

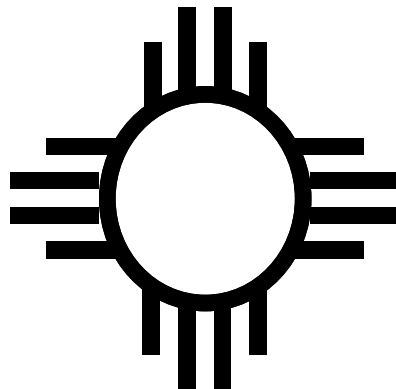
**NEW
MEXICO
REGISTER**



Volume XVIII
Issue Number 20
October 31, 2007

New Mexico Register

**Volume XVIII, Issue Number 20
October 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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New Mexico Register

Volume XVIII, Number 20

October 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.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

AMENDED NOTICE OF JOINT HEARING OF ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD and NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

(Please disregard previous notice published in Issue #19)

The Albuquerque-Bernalillo County Air Quality Control Board (Air Board) and the New Mexico Environmental Improvement Board (EIB) will hold a joint public hearing and may hold special meetings on **November 26 and continuing through November 28, 2007 or later if necessary, beginning at 9:00am each day. Non-technical public comment for the Air Board will be taken on the evening of November 27 commencing at 6:30pm.** The location will be at the Albuquerque Convention Center, 401 2nd St NW, Albuquerque, NM 87102 in the East Complex, upper level, San Miguel/Mesilla conference rooms. The hearing will address:

Proposal to adopt new regulations, **20.11.104 NMAC (Air Board) and 20.2.88 NMAC (EIB)**, both of which are entitled **Emissions Standards for New Motor Vehicles.**

These regulations are part of a broader effort to address emissions including greenhouse gases and are being proposed in accordance with Governor Richardson's Executive Order 2006-69 and in support of Mayor Chavez' Albuquerque Green environmental initiatives, which include climate protection.

The Boards may make decisions on the proposed regulations at the conclusion of the hearing or may convene meetings for that purpose.

The Air Quality Control Board and New Mexico Environmental Improvement Board are the federally delegated air quality authorities for Albuquerque and Bernalillo County and the State of New Mexico. Federal, State, and local delegation authorize the Air Board and the EIB to administer and enforce the Clean Air Act, the New Mexico Air Quality Control Act, air quality regulations, and to require air pollution

sources to comply with air quality standards.

Anyone intending to present technical testimony at the hearing regarding 20.11.104 NMAC (Air Board) is asked to submit a written notice of intent to testify (NOI) before 5:00pm on November 8, 2007 to: Attn: November Hearing Record, Ms. Janice Amend, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or, you may deliver your NOI to Room 3023, 400 Marquette Avenue NW.

Notices of Intent to Present Technical Testimony should include the following:

- (1) identify the name and address of 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) include a full narrative of anticipated direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- (4) attach each exhibit anticipated to be offered by that person at the hearing, with the exception of PowerPoint presentations or other demonstrative exhibits; and
- (5) attach the text of any recommended modifications to the proposed new and revised regulations.

Hearings and meetings of the Boards are open to the public and all interested persons are encouraged to participate. All persons who wish to present non-technical testimony regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6 and 74-2-6.D NMSA.

Persons, including members of the public, wishing to present non-technical testimony may do so without prior notification. Any such person also may offer exhibits in support of his testimony. Alternatively, any such person may submit a written statement for the record prior to or at the hearing.

Non-technical public comment on the evening of Nov. 27 to the Air Board may be limited to five (5) minutes for each com-

menter to address the proposed 20.11.104 NMAC (Air Board), Emissions Standards for New Motor Vehicles. Equipment will not be provided for commentators to show overhead slides or make computerized slide presentations unless a special request is received in advance. Commentors should notify Ms. Janice Amend at 768-2601 to make such a request. Commentors are encouraged to provide written versions of their testimonies either electronically on computer disk or CD ROM or in paper copy. Translators will be available for all persons who wish to testify in Spanish on that evening.

Interested persons may obtain a copy of the proposed rules at the Environmental Health Department Office, or by contacting Ms. Janice Amend electronically at jamend@cabq.gov or by phone (505) 768-2601.

NOTICE FOR PERSON WITH DISABILITIES: Notice to persons with disabilities: If you have a disability and require special assistance to participate in a Board meeting please call: 311 (Voice) or 1-800-659-8331 (TTY).

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

AMENDED NOTICE OF HEARING OF THE ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

(Please disregard previous notice published in Issue #19)

The hearing for **20.11.47 NMAC, Emission Inventory Requirements and 20.11.47 NMAC, Emission Inventory Requirements into the New Mexico State Implementation Plan for air quality (SIP)** has been postponed until further notice.

The Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing on **November 29, 2007, at 9:00am** regarding the proposal to adopt a new regulation, **20.11.48 NMAC, Greenhouse Gas Emissions Reporting.** The location of the hearing will be at the Albuquerque Convention Center, 401 2nd St NW, Albuquerque, NM 87102 in the East Complex, upper level, San Miguel/Mesilla conference rooms.

This regulation is a part of a broader effort to address greenhouse gases and is in support of Mayor Chavez' Albuquerque Green environmental initiatives, which include climate protection. The proposed regulation, 20.11.48 NMAC, Greenhouse Gas Emissions Reporting, requires specific greenhouse gas reporting for three industrial sectors: power plants, refineries and cement manufacturing plants.

The Board may make a decision on the proposed regulation at the conclusion of the hearing or may convene a meeting for that purpose.

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

Anyone intending to present technical testimony at the hearing regarding 20.11.48 NMAC Greenhouse Gas Emissions Reporting, is asked to submit a written notice of intent to testify (NOI) before 5:00pm on November 8, 2007 to: Attn: November Hearing Record, Ms. Janice Amend, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or, you may deliver your NOI to Room 3023, 400 Marquette Avenue NW.

Notices of Intent to Present Technical Testimony should including the following:

(1) identify the name and address of 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) include a full narrative of anticipated direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;

(4) attach each exhibit anticipated to be offered by that person at the hearing, with the exception of PowerPoint presentations or other demonstrative exhibits; and

(5) attach the text of any recommended modifications to the proposed new and revised regulation.

The hearing of the Board is open to the public and all interested persons are encouraged to participate. All persons who wish to present non-technical testimony regarding

the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Persons, including members of the public, wishing to present non-technical testimony may do so without prior notification. Any such person also may offer exhibits in support of his testimony. Alternatively, any such person may submit a written statement for the record prior to or at the hearing.

Non-technical public comment on Nov. 29 may be limited to five (5) minutes for each commenter to address the proposed 20.11.48 NMAC, Greenhouse Gas Emissions Reporting. Equipment will not be provided for commentors to show overhead slides or make computerized slide presentations unless a special request is received in advance. Persons who wish to testify in Spanish must notify Ms. Janice Amend sufficiently in advance at (505) 768-2601 if they need translation services. Commentors are encouraged to provide written versions of their testimonies either electronically on computer disk or CD ROM or in paper copy.

Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Ms. Janice Amend electronically at jamend@cabq.gov or by phone (505) 768-2601.

NOTICE FOR PERSON WITH DISABILITIES: Notice to persons with disabilities: If you have a disability and require special assistance to participate in a Board meeting please call: 311 (Voice) or 1-800-659-8331 (TTY).

**NEW MEXICO
DEPARTMENT OF
CULTURAL AFFAIRS
ARTS DIVISION**

**NOTICE OF HEARING ON PROPOSED
RULES GOVERNING THE NEW MEXICO
ARTS DIVISION**

Notice is hereby given that pursuant to the New Mexico Arts Commission and Division Act Section 18-5-7(F) NMSA 1978, the New Mexico Arts Division proposes to adopt regulations to update the New Mexico Arts Commission bylaws and regulations governing the New Mexico Arts Division and its funding application proce-

dures, requirements, and programs.

The proposed regulations update the New Mexico Arts Commission bylaws. The proposed changes will be discussed, and comments taken at a public hearing to be held on November 30, 2007. New Mexico Arts Commission updates section 4.12.1.16 NMAC General Provisions and 4.12.10.8 NMAC Application Process for Folk Arts Apprenticeship. Also proposed is the replacement of the most current issues of the two FY2009 guidelines. The updates will be heard between 9:00 am and 9:30 am. The hearing will be held at the New Mexico Arts offices, conference room #241 located at The Bataan Memorial Building - Department of Cultural Affairs, at 407 Galisteo St., Santa Fe, NM. Copies of the proposed regulations may be obtained before the meeting at the New Mexico Arts Division offices listed above or by contacting Virginia Castellano at 505/827-6490 or by e-mail virginia.castellano@state.nm.us. The notice of the public hearing and the proposed language changes will be posted on NMA website www.nmarts.org under "Breaking News" beginning October 29th.

Interested persons may submit written comments to the New Mexico Arts Division at PO Box 1450, Santa Fe, NM 87504-1450 or e-mail comments regarding the funding programs to virginia.castellano@state.nm.us to be received by 8:00 am November 29, 2007. Written comments shall suggest specific reasons for any suggested amendments or comments and include any proposed amendatory language.

If any interested person has a disability and requires some accommodation in attending the public hearing or to have the rules communicated to them, please submit a written request identifying the disability and the type of accommodation needed to Virginia Castellano before November 20. If accommodation is not requested in advance we cannot guarantee the availability of accommodation on-site.

**NEW MEXICO
DEPARTMENT OF
CULTURAL AFFAIRS
HISTORIC PRESERVATION
DIVISION**

**NEW MEXICO DEPARTMENT OF
CULTURAL AFFAIRS
State Historic Preservation Division**

NOTICE
Cultural Properties Review Committee
Regular Meeting and Public Hearing on
Rulemaking

Notice is hereby given, in conformance with § 9-4A-6(E) NMSA 1978, that the Cultural Properties Review Committee (CPRC), along with the State Historic Preservation Division, Department of Cultural Affairs, will be holding a regular meeting of the CPRC, which shall include a public hearing, on Rulemaking at 1:00 P.M. on Friday, October 5, 2007, at the Capitol Building, Room 311, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The purpose of the public hearing on rulemaking is to take comments on proposed changes to Title 4, Chapter 10, *Cultural Properties and Historic Preservation*. The Department proposes that Parts 2, 3, 4, 5, 6, 7, 9, 11, 12 and 13 of Title 4, Chapter 10, be reformatted and renumbered to conform to current NMAC requirements without any other changes or amendments. In addition, the Department proposes replacing Title 4, Chapter 10, Part 10, *Certified Local Government Program*, and comments will be received on this proposal during the public hearing. Interested persons may testify at the hearing or submit written comments on the new rule to Title 4, Chapter 10, Part 10, to the Historic Preservation Division (HPD) at 407 Galisteo St., Suite 236, Santa Fe, New Mexico, 87501, or via fax at (505) 827-6338. Written comments must be received no later than 5:00 P.M., November 14, 2007. Written comments will be given the same consideration as oral testimony at the public hearing. The revised rule 4.10.10 NMAC may be obtained from the HPD website (<http://www.nmhistoricpreservation.org/>), by calling the Historic Preservation Division at (505) 827-6320 between 8:00 A.M. to 5:00 P.M. Monday through Friday, or by email to jan.biella@state.nm.us.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will open a public hearing on November 14, 2007, 9:00 a.m. at the New Mexico State Capitol Building, Room 321, 490 Old Santa Fe Trail, Santa Fe, NM 87501, for the purpose of taking public comment in the matter in EIB No. 07-09 (R), the New Mexico Environment Department's ("NMED") proposal to adopt a new regulation, 20.2.88 NMAC (Emissions Standards for New Motor Vehicles). Technical testimony will be taken in a joint public hearing before the

Board and the Albuquerque-Bernalillo County Air Quality Control Board on November 26, 2007, beginning at 9:00 a.m. and continuing through the week as necessary at the Albuquerque Convention Center, 401 2nd St NW, Albuquerque, NM 87102 in the East Complex, upper level, San Miguel/Mesilla conference rooms. This regulation is part of a broader state effort to address emissions of greenhouse gases and is being proposed in accordance with Governor Richardson's Executive Order 2006-69.

The proposed regulation may be reviewed during regular business hours at the NMED Air Quality Bureau office, 2044 Galisteo, Santa Fe, New Mexico, 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, as defined in 20.1.1 NMAC, must file a written notice of intent including the following:

- (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) include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- (4) list, describe, and 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, including any proposed Statement of Reasons for adoption of rules.

Notices of intent and other documents submitted to the Board shall be filed in the original with 9 copies for Board members, Board counsel and the Hearing Officer, and shall also be served on NMED counsel and

the persons identified on the service list maintained by the Board. Notices of intent should reference the docket number, EIB No. 07-09(R) and the date of the hearing, and must be received in the Board's Office at the following address no later than 5:00 pm on November 8, 2007:

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 person, including a member of the public, wishing to present non-technical testimony may do so without prior notification. Any such person also may offer exhibits in support of his testimony. Alternatively, any such person may submit a written statement for the record prior to or at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by October 30, 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 may access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed regulation at the conclusion of the hearing or may convene another meeting for that purpose.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on January 7, 2008 at 9:00 a.m. at the New Mexico Energy, Minerals and Natural Resources Department, Wendell Chino Building, Porter Hall, 1220 St. Francis Drive, Santa Fe, NM 87505, for the purpose of hearing the matter in EIB No. 07-13 (R), the New Mexico Environment Department's ("NMED") proposal to adopt a new regulation, 20.2.86 NMAC (Best Available Control Technology for Mercury at New Power Plants). This regulation is proposed in accordance with House Bill 318 from the 2007 Regular Session of the New Mexico Legislature, which amended the Air Quality Control Act

to provide the Environmental Improvement Board authority to adopt a regulation for stringent mercury control at new coal-fired power plants with the Board's jurisdiction.

The proposed regulation may be reviewed during regular business hours at the NMED Air Quality Bureau office, 2044 Galisteo, Santa Fe, New Mexico, 87505, 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 a written notice of intent including the following:

- (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 should reference the docket number, EIB No. 07-13(R) and the date of the hearing, and must be received in the Board's Office at the following address no later than 5:00 pm on December 21, 2007:

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

Persons, including members of the public, wishing to present non-technical testimony

may do so without prior notification. Any such person also may offer exhibits in support of his testimony. Alternatively, any such person may submit a written statement for the record prior to or at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by December 21, 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 may access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed regulation at the conclusion of the hearing or may convene another meeting for that purpose.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING

The New Mexico Environmental Improvement Board ("the Board") will hold a public hearing after its regularly convened meeting on January 7, 2008 at 9:00 a.m., and continuing on January 8, 2008 if necessary, in Porter Hall in the Wendell Chino Building of the New Mexico Energy, Minerals and Natural Resources Department, at 1220 St. Francis Drive, Santa Fe, NM 87505, for the purpose of hearing the matter in EIB No. 07-11(R), the New Mexico Environment Department's ("NMED") proposal to adopt amendments to 20.5.1 NMAC (General Provisions), 20.5.2 NMAC (Registration of Tanks), 20.5.3 NMAC (Annual Fee), 20.5.4 NMAC (New and Upgraded Storage Tank Systems: Design, Construction and Installation), 20.5.5 NMAC (General Operating Requirements), 20.5.6 NMAC (Release Detection), 20.5.8 NMAC (Out-of-Service Systems and Closure) and 20.5.14 NMAC (Certification of Tank Installers). The proposed amendments would conform the regulations to the secondary containment, release detection, inspection and other requirements of the federal Energy Policy Act of 2005; clarify that owners and operators of storage tanks may be held liable for noncompliance with the rules; identify the tasks that must be conducted by certified tank installers; and streamline, re-format and clarify other requirements of the regulations.

Interested persons may review the proposed amendments during regular business hours at the NMED Petroleum Storage

Tank Bureau, 2044 Galisteo Street, Suite A, Santa Fe, NM; NMED's Albuquerque Field Office, 5500 San Antonio Drive NE, Albuquerque, NM; on NMED's website at www.nmenv.state.nm.us; or by contacting Jennifer Pruet at (505) 984-1815 or Jennifer.Pruett@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC, Rulemaking Procedures for the Environmental Improvement Board; the Environmental Improvement Act, Section 74-1-9 NMSA 1978; the Hazardous Waste Act, Section 74-4-5 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 a written notice of intent that:

- (1) identifies the person for whom the witness(es) will testify;
- (2) identifies 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) summarizes or includes a copy of the direct testimony of each technical witness and states the anticipated duration of the testimony of that witness;
- (4) attaches the text of any recommended modifications to the proposed regulatory change; and
- (5) lists and describes, or attaches, all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of the rules.

Notices of intent should reference the docket number, EIB No. 07-11(R) and the date of the hearing, and must be received in the Board's Office at the following address no later than 5:00 pm on December 21, 2007:

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

Persons, including members of the public, wishing to present non-technical testimony may do so without prior notification. Any such person also may offer exhibits in support of his testimony. Alternatively, any such person may submit a written statement for the record prior to or at the hearing.

Persons having a disability and needing help to participate in this hearing process should contact Judy Bentley by

November 16, 2007 at the NMED, Human Resources Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users may access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed regulation at the conclusion of the hearing or may convene another meeting for that purpose.

NEW MEXICO MEDICAL BOARD

NEW MEXICO MEDICAL BOARD

Notice

The New Mexico Medical Board will convene a regular Board Meeting on Thursday, November 15, 2007 at 8:00 a.m. and Friday, November 16, 2007 at 8:30 a.m. in the Conference Room, 2055 S. Pacheco, Building 400, Santa Fe, New Mexico. A Public Rule Hearing will be held on Thursday, November 15, 2007 at 1:30 p.m. The Board will reconvene after the Hearing to take action on the proposed rules. The Board may enter into Executive Session during the meeting to discuss licensing or limited personnel issues.

