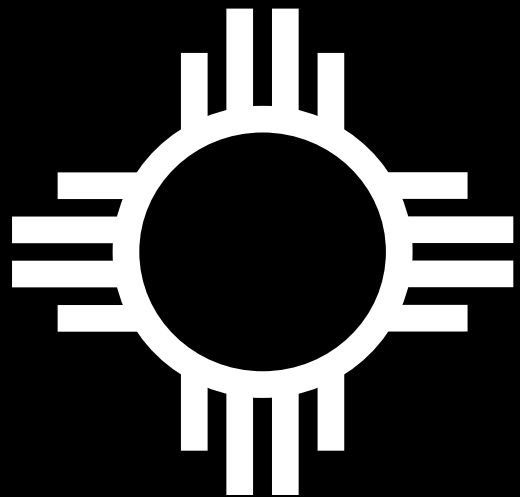


**NEW
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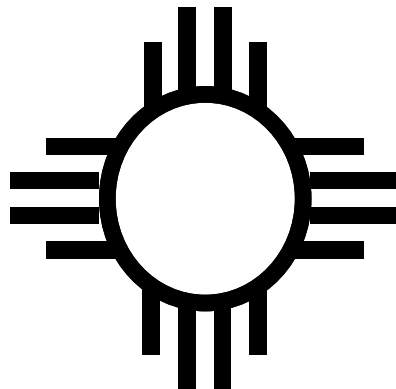


Volume XVIII
Issue Number 2
January 31, 2007

New Mexico Register

Volume XVIII, Issue Number 2

January 31, 2007



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

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2007

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New Mexico Register

Volume XVIII, Number 2

January 31, 2007

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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.

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Notices of Rulemaking and Proposed Rules

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC MEETING AND RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on April 3, 2007 at 9:00 a.m. at the Alamosa Multi-Service Center, Meeting Room A, 6900 Gonzales Road, SW, Albuquerque, New Mexico 87121. The purpose of the hearing is to consider the matter of EIB 06-15 (R) to adopt a new regulation, 20.2.85 NMAC (Mercury Emission Standards and Compliance Schedules for Electric Generating Units), and make related revisions to 20.2.71 NMAC (Operating Permit Emission Fees), 20.2.77 NMAC (New Source Performance Standards), and 20.2.84 NMAC (Acid Rain Permits).

The proponent of this regulatory adoption and revision is the New Mexico Environment Department ("NMED").

NMED proposes to adopt 20.2.85 NMAC to create mercury emission limitations and compliance schedules for electric generating units. In doing so, NMED proposes to satisfy obligations pursuant to the federal Environmental Protection Agency's Clean Air Mercury Rule. NMED proposes to revise 20.2.71 NMAC to incorporate fees for mercury emission limitations. NMED proposes to revise 20.2.77 NMAC to incorporate by reference federal New Source Performance Standards. NMED proposes to revise 20.2.84 NMAC to incorporate definitions added to federal regulations as part of the Clean Air Mercury Rule.

The proposed new and revised regulations may be reviewed during regular business hours at the NMED Air Quality Bureau office, 2044 Galisteo, Santa Fe, New Mexico. Full text of NMED's proposed new and revised regulations are available on NMED's web site at www.nmenv.state.nm.us, or by contacting Andy Berger at (505) 955-8034 or andy.berger@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures - Environmental Improvement Board), the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality Control Act Section, 74-2-6 NMSA 1978 and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- (4) list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and
- (5) attach the text of any recommended modifications to the proposed new and revised regulations.

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on March 19, 2007, and should reference the docket number, EIB 06-15 (R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Joyce Medina, Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N-2150 / 2153
Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505) 827-2836

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

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

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by March 19, 2007 at the NMED, Personnel Services

Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed new and revised regulations at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC MEETING AND RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on April 3, 2007 at 9:00 a.m. at the Alamosa Multi-Service Center, Meeting Room A, 6900 Gonzales road, SW, Albuquerque, New Mexico 87121. The purpose of the hearing is to consider the matter of EIB 06-16 (R), proposed revisions to Air Quality Control Regulations 20.2.78 NMAC (Emission Standards for Hazardous Air Pollutants) and 20.2.82 NMAC (Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants).

The proponent of this regulatory adoption and revision is the New Mexico Environment Department ("NMED").

NMED proposes to revise 20.2.78 NMAC to incorporate by reference federal National Emission Standards for Hazardous Air Pollutants. NMED proposes to revise 20.2.82 NMAC to incorporate by reference federal Maximum Achievable Control Technology Standards for Source Categories.

The proposed revised regulations may be reviewed during regular business hours at the NMED Air Quality Bureau office, 2044 Galisteo, Santa Fe, New Mexico. Full text of NMED's proposed revised regulations are available on NMED's web site at www.nmenv.state.nm.us, or by contacting Robert Spillers at (505) 955-8046 or robert.spillers@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures - Environmental Improvement Board), the Environmental Improvement

Act, Section 74-1-9 NMSA 1978, the Air Quality Control Act Section, 74-2-6 NMSA 1978, and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- (4) list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and
- (5) attach the text of any recommended modifications to the proposed new and revised regulations.

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on March 19, 2007, and should reference the docket number, EIB 06-16 (R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Joyce Medina, Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N-2150 / 2153
Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505) 827-2836

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

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

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by March 19, 2007 at the NMED, Personnel Services

Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed revised regulations at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC RULE MAKING HEARING TO CONSIDER REPEAL AND REPLACEMENT OF 20.9.4 NMAC, "SOLID WASTE MANAGE- MENT PLAN" REGULATIONS

The New Mexico Environmental Improvement Board (Board) will hold a public rule making hearing beginning on April 3, 2007 and continuing thereafter as necessary, at the Alamosa Multi-Service Center, Meeting Room A, 6900 Gonzales Road SW, Albuquerque, NM 87121. The hearing location may change prior to April 3 and those interested in attending should check the EIB website: <http://www.nmenv.state.nm.us/eib/index.html> prior to the hearing. The purpose of the hearing is to consider repeal and replacement of the Solid Waste Management Plan regulations, 20.9.4 NMAC. The New Mexico Environment Department is the proponent of the proposed replacement regulations.

The Solid Waste Management Plan is intended to provide guidance concerning solid waste disposal issues and to assist waste management decision-makers, practitioners and communities. The replacement Plan will affect: waste characterization, waste diversion, siting and capacity of solid waste facilities, education, funding for disposal and diversion, and environmental justice.

The proposed Plan may be reviewed during regular business hours at the office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room N-2153 Santa Fe, NM, 87505. Copies of the proposed Plan may be obtained by contacting Joyce Medina at (505) 827-2425 or by email at joyce.medina@state.nm.us. Please refer to Docket No. EIB 06-03(R). Written comments may be submitted to the EIB regarding the amend-

ed and replaced Plan at the above address and should reference the docket number. The proposed Plan can also be found on the New Mexico Environment Department website at <http://www.nmenv.state.nm.us/swb/pdf/SWMPbody5.pdf>.

Please note formatting and minor technical changes in the proposed Plan may occur. In addition, the Board may make other amendments in response to comments submitted to the Board and evidence presented at the hearing.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, NMSA 1978, Section 74-1-9, and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony shall file such statement prior to the close of the hearing.

Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and
- attach the text of any recommended modifications to the proposed changes.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on March 19, 2007, and should reference the Solid Waste Management Plan, the date of the hearing, and docket number EIB 06-03(R). Notices of intent to present technical testimony should be submitted to:

Joyce Medina
Office of the Environmental Improvement Board
Harold Runnels Building

1190 St. Francis Dr., Room N-2153
Santa Fe, NM 87502

If you are an individual with a disability and you require assistance or an auxiliary aid, such as a sign language interpreter, to participate in any aspect of this process, please contact the Personnel Services Bureau by March 19, 2007. The Personnel Services Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-9872. TDD or TDY users may access this number via the New Mexico Relay Network 1-800-659-1779.

