.17.2.5 EFFECTIVE DATE: December 31, 1996, unless a ~~[different]~~ ~~later~~ date is cited at the end of a section ~~[or paragraph]~~.

[12/31/96; 18.17.2.5 NMAC - Rn, 18 NMAC 17.2.5, 9/15/06; A, 1/01/07]

18.17.2.6 OBJECTIVE: ~~[The~~

~~objective of this part]~~ This part's objective is to set forth registration requirements for vessels and to promote safety for persons and property in and connected with ~~[the]~~ ~~vessels'~~ use, operation and equipment ~~[of vessels]~~.

[12/31/96; 18.17.2.6 NMAC - Rn, 18 NMAC 17.2.6, 9/15/06; A, 1/01/07]

18.17.2.7 DEFINITIONS:

A. "Certificate of number" means the registration certificate required to operate a motorboat on the waters of New Mexico.

B. "Combination lights" means lights required on ~~[all]~~ vessels operating on the waters of New Mexico in the hours of darkness, green on the starboard (right) side and red on the port (left) side and shall throw the lights from dead ahead to two points abaft of the beam on their respective sides.

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

D. "Director" means the director ~~[of the state parks division]~~ of the energy, minerals and natural resources department, state parks division.

E. "Division" means the ~~[state parks division of the]~~ energy, minerals and natural resources department, state parks division.

F. "Flotation assist device" means a wet suit or wearable flotation device in good condition capable of providing flotation to the wearer on the water's surface ~~[of the water]~~.

G. "Person" means an individual, partnership, firm, corporation, association, joint venture or other entity.

H. "Personal flotation device" means a coast guard approved life preserver, buoyant vest, hybrid device, ring buoy or buoyant cushion.

I. "Personal watercraft" means a class A motorboat less than 16 feet, designed to be operated by a person sitting, standing or kneeling on the vessel rather than the operator sitting or standing inside the vessel. Examples include jet skis, sea doos, wave runners and similar devices.

J. "Registration" means the process by which motorboats owned by persons domiciled in New Mexico and motorboats not registered in ~~[any other]~~ another state nor by the United States, which are operated on the waters of this state are numbered as evidenced by a certificate of number issued by the New Mexico taxation and revenue department under a joint powers agreement with the ~~[energy, minerals and natural resources]~~ department.

K. "Right of way" means the right of a vessel, which is proceeding on an established forward course at a relatively

constant speed to continue such course unchanged without reducing speed, turning, veering or reversing.

L. "Secretary" means the secretary of the energy, minerals and natural resources department.

M. "Superintendent" means ~~[an employee of the state parks]~~ a division employee who is in charge of a specific ~~[park(s)]~~ park.

N. "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

O. "Wake" means white water created from wave action breaking off the vessel's bow or sides ~~[of the vessel]~~.

[7/17/67...12/31/96; 12/31/98; 18.17.2.7 NMAC - Rn, 18 NMAC 17.2.7, 9/15/06; A, 1/01/07]

18.17.2.8 REGISTRATION:

A. Certificate of number: In accordance with the Boat Act, ~~[all]~~ boats operating on waters of the state shall be numbered and the certificate of number shall be available for inspection at all times when the motorboat is in operation. Every certificate of number except those issued to dealers and manufacturers expires on December 31 of the third calendar year of registration. Registration shall be renewed triennially. Refunds shall not be made for any unused period of a certificate of number due to non-use of a vessel or change in ownership. No person shall transfer or authorize the transfer of a registration validation decal from one vessel to another.

B. Registration number: A motorboat's registration number ~~[must]~~ shall be painted on or permanently affixed to each side of the motorboat's forward half ~~[of the motorboat]~~, and no other number ~~[may]~~ shall be displayed on that part of the motorboat. Numbers shall: read from left to right; be in plain vertical block characters; be of a color contrasting with the background; be distinctly visible and legible; be not less than three inches in height; and have spaces or hyphens that are equal to the width of a letter between the letter and number groupings. Example: NM 0000 AA or NM—0000—AA.

C. Dealer registrations: A dealer's certificate of number ~~[must]~~ shall be on board each vessel being demonstrated. Dealer numbers shall be displayed and mounted temporarily on such vessels. The dealer number ~~[is not to]~~ shall not be affixed permanently on ~~[any]~~ a vessel. ~~[No]~~ An individual dealer shall not demonstrate more than three vessels ~~[should be demonstrated]~~ at any one time ~~[by an individual dealer]~~.

D. Registration fees:

CLASS	MOTORBOAT LENGTH	THREE YEAR COST
A	Less than 16 ft.	\$28.50
1	16 ft. to less than 26 ft.	\$36.00
2	26 ft. to less than 40 ft.	\$43.50
3	40 ft. to less than 65 ft.	\$51.00
	65 ft. or over	\$66.00
	Duplicate Registration	\$ 5.00

[2/24/75...12/31/96; 12/31/98; 18.17.2.8 NMAC - Rn, 18 NMAC 17.2.8, 9/15/06; A, 1/01/07]

18.17.2.9 EQUIPMENT REQUIRED TO OPERATE A VESSEL: No person shall operate or give permission to operate a vessel on the waters of this state ~~[which]~~ that is not equipped as required by ~~[this section and as required by]~~ 18.17.2.9 NMAC and the Boat Act.

A. Flotation devices:

(1) ~~[All vessels must]~~ Vessels shall carry a U.S. coast guard approved wearable personal flotation device of proper size for each person on board or being pulled as a skier, plus one U.S. coast guard approved throwable device, cushion or ring buoy. Personal flotation devices and throwable devices ~~[must]~~ shall be in serviceable condition readily accessible for use and ~~[must]~~ shall bear evidence of U.S. coast guard approval.

(2) Skiers and those being pulled on ~~[any]~~ a floating object shall wear a U.S. coast guard approved type I, II or III personal flotation device while being pulled by a vessel.

(3) Vessels ~~[which]~~ that carry passengers for hire shall provide a U.S. coast guard approved type I life preserver for each person on board. ~~[An]~~ Vessels shall carry an additional number of approved type I life preservers of children size equal to at least ~~[ten]~~ 10 percent of the total number of persons carried ~~[must be provided]~~, unless the service is such that children are never carried. U.S. coast guard type II, III or IV devices will not suffice for ~~[this regulation]~~ 18.17.2.9 NMAC.

(4) ~~[A U.S. coast guard approved wearable personal flotation device shall be worn~~

~~by all persons]~~ Persons engaged in boating on a river ~~[and]~~ or in ~~[all]~~ boat races ~~[and by]~~ or persons using ice sailboats, personal watercraft, kayaks, canoes and rubber rafts on any waters of this state shall wear a U.S. coast guard approved wearable personal flotation device.

(5) ~~[A flotation assist device may be worn in lieu of a personal flotation device by persons]~~ Persons using wind sail boards, inner tubes, air mattresses, float tubes or other inflatable devices not covered in Paragraph (4) of Subsection A of 18.17.2.9 NMAC ~~[of this regulation,]~~ on ~~[any]~~ waters of this state may wear a flotation assist device in lieu of a personal flotation device.

(6) The operator of a vessel used for recreational purposes shall require children age 12 or under who are aboard the vessel to wear a personal flotation device approved by the United States coast guard while the vessel is underway, unless the child is below deck or in an enclosed cabin.

B. Fire extinguisher:

(1) ~~[All vessels]~~ Vessels constructed with any of the following characteristics ~~[must]~~ shall be equipped with serviceable U.S. coast guard approved marine fire extinguisher of a size and in a quantity set forth in Paragraph (2) of Subsection B of 18.17.2.9 NMAC:

(a) inboard engine;

(b) closed compartments under thwarts and seats where portable fuel tanks may be stored;

(c) double bottoms not sealed to the hull or ~~[which]~~ that are not completely filled with flotation material;

(d) closed living spaces;

(e) closed storage compartments in which combustible or flammable materials may be stored; or

(f) permanently installed fuel tanks.

(2) Fire extinguisher requirements by boat length:

continued on page 1234

CLASS	LENGTH OF MOTORBOAT	NUMBER OF EXTINGUISHERS REQUIRED	SIZE OF FIRE EXTINGUISHERS
A	Less than 16 feet	One [(4)]	B-I
1	16 feet to less than 26 feet	One [(4)]	B-I
2	26 feet to less than 40 feet	Two [(2)] or One [(4)]	[B-Is (or) B-IIs] <u>B-Is</u> or <u>B-II</u>
3	40 feet or more	Three [(3)] or One [(4)] each	[B-IIs (or) B-II and B-4] <u>B-Is</u> or <u>B-II and B-I</u>

C. Sound producing devices: ~~[All vessels must]~~ Vessels shall carry on board a sound producing device in accordance with the following minimum requirements:

(1) less than 26 feet: mouth, hand or power operated whistle or other sound producing mechanical device capable of producing a blast of two second duration and audible for at least one-half mile;

(2) 26 feet ~~[less]~~ but less than 40 feet: hand or power operated horn or whistle capable of producing a blast of two seconds or more duration and audible for a distance of at least one mile and a bell;

(3) 40 feet or more: power operated horn or whistle capable of producing a blast of two seconds or more duration and audible for a distance of at least one mile and a bell.

D. Flame arrester: ~~[Each carburetor of every enclosed]~~ Enclosed gas-line engine carburetors (except outboard motors) installed in a vessel shall be equipped with a U.S. coast guard approved backfire flame arrester that is marked with a U.S. coast guard approval number or in compliance with UL 1111 tests [~~; or in compliance with~~] or the standard SAE J-1928, MARINE.

E. Water closets: No person shall maintain or operate a vessel on the waters of this state equipped with a water closet unless the closet is self-contained and incapable of discharging directly into the water.

F. Lights:

(1) ~~[All motorboats]~~ Motorboats operating one-half hour after sunset to one-half hour before sunrise shall display a combination light on the vessel's fore part [~~of the vessel~~] and a white light aft to show 360 degrees around the vessel's horizon [~~of the vessel~~] and above the combination light. The combination light shall be green on the starboard (right) side and red on the port (left) side and shall throw the lights from dead ahead to two points abaft of the beam on their respective sides.

(2) Vessels not covered by Paragraph (1) of Subsection F of 18.17.2.9 NMAC shall when underway or anchored in a non-designated mooring area one-half hour after sunset to one-half hour before sunrise exhibit a white light or lantern to show 360 degrees around the horizon and a distance of at least one-half mile.

[7/17/67...12/31/96; 12/31/98; 18.17.2.9 NMAC - Rn, 18 NMAC 17.2.9, 9/15/06; A, 1/01/07]

18.17.2.10 BOAT RENTALS:

A. Records: The owner of a boat rental facility shall keep a record of the name and address of ~~[all]~~ persons borrowing or hiring ~~[any]~~ a vessel, the identification number thereof, the departure date and time and the expected date and time of return. The owner of a boat rental facility shall preserve the record for at least six months.

B. Equipment: Neither the owner of a boat rental facility nor ~~[any]~~ an agent nor employee thereof shall permit ~~[any]~~ a motorboat or ~~[any]~~ a borrowed or hired vessel to depart from the facility unless it is provided with the equipment required by ~~[Section 9]~~ 18.17.2.9 NMAC and the Boat Act.

[12/21/89; 12/31/96; 18.17.2.10 NMAC - Rn, 18 NMAC 17.2.10, 9/15/06; A, 1/01/07]

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

A. Riding the foredeck and gunwales of vessels: Except when casting off, mooring or when otherwise necessary, no vessel operator shall allow ~~[any]~~ a person to ride or sit on the gunwales or on the bow of a vessel when under way, unless the vessel is equipped with adequate guard rails designed to prevent a person from slipping under or rolling over the rail. ~~[No person]~~ Persons shall not sit on a seat back while the vessel is underway or allow ~~[his/her]~~ their legs to hang overboard at any time.

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

C. Speed:

(1) ~~[All vessels shall be operated]~~ Vessel operators shall not operate vessels at a speed ~~[no]~~ greater than is reasonable or proper according to conditions prevailing at the time of operation.

(2) ~~[All vessels shall be operated]~~ Vessel operators shall operate vessels at speeds controlled as necessary to avoid swamping or collision with any watercraft or person.

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

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

E. Pollution: No person shall deposit or discharge liquid or solid waste or other refuse into ~~[the]~~ this state's waters ~~[of this state]~~.

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

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

H. Age restriction: No person under the age of 13 shall operate a motorboat unless under ~~[the]~~ an adult's onboard supervision ~~[of an adult]~~.

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

[7/17/67...12/31/96; 5/31/97; 18.17.2.11 NMAC - Rn & A/E, 18 NMAC 17.2.11, 9/15/06; A, 1/01/07]

18.17.2.12 BOATING ACCIDENTS:

A. The operator or legal representative of ~~[any]~~ a vessel involved in a collision, accident or other casualty on ~~[any waters]~~ a water of this state shall:

~~A.~~ (1) report the collision, accident or other casualty immediately to the local law enforcement agency; and

~~B.~~ (2) file a U.S. coast guard boating accident report within 48 hours with the division if the collision, accident or other casualty resulted in a death, injury requiring more than standard first aid or property damage in excess of \$100; forms are available at offices of state parks with lakes; reports ~~must~~ shall be sent to and forms are also available at: State Parks Division; P.O. Box 1147, Santa Fe, New Mexico 87504-1147; (505) ~~827-7173;~~ 476-3355.

~~C.~~ B. No person shall knowingly make false claims or statements when reporting a collision, accident or casualty. [10/17/68...12/31/96; 12/31/98; 18.17.2.12 NMAC - Rn, 18 NMAC 17.2.12, 9/15/06; A, 1/01/07]

18.17.2.13 WATER SKIING:

Water skiing is permitted on the waters of this state; however, in the interest of public safety, the director or his designee may designate certain areas ~~may be designated~~ as closed to such activity and prohibit entry into these areas for ~~the purpose of~~ water skiing ~~is prohibited~~.

A. Prohibited skiing activities:

(1) Water skiing is prohibited within 150 feet of ~~any~~ a public dock (other than a ski dock), mooring line, launching ramp, boat, fisherman, swimmer or ~~any~~ a person not also engaged in water skiing.

(2) No person shall intentionally obstruct or interfere with water skiers engaged in waterskiing.

(3) The use of personal watercraft such as jet skis, sea-doo's, wave runners and similar devices to tow water skiers, surfboards, tubes or similar devices is prohibited except as provided in Paragraph (2) of Subsection B of 18.17.2.13 NMAC.

B. Skiing special requirements:

(1) ~~An~~ A person in the towing vessel shall raise an international fluorescent orange or a red warning flag ~~must be raised by a person in the towing vessel~~ whenever a person on water skis or other water device has fallen, dropped off or is starting, in order to warn other vessels away from the area. The flag shall be a minimum of 12 inches by 12 inches and displayed high enough to be visible 360 degrees around the vessel without obstruction.

(2) No person shall pull a water skier with a personal watercraft unless:

(a) ~~all~~ water skiing laws and ~~regulations~~ rules are complied with;

(b) the personal watercraft pulling the skier has manufacturer recommended seating for at least three people;

(c) there is a vacant seat on the pulling vessel for the skier; and

(d) the personal watercraft has an observer on board in addition to the operator.

[7/17/67...12/31/96; 18.17.2.13 NMAC - Rn, 18 NMAC 17.2.13, 9/15/06; A, 1/01/07]

18.17.2.14 SPECIAL REGULATIONS:

A. Weather:

(1) If at any time the superintendent determines that the weather or the condition of a lake is dangerous for boats, ~~he/she~~ the superintendent may prohibit the launching or use of boats for an indefinite period of time upon the posting of appropriate notice.

(2) Boaters shall observe small craft weather warnings and seek shelter ashore when flags or lights have been activated to indicate adverse weather conditions.

B. Anchoring and mooring:

(1) ~~All vessels~~ Vessels when not in use shall be firmly anchored, moored or otherwise secured so as to prohibit drifting or otherwise damaging ~~the~~ another's property ~~of others~~. No person shall moor or anchor a vessel ~~shall be moored or anchored~~ within 150 feet of ~~any~~ a marina, boat ramp or courtesy dock.

(2) Private docks are prohibited except as provided in 18.17.3 NMAC. Private ~~docks,~~ buoys and the mooring of houseboats are prohibited unless authorized by the director. ~~Overnight anchoring of vessels is authorized~~ Persons may anchor vessels overnight provided it does not impede or present a hazard to navigation. Overnight anchoring of vessels within a state park is subject to overnight camping permits and fees, unless the person has paid camping fees ~~have been paid~~ for towing vehicle, except for vessels moored at concession operated facilities such as marinas or buoy lines. ~~Anchored~~ Persons may not leave anchored vessels ~~may not be left~~ vacant for more than 24 hours without ~~special permission from the superintendent~~ the superintendent's permission unless moored at an authorized marina or buoy line.

(3) Courtesy docks are provided for the purpose of loading and unloading vessels. No person shall leave a vessel ~~shall be left~~ unattended at a courtesy dock for longer than 10 minutes.

C. Launching: Boaters ~~utilizing~~ using launching areas or launching ramps on ~~any~~ waters of this state ~~must~~ shall be prepared to launch or load their vessels promptly without undue delay to others. After the vessel is launched, the towing vehicle ~~must~~ shall be immediately

driven well away from the launching area and parked in a designated location if such is provided.

[7/17/67...12/31/96; 12/31/98; 18.17.2.14 NMAC - Rn, 18 NMAC 17.2.14, 9/15/06; A, 1/01/07]

18.17.2.15 TRAFFIC CONTROL:

When ~~any~~ a person operating a vessel meets, overtakes or crosses ~~the course of~~ another ~~vessel~~ vessel's course, the operator shall take the appropriate action.

A. Meeting: When two vessels approach each other head-on or nearly so, each vessel shall steer to the starboard (right) so as to pass port (left) side to port side.

B. Passing on parallel courses: When the courses of two vessels approaching one another are so far on the starboard side of each other as not to be meeting head-on, the vessels shall pass on the starboard side of each other.

C. Overtaking: When one vessel is overtaking another, the vessel overtaking ~~or passing~~ shall keep clear of the vessel being overtaken.

D. Crossing: When the courses of two vessels are such that their courses, if continued unchanged, will cross, the vessel approaching from the left shall give way by altering course, slowing down, stopping or reversing.

E. Power operated vessels: A power operated vessel ~~must~~ shall yield the right-of-way to a non-powered vessel.

F. Vessel departure/arrival: A vessel leaving a pier or dock has the right-of-way over a vessel approaching a dock.

G. Distance: ~~All vessels~~ Vessels shall keep 150 feet away from swimmers, water skiers, ~~fisherman~~ fishermen, diver flags and others not participating in the same activity.

[7/17/67...12/31/96; 18.17.2.15 NMAC - Rn, 18 NMAC 17.2.15, 9/15/06; A, 1/01/07]

18.17.2.16 RESTRICTED OPERATION ON STATE WATERS:

Limits to the size, type and operation of vessels on waters within the state are provided below. ~~All officials~~ Officials of the division and other state and federal agencies authorized by the director or by law and who are on official duty are exempt from ~~the Section 16 restrictions~~ 18.17.2.16 NMAC while operating in an emergency condition.

A. Bottomless lakes: Operation of motorboats powered by more than three horsepower is prohibited.

B. Heron lake:

Motorized boating activity is limited to no-wake operation only.

C. Cochiti lake: Motorized boating activity is limited to no-wake operation only.

D. Murphy lake: Only vessels powered with oars or electric motors are permitted.

E. Fenton lake: Vessels with motors or sails are prohibited.

F. San Juan river: Motorized vessels are prohibited on the San Juan river, within Navajo lake state park. The use of vessels on the San Juan river within Navajo lake state park is authorized from the San Juan day use area downstream and is limited to the purpose of fishing unless otherwise authorized by the director.

G. Santa Cruz: Motorized boating activity is limited to no-wake operation only.

H. Sugarite canyon: Gas powered boats are prohibited on lake Maloya. All boating is prohibited on lake Alice.

[7/17/67...12/31/96; 18.17.2.16 NMAC - Rn, 18 NMAC 17.2.16, 9/15/06; A, 1/01/07]

18.17.2.17 VESSEL INSPECTIONS: ~~[All vessels operating on the waters of this state are subject to random inspections to verify registration, titling and that the proper safety equipment is on board.]~~ Division law enforcement officials may randomly inspect vessels operating on the waters of this state to verify registration, titling and that the proper safety equipment is on board.

[10/17/68...12/21/89; 18.17.2.17 - Rn, 18 NMAC 17.2.17, 9/15/06; A, 1/01/07]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT STATE PARKS DIVISION

This is an amendment to 19.5.2 NMAC, Section 28 to be effective 1-01-07.

19.5.2.28 PERMITS AND PASSES:

A. Annual Permits:

(1) Annual day-use permits: Annual day-use permits authorize the vehicle owner or individual to access and use the park at no charge during the times indicated in ~~[Section 11 of this part]~~ 19.5.2.11 NMAC. ~~[Annual]~~ Visitors may use annual day-use permits [are available for use] at all parks, except at the living desert zoo and gardens state park and Smokey Bear historical park.

(2) Annual overnight camping

permits: Annual overnight camping permits authorize the vehicle owner or individual to access and use the park at no additional charge except for utility hookups during the times indicated in ~~[Section 12 of this part]~~ 19.5.2.12 NMAC.

(3) Veteran's permit: Veteran's permits authorize a New Mexico resident veteran with a permanent ~~[one hundred percent]~~ 100% service connected disability to obtain one ~~[non-transferable]~~ annual day-use permit at no charge for personal use only. An eligible veteran desiring more than one permit shall purchase additional annual day-use permits at full price. To obtain a permit, an eligible veteran shall present to the division the following proof of disability and New Mexico residency:

(a) a photocopy of the award letter issued by the United States department of veterans affairs indicating the veteran has a ~~[one hundred percent]~~ 100% service connected disability; and

(b) proof of New Mexico residency, such as a New Mexico driver's license, or other state of New Mexico-issued identification.

(4) Terms and Limitations:

(a) ~~[all]~~ Permits expire ~~[on December 31 of the year issued, regardless of the date issued]~~ one year from the date the division issues them. ~~[No refund nor proration shall be made for permits that remain in effect for less than a full calendar year.]~~

(b) Annual overnight camping permits are available for:

(i) New Mexico residents as documented with a current New Mexico driver's license or other state of New Mexico issued photo identification;

(ii) New Mexico residents 62 years of age or older as documented with a current New Mexico driver's license or other state of New Mexico issued photo identification;

(iii) New Mexico residents with disabilities ~~[as documented shall]~~ who present a New Mexico handicap motor vehicle license plate or a blue handicap placard with a placard holder identification card issued by the New Mexico motor vehicle division containing their name and placard number to verify disability; and

(iv) ~~[all]~~ out-of-state-residents including senior citizens and persons with disabilities as described in Subsection D of 19.5.6.11 NMAC.

(c) ~~[Permits are not accepted at concession]~~ Concession operated camp grounds do not accept division-issued permits.

(d) ~~[Replacement]~~ Except for annual day-use permits, visitors may obtain replacement permits and stickers [may be obtained] by submitting the original permit, proof of purchase or issuance in the case of

a veteran's permit, or signed affidavit describing the facts of the purchase or issuance, and loss or destruction of the permit. ~~[Effective January 1, 2006 the division shall no longer replace the annual day use permit.]~~

B. ~~[Leaseholders and]~~

Concessionaires: The director or director designee (see Subsection N of 19.5.7 NMAC) may issue a park pass to ~~[leaseholders,]~~ concessionaires, concession permittees or their commercial contractors, suppliers and agents for ~~[the purpose of]~~ access to and from the concession ~~[or a lease lot]~~. ~~[Leaseholders, concessionaires,]~~ Concessionaires, concession permittees or their commercial contractors, suppliers and agents using the park, lake or facilities away from the concession premises [or lease lot are subject to] shall pay the appropriate fees.

C. Contractors: The director or director designee (see Subsection N of 19.5.1.7 NMAC) may issue a park pass to division contractors, suppliers or agents ~~[of the division]~~ or other persons providing services to a park for ~~[the purpose of]~~ access to the park.

D. Complimentary Park Passes: The director or director designee (see Subsection N of 19.5.1.7 NMAC) may issue complimentary passes to legislators, park advisory board members, volunteers or individuals who significantly contribute to the division or in exchange for promotion of the division or advertising. The director or director designee may issue complimentary passes as rainchecks to visitors for unused services or to resolve visitor complaints.

E. Gift Certificates: The division may sell gift certificates for annual day use permits and annual camping permits.

F. Special Use Permits:

(1) ~~[Short]~~ The division shall authorize short term events and activities within the state parks system, such as regattas, boat races, parades, races, fishing tournaments, exhibitions and educational activities ~~[, are authorized]~~ only by a special use permit and only after payment of associated fees. See 19.5.6 NMAC. ~~[Special]~~ State park officials shall only issue special use permits [shall only be issued] for events and activities that provide a needed service to the park and that benefit the park. ~~[Applications for]~~ Persons shall submit applications for special use permits [shall be submitted] to the park where the event is proposed at least two weeks prior to the event, or at least 30 days prior to the event if the event is a regatta, motorboat or boat race, marine parade, tournament or exhibition. ~~[A]~~ State park officials shall not issue a special use permit [shall not be issued] for a period of more than five consecutive days. The park may charge fees in addition to the

special use fee to cover costs of additional staff, facilities, etc. needed for the event.

(2) Special Use Restrictions: No person shall violate [any] a condition or restriction attached to or indicated on the special use permit. [Violation of this regulation may result in the immediate cancellation of the permit.] The division may cancel a permit if the permit holder violates 19.5.2 NMAC.

[7-17-67, 12-21-89, 12-31-96, 12-31-98, 7-1-99; 19.5.2.28 NMAC - Rn & A, 19 NMAC 5.2.28, 12/31/02; A, 6/30/04; A, 1/1/07]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.33.6 NMAC, Sections 8, effective December 29, 2006.