The purpose of the Rule Hearing is to consider amending 16.10.2 NMAC (Physicians: Licensure Requirements), 16.10.3 NMAC (Examinations), 16.10.4 (Continuing Medical Education), 16.10.9 NMAC (Fees), and 16.10.11 NMAC (Physicians Supervising Pharmacist Clinicians).

Changes to Parts 2, 3, 4 and 11 will provide further clarification of licensure requirements, examinations, continuing medical education and supervisions of Pharmacist Clinicians. Changes to Part 9 will increase licensing fees.

Copies of the proposed rules will be available on October 15th on request from the Board office at the address listed above, by phone (505) 476-7220, or on the Internet at www.nmmb@state.nm.us.

Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m., November 9, 2007, to the board office, 2055 S. Pacheco, Building 400, Santa Fe, NM, 87505.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service in order to attend or participate in the hearing, please contact Lynnelle Tipton, Administrative Assistant at 2055 S. Pacheco, Building 400, Santa Fe, NM at

least one week prior to the meeting. Public documents, including the agenda and minutes, can be provided in various accessible formats.

NEW MEXICO OPTOMETRY EXAMINERS BOARD

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Optometry Examiners Board will hold a Rule Hearing on Saturday, December 1, 2007. Following the Rule Hearing the New Mexico Optometry Examiners Board will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Optometry Examiners Board Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held at the Regulation and Licensing Department, Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.16.13 NMAC: Continuing Education and NEW RULE: 16.16.18 NMAC: Authorized (Injections and) Minor Surgical Procedures.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, or call (505) 476-4630 after November 1, 2007. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing no later than November 15, 2007. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4630 at least two weeks prior to the meeting or as soon as possible.

Martha L. Gallegos, Administrator
PO Box 25101- Santa Fe, New Mexico
87504

NEW MEXICO PHYSICAL THERAPY BOARD

Legal Notice

Notice is hereby given that the New Mexico Physical Therapy Board will convene a Rule Hearing to amend, replace or repeal:

Title 16, Chapter 20, Part 1	G e n e r a l Provisions
Title 16, Chapter 20, Part 2	Examinations
Title 16, Chapter 20, Part 3	Issuance of Licenses
Title 16, Chapter 20, Part 4	Temporary Licenses
Title 16, Chapter 20, Part 5	Schedule of Fees
Title 16, Chapter 20, Part 6	P h y s i c a l Therapist Assistants
Title 16, Chapter 20, Part 7	Supervision
Title 16, Chapter 20, Part 8	Continuing Education
Title 16, Chapter 20, Part 9	E d u c a t i o n Criteria for Foreign-Educated Applicants
Title 16, Chapter 20, Part 10	D i r e c t Care Requirements

The New Mexico Physical Therapy Board will also add the following part:

Title 16, Chapter 20, Part 11 Disciplinary Proceedings

This Hearing will be held in the Rio Grande conference room at the Toney Anaya Building, 2nd Floor, 2550 Cerrillos Road in Santa Fe, New Mexico on Friday, November 30, 2007, beginning at 12:00 p.m.

Following the Rule Hearing the New Mexico Physical Therapy Board will convene a regular Board meeting on November 30, 2007, beginning with the Executive Session. The public portion of the meeting is anticipated to begin at 2:00 p.m.

Copies of the proposed rules are available on request from the Board office, P.O. Box 25101, Santa Fe, New Mexico, 87504-5101, or phone 505-476-4827.

Anyone wishing to present their views on the proposed rules may appear in person at the Hearing, or may send written comments to the Board Office. Written comments must be received by November 14, 2007 to allow time for distribution to the Board and Committee members. Individuals planning

to testify at the hearing must provide 14 copies of their testimony.

Final action on proposed rules will be taken during the Board meeting. Portions of the Committee and Board meeting may be closed to the public while the Board and Committee are in Executive Session to discuss licensing matters. Copies of the agenda will be available 24 hours in advance of the meeting from the Board office.

Disabled members of the public who wish to attend the meeting or hearing and are in need of reasonable accommodations for their disabilities should contact the Board Administrator at least one week prior to the meeting.

**End of Notices and
Proposed Rules Section**

Adopted Rules

**NEW MEXICO ENERGY,
MINERALS AND NATURAL
RESOURCES
DEPARTMENT
ENERGY CONSERVATION AND
MANAGEMENT DIVISION**

**TITLE 3 TAXATION
CHAPTER 3 PERSONAL
INCOME TAXES
PART 29 SUSTAINABLE
BUILDING TAX CREDIT FOR RESI-
DENTIAL BUILDINGS**

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

[3.3.29.1 NMAC - N, 10-31-07]

3.3.29.2 SCOPE: 3.3.29
NMAC applies to the application and certi-
fication procedures for administration of the
sustainable building tax credit for sustain-
able residential buildings.

[3.3.29.2 NMAC - N, 10-31-07]

**3.3.29.3 STATUTORY
AUTHORITY:** 3.3.29 NMAC is estab-
lished under the authority of NMSA 1978,
Section 7-2-18.19 and NMSA 1978, Section
9-1-5.

[3.3.29.3 NMAC - N, 10-31-07]

3.3.29.4 DURATION:
Permanent.

[3.3.29.4 NMAC - N, 10-31-07]

3.3.29.5 EFFECTIVE DATE:
October 31, 2007, unless a later date is cited
at the end of a section.

[3.3.29.5 NMAC - N, 10-31-07]

3.3.29.6 OBJECTIVE: 3.3.29
NMAC's objective is to establish proced-
ures for administering the program to issue
a certificate of eligibility for the sustainable
building tax credit for sustainable residen-
tial buildings.

[3.3.29.6 NMAC - N, 10-31-07]

3.3.29.7 DEFINITIONS:

A. "Annual cap" means
the annual total amount of the sustainable
building tax credit available to taxpayers
owning sustainable residential buildings.

B. "Applicant" means a
taxpayer who owns a sustainable residential
building in New Mexico and that desires to
have the department issue a certificate of
eligibility for a sustainable building tax
credit.

C. "Application package"

means the application documents an appli-
cant submits to the division to receive a cer-
tificate of eligibility for a sustainable build-
ing tax credit.

D. "Build green New
Mexico certification" means the verifica-
tion by a department-approved verifier, that
a building project has met certain prerequi-
sites and performance benchmarks or cred-
its within each category of the build green
New Mexico rating system resulting in the
issuance of a certification document.

E. "Build green New
Mexico rating system" means the certifica-
tion standards adopted by the homebuilders
association of central New Mexico.

F. "Certification" means
build green New Mexico certification,
LEED certification or energy star qualified.

G. "Certificate of eligibil-
ity" means the document, with a unique
identifying number that specifies the
amount and taxable year for the approved
sustainable building tax credit.

H. "Certification level"
means one of the following:

- (1) silver;
- (2) gold; or
- (3) platinum.

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

J. "Division" means the
department's energy conservation and man-
agement division.

K. "Energy reduction
requirements" means has achieved a HERS
index of 60 or lower.

L. "Energy star" means a
joint program of the United States environ-
mental protection agency and the United
States department of energy that qualifies
homes based on a predetermined threshold
of energy efficiency.

M. "Energy star qualified
manufactured home" means a home that an
energy star certified plant has certified as
being designed, produced and installed in
accordance with energy star's guidelines.

N. "HERS" means home
energy rating system as developed by
RESNET.

O. "HERS index" means a
relative energy use index, where 100 repre-
sents the energy use of a home built to a
HERS reference house and zero indicates
that the proposed home uses no net pur-
chased energy.

P. "LEED" means the
most current leadership in energy and envi-
ronmental design green building rating sys-
tem guidelines the U. S. green building
council developed and adopted.

Q. "LEED certification"

means the verification by the U. S. green
building council, or a department-approved
verifier, that a building project has met cer-
tain prerequisites and performance bench-
marks or credits within each category of the
LEED-H rating system resulting in the
issuance of a certification document.

R. "LEED-H" means the
LEED rating system for homes.

S. "Manufactured hous-
ing" means homes built in a factory meeting
the federal manufactured home construction
and safety standards, commonly referred to
as the HUD Code.

T. "Qualified occupied
square footage" means the building's condi-
tioned spaces as determined per the
American national standards institute stan-
dard Z765-2003 or as specified by the man-
ufactured housing manufacturer.

U. "Rating system" means
the LEED-H rating system, the build green
New Mexico rating system or the energy
star program for manufactured housing.

V. "RESNET" means the
residential energy services network, an
industry not-for-profit membership corpo-
ration and national standards making body
for building energy efficiency rating sys-
tems.

W. "Solar market develop-
ment tax credit" means the personal income
tax credit the state of New Mexico issues to
a taxpayer for a solar energy system the
department has certified.

X. "Sustainable building
tax credit" means the personal income tax
credit the state of New Mexico issues to an
applicant for a sustainable residential build-
ing.

Y. "Sustainable residential
building" means:

(1) a building used as a single-
family residence that meets the energy
reduction requirements and has been award-
ed:

(a) LEED-H certification at the
certification level of silver, gold or plat-
inum; or

(b) build green New Mexico cer-
tification at the gold certification level;

(2) a building used as multi-fami-
ly residences where all dwelling units have
met the energy reduction requirements and
the building has been awarded:

(a) LEED-H certification at the
certification level of silver, gold or plat-
inum; or

(b) build green New Mexico cer-
tification at the gold certification level; or

(3) an energy star qualified manu-
factured home.

Z. "Taxpayer" means any
individual subject to the tax imposed by the

Income Tax Act, NMSA 1978, Section 7-2-1 et seq.

AA. "Taxpayer identification number" means the taxpayer's nine digit social security number.

BB. "Verifier" means an entity the department approves to provide certifications for homes under the build green New Mexico or LEED-H rating systems.

[3.3.29.7 NMAC - N, 10-31-07]

3.3.29.8 GENERAL PROVISIONS:

A. Only a taxpayer who is the owner of a building in New Mexico that has been constructed or renovated to be a sustainable residential building and that receives certification on or after January 1, 2007 may receive a certificate of eligibility for a sustainable building tax credit.

B. The annual total amount of the sustainable building tax credit available to taxpayers owning sustainable residential buildings is limited to \$5,000,000. When the \$5,000,000 limit for sustainable residential buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

(2) if no sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the sustainable building tax credit is in effect.

C. No more than \$1,250,000 of the \$5,000,000 annual cap is for manufactured housing.

D. In the event of a discrepancy between a requirement of 3.3.29 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.3.29 NMAC's adoption, the existing rule governs.

[3.3.29.8 NMAC - N, 10-31-07]

3.3.29.9 VERIFIER ELIGIBILITY:

A. The division reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners that may apply for certification;

(2) the verifier has adequate staff and expertise to provide certification services, including:

(a) experience in green home building services;

(b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;

(c) a method of auditing the certification process to maintain adequate stringency; and

(d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;

(3) the verifier can identify the geographic area being served; and

(4) the verifier provides a statement that expresses a commitment to promoting energy-efficient green building with the highest standard of excellence.

B. The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

C. The verifier shall notify the division 30 calendar days prior to making changes to its certification process or rating systems.

D. The department may rescind an existing verifier's approval, if it determines that the above criteria are not being met. The department notifies the verifier of the reasons for disapproving or rescinding eligibility.

(1) The division shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the division's notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.

(2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing concludes.

[3.3.29.9 NMAC - N, 10-31-07]

3.3.29.10 APPLICATION FOR THE SUSTAINABLE BUILDING TAX CREDIT:

A. In order to obtain the sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the division on a division-developed form. An applicant may obtain an application form from the division.

B. An application package shall include a completed application form and attachments as specified on the application form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable residential building. The applicant shall submit all material submitted in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the application incomplete.

C. An applicant shall submit a complete application package to the division no later than November 15 of the calendar year for which the applicant seeks the sustainable building tax credit to allow time for approval and issuance of a certificate of eligibility. The division will review application packages it receives after that date for the subsequent taxable year.

D. The completed application form shall consist of the following information:

(1) the applicant's name, mailing address, telephone number and taxpayer identification number;

(2) the name of the applicant's authorized representative;

(3) the ending date of the applicant's taxable year;

(4) the address of the sustainable residential building, including the property's legal description;

(5) whether the applicant was the building owner at time of certification or a subsequent purchaser;

(6) the qualified occupied square footage of the sustainable residential building;

(7) the rating system under which the sustainable residential building was certified;

(8) the certification level achieved, if applicable;

(9) the HERS index, if applicable;

(10) the date of rating system certification;

(11) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, agreeing that:

(a) all information provided in the

application package is true and correct to the best of the applicant's knowledge under penalty of perjury?

(b) applicant has read the requirements contained in 3.3.29 NMAC?

(c) if an onsite solar system is used to meet the requirements of either the rating system certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market tax credit;

(d) applicant understands that there are annual limits for the sustainable building tax credit?

(e) applicant understands that the division must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a sustainable building tax credit? and

(f) applicant understands that the department issues a certificate of eligibility for the taxable year in which the sustainable residential building was certified or, if the sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available; and

(12) a project number the division assigns to the tax credit application.

E. In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable residential building?

(2) a copy of the rating system certification form?

(3) a copy of the final certification review checklist that shows the points achieved, if applicable?

(4) a copy of a HERS certificate, from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software the internal revenue service lists as eligible for certification of the federal tax credit, showing the HERS index achieved, if applicable; and

(5) other information the department needs to review the building project for the sustainable building tax credit.

[3.3.29.10 NMAC - N, 10-31-07]

3.3.29.11 APPLICATION REVIEW PROCESS:

A. The department considers applications in the order received, according to the day they are received, but not the time of day.

B. The department approves or disapproves an application package following the receipt of the complete application package. The department

disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division places the resubmitted application in the review schedule as if it were a new application.

C. The division reviews the application package to calculate the sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the sustainable building tax credit.

D. If an onsite solar system is used to meet the requirements of either the certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the division verifies that no person has applied for a solar market development tax credit for that solar system. If the division finds that a solar market development tax credit has been approved for that solar system, the division shall disapprove the application for the sustainable building tax credit. The applicant may submit a revised application package to the division. The division places the resubmitted application in the review schedule as if it were a new application.

E. If the division finds that the application package meets the requirements and a sustainable building tax credit is available, the department issues the certificate of eligibility for a sustainable building tax credit. If a sustainable building tax credit is partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year, until the last taxable year when the sustainable building tax credit is in effect. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, the sustainable building tax credit amount or amounts and the sustainable building tax credit's taxable year or years.

[3.3.29.11 NMAC - N, 10-31-07]

3.3.29.12 CALCULATING THE TAX CREDIT:

A. The division calculates the sustainable building tax credit based on the qualified occupied square footage of the sustainable residential building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

build green New Mexico gold:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$4.50; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$2.00
LEED-H Silver:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$5.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$2.50
LEED-H Gold:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$6.85; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$3.40
LEED-H Platinum:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$9.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$4.45
energy star manufactured housing:	
up to 3,000 square feet	equals the qualified square footage less than or equal to 3,000 multiplied by \$3.00.

B. An applicant may receive both a sustainable building tax credit and a federal tax credit if the applicant is eligible for each tax credit.

C. The department makes the final determination of the amount of the sustainable building tax credit.
[3.3.29.12 NMAC - N, 10-31-07]

3.3.29.13 CLAIMING THE STATE TAX CREDIT:

A. To claim the sustainable building tax credit, an applicant shall submit all certificates of eligibility to the taxation and revenue department within 30 days of the department's issuance, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.

B. Beginning with the taxable year on each certificate of eligibility, the taxation and revenue department will apply 25 percent of the amount on the certificate against the applicant's income tax liability for four years, unless the amount is less than or equal to \$25,000, in which case the taxation and revenue department applies the entire sustainable building tax credit in the taxable year on the certificate.

C. If the amount of the sustainable building tax credit the applicant claims exceeds the applicant's income tax liability, the applicant may carry the excess forward for up to seven consecutive taxable years.

D. A taxpayer claiming a sustainable building tax credit shall not claim a tax credit pursuant to another law for the same sustainable residential building unless the other tax credit is applicable to systems that are unrelated to the sustainable building tax credit. In addition, a taxpayer claiming the sustainable building tax credit shall not claim the credit for the same sustainable building under both the Income Tax Act and the Corporate Income and Franchise Tax Act.
[3.3.29.13 NMAC - N, 10-31-07]

HISTORY OF 3.3.29 NMAC:
[RESERVED]

**NEW MEXICO ENERGY,
MINERALS AND NATURAL
RESOURCES
DEPARTMENT
ENERGY CONSERVATION AND
MANAGEMENT DIVISION**

**TITLE 3 TAXATION
CHAPTER 3 PERSONAL
INCOME TAXES
PART 30 SUSTAINABLE
BUILDING TAX CREDIT FOR COM-
MERCIAL BUILDINGS**

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

[3.3.30.1 NMAC - N, 10-31-07]

3.3.30.2 SCOPE: 3.3.30 NMAC applies to the application and certification procedures for administration of the sustainable building tax credit for sustainable commercial buildings.
[3.3.30.2 NMAC - N, 10-31-07]

3.3.30.3 STATUTORY AUTHORITY: 3.3.30 NMAC is established under the authority of NMSA 1978, Section 7-2-18.19 and NMSA 1978, Section 9-1-5.
[3.3.30.3 NMAC - N, 10-31-07]

3.3.30.4 DURATION: Permanent.
[3.3.30.4 NMAC - N, 10-31-07]

3.3.30.5 EFFECTIVE DATE: October 31, 2007, unless a later date is cited at the end of a section.
[3.3.30.5 NMAC - N, 10-31-07]

3.3.30.6 OBJECTIVE: 3.3.30 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the sustainable building tax credit for sustainable commercial buildings.
[3.3.30.6 NMAC - N, 10-31-07]

3.3.30.7 DEFINITIONS:

A. "Annual cap" means the annual aggregate amount of the sustainable building tax credit available to taxpayers owning sustainable commercial buildings.