The Board may make a decision on the proposed regulatory change at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

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

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 10:00 a.m., on March 2, 2007, in the HSD Law Library at Pollon Plaza, 2009 S. Pacheco Street, Santa Fe, New Mexico. The subject of the hearing will be **State Coverage Insurance (SCI)**.

New Mexico Human Services Department is proposing regulation updates regarding the following: to clarify that premium payments for State Coverage Insurance (SCI) must be paid in full each month; that no partial payments of premiums or co-payments and no refunds of premiums will be allowed; that in appealing a denial or termination of SCI eligibility through an administrative hearing with the Department, an individual found to be eligible for SCI may enroll with an Managed Care Organization (MCO) but there is no retroactive enrollment or benefit coverage; that a potential SCI member has thirty days to send in the eligibility application and all documentation to the Income Support Division office after receiving the pre-enrollment (contact) letter from the MCO; and to effect various other minor revisions to clarify regulatory language.

Interested persons may submit written comments no later than 5:00 p.m., March 2, 2007, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at www.state.nm.us/hsd/register.html . or by sending a self-addressed stamped envelope to Medical Assistance Division, Program Oversight & Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

**BEFORE THE NEW MEXICO
SUPERINTENDENT
OF INSURANCE**

**IN THE MATTER OF
AMENDING
13.10.13 NMAC,
MANAGED
HEALTH CARE
RULE**

**DOCKET NO.
07-00017-IN**

**NOTICE OF
PROPOSED
RULEMAKING,
HEARING
AND PROCEDURAL ORDER**

NOTICE IS HEREBY GIVEN that the New Mexico Superintendent of Insurance ("Superintendent") upon the instruction of the Legislature and the recommendations of Insurance Division Staff ("Staff"), proposes to amend 13.10.13 NMAC, Managed Health Care Rule. The Superintendent, being otherwise fully advised, **FINDS and CONCLUDES THAT:**

1. The Managed Health Care Rule includes standards for credentialing and re-credentialing, which states that, "At least every two years, MHCPs shall repeat primary verification of its participating providers and facilities to assure ongoing compliance with this section." Paragraph G of Section 13.10.13.13 NMAC.

2. In 2003 the Legislature found that health care providers licensed in New

Mexico are severely burdened by multiple layers of mandatory credentialing obligations, costing them, their patients and third-party payers needless expense and wasted time. As a result, state licensure provisions may be contributing to harmful delays and professional shortages in the state. Laws 2003, ch. 235 Paragraph 1, effective June 30, 2003; NMSA 1978, Section 8-8-9.2, Temporary provisions. Based on these findings, the Legislature required that the Superintendent adopt rules that "shall require primary credential verification **no more frequently than every three years** and shall be scheduled to coincide with national accrediting organizations and hospital and managed care organizations' credentialing requirements." NMSA 1978, Section 8-8-9.2 (emphasis added). The Managed Health Care Rule, 13.10.13 NMAC, should be amended to conform to this legislative requirement.

3. On May 3, 2004 the Superintendent promulgated a Grievance Procedures rule. 13.10.17 NMAC. The Grievance Procedures rule applies to all health care insurers that are covered under the Managed Health Care Rule. Staff recommends that the Managed Health Care Rule be amended to reflect that the Grievance Procedures rule has superseded the earlier provisions regarding grievances found in the Managed Health Care Rule, 13.10.13 NMAC. The Managed Health Care Rule, 13.10.13 NMAC, should be amended to conform with the subsequent Grievance Procedures rule.

4. The Managed Health Care Rule, 13.10.13 NMAC, is enforced by the superintendent of the Division of Insurance, Public Regulation Commission of the State of New Mexico. The Managed Health Care Rule, 13.10.13 NMAC, should be amended to conform to the current designation of "Division" of Insurance within the Public Regulation Commission of the State of New Mexico.

COPIES OF PROPOSED RULEMAKING ARE AVAILABLE:

a. by downloading from the Public Regulation Commission's website, www.nmprc.state.nm.us, under "Insurance Division," then "News" and "Proposed Rules, 13.10.13 NMAC, Managed Health Care Rule;"

b. by sending a written request with the docket number, rule names, and rule numbers to the Public Regulation Commission's Docketing Office, P.O. Box 1269, Santa Fe, NM 87504-1269 along with a self-addressed envelope and a check for \$37.00 made payable to the Public Regulation Commission to cover the cost of

copying; or

c. for inspection and copying during regular business hours in the Public Regulation Commission's Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

COMMENTS ON RULEMAKING: The Superintendent requests written and oral comments from all interested persons and entities on the proposed rulemaking. All relevant and timely comments, including data, views, or arguments, will be considered by the Superintendent. In reaching his decision, the Superintendent may take into account information and ideas not contained in the comments, providing that such information or a writing containing the nature and source of such information is placed in the docket file, and provided that the fact of the Superintendent's reliance on such information is noted in the order the Superintendent ultimately issues.

IT IS THEREFORE ORDERED that this Notice of Hearing on Proposed Rulemaking and Procedural Order be issued.

IT IS FURTHER ORDERED that an informal public hearing pursuant to Section 59A-4-18 NMSA 1978 be held on March 21, 2007 at 9:30 a.m. in the Public Regulation Commission, Fourth Floor Hearing Room, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico for the purpose of receiving oral public comments including data, views, or arguments on the proposed rulemaking. All interested persons wishing to present oral comments may do so at the hearing. Interested persons should contact the Insurance Division ahead of time to confirm the hearing date, time and place since hearings are occasionally rescheduled.

IT IS FURTHER ORDERED that all interested parties may file written comments on the proposed rulemaking **on or before March 1, 2007**. An original and (2) two copies of written comments and suggested changes concerning the proposed amendment to the Grievance Procedure rule must be mailed or delivered to: NM Public Regulation Commission - Docketing Division, ATTN: Bettie K. Cordova, RE: Proposed Amended Rules in Docket No. 07-00017-IN, Public Regulation Commission's Docketing Office, Room 406, PO Box 1269, Santa Fe, NM 87504-1269. Telephone (505) 827-4526. If possible, please also e-mail a copy of written comments as an attachment in Microsoft Word format to Melinda.Silver@state.nm.us. Comments will be available for public inspection during regular business hours in the Docketing

Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

IT IS FURTHER ORDERED that the Superintendent may require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

IT IS FURTHER ORDERED that Insurance Division Staff shall cause a copy of this Notice to be published once in the *New Mexico Register* and once in the *Albuquerque Journal*.

PLEASE BE ADVISED THAT the New Mexico Lobbyist Regulation Act, Section 2-11-1 *et seq.*, NMSA 1978 regulates lobbying activities before state agencies, officers, boards and commissions in rulemaking and other policy-making proceedings. A person is a lobbyist and must register with the Secretary of State if the person is paid or employed to do lobbying or the person represents an interest group and attempts to influence a state agency, officer, board or commission while it is engaged in any formal process to adopt a rule, regulation, standard or policy of general application. An individual who appears for himself or herself is not a lobbyist and does not need to register. The law provides penalties for violations of its provisions. For more information and registration forms, contact the Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM 87503, (505) 827-3600.

PLEASE BE ADVISED THAT individuals with a disability, who are in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing, may contact Ms. Cordova at (505) 827-4426. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should be addressed to Ms. Cordova.

DONE, this 10th day of January 2007.

**NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION**

MORRIS J. CHAVEZ, Superintendent of Insurance

**End of Notices and
Proposed Rules Section**

Adopted Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

21 NMAC 16.8, Weighmaster and Deputy Weighmaster License Fees, filed April 24, 1997 is repealed effective January 31, 2007.