19.33.6.8 THREATENED AND ENDANGERED SPECIES OF NEW MEXICO:

A. MAMMALS

(1) Endangered:

(a) Arizona shrew, *Sorex arizonae*
(b) Mexican long-nosed bat, *Leptonycteris nivalis*

(c) (Penasco) least chipmunk, *Neotamias minimus atristriatus*
(d) meadow jumping mouse, *Zapus hudsonius*

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

(2) Threatened:

(a) least shrew, *Cryptotis parva*
(b) southern long-nosed bat, *Leptonycteris curasoae*
(c) spotted bat, *Euderma maculatum*

(d) western yellow bat, *Lasiurus xanthius*
(e) white-sided jackrabbit, *Lepus callotis*

(f) (Organ mountains) Colorado chipmunk, *Neotamias quadrivittatus australis*

(g) southern pocket gopher, *Thomomys umbrinus*
(h) American marten, *Martes americana*

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

B. BIRDS

(1) Endangered:

(a) brown pelican, *Pelecanus occidentalis*
(b) aplomado falcon, *Falco*

femorialis

(c) white-tailed ptarmigan, *Lagopus leucurus*
(d) whooping crane, *Grus americana*

(e) least tern, *Sterna antillarum*
(f) common ground-dove, *Columbina passerina*

(g) buff-collared nightjar, *Caprimulgus ridgwayi*

(h) elegant trogon, *Trogon elegans*
(i) northern beardless-tyrannulet, *Camptostoma imberbe*

(j) (southwestern) willow flycatcher, *Empidonax traillii extimus*

(k) thick-billed kingbird, *Tyrannus crassirostris*

(l) (Arizona) grasshopper sparrow, *Ammodramus savannarum ammoregus*
(2) Threatened:

(a) neotropic cormorant, *Phalacrocorax brasilianus*
(b) bald eagle, *Haliaeetus leucocephalus*

(c) common black-hawk, *Buteo gallus anthracinus*
(d) peregrine falcon, *Falco peregrinus*

(e) (Gould's) wild turkey, *Meleagris gallopavo mexicana*
(f) piping plover, *Charadrius melodus*

(g) whiskered screech-owl, *Megascops trichopsis*
(h) boreal owl, *Aegolius funereus*

(i) broad-billed hummingbird, *Cyananthus latirostris*
(j) white-eared hummingbird, *Hylocharis leucotis*

(k) violet-crowned hummingbird, *Amazilia violiceps*

(l) lucifer hummingbird, *Calothorax lucifer*
(m) Costa's hummingbird, *Calypte costae*

(n) Gila woodpecker, *Melanerpes uropygialis*

(o) Bell's vireo, *Vireo bellii*
(p) gray vireo, *vireo vicinior*
(q) Abert's towhee, *Pipilo aberti*
(r) Baird's sparrow, *Ammodramus bairdii*

(s) yellow-eyed junco, *Junco phaeonotus*
(t) varied bunting, *Passerina versicolor*

C. REPTILES

(1) Endangered:

(a) Gila monster, *Heloderma suspectum*
(b) sand dune lizard, *Sceloporus arenicolus*

(c) gray-checked whiptail *Aspidoscelis dixonii*
(d) gray-banded kingsnake,

Lampropeltis alterna

(e) Mexican gartersnake, *Thamnophis eques*
(f) plain-bellied water snake, *Nerodia erythrogaster*

(g) (New Mexico) ridgenosed rattlesnake, *Crotalus willardi obscurus*

(2) Threatened:

(a) western river cooter, *Pseudemys gorzugi*

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

(c) canyon spotted whiptail, *Aspidoscelis burti*

(d) mountain skink, *Eumeces callicephalus*

(e) green ratsnake, *Senticolis triaspis*

(f) narrow-headed gartersnake, *Thamnophis rufipunctatus*

(g) western ribbonsnake, *Thamnophis proximus*

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

D. AMPHIBIANS

(1) Endangered:

(a) Jemez mountains salamander, *Plethodon neomexicanus*
(b) lowland leopard frog, *Rana yavapaiensis*

(c) mountain toad, *Bufo boreas*
(d) Great Plains narrow-mouthed toad, *Gastrophyne olivacea*

(2) Threatened:

(a) Sacramento mountain salamander, *Aneides hardii*
(b) Sonoran desert toad, *Bufo alvarius*

E. FISHES

(1) Endangered:

(a) Gila chub, *Gila intermedia*
(b) Headwater chub, *Gila nigra*
(c) Chihuahua chub, *Gila nigrescens*

(d) roundtail chub, *Gila robusta*
(e) Rio Grande silvery minnow, *Hybognathus amarus*

(f) spikedace *Meda fulgia*
(g) Arkansas river shiner, *Notropis girard*

(h) (Pecos) bluntnose shiner, *Notropis simus pecosensis*

(i) southern redbelly dace, *Phoxinus erythrogaster*
(j) Colorado pikeminnow, *Ptychocheilus lucius*

(k) (Zuni) bluehead sucker, *Catostomus discobolus yarrowii*

(l) blue sucker, *Cycleptus elongates*

(m) Pecos gambusia, *Gambusia nobilis*

(2) Threatened:

(a) Gila trout, *Oncorhynchus gilae*

(b) Mexican tetra, *Astyanax mexicanus*

(c) peppered chub, *Macrhybopsis tetranema*

(d) suckermouth minnow, *Phenacobius mirabilis*

(e) loach minnow, *Tiaroga cobitis*

(f) gray redbreast, *Moxostoma congestum*

(g) Pecos pupfish, *Cyprinodon pecosensis*

(h) White Sands pupfish, *Cyprinodon tularosa*

(i) Gila topminnow, *Poeciliopsis occidentalis*

(j) greenthroat darter, *Etheostoma lepidum*

(k) bigscale logperch, *Percina macrolepidia*

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

F. CRUSTACEANS

(1) Endangered:

(a) Socorro isopod, *Thermosphaeroma thermophilum*

(b) Noel's amphipod, *Gammarus desperatus*

G. MOLLUSKS

(1) Endangered:

(a) paper pondshell, *Utterbackia imbecillis*

(b) Texas hornshell, *Popenaias popeii*

(c) Koster's springsnail, *Juturnia kosteri*

(d) Alamosa springsnail, *Pseudotryonia alamosae*

(e) Chupadera springsnail, *Pyrgulopsis chupaderae*

(f) Socorro springsnail, *Pyrgulopsis neomexicana*

(g) Roswell springsnail, *Pyrgulopsis roswellensis*

(h) Pecos assiminea, *Assiminea pecos*

(i) wrinkled marshsnail, *Stagnicola caperata*

~~(j) shortneck snaggletooth, *Gastrocopta dalliana dalliana*~~

~~(k) (l) Florida mountainsnail, *Oreohelix florida*~~

(2) Threatened:

(a) lake fingernailclam, *Musculium lacustre*

(b) swamp fingernailclam, *Musculium partumeium*

(c) long fingernailclam, *Musculium transversum*

(d) Lilljeborg's peaclam, *Pisidium lilljeborgi*

(e) Sangre de Cristo peaclam, *Pisidium sanguinichristi*

(f) Gila springsnail, *Pyrgulopsis*

gilae

(g) Pecos springsnail, *Pyrgulopsis pecosensis*

(h) New Mexico springsnail, *Pyrgulopsis thermalis*

(i) star gyro, *Gyraulus crista*

(j) shortneck snaggletooth, *Gastrocopta dalliana dalliana*

~~(k) (l) ovate vertigo, *Vertigo ovata*~~

~~(m) (n) Hacheta Grande woodlandsnail, *Ashmunella hebardii*~~

~~(o) (p) Cooke's peak woodlandsnail, *Ashmunella macromphala*~~

~~(q) (r) Mineral creek mountainsnail, *Oreohelix pilsbryi*~~

~~(s) (t) Doña Ana talussnail, *Sonorella todseni*~~

[1-11-91, 11-15-95, 12-31-96, 8-15-98; 19.33.1.8 NMAC - Rn & A, 19 NMAC 33.1.8, 4/14/00; 19.33.6.8 NMAC - Rn, 19.33.1.8 NMAC & A, 11/30/00; A, 11/14/02; A, 1/31/05; A, 9/15/05; A, 10/16/06; A, 12/29/06]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.510 NMAC, Sections 11 through 13, which will be effective on January 1, 2007. The Medical Assistance Division amended the subsections by changing the deduction amounts.

8.200.510.11 COMMUNITY SPOUSE RESOURCE ALLOWANCE (CSRA):

The CSRA standard varies based on when the applicant/recipient become institutionalized for a continuous period. The CSRA remains constant even if it was calculated prior to submission of a formal medicaid application. If institutionalization began:

(A) Between September 30, 1989 and December 31, 1989, the state maximum CSRA is \$30,000 and the federal maximum CRSA is \$60,000.

(B) On or after January 1, 1990, the state minimum is \$31,290 and the federal maximum CSRA is \$62,580.

(C) On or after January 1, 1991, the state minimum is \$31,290 and the federal maximum CSRA is \$66,480.

(D) On or before January 1, 1992, the state minimum is \$31,290 and the federal maximum CSRA is \$68,700.

(E) On or after January 1, 1993, the state minimum is \$31,290 and the federal maximum CSRA is \$70,740.

(F) On or after January 1, 1994, the state minimum is \$31,290 and the federal maximum CSRA is \$72,660.

(G) On or after January 1, 1995, the state minimum is \$31,290 and the federal maximum CSRA is \$74,820.

(H) On or after January 1, 1996, the state minimum is \$31,290 and the federal maximum CSRA is \$76,740.

(I) On or after January 1, 1997, the state minimum is \$31,290 and the federal maximum CSRA is \$79,020.

(J) On or after January 1, 1998, the state minimum is \$31,290 and the federal maximum CSRA is \$80,760.

(K) On or after January 1, 1999, the state minimum is \$31,290 and the federal maximum CSRA is \$81,960.

(L) On or after January 1, 2000, the state minimum is \$31,290 and the federal maximum CSRA is \$84,120.

(M) On or after January 1, 2001, the state minimum is \$31,290 and the federal maximum CSRA is \$87,000.

(N) On or after January 1, 2002, the state minimum is \$31,290 and the federal maximum CSRA is \$89,280.

(O) On or after January 1, 2003, the state minimum is \$31,290 and the federal maximum CSRA is \$90,660.

(P) On or after January 1, 2004, the state minimum is \$31,290 and the federal maximum CSRA is \$92,760.

(Q) On or after January 1, 2005, the state minimum is \$31,290 and the federal maximum CSRA is \$95,100.

(R) On or after January 1, 2006, the state minimum is \$31,290 and the federal maximum CSRA is \$99,540.

(S) On or after January 1, 2007, the state minimum is \$31,290 and the federal maximum CSRA is \$101,640.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.11 NMAC - Rn, 8 NMAC 4.MAD.510.1 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-05; A, 1-1-06; A, 1-1-07]

8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT): Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

<u>DEDUCTION</u>	<u>AMOUNT</u>
A. Personal needs allowance for institutionalized spouse	\$57
B. Basic community spouse monthly income allowance standard (CSMIA)	\$1,650
(CSMIA standard minus income of community spouse = deduction	
C. * Excess shelter allowance for allowable expenses for community spouse	[\$839] \$891
D. ** Extra maintenance allowance	
E. Dependent family member 1/3 X (CSMIA - dependent member's income)	
F. Non-covered medical expenses	
G. * The allowable shelter expenses of the community spouse must exceed \$495 per month for any deduction to apply.	
H. ** To be deducted, the extra maintenance allowance for the community spouse must be ordered by a court of jurisdiction or a state administrative hearing officer.	

I. **MAXIMUM TOTAL:** The maximum total of the community spouse monthly income allowance and excess shelter deduction is ~~[\$2,489]~~ \$2,541.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.12 NMAC - Rn, 8 NMAC 4.MAD.510.2 & A, 1-1-01, 7-1-01; A, 1-1-02; A, 7-1-02; A, 1-1-03; A, 7-1-03; A, 1-1-04; A, 7-1-04; A, 1-1-05; A, 7-1-05; A, 1-1-06; A, 7-1-06; A, 1-1-07]

8.200.510.13 AVERAGE MONTHLY COST OF NURSING FACILITIES FOR PRIVATE PATIENTS USED IN TRANSFER OF ASSET PROVISIONS: Costs of care are based on the date of application registration.

<u>DATE</u>	<u>AVERAGE COST PER MONTH</u>
A. July 1, 1988 - Dec. 31, 1989	\$ 1,726 per month
B. Jan. 1, 1990 - Dec. 31, 1991	\$ 2,004 per month
C. Jan. 1, 1992 - Dec. 31, 1992	\$ 2,217 per month
D. Effective July 1, 1993, for application register on or after Jan. 1, 1993	\$ 2,377 per month
E. Jan. 1, 1994 - Dec. 31, 1994	\$2,513 per month
F. Jan. 1, 1995 - Dec. 31, 1995	\$2,592 per month
G. Jan. 1, 1996 - Dec. 31, 1996	\$2,738 per month
H. Jan. 1, 1997 - Dec. 31, 1997	\$2,889 per month
I. Jan. 1, 1998 - Dec 31, 1998	\$3,119 per month
J. Jan. 1, 1999 - Dec. 31, 1999	\$3,429 per month
K. Jan. 1, 2000 - Dec. 31, 2000	\$3,494 per month
L. Jan. 1, 2001 - Dec. 31, 2001	\$3,550 per month
M. Jan. 1, 2002 - Dec. 31, 2002	\$3,643 per month
N. Jan. 1, 2003 - Dec. 31, 2003	\$4,188 per month
O. Jan. 1, 2004 - Dec. 31, 2004	\$3,899 per month
P. Jan. 1, 2005 - Dec. 31, 2005	\$4,277 per month
Q. Jan. 1, 2006 - Dec. 31, 2006	\$4,541 per month
R. Jan. 1, 2007 -	<u>\$4,551 per month</u>

Any fraction of a month remaining when this calculation is completed is dropped.

[1-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99, 7-1-00; 8.200.510.13 NMAC - Rn, 8 NMAC 4.MAD.510.3 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.520 NMAC, Sections 12, 13, 15, 16 and 20, which will be effective on January 1, 2007. The Medical Assistance Division amended the subsections by changing the deduction amounts.

8.200.520.12 COLA DISREGARD COMPUTATION

<u>Current amt/cost of living</u>	<u>Benefit period</u>
Current Title II amount =	Benefit before [4/06] 1/07
[1.041] 1.033	
<u>Benefit before 1/07 =</u>	<u>Benefit before 1/06</u>
1.041	
<u>Benefit before 1/06 =</u>	Benefit before 1/05
1.027	
<u>Benefit before 1/05 =</u>	Benefit before 1/04
1.021	

<u>Benefit before 1/04</u> = 1.014	Benefit before 1/03
<u>Benefit before 1/03</u> = 1.026	Benefit before 1/02
<u>Benefit before 1/02</u> = 1.035	Benefit before 1/01
<u>Benefit before 1/01</u> = 1.025	Benefit before 1/00
<u>Benefit before 1/00</u> = 1.013	Benefit before 1/99
<u>Benefit before 1/99</u> = 1.021	Benefit before 1/98
<u>Benefit before 1/98</u> = 1.029	Benefit before 1/97
<u>Benefit before 1/97</u> = 1.026	Benefit before 1/96
<u>Benefit before 1/96</u> = 1.028	Benefit before 1/95
<u>Benefit before 1/95</u> = 1.026	Benefit before 1/94
<u>Benefit before 1/94</u> = 1.030	Benefit before 1/93
<u>Benefit before 1/93</u> = 1.037	Benefit before 1/92
<u>Benefit before 1/92</u> = 1.054	Benefit before 1/91
<u>Benefit before 1/91</u> = 1.047	Benefit before 1/90
<u>Benefit before 1/90</u> = 1.040	Benefit before 1/89
<u>Benefit before 1/89</u> = 1.042	Benefit before 1/88
<u>Benefit before 1/88</u> = 1.013	Benefit before 1/87
<u>Benefit before 1/87</u> = 1.031	Benefit before 1/86
<u>Benefit before 1/86</u> = 1.035	Benefit before 1/85
<u>Benefit before 1/85</u> = 1.035	Benefit before 1/84
<u>Benefit before 1/84</u> = 1.074	Benefit before 7/82
<u>Benefit before 7/82</u> = 1.112	Benefit before 7/81
<u>Benefit before 7/81</u> = 1.143	Benefit before 7/80
<u>Benefit before 7/80</u> = 1.099	Benefit before 7/79
<u>Benefit before 7/79</u> = 1.065	Benefit before 7/78
<u>Benefit before 7/78</u> = 1.059	Benefit before 7/77

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.12 NMAC - Rn, 8 NMAC 4.MAD.520.6 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07]

8.200.520.13 FEDERAL BENEFIT RATES

YEAR	Individual FBR	Inst. FBR	Indiv. VTR	Couple FBR	Inst. FBR	Couple VTR
1/89 to 1/90	\$368	\$30	\$122.66	\$553	\$60	\$184.33
1/90 to 1/91	\$386	\$30	\$128.66	\$579	\$60	\$193.00

1/91 to 1/92	\$407	\$30	\$135.66	\$610	\$60	\$203.33
1/92 to 1/93	\$422	\$30	\$140.66	\$633	\$60	\$211.00
1/93 to 1/94	\$434	\$30	\$144.66	\$652	\$60	\$217.33
1/94 to 1/95	\$446	\$30	\$148.66	\$669	\$60	\$223.00
1/95 to 1/96	\$458	\$30	\$152.66	\$687	\$60	\$229.00
1/96 to 1/97	\$470	\$30	\$156.66	\$705	\$60	\$235.00
1/97 to 1/98	\$484	\$30	\$161.33	\$726	\$60	\$242.00
1/98 to 1/99	\$494	\$30	\$164.66	\$741	\$60	\$247.00
1/99 to 1/00	\$500	\$30	\$166.66	\$751	\$60	\$250.33
1/00 to 1/01	\$512	\$30	\$170.66	\$769	\$60	\$256.33
1/01 to 1/02	\$530	\$30	\$176.66	\$796	\$60	\$265.33
1/02 to 1/03	\$545	\$30	\$181.66	\$817	\$60	\$272.33
1/03 to 1/04	\$552	\$30	\$184.00	\$829	\$60	\$276.33
1/04 to 1/05	\$564	\$30	\$188	\$846	\$60	\$282.00
1/05 to 1/06	\$579	\$30	\$193	\$869	\$60	\$289.66
1/06 to 1/07	\$603	\$30	\$201	\$904	\$60	\$301.33
1/07 to 1/08	<u>\$623</u>	<u>\$30</u>	<u>\$207.66</u>	<u>\$934</u>	<u>\$60</u>	<u>\$311.33</u>

Ineligible child deeming allocation: \$301.00

Part B premium is [~~\$88.50~~] \$93.50 per month.

VTR (value of one third reduction) is used when an individual or couple lives in the household of another and receives food and shelter from the household or when the individual or couple is living in their own household but receiving support and maintenance from others.

Effective January 1, 1989, the SSI resource standard was increased to \$2,000 for an individual and \$3,000 for a couple. These amounts did not change in 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, [~~or~~] 2006, or 2007.

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.13 NMAC - Rn, 8 NMAC 4.MAD.520.7 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07]

8.200.520.15 SSI LIVING ARRANGEMENTS

A. Individual living in his/her own household who own or rent

Payment amount: [~~\$603~~] \$623 Individual
 [~~\$904~~] \$934 Couple

B. Individual receiving support and maintenance payments: For an individual or couple living his/her own household, but receiving support and maintenance from others (such as food, shelter or clothing), subtract the value of one third reduction (VTR).

Payment amount: [~~\$603 - \$201 = \$402~~] \$623 - 207.66 = \$415.34 Individual
 [~~\$904 - \$301.33 = 602.67~~] \$934 - \$311.33 = \$622.67 Couple

C. Individual or couple living household of another: For an individual or couple living in another person's household and not contributing his/her pro-rata share of household expenses, subtract the VTR.

Payment amount: [~~\$603 - \$201 = \$402~~] \$623 - 207.66 = \$415.34 Individual
 [~~\$904 - \$301.33 = 602.67~~] \$934 - \$311.33 = \$622.67 Couple

D. Child living in home with his/her parent(s)

Payment amount: [~~\$603~~] \$623

E. Individual in institution

Payment amount: \$30.00

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.15 NMAC - Rn, 8 NMAC 4.MAD.520.9 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07]

8.200.520.16 MAXIMUM COUNTABLE INCOME FOR INSTITUTIONAL CARE MEDICAID AND HOME AND COMMUNITY BASED WAIVER CATEGORIES:

Effective January 1, [~~2006~~] 2007, the maximum countable monthly income standard for institutional care medicaid and the home and community based waiver categories is [~~\$1,789~~] \$1,849.

[4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99, 4-1-99; 8.200.520.16 NMAC - Rn, 8 NMAC 4.MAD.520.10 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07]

8.200.520.20 COVERED QUARTER INCOME STANDARD:

<u>DATE</u>	<u>CALENDAR QUARTER AMOUNT</u>
Jan. 2007 - Dec. 2007	\$1,000 per calendar quarter
Jan. 2006 - Dec. 2006	\$970 per calendar quarter

Jan. 2005 - Dec 2005	\$920 per calendar quarter
Jan. 2004 - Dec. 2004	\$900 per calendar quarter
Jan. 2003 - Dec. 2003	\$890 per calendar quarter
Jan. 2002 - Dec. 2002	\$870 per calendar quarter

[8.200.520.20 NMAC - Rn, 8.200.510.14 NMAC & A, 1-1-02; A, 4-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.2 NMAC, Sections 7, 9, 10 and 17, Effective January 10, 2007.

16.10.2.7 DEFINITIONS.

A. "Board approved school" means a medical school that has been approved by the liaison committee on medical education, composed of the American medical association and the association of American medical colleges, has a liaison council on medical education (LCME)-approved curriculum or equivalent for graduates of Canadian schools, is on the approved list of the California state medical board, or has been approved by the board.

B. "Board approved training program" means a program approved by the accrediting council on graduate medical education of the American medical association (ACGME), the royal college of physicians and surgeons of Canada (RCPC), or a residency program located within an ACGME approved institution that has been approved by the board.

C. "Board approved credential verification service" means a credential verification service certified by the national commission on quality assurance (NCQA) and approved by the board.

[C.] D. "HSC" means the hospital services corporation, a New Mexico corporation, and a credential verification organization certified by the national commission on quality assurance (NCQA).

[D.] E. "FCVS" means the federation credential verification service of the federation of state medical boards.

[E.] F. "Major disaster" means a declaration of a major disaster by the federal emergency management agency (FEMA).

[F.] G. "Nationwide criminal history record," information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information in other

states."

[G.] H. "Nationwide criminal history screening," a criminal history background investigation of an applicant for licensure by examination or endorsement through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant."

[H.] I. "Telemedicine" means the practice of medicine across state lines as defined in the Medical Practice Act, Section 61-6-6, K NMSA 1978.

[16.10.2.7 NMAC - Rp 16 NMAC 10.2.7, 4/18/02; A, 1/20/03, A, 10/7/05; A, 12/30/05; A, 7/1/06; A, 1/10/07]

16.10.2.9 MEDICAL LICENSE BY EXAMINATION.

A. Prerequisites for licensure. Each applicant for a license to practice as a medical doctor in New Mexico must possess the following qualifications:

(1) graduated and received a diploma from a board approved school, completed a program determined by the board to be substantially equivalent to a U.S. medical school, based on board review of an evaluation by a board approved credential evaluation service, or is a graduate of a medical school located outside the United States who successfully completes two years or more of an approved postgraduate training program at an institution located in New Mexico prior to December 30, 2007;

(2) successfully passed one of the examinations or combinations of examinations defined in 16.10.3 NMAC; and

(3) completed two years of postgraduate training or been approved by the board in accordance with the provisions of Section 61-6-11, B NMSA 1978;

(4) when the board has reason to believe that an applicant for licensure is not competent to practice medicine it may require the applicant to complete a special competency examination or to be evaluated for competence by other means that have been approved by the board; and

(5) a qualified applicant who has not been actively and continuously in practice for more than 2 years prior to application may be required to successfully complete a special examination or evaluation such as, but not limited to, the SPEX (special purpose examination), the PLAS (post-

licensure assessment system of the federation of state medical boards), or specialty re-certification.

B. Required documentation for all applicants. Each applicant for a license must submit the required fees as specified in 16.10.9.8 NMAC and the following documentation:

(1) a completed signed application with a passport-quality photo taken within the previous 6 months; applications are valid for 1 year from the date of receipt by the board;

(2) verification of licensure in all states or territories where the applicant holds or has held a license to practice medicine, or other health care profession; verification must be received directly from the other state board(s), and must attest to the status, issue date, license number, and other information requested and contained on the form; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board;

(3) two recommendation forms from physicians, chiefs of staff or department chairs or equivalent with whom the applicant has worked and who have personal knowledge of the applicant's character and competence to practice medicine; the recommending physicians must have personally known the applicant and have had the opportunity to personally observe the applicant's ability and performance; forms must be sent directly to the board from the recommending physician; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board;

(4) verification of all work experience and hospital affiliations in the last five years, if applicable, not to include postgraduate training; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board;

(5) a copy of all ABMS specialty board certifications, if applicable; this information will be provided by HSC or another board-approved credentials verifi-

cation service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board; and

(6) the board may request that applicants be investigated by the biographical section of the American medical association, the drug enforcement administration, the federation of state medical boards, the national practitioner data bank, and other sources as may be deemed appropriate by the board;

(7) applicants who are not United States citizens must provide proof that they are in compliance with the immigration laws of the United States.

C. Additional documentation for applicants using the FCVS. Applicants are encouraged to use the FCVS as once a credential file is created future applications for medical licensure will be streamlined. However, application through FCVS is not required. Applicants using the FCVS must submit a completed application to the FCVS, who will provide primary source documentation to the board. Only the documents required in Subsection B of 16.10.2.9 are required in addition to the FCVS report.

D. Additional documentation for applicants using HSC or another board-approved credentials verification service.

(1) status report of ECFMG certification sent directly to the board from ECFMG, if applicable;

(2) copy of ECFMG interim letter documenting additional postgraduate training for international medical graduates applying through the fifth pathway process, if applicable;

(3) certified transcripts of exam scores as required in 16.10.3 NMAC sent directly to the board from the testing agency;

(4) proof of identity may be required; acceptable documents include birth certificate, passport, naturalization documents, and visas.

E. Additional documentation for applicants applying directly to New Mexico and not using FCVS or HSC or another board-approved credentials verification service.

(1) verification of medical education form with school seal or notarized, sent directly to the board from the school;

(2) transcripts sent directly to the board from the medical school;

(3) status report of ECFMG certification sent directly to the board from ECFMG, if applicable;

(4) copy of ECFMG interim letter documenting additional postgraduate training for international medical graduates applying through the fifth pathway process,

if applicable;

(5) postgraduate training form sent to the board directly from the training program;

(6) certified transcripts of exam scores as required in 16.10.3 NMAC sent directly to the board from the testing agency; and

(7) proof of identity may be required; acceptable documents include birth certificate, passport, naturalization documents, and visas;

(8) certified copies of source documents obtained directly from another state licensing jurisdiction who has the original document on file will be accepted in lieu of original documents when the originals cannot be obtained for a valid cause.

F. Licensure process. Upon receipt of a completed application, including all required documentation and fees, the applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board and must present original documents as requested by the board. The initial license will be issued following completion of any required interview, and/or approval by a member or agent of the board.

G. Initial license expiration. Medical licenses shall be renewed on July 1 following the date of issue. Initial licenses are valid for a period of not more than thirteen months or less than one month. [16.10.2.9 NMAC - N, 5/1/02; A, 1/20/03; A, 7/1/03; A, 4/3/05; A, 10/7/05; A, 7/1/06; A, 1/10/07]

16.10.2.10 MEDICAL LICENSE BY ENDORSEMENT.

A. Prerequisites for licensure. Each applicant for a license to practice as a medical doctor in New Mexico by endorsement must be of good moral character, hold a full and unrestricted license to practice medicine in another state, and possess the following qualifications:

(1) have practiced medicine in the United States or Canada immediately preceding the application for at least three years;

(2) be free of disciplinary history, license restrictions, or pending investigations in all jurisdictions where a medical license is or has been held;

(3) graduated from a board approved school or hold current educational commission for foreign medical graduates (ECFMG) certification; and

(4) current certification from a medical specialty board recognized by the American board of medical specialties (ABMS).

B. Required documentation for all applicants. Each applicant for a license must submit the required fees as

specified in 16.10.9.8 NMAC and the following documentation:

(1) a completed signed application with a passport-quality photo taken within the previous 6 months; applications are valid for 1 year from the date of receipt by the board;

(2) verification of licensure in all states or territories where the applicant holds or has held a license to practice medicine, or other health care profession; verification must be received directly from the other state board(s), and must attest to the status, issue date, license number, and other information requested and contained on the form;

(3) two recommendation forms from physicians, chiefs of staff or department chairs or equivalent with whom the applicant has worked and who have personal knowledge of the applicant's character and competence to practice medicine; the recommending physicians must have personally known the applicant and have had the opportunity to personally observe the applicant's ability and performance; forms must be sent directly to the board from the recommending physician; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board;

(4) verification of all work experience and hospital affiliations in the last five years, if applicable, not to include postgraduate training; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board;

(5) a copy of all ABMS specialty board certifications, if applicable; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board; and

(6) the board may request that applicants be investigated by the biographical section of the American medical association, the drug enforcement administration, the federation of state medical boards, the national practitioner data bank, and other sources as may be deemed appropriate by the board;

(7) applicants who are not U.S. citizens must provide proof that they are in compliance with the immigration laws of the United States.

C. Licensure process. Upon receipt of a completed application, including all required documentation and fees, the applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board and must present original

documents as requested by the board. The initial license will be issued following completion of any required interview, and/or approval by a member or agent of the board.