B. "Applicant" means a taxpayer who owns a sustainable commercial building in New Mexico and that desires to have the department issue a certificate of eligibility for a sustainable building tax credit.

C. "Application package" means the application documents an applicant submits to the division to receive a certificate of eligibility for a sustainable building tax credit.

D. "Building project" means a new construction or renovation project that will result in one or more sustainable commercial buildings.

E. "Building type" means the primary use of a building or section of a building as defined in target finder.

F. "Certificate of eligibility" means the document, with a unique identifying number that specifies the amount and taxable year for the approved sustainable building tax credit.

G. "Certification level" means one of the following:
(1) silver;
(2) gold; or
(3) platinum.

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

I. "Division" means the department's energy conservation and management division.

J. "Energy reduction requirements" means:

(1) through 2011, a 50 percent energy reduction based on the national average for that building type as published by the United States department of energy; and

(2) beginning January 1, 2012, a 60 percent energy reduction based on the national average for that building type as published by the United States department of energy.

K. "LEED" means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the U. S. green building council.

L. "LEED certification" means the U. S. green building council's verification that a building project has met certain prerequisites and performance benchmarks or credits within each category of a LEED rating system resulting in the issuance of a certification document.

M. "LEED-CI" means the LEED rating system for commercial interiors.

N. "LEED-CS" means the LEED rating system for the core and shell of buildings.

O. "LEED-EB" means the LEED rating system for existing buildings.

P. "LEED-NC" means the LEED rating system for new buildings and major renovations.

Q. "LEED rating system" means one of the following:

- (1) LEED-CI;
- (2) LEED-CS;
- (3) LEED-EB; or
- (4) LEED-NC.

R. "LEED registration" means the notification to the U. S. green building council that a project is pursuing LEED certification.

S. "Most current" means the LEED rating system available and selected at the time of LEED registration.

T. "Qualified occupied square footage" means the building's occupied spaces as determined by the U. S. green building council for those buildings obtaining LEED certification.

U. "Solar market development tax credit" means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.

V. "Sustainable building tax credit" means the personal income tax credit the state of New Mexico issues to an applicant for a sustainable commercial

building.

W. "Sustainable commercial building" means a building that is registered with and certified by the U.S. green building council under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system at the certification level of silver, gold or platinum and that:

(1) achieves any prerequisite for and at least one point related to commissioning under the "energy and atmosphere" credits of LEED, if included in the applicable rating system; and

(2) has met the energy reduction requirements as substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development, or an alternative method the division approved pursuant to 3.3.30.13 NMAC.

X. "Target finder" means the web-based program developed by the United States environmental protection agency to establish an energy goal in kilo British thermal units per square foot per year for predetermined building types.

Y. "Tax credit request" means the notification to the division that a project is pursuing the sustainable building tax credit.

Z. "Tax credit request package" means the documents an applicant submits to the division with its tax credit request.

AA. "Taxpayer" means an individual subject to the tax imposed by the Income Tax Act, NMSA 1978, Section 7-2-1 *et seq.*

BB. "Taxpayer identification number" means the taxpayer's nine digit social security number.

[3.3.30.7 NMAC - N, 10-31-07]

3.3.30.8 GENERAL PROVISIONS:

A. Only a taxpayer who is the owner of a building in New Mexico that has been constructed or renovated to be a sustainable commercial building and that receives certification on or after January 1, 2007 may receive a certificate of eligibility for a sustainable building tax credit.

B. The annual total amount of the sustainable building tax credit available to taxpayers owning sustainable commercial buildings is limited to \$5,000,000. When the \$5,000,000 limit for sustainable commercial buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount

under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

(2) if no sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the sustainable building tax credit is in effect.

C. In the event of a discrepancy between a requirement of 3.3.30 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.3.30 NMAC's adoption, the existing rule governs.

[3.3.30.8 NMAC - N, 10-31-07]

3.3.30.9 TAX CREDIT REQUEST:

A. An applicant seeking the sustainable building tax credit shall file a completed tax credit request form with the department in order to be eligible for the sustainable building tax credit. An applicant may obtain a tax credit request form from the division. This allows the department to predict the potential amount of the tax credit to be used and allows the applicant to obtain the status of the sustainable building tax credit's available funds.

B. A tax credit request package shall include a completed tax credit request form and all attachments as specified on the form. The applicant shall submit to the division the tax credit request form and the required attachments at the same time. An applicant shall submit one tax credit request form for each sustainable commercial building. The applicant shall provide all material submitted in the tax credit request package on 8½ inch by 11 inch paper. If the applicant fails to submit the tax credit request form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the tax credit request incomplete.

C. An applicant shall submit a tax credit request package to the division after the applicant has registered the proposed sustainable commercial building project with the U. S. green building council for LEED certification and before filing an application package with the division.

D. A complete tax credit request form shall include of the following information:

(1) the applicant's name, mailing address, telephone number and taxpayer identification number;

(2) that the request is for a personal income tax credit;

(3) the applicant's email address and an alternative phone number as optional information;

(4) the property's legal description and, if available, the address of the sus-

tainable commercial building;

(5) the LEED rating system under which the building project is registered with the U.S. green building council;

(6) the certification level the applicant is seeking;

(7) whether the basis of the energy reduction requirement is substantiated through the use of target finder or an alternative method;

(8) the maximum kilo British thermal units per square foot per year required for the sustainable commercial building to meet the energy reduction requirements for the sustainable building tax credit, broken out by all energy sources and including the percent of use for each energy source;

(9) the qualified occupied square footage of the sustainable commercial building;

(10) the estimated date of LEED certification for the building;

(11) a statement signed and dated by the applicant or the applicant's authorized representative, which may be a form of electronic signature if approved by the department, agreeing that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) the applicant has read the requirements contained in 3.3.30 NMAC;

(c) the applicant understands that there are annual limits for the sustainable building tax credit;

(d) the applicant understands that the division's acceptance of the tax credit request package in no way guarantees that the applicant will receive a certificate of eligibility for the sustainable building tax credit;

(e) the applicant understands that the tax credit request will expire 30 days after the estimated LEED certification date of the building project unless one of the following occur:

(i) the applicant files an application with the division; or

(ii) if the estimated LEED certification date for the building project is extended, the applicant notifies the division in writing of a new estimated LEED certification date; and

(f) applicant understands that if the tax credit request expires a new tax credit request is required; and

(12) a project number the division assigns to the tax credit request.

E. The tax credit request package shall consist of the following information provided as attachments:

(1) a copy of the LEED registration form filed with U. S. green building council and the U. S. green building coun-

cil's confirmation notice;

(2) a copy of the initial LEED checklist that shows the LEED credits and points the applicant is seeking;

(3) documentation of the energy reduction requirement including the following:

(a) the forms from using target finder, including the input form and the results form; or

(b) other documentation that describes how the energy reduction requirement was determined and justifying how this method achieves the sustainable building tax credit requirements (see 3.3.30.13 NMAC for the alternative method approval process);

(4) a copy of a summary project schedule showing major milestones; and

(5) other information the department needs to review the tax credit request package.

[3.3.30.9 NMAC - N, 10-31-07]

3.3.30.10 TAX CREDIT REQUEST REVIEW PROCESS:

A. The division records tax credit requests in the order received, according to the day they are received, but not the time of day.

B. The division does not accept a tax credit request until the division approves the information the application provided from using target finder or an alternative method of substantiating the energy reduction requirement (see 3.3.30.13 NMAC for the alternative method approval process).

C. The department denies acceptance of a tax credit request that is not complete or correct. The department's denial letter shall state the reasons why the department denied acceptance of the tax credit request. The applicant may resubmit the tax credit request package for the denied project. The division places the resubmitted tax credit request in the review schedule as if it were a new tax credit request.

D. Upon acceptance of the tax credit request, the division:

(1) notifies the applicant in writing or by email of the calculated sustainable building tax credit based on the information in the tax credit request package;

(2) records the tax credit request information so the potential amounts to be used in the future can be estimated; and

(3) advises the applicant how the applicant may obtain the status of the sustainable building tax credit's available funds.

[3.3.30.10 NMAC - N, 10-31-07]

3.3.30.11 APPLICATION FOR THE SUSTAINABLE BUILDING TAX CREDIT:

A. In order to receive a

certificate of eligibility for the tax credit, the applicant must submit an application for the sustainable building tax credit after the division has accepted the tax credit request, the building is completed, the applicant has fulfilled all other requirements and the total annual limit for the sustainable building tax credit has not been met. An applicant may obtain an application form from the division.

B. An application package shall include a completed application form and attachments as specified on the form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable commercial building. The applicant shall submit all material submitted in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the application incomplete.

C. An applicant shall submit a complete application package to the division no later than November 15 of the calendar year for which the applicant seeks the sustainable building tax credit to allow time for approval and issuance of a certificate of eligibility. The division may review application packages it receives after that date for the subsequent calendar year.

D. The completed application form shall consist of the following information:

(1) the project number the division assigned to the tax credit request for the proposed sustainable commercial building;

(2) the applicant's name, mailing address, telephone number and taxpayer identification number;

(3) the address of the sustainable commercial building, including the property's legal description;

(4) whether the applicant was the building owner at time of certification or a subsequent purchaser;

(5) the LEED rating system under which the sustainable commercial building was certified by the U.S. green building council;

(6) the certification level achieved;

(7) the kilo British thermal units per square foot per year anticipated as demonstrated in the energy model submitted for LEED certification, broken out by all energy sources and including the percent of use for each energy source;

(8) revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than 10 per-

cent;

(9) the qualified occupied square footage of the sustainable commercial building;

(10) the date of LEED certification; and

(11) a statement signed and dated by the applicant or an authorized representative of the applicant, which may be a form of electronic signature if approved by the department, asserting that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) all inputs for the energy reduction requirements are the same as the inputs for the energy model;

(c) if an onsite solar system is used to meet the requirements of either the LEED certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market tax credit;

(d) applicant understands that there are annual limits in place for the sustainable building tax credit;

(e) applicant understands that the division must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a sustainable building tax credit; and

(f) applicant understands that the department issues a certificate of eligibility for the tax year in which the sustainable commercial building was certified or if the applicant submitted the application after November 15 or the sustainable building tax credit's annual cap has been reached for the next tax year in which funds are available.

E. In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a current warranty deed, property tax bill or ground lease in the applicant's name as of or after the date of LEED certification for the address or legal description of the sustainable commercial building;

(2) a copy of the LEED certification form the U. S. green building council issued;

(3) a copy of the final LEED project info or project summary that shows the building's square footage;

(4) a copy of the final certification review LEED checklist that shows the LEED credits achieved;

(5) a copy of the final LEED optimize energy performance template or templates, signed by a New Mexico licensed design professional, that the applicant submitted for LEED certification including the results of the energy model that shows the kilo British thermal units per square foot per

year for the sustainable commercial building;

(6) revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than 10 percent; and

(7) a copy of the final LEED enhanced commissioning template, if available under the applicable LEED rating system; and

(8) other information the department needs to review the building project for the sustainable building tax credit.

[3.3.30.11 NMAC - N, 10-31-07]

3.3.30.12 APPLICATION REVIEW PROCESS:

A. The department considers applications in the order received, according to the day they are received, but not the time of day.

B. The department approves or disapproves an application package following the receipt of the complete application package.

C. The division reviews the application package to calculate the sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the sustainable building tax credit.

D. If an onsite solar system is used to meet the requirements of either the LEED certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the division verifies that no person has applied for a solar market development tax credit for that solar system. If the division finds that a solar market development tax credit has been approved for that solar system, the division shall disapprove the application for the sustainable building tax credit. The applicant may submit a revised application package to the division. The division places the resubmitted application in the review schedule as if it were a new application.

E. If the division finds that the application package meets the requirements and funds for a sustainable building tax credit are available, the department issues the certificate of eligibility for a sustainable building tax credit. If funds for a sustainable building tax credit are partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year in which funds are available, until the last taxable year when the sustainable building tax credit is in effect. The department provides approval through written notification to the applicant upon the application's completed review. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the sustainable building tax credit amount or amounts and the sustainable building tax credit's taxable year or years.

F. The department shall disapprove an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division places the resubmitted application in the review schedule as if it were a new application.

[3.3.30.12 NMAC - N, 10-31-07]

3.3.30.13 VERIFICATION OF THE ALTERNATIVE METHOD USED FOR THE ENERGY REDUCTION REQUIREMENT:

A. In the event the sustainable commercial building is a building type that is not available in target finder and the applicant uses an alternative method for the energy reduction requirement, the division reviews the submitted documentation. The following information shall be included:

(1) a narrative describing the methodology used;

(2) the kilo British thermal units per square foot per year for all buildings, real or modeled, used as a basis of comparison, broken out by all energy sources and including the percent of use for each energy source; and

(3) all formulas, assumptions and other explanation necessary to clarify how the kilo British thermal units per square foot per year for this project was derived.

B. The division uses the following criteria to evaluate the alternative method:

(1) clarity and completeness of the description of the alternative method;

(2) reasonableness of assumptions and comparisons; and

(3) thoroughness of justification of the method.

C. If the division rejects an alternative method it notifies the applicant of the reasons for the rejection.

D. The applicant may request that the division obtain the advice of a volunteer review committee of three or more New Mexico registered architects and New Mexico licensed professional mechanical and electrical engineers, chosen by the division, on their assessment of the alternative method, at which time the division may:

(1) reconsider the decision and accept the alternative method;

(2) recommend a revised alternative method; or

(3) reaffirm the rejection of the alternative method.

[3.3.30.13 NMAC - N, 10-31-07]

3.3.30.14 CALCULATING THE TAX CREDIT:

A. The division calculates the sustainable building tax credit based on the qualified occupied square footage of the sustainable commercial building, the LEED rating system under which the applicant achieved LEED certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

LEED-NC Silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$3.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1 .75; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.70

LEED-NC Gold:	
first 10,000 square	equals the qualified square footage less than or equal to 10,000 multiplied by \$4.75; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$2.00; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$1.00
LEED-NC Platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$6.25; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$3.25; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$2.00
LEED-EB OR LEED-CS Silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$2.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.25; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.50
LEED-EB OR LEED-CS Gold:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$3.35; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.40; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.70
LEED-EB OR LEED-CS Platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$4.40; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$2.30; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$1.40
LEED-CI Silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$1.40; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$.70; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.30
LEED-CI Gold:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$1.90; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$.80; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.40
LEED-CI Platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$2.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.30; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.80

B. An applicant may receive both a sustainable building tax credit and a federal tax credit if the applicant is eligible for each tax credit.

C. The department makes the final determination of the amount of the sustainable building tax credit.
[3.3.30.14 NMAC - N, 10-31-07]

3.3.30.15 CLAIMING THE STATE TAX CREDIT:

A. To claim the sustainable building tax credit for a given year, an applicant shall submit all certificates of eligibility to the taxation and revenue department prior to the end of that calendar year, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.

B. Beginning with the taxable year on each certificate of eligibility, the taxpayer claims 25 percent of the amount on the certificate against the applicant's income tax liability for four years, unless the amount is less than or equal to \$25,000, in which case the taxpayer claims the entire amount on the certificate in the taxable year on the certificate.

C. If the amount of the sustainable building tax credit the applicant claims exceeds the applicant's income tax liability, the applicant may carry the excess forward for up to seven consecutive taxable years.

D. A taxpayer claiming a sustainable building tax credit shall not claim a tax credit pursuant to another law for the same sustainable commercial building unless the other tax credit is applicable to systems that are unrelated to the sustainable building tax credit. In addition, a taxpayer claiming the sustainable building tax credit shall not claim the credit for the same sustainable building under both the Income Tax Act and the Corporate Income and Franchise Tax Act.

[3.3.30.15 NMAC - N, 10-31-07]

HISTORY OF 3.3.30 NMAC:
[RESERVED]

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

**ENERGY CONSERVATION AND
MANAGEMENT DIVISION**

**TITLE 3 TAXATION
CHAPTER 4 CORPORATE
INCOME TAXES
PART 16 SUSTAINABLE
BUILDING TAX CREDIT FOR RESI-
DENTIAL BUILDINGS**

3.4.16.1 ISSUING AGENCY:
Energy, Minerals and Natural Resources
Department.
[3.4.16.1 NMAC - N, 10-31-07]

3.4.16.2 SCOPE: 3.4.16
NMAC applies to the application and cer-

tification procedures for administration of the sustainable building tax credit for sustainable residential buildings.

[3.4.16.2 NMAC - N, 10-31-07]

3.4.16.3 STATUTORY AUTHORITY: 3.4.16 NMAC is established under the authority of NMSA 1978, Section 7-2A-21 and NMSA 1978, Section 9-1-5.

[3.4.16.3 NMAC - N, 10-31-07]

3.4.16.4 DURATION:
Permanent.

[3.4.16.4 NMAC - N, 10-31-07]

3.4.16.5 EFFECTIVE DATE:
October 31, 2007, unless a later date is cited at the end of a section.

[3.4.16.5 NMAC - N, 10-31-07]

3.4.16.6 OBJECTIVE: 3.4.16 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the sustainable building tax credit for sustainable residential buildings.

[3.4.16.6 NMAC - N, 10-31-07]

3.4.16.7 DEFINITIONS:

A. "Annual cap" means the annual total amount of the sustainable building tax credit available to taxpayers owning sustainable residential buildings.

B. "Applicant" means a taxpayer that owns a sustainable residential building in New Mexico and that desires to have the department issue a certificate of eligibility for a sustainable building tax credit.

C. "Application package" means the application documents an applicant submits to the division to receive a certificate of eligibility for a sustainable building tax credit.

D. "Build green New Mexico certification" means the verification by a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

E. "Build green New Mexico rating system" means the certification standards adopted by the homebuilders association of central New Mexico.

F. "Certification" means build green New Mexico certification, LEED certification or energy star qualified.

G. "Certificate of eligibility" means the document, with a unique identifying number that specifies the amount and taxable year for the approved sustainable building tax credit.