NEW MEXICO DEPARTMENT OF AGRICULTURE

These are amendments to 19.15.108 NMAC, Sections 9, 10, 13, 14, and 15 effective January 31, 2007. This rule was also renumbered and reformatted to comply with current NMAC requirements.

19.15.108.9 REGISTRATION:

A. Prior to installing, servicing, ~~or~~ repairing or reconditioning any commercial weighing or measuring device in the state of New Mexico, a service establishment and each service technician employed by, or who is a part of, the service establishment shall be registered with the department. Application for registration shall be on a form supplied by the department with said form duly signed and witnessed. By applying for registration, the principal officer of the service establishment certifies that each service technician employed by the service establishment is fully competent to install, service, ~~or~~ repair or recondition the class of devices for which registration is applied; has in their possession or available for use all necessary testing equipment, certified test standards, and required reference materials; and has full knowledge of all applicable laws, rules, and regulations. At the request of the department, an applicant shall submit appropriate evidence of qualifications.

B. This part shall not preclude or limit the right and privilege of any individual to install, service, repair, or recondition a commercial device owned by him or his employer. However, without registration, such individual is not permitted to remove an official out-of-order tag or place a device into commercial service. [7/1/97; 19.15.108.9 NMAC - Rn & A, 19 NMAC 15.108.9, 01/31/07]

19.15.108.10 ANNUAL REGISTRATION FEES:

~~A. Fifty dollars (\$50.00) per registered service establishment.~~

~~B. Five dollars (\$5.00) for each service technician registered by the service establishment.~~

~~C. If the complete applica-~~

~~tion for renewal of registration is not filed prior to the expiration of the current registration, a late registration fee of ten dollars (\$10.00) shall be charged in addition to the annual registration fees.~~

~~D. If a registration is canceled by the department during a licensed year and reinstated during the same licensed year, a reinstatement fee of ten dollars (\$10.00) will be charged prior to reinstatement.~~

~~E. All fees shall accompany the application for registration.] A complete registration will include payment of applicable fees for the registrant and all service technicians as established by an external policy memorandum. [7/1/97; 19.15.108.10 NMAC - Rn & A, 19 NMAC 15.108.10, 01/31/07]~~

19.15.108.13 AUTHORITY AND RESPONSIBILITIES OF A REGISTRANT:

A. A registered service technician or registered service establishment shall have the authority to:

(1) remove official tested and approved, out-of-order, and not sealed - not legal for trade stickers or tags;

(2) break seals on adjustment mechanisms;

(3) place into commercial service a device that has been officially rejected;

(4) place into commercial service a new or used device.

B. Prior to placing a device into commercial service, it shall be the responsibility of the registered service technician to:

(1) install, service, ~~or~~ repair or recondition a commercial device in such a manner that the device will comply with applicable requirements set forth in *national institute of standards and technology (NIST) handbook 44*, as revised, and the Petroleum Products Standards Act and associated rules;

(2) remove from a commercial device being installed, serviced, ~~or~~ repaired, or reconditioned all existing tested and approved, out-of-order or not sealed - not legal for trade stickers or tags;

(3) seal all adjustment mechanisms with an appropriate seal;

(4) affix to ~~a commercial device] commercial devices~~ installed, serviced, ~~or~~ repaired, or reconditioned, a clearly visible tag or sticker containing the registered service establishment name or registration number and date on which installation, service, ~~or~~ repair or recondition was performed. [7/1/97; 19.15.108.13 NMAC - Rn & A, 19 NMAC 15.108.13, 01/31/07]

19.15.108.14 PLACE-IN-SERVICE REPORT:

A. Within five (5) calendar days after a new or used device is installed, the original of the properly executed place-in-service report shall be mailed to the department. The duplicate copy of the report shall be retained by the registered service establishment and the triplicate copy of the report shall be given to the owner or operator of the device.

B. Within five (5) calendar days after repairing a device that has been officially rejected, the bottom portion of the out-of-order form shall be completed by the registered service technician performing the repair and the form mailed to the department.

C. A place-in-service report for the types of devices specified below shall be accompanied by the registered service establishment's test report which shows that the device was tested and performing within applicable tolerances at the time the device was placed into service:

(1) For commercial meters (liquid measuring devices) with a capacity of more than twenty (20) gallons or seventy five (75) liters per minute, a test report shall be required which shows that a volumetric prover of sufficient capacity was used to receive a test draft as specified in *NIST handbook 44* for the device under test.

(2) For devices other than those described above, the director may establish appropriate test standards and require test reports if it is determined at his discretion such standards and reports are in the best interests of all concerned.

[7/1/97; 19.15.108.14 NMAC - Rn & A, 19 NMAC 15.108.14, 01/31/07]

19.15.108.15 STANDARDS AND TESTING EQUIPMENT:

A. Prior to registration, and at least annually thereafter, all standards and testing equipment used by the registered service technician or registered service establishment shall be examined by the department or another approved laboratory and a calibration certificate issued for all standards and testing equipment found to be acceptable. A copy of the calibration certificate for all standards and testing equipment used by the registered service technician or registered service establishment shall accompany the registration application.

B. A registered service technician or registered service establishment shall not use in installing, servicing, ~~or~~ repairing, or reconditioning a commercial device any standards or testing equipment that has not been certified.

[7/1/97; 19.15.108.15 NMAC - Rn & A, 19 NMAC 15.108.15, 01/31/07]

**NEW MEXICO
DEPARTMENT OF
AGRICULTURE**

This is an amendment to 21.16.5 NMAC, Section 10, effective January 31, 2007. This rule was also renumbered and reformatted to comply with current NMAC requirements.

21.16.5.10 ANNUAL REGISTRATION FEES:

~~A. Fifty dollars (\$50.00) per registered service establishment.~~

~~B. Five dollars (\$5.00) for each service technician registered by the service establishment.~~

~~C. If the complete application for renewal of registration is not filed prior to the expiration of the current registration, a late registration fee of ten dollars (\$10.00) shall be charged in addition to the annual registration fees.~~

~~D. If a registration is canceled by the department during a licensed year and reinstated during the same licensed year, a reinstatement fee of ten dollars (\$10.00) will be charged prior to reinstatement.~~

~~E. All fees shall accompany the application for registration.] A complete registration will include payment of applicable fees for the registrant and all service technicians as established by an external policy memorandum.~~

[7/1/97; 21.16.5.10 NMAC - Rn & A, 21 NMAC 16.5.10, 01/31/07]

**NEW MEXICO CHILDREN,
YOUTH AND FAMILIES
DEPARTMENT
FAMILY SERVICES DIVISION**

**TITLE 8 SOCIAL SERVICES
CHAPTER 18 PRE-KINDERGARTEN PROGRAMS
PART 2 UNIFORM STANDARDS**

8.18.2.1 ISSUING AGENCY: Children, Youth and Families Department [8.18.2.1 NMAC - N, 01/31/2007]

8.18.2.2 SCOPE: This rule applies to all early care and education programs that are licensed by CYFD or other appropriate authority, such as child care centers, head start programs and family child care providers. [8.18.2.2 NMAC - N, 01/31/2007]

8.18.2.3 STATUTORY AUTHORITY: PRE-KINDERGARTEN ACT, NMSA 1978, 32-A-23-1, et.seq. (as amended) [8.18.2.3 NMAC - N, 01/31/2007]

8.18.2.4 DURATION: Permanent. [8.18.2.4 NMAC - N, 01/31/2007]

8.18.2.5 EFFECTIVE DATE: 01/31/2007, unless a later date is cited at the end of a section. [8.18.2.5 NMAC - N, 01/31/2007]

8.18.2.6 OBJECTIVE: This rule seeks to implement a state-funded pre-kindergarten program through children, youth and families department and addresses collaboration with public education department, program requirements, pre-kindergarten eligibility, requests for proposals and contracts for services. [8.18.2.6 NMAC - N, 01/31/2007]

8.18.2.7 DEFINITIONS: The following definitions are identical to those contained in the Pre-Kindergarten Act unless otherwise specified herein.