D. Initial license expiration. Medical licenses shall be renewed on July 1 following the date of issue. Initial licenses are valid for a period of not more than thirteen months or less than one month. [16.10.2.10 NMAC - N, 1/20/03; A, 7/1/03; A, 4/3/05; A, 10/7/05; A, 7/1/06; A, 1/10/07]

16.10.2.17 NATIONWIDE CRIMINAL HISTORY SCREENING.

All applicants for initial licensure in any category in New Mexico are subject to a state and national criminal history screening at their expense. All applicants must submit two (2) full sets of fingerprints, completed ~~[fingerprint]~~ fingerprint certificate form, signed authorization for criminal background screening and fee at the time of application.

A. Applications for licensure will not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.

B. Applications will be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

C. If the criminal background screening reveals a felony or a violation of the Medical Practice Act, the applicant/licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

D. Criminal background checks completed at the request of a medical board in another state within one year prior to the date of application will be accepted in lieu of a new criminal background screening.

[16.10.2.17 NMAC - N, 7/1/06; A, 1/10/07]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.7 NMAC, Sections 7, 14, 15, 16 and 18, Effective January 10, 2007.

16.10.7.7 DEFINITIONS:

A. "Inactive" means a license placed in a non-working status at the request of a physician not currently practicing in New Mexico.

B. "Retired" means a license that has been withdrawn from active or inactive status at the physician's request.

A retired license cannot be used to practice medicine in New Mexico and a retired license may not subsequently be reinstated.

C. "Statewide criminal history record," information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized database of the department of public safety or the repositories of criminal history information in municipal jurisdictions."

D. "Statewide criminal history screening," a criminal history background investigation of a licensee applying for licensure renewal through the use of social security number and date of birth submitted to the department of public safety and resulting in the generation of a statewide criminal history record for that licensee."

E. "Suspended for ~~[non-payment]~~ non-renewal" means a license that has not been renewed by September 30 of the expiration year. A license that has been suspended for ~~[non-payment]~~ non-renewal is not valid for practice in New Mexico.

F. "Voluntarily lapsed" means a license that is not renewed at the request of the physician.

[16.10.7.7 NMAC - N, 4/18/02; A, 4/3/05; A, 7/1/06; A, 1/10/07]

16.10.7.14 LICENSE SUSPENSION FOR ~~[NON-PAYMENT]~~ RENEWAL:

The board shall summarily suspend on October 1 of the renewal year the license of any physician who has failed within ninety days after the license renewal date to renew their license, to change the license status as indicated in ~~[section 15]~~ section 13, above, to pay all required fees, to comply with continuing medical education requirements, or to provide required documentation. Suspension for non-renewal is an administrative action.

[16.10.7.14 NMAC - N, 4/18/02; A, 4/3/05; A, 1/10/07]

16.10.7.15 RENEWAL APPLICATION UNDELIVERABLE:

If the notice of renewal is returned to the board office and the licensee has not sent a change of address, the summary suspension for non-renewal order will be considered undeliverable and will not be mailed.

[16.10.7.15 NMAC - N, 4/18/02; A, 1/10/07]

16.10.7.16 LICENSE REINSTATEMENT WITHIN TWO YEARS OF RENEWAL DATE:

A license that has been suspended for ~~[non-payment]~~ non-renewal, placed in inactive, or voluntary

lapsed status may be reinstated within two years of the renewal date by submitting the following documentation:

A. written request for reinstatement;

B. completion of a renewal application;

C. payment of fees as indicated in Subsection K of 16.10.9.8 and Subsection E of 16.10.9.8;

D. proof of completion of required continuing medical education as defined in 16.10.4 NMAC for the current year and the previous renewal cycle;

E. list of licenses held in any other state(s) and license status.

[16.10.7.16 NMAC - N, 4/18/02; A, 4/3/05; A, 1/10/07]

16.10.7.18 REINSTATEMENT PROCESS:

All applicants approved for reinstatement must pay the renewal fee indicated in 16.10.9.8 NMAC. Applicants with a license that has been placed on inactive status are not required to pay any additional fees. Applicants for reinstatement whose license has been suspended for ~~[non-payment]~~ non-renewal or voluntarily lapsed must pay the reinstatement fee indicated in 16.10.9.8 NMAC in addition to the renewal fee. Reinstatement licenses are issued for a period not less than 24 months or more than 36 months from the date of approval.

A. All reinstatement applications will be subject to a statewide criminal history screening. Reinstatement applications shall be processed pending the completion of the statewide criminal history screening and may be granted while the screening still pending.

B. If the statewide criminal background screening reveals a felony or a violation of the Medical Practice Act, the licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

[16.10.7.18 NMAC - N, 4/18/02; A, 4/3/05; A, 7/1/06; A, 1/10/07]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.8 NMAC, Sections 1 and 8, Effective January 10, 2007.

16.10.8.1 ISSUING AGENCY:

~~[New Mexico Board of Medical Examiners;]~~ New Mexico Medical Board, hereafter called the board.

[16.10.8.1 NMAC - Rp 16 NMAC 10.8.1, 7/15/01; A, 1/10/07]

16.10.8.8 UNPROFESSIONAL

OR DISHONORABLE CONDUCT. As defined in the Medical Practice Act, Section 61-6-15.D,(29), "unprofessional or dishonorable conduct" includes, but is not limited to, the following:

- A. practicing medicine without an active license;
- B. sexual misconduct, including sexual contact with patient surrogates, such as parents and legal guardians, that occurs concurrently with the physician-patient relationship;
- C. violating a narcotic or drug law;
- D. excessive prescribing or administering of drugs;
- E. excessive treatment of patients;
- F. impersonating an applicant in an examination or at a board interview;
- G. making or signing false documents;
- H. dishonesty;
- I. deceptive or anonymous advertising;
- J. improper use of a fictitious name;
- K. violation of a term of a stipulation; or
- L. prescribing drugs or medical supplies to a patient when there is no established physician-patient relationship, which would include at a minimum an adequate history and physical examination and informed consent;

(1) except for on-call physicians and physician assistants; and

(2) except for the provision of treatment for partners of patients with sexually transmitted diseases when this treatment is conducted in accordance with the expedited partner therapy guidelines and protocol published by the New Mexico department of health.

[16.10.8.8 NMAC - Rp 16 NMAC 10.8.8, 7/15/01; A, 1/10/07]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.9 NMAC, Sections 8 and 11, Effective January 10, 2007. Section 11 is renumbered to Section 12. New section is added for Section 11.

16.10.9.8 PHYSICIAN FEES:

- A. Application fee of \$250 for applicants providing source documentation through FCVS or HSC.
- B. Application fee of \$400 for applicants applying to the board and not using the federation credential verification service.
- C. Triennial license

renewal fee of \$300 plus a triennial fee to support the impaired physicians program of \$100.

D. Temporary license fee for a temporary camp or school license of \$25.

E. Temporary license fee for a temporary teaching/research license of \$100.

F. Processing fee of \$25 for placing a license on inactive status.

G. Late fee of \$100 for all physicians who renew their license to active status, or provide required documentation after June 30 but no later than August 15 of the year of expiration.

H. Late fee of \$150 for physicians who renew their licenses to active status, or provide required documentation between August 16 and October 1 of the year of expiration.

I. Reinstatement fee of \$200, for reinstatement of a suspended license, which shall be in addition to other fees due and payable to the board.

J. Duplicate license fee of \$30.

K. Duplicate renewal certificate fee of \$15.

L. Postgraduate training license fee of \$10.

M. Public service license fee of \$50 annually.

N. Biennial application fee of \$100 for a physician supervising a pharmacist clinician.

O. Telemedicine initial licensing and triennial renewal fee of \$300.

P. Nationwide criminal history screening fee of \$24 per screening, or current department of public safety fee.

Q. Statewide criminal history fee of [~~\$7 per screening~~] \$10 per screening, or current department of public safety fee.

[16.10.9.8 NMAC - Rp 16 NMAC 10.9.8.1, 7/15/01; A, 5/1/02; A, 7/14/02; A, 1/20/03; A, 4/3/05; A, 7/1/06; A, 1/10/07]

16.10.9.11 PHYSICIANS SUPERVISING PHARMACIST CLINICIANS:

A. Registration application fee of \$100.

B. Biennial renewal fee of \$100.

C. Change of supervising physician fee of \$25, with no change in scope of practice or protocol.

D. Late fee of \$25 for failure to renew registration or provide required documentation by July 1 of the renewal year.

[16.10.9.11 NMAC - Rp 16 NMAC 10.9.8.3 & 8.4, 7/15/01; A, 5/1/02; 16.10.9.11 NMAC - N, 1/10/07]

~~16.10.9.11~~ 16.10.9.12 MISCELLANEOUS FEES:

A. Verification of exam scores fee of \$15.

B. Copying fee of \$0.25 per page for records held in the board office.

C. License verification fee of \$25 per license for a letter of good standing to confirm the verification.

D. License verification fee of \$5 per license with a minimum charge of \$15 for verification of a list of licenses when the list contains the license numbers and physicians' names. No letters of good standing shall be issued for verifications from a list of this kind and notations regarding each verification shall be made on the list provided.

E. Copying fee of \$25 an hour to copy records stored in archives.

F. Fee of \$20 per copy for annual directory of physicians.

G. Returned check fee of \$25.

H. List of licensees on CD - \$100

I. Physician mailing labels - \$250, physician assistant mailing labels - \$50.

J. Waiver. The board may waive or reduce miscellaneous fees but only for good cause shown and documented. The NMMS, NMAPA, and UNMHSC will each be given one free list or CD annually. [16.10.9.12 NMAC - Rn, 16.10.9.11 NMAC, 1/10/07]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.11 NMAC, Sections 1, 5, 6, 7, 8, 9, 10 and 11, Effective January 10, 2007. This rule was also renumbered and reformatted from 16 NMAC 10.11 to comply with the current NMAC requirements.

16.10.11.1 ISSUING AGENCY:

[~~New Mexico Board of Medical Examiners~~] New Mexico Medical Board, hereafter called the board.

[4/5/97, 4/27/2000; 16.10.11.1 NMAC - Rn & A, 16 NMAC 10.11.1, 1/10/07]

16.10.11.5 EFFECTIVE DATE:

June 15, 1995, unless a later date is cited at the end of a section [~~or paragraph. Reformatted in NMAC format effective April 5, 1997.~~]

[4/5/97; 16.10.11.5 NMAC - Rn & A, 16 NMAC 10.11.5, 1/10/07]

16.10.11.6 OBJECTIVE:

These rules and regulations are adopted to carry out the [~~board of medical examiners~~] boards' responsibilities set forth in Sections

61-11B to 61-11B-3, NMSA 1978, the "Pharmacist Prescriptive Authority Act." [4/5/97; 16.10.11.6 NMAC - Rn & A, 16 NMAC 10.11.6, 1/10/07]

16.10.11.7 DEFINITIONS:

~~["Reasonable proximity" means a location not more than 120 miles or two hours, by automobile from the supervising physician.]~~

A. "Consultation" means in person, telephonically, by two-way radio, by e-mail or by other electronic means.

B. "Alternate supervising physician" means a physician who holds a current unrestricted license, is a cosignatory on the notification of supervision, and agrees to act as the supervising physician in the supervising physician's absence with no change to the scope of practice or protocol of the pharmacist clinician. The alternate supervising physician must be approved by the board.

C. "Scope of practice" means duties and limitations of duties placed upon a pharmacist clinician by their supervising physician and/or the alternate supervising physician(s) and the board; includes the limitations implied by the field of practice of the supervising physician and/or the alternate supervising physician(s) and the board.

[4/5/97, 4/27/2000; 16.10.11.7 NMAC - Rn & A, 16 NMAC 10.11.7, 1/10/07]

16.10.11.8 INTRODUCTION:

These rules and regulations are adopted to carry out the ~~[board of medical examiners']~~ boards' responsibilities set forth in Sections 61-11B to 61-11B-3, NMSA 1978, the "Pharmacist Prescriptive Authority Act." [4/5/97; 16.10.11.8 NMAC - Rn & A, 16 NMAC 10.11.8, 1/10/07]

16.10.11.9 APPROVAL OF SUPERVISING PHYSICIANS:

A physician shall only be approved as a pharmacist clinician supervisor after the pharmacist clinician ~~[submits an application, with a fee of \$100.00 biennially,]~~ registers with the board by submitting an application for authority to practice under the supervision of a licensed physician. The application shall include:

A. the name, address, phone number of the applicant and his/her proof of current certification as a pharmacist clinician by the board of pharmacy;

B. the name, address, and phone number of the supervising physician;

C. a written protocol agreed to and signed by the pharmacist clinician and the supervising physician that shall include:

(1) a statement identifying the physician authorized to prescribe dangerous drugs and the pharmacist clinician who is a party to the guidelines or protocol;

(2) a statement of the types of pre-

scriptive authority that the pharmacist clinician is authorized to make within his scope of practice which may include:

(a) a statement of the types of diseases, dangerous drugs or dangerous drug categories involved and the type of prescriptive authority authorized in each case; and

(b) a general statement of the procedures, decision criteria or plan the pharmacist clinician is to follow when exercising prescriptive authority;

(c) a statement of the activities the pharmacist clinician is to follow in the course of exercising prescriptive authority, including documentation of decisions made and a plan for communication to and consultation with the supervising physician concerning specific decisions made; documentation may occur on the prescriptive record, patient profile, patient medical chart or in a separate log book; and

(d) a statement that describes appropriate mechanisms for reporting to the physician the pharmacist clinician's activities in monitoring the patients; and

(e) a statement that describes provisions for immediate communication or consultation between the pharmacist clinician and the supervising physician or alternate supervising physician.

D. The pharmacist clinician may be authorized in the protocol to monitor dangerous drug therapy as follows:

(1) collecting and reviewing patient dangerous drug histories;

(2) measuring and reviewing routine patient vital signs including pulse, temperature, blood pressure and respiration; and

(3) ordering and evaluating the results of laboratory tests relating to dangerous drug therapy, including blood chemistries and cell counts, controlled substance therapy levels, blood, urine, tissue or other body fluids, culture and sensitivity tests when performed in accordance with guidelines or protocols applicable to the practice setting.

E. A pharmacist clinician may only prescribe controlled substances if he/she:

(1) has obtained a New Mexico controlled substances registration and a drug enforcement agency registration, and

(2) prescribes controlled substances within the parameters of written guidelines or protocols established under these regulations and Section 3, A. of the Pharmacist Prescriptive Authority Act.

F. The protocol for each pharmacist clinician shall be reviewed by the ~~[board of medical examiners]~~ board at least every two years.

G. A pharmacist clinician shall perform only those services that are set forth in the protocol.

H. Pharmacist clinicians may prescribe only those drugs described in a ~~[board of medical examiners approved formulary]~~ board approved protocol.

I. A physician may not supervise more than two (2) pharmacist clinicians at any given time without the prior approval of the ~~[board of medical examiners]~~ board.

J. Within thirty days after an employer terminates the employment of a pharmacist clinician, the supervising physician and/or the pharmacist clinician shall submit a written notice to the board providing the date of termination and reason for termination. The pharmacist clinician shall not work as a pharmacist clinician until the board approves another supervising physician.

[4/5/97, 4/27/2000; 16.10.11.9 NMAC - Rn & A, 16 NMAC 10.11.9, 1/10/07]

16.10.11.10 THE PHYSICIAN'S REQUIREMENTS OF SUPERVISION:

A. ~~[A pharmacist clinician must meet in person with the supervising physician or the supervising physician's board approved alternate at least once every two (2) weeks to discuss patient management.]~~ Supervising physicians must provide direction to pharmacist clinicians to specify the pharmacotherapeutic services to be provided under the circumstances in each case. ~~[This may be done by written guidelines or protocol or by oral communications in person, over the phone or by other electronic means.]~~ This may be done by written protocol or by oral consultation. It is the responsibility of the supervising physician to assure that the appropriate directions are given and understood.

B. ~~[The supervising physician must visit the premises of the pharmacist clinician's practice at least once every sixty (60) days in a nursing home setting and once every fourteen (14) days in the primary place of practice of the pharmacist clinician, and evaluate the quality of all pharmacotherapeutic services rendered by the pharmacist clinician by reviewing not less than twenty percent (20%) of all medical records to assure compliance with the guidelines or protocol and directions.]~~ Supervising physicians must establish a quality assurance program for review of medical services provided by the pharmacist clinician.

C. If the supervising physician is of the opinion that circumstances warrant exceptions to the requirements set forth in Subsections A or B above, the supervising physician must specify the circumstances in writing and deliver the same to the ~~[secretary of the state of New Mexico board of medical examiners]~~ board. The board will review, grant or deny requests for exceptions or waivers, at the

board's discretion.

D. Documentation of the supervising physician reviews must be retained by the pharmacist clinician and be available for board inspection for a period of not less than five (5) years from the date of such reviews.

E. The pharmacist clinician must ~~[function in reasonable proximity to the supervising physician and must]~~ have prompt access to the physician by telephone or other electronic means for advice and direction.

F. If the supervising physician plans to be or is absent from his or her practice for any reason, the supervising physician cannot designate a pharmacist clinician to take over those duties or cover the practice during such absence. The supervising physician may designate an alternate supervising physician, approved by the ~~[board of medical examiners]~~ board, to cover the practice and perform the duties of supervising physician. The alternate supervising physician will then supervise the pharmacist clinician and will be responsible for the pharmacist clinician's actions or omissions in exercising prescriptive authority or other duties as a pharmacist clinician.

G. ~~[In order to change a supervising physician between biennial renewals of certification, a pharmacist clinician shall submit to the board of medical examiners a new application. The new supervising physician may only act after the application is approved by the board of medical examiners.]~~ In order to change a supervising physician between biennial renewals of registration, without a change to the pharmacist clinician's scope of practice or protocol, a pharmacist clinician shall submit to the board a change of supervising physician form and the required fee, as specified in 16.10.9.11 NMAC. The new supervising physician may only act after the application is approved by the board. [4/5/97, 4/27/2000; 16.10.11.10 NMAC - Rn & A, 16 NMAC 10.11.10, 1/10/07]

16.10.11.11 REPORT AND COMMITTEE: ~~[The president of the board of medical examiners]~~ The chair of the board shall appoint two (2) members of the board, or a member and an agent of the board to an oversight committee that shall also include two members appointed by the board of pharmacy. The oversight committee will make a report that may include non-binding recommendations to both the board of pharmacy and the [board of medical examiners] medical board regarding disciplinary action. Each board can accept or reject the recommendations. [4/5/97; 16.10.11.11 NMAC - Rn & A, 16 NMAC 10.11.11, 1/10/07]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.12 NMAC, Sections 1, 5, 7 and 8, Effective January 10, 2007. This rule was also renumbered and reformatted from 16 NMAC 10.12 to comply with the current NMAC requirements.

16.10.12.1 ISSUING AGENCY: ~~[New Mexico Board of Medical Examiners,]~~ New Mexico Medical Board, hereafter called the board.

[3/17/98, 4/27/2000; 16.10.12.1 NMAC - Rn & A, 16 NMAC 10.12.1, 1/10/07]

16.10.12.5 EFFECTIVE DATE: March 17, 1998, unless a later date is cited at the end of a section.

[3/17/98; 16.10.12.5 NMAC - Rn & A, 16 NMAC 10.12.5, 1/10/07]

16.10.12.7 DEFINITIONS:

A. "Non-licensed physician" means a medical doctor licensed to practice medicine in a jurisdiction other than New Mexico.

B. "Board" means the ~~[New Mexico board of medical examiners]~~ New Mexico medical board.

C. "Supervising physician" means a physician licensed in the state of New Mexico by the ~~[board of medical examiners]~~ board who will function as the supervising physician to a non-licensed physician.

[3/17/98; 16.10.12.7 NMAC - Rn & A, 16 NMAC 10.12.7, 1/10/07]

16.10.12.8 DELEGATIONS UNDER SECTION 61-6-17 (I) NMSA 1978 (AS AMENDED IN 1997):

~~[A. In order for a non-licensed physician who is practicing medicine in New Mexico under a New Mexico licensed physician's supervision, the non-licensed physician, pursuant to Section 61-6-17 (I) NMSA 1978, as amended in 1997, shall have an unrestricted license to practice in some other licensing jurisdiction, which does not necessarily need to be in the United States.~~

B. The supervising physician shall report, in writing, to the board of medical examiners. The report shall include:

(1) name and local addresses of any physician that will be supervised;

(2) the jurisdiction where the supervised physician is licensed, and proof of licensure, and current status of licensure;

(3) the report shall be submitted to the board at least twenty-one (21) days before the supervised physician begins to practice medicine in New Mexico.

~~C. The supervising physician shall inform all patients who shall be treated by the non-licensed physician, that the supervised physician is not licensed to practice medicine in New Mexico and have the patients sign a statement acknowledging that the patient knows the supervised physician is not licensed to practice medicine in New Mexico.~~

~~D. Subsections A through C shall not apply to medical services rendered in a JCAHCO accredited hospital. Those hospitals shall comply with the following requirements:~~

~~(1) Prior to allowing a qualified physician to perform delegated medical acts, the supervising physician shall notify the hospital that such qualified physician shall be performing medical acts under the supervision of the physician at that institution.~~

~~(2) If possible, before using a qualified physician to perform delegated medical acts, the supervising physician(s) shall notify the board of the name and domicile of the physician, proof of license and licensure status, and the hospital to be utilized by that supervising physician. If it is not possible to provide pre notification of the utilization of a qualified physician pursuant to this section, the supervising physician shall make those disclosures to the board as required by this section within 10 days maximum of the date upon which the qualified physician begins practice under the supervising physician.]~~

A. In order for a non-licensed physician who is practicing medicine in New Mexico under a New Mexico licensed physician's supervision, the non-licensed physician, pursuant to Section 61-6-17 (I) NMSA 1978, as amended in 1997, shall have an unrestricted license to practice in some other licensing jurisdiction, which does not necessarily need to be in the United States.

B. The supervising physician shall report, in writing, to the board. The report shall include:

(1) name and local addresses of any physician that will be supervised;

(2) the jurisdiction where the supervised physician is licensed, and proof of licensure, and current status of licensure;

(3) the scope of practice and the manner by which the New Mexico licensed physician will directly supervise the non-licensed physician; and

(4) the name and address of the hospital, if any, to be utilized by the supervising physician.

C. The report shall be submitted to the board at least twenty-one (21) days before the supervising physician begins to practice medicine in New Mexico, except in the case of an emergency, in

which circumstance the report shall be submitted to the board within 10 days maximum of the date upon which the qualified physician begins practice under the supervising physician.

D. Prior to allowing a qualified physician to perform delegated medical acts, the supervising physician shall notify the hospital that such qualified physician shall be performing medical acts under the supervision of the physician at that institution.

E. The non-licensed physician must be granted approval by the board or the board's delegate to practice before he/she begins to practice in New Mexico under the provisions of this rule.

(1) Approval by the board for a non-licensed physician to practice under the direct supervision of a New Mexico licensed physician shall be for a period of not more than 15 days and cannot be renewed.

(2) Approval by the board for a non-licensed physician to practice under the direct supervision of a New Mexico licensed physician at a JCAHO accredited hospital shall be for a period of not more than three months; provided, however, that the approval can be renewed by the board up to three times.

F. The supervising physician shall inform all patients who shall be treated by the non-licensed physician, that the supervised physician is not licensed to practice medicine in New Mexico and have the patients sign a statement acknowledging that the patient knows the supervised physician is not licensed to practice medicine in New Mexico.

[3/17/98, 4/27/2000; 16.10.12.8 NMAC - Rn & A, 16 NMAC 10.12.8, 1/10/07]

NEW MEXICO STATE MINE INSPECTOR

The New Mexico State Mine Inspector with the concurrence of the Mine Safety Board hereby repeals the following rules, effective 12/29/2006:

MI 69-0, "Mine Safety for Underground Workmen" (filed 01/06/1969);

MI 73-2 (SIM Rule No. 73-1), "Radiation in Underground Mines" (filed 12-14-73);

MI 77-1 (SIM Rule No. 76-1), "Adopting Parts of 55,56 and 57 of Title 30, Code of Federal Regulations, As Published in the Federal Register, Vol. 41, No. 113, on June 10, 1976" (filed 1/3/77);

MI 79-1, "Rules and Regulations Governing the Requirements and Maintenance for an Emergency Vehicle to be Used to Transport Injured Employees" (filed 3/7/79);

MI 79-2, "Rules and Regulations Governing the Handling of Energized

Electrical Power Cables of 440 Volts and Higher" (filed 3/7/79); and
SIM Rule No. 89-1, "Education and Training" (filed 9/19/1989).

NEW MEXICO STATE MINE INSPECTOR

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 8 MINE SAFETY PART 3 MINE SAFETY FOR UNDERGROUND WORKERS

11.8.3.1 ISSUING AGENCY:
New Mexico State Mine Inspector.

[11.8.3.1 NMAC - N, 12/31/06]

11.8.3.2 SCOPE: All persons subject to NMSA 1978, Section 69-5-1 et seq and Sections 69-8-1 et seq.

[11.8.3.2 NMAC - N, 12/31/06]

11.8.3.3 STATUTORY AUTHORITY: NMSA 1978, Section 69-5-1 et seq and Sections 69-8-1 et seq.

[11.8.3.3 NMAC - N, 12/31/06]

11.8.3.4 DURATION:
Permanent.

[11.8.3.4 NMAC - N, 12/31/06]

11.8.3.5 EFFECTIVE DATE:
December 31, 2006, unless a later date is cited at the end of a section.

[11.8.3.5 NMAC - N, 12/31/06]

11.8.3.6 OBJECTIVE: The objective of Part 3 of 11.8 NMAC is to establish general requirements for all underground mine workers.

[11.8.3.6 NMAC - N, 12/31/06]

11.8.3.7 DEFINITIONS:
[Reserved]

[11.8.3.7 NMAC - N, 12/31/06]

11.8.3.8 REQUIREMENTS FOR UNDERGROUND MINE WORKERS:

A. No mine employee or other person shall remove, displace, damage, destroy, carry off or fail to use any safety device, safeguard notice or warning, provided for use in any mine employment or place of mine employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any mine employee, in such employment or place of employment, or fail or neglect to follow and obey safety orders promulgated by the mine operator or mine inspector, and to do every other thing reasonably necessary to protect the life, health, safety and welfare of employees, including

himself. This being a state law, violation of this act constitutes a misdemeanor.

B. No miner or other person shall carry into a mine intoxicating liquors or alcoholic beverages or any controlled substances or enter the mine under the influence of intoxicating liquor or controlled substances. This being a state law, violation constitutes a crime punishable by fine or imprisonment, or both.

[11.8.3.8. NMAC - N, 12/31/06]

HISTORY of 11.8.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Commission of Public Records and Archives:

MI 69-0, Rules Pertaining to Mine Safety for Underground Workmen, filed 1/6/69.

History of Repealed Material: [Reserved]

Other History:

MI 69-0, Rules Pertaining to Mine Safety for Underground Workmen (filed 1/6/1969) was renumbered, reformatted, and replaced by 11.8.3 NMAC Mine Safety for Underground Workers, effective 12/31/2006.

NEW MEXICO OFF-HIGHWAY MOTOR VEHICLE SAFETY BOARD

TITLE 18 TRANSPORTATION AND HIGHWAYS CHAPTER 15 OFF-HIGHWAY MOTOR VEHICLE SAFETY PART 3 OFF-HIGHWAY MOTOR VEHICLE SAFETY STANDARDS

18.15.3.1 ISSUING AGENCY:
Off-highway Motor Vehicle Safety Board.

[18.15.3.1 NMAC - N, 1/1/2007]

18.15.3.2 SCOPE: This rule prescribes safety standards, registration, and safety permit requirements for all persons seeking to operate an off-highway motor vehicle and applies to all persons seeking to operate an off-highway motor vehicle safety training organization, or serve as an off-highway motor vehicle instructor or guide in New Mexico.