H. "Certification level"

means one of the following:

- (1) silver;
- (2) gold; or
- (3) platinum.

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

J. "Division" means the department's energy conservation and management division.

K. "Energy reduction requirements" means the sustainable residential building has achieved a HERS index of 60 or lower.

L. "Energy star" means a joint program of the United States environmental protection agency and the United States department of energy that qualifies homes based on a predetermined threshold of energy efficiency.

M. "Energy star qualified manufactured home" means a home that an energy star certified plant has certified as being designed, produced and installed in accordance with energy star's guidelines.

N. "HERS" means home energy rating system as developed by RESNET.

O. "HERS index" means a relative energy use index, where 100 represents the energy use of a home built to a HERS reference house and zero indicates that the proposed home uses no net purchased energy.

P. "LEED" means the most current leadership in energy and environmental design green building rating system guidelines the U. S. green building council developed and adopted.

Q. "LEED certification" means the verification by the U. S. green building council, or a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the LEED-H rating system resulting in the issuance of a certification document.

R. "LEED-H" means the LEED rating system for homes.

S. "Manufactured housing" means homes built in a factory meeting the federal manufactured home construction and safety standards, commonly referred to as the HUD Code.

T. "Qualified occupied square footage" means the building's conditioned spaces as determined per the American national standards institute standard Z765-2003 or as specified by the manufactured housing manufacturer.

U. "Rating system" means the LEED-H rating system, the build green New Mexico rating system or the energy star program for manufactured housing.

V. "RESNET" means the residential energy services network, an

industry not-for-profit membership corporation and national standards making body for building energy efficiency rating systems.

W. "Solar market development tax credit" means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.

X. "Sustainable building tax credit" means the corporate income tax credit the state of New Mexico issues to an applicant for a sustainable residential building.

Y. "Sustainable residential building" means:

(1) a building used as a single-family residence that meets the energy reduction requirements and has been awarded:

(a) LEED-H certification at the certification level of silver, gold or platinum; or

(b) build green New Mexico certification at the gold certification level;

(2) a building used as multi-family residences where all dwelling units have met the energy reduction requirements and the building has been awarded:

(a) LEED-H certification at the certification level of silver, gold or platinum; or

(b) build green New Mexico certification at the gold certification level; or

(3) an energy star qualified manufactured home.

Z. "Taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act, NMSA 1978, 7-2A-1 *et seq.*

AA. "Taxpayer" means a corporation subject to the taxes imposed by the Corporate Income and Franchise Tax Act, NMSA 1978, Section 7-2A-1 *et seq.*

BB. "Taxpayer identification number" means an 11-digit number the New Mexico taxation and revenue department issues that indicates that the taxpayer is registered with the taxation and revenue department to pay gross receipts and compensating taxes.

CC. "Verifier" means an entity the department approves to provide certifications for homes under the build green New Mexico or LEED-H rating systems.

[3.4.16.7 NMAC - N, 10-31-07]

3.4.16.8 GENERAL PROVISIONS:

A. Only a taxpayer that is the owner of a building in New Mexico that has been constructed or renovated to be a sustainable residential building and that receives certification on or after January 1, 2007 may receive a certificate of eligibility

for a sustainable building tax credit.

B. The annual total amount of the sustainable building tax credit available to taxpayers owning sustainable residential buildings is limited to \$5,000,000. When the \$5,000,000 limit for sustainable residential buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

(2) if no sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the sustainable building tax credit is in effect.

C. No more than \$1,250,000 of the \$5,000,000 annual cap is for manufactured housing.

D. In the event of a discrepancy between a requirement of 3.4.16 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.4.16 NMAC's adoption, the existing rule governs.

[3.4.16.8 NMAC - N, 10-31-07]

3.4.16.9 VERIFIER ELIGIBILITY:

A. The division reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners that may apply for certification;

(2) the verifier has adequate staff and expertise to provide certification services, including:

(a) experience in green home building services;

(b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;

(c) a method of auditing the certification process to maintain adequate stringency; and

(d) ability to administer the program and report on the certifications, audits and other relevant information the department may request; and

(3) the verifier can identify the geographic area being served; and

(4) the verifier provides a statement that expresses a commitment to promoting energy-efficient green building with the highest standard of excellence.

B. The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity

meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

C. The verifier shall notify the division 30 calendar days prior to making changes to its certification process or rating systems.

D. The department may rescind an existing verifier's approval, if it determines that the above criteria are not being met.

(1) The division shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the division's notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.

(2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing concludes.

[3.4.16.9 NMAC - N, 10-31-07]

3.4.16.10 APPLICATION FOR THE SUSTAINABLE BUILDING TAX CREDIT:

A. In order to obtain the sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the division on a division-developed form. An applicant may obtain an application form from the division.

B. An application package shall include a completed application form and attachments as specified on the application form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable residential building. The applicant shall submit all material submitted in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the applica-

tion form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the application incomplete.

C. An applicant shall submit a complete application package to the division no later than 30 days before the end of taxable year for which the applicant seeks the sustainable building tax credit to allow time for approval and issuance of a certificate of eligibility. The division will review application packages it receives after that date for the subsequent taxable year.

D. The completed application form shall consist of the following information:

(1) the applicant's name, mailing address, telephone number and taxpayer identification number;

(2) the name of the applicant's authorized representative;

(3) the ending date of the applicant's taxable year;

(4) the address of the sustainable residential building, including the property's legal description;

(5) whether the applicant was the building owner at time of certification or a subsequent purchaser;

(6) the qualified occupied square footage of the sustainable residential building;

(7) the rating system under which the sustainable residential building was certified;

(8) the certification level achieved, if applicable;

(9) the HERS index, if applicable;

(10) the date of rating system certification;

(11) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, agreeing that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) applicant has read the requirements contained in 3.4.16 NMAC;

(c) if an onsite solar system is used to meet the requirements of either the rating system certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market tax credit;

(d) applicant understands that there are annual limits for the sustainable building tax credit;

(e) applicant understands that the division must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a sustainable building tax credit; and

(f) applicant understands that the

department issues a certificate of eligibility for the taxable year in which the sustainable residential building was certified or, if the sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available; and

(12) a project number the division assigns to the tax credit application.

E. In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable residential building;

(2) a copy of the rating system certification form;

(3) a copy of the final certification review checklist that shows the points achieved, if applicable;

(4) a copy of a HERS certificate, from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software the internal revenue service lists as eligible for certification of the federal tax credit, showing the HERS index achieved, if applicable; and

(5) other information the department needs to review the building project for the sustainable building tax credit.

[3.4.16.10 NMAC - N, 10-31-07]

3.4.16.11 APPLICATION REVIEW PROCESS:

A. The department considers applications in the order received, according to the day they are received, but not the time of day.

B. The department approves or disapproves an application package following the receipt of the complete application package. The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division places the resubmitted application in the review schedule as if it were a new application.

C. The division reviews the application package to calculate the sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the sustainable building tax credit.

D. If an onsite solar system is used to meet the requirements of either the certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the

division verifies that no person has applied for a solar market development tax credit for that solar system. If the division finds that a solar market development tax credit has been approved for that solar system, the division shall disapprove the application for the sustainable building tax credit. The applicant may submit a revised application package to the division. The division places the resubmitted application in the review schedule as if it were a new application.

E. If the division finds that the application package meets the requirements and a sustainable building tax credit is available, the department issues the certificate of eligibility for a sustainable building tax credit. If a sustainable building tax credit is partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year, until the last taxable year when the sustainable building tax credit is in effect. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, the sustainable building tax credit amount or amounts and the sustainable building tax credit's taxable year or years.

[3.4.16.11 NMAC - N, 10-31-07]

3.4.16.12 CALCULATING THE TAX CREDIT:

A. The division calculates the sustainable building tax credit based on the qualified occupied square footage of the sustainable residential building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

[Continued on page 948]

build green New Mexico gold:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$4.50; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$2.00
LEED-H Silver:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$5.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$2.50
LEED-H Gold:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$6.85; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$3.40
LEED-H Platinum:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$9.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$4.45
energy star manufactured housing:	
up to 3,000 square feet	equals the qualified square footage less than or equal to 3,000 multiplied by \$3.00.

B. An applicant may receive both a sustainable building tax credit and a federal tax credit if the applicant is eligible for each tax credit.

C. The department makes the final determination of the amount of the sustainable building tax credit.
[3.4.16.12 NMAC - N, 10-31-07]

3.4.16.13 CLAIMING THE STATE TAX CREDIT:

A. To claim the sustainable building tax credit, an applicant shall submit all certificates of eligibility to the taxation and revenue department within 30 days of the department's issuance, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.

B. Beginning with the taxable year on each certificate of eligibility, the taxation and revenue department will apply 25 percent of the amount on the certificate against the applicant's income tax liability for four years, unless the amount is less than or equal to \$25,000, in which case the taxation and revenue department applies the entire sustainable building tax credit in the taxable year on the certificate.

C. If the amount of the sustainable building tax credit the applicant claims exceeds the applicant's income tax liability, the applicant may carry the excess forward for up to seven consecutive taxable years.

D. A taxpayer claiming a sustainable building tax credit shall not claim a tax credit pursuant to another law for the same sustainable residential building unless the other tax credit is applicable to systems that are unrelated to the sustainable building tax credit. In addition, a taxpayer claiming the sustainable building tax credit shall not claim the credit for the same sustainable building under both the Income Tax Act and the Corporate Income and Franchise Tax Act.

[3.4.16.13 NMAC - N, 10-31-07]

HISTORY OF 3.4.16 NMAC: [RESERVED]

**NEW MEXICO ENERGY,
MINERALS AND
NATURAL RESOURCES
DEPARTMENT**
ENERGY CONSERVATION AND
MANAGEMENT DIVISION

**TITLE 3 TAXATION
CHAPTER 4 CORPORATE
INCOME TAXES
PART 17 SUSTAINABLE
BUILDING TAX CREDIT FOR COM-
MERCIAL BUILDINGS**

3.4.17.1 ISSUING AGENCY:
Energy, Minerals and Natural Resources
Department.
[3.4.17.1 NMAC - N, 10-31-07]

3.4.17.2 SCOPE: 3.4.17
NMAC applies to the application and certi-
fication procedures for administration of the
sustainable building tax credit for sustain-
able commercial buildings.
[3.4.17.2 NMAC - N, 10-31-07]

**3.4.17.3 STATUTORY
AUTHORITY:** 3.4.17 NMAC is estab-
lished under the authority of NMSA 1978,
Section 7-2A-21 and NMSA 1978, Section
9-1-5.
[3.4.17.3 NMAC - N, 10-31-07]

3.4.17.4 DURATION:
Permanent.
[3.4.17.4 NMAC - N, 10-31-07]

3.4.17.5 EFFECTIVE DATE:
October 31, 2007, unless a later date is cited
at the end of a section.
[3.4.17.5 NMAC - N, 10-31-07]

3.4.17.6 OBJECTIVE: 3.4.17
NMAC's objective is to establish proce-
dures for administering the program to issue
a certificate of eligibility for the sustainable
building tax credit for sustainable commer-
cial buildings.
[3.4.17.6 NMAC - N, 10-31-07]

3.4.17.7 DEFINITIONS:

A. "Annual cap" means
the annual aggregate amount of the sustain-
able building tax credit available to taxpay-
ers owning sustainable commercial build-
ings.

B. "Applicant" means a
taxpayer that owns a sustainable commer-
cial building in New Mexico and that
desires to have the department issue a cer-
tificate of eligibility for a sustainable build-
ing tax credit.

C. "Application package"
means the application documents an appli-
cant submits to the division to receive a cer-

tificate of eligibility for a sustainable build-
ing tax credit.

D. "Building project"
means a new construction or renovation
project that will result in one or more sus-
tainable commercial buildings.

E. "Building type" means
the primary use of a building or section of a
building as defined in target finder.

F. "Certificate of eligibili-
ty" means the document, with a unique
identifying number that specifies the
amount and taxable year for the approved
sustainable building tax credit.

G. "Certification level"
means one of the following:

- (1) silver;
- (2) gold; or
- (3) platinum.

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

I. "Division" means the
department's energy conservation and man-
agement division.

J. "Energy reduction
requirements" means:

- (1) through 2011, a 50 percent
energy reduction based on the national aver-
age for that building type as published by
the United States department of energy; and
- (2) beginning January 1, 2012, a
60 percent energy reduction based on the
national average for that building type as
published by the United States department
of energy.

K. "LEED" means the
most current leadership in energy and envi-
ronmental design green building rating sys-
tem guidelines developed and adopted by
the U. S. green building council.

L. "LEED certification"
means the U. S. green building council's
verification that a building project has met
certain prerequisites and performance
benchmarks or credits within each category
of a LEED rating system resulting in the
issuance of a certification document.

M. "LEED-CI" means the
LEED rating system for commercial interi-
ors.

N. "LEED-CS" means the
LEED rating system for the core and shell
of buildings.

O. "LEED-EB" means the
LEED rating system for existing buildings.

P. "LEED-NC" means the
LEED rating system for new buildings and
major renovations.

Q. "LEED rating system"
means one of the following:

- (1) LEED-CI;
- (2) LEED-CS;
- (3) LEED-EB; or
- (4) LEED-NC.

R. "LEED registration"

means the notification to the U. S. green
building council that a project is pursuing
LEED certification.

S. "Most current" means
the LEED rating system available and
selected at the time of LEED registration.

T. "Qualified occupied
square footage" means the building's occu-
pied spaces as determined by the U. S.
green building council for those buildings
obtaining LEED certification.

U. "Solar market develop-
ment tax credit" means the personal income
tax credit the state of New Mexico issues to
a taxpayer for a solar energy system the
department has certified.

V. "Sustainable building
tax credit" means the corporate income tax
credit the state of New Mexico issues to an
applicant for a sustainable commercial
building.

W. "Sustainable commer-
cial building" means a building that has
been registered with and certified by the
U.S. green building council under the
LEED-NC, LEED-EB, LEED-CS or
LEED-CI rating system at the certification
level of silver, gold or platinum and that:

- (1) achieves any prerequisite for
and at least one point related to commis-
sioning under the "energy and atmosphere"
credits of LEED, if included in the applica-
ble rating system; and

(2) has met the energy reduction
requirements as substantiated by the United
States environmental protection agency tar-
get finder energy performance results form,
dated no sooner than the schematic design
phase of development, or an alternative
method the division approved pursuant to
3.4.17.13 NMAC.

X. "Target finder" means
the web-based program developed by the
United States environmental protection
agency to establish an energy goal in kilo
British thermal units per square foot per
year for predetermined building types.

Y. "Tax credit request"
means the notification to the division that a
project is pursuing the sustainable building
tax credit.

Z. "Tax credit request
package" means the documents an applicant
submits to the division for with its tax cred-
it request.

AA. "Taxable year" means
the calendar year or fiscal year upon the
basis of which the net income is computed
under the Corporate Income and Franchise
Tax Act, NMSA 1978, 7-2A-1 *et seq.*

BB. "Taxpayer" means a
corporation subject to the taxes imposed by
the Corporate Income and Franchise Tax
Act, NMSA 1978, Section 7-2A-1 *et seq.*

CC. "Taxpayer identifica-
tion number" means an 11-digit number the

New Mexico taxation and revenue department issues that indicates that the taxpayer is registered with the taxation and revenue department to pay gross receipts and compensating taxes.

[3.4.17.7 NMAC - N, 10-31-07]

3.4.17.8 GENERAL PROVISIONS:

A. Only a taxpayer that is the owner of a building in New Mexico that has been constructed or renovated to be a sustainable commercial building and that receives certification on or after January 1, 2007 may receive a certificate of eligibility for a sustainable building tax credit.

B. The annual total amount of the sustainable building tax credit available to taxpayers owning sustainable commercial buildings is limited to \$5,000,000. When the \$5,000,000 limit for sustainable commercial buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable taxable year and issue a certificate of eligibility for the balance for the subsequent taxable year; or

(2) if no sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent taxable year in which funds are available, except for the last taxable year when the sustainable building tax credit is in effect.

C. In the event of a discrepancy between a requirement of 3.4.17 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.4.17 NMAC's adoption, the existing rule governs.

[3.4.17.8 NMAC - N, 10-31-07]

3.4.17.9 TAX CREDIT REQUEST:

A. An applicant seeking the sustainable building tax credit shall file a completed tax credit request form with the department in order to be eligible for the sustainable building tax credit. An applicant may obtain a tax credit request form from the division. This allows the department to predict the potential amount of the tax credit to be used and allows the applicant to obtain the status of the sustainable building tax credit's available funds.

B. A tax credit request package shall include a completed tax credit request form and all attachments as specified on the form. The applicant shall submit to the division the tax credit request form and the required attachments at the same time. An applicant shall submit one

tax credit request form for each sustainable commercial building. The applicant shall provide all material submitted in the tax credit request package on 8½ inch by 11 inch paper. If the applicant fails to submit the tax credit request form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the tax credit request incomplete.

C. An applicant shall submit a tax credit request package to the division after the applicant has registered the proposed sustainable commercial building project with the U. S. green building council for LEED certification and before filing an application package with the division.