A. "Community" means an area defined by school district boundaries, tribal boundaries or joint boundaries of a school district and tribe or any combination of school districts and tribes.

B. "CYFD" means the children, youth and families department.

C. "Early childhood development specialist" means the adult teacher or teacher assistant responsible for working directly with four-year-old children in implementing pre-kindergarten services.

D. "Eligible provider" means a program licensed by the children, youth and families department that provides early childhood development readiness services or preschool special education, or is a public school, tribal program or head start program.

E. "Pre-kindergarten or pre-k" means a voluntary developmental readiness program for children who have attained their fourth birthday prior to September 1.

F. "Pre-kindergarten program" means a voluntary program for the provision of pre-kindergarten services throughout the state that addresses the total developmental needs of preschool children, including physical, cognitive, social and emotional needs, and shall include health care, nutrition, safety and multicultural sensitivity.

G. "PED" means the public education department.

H. "Request for proposal or RFP" means all documents, including those attached or incorporated by reference,

used for soliciting proposals pursuant to the Procurement Code. [13-1-1 through 13-1-199, NMSA 1978]

I. "Tribe" means an Indian nation, tribe or pueblo located in New Mexico. [8.18.2.7 NMAC - N, 01/31/2007]

8.18.2.8 COLLABORATION WITH PUBLIC EDUCATION DEPARTMENT: The children, youth and families and public education departments shall cooperate in the development and implementation of a voluntary program for the provision of pre-kindergarten services throughout the state. Such collaboration shall include but not be limited to:

A. developing and issuing the RFP;

B. providing any necessary training to the departments' respective pre-kindergarten teachers and their supervisors;

C. collection of program data that is not identifiable to an individual student;

D. reporting to the governor and legislative committees regarding implementation and progress;

E. reviewing and continued implementation of pre-kindergarten program standards previously developed by the two departments; and

F. making joint recommendations with the public education department for legislative changes to the Pre-Kindergarten Act or this rule. [8.18.2.8 NMAC - N, 01/31/2007]

8.18.2.9 REQUIREMENTS: The pre-kindergarten program shall address the total developmental needs of preschool children, including physical, cognitive, social and emotional needs, and shall include health care, nutrition, safety and multicultural sensitivity. In order to implement the pre-kindergarten program, CYFD shall:

A. award program funds through an RFP process to early care and education programs that are licensed by CYFD or other appropriate authority, such as child care centers, head start programs and family child care providers;

B. ensure that the facilities' child care licensure is in good standing, including criminal background checks of all eligible providers' employees;

C. provide technical assistance to providers to ensure effectiveness of the pre-kindergarten program;

D. ensure that communities being served meet eligibility requirements based on funding criteria of the Pre-Kindergarten Act;

E. monitor eligible providers through its office of child devel-

opment for adherence to contract requirements and New Mexico pre-kindergarten program standards developed between the two departments.

[8.18.2.9 NMAC - N, 01/31/2007]

8.18.2.10 PRE-KINDERGARTEN ELIGIBILITY: Children who turn four years old before September 1 are eligible to participate in a pre-kindergarten program.

[8.18.2.10 NMAC - N, 01/31/2007]

8.18.2.11 REQUESTS FOR PROPOSALS AND CONTRACTS FOR PRE-KINDERGARTEN SERVICES: CYFD shall:

A. issue a request for proposals for pre-kindergarten services to serve eligible four-year-old children in their community;

B. ensure that the proposal contains a detailed description of the services that are to be provided, including:

(1) how those services shall meet child, youth and families department standards;

(2) the number of four-year-old children that shall be served;

(3) a description of the facilities along with site and floor plans;

(4) other revenue sources and the amounts that the eligible pre-kindergarten provider receives;

(5) a description of the qualifications and experience for each early childhood development staff at the proposed pre-kindergarten site;

(6) the plan for communicating with and involving parents/guardians in the pre-kindergarten program;

(7) how those services meet the continuum of services; and

(8) any other relevant information requested by children, youth and families department or public education department;

C. issue contracts which will be initiated by the office of child development and signed by the appropriate persons in which the eligible provider agrees to adhere to all fiscal, curriculum and training requirements;

D. issue a contract with an eligible provider that specifies and ensures that funds shall not be used for any religious, sectarian or denominational purposes, instruction or material.

[8.18.2.11 NMAC - N, 01/31/2007]

8.18.2.12 UNEXPENDED FUNDS: Any unexpended funds in CYFD's pre-kindergarten fund shall not revert back to the general fund pursuant to NMSA 1978 Sec. 32A-23-1

[8.18.2.12 NMAC - N, 01/31/2007]

HISTORY OF 8.18.2 NMAC:
[RESERVED]

**NEW MEXICO
DEPARTMENT OF
FINANCE AND
ADMINISTRATION
BOARD OF FINANCE**

This is an amendment to 2.60.4 NMAC, Sections 2, 3, and 7 through 14, effective February 1, 2007.

2.60.4.2 SCOPE: State treasurer and financial institutions holding deposits of public money or collateral pledged to secure those deposits under the state board of finance authority.

[4-30-97; 2.60.4.2 NMAC - Rn, 2 NMAC 60.4.2, 11-15-2001; A, 2-1-2007]

2.60.4.3 STATUTORY AUTHORITY:

A. Section 6-1-1 Part E NMSA 1978 states that the state board of finance has general supervision of the fiscal affairs of the state and of the safekeeping and depositing of all money and securities belonging to or in custody of the state.

B. Section 6-10-10 Part C NMSA 1978 provides that the state treasurer may deposit money in one or more accounts with any bank, savings and loan association, or credit union whose deposits are insured by an agency of the United States to receive public money or deposits.

C. Section 6-10-16 and Section 6-10-16.1 NMSA 1978 provide for the type of securities of the United States and New Mexico, including surety bonds as provided in Section 6-10-15, to be used as collateral for deposits of public funds.

D. Section 6-10-17 NMSA 1978 provides that any financial institution designated as a depository of public money shall deliver securities having an aggregate value of at least one-half the amount of public money to be deposited to a custodial bank and shall deliver a joint safekeeping receipt issued by the custodial bank to the public official from whom the public money is received for deposit.

E. Section 6-10-17.1 NMSA 1978 provides that when a depository bank has not maintained qualifying securities as collateral for deposits of public money, the treasurer or board shall request the depository to provide additional qualifying securities to meet those requirements within ten calendar days. If the financial institution does not comply, the board or treasurer shall withdraw all deposits of public money within the next ten calendar days.

F. Section 6-10-18 NMSA 1978, requires any financial institution des-

ignated as a depository of public money to enter into a written agreement to assure that collateral it pledges as security remains secure throughout the term of the designation.

G. Section 6-10-20 NMSA 1978 provides that the board may at any time within its discretion require any depository financial institution to furnish additional security for deposit of the kind specified in Section 6-10-16 NMSA.

H. Section 6-10-21 NMSA 1978, authorizes the board to regulate the safekeeping of securities pledged as collateral by depository banks and requires the board to designate the custodial banks charged with safekeeping that collateral pursuant to contracts between the two financial institutions and the state.

I. Section 6-10-24.1 NMSA 1978, bars the state treasurer from depositing public money in a financial institution in an amount that exceeds four hundred percent of the total equity capital in the case of banks or four hundred percent of the net worth in case of savings and loan associations, or twenty-five percent of the total of the financial institution's deposits, whichever is less.