[18.15.3.2 NMAC - N, 1/1/2007]

18.15.3.3 STATUTORY AUTHORITY: NMSA 1978, Sections 66-3-1001 through 66-3-1020.

[18.15.3.3 NMAC - N, 1/1/2007]

18.15.3.4 DURATION:
Permanent.

[18.15.3.4 NMAC - N, 1/1/2007]

18.15.3.5 EFFECTIVE DATE: January 1, 2007, unless a later date is cited at the end of a section.
[18.15.3.5 NMAC - N, 1/1/2007]

18.15.3.6 OBJECTIVE: The purpose of this rule is to provide minimum and uniform standards for the registration, permitting and safe operation of off-highway motor vehicles and for the certification of off-highway motor vehicle safety training organizations, instructors and guides, and matters incident thereto.
[18.15.3.6 NMAC - N, 1/1/2007]

18.15.3.7 DEFINITIONS:

A. "ASI" means the ATV safety institute, a division of the specialty vehicle institute of America.

B. "Board" means the off-highway motor vehicle safety board or its designee.

C. "Certificate" means one of the following documents issued by the board on a non-exclusive basis authorizing a person to:

(1) **"safety training certificate":** operate an off-highway motor vehicle if under 18 years of age or;

(2) **"instructor certificate":** serve as an off-highway motor vehicle safety training organization, a lead instructor, guide or junior instructor.

D. "CPS" means the consumer product safety commission.

E. "Department" means the New Mexico tourism department.

F. "Designee" means a person authorized to perform certain specified duties on behalf of the board.

G. "Division" means the motor vehicle division of the New Mexico taxation and revenue department.

H. "Enrolled" means that a student has attended the first day of a scheduled safety training course and will continue until the course is completed.

I. "Extension site" means a location other than the main off-highway motor vehicle safety training organization's training site where a certified organization offers OHV safety training courses.

J. "Guide" means a person who is certified as a lead instructor by the board and who guides or directs an off-highway vehicle organized tour.

K. "Implied Consent Act" means Sections 66-8-105 through 66-8-112, NMSA 1978.

L. "Junior instructor" means a person over the age of eighteen (18) but less than twenty-one (21) years of age certified by the board pursuant to the instructor qualifications and standards criteria of these rules as meeting the minimum

qualifications to teach and evaluate a student in a board certified off-highway motor vehicle safety training course under the direct supervision of a lead instructor.

M. "Lead instructor" means a person at least twenty-one (21) years of age certified by the board pursuant to the instructor qualifications and standards criteria of these rules as meeting the minimum qualifications to teach and evaluate a student in a board certified off-highway motor vehicle safety training course.

N. "Moral turpitude" means behavior that gravely violates the accepted moral standards of the community.

O. "MSF" means the motorcycle safety foundation.

P. "Off-highway motor vehicle" means a motor vehicle designed by the manufacturer for operation exclusively off the highway or road and includes:

(1) **"all terrain vehicle"**, which means a motor vehicle fifty inches or less in width, having an unladen dry weight of one thousand pounds or less, traveling on three or more low-pressure tires and having a seat designed to be straddled by the operator and that has a handlebar-type steering control;

(2) **"off-highway motorcycle"**, which means a motor vehicle traveling on not more than two tires and having a seat designed to be straddled by the operator and that has handlebar-type steering control; or

(3) **"snowmobile"**, which means a motor vehicle designed for travel on snow or ice and steered and supported in whole or in part by skis, belts, cleats, runners or low-pressure tires.

Q. "Off-highway motor vehicle safety training organization" (also referred to in these rules as "OHV safety training organization" or "organization") means a business, including all sites and/or tracks or courses within and on which it operates, certified by the board as qualified to provide both classroom and hands-on safety training to operators of off-highway motor vehicles.

R. "Person" means an individual, firm, partnership, association, corporation, limited liability company, or other legal entity.

S. "Proctored exam" means an exam monitored by a lead instructor or a junior instructor under the direct supervision of a lead instructor.

T. "Revocation or revoked" means the involuntary permanent termination of a certificate by the board for cause.

U. "Staging area" means a parking lot, trailhead or other location to or from which an off-highway motor vehicle is transported so that it may be placed into operation or removed from operation.

V. "Student" means a per-

son who has enrolled in an OHV safety training course certified by the board.

W. "Suspended or suspension" means the involuntary permanent termination of a certificate by the board for cause.

X. "Trail etiquette" means the correct and appropriate interaction between all types of trail users; respect for and adherence to rules and laws governing use on public and private land; respect for the environment and avoidance of causing any adverse impacts to the environment; not littering and making sure campfires are extinguished.

[18.15.3.7 NMAC - N, 1/1/2007]

18.15.3.8 OPERATION REQUIREMENTS:

A. License not required. Drivers of off-highway motor vehicles are not required to be licensed.

B. Prohibitions. A person shall not operate an off-highway motor vehicle:

(1) in a careless, reckless or negligent manner so as to endanger the person or property of another;

(2) while under the influence of intoxicating liquor or drugs as provided by Section 66-8-102 NMSA 1978;

(3) while in pursuit of and with intent to hunt or take a species of animal or bird protected by law unless otherwise authorized by the state game commission;

(4) in excess of ten (10) miles per hour within two hundred feet of a business, animal shelter, horseback rider, bicyclist, pedestrian or occupied dwelling unless the person operates the vehicle on a closed course or track;

(5) unless in possession of the person's registration certificate or nonresident permit;

(6) unless the vehicle is equipped with a spark arrestor approved by the United States forest service; provided that a snowmobile is exempt from this provision;

(7) when conditions such as darkness limit visibility to five hundred feet (500') or less, unless the vehicle is equipped with:

(a) one or more headlights of sufficient candlepower to light objects at a distance of one hundred-fifty feet (150'); and

(b) at least one taillight of sufficient intensity to exhibit a red or amber light at a distance of two hundred feet (200') under normal atmospheric conditions; or

(8) that produces noise that exceeds ninety-six (96) decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J-1287.

C. Requirements for minors. A person under the age of eighteen

(18) shall not operate an off-highway motor vehicle:

(1) or ride upon an off-highway motor vehicle without wearing eye protection and a safety helmet that is securely fastened in a normal manner as headgear that meets the standards established by the board in these rules;

(2) without an off-highway motor vehicle safety permit; or

(3) while carrying a passenger.

D. Visual supervision. A person under the age of eighteen (18) but at least ten (10) years of age shall not operate an off-highway motor vehicle unless the person is visually supervised at all times by a parent, legal guardian or a person over the age of eighteen (18) who has a valid driver's license. This rule does not apply to a person who is at least:

(1) thirteen (13) years of age and has a valid motorcycle license and off-highway motor vehicle safety permit; or

(2) fifteen (15) years of age and has a valid driver's license, instructional permit or provisional license and off-highway motor vehicle safety permit.

E. Minors under 10 years of age. A person under the age of ten (10) shall not operate an off-highway motor vehicle unless:

(1) the all-terrain vehicle is an age-appropriate size-fit vehicle in compliance with these rules; and

(2) the person is visually supervised at all times by a parent, legal guardian or instructor of a safety training course certified by the board under these rules.

F. Organized tour exception. The requirements of Subsections D and E of this section do not apply to a person who is part of an organized tour under the guidance or direction of a guide certified by the board under these rules.

G. Noise standard. An off-highway motor vehicle may not be sold or offered for sale if the vehicle produces noise that exceeds ninety-six (96) decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J-1287. This subsection shall not apply to an off-highway motor vehicle that is sold or offered for sale only for organized competition.

H. Prohibited areas of operation. A person shall not operate an off-highway motor vehicle on any:

(1) limited access highway or freeway at any time; or

(2) any paved street or highway except as provided in Subsection B of Section 66-3-1011 NMSA 1978.

I. Public lands restrictions. A person shall not operate an off-highway motor vehicle on state game commission-owned-controlled or-administered land or on land owned, controlled or admin-

istered by the state parks division of the energy, minerals and natural resources department except in compliance with Subsections C and D of Section 66-3-1011 NMSA 1978.

J. Public highway restrictions. Off-highway motor vehicles may only be driven adjacent to a highway for the purpose of gaining access to or returning from areas designed for the operation of off-highway vehicles by the shortest possible route and when no other route is available or when the area adjacent to a highway is being used as a staging area. Such use must occur between the highway and fencing that separates the highway from private or public lands, and the operator of the off-highway motor vehicle shall yield to all vehicles entering or exiting the highway, in a manner that does not interfere with highway traffic. When snow conditions permit, an off-highway motor vehicle may be operated on the right-hand side of a highway, parallel, but not closer than ten feet (10'), to the inside of the plow bank.

K. Accidents and accident reports. The driver of an off-highway motor vehicle involved in an accident resulting in injuries to or the death of a person or resulting in damage to public or private property to the extent of five hundred dollars (\$500) or more shall immediately notify a law enforcement agency of the accident and the facts relating to the accident. If the driver is under the age of eighteen, the driver's parent or legal guardian shall immediately notify a law enforcement agency of the accident and the facts relating to the accident.

[18.15.3.8 NMAC - N, 1/1/2007]

18.15.3.9 EQUIPMENT REQUIREMENTS:

A. Safety helmets. All off-highway motor vehicle operators and passengers under the age of eighteen (18) shall wear safety helmets that comply with the safety standards of Title 49 Transportation, Chapter V - National Highway Traffic Safety Administration, Department of Transportation, Part 571-Federal Motor Vehicle Safety Standards, Subpart B-Federal Motor Vehicle Safety Standards, Standard No. 218, Motorcycle helmets of the Code of Federal Regulations (49CFR571.218). A helmet exhibiting the symbol DOT in conformance with 49CFR571.218 shall constitute prima facie evidence of compliance with this standard.

B. Eye protection. Unless the off-highway motor vehicle has a protective windscreen, all off-highway motor vehicle operators and passengers under the age of eighteen must wear eye protection that meets or exceeds the Vehicle Equipment Safety Standards Regulations VESC-8 (Minimum Requirements for

Motorcycles, Eye Protection Section 11-1306(e) or the American National Standards Institute (ANSI) Standard Z87.1 and more generally known as safety glasses or safety goggles. Additionally, the protective eyewear must be free of scratches, give a clear view to both sides and be fastened securely.

C. Age appropriate size-fit. Standards governing the relationship between the engine displacement level (in cubic centimeters, or cc.) of an all-terrain vehicle (ATV) and the minimum age an operator must attain before he may operate an ATV with higher than minimum engine displacement levels, combined with objective measurements of how a rider physically fits on an ATV and can operate basic equipment features, are called "age appropriate size-fit" standards.

(1) No person under six (6) years of age shall operate an all-terrain vehicle on public land.

(2) Operators under the age of ten (10) shall not operate an ATV with an engine size greater than 100cc. and shall comply with the physical fit standards set forth below in Subsection D of this section.

(3) Operators from ages ten (10) through fifteen (15) shall not operate an ATV with an engine size greater than 250cc. and shall comply with the physical fit standards set forth below in Subsection D of this section.

(4) Notwithstanding Paragraph (3) of this subsection, operators who are fourteen (14) or fifteen (15) years of age and who possess a valid driver's license may operate an ATV with an engine size not greater than 450 cc.

(5) Operators at least sixteen (16) years of age may operate an ATV with an engine size greater than 250cc.

D. Physical fit standards. Unless the relationship between an operator and the ATV being operated complies with the following standards, there is a violation of the age appropriate size-fit standards of these rules, regardless of whether the operator is in compliance with the engine size standards of Subsection C immediately preceding.

(1) Clearance between ATV seat and inseam while standing up on foot pegs - The intent for requiring a clearance is twofold: the first is to permit the rider to stand up and absorb shocks through the legs while traversing rough terrain; the second is to minimize the possibility of the rider being struck by the seat and catapulted over the handle bars. Three to six inches should be a minimum clearance. The maximum will be controlled by the reference point below.

(2) Upper legs- The upper portion of the leg, roughly from the top of the knee to the hip (or the lap if sitting in a chair) should be approximately horizontal. A little above or below the horizontal is not a viola-

tion of this standard, but gross departures (knees significantly below or above the hips) shall warrant further inquiry. Knees that are significantly above the hips and which contact the handlebars in both directions when they are turned constitute a violation of this standard.

(3) Foot length- With the heel of the right shoe locked against the footpeg or in the proper position on the running board, the toe should be able to depress the foot brake with a simple downward rotation of the foot. Contact with engine or exhaust protrusions should be examined. The rider should be able to operate the brakes consistently without hesitation. The same principle applies to the left side of the ATV where the gearshift is located.

(4) Grip reach- With the rider in the normal seated position (not leaning forward) and the hands on the handlebars, the elbows should have a distinct angle between the upper arm and the forearm. If the elbows are straight out, the rider has no ability to turn the handlebars. If the elbows are less than right angles, the rider is too large for the ATV and steering is difficult possibly throwing the rider off balance.

(5) Throttle reach- With the right hand in the normal operating position, the thumb must easily operate the throttle. The rider must be able to turn the handlebars to both the extreme left and extreme right position without any interference with easy operation.

(6) Brake reach- With the hands in the normal operating position and the fingers straight out, the first joint (from the tip) of the middle finger should extend beyond the brake lever. If not, the hand is too small to effectively grasp the lever in an emergency. The thumb must also reach the engine stop switch. The rider should be able to squeeze the brake lever comfortably and repeatedly.

[18.15.3.9 NMAC - N, 1/1/2007]

18.15.3.10 MINIMUM CRITERIA FOR APPROVAL AND CERTIFICATION OF OFF-HIGHWAY MOTOR VEHICLE SAFETY TRAINING ORGANIZATIONS AND INSTRUCTORS/GUIDES:

A. ASI standard adopted. The board shall approve and certify all motor vehicle safety training organizations for ATV's whose applications establish that they will:

(1) utilize ASI's instructional materials, its hands-on, or practical, training standards for rider courses, and its criteria for instructor training (collectively "the curriculum"), or a materially equivalent curriculum; and

(2) comply with the requirements of these rules.

B. MSF standard adopted. The board shall approve and certify all motor vehicle safety training organization for off-highway motorcycles whose applications establish that they will:

(1) utilize the MSF "dirt bike school" instructional materials, its hands-on, or practical, training standards for rider courses, and its criteria for instructor training, or a materially equivalent curriculum; and

(2) comply with the requirements of these rules.

C. Snowmobile standard. [Reserved]

D. Out of state safety permits. A current off-highway motor vehicle safety permit issued by another state to a person under the age of eighteen (18), or an ASI, MSF or equivalent certificate as determined by the board evidencing completion of an OHV safety training course, shall satisfy the requirement for completion of an off-highway motor vehicle safety training course before operating an off-highway motor vehicle in New Mexico. New Mexico residents under the age of eighteen (18) must successfully complete an off-highway motor vehicle safety course that complies with these rules.

E. Grandfathered safety permits. Safety certificates issued prior to January 1, 2007, by ASI, MSF, 4-H or equivalent certificates as determined by the board evidencing completion of an OHV safety training course, shall satisfy the requirement for completion of an off-highway motor vehicle safety training course before operating an off-highway motor vehicle in New Mexico.

[18.15.3.10 NMAC - N, 1/1/2007]

18.15.3.11 APPLICATION FOR APPROVAL AND CERTIFICATION:

A. Certification required. No person may operate an off-highway motor vehicle safety training organization without first having obtained approval and a form of certification issued by the board or its authorized designee.

B. Application form. A person wishing to obtain certification to operate an off-highway motor vehicle safety training organization ("OHV training organization" or "organization") must file an application with the board through the department. A person may obtain an application by contacting the department or accessing the department's website at <http://www.newmexico.org/index2.php>.

C. Contents of application. An application for an off-highway motor vehicle safety training organization certification shall contain the following information to the extent it is applicable. For example, if an applicant does not pro-

pose to maintain a fixed building site, requirements pertaining to same shall not be applicable:

(1) the applicant's name, mailing address, telephone number, and, if the applicant has one, the applicant's e-mail address;

(2) a photocopy of the certificate of maximum occupant load issued by the state or local fire marshal stating the maximum occupancy allowed by the fire code for each room at the main safety training site and each extension site, if applicable, that will be used as a classroom;

(3) a list of all proposed sites to be used for conducting off-highway motor vehicle safety training courses (safety training courses), and if the sites are not owned by the applicant, evidence that the applicant has the right to use all sites for safety training courses;

(4) a list of all instructors who will conduct safety training courses; when instructors leave an applicant's employ or are newly hired, an applicant or operator shall file updated information with the board no less frequently than monthly;

(5) the criteria the applicant will use to hire, train and continue to employ instructors to conduct safety training courses;

(6) a list of all instructors other than the applicant, if any, who will conduct safety training courses; when instructors leave an applicant's employ or are newly hired, an applicant or operator shall file updated information with the board or its designee monthly;

(7) a schedule of fees applicable to students who enroll in a safety training course;

(8) the proposed curriculum, handouts, videos, and final examination questions for the safety training course;

(9) the name, address, and telephone number of three (3) references of which one (1) must be an employment reference and two (2) character references, none of whom may be family members; and

(10) the applicant's resume or curriculum vitae.

D. Completeness. When the department receives an application for an OHV training organization certification, the department shall check the application for completeness.

(1) If the application is not complete, the department shall contact the applicant for additional information.

(2) If the application is complete, the department shall review the application. [18.15.3.11 NMAC - N, 1/1/2007]

18.15.3.12 ISSUANCE OF INITIAL CERTIFICATION:

A. Review by the depart-

ment and board. In reviewing applications for OHV safety training organizations, the board shall consider whether:

- (1) the information provided by the applicant is accurate and valid;
- (2) the character and employment references provided by the applicant report that the applicant is fit to operate an OHV safety training organization;
- (3) the applicant or any instructor has a criminal history, as evidenced by a background check conducted by the department showing a conviction for one or more of the following offenses:
 - (a) criminal assault in any degree;
 - (b) assault with intent to commit criminal sexual conduct in any degree;
 - (c) attempt to commit criminal sexual conduct in any degree;
 - (d) felonious assault, abuse, cruelty, torture or indecent exposure;
 - (e) any drug related felony;
 - (f) a crime in which an element of the crime is the use or threat of use of physical force;
 - (g) a crime in which fraud, theft, or embezzlement is considered to be an element of the conviction; or
 - (h) any failure in a required drug/alcohol testing program.
- (4) the proposed OHV safety training organization can certify that its facilities meet the accessibility requirements of the ADA; and
- (5) the persons who will serve as safety training course instructors meet the requirements of this rule.

B. Automatic disqualification. A criminal record of any of the offenses described above will disqualify an applicant or instructor for certification.

C. Issuance of initial certificate. The department shall submit to the board its review and determination that an applicant either does or does not meet the standards prescribed in Subsection A. The board shall conduct an independent review of the department's determination. If the board determines that an applicant meets the standards in Subsection A of this section it shall approve issuance of a certificate conditioned upon:

- (1) submittal of a certificate of insurance that meets the requirements of Subsection C of 18.15.3.15 NMAC for each site used for safety training; and
- (2) posting of a surety bond with the department in the amount of \$5,000 issued by a company authorized to transact surety business in New Mexico; the surety bond shall be continuous and shall assure the satisfactory performance of all contracts with students, including tuition refund agreements, and the maintenance of student records.

D. Denial of certificate. If the board determines that an applicant

does not meet the standards prescribed in Subsection A of this rule, the board will issue a letter stating the reasons for denial of the certificate. A person may address the reasons for denial in a reapplication for a certificate at any time.

[18.15.3.12 NMAC - N, 1/1/2007]

18.15.3.13 TERM OF CERTIFICATION:

A. Term. Initial certificates shall be valid from the date of issuance and until June 30 of the next year thereafter, unless suspended or revoked for cause before that date. Initial certificates shall be valid from the date of issuance to the next June 30. Renewal certificates shall be valid from July 1 of the year of renewal to June 30 of the next year following issuance.

B. Certification renewal. A certificate holder must file an application for renewal of its certificate with the department on or before June 1 of the year of expiration to ensure certificate renewal by July 1. The department will review applications for renewal in the order in which they are received.

(1) The board will renew a certificate for a period of one (1) year if:

- (a) the board or its designee finds that the OHV safety training organization is in compliance with the requirements of this rule;
- (b) the certificate holder has submitted all required reports to the department;
- (c) the certificate holder has submitted a certificate of insurance that meets the requirements of Subsection C of 18.20.3.15 NMAC for each site used for safety training.

(2) The board shall not renew the certificate of any OHV safety training organization not in compliance with the requirements of this rule.

C. Probation. The board may place a certificate holder on probation if the board finds that the OHV safety training organization is not in compliance with one or more of the requirements of this rule. The board shall send a notice of probation to the certificate holder specifying the provisions of this rule with which the certificate holder is not in compliance. The board shall determine the period of probation depending on the number and severity of the violations. The board will review the certificate holder's operations periodically during the probation period.

D. Early termination.

(1) A certificate shall automatically terminate if an OHV safety training organization ceases operation completely. A certificate shall terminate with respect to any site that ceases operation but shall remain valid for any other certified sites that

remain in operation.

(2) The board may suspend or revoke a license for cause as provided in this rule.

E. Restriction on sale of certificate. An OHV safety training organization certificate may not be sold or transferred.

[18.15.3.13 NMAC - N, 1/1/2007]

18.15.3.14 CLASSROOM COURSE REQUIREMENTS FOR OFF-HIGHWAY MOTOR VEHICLE SAFETY TRAINING ORGANIZATIONS: At all course locations, a certificate holder in providing classroom instruction shall:

A. engage as safety training instructors only those persons who have been certified by the board; a certificate holder may not serve as an instructor unless the certificate holder has been certified by the board as an instructor;

B. enroll no more than the maximum number of students permitted by board approval of a training program in any course that provides classroom instruction distinct from hands-on training, or the maximum occupancy allowed by the fire code, whichever is less, in an off-highway motor vehicle education classroom course;

C. group students under the age of twelve (12) in classes without any other age groups, provided that this requirement shall not apply to any "family unit" classes if they are offered. Family unit classes are classes where all participants are part of a common household and at least one member is a parent or legal guardian of the minor participants;

D. display the license issued by the board in an appropriate and visible location;

E. if applicable, display the placard issued by the fire marshal stating the maximum occupancy of each classroom in an appropriate and visible location in the classroom;

F. if applicable, use classroom facilities that:

- (1) have adequate space, lighting, heating, and ventilation;
- (2) have seats and stable writing surfaces for each student in the class;
- (3) have a whiteboard, blackboard, or flipchart;
- (4) have a monitor of sufficient size for all students to see, if videos are used; and
- (5) comply with all federal, state, and local laws relating to persons with disabilities, public health, safety, and sanitation, including restroom facilities;

G. ensure that the learning environment is appropriate for students in different age groups and conducive to learning and free from discrimination, intimidation, and harassment; no person shall

engage in, or be permitted to engage in, conduct that is offensive to the ordinary dignity, decency, and morality of others;

H. use only the curriculum, handouts, videos, and final examination questions approved by the board;

I. include in the curriculum lessons about:

(1) safety awareness;

(2) New Mexico operations requirements;

(3) equipment requirements;

(4) age-appropriate size-fit use of off-highway motor vehicles;

(5) responsible use of off-highway motor vehicles with respect to environmental considerations, private property restrictions, and restrictions against operating off-highway motor vehicles under the influence of alcohol or drugs;

(6) respecting ATV's: safety awareness; preparations to ride; controls and equipment checks; starting procedures; posture, starting out, shifting gears, braking and parking; turning; quick stops and swerving; riding strategies; riding over obstacles; riding on hills; and safe riding practices; and

(7) trail etiquette;

J. accommodate the special needs of hearing impaired students; whenever an off-highway motor vehicle safety training organization becomes aware that an enrollee is hearing impaired, the organization shall inform the hearing impaired student in writing that if a friend or family member of the enrollee cannot perform sign language interpretation for the student, the organization will contact the board to arrange for sign language interpretation; the safety training organization shall contact the board at least twenty (20) days before the scheduled date of the safety training course;

K. accommodate the special needs of non-English speaking students; whenever an off-highway motor vehicle safety training organization becomes aware that an enrollee does not speak English, the organization will make reasonable efforts to provide interpreter services; the off-highway motor vehicle safety training organization shall first inquire if a friend or family member of the enrollee can interpret for the student; if that is not possible, the organization will make reasonable efforts to find an off-highway vehicle safety instructor or other person to interpret for the student during the off-highway vehicle safety course;

L. provide at a minimum the ASI or MSF requisite curriculum or equivalent classroom instruction for each course and curriculum specified by the board;

M. have a proctored final exam with at least twenty (20) questions to

fairly test a student's knowledge of the safety curriculum; student must correctly answer at least seventy percent (70%) of the questions to pass the final exam; the exam shall require students to list, define, describe, identify, demonstrate, explain, compare, predict, estimate, or solve driving-related terms, signs, and situations; the final exam shall be age appropriate for the following age brackets and may be administered in either written or verbal response format:

(1) ages 11 and under; for this group, a parent or guardian of one or more minor students will be required to take and pass the adult written test;

(2) ages 12 and older;

N. use completion certificates purchased from the board at a cost of \$1.00 per certificate;

O. not permit a student to attend any safety training classes until the student, his parent or guardian has received written information stating all fees, including incidental costs, charged for the course, organization policies for passing and failing, refund and reschedule policies and attendance requirements; the parent or guardian of a student under the age of eighteen (18) must grant written permission for the student to participate.

[18.15.3.14 NMAC - N, 1/1/2007]

18.15.3.15 HANDS-ON TRAINING:

A. Hours requirement.

An OHV safety training organization shall provide at least four (4) hours of hands-on training to each student.

B. Pre-riding classroom instruction. Before an organization schedules students for hands-on training, the organization shall have provided the classroom instruction required by Subsection I of 18.15.3.14 NMAC of these rules.

C. Insurance required. A certificate holder shall provide to the board a certificate showing the issuance of an insurance policy with the required uniform endorsement by a company authorized to transact insurance business in New Mexico property damage and personal liability insurance insuring the organization, its employees, students and business invitees, the premises used for classroom and hands-on training and any off-highway vehicles used by instructors and provided by the organization for the use of students during hands-on training. The certificate shall evidence a minimum of five-hundred thousand dollars (\$500,000) of coverage.

D. Class sizes. Class sizes are shall be strictly limited as follows:

(1) students ages 12 and under, class maximum of 4;

(2) students ages 12-15, class

maximum of 6;

(3) students ages 16 and older, class maximum of 8.

E. Course or track dimensions. The course or track upon which hands-on training is conducted shall be a minimum of one hundred (100') feet in length and fifty (50') feet in width and shall encompass not less than five thousand (5000) square feet.

F. Other requirements.

(1) An adult member of a student's family must be present at all hands-on training sessions if the student is under the age of twelve (12). A release form, granting permission for participation in the hands-on training sessions, signed by a parent or legal guardian, shall be required for students ages 12-17 to participate in hands on training without parental supervision.

(2) An organization shall maintain a training log for each student. The training log shall include the student's name, registration permit number, home telephone number, the instructor's name, the date of training session, the curriculum used, the instructor remarks, the student's final hands-on and written training grade and total riding time for the student.

(3) To pass the hands-on examination a student must demonstrate proficiency during a riding test administered and graded by an instructor.

(4) No student shall be permitted to operate an off-highway motor vehicle during hands-on training if the vehicle is in violation of any vehicle safety standards, unless the vehicle can be brought into compliance before it is ridden.

G. Disabled and special education students. When providing hands-on training instruction to disabled students, an organization shall make reasonable attempts to accommodate the needs of disabled or special students.

H. Reports of moving violations and crashes under control of safety training organization. An organization shall report to the board:

(1) within twenty-four (24) hours, all crashes that result in injury or death that involve students operating off-highway motor vehicles during hands-on training; and

(2) within ten (10) working days of their occurrence, all other crashes that result in personal or property damage and any moving violations issued to students operating off-highway motor vehicles during hands-on training.