D. A complete tax credit request form shall include the following information:

(1) the applicant's name, mailing address, telephone number and taxpayer identification number;

(2) the name of the applicant's authorized representative;

(3) the ending date of the applicant's taxable year;

(4) that the request is for a corporate income tax credit;

(5) the email address and an alternative phone number for the applicant's authorized representative, as optional information;

(6) the property's legal description and, if available, the address of the proposed sustainable commercial building;

(7) the LEED rating system under which the building project is registered with the U.S. green building council;

(8) the certification level the applicant is seeking;

(9) whether the basis of the energy reduction requirement is substantiated through the use of target finder or an alternative method;

(10) the maximum kilo British thermal units per square foot per year required for the sustainable commercial building to meet the energy reduction requirements for the sustainable building tax credit, broken out by all energy sources and including the percent of use for each energy source;

(11) the qualified occupied square footage of the sustainable commercial building;

(12) the estimated date of LEED certification for the building;

(13) a statement signed and dated by the applicant or the applicant's authorized representative, which may be a form of electronic signature if approved by the department, agreeing that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) the applicant has read the

requirements contained in 3.4.17 NMAC;

(c) the applicant understands that there are annual limits for the sustainable building tax credit;

(d) the applicant understands that the division's acceptance of the tax credit request package in no way guarantees that the applicant will receive a certificate of eligibility for the sustainable building tax credit;

(e) the applicant understands that the tax credit request will expire 30 days after the estimated LEED certification date of the building project unless one of the following occur:

(i) the applicant files an application with the division; or

(ii) if the estimated LEED certification date for the building project is extended, the applicant notifies the division in writing of a new estimated LEED certification date; and

(f) applicant understands that if the tax credit request expires a new tax credit request is required; and

(14) a project number the division assigns to the tax credit request.

E. The tax credit request package shall consist of the following information provided as attachments:

(1) a copy of the LEED registration form filed with U. S. green building council and the U. S. green building council's confirmation notice;

(2) a copy of the initial LEED checklist that shows the LEED credits and points the applicant is seeking;

(3) documentation of the energy reduction requirement including the following:

(a) the forms from using target finder, including the input form and the results form; or

(b) other documentation that describes how the energy reduction requirement was determined and justifying how this method achieves the sustainable building tax credit requirements (see 3.4.17.13 NMAC for the alternative method approval process);

(4) a copy of a summary project schedule showing major milestones; and

(5) other information the department needs to review the tax credit request package.

[3.4.17.9 NMAC - N, 10-31-07]

3.4.17.10 TAX CREDIT REQUEST REVIEW PROCESS:

A. The division records tax credit requests in the order received, according to the day they are received, but not the time of day.

B. The division does not accept a tax credit request until the division approves the information the application provided from using target finder or an

alternative method of substantiating the energy reduction requirement (see 3.4.17.13 NMAC for the alternative method approval process).

C. The division notifies the applicant, in writing or by email, of any reason for non-acceptance. The division acts on the tax credit request after the applicant provides any additional information the division requests.

D. Upon acceptance of the tax credit request, the division:

(1) notifies the applicant in writing or by email of the calculated sustainable building tax credit based on the information in the tax credit request package;

(2) records the tax credit request information so the potential amounts to be used in the future can be estimated; and

(3) advises the applicant how the applicant may obtain the status of the sustainable building tax credit's available funds.

E. The department denies acceptance of a tax credit request that is not complete or correct. The department's denial letter shall state the reasons why the department denied acceptance of the tax credit request. The applicant may resubmit the tax credit request package for the denied project. The division places the resubmitted tax credit request in the review schedule as if it were a new tax credit request.

[3.4.17.10 NMAC - N, 10-31-07]

3.4.17.11 APPLICATION FOR THE SUSTAINABLE BUILDING TAX CREDIT:

A. In order to receive a certificate of eligibility for the tax credit, the applicant must submit an application for the sustainable building tax credit after the division has accepted the tax credit request, the building is completed, the applicant has fulfilled all other requirements and the total annual limit for the sustainable building tax credit has not been met. An applicant may obtain an application form from the division.

B. An application package shall include a completed application form and attachments as specified on the form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable commercial building. The applicant shall submit all material submitted in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the application incomplete.

C. An applicant shall submit a complete application package to the

division no later than 45 days before the end of taxable year for which the applicant seeks the sustainable building tax credit to allow time for approval and issuance of a certificate of eligibility. The division may review application packages it receives after that date for the subsequent taxable year.

D. The completed application form shall consist of the following information:

(1) the project number the division assigned to the tax credit request for the proposed sustainable commercial building;

(2) the applicant's name, mailing address, telephone number and taxpayer identification number;

(3) the name of the authorized representative of the applicant, if different from the tax credit request form;

(4) the ending date of the applicant's taxable year, if different from the tax credit request form;

(5) the address of the sustainable commercial building, including the property's legal description;

(6) whether the applicant was the building owner at time of certification or a subsequent purchaser;

(7) the LEED rating system under which the sustainable commercial building was certified by the U.S. green building council;

(8) the certification level achieved;

(9) the kilo British thermal units per square foot per year anticipated as demonstrated in the energy model submitted for LEED certification, broken out by all energy sources and including the percent of use for each energy source;

(10) revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than 10 percent;

(11) the qualified occupied square footage of the sustainable commercial building;

(12) the date of LEED certification; and

(13) a statement signed and dated by the applicant or an authorized representative of the applicant, which may be a form of electronic signature if approved by the department, asserting that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) all inputs for the energy reduction requirements are the same as the inputs for the energy model;

(c) if an onsite solar system is used to meet the requirements of either the

LEED certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market tax credit;

(d) applicant understands that there are annual limits in place for the sustainable building tax credit;

(e) applicant understands that the division must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a sustainable building tax credit; and

(f) applicant understands that the department issues a certificate of eligibility for the taxable year in which the sustainable commercial building was certified or if the applicant submitted the application less than 45 days before the end of the taxable year or if the sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available.

E. In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a warranty deed, property tax bill or ground lease in the applicant's name as of or after the date of LEED certification for the address or legal description of the sustainable commercial building;

(2) a copy of the LEED certification form the U. S. green building council issued;

(3) a copy of the final LEED project info or project summary that shows the building's square footage;

(4) a copy of the final certification review LEED checklist that shows the LEED credits achieved;

(5) a copy of the final LEED optimize energy performance template or templates, signed by a New Mexico licensed design professional, that the applicant submitted for LEED certification including the results of the energy model that shows the kilo British thermal units per square foot per year for the sustainable commercial building;

(6) revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than 10 percent; and

(7) a copy of the final LEED enhanced commissioning template, if available under the applicable LEED rating system; and

(8) other information the department needs to review the building project for the sustainable building tax credit.

[3.4.17.11 NMAC - N, 10-31-07]

3.4.17.12 APPLICATION REVIEW PROCESS:

A. The department considers applications in the order received, according to the day they are received, but not the time of day.

B. The department approves or disapproves an application package following the receipt of the complete application package.

C. The division reviews the application package to calculate the sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the sustainable building tax credit.

D. If an onsite solar system is used to meet the requirements of either the LEED certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the division verifies that no person has applied for a solar market development tax credit for that solar system. If the division finds that a solar market development tax credit has been approved for that solar system, the division disapproves the application for the sustainable building tax credit. The applicant may submit a revised application package to the division. The division places the resubmitted application in the review schedule as if it were a new application.

E. If the division finds that the application package meets the requirements and funds for a sustainable building tax credit are available, the department issues the certificate of eligibility for a sustainable building tax credit. If funds for a sustainable building tax credit are partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year in which funds are available, until the last taxable year when the sustainable building tax credit is in effect. The department provides approval through written notification to the applicant upon the application's completed review. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the sustainable building tax credit amount or amounts and the sustainable building tax credit's taxable year or years.

F. The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division places the resubmitted application in the review schedule as if it were a new application.

[3.4.17.12 NMAC - N, 10-31-07]

3.4.17.13 VERIFICATION OF THE ALTERNATIVE METHOD USED FOR THE ENERGY REDUCTION REQUIREMENT:

A. In the event the sustainable commercial building is a building type that is not available in target finder and the applicant uses an alternative method for the energy reduction requirement, the division reviews the submitted documentation. The following information shall be included:

(1) a narrative describing the methodology used;

(2) the kilo British thermal units per square foot per year for all buildings, real or modeled, used as a basis of comparison, broken out by all energy sources and including the percent of use for each energy source; and

(3) all formulas, assumptions, and other explanation necessary to clarify how the kilo British thermal units per square foot per year for this project was derived.

B. The division uses the following criteria to evaluate the alternative method:

(1) clarity and completeness of the description of the alternative method;

(2) reasonableness of assumptions and comparisons; and

(3) thoroughness of justification of the method.

C. If the division rejects an alternative method it notifies the applicant of the reasons for the rejection.

D. The applicant may request that the division obtain the advice of a volunteer review committee of three or more New Mexico registered architects and New Mexico licensed professional mechanical and electrical engineers, chosen by the division, on their assessment of the alternative method, at which time the division may:

(1) reconsider the decision and accept the alternative method;

(2) recommend a revised alternative method; or

(3) reaffirm the rejection of the alternative method.

[3.4.17.13 NMAC - N, 10-31-07]

3.4.17.14 CALCULATING THE TAX CREDIT:

A. The division calculates the sustainable building tax credit based on the qualified occupied square footage of the sustainable commercial building, the LEED rating system under which the applicant achieved LEED certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

[Please see table on page 953]

LEED-NC Silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$3.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.75; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.70
LEED-NC Gold:	
first 10,000 square	equals the qualified square footage less than or equal to 10,000 multiplied by \$4.75; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$2.00; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$1.00
LEED-NC Platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$6.25; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$3.25; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$2.00
LEED-EB OR LEED-CS Silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$2.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.25; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.50
LEED-EB OR LEED-CS Gold:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$3.35; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.40; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.70
LEED-EB OR LEED-CS Platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$4.40; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$2.30; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$1.40
LEED-CI Silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$1.40; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$.70; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.30
LEED-CI Gold:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$1.90; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$.80; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.40
LEED-CI Platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$2.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.30; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.80

B. An applicant may receive both a sustainable building tax credit and a federal tax credit if the applicant is eligible for each tax credit.

C. The department makes the final determination of the amount of the sustainable building tax credit.
[3.4.17.14 NMAC - N, 10-31-07]

3.4.17.15 CLAIMING THE STATE TAX CREDIT:

A. To claim the sustainable building tax credit for a given year, an applicant shall submit all certificates of eligibility to the taxation and revenue department prior to the end of that taxable year, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.

B. Beginning with the taxable year on each certificate of eligibility, the taxation and revenue department will apply 25 percent of the amount on the certificate against the applicant's income tax liability for four years, unless the amount is less than or equal to \$25,000, in which case the taxation and revenue department applies the entire sustainable building tax credit in the taxable year on the certificate.

C. If the amount of the sustainable building tax credit the applicant claims exceeds the applicant's income tax liability, the applicant may carry the excess forward for up to seven consecutive taxable years.

D. A taxpayer claiming a sustainable building tax credit shall not claim a tax credit pursuant to another law for the same sustainable commercial building unless the other tax credit is applicable to systems that are unrelated to the sustainable building tax credit. In addition, a taxpayer claiming the sustainable building tax credit shall not claim the credit for the same sustainable building under both the Income Tax Act and the Corporate Income and Franchise Tax Act.
[3.4.17.15 NMAC - N, 10-31-07]

HISTORY OF 3.4.17 NMAC:
[RESERVED]

**NEW MEXICO ENERGY,
MINERALS AND
NATURAL RESOURCES
DEPARTMENT
ENERGY CONSERVATION AND
MANAGEMENT DIVISION**

**TITLE 3 TAXATION
CHAPTER 13 BUSINESS TAX
CREDITS
PART 21 BIODIESEL BLEND-
ING FACILITY TAX CREDIT**

3.13.21.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department.
[3.13.21.1 NMAC - N, 10-31-07]

3.13.21.2 SCOPE: 3.13.21 NMAC applies to the application and certification procedures for administration of the biodiesel blending facility tax credit for rack operations.
[3.13.21.2 NMAC - N, 10-31-07]

3.13.21.3 STATUTORY AUTHORITY: 3.13.21 NMAC is established under the authority of NMSA 1978, Section 7-9-79.2 and NMSA 1978, Section 9-1-5.
[3.13.21.3 NMAC - N, 10-31-07]

3.13.21.4 DURATION: Permanent.
[3.13.21.4 NMAC - N, 10-31-07]

3.13.21.5 EFFECTIVE DATE: October 31, 2007, unless a later date is cited at the end of a section.
[3.2.21.5 NMAC - N, 10-31-07]

3.13.21.6 OBJECTIVE: 3.13.21 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the biodiesel blending facility tax credit for rack operators.
[3.13.21.6 NMAC - N, 10-31-07]

3.13.21.7 DEFINITIONS:

A. "Annual cap" means the annual aggregate amount of the biodiesel blending facility tax credit available to taxpayers.

B. "Applicant" means a taxpayer that installs biodiesel blending equipment for the purpose of establishing or expanding a biodiesel blending facility and that desires to have the department issue a certificate of eligibility for a biodiesel blending facility tax credit.

C. "Application package" means the application documents an applicant submits to the department to receive a certificate of eligibility for a biodiesel blending facility tax credit.

D. "Biodiesel" means renewable, biodegradable, monoalkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets the ASTM International D 6751 standard specification for biodiesel B100 blend stock for distillate fuels (Copyright ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428. This document is available for public viewing only at the New Mexico state records center and archives and may not be reproduced, in full or part. A copy of this publication may be obtained from ASTM International,

www.astm.org.)

E. "Biodiesel blending equipment" means equipment necessary for the process of blending biodiesel with diesel fuel to produce blended biodiesel fuel.

F. "Biodiesel blending facility" means an installation that is part of a rack operation for the purpose of blending biodiesel fuel, including reactivating existing blending and storage equipment in place, expanding storage equipment at an existing facility, installing a new blending facility or site specific blending at a retail facility.

G. "Biodiesel blending facility tax credit" means the gross receipts or compensating tax credit the state of New Mexico issues to an applicant for a biodiesel blending facility.

H. "Blended biodiesel fuel" means a diesel fuel that contains at least two percent biodiesel.

I. "Bulk storage" means the storage of special fuels in any tank or receptacle, other than a supply tank, for the purpose of sale by a dealer or for use by a user or for any other purpose.

J. "Bulk storage user" means a user who operates, owns or maintains bulk storage in this state from which the user places special fuel into the supply tanks of motor vehicles that the user owns or operates.

K. "Certificate of eligibility" means the document, with a unique identifying number that specifies the amount and taxable year for the approved biodiesel blending facility tax credit.

L. "Dealer" means any person who sells and delivers special fuel to a user.

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

N. "Diesel fuel" means any diesel-engine fuel used for the generation of power to propel a motor vehicle.

O. "Installation of equipment" means to assemble and construct biodiesel blending equipment, including equipment necessary for receiving and off-loading B100 or pre-blended biodiesel, equipment for storage of B100 or blended biodiesel fuel and equipment for on-loading and dispensing B100 or blended biodiesel fuel.

P. "Motor vehicle" means a self-propelled vehicle or device that is either subject to registration pursuant to NMSA 1978 Section 66-3-1 or is used or may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer.

Q. "Rack operations" means a facility that is a refinery in this state, any facility where special fuel is

blended in this state or where special fuel is stored at a pipeline terminal in this state.

R. "Rack operator" means the operator of a refinery in this state, any person who blends special fuel in this state or the owner of special fuel stored at a pipeline terminal in this state.

S. "Supply tank" means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains special fuel or special fuel is delivered into it.

T. "Taxable year" means the annual accounting period for purposes of filing corporate income taxes, as defined by the United States internal revenue service.

U. "Taxpayer" means a rack operator who owns the rack operation where the rack operator installs biodiesel blending equipment and who applies for certification of an operating biodiesel blending facility in order to receive a biodiesel blending facility tax credit and is liable for payment of gross receipts or compensating taxes.

V. "Taxpayer identification number" means an 11-digit number the New Mexico taxation and revenue department issues that indicates that the taxpayer is registered with the taxation and revenue department to pay gross receipts and compensating taxes.

[3.13.21.7 NMAC - N, 10-31-07]

3.13.21.8 GENERAL PROVISIONS:

A. Only a taxpayer who on or after July 1, 2007 installs biodiesel blending equipment in New Mexico for the purpose of establishing or expanding a biodiesel blending facility may receive a certificate of eligibility for a biodiesel blending facility tax credit.

B. The biodiesel blending facility tax credit is an amount equal to 30 percent of the biodiesel blending equipment's purchase cost plus 30 percent of the biodiesel blending equipment's installation cost.

C. The biodiesel blending facility tax credit shall not exceed \$50,000 for biodiesel blending equipment installed at any one facility.

D. The annual aggregate amount of the biodiesel blending facility tax credit available to taxpayers is limited to \$1,000,000. When the \$1,000,000 limit for rack operations is reached based on the total certificates of eligibility the department has issued and New Mexico department of taxation and revenue has recorded, the department shall:

(1) if part of the eligible biodiesel blending facility tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable taxable year and issue a certificate of eligibility for the balance for the subsequent taxable year; or

(2) if no biodiesel blending facility tax credit funds are available, issue a certificate of eligibility for the next subsequent taxable year in which funds are available.

E. In the event of a discrepancy between a requirement of 3.13.21 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.13.21 NMAC's adoption, the existing rule governs.
[3.13.21.8 NMAC - N, 10-31-07]

3.13.21.9 CERTIFICATE OF ELIGIBILITY APPLICATION:

A. An applicant may obtain a certificate of eligibility application form from the department.

B. An application package shall include a completed certificate of eligibility application form and attachments as specified on the certificate of eligibility application form. The applicant shall submit the completed certificate of eligibility application form and required attachments at the same time. An applicant shall submit one certificate of eligibility application for each biodiesel blending facility. The applicant shall submit all material submitted in the application package on 8½ inch by 11 inch paper.

C. An applicant shall submit a complete application package to the department no later than 90 days before the end of taxable year for which the applicant seeks the biodiesel blending facility tax credit to allow time for approval and issuance of an approved certificate of eligibility. The department reviews application packages it receives after that date for the subsequent taxable year.