[4-30-97; 2.60.4.3 NMAC - Rn & A, 2 NMAC 60.4.3, 11-15-2001; A, 8-1-2006; A, 2-1-2007]

2.60.4.7 DEFINITIONS:

A. "Board" means state board of finance.

B. "Custodian bank" means a federal reserve bank or branch or any bank designated by the board as described in this rule.

C. "Financial institution" means any certified or designated bank, savings and loan association or credit union whose deposits are insured by an agency for the United States to receive public money.

D. "Deposit ratio" means the amount of state funds on deposit or invested with a financial institution relative to the total amount of deposits at the financial institution, excluding, however, funds held by the fiscal agent bank, as the state's fiscal agent bank, and demand deposits held by state checking depository banks when determining the amount of state funds.

E. "Equity ratio" means the amount of state funds on deposit or invested with a financial institution relative to the total equity capital of the financial institution, excluding, however, funds held by the fiscal agent bank, as the state's fiscal agent bank, and demand deposits held by state checking depository banks when determining the amount of state funds.

F. "Letters of credit" means those letters of credit that are eligible to be pledged to the state to secure state

funds pursuant to Section 6-10-16, NMSA 1978, as it may be amended from time to time.

[D.] G. "Securities" means those securities eligible as collateral for public funds under Section 6-10-16 NMSA 1978.

H. "Surety bond" means a bond substantially in the form prescribed in 6-10-15 NMSA 1978, issued by a surety company that is continually rated in the highest category by at least one nationally recognized statistical rating agency and licensed to do business in New Mexico. [2.60.4.7 NMAC - N, 11-15-2001; A, 2-1-2007]

2.60.4.8 DESIGNATION OF AND REPORTING REQUIREMENTS FOR A DEPOSITORY BANK:

A. Financial institutions requesting to become a depository bank must submit the following information to the state treasurer:

(1) a letter from the financial institution requesting to become a depository bank;

(2) copy of federal deposit insurance corporation (FDIC) certification or the national credit union administration certification;

(3) financial reports for the preceding four quarters; newly chartered financial institutions must provide their most recent financial report.

B. Initial and continued appointment of financial institutions to serve as depository banks for the state of New Mexico is determined by the institution's risk assessment ratios and required collateral levels as specified in Section 2.60.4.9 below, and entry into and maintenance of a depository agreement consistent with Section 6-10-18 NMSA 1978. [4-30-97, 4-30-98; 2.60.4.8 NMAC - Rn & A, 2NMAC 60.4.8, 11-15-2001; A, 8-1-2006; A, 2-1-2007]

2.60.4.9 COLLATERAL REQUIREMENTS FOR DEPOSITORY BANK SERVICES AS DETERMINED BY RISK ASSESSMENT RATIOS:

A. The board directs the state treasurer to conduct risk assessment analysis of financial institutions holding deposits of public money under the board's authority. The risk assessment will include a determination of each financial institution's primary capital-to-asset ratio, net operating income to total average asset ratio and non-performing loans to primary capital ratio for the past four consecutive quarters. These risk assessment ratios will determine collateral level requirements for financial institutions holding deposits of public money as listed below.

(1) If a financial institution's pri-

mary capital-to-asset ratio (as defined by the federal deposit insurance corporation (FDIC)) is:

(a) 6.1 percent or greater, the financial institution shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit;

(b) 5.0 percent to 6.0 percent, the financial institution shall be required to maintain collateral with an aggregate market value equal to 75 percent of the amount of the deposit;

(c) less than 5.0 percent, the financial institution shall be required to maintain collateral with an aggregate market value equal to 100 percent of the amount of the deposit.

(2) If the financial institution's net operating income after taxes to its total average asset ratio is:

(a) .61 percent or greater, the financial institution shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit;

(b) .51 percent to .60 percent, the financial institution shall be required to maintain collateral with an aggregate market value equal to 75 percent of the amount of the deposit;

(c) less than .51 percent, the financial institution shall be required to maintain collateral with an aggregate market value equal to 100 percent of the amount of the deposit;

(d) a newly chartered financial institution is exempt from this ratio requirement for the first year of its operation; for the second year of operations, the financial institution shall annualize its net operating income beginning with the first quarter of the second year; if this ratio is less than .61 percent, the state treasurer shall review the financial institution's financial condition and may request additional collateral.

(3) If the financial institution's non-performing loans (defined as loans which are at least 90 days past due and accruing or non-accruing) to the financial institution's primary capital ratio is:

(a) 34.9 percent or less, the financial institution shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit;

(b) 35.0 percent to 49.9 percent, the financial institution shall be required to maintain collateral with an aggregate market value equal to 75 percent of the amount of the deposit;

(c) greater than 49.9 percent, the financial institution shall be required to maintain collateral with an aggregate market value equal to 100 percent of the amount of the deposit.

(4) If a financial institution's

deposit ratio is:

(a) less than 10 percent, the financial institution shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit;

(b) 10 percent or greater, the financial institution shall be required to maintain collateral with an aggregate market value equal to 100 percent of the amount of the deposit.

(5) If a financial institution's equity ratio is:

(a) less than 200 percent, the financial institution shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit;

(b) 200 percent or greater, the financial institution shall be required to maintain collateral with an aggregate market value equal to 100 percent of the amount of the deposit.

B. Should the risk assessment ratios result in different levels of collateral for a financial institution, the state treasurer shall request the highest collateral level required.

C. Collateral levels shall be required until the risk assessment ratios of the financial institution return to a level which allows collateral to be kept at a lower level or at statutory minimum level as appropriate.

D. [When making deposits in New Mexico financial institutions, the state treasurer shall not deposit any amount.] State funds shall not be deposited or invested in a financial institution an amount that, when added to state funds already on deposit and invested in that financial institution, exceeds two hundred percent of the total equity capital in case of banks or two hundred percent of the net worth in the case of savings and loan associations or ten percent of the total of the bank's or the saving and loan association's deposits, whichever is less, unless and until the bank or savings and loan association has pledged and maintains collateral with an aggregate market value equal to one hundred percent of the aggregate amount on deposit. In no event [shall the state treasurer deposit] shall state funds be deposited or invested in any amount that, when added to state funds already on deposit and invested in that financial institution, exceeds four hundred percent of the total equity capital in case of banks or four hundred percent of the net worth in case of savings and loan associations or [ten percent] twenty-five percent of the total of the bank's or the savings and loan association's deposits, whichever is less, provided, however, the twenty-five percent of total deposits limitation shall not apply during the first year of operation of a newly chartered bank or savings and loan

association. In the event state funds in a bank or savings and loan association exceed the four hundred percent/twenty-five percent limitations set out herein, the state treasurer shall not renew any maturing certificates of deposit and shall provide for the staged withdrawal of the amount in excess of these limitations over a reasonable period of time to avoid causing failure of the institution unless immediate withdrawal is necessary to prevent loss of funds pursuant to 2.60.4.12 NMAC. Further, the state treasurer shall not deposit state funds in credit unions in excess of the amount insured by an agency of the United States. The amount of state funds deposited and invested as described above shall exclude funds held by the state's fiscal agent bank, as the fiscal agent bank, and demand deposits held by state checking depository banks.

[4-30-97, 4-30-98; 2.60.4.9 NMAC - Rn & A, 2 NMAC 60.4.8, 11-15-2001; A, 8-1-2006; A, 2-1-2007]

2.60.4.10 REQUIRED TYPES OF COLLATERAL:

A. Deposits of public money shall be secured by the following.

(1) Securities of the United States, its agencies or instrumentalities. These shall be accepted as security at market value.

(2) Securities of the state of New Mexico, its agencies, instrumentalities, counties, municipalities or other subdivisions. These shall be accepted at par value.