[18.15.3.15 NMAC - N, 1/1/2007]

18.15.3.16 OPERATING REQUIREMENTS FOR OFF-HIGHWAY MOTOR VEHICLE SAFETY TRAINING ORGANIZATIONS: A cer-

ificate holder:

A. shall adhere strictly to the requirements of this rule;

B. shall notify the board at least thirty (30) days in advance if the OHV safety training organization intends to cease operations at any site, and shall submit an application for certification that complies with the requirements of 18.15.3.11 NMAC of these rules for any new sites proposed;

C. shall make all organization records available for inspection by the board or its designee at any time; a certificate holder shall maintain its records in permanent and legible form for a minimum of three (3) years from each student's date of enrollment for each student receiving instruction, including students who passed, failed, withdrew, cancelled, or transferred to another organization; the records shall be updated for each class or training session;

D. shall, on a quarterly basis, provide the board with a copy of the class roster for each safety training course conducted which shall contain, at a minimum, the name of the instructor, and each student's name, date of birth, date of course completion, final exam test score, and completion certificate number;

E. shall have a written refund policy and a written reschedule policy which must be issued to each student upon enrollment;

F. shall notify the board of:

(1) any changes in address ten (10) days before opening for business at the new location;

(2) the addition of extension sites ten (10) days before the first scheduled training session at the site;

(3) the closing of extension sites, and reason for closure, monthly; and

(4) the addition or deletion of instructors monthly;

G. shall conduct all safety training operations in a professional and courteous manner;

H. shall operate all extension sites under the name used for the main organization and be accountable for all extension site operations;

I. shall not publish, advertise, or insinuate in any way that a student is assured of obtaining an off-highway motor vehicle safety permit if they take the course offered by the certificate holder;

J. may use the phrases "certified by the off-highway motor vehicle safety board" or "curriculum approved by the off-highway motor vehicle safety board" but may not otherwise use the word "approved" or any of its synonyms in its advertising or promotional materials.

[18.15.3.16 NMAC - N, 1/1/2007]

18.15.3.17 EVALUATION OF**OFF-HIGHWAY MOTOR VEHICLE SAFETY TRAINING ORGANIZATIONS:**

A. Responsibility. The board or its designee shall conduct periodic evaluations of OHV safety training organizations using criteria developed by the board. The board shall prepare a written evaluation and shall provide a copy of the evaluation to the certificate holder upon request. The board may in its discretion conduct evaluations of an OHV safety training organization on its own initiative at any time and for any reason or in response to complaints from any person. The board shall document, investigate, and discuss all complaints with the organization.

B. Relevant factors. In conducting its evaluations, the board shall consider:

(1) the number and nature of any comments or complaints received from students, instructors, judges, law enforcement officers, and others;

(2) whether the organization consistently meets the requirements of this rule; and

(3) on-site quality assurance visits by the board or its designee; on-site visits may address the adequacy of classroom facilities, instructors' off-highway motor vehicle safety knowledge and teaching techniques, learning environment, quality of the curriculum, class materials, and examination questions, and customer service.

[18.15.3.17 NMAC - N, 1/1/2007]

18.15.3.18 CERTIFICATION OF INSTRUCTORS AND GUIDES:

A. Certification required. No person or certificate holder may serve as an OHV safety training lead instructor, junior instructor or guide as defined in 18.15.3.7 NMAC (collectively, "instructor") without first having obtained a certificate from the board.

B. Application requirements. A person wishing to obtain a certificate as an OHV safety training instructor must file an application with the board. A person may obtain an application by contacting the department's website at <http://www.newmexico.org/index2.php>.

C. Contents of application. The application must be accompanied by:

(1) a copy of the applicant's limited history driving record from the motor vehicle division, driver services bureau dated no earlier than sixty (60) days before the date the application is filed with the board;

(2) a finger print background check dated no earlier than sixty (60) days before the date the application is filed with the board, or verification that the applicant

submitted a request for a state police background check to the department of public safety at least sixty (60) days before the date the application is filed with the board;

(3) a copy of a safety training certificate from a board certified off-highway motor vehicle safety training organization; an affidavit signed by the applicant stating he has a minimum of one year of off-highway motor vehicle riding experience; and a copy of a diploma or official transcript evidencing at least a high school diploma or GED certificate; and

(4) the name, address, and telephone number of three (3) references, at least one (1) of which must be an employment reference and the other two (2) character references, none of which may be from family members.

D. Completeness check. When the board receives an application for certification as an instructor, the board shall check the application for completeness.

(1) If the application is incomplete, the board shall contact the applicant for additional information.

(2) If the application is complete, the board shall review the application.

E. Standards for issuance of instructor certificate. In reviewing applications for instructors, the bureau shall consider whether:

(1) the information provided is accurate and valid;

(2) the character and employment references provided by the applicant report that the applicant is fit to be an instructor;

(3) the applicant is at least twenty-one (21) years of age for lead instructor certification and at least eighteen (18) years of age for junior instructor or guide certification;

(4) the applicant meets the educational and experience requirements described in Paragraph (3) of Subsection C of 18.15.3.18 NMAC;

(5) the applicant has not been convicted of a crime involving moral turpitude; and

(6) the applicant has a valid New Mexico driver's license with no suspensions, revocations, reckless, or DUI convictions within the preceding three (3) years.

F. Final review.

(1) If the board determines that an applicant's application is complete and that the applicant meets all the qualification requirements of this rule the board will issue a certificate to the applicant certifying him as a lead instructor and/or guide or a junior instructor.

(2) If the board determines that an applicant does not meet the qualifications for certification the board shall issue a letter stating its reasons for denial of certification.

G. Term. An instructor certificate shall be valid from the date of

issuance to the next June 30 of every other year, unless suspended or revoked for cause before that date. Initial certificates shall be valid from the date of issuance for two years to June 30. Renewal certificates shall be valid from July 1 of the year of renewal for two years to June 30.

[18.15.3.18 NMAC - N, 1/1/2007]

18.15.3.19 RECERTIFICATION OF INSTRUCTORS AND GUIDES:

A. Certificate renewal.

(1) An instructor must file an application for renewal of his or her certificate as a lead instructor and/or guide or junior instructor with the board on or before June 1 every other year to ensure certificate renewal by July 1. An instructor who files an application for renewal after June 1 shall have no guarantee that he will be recertified before the expiration of his last certificate.

(2) A person may obtain an application for renewal by contacting the board or accessing the board's website at <http://www.newmexico.org/index2.php>.

(3) The application for renewal shall be accompanied by the documents specified in Subsection C of 18.15.3.18 NMAC.

(4) The board will review applications for renewal in the order in which they are received.

B. Continuing education requirements.

(1) Instructors must submit an affidavit completed by a certified off-highway motor vehicle safety training organization stating the instructor is in good standing with all the requirements necessary for continuing as an instructor in their program.

(2) Instructors may be required to attend additional continuing education courses established or approved by the board.

C. Approval/disapproval of application for certificate renewal.

(1) The board will renew the certificate of an instructor for a period of two years if the instructor:

(a) meets the standards specified in Subsection E of 18.15.3.18 NMAC;

(b) has received an overall rating of satisfactory or better in the periodic evaluations conducted by the board in the preceding two years; and

(c) has completed continuing education requirements under Subsection B of this section in the two years preceding the application for renewal.

(2) The board shall not renew the license of any instructor who:

(a) fails to provide proof of completion of required continuing education within the two years preceding the application for renewal; or

(b) fails to provide the affidavit

required in Paragraph (1) of Subsection B of this section.

[18.15.3.19 NMAC - N, 1/1/2007]

18.15.3.20 SUSPENSION OR REVOCATION OF A CERTIFICATE:

A. Grounds. The board may suspend or revoke the license or certificate of a certificate holder or instructor:

(1) who makes a false statement on an application;

(2) who fails to follow the approved curriculum;

(3) who poses an immediate danger to the physical or mental safety or health of a student;

(4) who is convicted of any alcohol or drug-related driving offense within the past three (3) years;

(5) who has refused to submit to or failed chemical tests pursuant to the Implied Consent Act within the past three (3) years;

(6) whose New Mexico driver's license is suspended or revoked;

(7) who fails to notify the board in writing within ten days that his/her driver's license has been suspended or revoked as a result of a DWI conviction or refusal to submit to or failure of chemical tests pursuant to the Implied Consent Act, or that he/she has been convicted in any jurisdiction of an alcohol or drug-related driving offense or an offense involving moral turpitude;

(8) whose conduct in the performance of official duties is unethical, including but not limited to, verbal abuse, intimidation, or sexual harassment of students;

(9) who fails to comply with any requirement of this rule or any lawful order of the board;

(10) who knowingly becomes employed or remains employed by an OHV safety training organization whose license has been revoked pursuant to this rule;

(11) who employs or continues to employ an instructor whose certificate has been revoked pursuant to this rule; or

(12) who fails to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 et seq. or any rule implementing that act.

B. Procedure. The board shall use the procedures prescribed in the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 et seq., in all suspension and revocations proceedings held pursuant to this rule.

C. Consequences of suspension or revocation.

(1) An OHV safety training organization shall not offer or conduct any safety training courses if its certificate is suspended or revoked.

(2) An instructor shall not con-

duct any safety training courses if his or her certificate is suspended or revoked.

D. Notice of suspension or revocation.

(1) The board shall immediately notify by certified mail, return receipt requested, each instructor employed by an organization whose certificate has been suspended or revoked that the organization's certificate has been suspended or revoked and that the instructor may not conduct any OHV safety training courses for that organization unless and until the certificate is reinstated by the board.

(2) The board shall immediately notify by certified mail, return receipt requested, each OHV safety training organization that employs an instructor whose certificate is suspended or revoked that the instructor's certificate has been suspended or revoked and that the organization may not employ that instructor unless and until the certificate is reinstated by the board.

(3) The board will notify a specified designee that the OHV safety training organization's license or the instructor's certificate has been revoked or suspended.

[18.15.3.20 NMAC - N, 1/1/2007]

18.15.3.21 IMMEDIATE SUSPENSION OF A CERTIFICATE:

A. Grounds. The board may immediately suspend the certificate of an OHV safety training organization or the certificate of an instructor if the board finds that the certificate holder or instructor poses an immediate danger to the physical or mental safety or health of a student.

B. Notice of immediate suspension. The board shall commence proceedings to immediately suspend a certificate by issuing a written notice of immediate suspension to the certificate holder or instructor, which shall contain at least the following information:

(1) the name and last known address of the certificate holder or instructor whose license or certificate the bureau is immediately suspending;

(2) a statement that the board is immediately suspending the organization's certificate or instructor's certificate for a period of thirty (30) days and the effective date of the immediate suspension;

(3) a general description of the facts alleging that the certificate holder or instructor poses an immediate danger to the physical or mental safety or health of a student that warrants immediate suspension; the description shall be in sufficient detail to apprise a person of ordinary intelligence of the nature of the violation;

(4) a statement that the certificate holder or instructor has ten (10) days from the date of receipt of the notice of immediate suspension to request a hearing; the cer-

tificate holder or instructor may request a hearing by mailing, certified and return receipt requested, or hand-delivering a letter to the board;

(5) the street and post office addresses of the board where requests for a hearing may be made.

C. Hearing. The board shall grant a timely request for a hearing.

(1) The board shall appoint a hearing examiner.

(2) The hearing shall be held as soon as possible, but not later than thirty (30) days from the effective date of the immediate suspension.

(3) The immediate suspension will remain in effect until the conclusion of the hearing.

(4) The hearing may be held telephonically if both parties agree.

D. Hearing purpose. The hearing is for the sole purpose of determining if the board has reasonable grounds to believe that the certificate holder or instructor poses an immediate danger to the physical or mental safety or health of a student.

(1) If the hearing examiner finds that no immediate danger exists, the board will withdraw the immediate suspension but may initiate revocation proceedings pursuant to 18.15.3.20 NMAC.

(2) If the hearing examiner finds that an immediate danger exists, the board shall initiate revocation proceedings pursuant to 18.15.3.20 NMAC within ten (10) days of the end of the hearing. The immediate suspension will remain in effect until the conclusion of the revocation procedure.

E. Grounds for withdrawal of immediate suspension.

(1) The board shall withdraw an immediate suspension if:

(a) a hearing is timely requested and the board has not held the hearing within thirty (30) days of the effective date of the immediate suspension, unless the certificate holder or instructor requests a later hearing date and agrees in writing that the immediate suspension will remain in effect until the conclusion of the later hearing;

(b) the hearing examiner finds that an immediate danger does exist but the board does not initiate revocation proceedings pursuant to 18.15.3.20 NMAC within ten (10) days of the ruling; or

(c) the certificate holder or instructor does not request a hearing and the board does not initiate revocation proceedings pursuant to 18.15.3.20 NMAC within thirty (30) days of the effective date of the immediate suspension.

(2) The board may, in its discretion, withdraw an immediate suspension for any reason but shall document its decision in writing.

[18.15.3.21 NMAC - N, 1/1/2007]

18.15.3.22 EXEMPTION OR VARIANCE:

A. Exemptions to act. The provisions of the Off-Highway Motor Vehicle Act shall not apply to persons who operate off-highway motor vehicles on privately held lands or to off-highway motor vehicles that are:

(1) owned and operated by an agency or department of the United States, this state or a political subdivision of this state;

(2) operated exclusively on lands privately held; provided that the appropriate tax or fee has been paid in lieu of the motor vehicle registration fees;

(3) owned by nonresidents and used in this state only for organized and endorsed competition purposes; provided that the use is not on a rental basis;

(4) brought into this state by manufacturers or distributors for wholesale purposes and not used for demonstrations;

(5) in the possession of dealers as stock-in-trade and not used for demonstration purposes;

(6) farm tractors, as defined in Section 66-1-4.6 NMSA 1978, special mobile equipment, as defined in Section 66-1-4.16 NMSA 1978, or off-highway motor vehicles being used for agricultural operations; or

(7) used exclusively on private closed courses, whether owned by the rider or another person; provided that, if applicable, the excise tax and registration fees have been paid and are current.

B. Petitions for exemption or variance. Any OHV safety training organization or instructor may petition for an exemption or variance from any of the requirements of this rule. Such petition shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation which necessitates the exemption or variance;

(3) describe the effect of complying with this rule on the organization and its students, and on its competitors and their students, or on the instructor if the exemption or variance is not granted;

(4) state how the exemption or variance will achieve the purposes of this rule and the Off-Highway Motor Vehicle Act; and

(5) state why the proposed alternative is in the public interest and is better than the requirement in the rule.

C. Stay of enforcement. Such petition may include a motion that the board stay the affected portion of these rules for the transaction specified in the motion.

D. Affidavit. Petitions for an exemption or a variance and motions for a stay must be supported by an affidavit

signed by the certificate holder or instructor, or other person with authority to bind the certificate holder or instructor.

E. The board may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

[18.15.3.22 NMAC - N, 1/1/2007]

HISTORY OF 18.15.3 NMAC:
[RESERVED]

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

Notice of Repeal

1.17.215 NMAC, Judicial Records Retention and Disposition Schedules for the New Mexico Court of Appeals, is hereby repealed and replaced with the new 1.17.215 NMAC, Judicial Records Retention and Disposition Schedules for the Court of Appeals, effective January 9, 2007.

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

December 6, 2006

Leo R. Lucero, Agency Analysis Bureau Chief

NM Commission of Public Records
1205 Camino Carlos Rey
Santa Fe, New Mexico 87507

Mr. Lucero:

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

* 1.17.215 NMAC JRRDS, Court of Appeals, and

* 1.18.630 NMAC ERRDS, Human Services Department

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

Sincerely,

Sandra Jaramillo
State Records Administrator

SJ/lrl

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS

1.17.215 NMAC JRRDS, Court of Appeals

1. Subject matter: 1.17.215 NMAC, Judicial Records Retention and Disposition Schedule for the Court of Appeals. This rule is new and replaces 1.17.215 NMAC JRRDS, New Mexico Court of Appeals an outdated version that was filed on 12/7/2001. This records retention and disposition schedule is a timetable for the management of specific records series for the Court of Appeals. It describes each record series by record name, record function, record content, record filing system, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the office as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Court of Appeals.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Court of Appeals. Persons and entities normally subject to the rules and regulations of the Court of Appeals may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Court of Appeals.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Court of Appeals. Any person or entity outside the covered geographical area that conducts business with or through the Court of Appeals may also be affected by this rule.

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

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87507. Telephone number: (505) 476-7900.

7. Effective date of this rule: January 9, 2007.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.17.215 NMAC JRRDS, Court of Appeals.

Alvin Garcia Date
Assistant Attorney General

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS

1.18.630 NMAC ERRDS, Human Services Department

1. Subject matter: 1.18.630 NMAC, Executive Records Retention and Disposition Schedule for the Human Services Department. This rule is an amendment to 1.18.630 NMAC ERRDS, Human Services Department filed on 1/9/2007. This records retention and disposition schedule is a timetable for the management of specific records series of the Human Services Department. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the Human Services Department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Human Services Department.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Human Services Department. Persons and entities normally subject to the rules and regulations of the

Human Services Department may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Human Services Department.

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

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

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

7. Effective date of this rule: January 9, 2007.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.630 NMAC ERRDS, Human Services Department.

Alvin Garcia Date
Assistant Attorney General

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an amendment to 11.4.2 NMAC, Section 9, effective December 29, 2006.

11.4.2.9 SAFETY:

A. Annual inspections:

(1) All employers, members of a group self-insurer or members of a governmental pool paying an annual workers' compensation insurance premium in excess of \$5,000.00 and all employers certified as individual self-insurers are required to have a safety inspection at least once per year. All other employers are encouraged to do so.

(2) The minimum standards for the annual safety inspection are contained in the WCA booklet, Annual Safety Inspections.

(3) All employers, individual self-insurers, members of a group self-insurer or members of a governmental pool shall submit proof of a safety inspection to the WCA within thirty (30) days of the completion of the inspection.

~~(4)~~ (4) Failure to comply with the annual safety inspection requirement may subject an employer to penalties under Section 52-1-6.2 NMSA 1978.

B. Extra-hazardous employers:

(1) An "extra-hazardous employer is:

(a) an employer whose average severity index for the twelve months preceding the designation is at least two standard deviations above the mean of the average severity indexes in the industry in which the employer is classified; or

(b) an employer whose average sum of severity indexes is at least two standard deviations above the mean of the average sum of severity indexes in the industry in which the employer is classified.

(2) The official reports to the WCA of notices of accident (Form E-1.2) and payment of benefits (Form E-6) shall definitively constitute the database from which the severity index for an employer is calculated. Additional or updated data not present in the E-1.2 or E-6 databases shall not be considered in the calculation of the severity index, the imposition of requirements or sanctions under this rule, nor for any other purpose. For purposes of administrative and judicial review, a copy of the WCA computer generated report showing the E-1.2 and E-6 report data used to calculate the employer's average severity index, together with an attestation from the database manager that the report is correct and accurate, shall be considered competent evidence of the correct data on which the severity index and average severity index should be calculated.

(3) The severity index for a particular injury shall be a number between 1 and 15, calculated by using the following table for assignment of values:

Type of benefit payable:	Medical only	TPD	TTD	PPD	PTD	Death
Rating:	0	1	2	3	4	5
Medical costs		\$0-1000	\$1001-5,000	\$5001-10,000	\$10,001-30,000	\$30,001 or greater
Rating:	0	1	2	3	4	5
Indemnity costs:		\$0-1000	\$1001-5,000	\$5001-10,000	\$10,001-30,000	\$30,001 or greater
Rating:	0	1	2	3	4	5

(4) The WCA shall utilize the E-1.2 and E-6 databases to calculate the severity index for each reported accident for an employer for which expenditures for benefits were made during the twelve (12) months preceding the calculation, utilizing the table set forth in Paragraph (3) of Subsection B of this section.

(5) The WCA shall calculate an average severity index and average sum severity index for the employer for all injuries reported to the WCA's E-1.2 and E-6 databases for the twelve (12) months immediately preceding the calculation. The calculations shall occur every six (6) months on a schedule to be determined by the director.

(6) The WCA shall compare the average severity index for the employer with the average severity index and average sum severity index of other employers in the same 2 digit NAICS code classification determined by the WCA to be appropriate for the employer, for the same time period, utilizing standard statistical techniques.

(7) The WCA shall give written notice to any employer, and the insurer or self-insurance entity, if any, that it determines to fall into the definition of "extra-hazardous" by personal service upon any person of suitable age and discretion at the business location or by certified mail addressed to the owner, proprietor, managing partner, president, majority stockholder, chief operational officer or manager of the business.

(8) Employers who have received a notice of classification shall have five (5) working days to file a written request for reconsideration with the director. No requirement under these rules shall be stayed during the pendency of a request for reconsideration. The director may hold hearings upon a request for reconsideration and make a determination as appropriate. Appeal of a ruling by the director shall be by writ of certiorari to the district court, pursuant to S.C.R.A. Rule 1-075.

(9) Within fifteen (15) days of service of a notice of classification, an extra-hazardous employer shall have a safety consultation performed at every location where it does business in New Mexico unless a more limited safety consultation is authorized in writing by the director, for good cause shown. The consultation must be performed by field office safety personnel, the employer's insurer or a safety consultant approved by the director. Field office safety personnel may assist employers in interpreting the requirement for a safety consultation and in conducting the consultation.

(10) Within five (5) working days of the safety consultation called for in Paragraph (8) of Subsection B of 11.4.2.9 NMAC the person performing the safety inspection shall submit a written report detailing any identified hazardous conditions and practices. The written report must be in a form acceptable to the director.

(11) Within ten (10) working days of the submission of the written report concerning the safety consultation, the extra-hazardous employer shall submit a specific accident prevention plan to resolve the hazards and practices identified in the written report. The plan must propose acceptable access to work sites and workers for field office safety personnel for the purpose of determining compliance with the plan. The director must approve the specific accident prevention plan. Any plan not approved by the director must be corrected and resubmitted for approval within ten (10) days of the notice of disapproval by the director.

(12) For good cause shown, the director may extend any time limit required by this part for up to thirty (30) additional days. _

(a) All applications for extension shall be submitted in writing and shall state with specificity the reasons for requested additional time.

(b) The director may hold hearings to determine the appropriateness of extensions of time for submission of specific accident prevention plans.

(c) The director's determination on a request for an extension is final.

(d) In the case of an extra-hazardous employer whose employees are assigned to furnish services to other employers, the responsibility for the development and submission of an accident prevention plan as required by these rules shall be with the employer who controls and provides direct on-site supervision of the workers who are exposed to the hazards and practices identified in the written report of the safety consultant.

(13) Any employer who fails to develop, submit, cause to be submitted, implement or comply with a specific accident prevention plan as provided for in these rules shall be subject to imposition of a penalty of up to \$5,000.00 per failure. Each incident of failure to formulate, submit, cause to be submitted, implement or comply with a specific accident prevention plan persisting for a period of fifteen (15) working days shall constitute a separate violation and subject the employer to additional penalties. The enforcement procedures established in Part Five (5) of these rules shall be utilized in all proceedings under this subsection.

(14) An employer shall no longer be designated as "extra-hazardous" when the provisions of Paragraphs (8) through (11) of Subsection B of 11.4.2.9 NMAC, inclusive, have been satisfied and when the average severity index for the employer and average sum of severity indexes for the employer both are less than two standard deviations from the industry mean as determined by a regularly scheduled calculation.

C. The employer, its insurer and all agents of the employer or insurer have the duty of compliance with reasonable requests for information from workers' compensation administration personnel. WCA personnel shall collect data regarding all work-place fatalities in New Mexico. [2/24/92, 10/30/92, 6/1/96, 4/30/98; 11.4.2.9 NMAC - Rn & A, 11 NMAC 4.2.9, 11/30/04; A, 12/29/06]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an amendment to 11.4.7 NMAC, Sections 7, 9, 10, and 17, effective January 1, 2007.

11.4.7.7 DEFINITIONS: For the purposes of these rules, the following definitions apply to the provision of all services:

A. "ASA relative value guide" means a document published by the American society of anesthesiologists which includes basic relative unit values for

each procedure code listed in the edition of the American medical association's *current procedural terminology* adopted in the director's annual order and unit values for anesthesia modifiers and qualifying circumstances. The current calendar year edition of the ASA relative value guide applies to these rules.

B. "Authorized health care provider (HCP)" means the health care provider selected in accordance with the act and the rules of the WCA.

C. "Average wholesale price (AWP)" means the average national price paid by pharmacies for pharmaceutical products, as determined and published at least monthly by any nationally recognized pricing guide.

D. "Balance billing" means submitting a bill to any party for the difference between the usual and customary charges and the maximum amount of reimbursement allowed for compensable health care services or items.

E. "Bill review" means the review of medical bills and/or associated medical records by a workers' compensation payer or its representative on behalf of the payer.

F. "By report (BR)" means a maximum fee for a service has not been established in the WCA schedule of maximum allowable payments.

G. "Business day" means any day on which the WCA is open for business.

H. "Caregiver" means any provider of health care services not defined and specified in NMSA 1978, Section 52-4-1.

I. "Case management" means the on-going coordination of health care services provided to an injured or disabled worker including, but not limited to:

(1) developing a treatment plan to provide appropriate health care service to an injured or disabled worker;

(2) systematically monitoring the treatment rendered and the medical progress of the injured or disabled worker;

(3) assessing whether alternate health care services are appropriate and delivered in a cost-effective manner based upon acceptable medical standards;

(4) ensuring that the injured or disabled worker is following the prescribed health care plan; and,

(5) formulating a plan for the return to work.

J. "Complaint" means a written request for workers' compensation benefits or any relief under the act, filed on a mandatory form with the clerk of the WCA by a worker, employer, insurance carrier.

K. "Completion of form

letter to health care provider" means all acts necessary to fully complete this form including, but not limited to, writing and/or dictating, transcription, research, and consultation but excluding the conduct of a physical examination or the taking of a medical history.

L. "Contractor" means any organization that has a legal services agreement currently in effect with the workers' compensation administration (WCA) for the provision of utilization review or case management or peer review services.

M. "Deposition" means any deposition ordered by a judge under the act.

N. "Diagnostic statistical manual for mental disorders (DSM)" means the current edition of the manual, which lists and describes the scientifically diagnosed mental disorders and is commonly referred to as "DSM".

O. "Director" means director of the workers' compensation administration (WCA).

P. "Durable medical equipment (DME)" means supplies and equipment that are rented, leased, or permanently supplied to a patient and which have been prescribed to aid the recovery or improve the function of an injured or disabled worker.

Q. "Descriptor" means the definition of a service that is represented in the schedule of maximum allowable payments.

R. "Employer" means, collectively: an employer subject to the act; a self-insured entity, group or pool; a workers' compensation insurance carrier or its representative; or any authorized agent of an employer or insurance carrier, including any individual owner, chief executive officer or proprietor of any entity employing workers.

S. "Failed appointment" means an appointment with a health care provider or caregiver for which the patient fails to show or arrives too late to be treated on the same day.

T. "Forms" means a bill for services that is rendered by a health care provider, caregiver, or supplier submitted on one of the following forms as mandated in these rules:

(1) CMS-1500 (12-90) effective until June 1, 2007, CMS-1500 (08/05) effective June 1, 2007

(2) Form UB-92 effective until June 1, 2007, CMS-1450, UB04, effective June 1, 2007.

U. "Freestanding ambulatory surgical center (FASC)" means a separate facility that is licensed by the New Mexico department of health as an ambulatory surgical center.

V. "Health care provider (HCP)" means any person, entity, or facility authorized to furnish health care to an injured or disabled worker pursuant to NMSA 1978, Section 52-4-1, including any provider designated pursuant to NMSA 1978, Section 52-1-49, and may include a provider licensed in another state if approved by the director, as required by the act. The director has determined that certified registered nurse anesthetists (CRNAs) and certified nurse specialists (CNSs) who are licensed in the state of New Mexico are automatically approved as health care providers pursuant to NMSA 1978, Section 52-4-1(O).

W. "Hospital" means any place currently licensed as a hospital by the department of health pursuant to NMSA 1978, Section 52-4-1(A), where services are rendered within a permanent structure erected upon the same contiguous geographic location as are all other facilities billed under the same name.