D. The completed certificate of eligibility application shall consist of the following information:

(1) taxpayer information, including the applicant's name, mailing address, telephone number, biodiesel blending facility tax credit's taxable year or years and CRS or taxpayer identification number;

(2) blending equipment information, including project location with county and legal description, blending equipment type (splash or injection), blending equipment description, blending equipment cost, blending equipment installation cost and date on which the biodiesel blending equipment and facility went into operation;

(3) proof of ownership of the rack, design schematic, equipment specifi-

cations and serial numbers, photographs, installation/construction documents, storage and blending capacities, description of operation, construction permit and environmental protection agency related plans with engineer's stamp and final inspection report;

(4) evidence of purchase of equipment and installation including receipts and invoices; and

(5) applicant agreement stating that the taxpayer agrees that all information in the application packet is true and correct to the best of the applicant's knowledge, that the applicant has read the certification requirements of 3.13.21 NMAC, that the applicant understands that there is an annual aggregate biodiesel blending facility tax credit limit, that the department must certify the biodiesel blending facility documented in the application package is eligible for the biodiesel blending facility tax credit and that the applicant allows the department or its authorized representative to inspect the biodiesel blending facility that is described in the application package from the application package's submittal to three years after the department has certified the biodiesel blending facility upon the department providing a minimum of five days notice to the applicant.

[3.13.21.9 NMAC - N, 10-31-07]

3.13.21.10 APPLICATION REVIEW PROCESS:

A. The department considers certificate of eligibility applications in the order received, according to the day they are received, but not the time of day.

B. The department reviews the application package to calculate the biodiesel blending facility tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the biodiesel blending facility tax credit.

C. If the department verifies that no person has applied for a biodiesel blending facility tax credit for that biodiesel blending facility and if the department finds that the application package meets the requirements and funds for a biodiesel blending facility tax credit are available, the department issues the certificate of eligibility for a biodiesel blending facility tax credit. If funds for a biodiesel blending facility tax credit are partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year in which funds are available. The certificate of eligibility shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility project number, the biodiesel blending

facility tax credit amount or amounts and the biodiesel blending facility tax credit's taxable year or years.

D. The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The department reviews the resubmitted application in the review schedule as if it were a new application.

[3.13.21.10 NMAC - N, 10-31-07]

3.13.21.11 CLAIMING THE BIODIESEL BLENDING FACILITY TAX CREDIT:

A. Upon receipt of a certificate of eligibility from the department, the taxpayer shall submit a completed form RPD-41339, biodiesel blending facility tax credit approval request form, to the taxation and revenue department. The taxpayer shall attach the certificate of eligibility received from the department and a copy of the invoice for the qualified equipment and installation costs. Once the taxation and revenue department notifies the taxpayer of approval for the biodiesel blending facility tax credit, the taxpayer may apply the biodiesel blending facility tax credit to gross receipts and compensating tax due. To apply the biodiesel blending facility tax credit, the taxpayer shall submit form RPD-41321, biodiesel blending facility tax credit claim form, along with a CRS-1 long form for the report period to which the taxpayer wishes to apply the biodiesel blending facility tax credit. Unused biodiesel blending facility tax credit may be carried forward for four years from the date the department issues the certificate of eligibility.

B. If a rack operator who has claimed biodiesel blending facility tax credit against gross receipts tax or compensating tax due ceases biodiesel blending without completing at least 180 days of availability of the facility within the first 365 days after the department's issuance of a certificate of eligibility, the taxpayer shall notify taxation and revenue department that the taxpayer is no longer eligible for the approved biodiesel blending facility tax credit and that the liabilities for the reports to which the biodiesel blending facility tax credit had been applied are now due. The taxation and revenue department will extinguish any amount of the approved biodiesel blending facility tax credit not applied against the taxpayer's gross receipts tax or compensating tax liability and assess the taxpayer for the tax owed. The taxpayer shall pay the assessment within 425 days of the date of issuance of the certificate of eligibility. The taxpayer may still qualify for subsequent biodiesel blending facility tax

credits, within the first 365 days after the department's issuance of the certificate of eligibility. When applying for biodiesel blending facility tax credits the taxpayer shall use only the CRS-1 long form.

C. Beginning with the taxable year on each certificate of eligibility, the taxation and revenue department applies 30 percent of the amount on the certificate of eligibility against the applicant's gross receipts or compensating tax liability for four years, unless the amount is less than or equal to \$50,000, in which case the taxation and revenue department applies the entire biodiesel blending facility tax credit in the taxable year on the certificate.

D. If the amount of the biodiesel blending facility tax credit the applicant claims exceeds the applicant's gross receipts or compensating tax liability, the applicant may carry the excess forward for up to four consecutive taxable years.

[3.13.21.11 NMAC - N, 10-31-07]

HISTORY OF 3.13.21 NMAC: [RESERVED]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

These are amendments to 20.2.35 NMAC, Sections 5 and 111, to be effective November 10, 2007.

20.2.35.5 EFFECTIVE DATE: November 30, 1995, except where a later date is cited at the end of a section.

[11/30/95; 20.2.35.5 NMAC - Rn, 20 NMAC 2.35.104 10/31/02; A, 11/10/07]

[The latest effective date of any section in this Part is 11/10/07.]

20.2.35.111 STACK HEIGHT:

A. The owner or operator of a natural gas processing plant shall not permit, cause, suffer or allow sulfur compounds to be emitted to the atmosphere unless the sulfur compound emission is from a stack of a sufficient physical height to prevent concentrations of sulfur compounds near ground level equal to or exceed any state or federal ambient air standard. The necessary physical stack height shall be determined by the following graph in 20.2.35.115 NMAC (Figure 1) or through the use of dispersion modeling approved by the department.

B. If the natural gas processing plant is an existing natural gas processing plant, the requirements of this ~~sub-section~~ section shall not apply to that existing natural gas processing plant until January 1, 1977.

C. By January 1, 1977,

any person owning or operating an existing natural gas processing plant must file with the department the following:

(1) the height of all stacks from which sulfur is emitted;

(2) the quantity of the sulfur emitted from each stack;

(3) the exit gas temperature for each stack;

(4) the total mass flow rate of the stack effluent gases (for flares, the total effluent mass flow rate shall consist of the stack effluent mass flow rate plus that amount of air required for complete combustion); and

(5) any other information the department deems necessary to determine whether or not the physical height of any stack from which sulfur is emitted complies with the requirements of this subsection.

[11/30/95; 20.2.35.111 NMAC - Rn, 20 NMAC 2.35.111 10/31/02; A, 11/10/07]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.100 NMAC, Sections 7, and 8, effective 10/31/2007.

8.102.100.7 DEFINITIONS:

A. Definitions A-L:

(1) **Applicant:** means person applying for cash assistance on behalf of a benefit group.

(2) **Application:** means a written request, on the appropriate ISD form, signed by or on behalf of an individual or family, for assistance.

(3) **Attendant:** means an individual needed in the home for medical, housekeeping, or child care reasons.

(4) **Authorized representative:** means an adult who is designated in writing by the applicant who is sufficiently knowledgeable about the applicant/ benefit group's circumstances to complete the application form correctly and represent the benefit group.

(5) **Basic needs:** include food, clothing, shelter, utilities, personal requirements and the individual's share of household supplies.

(6) **Beginning month:** means the first month for which a benefit group is certified after a lapse in certification of at least one calendar month in any project area. A benefit group is budgeted prospectively in a beginning month. A beginning month is also an initial month.

(7) **Benefit group:** means a pregnant woman or a group of people that includes a dependant child, all of that dependent child's full, half, step- or adopted

siblings living with the dependant child's parent or relative within the fifth degree of relationship and the parent with whom the children live.

(8) Benefit month: means the month for which cash assistance benefits have been issued. This term is synonymous with issuance month defined below.

(9) Budget month: means the calendar month for which income and other circumstances of the benefit group shall be determined in order to calculate the cash assistance amount.

(10) Capital gains: means proceeds from the sale of capital goods or equipment.

(11) Cash assistance: means cash payments funded by the temporary assistance for needy families (TANF) block grant pursuant to the federal act and by state funds; or state funded cash assistance in the general assistance program.

(12) Caretaker relative: means an individual who assumes parental control over a child living in the home.

(13) Certification: means the authorization of eligibility of a benefit group for the issuance of cash assistance benefits.

(14) Certification period: means the time period assigned to a benefit group that is approved to receive cash assistance benefits. The certification period shall conform to calendar months.

(15) Collateral contact: means an individual or agency designated by the benefit group to provide information concerning eligibility.

(16) Conciliation process: means a 30- day process during which the department and the individual have the opportunity to address barriers to compliance or to correct whatever failure has generated the noncompliance determination. Prior to imposing the first sanction, if the department determines that a participant is not complying with the work participation requirement or child support requirements, the participant shall be required to enter into a conciliation process established by the department to address the noncompliance and to identify good cause for noncompliance or barriers to compliance. The conciliation process shall occur only once prior to the imposition of the sanction.

(17) Date of admission: means the date established by the immigration and naturalization service (INS) as the date an alien (or sponsored alien) was admitted for permanent residence.

(18) Date of entry: means the date established by the immigration and naturalization service (INS) as the date an alien (or sponsored alien) was admitted for permanent residence.

(19) Department: means the

human services department.

(20) Dependent child: means a natural child, adopted child, stepchild or ward who is:

(a) seventeen years of age or younger; or

(b) eighteen years of age and is enrolled in high school; or

(c) between eighteen and twenty-two years of age and is receiving special education services regulated by the public education department.

(21) Director: means the director of the income support division.

(22) Diversion payment: means a lump sum payment, which will enable the applicant to keep job or to accept a bona fide offer of employment.

(23) Documentation: means a written statement entered in the case record regarding the type of verification used and a summary of the information obtained to determine eligibility.

(24) Earned income: means cash or payment in-kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services.

(25) Education works program (EWP): provides state-funded cash assistance to a benefit group where at least one individual is enrolled in a post secondary institution. The applicant or recipient benefit group must be otherwise eligible for NMW cash assistance, but chooses to participate in the education works cash assistance program.

(26) Emancipated: means an individual under the age of 18 years who is legally recognized as no longer under parental control due to marriage or by a decision of a court.

(27) Encumbrance: means debt owed on property.

(28) Equity value: means the fair market value of property, less any encumbrances owed on the property.

(29) Expedited services: means the process by which benefit groups reporting little or no income or resources will be provided an opportunity to participate in the food stamp program.

(30) Expungement: means the permanent deletion of cash benefits from an EBT account that is stale.

(31) Fair hearing: means an administrative proceeding which a claimant or his representative may request if:

(a) an application is not acted on within a reasonable time after the filing of the application;

(b) an application is denied in whole or in part; or

(c) the cash assistance or services are modified, terminated or not provided.

(32) Fair market value (FMV): means the amount an item can be expected to sell for on the open market at the prevailing rate of return. For vehicles, the term FMV means the amount a dealer would buy a vehicle for wholesale or offer as a trade-in. It is not the amount the dealer would sell the vehicle for at retail.

(33) Federal act: means the federal Social Security Act and rules promulgated pursuant to the Social Security Act.

(34) Federal fiscal year: October 1 through September 30 of the calendar year.

(35) Federal means-tested public benefit: means benefits from the food stamp program; the food assistance block grant programs in Puerto Rico, American Samoa and the commonwealth of the Northern Mariana Islands, supplemental security income (SSI), and the TANF block grant program under Title IV of the Social Security Act; medicaid and SCHIP.

(36) Federal poverty guidelines: means the level of income defining poverty by family size published annually in the federal register by the United States department of health and human services.

(37) Five-year bar: means the federally imposed prohibition on receiving federal means-tested public benefits for certain qualified aliens who entered the United States (U.S.) on or after August 22, 1996, until they continuously lived in the U.S. for five years. The count for the five year bar begins on the date the non-citizen attains qualified alien status.

(38) Food Stamp Act: the Food Stamp Act of 1977 (P.L. 95-113), and subsequent amendments.

(39) General assistance (GA) benefit group: means a benefit group in which all members receive cash assistance financed by state or local funds.

(40) Government entity: includes any federal, state, tribal or local unit of government as well as any non-government entity which receives public funds for the purpose of meeting the housing needs of its clientele.

(41) Gross income: means the total amount of income that a benefit group is entitled to receive before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and monies due and owing the benefit group, but diverted by the provider. Gross income does not include specific income exclusions, such as but not limited to, the cost of producing self-employment income, and income excluded by federal law.

(42) Gross income test (85 per-

cent test): for the benefit group to be eligible, the gross earned income of the benefit group must be less than 85 percent of the federal poverty guidelines as determined in 8.102.500.8 NMAC.

(43) Head of household: means the payee who is the responsible case head for the benefit group. The payee may be the parent, guardian, sole adult member, specified relative, pregnant woman, a GA recipient, or caretaker.

(44) Immigrant: means a non-citizen or an alien within the meaning found in Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(45) Immigration and naturalization service (INS): a division of the U.S. department of justice.

(46) Impairment: means a condition resulting from anatomical, physiological, or psychological abnormalities evidenced by medically acceptable clinical and laboratory diagnostic techniques. Impairment has to do only with the medical, psychiatric, or both processes. To evaluate both physical and mental impairment, medical evidence consisting of signs, symptoms and objective findings must be obtained.

(47) Individual development account program: means [accounts] an account created for eligible individuals which [are] is established and maintained by an authorized financial institution to be used for individual development.

(48) Individual development program: means a program that establishes and administers individual development accounts and reserve accounts in order to provide financial training required by the division for account owners.

(49) Ineligible alien: means an individual who does not meet the eligible alien requirements or who is not admitted for permanent residence.

(50) Initial month: means the first month for which a benefit group is certified for participation in the cash assistance program. An initial month is also a month in which a benefit group is certified following a break in participation of one calendar month or longer.

(51) Inquiry: means a request for information about eligibility requirements for a financial, medical, or food assistance program that is not an application.

(52) Institution of higher education: means any education institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high school level.

(53) Institution of post-secondary education: means an institution of post-secondary education, any public or pri-

vate educational institution that normally requires a high school diploma or equivalency certificate for enrollment, or that admits persons who are beyond the age of compulsory school attendance in the state in which the institution is located, regardless of the high school prerequisite, provided that the institution is legally authorized or recognized by the state to provide an educational program beyond secondary education in the state or a program of training to prepare students for gainful employment.

(54) Irrevocable trust funds: means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

(55) Issuance month: means the calendar month for which cash assistance is issued. In prospective budgeting, the budget and issuance months are the same.

(56) Legal guardian: means a judicially or parental created relationship between a child and appointed adult.

B. Definitions M-Z:

(1) Medicaid: medical assistance under title XIX of the Social Security Act, as amended.

(2) Minor unmarried parent: means an unmarried parent under the age of 18 years or is age 18 and enrolled in high school.

(3) Month of approval: means the month the action to approve a benefit group for cash assistance is taken.

(4) Net income tests: means for the benefit group to be eligible, the benefit group's net earned income must be less than the standard of need applicable to the benefit group after allowable deductions have been made to the earned and unearned income.

(5) Net monthly income: means gross non-exempt income minus the allowable deductions. It is the income figure used to determine eligibility and cash assistance benefit amount.

(6) Non-benefit group members: means persons residing with a benefit group who are specifically excluded by regulation from being included in the benefit group certification.

(7) Non-citizen U.S. national: means a person who is not an U.S. citizen but was born in an outlying possession of the U.S. on or after the date the U.S. acquired the possession, or a person whose parents are non-citizen U.S. nationals. A person who resides on one of the following U.S. island territories is a non-citizen U.S. national: American Samoa, Swains island or the Northern Mariana islands.

(8) Notice of adverse action (NOAA): means a written notice that includes a statement of the action the department has taken or intends to take, the reason for the action, the benefit group's right to a fair hearing, who to contact for

additional information, the availability of continued benefits, and liability of the benefit group for any overissuance received if the hearing decision is adverse to the benefit group. This notice may be received prior to an action to reduce benefits, or at the time reduced benefits will be received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated. Recipients have 13 days from the mailing date of the notice to request a fair hearing and to have benefits restored to their previous level.

(9) Overissuance: means the amount by which cash assistance benefits issued to a benefit group exceed the amount the benefit group was eligible to receive.

(10) Parent: means natural parent, adoptive parent, stepparent or legal guardian.

(11) Participant: means a recipient of cash assistance or services or a member of a benefit group who has reached the age of majority.

(12) Payment standard: means the amount of the cash assistance payment, after the countable net earned and unearned income of the benefit group has been subtracted from the benefit group's standard of need, and prior to reduction by sanction, recoupment or both.

(13) Permanent total disability: means an individual must have a physical or mental impairment, expected to last at least 12 months, that prevents gainful employment in any employment position within the individual's current employment capacity.

(14) Person: means an individual.

(15) Project area: means the geographic area designated to a county office that is responsible for the administration of the department's programs.

(16) Prospective budgeting: means the computation of a benefit group's eligibility and benefit amount based on a reasonable estimate of income and circumstances that will exist in the current month and future months.

(17) Qualified alien status: means a person lawfully admitted into the United States under INA guidelines as defined in PROWA of 1996.

(18) Real property: means land, affixed improvements, and structures which include mobile homes. Grazing permits are also considered real property.

(19) Recertification: means a complete review of all conditions of eligibility which are subject to change and a redetermination of the amount of assistance payment for an additional period of time.

(20) Recipient: means a person receiving cash assistance benefits.

(21) Refugee: means a lawfully admitted individual granted conditional entry into the United States.

(22) Regular reporting: means a reporting requirement that requires a participating household to report a change within ten days of the date a change becomes known to the household.

(a) A financial change becomes known to the household when the household receives the first payment attributed to an income or resource change, or when the first payment is made for a change in an allowable expense.

(b) A non-financial change including but not limited to, a change in household composition or a change in address, becomes known to the household on the date the change takes place.

(23) Resource standard: means the financial standard with respect to resources and property, \$2,000 for non-liquid resources and \$1500 for liquid resources.

(24) Retrospective budgeting: means the computation of a benefit group's benefits for an issuance month based on actual income and circumstances that existed in the previous month.

(25) Resource planning session: means a planning session to ascertain the applicant's immediate needs and to assess the applicant's financial and non-financial options.