(3) Securities, including student loans, that are guaranteed by the United States or the state of New Mexico. These shall be accepted as security at market value.

(4) Revenue bonds that are underwritten by a member of the national association of securities dealers, known as "N.A.S.D.", and are rated "BAA" or above by a nationally recognized bond rating service. These shall be accepted as security at market value.

(5) Bonds of the New Mexico mortgage finance authority, a state instrumentality.

(6) Farmers' home administration loans, which are fully guaranteed by the federal government.

(7) Letters of credit issued by a federal home loan bank in the same amount that would be required if securities were being posted as collateral pursuant to Subsection A of 2.60.4.9 NMAC. These shall be accepted at par value.

(8) ~~Surety bonds, as provided for in Section 6-10-15 NMSA 1978, from a surety company that is continually rated in the highest category by at least one nationally recognized rating agency and is licensed to do business in New Mexico.~~

~~Should the surety company fall below the highest rating category, the surety bond issued by the company shall not be valid for use as collateral.] Surety bonds in the same amount that would be required if securities were being posted as collateral pursuant to Subsection A of 2.60.4.9 NMAC. Additionally, each surety bond must receive prior approval from the board and a district judge of the first judicial district. These shall be accepted at par value.~~

B. Mutual funds may not be pledged as collateral for deposits of public funds.

[2.60.4.10 NMAC - N, 11-15-2001; A, 2-1-2007]

2.60.4.11 DEPOSITORY BANK REPORTING ~~[OF RISK ASSESSMENT RATIOS AND COLLATERAL LEVELS]~~ TO THE STATE TREASURER:

A. The figures to be used by the state treasurer in completing the risk assessment analysis for the depository bank shall be calculated from the quarterly call statements, thrift reports, or national credit union administration reports of the financial institution and from the state treasurer's generated report "New Mexico financial institution quarterly report". Both reports shall be furnished by the financial institution to the state treasurer no later than on the tenth day of the second month following the end of each calendar quarter. If the tenth day falls on a weekend or a legal holiday, the figures shall be submitted on the next business day.

B. By the tenth day, depository banks shall submit a monthly collateral (including surety bonds and letters of credit) level report to the state treasurer on the state treasurer's generated report "state treasurer collateral compliance monthly report". If the tenth falls on a weekend or a legal holiday, the figures shall be submitted on the next business day.

C. The figures provided to the state treasurer by the financial institution shall be certified in writing by the president, an executive officer, or a person authorized by a corporate resolution certifying the information of the financial institution.

D. The state treasurer may, at any time between quarterly reporting periods, request any additional certified information from the financial institution as needed to assess the risk level of that financial institution.

E. The state treasurer is directed to require each financial institution to advise the state treasurer of any adverse event having a potential material impact on the financial ratios required of it by its respective regulatory agencies or by this

rule and as well as any final administrative enforcement action imposed upon it. If deposits are secured by a surety bond, an adverse event would include any downgrade in rating of the surety company.

[2.60.4.11 NMAC - N, 11-15-2001; A, 8-1-2006; A, 2-1-2007]

2.60.4.12 COLLATERAL LEVEL NON-COMPLIANCE AND APPROPRIATE ADJUSTMENTS:

A. If a financial institution that has been designated as a depository of public money is unable to meet the risk assessment qualifications for a minimum level of collateral required, the state treasurer is directed to cease making any additional deposits of public money into the financial institution and to withdraw deposits in the order they would otherwise mature to an amount which can be collateralized at an appropriate level of collateral in accordance with the risk assessment ratios.

B. If a financial institution that has been designated as a depository of public money has not maintained qualifying securities as collateral, the state treasurer shall request the financial institution to substitute or provide additional qualifying securities to meet those requirements within ten days. If the financial institution does not comply with the request within ten calendar days, the state treasurer shall withdraw from that financial institution within the next ten calendar days all deposits of public money under the state treasurer's control without penalty.

C. ~~[The state treasurer is directed to require each financial institution that has had a final administrative enforcement action imposed upon it to advise the state treasurer of such action.] Upon receipt of notice by a financial institution of an adverse event or final administrative enforcement action imposed upon it.~~

(1) If the state treasurer believes such action indicates a high level of risk in maintaining public deposits in that financial institution, the state treasurer shall report to the board and the board shall decide whether additional collateral shall be required.

(2) The state treasurer may require the pledging of additional collateral or make an emergency withdrawal of state deposits prior to maturity and prior to obtaining board direction when such action is necessary in his judgment in the exercise of reasonable care to protect state funds.

(3) If the financial institution believes that exceptional circumstances exist which indicate that it is/was not appropriate for the state treasurer to take any action ~~[listed above]~~ pursuant to this subsection:

(a) the financial institution shall

appear at the next board meeting and present its position;

(b) the board shall ~~[at the time vote on whether an exception to this policy will be allowed]~~ determine what action should be taken and/or if deposits should be reinstated.

(4) If a surety company that has issued the surety bond ceases to be rated in the highest rating category by at least one nationally recognized statistical rating agency, the surety bond issued by the company shall no longer be valid for use as collateral for state deposits and an alternative surety bond or collateral must be pledged immediately.

D. The withdrawal of state deposits shall not be subject to the assessment of a penalty for early withdrawal except to the extent required to be imposed by federal law and in that event, only the minimum penalty required to be imposed shall be imposed by the financial institution.

E. Nothing herein shall restrict the state treasurer or the board from the lawful exercise of rights and duties conferred upon them by law.

[2.60.4.12 NMAC - N, 11-15-2001; A, 8-1-2006; A, 2-1-2007]

2.60.4.13 REQUIREMENTS TO PROVIDE CUSTODIAL BANK SERVICES:

A. Financial institutions requesting to become a custodial bank must submit the following information to the state treasurer:

(1) a letter from the ~~[financial institution]~~ federal reserve bank or branch or any bank qualified to perform custodial functions in the state requesting to become a custodial bank;

(2) copy of federal deposit insurance corporation (FDIC) certification; ~~[and]~~

(3) financial reports for the preceding four quarters; newly chartered financial institutions must provide their most recent financial report; and

(4) for banks that are not federal reserve banks or branches, information and documentation demonstrating their qualifications to perform custodial functions in the state.

B. Initial and continued appointment for a custodian to serve as agent for the state of New Mexico is determined by the risk assessment ratios of the financial institution. Qualified financial institutions requesting initial and continued appointment as a custodial bank must certify that the institution has maintained a primary capital-to-asset ratio of greater than 6.0 percent, a net operating income-to-total average asset ratio of .61 percent or higher and non performing loans-to-primary capital ratio of 34.9 percent or lower continuously for the preceding four quarters. A

newly chartered financial institution, at the time of appointment, must certify that the institution has maintained a primary capital-to-asset ratio of greater than 6.0 percent, a net operating income-to-total average asset ratio of .61 percent or higher and non performing loans-to-primary capital ratio of 34.9 percent or lower for the current quarter.

C. No custodian designated by the state treasurer shall be a member of the same holding company as the financial institution whose securities the custodian is holding as the ~~[as the]~~ state's agent. In addition, any financial institution that owns 5 percent or more of another financial institution may not hold collateral for that financial institution.

[2.60.4.13 NMAC - N, 11-15-2001; A, 2-1-2007]

2.60.4.14 CUSTODIAL BANK REPORTING ~~[OF RISK ASSESSMENT RATIOS]~~ TO THE STATE TREASURER:

A. The figures to be used by the state treasurer in completing the risk assessment analysis for the custodial bank shall be calculated from the quarterly call statements of the financial institution and from the treasurer's generated report "New Mexico financial institution quarterly report". Both reports shall be furnished by the financial institution to the state treasurer no later than on the tenth day of the second month following the end of the calendar quarter. If the tenth day falls on a weekend or a legal holiday, the figures shall be submitted on the next business day.