X. "Independent medical examination (IME)" means a specifically requested evaluation of an injured or disabled worker's medical condition performed by an HCP, other than the treating provider, as provided by NMSA 1978, Section 52-1-51.

Y. "International classification of diseases (ICD-9-CM)" means a set of numerical diagnostic codes, 9th revision, that is commonly referred to as ICD-9.

Z. "Materials supplied by health care provider (CPT Code 99070)" means supplies and materials over and above those usually included with the HCP's or caregiver's services and which are not governed by the durable medical equipment paragraph of these rules. Examples include sterile trays, unit doses of drugs, bandages, elastic wraps, initial casting, splinting and strapping materials, removable splints, slings, etc.

AA. "Maximum allowable payment (MAP)" means the maximum amount payable for any outpatient services, not including emergency department visits, outpatient surgery visits, or New Mexico gross receipts tax.

BB. "Maximum amount of reimbursement due" means the maximum payment for any service that is the lesser of the contract amount or the amount appropriately calculated by one of the following official methods:

(1) the assigned ratio discount method which is the hospital's [or FASC's] established usual and customary charge for compensable services multiplied by the assigned ratio, plus any applicable New Mexico gross receipts tax; or,

(2) the maximum allowable payment method which is the lesser of the usual and customary fee, the contract amount or

the MAP, plus any applicable New Mexico gross receipts tax; or,

(3) the pharmacy maximum allowable payment (Pharm MAP) which is the maximum payment that a pharmacy or authorized HCP may receive for any prescription drug, plus any applicable New Mexico gross receipts tax; or,

(4) the contract amount which is a contractually negotiated fee between the practitioner and the payer that does not exceed the MAP or the assigned ratio for the service.

CC. "Medical records" means:

(1) all records, reports, letters, and bills produced or prepared by an HCP or caregiver relating to the care and treatment rendered to the worker;

(2) all other documents generally kept by the HCP or caregiver in the normal course of business relating to the worker, including, but not limited to, clinical, nurses' and intake notes, notes evidencing the patient's history of injury, subjective and objective complaints, diagnosis, prognosis and/or restrictions, reports of diagnostic testing, hospital records, logs and bills, physical therapy records, and bills for services rendered, but does not include any documents that would otherwise be inadmissible pursuant to NMSA 1978, Section 52-1-51(C).

DD. "NPI" means national provider identifier: a standard unique health identifier for health care providers (effective 6/01/2007).

DD.] EE. "New Mexico gross receipts tax (NMGRT)" means the gross receipts tax or compensating tax as defined in Chapter 7, Article 9 of the New Mexico Statutes Annotated 1978 (the "Gross Receipts and Compensating Tax Act"). This tax is collected by the New Mexico taxation and revenue department.

EE.] FF. "New patient" means a patient who is new to the HCP, group practice, or caregiver and/or whose medical and administrative records need to be established. A patient shall also be considered a new patient if seen for a new injury or disability or when a lapse of three (3) or more years from the most recent prior visit has occurred.

FF.] GG. "Outpatient hospital services" means any diagnostic test or procedure, therapeutic treatment/procedure, drugs, supplies, durable medical equipment, and/or other services and items provided to a worker not involving an inpatient stay, emergency department visit or outpatient surgery.

GG.] HH. "Outpatient surgery visit" means a visit, not involving an overnight stay (less than 24 hours), to a hospital owned and operated treatment center or a freestanding ambulatory surgery

center.

HH.] II. "Peer review" means an individual case by case review of services for medical necessity and appropriateness conducted by an HCP licensed in the same profession as the HCP whose services are being reviewed.

II.] JJ. "Peer review opinion" means referral by the WCA, or its contractor, if any, upon approval and agreement to pay by the payer, for peer review services to answer specific questions concerning issues arising in the course of the contractor's services.

JJ.] KK. "Physical impairment ratings (PIR)" means an evaluation performed by an MD, DO, or DC to determine the degree of anatomical or functional abnormality existing after an injured or disabled worker has reached maximum medical improvement. The impairment is assumed to be permanent and is expressed as a percent figure of either the body part or whole body, as appropriate, in accordance with the provisions of the Workers' Compensation Act and the most recent edition of the American medical association's guides to the *evaluation of permanent impairment* (AMA guide).

KK.] LL. "*Physicians' current procedural terminology* ("CPT")" means a systematic listing and coding of procedures and services performed by HCPs of the American medical association, adopted in the director's annual order. Each procedure or service is identified with a numeric or alphanumeric code (CPT code). This was developed and copyrighted by the American medical association.

LL.] MM. "Practitioner" as used throughout this rule means any HCP, pharmacy, supplier, caregiver, or freestanding ambulatory surgical center — individually or in combination — as appropriate to the context of the paragraph in which it is used.

MM.] NN. "Prescription drug" means any drug, generic or brand name, which requires a written order from an authorized HCP for dispensing by a licensed pharmacist or authorized HCP.

NN.] OO. "Ratio report worksheet definitions":

(1) "Adjusted net revenues" means patient revenues plus other operating revenues minus authorized deductions indicated on the worksheet.

(2) "Adjusted operating expenses" means the sum of hospital operating expenses, as recorded on an accrual basis, including non-physician salaries and wages, non-physician employee benefits, non-physician professional fees, supplies utilities, depreciation, amortization, interest paid, state and local taxes paid, administrative and facility overhead expenses and related organizational expenses. All income

tax paid or due is excluded from adjusted operating expenses. Physician expenses, as defined in this section, are subtracted from operating expenses to derive adjusted operating expenses.

(3) "Contractual allowances" means gross patient charges at established rates minus the amounts received or to be received.

(4) "Generally accepted accounting principles (GAAP)" means accounting principles that encompass the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time as published by the governmental accounting standards board.

(5) "Medicaid/medicare contractual allowances" means gross patient charges at established rates minus the amounts received or to be received from the patient or the program under the agreement or contract between the participating hospital or freestanding ambulatory care center and the United States department of health and human services.

(6) "New hospital" means a hospital, as defined in NMSA 1978, Section 52-4-1, which has not completed its first full fiscal year.

(7) "Other allowances" means gross patient charges at the hospital's established usual and customary rates minus the amounts received or to be received under contractual agreements with non-governmental third party payers or courtesy discounts.

(8) "Other governmental contractual allowances" means unreimbursed charges for contractual allowances including, but not limited to, governmental entities like CHAMPUS and the veterans' administration.

(9) "Other operating revenues" means revenues received from patients for non-patient care. Grants, gifts, and investment income are not included.

(10) "Physician expenses" means salaries, benefits, contractual fees, educational expenses, and travel expenses paid to or on behalf of physicians by a hospital or freestanding ambulatory surgical center.

(11) "Physician professional fees" means fees for professional services provided by a physician and billed by a hospital or freestanding ambulatory surgical center.

(12) "Related organizational expenses" means expenses applicable to services, facilities, and supplies furnished to the hospital or freestanding ambulatory surgical center by organizations related to the hospital or ambulatory surgical center by a common ownership or control.

~~[OO]~~ **PP.** "Referral" means the sending of a patient by the authorized HCP to another practitioner for evaluation or treatment of the patient and it

is a continuation of the care provided by the authorized HCP.

~~[PP]~~ **QQ.** "Rules of the WCA" means rules enacted by the WCA and cited as 11.4 NMAC.

(1) These rules are organized by title, chapter, part, section, paragraph, and subparagraph.

(2) For ease of use, these rules may be referred to in writing and speech by part, section, paragraph, and subparagraph.

~~[QQ]~~ **RR.** "Services" means health care services, the scheduling of the date and time of the provision of those services, procedures, drugs, products or items provided to a worker by an HCP, pharmacy, supplier, caregiver, or freestanding ambulatory surgical center which are reasonable and necessary for the evaluation and treatment of a worker with an injury or occupational disease covered under the New Mexico Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law.

~~[RR]~~ **SS.** "Service component modifiers (radiology and pathology/laboratory)" means the designation of radiology and pathology or laboratory procedures that are divided into professional and technical components for billing purposes.

(1) "Professional component (modifier code "-26")" means that portion of a diagnostic or therapeutic procedure which consists of the physician's professional services (an examination of the patient, the performance or supervision of the procedure, and an interpretation and written report of the procedure findings) and must be coded with the modifier-26.

(2) "Technical component (modifier code "-27")" means that portion of a diagnostic or therapeutic procedure which includes the provision of personnel, materials, space, equipment, etc., necessary to perform the procedure must be coded with the modifier -27).

~~[SS]~~ **TT.** "Special report" means a practitioner's preparation of a written response to a request for information or records, requiring the creation of a new document or the previously unperformed analysis of existing data.

~~[TT]~~ **UU.** "Surgical modifiers" means:

(1) "bilateral procedure suffix code "-50"" used for the second procedure when performed during the same operative session;

(2) "multiple procedures suffix code "-51"" used when secondary or lesser surgical procedures are performed during the same operative session as the primary or major surgical procedure;

(3) "assistant surgeon suffix code "-80"" used to identify services performed by an assistant surgeon during a surgical

procedure.

~~[UU]~~ **VV.** "Unbundling" means coding and billing separately for procedures that do not warrant separate identification because they are an integral part of a service for which a corresponding CPT code exists.

~~[VV]~~ **WW.** "Unlisted service or procedure" means a service performed by an HCP or caregiver which is not listed in the edition of the American medical association *physicians' current procedural terminology* referenced in the director's annual order or has not otherwise been designated by these rules.

~~[WW]~~ **XX.** "Usual and customary fee" means the monetary fee that a practitioner normally charges for any given health care service. It shall be presumed that the charge billed by the practitioner is that practitioner's usual and customary charge for that service unless it exceeds the practitioner's charges to self-paying patients or non-governmental third party payers for the same services and procedures.

~~[XX]~~ **YY.** "Utilization review" means the evaluation of the necessity, appropriateness, efficiency, and quality of health care services provided to an injured or disabled worker.

~~[YY]~~ **ZZ.** "Worker" means an injured or disabled employee. [4-1-91, 12-30-91, 12-31-91, 2-24-92, 10-30-92, 1-15-93, 3-18-94, 1-31-95, 8-1-96, 8-15-97, 10-01-98; 11.4.7.7 NMAC - Rn, 11 NMAC 4.7.7, 8-30-02; A, 10-25-02; A, 1-14-04; A, 1-14-05; A, 1-1-07]

11.4.7.9 PROCEDURES FOR ESTABLISHING THE MAXIMUM AMOUNT OF REIMBURSEMENT DUE

A. All hospitals shall be reimbursed at the hospital ratio itemized in the official WCA listing that becomes effective on December 31, 2006 for all services rendered from December 31, 2006, through December 31, 2007, except as provided in Subsection B of this temporary rule. Any new hospital shall be assigned a ratio of 67%.

(1) The assigned ratio is applied toward all charges for compensable services provided during a hospital inpatient stay, emergency department visit and outpatient hospital surgery.

(2) This ratio does not include procedures that are performed in support of surgery, even if performed on the same day and at the same surgical site as the surgery.

(3) Appeal of assigned ratio by hospitals:

(a) A written appeal may be filed with the director within thirty (30) days of the assignment of the ratio. The administra-

tion will review the appeal and respond with a written determination. The administration may require the hospital to provide additional information prior to a determination.

(b) If the hospital is not satisfied with the administration's written determination, within ten (10) calendar days of the date of the determination, the hospital may request that a formal hearing be set and conducted by the director. The director's rulings in all such formal hearings shall be final.

B. The following services and items will be reimbursed as specified, commencing with services provided on or after 12:01 A.M. December 31, 2006:

(1) Implants and hardware implanted or installed during surgery in the setting of a hospital shall be reimbursed at invoice cost times 1.25 plus shipping and handling for the implant or hardware and NMGR. T.

(2) The professional and technical charges for radiology and pathology/laboratory services provided in a hospital shall be paid at rates equivalent to those set forth in the most current version of the MAP. The hospital shall provide a detailed billing breakdown of the professional and technical components of the services provided, and shall be paid pursuant to the procedures set forth at Paragraph (7) of Subsection G of 11.4.7.9 NMAC of these rules.

C. All hospitals shall provide to the WCA:

(1) the most recent full year filing of their HCFA/CMS 2552 G-2 worksheet prepared on behalf of the organization, by February 1, 2007;

(2) any hospital may specifically designate this worksheet as proprietary and confidential; any worksheet specifically designated as proprietary and confidential in good faith shall be deemed confidential pursuant to NMSA 1978, Section 52-5-21 and the rules promulgated pursuant to that provision.

(3) Failure to comply may result in fines and penalties.

D. All provisions of 11.4.7 NMAC contrary to the provisions set forth in this temporary rule are deemed void and inoperative during the effective period of this rule.

E. Method of payment for FASCs:

(1) All FASCs will provide global billing by CPT code on a CMS-1500 and shall be paid by the assigned centers for Medicare and Medicaid services (CMS) ambulatory payment classification (APC) base payment rate times 1.3 effective for services from December 31, 2006, to December 31, 2007. See <http://www.cms.hhs.gov/HospitalOutpatientPPS>, under Addendum B. No adjusted conversion factors or index values are to be

applied. Payment will be made in accordance with the APC base payment rate assigned for that service in the quarter in which services were rendered. Absent an assigned APC base payment rate, services shall be paid BR.

(a) Bilateral procedure "-50"

(i) When performed during the same operative session, the first or major procedure shall be coded with the appropriate CPT code without a modifier and shall be paid at the lesser of billed charges or the APC base payment rate times 1.3.

(ii) The second procedure shall be coded with the same CPT code plus the "-50" modifier code and shall be paid at no more than 50% of the APC base payment rate times 1.3.

(b) Multiple procedures "-51"

(i) The primary or major surgical procedure shall be coded with the appropriate CPT code without a modifier and shall be paid at the lesser of the billed charges or the APC base payment rate times 1.3.

(ii) The second and third procedure shall be coded with the respective CPT code plus the "-51" modifier code and shall be paid at 50% of the APC base payment rate times 1.3.

(iii) The fourth and subsequent procedures will be paid BR.

(2) Implants and hardware implanted or installed during surgery in the setting of a FASC shall be reimbursed at invoice cost times 1.25 plus shipping and handling for the implant or hardware and NMGR. T.

(3) The professional and technical charges for radiology and pathology/laboratory services provided in a FASC shall be paid at rates equivalent to those set forth in the most current version of the MAP. The FASC shall provide a detailed billing breakdown of the professional and technical components of the services provided, and shall be paid pursuant to the procedures set forth at Paragraph (7) of Subsection G of 11.4.7.9 NMAC of these rules.

F. Subsections A-E of 11.4.7.9 NMAC, inclusive, shall be repealed effective 11:59 P.M. December 31, 2007, and shall be of no force or effect with respect to any services provided thereafter.

G. Maximum allowable payment method

(1) Basic provisions

(a) These rules apply to all charges for medical and other health care treatment provided on an outpatient basis, including procedures that are performed in support of ambulatory surgery, even on the same day and at the same site as the surgery.

(b) The MAP is procedure-specific and provider-neutral. Any code listed in the edition of the *physicians current proce-*

dural terminology adopted in the director's annual order may be used to designate the services rendered by any qualified practitioner within the parameters set by that practitioner's licensing regulatory agencies combined with applicable state laws, rules, and regulations.

(c) For purposes of NMSA 1978, Section 52-4-5(A) (1990), the director shall issue an order not less than once per annum setting the schedule of maximum allowable payments for medical services. The order shall contain the revised fee schedule, a brief description of the technique used for derivation of the fee schedule and a reasonable identification of the data upon which the fee schedule was based. The fee schedule shall be released to the public not less than 30 days prior to the date upon which it is adopted and public comments will be accepted during the 30 days immediately following release. After consideration of the public comments the director shall issue a final order adopting a fee schedule, which shall state the date upon which it is effective. The final fee schedule order shall be available at the WCA clerk's office not less than ten days prior to its effective date.

(2) Evaluation and management (E/M) services:

(a) The definition for "new patient" is unique to New Mexico, differing from the definition presented in the *physicians' current procedural terminology*. (See Subsection EE of 11.4.7.7 NMAC)

(b) E/M CPT codes shall not be pro-rated.

(3) Independent medical examinations

(a) All IMEs and their fees must be authorized by the claims payer prior to the IME scheduling and service, regardless of which party initiates the request for an IME. In the event of an IME ordered by a judge, the judge will set the fee.

(b) In the event a worker fails to provide 48 hours' notice of cancellation of an IME appointment, the HCP may be reimbursed either 60% of the pre-approved fee or up to 60% of the HCP's usual and customary fee if a fee was not pre-approved. "Missed IME" should be written next to the code.

(4) Physical impairment ratings

(a) All PIRs and their fees shall be authorized by the claims payer prior to their scheduling and performance regardless of which party initiated the request for a PIR. The PIR is inclusive of any evaluation and management code.

(b) Impairment ratings performed for primary and secondary mental impairments shall be billed using CPT code 90899 (unlisted psychiatric service/procedure) and shall conform to the guidelines, whenever possible, presented in the most recent edition of the AMA guides to the evaluation of

permanent impairment.

(c) A PIR is frequently performed as an inherent component of an IME. Whenever this occurs, the PIR may not be unbundled from the IME. The HCP may only bill for the IME at the appropriate level.

(d) In the event that a PIR with a specific HCP is ordered by a judge and the HCP and claims payer are unable to agree on a fee for the PIR, the judge may set the fee or take other action to resolve the fee dispute.

(5) Physical medicine and rehabilitation services

(a) It shall be the responsibility of the physical medicine/rehabilitation provider to notify the claims payer of a referral prior to commencing treatment.

(b) The appropriate CPT code must be used for billing by practitioners.

(c) Services provided by caregivers (e.g., technicians, exercise physiologists) must be pre-authorized and paid pursuant to Paragraph (13) of Subsection G of 11.4.7.9 NMAC.

(d) In the event a worker fails to provide 48 hours notice of cancellation of an FCE appointment, the practitioner may be reimbursed up to 60% of the MAP for a four-hour appointment.

(6) Materials supplied under CPT code 99070

(a) Supplies and materials must be itemized.

(b) Supplies and materials are reimbursed at the practitioner's invoice cost plus 25%, plus tax, shipping and handling charges.

(c) A copy of the invoice shall be provided either at the time of billing or upon the payer's request.

(7) Service component modifiers — radiology and pathology/laboratory

(a) Use of the technical and professional component modifier codes is required for the billing of all radiology and pathology/laboratory procedures. The CPT code followed by "TC" is the appropriate billing code for the technical component.

(b) The dollar value listed as the MAP for a specific radiology or pathology/laboratory procedure represents the combined maximum allowable payment for both the technical and professional components of that procedure:

(i) The entity billing for the technical component shall be paid at no more than 60% of the MAP for the procedure when the service is provided on an inpatient or outpatient basis.

(ii) The entity billing for the professional component shall be paid at no more than 40% of the MAP for the billed procedure, whether the service was provided on an inpatient or an outpatient

basis.

(8) Surgical modifiers

(a) Bilateral procedure "-50"

(i) When performed during the same operative session, the first or major procedure shall be coded with the appropriate CPT code without a modifier and shall be paid at the lesser of billed charges or the MAP.

(ii) The second procedure shall be coded with the same CPT code plus the "-50" modifier code and shall be paid at no more than 50% of the MAP.

(b) Multiple procedures "-51"

(i) The primary or major surgical procedure shall be coded with the appropriate CPT code without a modifier and shall be paid at the lesser of the billed charges or the MAP.

(ii) The second and third procedure shall be coded with the respective CPT code plus the "-51" modifier code and shall be paid at 50% of the MAP.

(iii) The fourth and subsequent procedures will be paid BR.

(c) Assistant surgeon "-80"

(i) The attending surgeon shall bill using the appropriate CPT code(s) and modifiers, if applicable, for the procedure(s) performed and shall be paid at the lesser of the billed charges or the MAP, subject to the percentages for modifiers in this section.

(ii) The assistant surgeon shall bill using the appropriate CPT codes(s) plus the modifier for the procedures performed and shall be paid at no more than 25% of the MAP.

(9) Unlisted services or procedures are billable and payable on a BR basis.

(10) Performance of BR services.

(a) The fee for the performance of any BR service is negotiated between the practitioner and the payer prior to delivery of the service. Payers should ensure that a CPT code with an established MAP is not available.

(b) Performance of any BR service requires that the practitioner submit a written report with the billing to the payer.

(i) The report shall substantiate the rationale for not using an established CPT code.

(ii) The report shall include pertinent information regarding the nature, extent, and special circumstances requiring the performance of that service and an explanation of the time, effort, personnel, and equipment necessary to provide the service.

(iii) Information provided in the medical record(s) may be submitted in lieu of a separate report if that information satisfies the requirements of

Paragraph (1) of Subsection D of 11.4.7.10 NMAC.

(iv) No separate charge is allowed for the report.

(v) In the event a dispute arises regarding the reasonableness of the fee for a BR service, the practitioner shall make a prima facie showing that the fee is reasonable. In that event, the burden of proof shall shift to the payer to show why the proposed fee is not reasonable.

(vi) Any disputes shall be submitted pursuant to Section 13 of this rule.

(11) Special reports shall be billed with CPT code "99080" and the descriptor "special report". The form letter to health care provider is a special report. The MAP is \$45.

(12) The use of global fees is encouraged, however global fee shall not be used unless payer and provider agree. Agreement for use of a global fee may be sought and obtained before, during or after provision of services. All services not covered by the global fee shall be coded and paid separately, to the extent substantiated by medical records. Agreement to use a global fee creates a presumption that the HCP will be allowed to continue care throughout the global fee period.

(13) Caregiver services are subject to the payer's pre-authorization prior to the scheduling and performance of any service. All services provided by caregivers are paid BR.

(14) Durable medical equipment (DME) shall be pre-authorized by the payer. However, reasonable and necessary prosthetic/orthotics training and/or adjusting is excluded from the cost of the DME and may be billed separately.

(a) Rental of DME shall not exceed 90 days unless it is determined by the payer to be more cost efficient to do so.

(b) Rental fees shall not exceed the cost of purchase established in the Subparagraph, below. Rental fees paid for the first 30 days of rent may be applied against the purchase price. Subsequent rental fees may not be applied against the purchase price. The decision to purchase should be made within the first 30 days of rental.

(c) Purchases of DME are paid at the practitioner's invoice cost plus 25% plus taxes, shipping and handling charges.

(d) A copy of the invoice shall be provided either at the time of billing or upon the payer's request.

(15) Prorating

(a) The prorating of the practitioner's fees for time spent providing a service, as documented in the provider's treatment notes, is not prohibited by these rules; provided however, that EOB — 13 is sent to

the practitioner. (See item (iii) of Subparagraph (e) of Paragraph (4) of Subsection C of 11.4.7.11 NMAC).

(b) The practitioner's fees should not be prorated to exclude time spent in pre- and post-treatment activity, such as equipment setup, cleaning, disassembly, etc., if it is directly incidental to the treatment provided and is adequately documented.

(16) Referrals

(a) If a referral is made within the initial sixty (60) day care period as identified by NMSA 1978, Section 52-1-49(B), the period is not enlarged by the referral.

(i) When referring the care of a patient to another provider, the referring provider shall submit complete medical records for that patient, upon request of the referral provider, at no charge to the patient, referral provider or payer.

(ii) When transferring the care of a patient to another provider, the transferring provider shall submit complete medical records for that patient to the subsequent provider at no charge to the patient, subsequent provider or payer.

(b) If, subsequent to the completion of a consultation, a referral is made to the consultant for the assumption of responsibility for the management of a portion or all of the patient's condition(s), the following procedures apply:

(i) Follow up consultation codes shall not be used.

(ii) Evaluation and management codes shall be used.

(iii) Only established patient codes shall be used.

(c) If a practitioner who has been requested to examine a patient assumes responsibility immediately for primary provision of the patient's care, it shall be considered a referral and not a consultation.

(i) Consultation codes shall not be used.

(ii) Evaluation and management codes shall be used.

(iii) For the first visit only, a new patient code may be used.

(iv) HCPs and caregivers may negotiate with the payer, prior to performing the service, regarding the use of consultation codes in appropriate circumstances.

(17) Physical therapy

(a) New Mexico specific codes are no longer in use. Please consult the fee schedule currently in use for specific codes. Evaluation and management codes are not appropriate for this purpose.

(b) Physical therapy bills may include all codes which are reasonable and necessary for the evaluation and treatment of a worker in a single day.

(c) An initial failed appointment, without providing 48 hours' notice to the physical therapist, may be billed at 60% of

the MAP.

(18) Failed appointments

(a) An initial failed appointment, when the new patient fails to provide 48 hours notice to the HCP, may be billed at the level of a new outpatient/expanded problem focused H&E/low to moderate severity/straightforward medical decision making/evaluation and management service, using CPT code 99202 and annotated as "FAILED INITIAL APPOINTMENT/NEW PATIENT"

(b) A failed appointment by an established patient may not be billed.

(19) Facility fees

(a) Charges for the use of a room for other than an emergency room visit or operating and recovery rooms for inpatient or outpatient hospital surgery are prohibited by these rules.

(b) For instances of outpatient services, where two or more HCPs combine in delivery of the service, the maximum total payment is based on the MAP for the specific service. The HCPs may allocate the payment among themselves.

(20) Charges for copies of radiographic film (X-rays) may be billed to the requestor by the X-ray facility following by report (BR) procedures.

(21) Second medical opinions requested by a party are deemed medically reasonable and necessary for payment purposes.

H. Pharmacy maximum allowable payment (Pharm MAP) is based upon the maximum payment that a pharmacy or authorized HCP is allowed to receive for any prescription drug, not including NMGR.T.

(1) Basic provisions

(a) Pharmacies and authorized HCPs must include patient identification and information. No specific form is required.

(i) Pharmacies shall not dispense more than a 30-day supply of medication unless authorized by the payer.

(ii) Only generic equivalent medications shall be dispensed unless a generic does not exist and unless specifically ordered by the HCP.

(iii) Compounded medication prepared by pharmacists shall be paid on a by report (BR) basis.

(b) Any medications dispensed and administered in excess of a 24-hour supply to a registered emergency room patient shall be paid according to the MAP.

(c) Health care provider dispensed medications shall not exceed a 10 day supply for new prescriptions only. The payment for health care provider dispensed medications shall not exceed the cost of a generic equivalent.

(d) Any bill that is submitted without an NDC number will be paid at the

lowest AWP available for the month in which the drugs were dispensed.

(e) The HCP formula for billing generic and brand name prescription drugs is:

($\text{\$}$)AWP x .90 with no dispensing fee included.

(2) Average wholesale price (AWP)

(a) Any nationally recognized monthly or weekly publication that lists the AWP may be used to determine the AWP.

(b) The date that shall be used to determine the AWP and calculation of the Pharm MAP shall be the date on which the drugs were dispensed, regardless of AWP changes during the month.

(c) Use of a prorated calculation of AWP will often be necessary in the formulas. For each drug dispensed, the prorated AWP shall be based on the AWP for the "100s ea" quantity of the specific strength of the drug, as listed in a nationally recognized publication, with the following exceptions:

(i) If an AWP listed in the publication is based on the exact quantity of the drug dispensed, e.g., #15, #60, 15 ml, 3.5 gm, etc., the AWP for the exact quantity shall be used with no prorating calculation made.

(ii) If the drug is dispensed as a quantity based on volume (grams, ounces, milliliters, etc.) rather than single units ("ea"), the prorated AWP shall be calculated in accordance with the highest quantity (volume) listed for the specific strength of drug.

(iii) [Subject to items (i) and (ii) of Subparagraph (b) of Paragraph (2) of Subsection C of 11.4.7.9 NMAC, in] In cases of a conflict between referenced publications, the lower price shall prevail.

(3) The formula for billing generic and brand name prescription drugs is:

Pharm MAP($\text{\$}$) = ($\text{\$}$)AWP x .90 + $\text{\$}$ 5.00.