(26) School age: means any dependent child who turns six years prior to September first and is under 18 years of age.

(27) Secretary: means the secretary of the department.

(28) Self-employed: means an individual who engages in a self-managed enterprise for the purpose of providing support and income and who does not have the usual withholding deducted from this income.

(29) Semiannual reporting: means a reporting requirement that allows up to a 12-month certification period and requires a household to submit a report in the sixth month of a 12-month certification period or in the same month a food stamp semiannual report is due.

(30) Services: means child-care assistance; payment for employment-related transportation costs; job search assistance; employment counseling; employment; education and job training placement; one-time payment for necessary employment-related costs; case management; or other activities whose purpose is to assist transition into employment.

(31) Shelter for battered women and children: means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

(32) Single-parent benefit group: means any benefit group which does not include both parents of a child included in the benefit group and thus includes families in which there is only one parent or in which there are no parents.

(33) Sponsor: means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission to the United States as a permanent resident.

(34) Sponsored alien: means an alien lawfully admitted for permanent residence in the United States as an immigrant, as defined in Sections 101(a)(15) and 101(a)(2) of the Immigration and Nationality Act.

(35) Stale: means EBT accounts which have not been accessed, no withdrawal activity, by the household in the last 90 days from the most recent date of withdrawal.

(36) Standard of need: means an amount which is based on the number of individuals included in the benefit group and allows for financial standard and basic needs.

(37) State-funded alien eligible: means an alien who entered the United States on or after August 22, 1996, as one of the classes of aliens described in Subsection B of 8.102.410.10 NMAC, is eligible with respect to citizenship requirements for state-funded assistance under NMW and GA without regard to how long the alien has been residing in the United States.

(38) Supplemental security income (SSI): means monthly cash payments made under the authority of:

(a) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled;

(b) Section 1616(a) of the Social Security Act; or

(c) Section 212(a) of P.L. 93-66.

(39) Temporary total disability: means a physical or mental impairment, expected to last at least 30 days from date of determination, but less than one year from the date of application, that prevents gainful employment in any employment position within the individual's current employment capacity.

(40) Two-parent benefit group: means a benefit group which is considered to exist when both parents of any child included in the benefit group live in the home with the child and are included in the benefit group.

(41) Term limits: means NMW assistance (cash benefits and supportive services) is not provided to or for an adult or a minor head of household for more than 60 months during the individual's lifetime.

(42) Unearned income: means old age, survivors, and disability insurance

payments (social security), railroad retirement benefits, veterans administration compensation or pension payments, military retirement and allotments, pensions, annuities and retirement benefits; lodge or fraternal benefits, any other public or private disability or retirement benefit or pension, shared shelter payments, Individual Indian Money (IIM); royalty or lease payments for land or property owned by a benefit group member; settlement payments resulting from insurance or litigation; worker's compensation benefits; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income.

(43) Vehicle: means a conveyance used for the transportation of individuals to or from employment, for the activities of daily living or for the transportation of goods; vehicle does not include any boat, trailer or mobile home used as the principal place of residence.

(44) Verification: means the use of third-party information or documentation to establish the accuracy of statements on the application.

(45) Vocational education: means an organized education program that is directly related to the preparation of a person for employment in a current or emerging occupation requiring training other than a baccalaureate or advance degree. Vocational education must be provided by an educational or training organization, such as a vocational-technical school, community college, or post-secondary institution or proprietary school.

(46) Wage subsidy program: means a subsidized employment opportunity through which a TANF cash assistance recipient is hired into full-time employment.

[8.102.100.7 NMAC - N, 07/01/2001; A, 02/14/2002, A, 05/15/2003; A, 1/1/2004; A, 02/28/2007; A/E, 07/16/2007; A, 10/31/2007]

8.102.100.8 ABBREVIATIONS AND ACRONYMS

A. Abbreviations and acronyms

(1) AFDC: aid to families with dependent children (replaced by TANF effective July 1, 1997)

(2) BG: benefit group

(3) BIA: bureau of Indian affairs

(4) BIA-GA: bureau of Indian affairs-general assistance

(5) CA: cash assistance

(6) CE: categorical eligibility or categorically eligible

(7) CFR: code of federal regulations

(8) CS: child support

(9) CSED: (HSD) child support

enforcement division

(10) **CYFD:** (New Mexico) children youth & families department

(11) **DOH:** (New Mexico) department of health

(12) **DOL:** department of labor

(13) **DOT:** dictionary of occupational titles

(14) **E&T:** employment and training (food stamp work program)

(15) **EBT:** electronic benefit transfer

(16) **EI:** earned income

(17) **EW:** eligibility worker (now caseworker)

(18) **EWP:** education works program

(19) **FAP:** financial assistance program

(20) **FAA:** family assistance analyst (formally ISS)

(21) **FFY:** federal fiscal year

(22) **FMV:** fair market value

(23) **FNS:** food and nutrition service (previously FCS)

(24) **FPL:** federal poverty level

(25) **FSP:** food stamp program

~~(26) GA: general assistance]~~

~~(27)~~ (26) **GED:** general equivalency degree

~~(28)~~ (27) **HHS:** (U.S.) health and human services

~~(29)~~ (28) **HSD:** (New Mexico) human services department

~~(30)~~ (29) **HUD:** (U.S.) housing and urban development

~~(31)~~ (30) **IDA:** individual development account

~~(32)~~ (31) **INS:** (U.S.) immigration and naturalization service

~~(33)~~ (32) **IPV:** intentional program violation

~~(34)~~ (33) **IRP:** individual responsibility plan

~~(35)~~ (34) **IRU:** incapacity review unit

~~(36)~~ (35) **ISD:** (HSD) income support division

~~(37)~~ (36) **ISD2:** integrated services delivery for ISD

~~(38)~~ (37) **ISS:** income support specialist (now caseworker)

~~(39)~~ (38) **JTPA:** Job Training Partnership Act (now WIA)

(40) (39) **LIHEAP:** low income home energy assistance program

~~(41)~~ (40) **LITAP:** low income telephone assistance program

~~(42)~~ (41) **MAD:** (HSD) medical assistance division

~~(43)~~ (42) **MVD:** (New Mexico) motor vehicle division

~~(44)~~ (43) **NADA:** national automobile dealers association

~~(45)~~ (44) **NMAC:** New Mexico administrative code

~~(46)~~ (45) **NMW:** New Mexico

works

~~(47)~~ (46) **NOAA:** notice of adverse action

~~(48)~~ (47) **POS:** point of sale

~~(49)~~ (48) **QC:** quality control

~~(50) QR: quarterly reporting or quarterly reporters]~~

~~(51)~~ (49) **RR:** regular reporting or regular reporters

~~(52)~~ (50) **RRP:** refugee resettlement program

~~(53)~~ (51) **SAVE:** systematic alien verification for entitlements

~~(54)~~ (52) **SE:** self employment

~~(55)~~ (53) **SR:** semiannual reporting

~~(56)~~ (54) **SSA:** social security administration

~~(57)~~ (55) **SSI:** supplemental security income

~~(58)~~ (56) **SSN:** social security number

~~(59)~~ (57) **TANF:** temporary assistance to needy families (block grant program under Title IV-A of the Social Security Act)

~~(60)~~ (58) **UCB:** unemployment compensation benefits

~~(61)~~ (59) **UEI:** unearned income

~~(62)~~ (60) **USDA:** United States department of agriculture

~~(63)~~ (61) **VA:** veterans administration

~~(64)~~ (62) **WIA:** Workforce Investment Act

~~(65)~~ (63) **WID:** work incentive deduction

~~(66)~~ (64) **WPA:** work participation agreement

B. [Reserved]

[8.102.100.8 NMAC - N, 07/01/2001; A, 02/14/2002; A, 01/01/2004; A, 02/28/2007; A/E, 07/16/2007; A, 10/31/2007]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.510 NMAC, Sections 10 and 11 effective 10/31/2007.

8.102.510.10 R E S O U R C E EXCLUSIONS:

A. Real property:

(1) **The home:** The value of the benefit group's home and certain other property, as defined below, is not considered in determining eligibility. The "home" is the dwelling place occupied by the benefit group. The home is considered to be occupied by the benefit group during a temporary absence from the home when there is a definite plan to return to the home and no one else is occupying it. "Home" includes,

in addition to the residence building and the land upon which it is constructed, the following:

(a) a reasonable amount of land within reasonable proximity to the residence building if that land is currently used by and useful to the client;

(b) outbuildings within reasonable proximity to the residence building, such as barn, garage and well, if the well is a principal source of water;

(c) buildings used for rental purposes if located on land contiguous to the land upon which the residence building is constructed and if these buildings cannot be divided from the residence land and sold separately;

(d) grazing permits currently being used to graze livestock owned by the client;

(e) furniture, equipment and household goods necessary for the operation and maintenance of the home.

(2) **Other real property - burial plots:** One burial plot for each person included in the benefit group; a burial plot shall consist of the space needed to bury members of the immediate family.

B. Exempt personal property: The value of the following items of personal property shall not be considered in determining eligibility for financial assistance.

(1) Vehicles:

(a) **Transportation to or from work/daily living:** Vehicles used for transportation of benefit group members to or from work or work activities, for daily living activities, or for transportation of goods or services shall not be considered in the determination of resources attributed to the benefit group.

(b) **Specially equipped vehicles:** A vehicle that is specially equipped for the handicapped shall not be considered in the determination of resources attributed to the benefit group.

(2) **Exempt income:** Any income which is exempt under income provisions is also exempt from consideration as a resource. To maintain its exempt status, exempt income which is accumulated must be kept separately from non-exempt savings.

(3) **Funeral agreements:** The equity value of funeral agreements owned by a benefit group member. Funeral agreements include any arrangement under which prepaid funeral services are provided or cash benefits which are intended to pay for funeral services are paid upon the death of the person. Included as such agreements are contracts with funeral homes, life or burial insurance, or trust or escrow accounts in financial institutions or banks, provided that the trust or escrow accounts contain provisions making the funds payable only

upon the death of a named individual. There is no limit on the amount which can be disregarded.

(4) Contingent and unliquidated claims: A "contingent and unliquidated claim" is an as yet undetermined right of the client to receive, at some future time, a resource such as an interest in an estate not probated or damages or compensation resulting from an accident or injury. Such a claim is not considered a resource to meet requirements if the ~~[client]~~ benefit group member can demonstrate that the client has consulted an attorney, or that under the circumstances, it is reasonable not to have consulted an attorney, and that the ~~[client]~~ benefit group member is making every reasonable effort to prosecute the ~~[client's]~~ benefit group member's claim or to proceed with the probate. If the ~~[client]~~ benefit group member can demonstrate that the client's share in an estate not probated would be less than the expense of the proceedings to probate the estate, the value is not considered a resource.

(5) Work-related equipment exclusion: Work-related equipment, such as the tools of a trades person or the machinery of a farmer, which are essential to the employment or self-employment of a benefit group member, are excluded, in an amount not to exceed \$1000 per individual, and remain excludable, if the trades person becomes disabled. Farm machinery retains this exclusion for one year if the farmer ends self-employment.

(6) Livestock: The value of livestock is an excluded non-liquid resource.

C. Individual development account (IDA): As defined in the Individual Development Account Act 58-30 NMSA, 1978, funds in an IDA are exempt from consideration as resources in determining benefit group eligibility ~~[based on the following limitations]~~ are subject to certain requirements. To be disregarded, the IDA must be designated for a qualified use and meet all requirements as follows.

(1) IDA requirements:

~~[(a) the benefit group member must first establish and maintain a savings account with a balance of \$1,500;]~~

~~[(b)]~~ **(a)** the benefit group member must establish the IDA for one of the ~~[three]~~ purposes listed ~~[above]~~ in Paragraph (2) of this subsection;

~~[(c)]~~ **(b)** in order for such accounts to be excludable, the IDA must be a trust created or organized in the United States, with trust language restricting use of account funds to the ~~[purposes]~~ qualified uses as designated in this section; and

~~[(d)]~~ **(c)** the IDA must be funded exclusively with income earned by a benefit group member or by contributions made by a non-benefit group member;

~~[(e)]~~ **(d)** funds withdrawn from the account and used for any purpose other than those specified under this section, will cause the account to lose its status as an excluded resource, starting with the month in which the funds are so used; the amounts withdrawn also constitute an overpayment of assistance, and must be reported and shall be recouped.

(2) IDA qualified uses: Allowable uses of the money withdrawn from an IDA are listed in Subparagraph (a) thru ~~[(d)]~~ **(f)** of this subsection.

(a) Post-secondary education expenses: In order to be considered used for the qualified purpose, the post-secondary education funds must be paid from an IDA directly to an eligible education institution, as set forth in this section. For purposes of this regulation, post-secondary education expenses include:

(i) tuition and fees required for the enrollment or attendance of a student at an eligible education institution; an eligible institution is an institution described in section 481(a)(1) or 1201(a) of the Higher Education Act of 1965 (20 USC 1088(a)(1) or 1141(a)); an area vocational education school (as defined in section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)) which is in any state; or

(ii) books, fees, supplies, and equipment required for courses of instruction at an eligible educational institution.

(b) Business capitalization: In order to be considered used for the qualified purpose, for business capitalization, the funds have to be paid directly from the IDA to a business capitalization account established in a federally insured financial institution that is restricted to use solely for qualified business capitalization expenses. A qualified business means any business that does not contravene any law or public policy. Qualified business capitalization expenses include capital, plant, equipment, working capital, and inventory expenses. To be a qualified business, there must be a business-plan which:

(i) is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity;

(ii) includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and

(iii) may require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

(c) First-time home purchase by a qualified buyer: The purpose of the IDA is to assist a qualified first-time home buyer to accumulate part of the cash necessary to

initiate purchase of the individual's first home.

(i) Only IDA's established by qualified first-time home buyers shall be disregarded. A qualified first-time home buyer is one who has never had an ownership interest in a principal residence.

(ii) The IDA may be used only for the purchase of a qualified principal residence. A qualified principal residence is one which qualifies as the principal home under Subsection 1034 the federal internal revenue services code, and the costs for which do not exceed 100 percent of the average area purchase price applicable to such residence, determined in accordance with paragraphs (2) and (3) of Subsection 143(e) of the internal revenue services code.

(iii) No more than \$1500 may be accumulated in an IDA for first-time home purchase. Any amount in excess of \$1500 is considered in determining whether the benefit group meets the cash resource limit.

(d) Home improvements: Costs of major home improvements or repairs on the home of the account owner.

(e) Death of account owner: The amount deposited by the deceased account owner held in an IDA shall be distributed directly to the account owner's spouse. If the spouse is deceased or there is no spouse the amount shall be distributed to a dependent or other named beneficiary of the deceased. The account and matching funds designated for that account from a reserve account may be transferred and maintained in the name of the surviving spouse, dependent or beneficiary.

(f) Vehicle acquisition: Acquisition of a vehicle necessary to obtain or maintain employment by an account owner or the spouse of an account owner.

D. Federally excluded resources: Certain resources are excluded pursuant to federal law. For a listing of federally excluded resources see 8.139.527 NMAC.

[8.102.510.10 NMAC - Rp 8.102.510.10 NMAC, 07/01/2001, A, 05/15/2003; A/E, 07/16/2007; A, 10/31/2007]

8.102.510.11 RESOURCE AVAILABILITY:

A. Availability: Resources that are actually available or which are considered to be available are considered in determining eligibility for assistance. For purposes of cash assistance eligibility, the countable resources of all benefit group members shall be considered to be available to the benefit group. The resource determination shall be made based upon the status of resources on the first moment of the first day of each month.

Subsequent changes shall not effect the determination of eligibility or ineligibility until the first moment of the first day of the following month.

B. Potentially available resources: The benefit group is required to take all appropriate steps to make available to itself any property resources to which the group may be entitled but whose value is not currently available, which includes, but is not limited to, an inheritance, where the estate has not yet gone through probate. The fact that specific property is not readily marketable on the client's terms is not a condition prohibiting transfer. The current value of property, which must be partitioned in order to be accessible, is not considered available if the net value (after estimated costs of partition and other closing costs) is less than the resource limit. If the amount likely to be derived from the applicant's or recipient's share of the property exceeds the resource limit, the applicant or recipient will be required to initiate attempts to obtain the recipient's share of the estate.

C. SSI recipients and other non-members: The property of individuals receiving SSI or of other non-members shall not be considered available, regardless of relationship to benefit group members, except as indicated in E. below.

D. Alien sponsor: The gross income and resources belonging to an individual who is the sponsor of an alien included in the cash assistance benefit group, and the income belonging to the sponsor's spouse, shall be counted in its entirety to determine the eligibility and payment amount if the sponsor has executed an affidavit of support pursuant to Subsection 213-A of the Immigration and Nationality Act. The income and resources of the alien sponsor, and spouse, shall be counted until the sponsored alien achieves citizenship or can be credited with 40 qualifying quarters under title II of the federal Social Security Act.

E. Deeming resources: A liquid resource owned by a parent of a minor parent living in the home, shall be deemed on a pro rata basis, unless the parent of the minor parent receives SSI.

F. Joint property:

(1) Joint resources: Resources owned jointly by separate benefit groups shall be considered available in their entirety to each benefit group, unless it can be demonstrated by an applicant or recipient that such resources are inaccessible to it. The benefit group must verify that:

- (a) it does not have the use of the resource;
- (b) it did not make the purchase or down payment;
- (c) it does not make the continuing loan payments; and
- (d) the title is transferred to or

retained by the other benefit group;

(e) if a benefit group can demonstrate that it has access to only a part of the resource, the value of that part is counted toward the benefit group's resource level; a resource will be considered totally inaccessible, if it cannot be practically subdivided and the benefit group's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply; for purposes of this provision, ineligible aliens or disqualified individuals residing with a benefit group are considered benefit group members.