B. Custodial banks shall report monthly to the state treasurer the collateral amounts held for each depository bank for which it holds collateral.

C. The figures provided to the state treasurer by the financial institution shall be certified in writing by the president, an executive officer, or a person authorized by a corporate resolution certifying the information of the financial institution.

D. The state treasurer is directed to require each custodial bank to advise the state treasurer of any adverse event having a potential material impact on the financial ratios required of it by its respective regulatory agencies and by this rule as well as any final administrative enforcement action imposed upon it.

~~[D-]~~ E. The state treasurer may, at any time between quarterly reporting periods, request any additional certified information from the financial institution as needed to assess the risk level of that financial institution.

[2.60.4.14 NMAC - N, 11-15-2001; A, 2-1-2007]

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION BOARD OF FINANCE

This is an amendment to 2.70.4 NMAC, Sections 2, 3, 4, 6, 7, and 9 through 11, effective February 1, 2007. This rule was also renumbered and reformatted from Directive 89-4 to comply with current NMAC requirements.

2.70.4.2 SCOPE: All institutions of higher education confirmed by Article 12, Section 11 of the New Mexico Constitution.

[2.70.4.2 NMAC - N, 2/1/07]

2.70.4.3 STATUTORY AUTHORITY: Section 21-1-21, NMSA 1978, which requires prior approval by the higher education department and state board of finance of any expenditure by any state educational institution confirmed by Article 12, Section 11 of the state constitution for the purchase of real property or construction of buildings or other major structures or major remodeling projects.

[2.70.4.3 NMAC - N, 2/1/07]

2.70.4.4 DURATION: Permanent

[2.70.4.4 NMAC - N, 2/1/07]

2.70.4.6 OBJECTIVE:

A. Section 21-1-21 NMSA 1978 states: "No expenditure shall be made by any state educational institution confirmed by Article 12, Section 11 of the state constitution for the purchase of real property ~~[for]~~ or the construction of buildings or other major structures or for major remodeling projects without prior approval of the proposed purchase or construction or remodeling by the board of educational finance and the state board of finance".

B. Involvement of the state board of finance in the approval of capital outlay projects and capital expenditures at New Mexico colleges and universities is specified by this statute. This involvement is substantially different from the involvement with state building projects, where the state board of finance is the final authority for accepting bids and determining whether the project will be constructed. In the case of educational institutions, the authority for the actual construction of the project resides with the board of regents of the institution. However, New Mexico statute requires the ~~[commission of higher education]~~ higher education department and the state board of finance to provide prior approval to the board of regents before they

are allowed to proceed with the project.

C. Since the statute requires the ~~[commission on higher education]~~ higher education department and the state board of finance to provide "prior" approval of the project, these two bodies should review all major capital projects to determine that the proposed project is in keeping with the overall statewide plan for higher education. The source of funding for the project should also be carefully reviewed to determine that sufficient funds are available for the project and the use of the funds will not have an adverse effect on other portions of the institution's budget. The sufficiency of planning for the project, and the completeness of the review of the project by the board of regents should also be determined.

[2.70.4.6 NMAC - Rn, Directive 89-4 & A, 2/1/07]

2.70.4.7 DEFINITIONS: For these purposes, "major" is defined as:

A. any project funded, in whole or in part, by capital outlay legislation signed into law which costs over \$500,000.00, at institutions with FTE enrollments under 1,500;

B. any project funded, in whole or in part, by capital outlay legislation signed into law which costs over \$750,000.00, at institutions with FTE enrollments of 1,500 or more;

C. any project funded exclusively by sources other than legislative appropriations which costs over \$50,000.00, at institutions with enrollments of 1,500 FTE or less; or

D. any project funded exclusively by sources other than legislative appropriations which costs over \$300,000.00, at institutions with enrollments exceeding 1,500 FTE.

[2.70.4.7 NMAC - Rn, Directive 89-4 & A, 2/1/07]

2.70.4.9 INFORMATION REQUIRED FOR SUBMISSION FOR PURCHASE OF REAL PROPERTY:

A. To ensure that the state board of finance will have sufficient information to review capital outlay expenditures at New Mexico's educational institutions, the following information will be required to be submitted to the board after the ~~[commission on higher education]~~ higher education department has approved the request.

~~[(1) Purchase of real property:]~~

~~[(A)]~~ (1) legal description of the property;

~~[(B)]~~ (2) a copy of the appraisal and concurrence therewith, if performed by an independent appraiser, by the property tax division of the taxation and revenue

department;

~~[(C)]~~ (3) a site improvement survey to verify the legal description and to uncover the existence of recorded and unrecorded easements and encroachments;

~~[(D)]~~ (4) a description of the use to which the property will be placed;

~~[(E)]~~ (5) the source of funds for the purchase to include citation of the relevant section of the law when source of funds is legislative appropriation;

~~[(F)]~~ (6) [title insurance with the proviso that general exceptions 1-4 of the title insurance policy be deleted] current title binder evidencing clear title with no non-standard exceptions, and agreement by the title company that it will delete general exceptions 1 through 6 and the first two-thirds of 7;

~~[(G)]~~ (7) merchantable fee simple title by warranty deed, except if the seller is a public entity;

~~[(H)]~~ (8) phase I of an environmental assessment to verify prior use of the land with regard to possible environmental hazards;

(9) a copy of the purchase agreement, which should contain a provision making the acquisition subject to the approval of higher education department and the state board of finance; and

(10) evidence of approval of acquisition by applicable board of regents and higher education department.

B. Waivers of certain provisions may be granted at the discretion of the board of finance, on a case by case basis, until patterns develop that can be worked into the policy. Additionally, requirements affecting bond approvals are set forth in 2.61.5 NMAC.

[2.70.4.9 NMAC - Rn, Directive 89-4 & A, 2/1/07]

2.70.4.10 INFORMATION REQUIRED FOR SUBMISSION FOR CONSTRUCTION OF BUILDINGS OR OTHER FACILITIES; MAJOR REMODELING OR REPAIRS:

A. To ensure that the state board of finance will have sufficient information to review capital outlay expenditures at New Mexico's educational institutions, the following information will be required to be submitted to the board after the higher education department has approved the request.

~~[(A)]~~ (1) a description of the facility to be constructed or repaired, including the types of space to be included, the function of the facility, and the relationship of the project to the institution's five-year master plan;

~~[(B)]~~ (2) the total square footage of the facility, both net assignable square feet and gross square feet;

~~[(C)]~~ (3) the cost per square foot for the construction or repair of the facility and the cost per square foot for the total project;

~~[(D)]~~ (4) a budget for the project, including architects and engineering fees and contingencies;

~~[(E)]~~ (5) source of funds to include citation of the relevant section of the law when source of funds is legislative appropriation; and

~~[(F)]~~ (6) evidence of approval of expenditure by applicable board of regents and higher education department.

B. Waivers of certain provisions may be granted at the discretion of the board of finance, on a case by case basis, until patterns develop that can be worked into the policy. Additionally, requirements affecting bond approvals are set forth in 2.61.5 NMAC.

[2.70.4.10 NMAC - Rn, Directive 89-4 & A, 2/1/07]

2.70.4.11 REVISED PROJECTS: To ensure that the project actually constructed will be substantially the same as that approved by the ~~[commission on higher education]~~ higher education department and the state board of finance, any change in the project resulting in a change in the budget of more than ten percent will require separate review and approval by the state board of finance. The same information will be required for such changes as is required for the original submission of the project. Any additional information which can help in evaluating a proposed project can be requested by the state board of finance prior to approval.