I. Qualification of out of state health care providers

(1) An HCP that is not licensed in the state of New Mexico must be approved by the director to qualify as an HCP under the act.

(2) No party shall have recourse to the billing and payment dispute resolution provisions of these rules with respect to the services of an HCP who is not licensed in New Mexico or approved by the director.

(3) The director's approval may be obtained by submitting a written motion and order, supported by an original affidavit of the HCP seeking approval, on forms acceptable to the director. Nothing in this rule shall prevent the director from entering into agreements with any party or HCP to provide for simplified and expeditious qualification of HCPs in individual cases, pro-

vided, however, that all such agreements shall be considered public records.

(4) The director's approval of a health care provider in a particular case, pursuant to the provisions of Section 52-4-1, will be deemed given when an out of state health care provider provides services to that injured worker and the employer/insurer pays for those services. The approval obtained by this method will not apply to the provision of health care by that provider to any other worker, except by obtaining separate approval as provided in these rules. [01-24-91, 4-1-91, 12-30-91, 12-31-91, 1-18-92, 10-30-92, 1-15-93, 10-28-93, 2-23-94, 3-14-94, 12-2-94, 1-31-95, 8-1-96, 9-1-96, 8-15-97, 4-30-98, 10-01-98, 6-30-99; 11.4.7.9 NMAC - Rn & A, 11.4.7.9 NMAC, 8-07-02; A, 10-25-02; A, 1-14-04; A, 1-14-05; A, 12-30-05; A, 12-31-06; A, 1-1-07]

11.4.7.10 BILLING PROVISIONS AND PROCEDURES

A. Basic provisions

(1) Balance billing is prohibited.

(2) Unbundling is prohibited.

(a) If a service that is ordinarily a component of a larger service is performed alone for a specific purpose it may be considered a separate procedure for coding, billing, and payment purposes.

(b) Documentation in the medical records must justify the reasonableness and necessity for providing such services alone.

(3) The patient/worker shall not be billed for health care services provided by an authorized HCP as treatment for a valid workers' compensation claim except as provided in Subparagraphs (a) or (b) of Paragraph (2) of Subsection A of 11.4.7.13 NMAC.

(4) All reasonable and necessary services provided to a patient/worker with a valid workers' compensation claim shall be paid by the employer or the employer's representative on behalf of the employer.

(5) If a service has been pre-authorized or is provided pursuant to a treatment plan that has been pre-authorized by an agent of the payer, it shall be rebuttably presumed that the service provided was reasonable and necessary. The presumption may be overcome by competent evidence that the payer, in the exercise of due diligence, did not know that the compensability of the claim was in doubt at the time that the authorization was given.

(6) Timeliness

(a) Initial billing of outpatient services by practitioners, other than hospitals and FASC's, shall be postmarked no later than 30 calendar days from the date of service.

(b) Initial billing of outpatient services by hospitals and FASCs shall be postmarked within 30 days from the end of

the month in which services were rendered.

(c) Initial billing of inpatient services shall be issued no later than 60 calendar days from the date of discharge.

(d) Failure of the practitioner to submit the initial billing within the time limits provided by these rules shall constitute a violation of these rules but does not absolve the employer of financial responsibility for the bill.

B. Billing forms have been adopted from the US department of health and human services' health care financing administration.

(1) Billing for services calculated according to the ratio discount method must be on a UB-92 (effective until 6/1/07), UB04 (effective 6/1/07), CMS-1450. This includes inpatient services, emergency room services and hospital outpatient surgery.

(2) Billing for services calculated according to the MAP and provided by hospitals may be on form UB-92 (effective until 6/1/07), UB04 (effective 6/1/07), CMS-1450 or form CMS-1500. FASCs shall bill for services on a CMS-1500.

(3) Billings for all outpatient services calculated according to the MAP must be on form CMS-1500.

(4) Pharmacies and authorized HCPs must include patient identification and appropriate information. Billings for pharmaceuticals requires no specific form.

(5) Completion of forms

(a) "WORKERS' COMPENSATION" or "WORK COMP" shall be clearly printed or stamped at the top of the billing form. Any subsequent billing for the same service(s) must be clearly labeled "TRACER" or "TRACER BILL" at the top of the billing form and may be a copy of the original bill.

(b) Entry of the applicable CPT code and a descriptor are mandatory for each procedure billed, regardless of which form or itemized statement is utilized.

(c) FORM CMS-1500 (12/90) information required for completion is self-explanatory with the following exceptions:

(i) Sections 6, 9, 11a-d, 12, 13, 17a, 19, 22, 23, 24h-k, and 27 are not applicable.

(ii) Section 1. Check "Other".

(iii) Section 1a. Enter patient's social security number.

(iv) Section 4. Enter employer's name.

(v) Section 7. Enter employer's address and telephone number.

(vi) Section 11. Name of workers' compensation insurance carrier or self-insured employer or third party administrator.

(vii) Section 21. Enter

ICD-9-CM or DSM code and descriptor for each diagnosis.

(viii) Section 24d. Entry of a specific CPT code, any applicable modifier and the descriptor is mandatory for each procedure/service billed.

(ix) Section 26. Optional

(x) Section 28. Multiple page bills should show the cumulative total in Section 28 of each consecutively numbered page, with the combined total for all pages on the last page.

(xi) Section 29. This section may be used to indicate any agreed upon discount amount or rate.

(xii) Section 30. This section may be used to indicate the amount due after applying any discounts. Otherwise, leave it blank.

(xiii) Anesthesiologists and laboratories may omit Sections 14, 15, and 16.

(d) Form CMS-1450 (UB-92) must be completed by health care facilities (effective until 6/1/2007):

(i) Locators that are optional on the UB-92 are 8, 9, 10, 11, 31, 33, 34, 35, 36, 37, 38, 48, 49, 51, 52, 53, 54, 55, 57, 59, 64, 79, and 84.

(ii) The following locators on the UB-92 must be completed by the health care facilities: 1, 2, 3, 4, 5, 6, 7, 12, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24-30, 32, 42, 43, 44, 47, 50, 56, 58, 60, 65, 67, 76, 78, 80.

(iii) Locator 1. Practitioner name, address, and telephone number.

(iv) Locator 2. Site of service - name and address.

(v) Locator 3. Account number or invoice number.

(vi) Locator 4. Enter Code 111, 115, 117, 121, 125, 127, 851, 855, or 857 for inpatient; 131, 135, 137 for outpatient and for emergency room; 831 for FASC. (Note: if Locator 42 contains an entry beginning with "45", then the service was emergency room, not outpatient.)

(vii) Locator 5. Hospital federal tax identification number.

(viii) Locator 6. Statement coverage dates must be provided.

(ix) Locator 7. Covered days - the days during the billing period applicable to the cost report.

(x) Locator 12. Injured worker's name.

(xi) Locator 14. Injured worker's birth date.

(xii) Locator 17. Date of admission to hospital or facility.

(xiii) Locator 19. Type of admission., code values: 1 = emergency, 2 = urgent, 3 = elective, 5 = trauma center, 9

= information unavailable.

(xv) Locator 20. Source of admission code values: 1 = physician referral, 2 = clinic referral, 3 = HMO referral, 4 = hospital transfer, 6 = transfer from HCF, 7 = ER, 8 = law enforcement, 9 = unavailable, A = transfer from (CAH).

(xv) Locator 22. Patient status: code values (01-76).

(xvi) Locator 23. Health care provider medical record number.

(xvii) Locators 24-30. Use condition code 02 for employment related injury.

(xviii) Locator 42. Revenue codes for services billed. (Note: revenue code (0001) must be provided in column 42 for total charges.)

(xix) Locator 43. Lists and describes each medical service and item being billed corresponding to revenue code applicable.

(xx) Locator 44. Accommodation rate for applicable services provided.

(xxi) Locator 47. Billed charges. Information based on service provided (revenue code). (note: last revenue code in column 42 must be 0001 for non-electronic filers.)

(xxii) Locator 50. Insurance carrier, self-insurer or TPA (claims administrator).

(xxiii) Locator 56. DRG (diagnosis related group). Code used by Medicare to group medical services provided by inpatient hospital services. Required for type of bill = 111, 115, 117, 121, 125, 127, or inpatient for CAH codes 851, 855 and 857.

(xxiv) Locator 58. Insured's name - patient's name or employer's name.

(xxv) Locator 60. SSN of injured worker or worker's identification number.

(xxvi) Locator 65. Employer's Name.

(xxvii) Locator 67. Principle diagnosis code must be based on ICD-9-CM. Code must include all five digits.

(xxviii) Locator 68-75. Other diagnosis codes are based on ICD-9-CM. These codes are sent to payer if available.

(xxix) Locator 78. The health care facilities current workers' compensation ratio.

(xxx) Locator 80. Principle procedure code and date: The HCP enters the ICD-9-CM code for the inpatient principle procedure. The principle procedure is the procedure performed for definitive treatment rather than for diagnostic or exploratory purposes, which is neces-

sary to take care of a complication. The code should relate closely to the principle diagnosis. A date should also be provided.

(e) Form CMS-1450 (UB-04) must be completed by health care facilities (effective 6/1/2007):

(i) The following locators on the UB-04 must be completed by the health care facilities: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14, 15, 16, 17, 18 - 28, 31, 37, 42, 43, 44, 46, 47, 50, 56, 58, 60, 63, 65, 67, 72, 73, 74, 76, 77.

(ii) Locator 1. Practitioner name, complete address and telephone number.

(iii) Locator 2. Paid to service provider - name and address.

(iv) Locator 3. Patient control number, medical record number

(v) Locator 4. Enter code 111, 115, 117, 121, 125, 127, 851, 855, or 857 for inpatient; 131, 135, 137 for outpatient and for emergency room; 831 for FASC. (Note: if locator 42 contains an entry beginning with "45", then the service was emergency room, not outpatient.)

(vi) Locator 5. Hospital federal tax identification number.

(vii) Locator 6. Statement coverage dates must be provided.

(viii) Locator 7. (NM Specific) Covered days - the days during the billing period applicable to the cost report.

(ix) Locator 8a. Injured worker's I.D. 8b-injured worker's name

(x) Locator 10. Injured worker's birthdate.

(xi) Locator 11. Gender

(xii) Locator 12. Date of admission to hospital or facility.

(xiii) Locator 14. Type of admission, code values: 1=emergency, 2=urgent, 3=elective, 5=trauma center, 9= information unavailable.

(xiv) Locator 15. Source of admission code values: 1=physician referral, 2=clinic referral,

3=HMO referral, 4 = hospital transfer, 6 = transfer from HCF, 7 = ER, 8 = law enforcement, 9 = unavailable, A = transfer from (CAH).

(xv) Locator 17. Patient status: code values (01-76).

(xvi) Locators 18-28. Use condition code 02 for employment related injury, wo for UMWA.

(xvii) Locator 29. Accident and state abbreviation.

(xviii) Locator 31. Date of work-related occurrence. Note: code = 04, 03, 02, 05, 06 or 07.

(xix) Locator 37. New Mexico specific (WCA) DRG code (diagnosis related group) code used by Medicare to group medical services provided by inpatient hospital services. Required for type of bill = 111, 115, 117, 121, 125, 127, or inpatient for CAH codes 851, 855, and 857.

(xx) Locator 42. Revenue codes for services billed. (Note: revenue code (0001) must be provided in column 42 for total charges.)

(xxi) Locator 43. Lists and describes each medical service and item being billed corresponding to revenue code applicable.

(xxii) Locator 44. Accommodation rate for applicable services provided.

(xxiii) Locator 46. Units of service (mandatory for accommodation rate).

(xxiv) Locator 47. Billed charges. Information based on service provided (revenue code). (note: last revenue code in column 42 must be 0001)

(xxv) Locator 50. Insurance carrier, self-insurer or TPA (claims administrator).

(xxvi) Locator 56. National provider identifier of hospital facility.

(xxvii) Locator 58. Insured's name or employer's name.

(xxviii) Locator 60. SSN of injured worker or worker's identification number.

(xxix) Locator 63. WCA authorization number

(xxx) Locator 65. Employer's name.

(xxxi) Locator 67. Principle diagnosis code must be based on ICD-9-CM. Code must include all five digits.

(xxxii) Locator 67a-h. Other diagnosis codes are based on ICD-9-CM. These codes are sent to payer if available.

(xxxiii) Locator 72. External cause of injury code.

(xxxiv) Locator 73. (N.M. WCA Specific) The health care facilities, current workers' compensation ratio.

(xxxv) Locator 74. and 74 (a-e)

Principle procedure code and date: The HCP enters the ICD-9-CM code for the inpatient principle procedure. The principle procedure is the procedure performed for definitive treatment rather than for diagnostic or exploratory purposes, which is necessary to take care of a complication. The code should relate closely to the principle diagnosis. A date should also be provided.

(6) The health care facility is required to submit all requested data to the payer. Failure to do so could result in fines and penalties imposed by the WCA. All payers are required to notify the economic research bureau of unreported data fields within 10 days of payment of any inpatient bill.

C. New Mexico gross receipts tax (NMGR): Practitioners whose corporate tax status requires them to pay NMGR shall bill for NMGR in one of the following ways:

(1) Indicate via a printed or stamped statement adjacent to the combined

“total charges” that the individual charges and total charges include NMGRT at the specific percentage applicable to the practitioner.

(2) Make no mention of NMGRT, in which case the bill shall be paid at the lesser of the MAP or the billed amount.

(3) Itemize the actual amount of the NMGRT below the combined “total charges” amount for all billed services and items, indicating the specific tax rate (percent) applicable to the municipality or county location of the practitioner; and, add this amount to the combined “total charges” to derive a “total amount billed”.

D. Medical records

(1) Initial bills for every visit shall be accompanied by appropriate office notes (medical records) which clearly substantiate the service(s) being billed and are legible.

(2) No charge shall be made to any party to the claim for the initial copy of required information. Second copies provided shall be charged and paid pursuant to Subsection A of 11.4.7.15 NMAC.

(3) A charge may be made to the requesting party to the claim for second and subsequent copies of any medical records.

(4) No charge shall be made for provision of medical records to the WCA's utilization review/case management/peer review contractor for required information.

(5) Records for hospitals and FASCs shall have a copy of the admission history and physical examination report and discharge summary, hospital emergency department medical records, ambulatory surgical center medical records or outpatient surgery records.

[4-1-91, 12-31-91, 11-18-92, 1-15-93, 10-28-93, 3-14-94, 12-2-94, 11-18-94, 12-31-94, 8-1-96, 10-01-98; 11.4.7.10 NMAC - Rn, 11 NMAC 4.7.10, 8-30-02; A, 10-25-02; A, 1-14-04; A, 1-14-05; A, 12-30-05; A, 12-31-06; A, 1-1-07]

11.4.7.17 DATA ACQUISITION:

~~A. [All workers' compensation payers shall submit required paid inpatient services data by January 1, 2006, for the period July 1, 2005, through September 30, 2005. Thereafter, payers shall submit required paid inpatient services data on a quarterly basis as follows:~~

~~(1) October 1 through December 31 by April 1;~~

~~(2) January 1 through March 31 by July 1;~~

~~(3) April 1 through June 30 by October 1; and,~~

~~(4) July 1 through September 30 by January 1.] The insurer must report an inpatient hospital bill to the WCA within 10 to 90 days of payment of the bill. Reports may be submitted by mail, fax, or electron-~~

~~ic media in batches daily, weekly, or monthly from the insurer or insurer's representative. In any event, the insurer must report the inpatient bill no later than the 92nd day from the date of payment.~~

B. The paid inpatient services data shall be submitted in a format acceptable to the WCA. The economic research bureau shall distribute a specific set of instructions for the submission of required data.

C. If the required paid inpatient services data is not received from payer as stated under Subsection A of this section, the economic research bureau may petition for a hearing before the WCA director or his designee and seek penalties pursuant to NMSA 1978, section 52-1-61 (1991).

[3-14-94, 8-1-96; 11.4.7.17 NMAC - Rn, 11 NMAC 4.7.17, 8-30-02; A, 1-14-04; A/E, 7-5-05; A/E, 7-28-05; A, 12-30-05; A, 1-1-07]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an amendment to 11.4.8 NMAC, Section 8, effective December 29, 2006.

11.4.8.8 INDIVIDUAL SELF-INSURANCE:

A. Eligibility criteria; to be eligible to apply for, and as a continuing obligation to maintain, a certificate of self-insurance, an employer must meet and maintain compliance with the following requirements to the satisfaction of the director:

(1) For all applications filed on or after October 1, 1998, the employer shall provide an audited financial statement demonstrating a tangible net worth of at least two and one half million dollars (\$2,500,000). For all applications filed or approved on or before September 30, 1998, the employer shall provide an audited financial statement demonstrating a tangible net worth of at least one million dollars (\$1,000,000). Audited financial statements shall not be more than six months old, except as approved by the director.

(2) The employer shall have been in business for a period of not less than three (3) years. This requirement may be waived by the director under circumstances where the form of business organization has changed within the three (3) year period while the management of the business entity stays substantially the same.

(3) The employer shall demonstrate a strong trend of financial health and financial solvency.

(4) An acceptable risk management program including acceptable claims

administration personnel, policies and procedures.

(5) Workers' compensation specific or aggregate insurance from a carrier approved and regulated by the New Mexico department of insurance with a rating that is within the parameters of acceptability set forth in an order published by the director, with retention of \$250,000 or less per occurrence. An acceptable policy of excess insurance shall provide coverage for all provisions of the act and shall contain no exclusion of such coverage.

(6) An irrevocable letter of credit or a surety bond in the amount and on a form specified by the director and issued in favor of the New Mexico self-insurers' guarantee fund. The issuer of the surety bond or letter of credit shall not be in the control of the self-insured and shall have a rating that is within the parameters of acceptability set forth in an order published by the director. Security shall be used for the payment of claims and related expenses in the event of default by the employer and for reimbursement to the New Mexico self-insurers' guarantee fund for any benefits paid by the fund on behalf of the employer.

(7) A bona fide employment relationship shall exist between the employer and the employees which it proposes to self-insure. Employees under the control of any other entity with respect to the day to day supervision of the work may not come under an individual self-insurance program.

(8) Every private individual self-insurer must pay assessments as specified in NMSA 1978, Section 52-8-7(B), to the self-insurers' guarantee fund.

(9) A parent company may self-insure its subsidiaries under one certificate in the name of the parent provided the parent meets all eligibility criteria and provides parental guarantees for the subsidiaries and guarantees by each subsidiary for the other(s).

(10) Any other reasonable criteria deemed necessary by the director to guarantee payment of workers' compensation claims to injured workers.

B. Application requirements:

(1) An employer seeking to be certified as a self-insurer under the act shall make application on a form prescribed by the director.

(2) The director may request information regarding the employer's business, financial circumstances, history and any other such information deemed relevant or necessary.

(3) The application shall be accompanied by the following:

(a) a one hundred fifty dollar (\$150) non-refundable filing fee made out to the workers' compensation administra-

tion; and

(b) proof of valid workers' compensation insurance in force for the three years preceding the date of application and continuing in force up to the approved date of self-insurance.

(c) a certified copy of the employer's most recent audited financial statement which may not be more than six months old, except as approved by the director; the audited financial statements shall be presented in accordance with generally accepted accounting principles (GAAP); additionally, the employer's previous two years financial statements shall be provided;

(d) if the employer is a corporation, its board of directors must adopt a resolution, as prescribed by the director, authorizing and directing the corporation to undertake to self-insure itself and to comply with the provisions of the act and the rules of the director; a similar official ratification is required from the governing body of any governmental entity;

(e) if the employer is a subsidiary, a parental guarantee from the subsidiary's upper-most parent in a form acceptable to the director;

(f) a detailed summary of the employer's workers' compensation loss history for the last three (3) years and experience modifiers for the same period; records shall include all claims covered under a claims "buy-back" program;

(g) an explanation of the safety program, a copy of the safety manual, and resumes of all personnel responsible for the New Mexico safety program;

(h) the employer is required to carry worker's compensation excess insurance coverage, provided by an insurance carrier not controlled by the self-insured; the employer shall submit a copy of the proposed policy or binder, including the declaration page of such policy, and all endorsements providing or limiting coverage; excess insurance shall include statutory limits, specific occurrence retention, and the current New Mexico amendatory endorsement with a retention of \$250,000 or less; the insurance shall be written by a company that has a rating that is within the parameters of acceptability set forth in an order published by the director; the company shall be approved and regulated by the New Mexico department of insurance or be otherwise approved by the director;

(i) a letter of intent from an approved surety to issue a surety bond, or a letter of intent from a New Mexico financial institution to issue an irrevocable letter of credit, in an amount and form to be specified by the director, but not less than \$200,000; the surety company shall have a rating that is within the parameters of acceptability set forth in an order published by the director.

(4) By signing and submitting the application and, as a condition of the continuing privilege of certification as a self-insurer under the Workers' Compensation Act, the employer agrees:

(a) to promptly discharge all the employer's liabilities to injured employees or their dependents in accordance with the requirements of the Workers' Compensation Act, as amended, and to comply with any rules of the director adopted thereunder;

(b) to notify the director prior to liquidation, sale or transfer of ownership, or any material change in New Mexico operations and to arrange for the payment of all existing liability, and any disability or liability arising thereafter, by guarantee bond or letter of credit, or as otherwise required by the director;

(c) to obtain the director's approval prior to making any material change in any excess insurance policy or security; evidence of renewal must be provided to the director sixty (60) days prior to the date of expiration;

(d) to notify the director prior to any change in the provider or scope of claims management services;

(e) to promptly notify the director of any material change in the employer's financial condition;

(f) to cooperate fully with administration representatives in any evaluation or audit of the self-insurance program, and to resolve in good faith any issues raised in those evaluations or audits;

(g) unless otherwise approved by the director, to have at least one claims representative within New Mexico, licensed as a New Mexico adjuster, to pay workers' compensation claims of claimants resident or located in New Mexico; all claims shall be paid promptly from accounts in financial institutions located within New Mexico; third party administrators must be licensed in New Mexico; all adjusters responsible for New Mexico claims shall be licensed in New Mexico regardless of location;

(h) the self-insured shall be responsible for compliance with the act and these rules by it and its agents and the self-insured shall be subject to sanctions for any act or omission by it or its agents;

(i) provide loss runs on a semi-annual basis;

(j) provide annual audited financial statements;

(k) to continue to pay claims as required by law, maintain acceptable security, and provide the workers' compensation administration with any information required to assess claim liability and financial ability to pay claims, including access to claim files, after decertification from self-insurance and continuing until the director determines that all self-insurance claims have been fully satisfied;

(l) to provide information required for verification by the workers' compensation administration of compliance with NMSA 1978, Section 52-5-19;

(m) to maintain loss reserves at the full undiscounted value of each claim, including indemnity and medical only claims.

(5) The director shall notify the chairman of the board of directors (board) of the self-insurers' guarantee fund commission of the identity of any applicant for self-insurance within fifteen (15) days of the receipt of the application. The board shall respond in writing to the director within thirty (30) days of receipt of the notification or be deemed to have expressed no objection to the applicant's membership in the commission. The administration's self-insurance audit staff shall take any written objections into account when making its final recommendation to the director.

C. Evaluation factors: the director may decline to approve an application for self-insurance if not satisfied that the employer will be able to meet all its obligations under the act and these rules. In determining if an employer can meet these obligations, the factors to be considered by the director shall include, but not be limited to, the following:

(1) financial condition to include valuation of assets and liabilities, net worth, asset make-up, profitability, solvency, current and projected financial trends for the company and industry, notes to financial statements, reliability of financial statements, contingent liabilities, and ongoing criminal or fraud investigations;

(2) organizational structure and management background;

(3) workers' compensation loss history, experience modifiers, trends, and reliability of information;

(4) number of employees and the degree of hazard to which employees are exposed;

(5) proposed excess insurance coverage;

(6) proposed surety bond or other security;

(7) claims administration personnel, policies, and procedures;

(8) safety programs and safety record; and

(9) recommendations of the self-insurers' guarantee fund commission.

D. Financial responsibility:

(1) The employer will pay claims for which it becomes obligated under the New Mexico Workers' Compensation Act, in accordance with the act. The payment of such claims will continue without regard to the self-insurance status of the employer and without regard to any amount of security posted whether or not the security is

called. The employer shall report to the WCA, on its periodic loss runs, all claims incurred regardless of type or cost. The employer shall maintain a level of reserves sufficient to pay all claims and associated expenses, and security in an amount and form acceptable to the director. The employer agrees that failure to maintain minimum financial criteria, and an adequate risk management program may result in increased security requirements, termination of self-insurance status or any other measure deemed necessary by the director for the protection of benefits of injured workers and the New Mexico self-insurers' guarantee fund.

(2) In addition to any other requirements under the act or regulations governing self-insurance, upon voluntary or involuntary termination of employer's self-insurance status, the employer must:

(a) provide any information requested by the director for the purpose of establishing claims liability and financial condition;

(b) comply with any requirement by the director to increase security;

(c) make claims files available to the director for the performance of any audit, examination or review, or for administration of claims in the event of a default;

(d) keep the WCA current of changes in address/location, pertinent personnel, claims administration services, location of claims files and related claims personnel, and financial condition; and

(e) compliance with the above will be considered by the director when making a determination on any security reduction or release requested by the employer.

(3) All government entities must have a pre-funded system. All past, present, and future liabilities existing at any time shall be fully accounted for by liquid assets or other assets agreeable to the director. No government entity shall be required to post security.

E. Certification: After considering the application and all supportive documentation, the director shall act upon a completed application for a certificate of self-insurance within sixty (60) days. If, because of the number of applications pending before him, the director is unable to act upon an application within that period, the director shall have an additional sixty (60) days to act.

(1) Upon approval, the director shall issue a certificate acknowledging the employer's status as a self-insured under the act. The certificate shall be effective continuously until terminated at the request of the self-insured or revoked by the director.

(2) If there is a change of ownership whereby the controlling interest of a

self-insured changes, the new ownership shall submit a new application to the director for a certificate of self-insurance. A non-refundable filing fee of one hundred fifty dollars (\$150) must accompany the new application.

(3) Upon a merger or other combination by two self-insured employers, the employers may continue to be self-insured under one certificate provided adequate disclosure and guarantees are provided. The director's approval is required for all such certificates.

(4) The director may, using his/her sole discretion, issue a provisional certificate, good for not more than one (1) year, to a self-insurer if the director is convinced that any defects are minor in nature and can be corrected within the one (1) year period.

F. Audits and examinations: A self-insured employer or applicant is subject to initial or periodic examination or audit by the WCA to determine initial or continued eligibility for self-insurance. The applicant or self-insured agrees to bear the costs of any reviews or evaluations. Such evaluations may include, but are not limited to:

(1) audits or reviews of the applicant's or self-insured's records regarding any representation made on its financial statement;

(2) audits or reviews of the applicant's or self-insured's records pertaining to its loss history, claims administration, or its loss reserve fund;

(3) audits or reviews of safety programs;

(4) interviewing or taking the testimony of the applicant or self-insured, or any of its agents or employees, regarding any matter pertaining to the obligations of the applicant or self-insured under the act or the director's rules.

G. Denials ~~and decertification~~, decertification and probation:

(1) The director shall deny an application for self-insurance if the employer has failed to demonstrate to the director's satisfaction that the employer meets all requirements of the act and the director's rules or failed to demonstrate its ability to meet all its obligations under the act.

(2) A certificate of self-insurance may be revoked or placed on probationary status if the director, with good cause, ceases to be satisfied that the employer is able to meet all its obligations under the act and these rules. The occurrence of any of the following events shall constitute good cause to revoke or place on probationary status a certificate of self-insurance:

(a) failure of the employer to comply with any provisions or requirements of the act or the director's rules or with any

lawful order or communication of the director;

(b) failure of the employer's surety or guarantor to remain financially solvent or any other impairment of any aspect of the employer's financial responsibility requirements;

(c) failure to comply with any other statutes, laws, rules, or regulations of the state of New Mexico;

(d) failure to cooperate with the WCA in efforts to mitigate adverse consequences for injured workers caused by the filing, by the employer, for protection under the federal bankruptcy laws;

(e) failure to maintain membership in the New Mexico self-insurers' guarantee fund commission in good standing.

(3) Any self-insured who becomes decertified shall maintain security with the administration in a form and amount acceptable to the director. The employer retains responsibility for payment of all current and future obligations incurred while self-insured, including all obligations to the self-insurers' guarantee fund. The security amount set after decertification shall account for both known claims and associated expenses and claims incurred but not reported (IBNR) and associated expenses. If the employer is still subject to the act, proof of coverage must be provided. No adjustments to the security will be allowed until the director has determined that an adequate time has passed to reasonably determine the expected long-term liabilities. At that time, the director may, in his discretion, reduce or return some or all of the security.

(4) The denial, ~~or~~ revocation, or probation of a certificate of self-insurance shall be made by an order signed by the director or by his authority. Every such order shall state its effective date and shall concisely state: what is ordered; the grounds on which the order is based; and the provisions of the act or rules pursuant to which the action is taken.

(5) Probationary certification: The self-insured shall be responsible for compliance with the act and the rules. Failure to comply with the act or the rules may result in the issuance of a probationary certificate of individual self-insurance.

(a) A probationary certificate means the revocation of the self-insured's existing self-insurance certificate.

(b) The duration of the probationary period shall be within the director's discretion but shall not extend for more than one year's time.

(c) The self-insured may be sanctioned for any violations that occur during the probationary period pursuant to NMSA 1978, section 52-6-21.

(d) If the self-insured fails to

come into compliance with the act and the rules by the end of the probationary period, the self-insured's status as a self-insured may be revoked.

(e) All conditions of the act and the rules still apply and nothing in this rule is intended to alter the responsibilities for workers' compensation benefits of self-insureds or their agents.

(f) The probationary certificate may be withdrawn and the original certificate of self-insurance may be reinstated if the self-insured comes into full compliance with the act and the rules. The reinstatement of the original certificate shall be at the sole discretion of the director.

H. Recertification:

(1) Any employer formerly certified as a self-insurer who ceases to be certified may not apply for recertification until three (3) years after decertification.

(2) An employer who seeks to reinstate its certificate of self-insurance shall reapply to the director on the form prescribed pursuant to these rules.

(3) A non-refundable filing fee of one hundred fifty dollars (\$150) must accompany the application for recertification.

I. Hearings: Any person aggrieved by a decision of the director regarding the denial of any application for a certificate of self-insurance, or the certification or decertification of a party as a self-insurer, may request in writing a hearing before the director. The request shall briefly state the respects in which the party is aggrieved, the relief sought and the grounds to be relied upon as the basis of relief. The administration's rules of Enforcement and Administrative Investigations, Part 5, shall apply.

J. Penalty: In addition to any other sanctions provided herein, failure to comply with any of the provisions of these rules or the act renders the self-insurer or applicant subject to penalties as provided in NMSA 1978, Section 52-1-61.

K. Waiver: Any requirement contained in these rules may be waived by specific written authorization of the director. Any interested person may request such a variance or waiver in writing. [8/1/96, 10/1/98; 11.4.8.8 NMAC - Rn & A, 11 NMAC 4.8.8, 1/14/05; A, 12/29/06]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an amendment to 11.4.9 NMAC, Section 8, effective December 29, 2006.

11.4.9.8 GROUP SELF INSURANCE:

A. Application and maintenance:

(1) All the requirements for application and maintenance of a certificate of group self-insurance are contained in NMSA 1978, Section 52-6-5. In addition, the following shall apply:

(a) Submit with the application a non-refundable filing fee of five hundred dollars (\$500.00).

(b) The application shall contain the group's pro forma financial statement, following generally accepted accounting principles, presented in a format acceptable to the director.

(c) Specific excess insurance shall be written with statutory upper limits. The insurance shall be written by an acceptably rated company approved and regulated by the New Mexico department of insurance to write excess insurance in the state of New Mexico, or a company that is otherwise approved by the director. The policy must include the current New Mexico amendatory endorsement.

(d) The required fidelity bond for the administrator shall be written at a minimum of two hundred fifty thousand dollars (\$250,000).

(e) The required fidelity bond for the service company providing claims service shall be written at a minimum of two hundred fifty thousand dollars (\$250,000).

(f) A performance bond of two hundred fifty thousand dollars (\$250,000) shall be provided for the service company providing claims service, if requested by the director.

(g) A fidelity bond for any member of the board of trustees of the group having signatory authority with respect to the group's funds or investments, or as a condition precedent to any board of trustees action creating or changing such signatory authority, is required and shall be written at a minimum of two hundred fifty thousand dollars (\$250,000).

(h) A statement of the type of business in which employers in the proposed group are engaged and an explanation of how they meet the criteria of "same or similar" contained in NMSA 1978, Section 52-6-2(B).

(i) An actuarial report/study based on at least 3 years loss history of the group's proposed members, including loss projections for the group.

(2) After considering the group's application and all supportive documentation, the director shall act upon a completed application for a certificate of approval within sixty (60) business days. If, because of the number of applications pending, the director is unable to act upon an application within that period, the director shall have an additional sixty (60) days to act.

(3) The definitions in Subsections

A and B of 11.4.9.7 NMAC shall be applied prospectively only, commencing with the effective date of this rule. Existing members of a group which would be ineligible for membership under this rule shall not be excluded from membership in the group on the basis of this rule. In the event that a member's coverage is not reinstated within thirty days of the delivery to the director of the notice of cancellation or termination required in NMSA 1978, Section 52-6-9 (B), the former member will be considered a new applicant for purposes of qualifying as a member of the group.

(4) Each group will screen applicants to their group based upon the definition of "same or similar type of business" contained in this rule. No group shall admit any prospective member that is not in the same or similar type of business.

(a) Each group will designate in writing for the director, a general category from the standard industrial classification manual, designated as a lettered division heading, which most closely fits the type of businesses represented by the sponsoring trade or professional association.

(b) The director will presume that businesses properly included in that division are in the same or similar type of business as are other businesses in the group.

(c) A group may request in writing that additional two digit major group codes, three digit industry group codes or four digit industry codes from the standard industrial classification manual, other than those under the group's designated lettered division heading.

(i) The request for designation of a business as a same or similar type of business for a group shall be accompanied by a written explanation which must satisfy the director that the businesses are significantly related to the sponsoring trade association's industry.

(ii) The director may consult widely accepted publications which classify types of businesses for the purpose of considering the approval or disapproval of such requested designations.

(d) Upon prior written approval by the director, a group may add to its roster an individual business which is not otherwise clearly eligible for membership. A request for approval of such individual business shall be accompanied by a written explanation demonstrating to the satisfaction of the director that the business, because of its particular circumstances should be deemed to be in the same or similar type of business as the other members of the group.

(e) The director shall approve or disapprove such requests in writing.

(f) The WCA will follow its established protocol to ensure prompt response to requests for such designations.

(5) Each group will certify to the director on each report of roster additions submitted, that any additions to the group's roster are in the same or similar type of business as the other members of the group.

(6) Groups may offer claims "buy back" programs to their members provided:

(a) a written narrative describing the program shall be provided to the participants and the WCA; and,

(b) details of claims bought back must be provided to the participating member, or its designee, or to the WCA upon request.

B. Evaluation factors: The director shall decline to approve an application for group self-insurance upon a finding that the proposed group does not meet all the requirements of the Group Self-Insurance Act and the rules thereunder. In determining whether a group can meet the requirements of the Group Self-Insurance Act (NMSA 1978, Sections 52-6-1 through 52-6-25) and the rules thereunder, the factors to be considered by the director shall include, but not be limited to, the following:

(1) organizational structure and management background;

(2) compliance with NMSA 1978, Section 52-6-2(B);

(3) services provided by the group;

(4) statistical reporting and expertise;

(5) workers' compensation loss history and risk;

(6) source and reliability of financial information;

(7) sufficiency of premium;

(8) proposed bylaws, underwriting guidelines, membership application, and membership agreement;

(9) the distribution of group members as to size, premium and loss exposure;

(10) adequacy of reserve methodology;

(11) proposed excess insurance coverage;

(12) adequacy and form of security;

(13) claims administration personnel, policies and procedures;

(14) safety program;

(15) financial condition of proposed members;

(16) results of financial evaluation of the group.

C. Financial responsibility:

(1) The group shall submit audited financial statements on an annual basis.

(2) Every group self-insured shall have actuarially determined financial strength sufficient to meet their obligations.

(3) The actuarial opinion and

report required by NMSA 1978, Section 52-6-12, shall be filed annually and include the actuarial report from which the reserves for known claims and associated expenses and claims incurred but not reported and associated expenses were obtained.

(4) The group shall set rates utilizing the advisory loss costs published by the national council of compensation insurance, and adhere to uniform classification system, uniform experience rating plans, and manual rules filed with the superintendent of insurance, provided, however:

(a) Permission to apply premium discounts shall be requested by the group, subject to approval by the director, and shall be based on the group's expense levels and loss experience.

(b) Permission to make and use its own rates shall be requested by the group, subject to approval by the director and shall be based on at least three years of the group's experience.

(c) All requests for permission regarding rates or discounts shall be accompanied by an actuarial opinion supporting the request.

(d) Retroactive rate decreases and retroactive premium discounts are prohibited.

(e) All requests for rate reductions or premium discounts shall be approved or disapproved by the director within sixty (60) days after the submission of the request and any additional data requested by the director.

~~[(5) Each group shall annually certify to the director the group's continued compliance with Section NMSA 1978, 52-6-5 (B)(1), and, if requested by the director, each group shall provide to the administration a compilation of member assets and liabilities. Such compilation shall be in a form acceptable to the administration. No member's financial statement used for this compilation shall be more than 12 months old.]~~

(5) Each group shall annually certify to the director the group's continued compliance with NMSA 1978, Section 52-6-5 (B)(1) by submitting a compilation consisting of each member's assets, liabilities and net worth. No member's financial statements used for this compilation shall be more than 12 months old.

(6) In any month where the group's membership roster changes, each group shall submit to the administration an update of additions and deletions to the group's membership roster.

(7) Each group shall provide within 30 days of the end of each calendar quarter a roster of members including the number of employees employed by each member on the last day of the quarter.

(8) The group shall promptly notify the director of insolvencies or bankrupt-

cies of members.

(9) The board of trustees shall adopt a policy statement regarding the admission to, or continued membership in, the group of any prospective member or current member with negative net worth. Such statement shall be provided to the director and to each member and prospective member of the group.

(10) Permission to declare and issue a dividend shall be requested by the group not less than twelve months after the end of the fund year, subject to approval by the director, and shall be based on funds in excess of the amount necessary to fund all obligations for that fund year.

(a) All requests for dividend distributions shall be accompanied by financial information and an actuarial opinion supporting the request.

(b) All dividend refunds shall be approved or disapproved by the director within sixty (60) days after the submission of the request, and any additional data requested by the director.

(11) The group shall provide proof of renewal of all excess insurance policies, fidelity bonds, or security within 15 days of renewal and copies of all excess insurance policies, fidelity bonds or security within 45 days of renewal.

(12) The group shall provide loss runs on a semi-annual basis.

D. Certification: By signing and submitting an application, and as a condition of the continuing privilege of certification as a group self-insurer under the Group Self-Insurance Act, the group agrees to:

(1) promptly discharge all of the group's liabilities to injured employees or their dependents in accordance with the requirements of the act and to comply with the act and any rules of the director adopted thereunder;

(2) obtain the director's approval prior to making any change in any excess insurance policy, fidelity bond, or security which results in diminished coverage;

(3) notify the director of changes in the kind or amount of services provided by any third party claims administrator;

(4) promptly notify the director of any material change in the group's financial condition or group operations;

(5) cooperate fully with administration representatives in any evaluation or audit of the group self-insurance program, and to resolve, in good faith, issues raised in those evaluations or audits; it is specifically contemplated that such evaluation and audit issues may include notice of inadvertent or mistaken failures to pay benefits which were not paid when due, where no apparent ground existed at the time to contest the payment in good faith; failure to correct

such inadvertent or mistaken failures to pay, after notice, may constitute a failure to resolve such audit issues in good faith in violation of this rule, and may result in any sanction appropriate under the Group Self-Insurance Act; any dispute concerning issues raised shall be referred by the self-insurance bureau chief to the director for determination if not first informally resolved;

(6) the group shall be responsible for compliance with the act and the rules and shall be subject to sanction by the administration for acts or omissions in violation of the act or the rules by itself or by any person or entity acting in an agency relationship with the group; it shall be a defense to any sanction proposed that the group has appropriately fulfilled its duty to monitor, educate and control its agents; nothing in this rule is intended to alter the liability for workers compensation benefits of groups or their agents.

E. Probationary certification: The group shall be responsible for compliance with the act and the rules. Failure to comply with the act or the rules may result in the issuance of a probationary certificate of group self-insurance.

(1) A probationary certificate means the revocation of the group's existing self-insurance certificate.

(2) The duration of the probationary period shall be within the director's discretion but shall not extend for more than one year's time.

(3) The group may be sanctioned for any violations that occur during the probationary period pursuant to NMSA 1978, section 52-6-21.

(4) If the group fails to come into compliance with the act and the rules by the end of the probationary period, the group's status as a self-insured may be revoked.

(5) All conditions of the act and the rules still apply and nothing in this rule is intended to alter the responsibilities for workers' compensation benefits of groups or their agents.

(6) The probationary certificate may be withdrawn and the original certificate of self-insurance may be reinstated if the group comes into full compliance with the act and the rules. The reinstatement of the original certificate shall be at the sole discretion of the director.

(7) A probationary certificate of self-insurance shall be made by an order signed by the director or by his authority. Every such order shall state its effective date and shall concisely state: what is ordered; the grounds on which the order is based; and the provisions of the act or rules pursuant to which the action is taken.

[E.] E. Waiver: Any requirement not mandated by statute contained in these rules may be varied or waived by spe-

cific written authorization of the director. Any interested person may request such a variance or waiver in writing.

[6/22/87, 6/23/87, 8/1/96, 11/15/96; 11.4.9.8 NMAC - Rn & A, 11 NMAC 4.9.8, 1/14/05; A, 12/29/06]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an amendment to 11.4.13 NMAC, Section 10, effective December 29, 2006.

11.4.13.10 SAFETY PLANS

A. Criteria for approval. The following requirements must be met for initial approval of a safety plan and for final approval of an application for a controlled insurance plan. Failure to maintain continuous compliance with each of these requirements shall be considered a violation of these rules and the director shall be authorized to seek injunctive action to prohibit construction work until such failure is corrected.

(1) New Mexico OSHA compliance.

(2) Appointment of a site safety manager acceptable to the director.

(a) The site safety manager shall have a minimum of three-year's experience in programs covered by 29 CFR part 1910 or 29 CFR part 1926, as applicable.

(b) An applicant shall submit a resume and credentials of the proposed site safety manager not less than 14 days before commencement of work on the project. The director, or his designee, shall review the resume credentials within 14 days. Work on the project shall not commence until the director or his designee has approved a site safety manager.

(c) An applicant shall submit a resume and credentials for any proposed substitute or standby site safety manager prior to any construction activities at the single construction site overseen by the substitute or standby site safety manager.

(d) In no event shall the applicant allow work at the single construction site to proceed for more than 8 continuous hours without the approved site safety manager, or approved substitute or backup site safety manager being physically present at the single construction site.

(e) All approved safety plans must provide that the approved site safety manager, or approved standby or substitute site safety manager shall have plenary authority to close down the construction project in whole or in part, in the event that hazards to health or safety of workers present an imminent danger to worker health or safety. The approved site safety manager, backup site safety manager or substitute site

safety manager has a duty to close down the construction project, in whole or in part, upon discovery of an imminent danger to worker health or safety that cannot be immediately rectified.

(3) A plan for coordination of site safety programs among all contractors and subcontractors by the site safety manager, including access for contractor and subcontractor safety personnel.

(a) The plan shall provide for review of the controlled insurance plan safety plan and drug and alcohol testing provisions by safety personnel employed by, or contracted to, individual contractors and subcontractors.

(b) The plan shall provide that any safety provisions, and drug and alcohol testing programs required by the contractor or subcontractor that are more stringent in the safety provisions or drug and alcohol testing programs required by the approved safety plan shall be enforceable against the contractor or subcontractor and shall not be superseded by the approved controlled insurance plan safety plan or the approved controlled insurance plan drug and alcohol screening program.

(4) Third party safety consultant

(a) The applicant shall engage the services of an independently contracted safety consultant ("third party safety consultant") to provide independent inspections and oversight on safety issues to assist the site safety manager and the WCA.

(i) The third party safety consultant shall conduct work environment evaluation inspections of the single construction site at least twice per month during construction activities.

(ii) The third party safety consultant shall notify the site safety manager immediately of any hazardous condition disclosed by the third party safety consultant's inspection.

(iii) The third party safety consultant shall not be terminated in response to making a good-faith finding that a safety hazard exists or in response to reporting such safety violations as provided by these rules.

(b) The third party safety consultant shall have credentials at least equal to those required of the site safety manager.

(c) The third party safety consultant shall not be the backup site safety manager.

(d) The credentials of the third party safety consultant shall be presented to, and approved in writing by, the WCA prior to the commencement of construction.

(e) In the event that the third party safety consultant is replaced during construction activities, the credentials of the replacement third party safety consultant shall be presented to the WCA within no

more than five working days of the earlier of the termination of the contract or the cessation of work by the prior third party safety consultant.

(f) The third party safety consultant shall prepare written reports at least every 30 days from the date of commencement of construction detailing any safety issues or hazards discovered during the inspections that occurred during the prior month. Said reports shall be provided to the WCA, all contractors and all sub-contractors.

(g) The third party safety consultant shall also generate a written report in the event that he or she discovers any condition or hazards that constitute an imminent danger to worker health or safety that the independent safety consultant believes would justify closure of the construction site in whole or in part by the site safety manager. Said report shall be provided to the WCA, all contractors and all subcontractors within 2 days of the discovery of the condition or hazard.

(5) Drug and alcohol screening, complying with provisions of NMSA 1978, Section 52-1-12.1. Compliance with the drug and alcohol screening plan shall be the responsibility of the applicant provided that the applicant shall implement any more stringent plan incorporated pursuant to Subparagraph (a) of Paragraph (3) of Subsection A of 11.4.13.10 NMAC.

(6) Continuous coverage of the construction site shall be provided by an on-site registered nurse, who shall have demonstrated experience in the treatment of workers' compensation claimants, during all working hours.

(a) Credentials and resume for the registered nurse must be presented to the WCA and approved prior to the beginning of construction.

(b) Credentials for any registered nurse serving in a backup capacity or as a substitute for the original approved registered nurse must be presented to the WCA and approved prior to the first instance of coverage by that nurse.

(c) Should the retention of a registered nurse constitute a hardship on the applicant because of location or any other circumstance, the applicant may petition the director for a waiver of this requirement pursuant to 11.4.13.11 NMAC and the substitution of a certified, full-time, emergency medical technician (EMT). The applicant must demonstrate compliance.

(7) Emergency medical services plan

(a) The plan must include a provision requiring prominent display at the work site giving notice to workers of emergency facilities to be used in the event of an accident, including a map directing workers

to the appropriate emergency facilities.

(b) The plan must include a provision requiring prominent display at the work site of notices concerning any contracted physicians or medical facilities.

(c) The plan must contain a provision for providing notice of initial choice of health care providers to workers, in compliance with WCA regulations.

(d) The plan must contain evidence of planning and contractual preparation for emergency medical evacuation by air, when medically appropriate.

(8) Evidence of a plan for facilitating return to work of injured employees.

(a) The plan must provide for appropriate communication to workers to ensure to the extent possible they are fully apprised concerning return to work policies.

(b) The plan must provide for the direct involvement of the employer of the injured worker in return to work planning and implementation commencing as soon as possible after the injury to the worker.

(c) The plan must provide for continued communication concerning return to work between the insurer, the worker and employer for all injuries persisting beyond the completion of the project.

(9) The site safety manager must certify to the owner of the property upon which the controlled insurance plan project is being built, all contractors and subcontractors and to the independent safety consultant, and to the WCA, that each worker on the single construction site has been specifically safety trained for each job function that they perform, within 10 days of the commencement, or change, of the workers job duties on the single construction site. The certification shall be on a form approved by the director.

(10) The plan must provide for communications provided to the applicant regarding substance abuse testing, medical treatment and medical conditions, or injury reports to be promptly and specifically communicated to the workers employer within four calendar days of the communication to the applicant. The applicant is solely responsible for this requirement. The applicant shall specify, to the WCA and to each contractor and subcontractor, before the commencement of work at the single construction site, the names of at least two persons working full time at the single construction site who are authorized to assist the applicant in fulfilling this responsibility.

B. Failure to obtain approval for a safety plan or to maintain compliance with an approved safety plan is a serious violation of these rules and the director is authorized to seek injunctive relief to prevent commencement or continuation of construction until such situation is remedied in addition to any other relief

sought.

[11.4.13.10 NMAC - N, 11/15/04; A, 12/29/06]

End of Adopted Rules Section

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Other Material Related to Administrative Law

NEW MEXICO COMMISSION OF PUBLIC RECORDS HISTORICAL RECORDS ADVISORY BOARD

Commission of Public Records
New Mexico State Records Center &
Archives
1205 Camino Carlos Rey
Santa Fe, New Mexico 87505

NOTICE OF REGULAR MEETING

A regular meeting of the New Mexico Historical Records Advisory Board has been scheduled for Friday, January 19, 2007 at 9:00 A.M. The meeting will be held in the Commission Room of the State Records Center and Archives, which is an accessible facility, located at 1205 Camino Carlos Rey, Santa Fe, NM 87507. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Gail Packard at the State Records Center and Archives at least one week prior to the meeting, or as soon as possible. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact Gail Packard at 505-476-7956 at the State Records Center and Archives for documents. A copy of the proposed agenda may be obtained at the State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87507.

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

Director's Response to Public Comment on Changes to Parts 2, 7, 8, 9 and 13

The proposed amendments to Parts 2, 7, 8, 9 and 13 of the WCA Rules were opened for public comment on October 25, 2006, through November 15, 2006, for written comment. Numerous in-person and written comments were received and considered from the public at the rules hearing and in writing after the hearing.

Parts 8 and 9, Individual and Group Self-Insurance Rules:

Several comments were received pertaining to the proposed amendment at 11.4.9.8.C(5) requiring a group to annually provide a compilation of each member's assets, liabilities and net worth. At the hearing, one

commenter asked whether this provision would be applied to pools. The answer is no. One commenter suggested the amendment removes the Director's discretion in requesting the information. It was suggested that the requirement could lead to more uninsured employers, that it is not good policy to over-regulate the groups, and that private insurers do not require financial statements. One commenter contributed that a positive net worth can evaporate or fluctuate because of personal tragedy and that a financial statement is only a snapshot of financial health at that particular time and does not necessarily accurately represent the member's contribution to a community and the group. Another commenter asserted that disclosing financial statements upon initial application to the group was acceptable but ongoing disclosures erect additional hurdles which make it hard for small businesses to operate. The WCA should rely on the financial strength of the group and not the individual members. Further, a letter of credit or bank accounts and investment portfolios are all sources of funds that could be attached by the WCA to satisfy any claims; only after these funds are exhausted would the funds of individual members be sought after for any liabilities. There was an assertion at the hearing that the amendment to the rule would conflict with NMSA 1978, §52-6-5, but that the current rule does not. It was also stressed that it would be a great burden to members and to the groups to collect the financial information from its members; it is appropriate to look at the financials of the group. Concern was expressed that the member's financial statements are proprietary and confidential and the members do not want them provided to others since it would breach confidentiality between the group and its members and could impair their ability to competitively bid jobs, especially for open shop contractors. Financials are sometimes strictly controlled, particularly when there is federal government involvement. Some of the group members do not prepare financial statements. The financial statements the group does have are always available to the auditors. Some of the groups will have to educate their members and possibly assist in the preparation of financial statements in order to meet this requirement. If the member does not, it could lead to termination of the member from the group, which, ultimately, hurts the group and the goal of keeping employers insured. Another commenter asserted that the group he represents is sound and is a good insurer, particularly when private insurers flee the state. A commenter asserted that this regulatory effort impaired the groups' ability to competitive-

ly self-insure in New Mexico, who provide stability in the marketplace and are actively involved in the workers' compensation system. The proposed amendment would create more problems than benefits. One commenter expressed concern that "compilation" is not defined under the rule. Other commenters testified that the groups audit their members to ensure they meet the threshold requirement and certify to the WCA that the assets of the members exceed \$3M. The WCA should rely on the professional actuaries and CPAs that serve the groups already instead of becoming a repository of information that is subject to interpretation. It was asserted that the certification provided now requires an actuarial opinion from licensed professionals and the materials provided by unqualified members are actually reduce the standards that currently are being met by the groups. Several commenters suggested that the Director convene a task force to study factors affecting the groups and the interplay between the rules and statutes; the statute should particularly differentiate between initial approval of a group and the requirements to maintain its certification; one commenter pointed out that the statute only requires certification. Several commenters asked that the WCA defer implementation of the amendment; one commenter requested a year's time before the rule was made effective.

One commenter asserted that the probationary provisions could be improved and that the current statute has sufficient enforcement and fine provisions and, further, that the statute does not contemplate probation. The sole discretion of the Director to take a group off of probation exceeds the authority granted by the statute. When the self-insurer cures the deficiencies that led to probation, reinstatement of the original certificate of self-insurance should be the ultimate resolution and should not be discretionary.

Response: The statute requires certification that the group's members combined meet the \$3M threshold; the WCA is asking for a compilation that would verify that the financial solvency of the group's largest members is not outweighed by the negative net worth of the group's smaller members. Since the members share joint and several liability in the event that the group's funds are exhausted, this is critical in ensuring service to a group's employers and their workers. This requirement has always been in effect, but was activated only upon the request of the director. This rules change will make it a mandatory annual requirement.

The WCA is asking for a **compilation** of the financial statements of its members, not the financial statements themselves.

The WCA respects the privacy of the group members and believes that NMSA 1978, §52-5-21, which deems all records of the WCA confidential, is sufficient to guarantee the privacy and confidentiality of any information provided to the WCA.

The WCA appreciates all of the comments received in this rule-making. The rule will be enacted as proposed.

Part 2 - Safety Rules

One commenter asserted that the proof of compliance is subject to interpretation by the WCA since there is not a standard form and it would make the WCA a repository of more paper. This requirement could affect costs and the growth of government. One commenter requested that the word "proof" be changed to "notification" of completion of a safety inspection. One commenter requested that the requirement be changed from 30 days to 45 or 60 days in order to allow group self-insurers and pools to obtain this information from their members.

Response: The WCA will enact the amendments as proposed. The substitution of the word "notification" for "proof" in the context of this rule does not sufficiently require evidence that a safety inspection was performed. The WCA believes that 30 days is sufficient to obtain the information.

Part 7 - Medical Rules

There were no comments received to the proposed amendments to the medical rules. The amendments will be enacted as proposed. There is one additional change that will be made to the rule at 11.4.7.9 H(2)(iii) pertaining to average wholesale price. The language is outdated and will be changed from "Subject to items (i) and (ii) of Subparagraph(b) of Paragraph (2) of Subsection 11.4.7.9 NMAC in cases of a conflict between referenced publications, the lower price shall prevail." to "In cases of a conflict between referenced publications, the lower price shall prevail."

Part 13 - OCIP Rules

No comments were received pertaining to the proposed amendments to the OCIP Rules. The amendment will be enacted as proposed.

The public record of this rulemaking shall incorporate this Response to Public Comment and the formal record of the rule-making proceedings shall close upon execution of this document.

Alan M. Varela
Director
N.M. Workers' Compensation
Administration
December 14, 2006

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES

2007

Volume XVIII	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 16
Issue Number 2	January 17	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 30
Issue Number 7	April 2	April 16
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