[2.70.4.11 NMAC - Rn, Directive 89-4 & A, 2/1/07]

NEW MEXICO GENERAL SERVICES DEPARTMENT RISK MANAGEMENT DIVISION

This is an amendment to 13.10.20 NMAC Section 10, where a second sentence was added to the end of Subsection B - effective 01-31-07.

13.10.20.10 GENERAL ELIGIBILITY CRITERIA: To participate in the program, participants must be:

A. employed by a New Mexico based small employer; and

B. the small employer may not have offered health care coverage to persons and dependents for a period of at least twelve months prior to enrollment in the coverage offered under the program, not inclusive of a government sponsored health benefit program. For the purpose of this paragraph, an employer will be deemed not

to have offered health care insurance coverage if the employer's health care insurance was unilaterally cancelled, in part or in whole, by the carrier, through no action or inaction on the part of the employer, and the employer has not offered other private health care coverage since the unilateral cancellation of the employer's prior health care insurance coverage; only then may that employer not be subject to the time requirement of this section, in order to participate in the small employer health care coverage program governed by these rules.
[13.10.20.10 NMAC - N, 7/1/2006; A, 1/31/2007]

NEW MEXICO HIGHER EDUCATION DEPARTMENT

The New Mexico Higher Education Department repeals its rule 5 NMAC 7.17, entitled Teachers' Loan-for-Service Program, effective 1/31/07.

The New Mexico Higher Education Department repeals its rule 5 NMAC 55.2, entitled Concurrent Enrollment, effective 1/31/07.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS
PART 9 PRE-KINDERGARTEN PROGRAM**

6.30.9.1 ISSUING AGENCY: Public Education Department
[6.30.9.1 NMAC - N, 1/31/2007]

6.30.9.2 SCOPE: This rule applies to all school districts, public schools, including charter schools.
[6.30.9.2 NMAC - N, 1/31/2007]

6.30.9.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, NMSA 1978; Pre-Kindergarten Act 32A-23-1 to 32A-23-8, NMSA 1978.
[6.30.9.3 NMAC - N, 1/31/2007]

6.30.9.4 DURATION: Permanent
[6.30.9.4 NMAC - N, 1/31/2007]

6.30.9.5 EFFECTIVE DATE: 1/31/2007, unless a later date is cited at the end of a section.

[6.30.9.5 NMAC - N, 1/31/2007]

6.30.9.6 OBJECTIVE: This rule seeks to implement a state funded pre-kindergarten program through the public education department and addresses collaboration with the children, youth and families department, program requirements, pre-kindergarten eligibility, requests for proposals and contracts for services, and administration of funds.

[6.30.9.6 NMAC - N, 1/31/2007]

6.30.9.7 DEFINITIONS:
A. "Community" means an area defined by school district boundaries, tribal boundaries or joint boundaries of a school district and tribe or any combination of school districts and tribes.

B. "CYFD" means the children, youth and families department.

C. "Department" means the public education department or PED.

D. "Early childhood development specialist" means the adult responsible for working directly with four-year-old children in implementing pre-kindergarten services.

E. "Eligible provider" means a person licensed by the children, youth and families department that provides early childhood developmental readiness services or preschool special education, or is a public school, tribal program or head start program.

F. "Pre-kindergarten or pre-k" mean a voluntary developmental readiness program for children who have attained their fourth birthday prior to September 1.

G. "Pre-k program" means a voluntary program for the provision of pre-k services throughout the state that addresses the total developmental needs of preschool children, including physical, cognitive, social and emotional needs, and shall include health care, nutrition, safety and multicultural sensitivity.

H. "Request for proposal or RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals pursuant to the Procurement Code (see 13.1.1 through 13.1.199 NMSA 1978).

I. "Tribe" means an Indian nation, tribe or pueblo located in New Mexico.
[6.30.9.7 NMAC - N, 1/31/2007]

6.30.9.8 COLLABORATION WITH CYFD: The PED shall collaborate with the CYFD in the development and implementation of a voluntary program for the provision of pre-kindergarten services throughout the state. Such collaboration shall include but not be limited to:

A. development and

issuance of the RFP;

B. training and technical assistance provided to pre-k program supervisors and program staff;

C. collection of program data that is not identifiable to an individual student;

D. reporting to the governor and legislative committees regarding implementation and progress;

E. contacting the CYFD prior to recommending any changes to the Pre-Kindergarten Act or this rule.

[6.30.9.8 NMAC - N, 1/31/2007]

6.30.9.9 REQUIREMENTS: The CYFD and PED shall cooperate in the development and implementation of a voluntary program for the provision of pre-k services throughout the state. The pre-k program shall address the total developmental needs of preschool children, including physical, cognitive, social and emotional needs, and shall include health care, nutrition, safety and multicultural sensitivity. In order to implement the pre-k program, the PED shall:

A. award program funds through an RFP process to public school districts and schools, including charter schools;

B. provide technical assistance to providers to ensure effectiveness;

C. ensure that funds shall not be used for any religious, sectarian or denominational purposes, instruction or material;

D. ensure communities being served are meeting eligibility requirements based on the funding criteria of the Pre-Kindergarten Act;

E. monitor programs for compliance with the pre-k law, rule and contract to include scheduled and unscheduled visits and any necessary corrective actions; and

F. determine public school requirements for licensure or teaching endorsements for pre-k program early childhood development specialists and staff.

[6.30.9.9 NMAC - N, 1/31/2007]

6.30.9.10 PRE-KINDERGARTEN ELIGIBILITY: Children who turn four years old before September 1 are eligible to participate in pre-k programs.
[6.30.9.10 NMAC - N, 1/31/2007]

6.30.9.11 REQUESTS FOR PROPOSALS AND CONTRACTS FOR PRE-K SERVICES: The PED shall:

A. issue an RFP for pre-k services to serve eligible four-year-old children through public school programs;

B. ensure that the proposal contains a detailed description of the service-

es that are to be provided, including:

(1) how those services shall meet pre-k program standards;

(2) the number of four-year-old children that shall be served;

(3) a description of the facilities along with site and floor plans;

(4) additional revenue sources and funding amounts available for the pre-k program;

(5) a description of the qualifications and experience of the early childhood development specialists for each site;

(6) the plan for communicating with and involving parents in the program;

(7) how program services meet the continuum of services to children; and

(8) any other relevant information requested by the department.

[6.30.9.11 NMAC - N, 1/31/2007]

**HISTORY OF 6.30.9 NMAC:
[RESERVED]**

**UNIVERSITY OF NEW
MEXICO**

**Notice of Repeal by the University of New
Mexico Policy Office**

The University of New Mexico is repealing the following policies, currently filed with the State Records Center. The effective date of the repeal is January 31st, 2007.

UNM 92-1, University of New Mexico Visitor Code of Conduct, filed 5-8-92.

UNM/UBP 2160-1, Outdoor Vendors, filed 2-22-94.

UNM/UBP 3640-1, Tax Deferred Annuities, filed 2-22-94.

UNM/UBP 3730-1, Solicitation, filed 2-22-94.

UNM/UBP 3775-1, Smoking in UNM Buildings, filed 2-22-94.

5.60.7 NMAC Campus Violence, filed 10-28-2004.

The rewritten policies are available on the UNM Policy's Office website at <http://www.unm.edu/~ubppm/>. Interested persons may also request a copy by contacting the Policy Office at (505) 277-9749 or by writing to the University of New Mexico Policy Office, 1 University of New Mexico, MSC07 4270, Albuquerque, NM 87131-0001.

End of Adopted Rules 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
Issue Number 8	April 17	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 14
Issue Number 12	June 15	June 29
Issue Number 13	July 2	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 30
Issue Number 17	August 31	September 14
Issue Number 18	September 17	September 28
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 3	December 14
Issue Number 24	December 17	December 31

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