(2) Joint bank accounts: If signatories to a joint bank account are separate benefit groups, the funds in the account are considered available to each benefit group to the extent that it has contributed to the account. If the participation benefit group has not contributed to the account, the funds are considered available only if there is clear and convincing evidence that the other benefit group intends that the participation benefit group actually owns the funds. [8.102.510.11 NMAC - Rp 8.102.510.11 NMAC, 07/01/2001; A/E, 07/16/2007; A, 10/31/2007]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.290.400 NMAC, Sections 6, 7, 9 through 14, which will be effective on November 1, 2007. The Chapter name has also been amended.

CHAPTER 290 MEDICAID ELIGIBILITY - HOME AND ~~(COMMUNITY-BASED WAIVER SERVICES)~~ COMMUNITY-BASED SERVICES WAIVER (CATEGORIES 090, 091, 092, 093, 094, 095 AND 096)

8.290.400.6 OBJECTIVE: The objective of these regulations is to provide eligibility ~~[policy and procedures]~~ criteria for the medicaid program. [2/1/95; 8.290.400.6 NMAC - Rn, 8 NMAC 4.WAV.000.6, 5/1/02; A, 11/1/07]

8.290.400.7 DEFINITIONS: ~~[RESERVED]~~

A. Individual service plan (ISP): A treatment plan for a recipient that includes the recipient's needs, functional level, intermediate and long range goals, statement for achieving the goals and specifies responsibilities for the care needs. The plan determines the services allocated to an individual within program allowances.

B. Letter of allocation: Written notice to the applicant that they may proceed with the HCBSW application process.

C. Level of care: The level of nursing care needed by an individual.

D. Prospective: A period of time starting with the date of application going forward.

E. Restricted coverage: Medicaid eligibility without long term care services coverage.

F. Unduplicated recipient positions (UDR): Space available in a particular HCBSW program.

G. Waiver: Permission from the centers for medicaid and medicare services to cover a particular population or service not ordinarily allowed. [8.290.400.7 NMAC - N, 11/1/07]

8.290.400.9 HOME AND COMMUNITY-BASED ~~[WAIVER SERVICES]~~ SERVICES WAIVER - Category 090, 091, 092, 093, 094, 095, 096:

The human services department (HSD) is the single state agency designated to administer the medicaid program in New Mexico. The department of health (DOH), the aging and long term services department (ALTSD) and the human services department are charged with developing and implementing home and community-based ~~[waiver services (HCBSW)]~~ services waiver (HCBSW) to medicaid applicants/recipients who meet both financial and medical criteria for an institutional level of care. Provision of these services under a waiver allows applicants/recipients to receive the care required at home at less cost than in an institution. The services to be furnished under the waiver must be cost-effective. This means the aggregate cost of care must be an amount less than the cost of maintaining individuals in institutions at the appropriate level of care. The types of services for which medicaid recipients are eligible vary based on the individual waiver. See medical assistance division program manual for the standards for individual waiver of covered services and program ~~[policies]~~ rules for all waiver services. The following sections contain the eligibility ~~[policy]~~ rules for all waiver services. ~~[Unless specifically approved by the medical assistance division director, no other policies, procedures, or rules of any kind apply.]~~

[2/1/95; 8.290.400.9 NMAC - Rn, 8 NMAC 4.WAV.400 & A, 5/1/02; A/E, 12-1-06; A, 11/1/07]

8.290.400.10 BASIS FOR DEFINING THE GROUP: Eligibility for applicants/recipients who apply for waiver services is determined as if ~~[he/she]~~ he were actually institutionalized, although this requirement has been waived. Entry into some of the waiver programs may be based upon the number of unduplicated recipient positions (UDRs) (i.e., slots). Some waiver

categories require individuals to be placed on a central registry. The individual waiver program manager is responsible for notifying ISD when an individual is allocated into a waiver program.

A. **Disabled and elderly (D&E) waiver:** The disabled and elderly waiver identified as categories 091 (elderly), 093 (blind) and 094 (disabled) was approved effective July 1983, subject to renewal. To qualify as disabled or blind for the purposes of this waiver, disability or blindness must have been determined to exist by the disability determination contractor (DDC). To qualify as an elderly person for purposes of this waiver, the applicant/recipient must be ~~sixty-five (65)~~ 65 years of age or older. Applicants/recipients must also meet both the financial and non-financial eligibility requirements and meet the medical level of care for nursing facility services.

B. **Developmentally disabled (DD) waiver:** The developmental disabled waiver identified as category 096 was approved effective July 1984, subject to renewal. This waiver is designed to furnish services to applicants/recipients who meet the definition of a developmental disability and mental retardation or specific related condition as determined by the department of health and the DDC in accordance with the approved DD waiver criteria, including the following:

(1) the individual has a developmental disability, defined as a severe chronic disability, other than mental illness, that:

(a) is attributable to a mental or physical impairment, including the result of trauma to the brain, or a combination of mental and physical impairments;

(b) is manifested before the person reaches the age of ~~twenty-two years (22)~~ 22 years;

(c) is expected to continue indefinitely;

(d) results in substantial functional limitations in three or more of the following areas of major life activity:

- (i) self-care;
- (ii) receptive and expressive language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction;
- (vi) capacity for independent living; and
- (vii) economic self-sufficiency; and

(e) reflects the person's need for a combination and sequence of special or interdisciplinary treatment, generic or other support and services that are of lifelong or extended duration and are individually planned and coordinated.

(2) The individual also has men-

tal retardation or a specific related condition, limited to cerebral palsy, autism (~~Asperger~~ Asperger syndrome), seizure disorders, chromosomal disorders (e.g. downs), syndrome disorders, inborn errors of metabolism, and developmental disorders of brain formation.

(3) The individual must also require the level of care provided in an intermediate care facility for the mentally retarded (ICF-MR), and meet all other applicable financial and non-financial eligibility requirements.

C. **Medically fragile (MF) waiver:** The medically fragile (MF) waiver identified as category 095 was established effective August, 1984 subject to renewal. To be eligible for the medically fragile waiver, an applicant/recipient must meet the level of care required for admission to an intermediate care facility for the mentally retarded (ICF/MR), and meet all other applicable financial and non-financial eligibility requirements.

(1) To qualify for the MF waiver an individual must:

(a) have a developmental disability, developmental delay, or be at risk for developmental delay as determined by the DDC, and

(b) be diagnosed with a medically fragile condition prior to the age of ~~twenty-two (22)~~ 22, defined as a chronic physical condition, which results in a prolonged dependency on medical care for which daily skilled (nursing) intervention is medically necessary, and which is characterized by one or more of the following:

(i) a life threatening condition characterized by reasonably frequent periods of acute exacerbation, which require frequent medical supervision ~~and/or~~ or physician consultation and which, in the absence of such supervision or consultation, would require hospitalization;

(ii) frequent, time-consuming administration of specialized treatments, which are medically necessary;

(iii) dependency on medical technology such that without the technology a reasonable level of health could not be maintained; examples include, but are not limited to, ventilators, dialysis machines, enteral or parenteral nutrition support and continuous oxygen; and

(iv) periods of acute exacerbation of a life-threatening condition, the need for extraordinary supervision or observation, frequent or time-consuming administration of specialized treatments, dependency on mechanical (life) support devices, and developmental delay or disability.

D. **Acquired immunodeficiency syndrome (AIDS) and AIDS related condition (ARC) waiver:** The

acquired immunodeficiency syndrome (AIDS) and AIDS related condition waiver designated as category 090, was established effective July 1987, subject to renewal. This waiver serves applicants/recipients diagnosed with AIDS/ARC. Applicants/recipients must require institutional level of care and meet all other applicable financial and non-financial eligibility requirements.

E. **Brain injury (BI) under the mi via waiver:** Brain injury ~~under~~ services are only available through the mi via waiver, and are designated as category 092. The mi via waiver, administered by the ALTSD, is effective December 1, 2006 and is subject to renewal. To qualify for purposes of this waiver, the applicant/recipient must be under ~~sixty-five (65)~~ 65 years of age at the time of approval, meet all other applicable financial and non-financial eligibility requirements and have a brain injury. Brain injury is defined as an injury to the brain of traumatic or acquired origin resulting in total or partial functional disability or psychosocial impairment or both. Additional criteria include the following:

(1) the term applies to open and closed head injuries caused by: an insult to the brain from an outside physical force; anoxia; electrical shock; shaken baby syndrome; toxic and chemical substances; near-drowning; infections; tumors; or vascular lesions;

(2) BI may result in either temporary or permanent, partial or total impairments in one or more areas including, but not limited to: cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory perception and motor abilities; psychosocial behavior; physical functions; information processing; and speech;

(3) the term "brain injury" does not apply to injuries that are congenital, degenerative, induced by birth trauma or neurological disorders related to the aging process, or chemically caused brain injuries that are a result of habitual substance abuse; the BI participant must have a documented BI diagnosis, as defined by the state; a list of applicable international classification of disease (ICD9) codes can be obtained from ALTSD or HSD/MAD; and

(4) individuals who require nursing facility level of care.

[2/1/95; 3/15/96; 8.290.400.10 NMAC - Rn, 8 NMAC 4.WAV.402 & A, 5/1/02; A/E, 12-1-06; A, 11/1/07]

8.290.400.11 GENERAL RECIPIENT REQUIREMENTS: Eligibility for the waiver programs is always prospective. Applicants/recipients must meet, or expect to meet, all non-financial eligibility criteria

in the month for which determination of eligibility is made. The application process begins once the letter of allocation, level of care, and the application for medical assistance is received by the income support division worker. After the individual service plan (ISP) has been in effect for 30 days or if it can be reasonably anticipated that services will be in effect for 30 days, the application is approved effective the first day of the month of the start date of the individualized service plan, unless income/resources deemed to a minor child from his parents results in the child's ineligibility for the initial month. The eligibility start date is based on the date of application or the start date of the ISP, whichever is later.

A. **Enumeration:** An applicant/recipient must furnish ~~his/her~~ his social security number. Medicaid eligibility is denied or terminated for an applicant/recipient who fails to furnish ~~his/her~~ social security number.

B. **Citizenship:** Refer to medical assistance ~~Program~~ Eligibility Manual Section [Section] 11 of 8.200.410 NMAC.

C. **Residence:** To be eligible for medicaid, an applicant/recipient must be physically present in New Mexico on the date of application or final determination of eligibility and must have declared an intent to remain in the state. If the applicant/recipient does not have the present mental capacity to declare intent, the applicant's/recipient's representative may assume responsibility for the declaration of intent. If the applicant/recipient does not have the mental capacity to declare intent and there is no representative to assume this responsibility, the state where the applicant/recipient is living will be recognized as the state of residence. If waiver services are suspended because the recipient is temporarily absent from the state but is expected to return within ~~sixty (60)~~ 60 consecutive days at which time waiver services will resume, the medicaid case remains open. If waiver services are suspended for any other reason for ~~sixty (60)~~ 60 consecutive days, the medicaid case is closed after appropriate notice is provided to the recipient.

D. **Non-concurrent receipt of assistance:** Home and community-based ~~Waiver (HCBS)~~ services waiver (HCBSW) services furnish medicaid benefits to an applicant/recipient who qualifies both financially and medically for institutional care but who, with provision of waiver services, can receive the care ~~he/she~~ he needs in the community at less cost to the medicaid program than the appropriate level of institutional care. Individuals receiving services under a ~~HCBS Waiver~~ HCBSW may not receive concurrent services under nursing facility

(NF), ICF-MR, personal care or any other ~~HCBS~~ HCBSW.

(1) **SSI recipients:** Applicants receiving supplemental security income (SSI) benefits are categorically eligible for waiver services. No further verification of income, resources, citizenship, age, disability, or blindness is required. The applicant must, however, meet the level of care requirement. (An SSI recipient must meet the assignment of rights and TPL requirements and not be ineligible because of a trust.)

(2) **Married SSI couples:** All married SSI couples where neither member is institutionalized in a medicaid-certified facility are treated as separate individuals for purposes of determining eligibility and benefit amounts beginning the month after the month they began living apart. See Section 8012 of the Omnibus Budget Reconciliation Act of 1989. In the case of an initial application, or reinstatement following a period of ineligibility, when members of a married couple are not living together on the date of application or date of request for reinstatement, each member of the couple is considered separately as of the date of application or request, regardless of how recently the separation occurred.

[2/1/95, 4/30/98; 8.290.400.11 NMAC - Rn, 8 NMAC 4.WAV.410, 411, 412, 413, 414 & A, 5/1/02; A, 11/1/07]

8.290.400.12 SPECIAL RECIPIENT REQUIREMENTS:

A. **Age:** To be considered elderly, an applicant/recipient must be ~~sixty five (65)~~ 65 years of age or older. See 8.281.400.16 NMAC, AGE, for information on verification of age.

B. **Blind:** To be considered blind, an applicant/recipient must have central visual acuity of 20/200 or less with corrective lenses or must be considered blind for practical purposes. The ISD worker is responsible for submitting medical reports to the DDC, if necessary. See 8.281.400.17 NMAC, BLIND, for information on documentation and verification of blindness.

C. **Disability:** To be considered disabled, an applicant/recipient must be unable to engage in any substantial gainful activity because of any medical determinable physical, developmental, or mental impairment, which has lasted, or is expected to last, for a continuous period of at least ~~twelve (12)~~ 12 months. The ISD worker is responsible for submitting medical reports to the DDC, if necessary. See 8.281.400.18 NMAC, DISABILITY, for information on documentation and verification of disability.

D. **Requires institutional care:** An institutional level of care must be recommended for the applicant/recipient by

a physician, nurse practitioner or a doctor of osteopathy, licensed to practice in the state of New Mexico. Institutions are defined as acute care hospitals, nursing facilities (either high NF or low NF as defined by medicaid regulations) and intermediate care facilities for the mentally retarded (ICF-MRs). Level of care reviews are completed by the medical assistance division (MAD) utilization review contractor.

[2/1/95; 8.290.400.12. NMAC - Rn, 8 NMAC 4.WAV.420, 421, 422, 424, 429, 5/1/02; A, 11/1/07]

8.290.400.13 RECIPIENT RIGHTS AND RESPONSIBILITIES:

An applicant/recipient is responsible for establishing ~~his/her~~ his eligibility for medicaid. As part of this responsibility, the applicant/recipient must provide required information and documents or take the actions necessary to establish eligibility. Failure to do so must result in a decision that eligibility does not exist. An applicant/recipient must also grant the human services department (HSD) permission to contact other persons, agencies or sources of information, which are necessary to establish eligibility. See 8.200.430 NMAC, RECIPIENT RIGHTS AND RESPONSIBILITIES for specific information.

[2/1/95; 8.290.400.13 NMAC - Rn, 8 NMAC 4.WAV.430, 5/1/02; A, 11/1/07]

8.290.400.14 REPORTING REQUIREMENTS:

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

[2/1/95; 8.290.400.14 NMAC - Rn, 8 NMAC 4.WAV.450 & A; 5/1/02; A, 11/1/07]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.290.500 NMAC, Sections 6, 7, 9, 14 and 23, which will be effective on November 1, 2007. The Chapter name has also been amended.

CHAPTER 290 MEDICAID ELIGIBILITY - HOME AND ~~[COMMUNITY-BASED WAIVER SERVICES]~~ COMMUNITY-BASED SERVICES WAIVER (CATEGORIES 090, 091, 092, 093, 094, 095 AND 096)

8.290.500.6 OBJECTIVE: The objective of these regulations is to provide eligibility ~~[policy and procedures]~~ criteria for the medicaid program.
[2/1/95; 8.290.500.6 NMAC - Rn, 8 NMAC 4.WAV.000.6, 5/1/02; A, 11/1/07]

8.290.500.7 DEFINITIONS: ~~[RESERVED]~~ See 8.290.400.7 NMAC.
[8.290.500.7 NMAC - N, 11/1/07]

8.290.500.9 NEED DETERMINATION: Eligibility for the home and ~~[community-based]~~ community-based services waiver programs is always prospective. Applicants/recipients must meet, or expect to meet, all financial eligibility criteria in the month for which a determination of eligibility is made. Applicants for and recipients of medicaid through one of the waiver programs must apply for, and take all necessary steps to obtain, any income or resources to which they may be entitled. Such steps must be taken within ~~[thirty (30)]~~ 30 days of the date the human services department (HSD) furnishes notice of the potential entitlement.

A. Failure to apply for and take steps to determine eligibility for other benefits: Failure or refusal to apply for and take all necessary steps to determine eligibility for other benefits after notice is received results in an applicant/recipient becoming ineligible for medicaid.

B. Exceptions to general requirement: Applicants/recipients who have elected a lower VA payment do not need to reapply for veterans administration improved pension (VAIP) benefits. Crime victims are not required to accept victims compensation payments from a state-administered fund as a condition of medicaid eligibility.
[2/1/95; 1/1/97; 8.290.500.9 NMAC - Rn, 8 NMAC 4.WAV.500, 5/1/02; A, 11/1/07]

8.290.500.14 ASSET TRANSFERS: See 8.281.500.14 NMAC and following subsections for ~~[regulations]~~ rules

governing transfers of assets. All provisions pertaining to transfers under institutional care medicaid apply to transfers under the waiver programs with the exception of the penalty for transfers ~~[without fair return]~~ of assets for less than fair market value. The penalty for transfers of assets without fair return for waiver applicants/recipients is ineligibility for long term care medicaid services under the waiver programs. Federal regulations specify that, to be eligible for a waiver program, an individual must be receiving the ~~[waivered services]~~ waiver or long term care services. Because a waiver applicant/recipient is not eligible to receive these services under the medicaid program, they become medicaid ineligible. For transfers without fair return that occur after February 8, 2006, the penalty period is five years. If the transfer took place prior to February 8, 2006, the penalty period is three years. The penalty period is calculated in the same way as for institutional care medicaid if the applicant or recipient enters a nursing facility.

[2/1/95, 1/1/97; 8.290.500.14 NMAC - Rn, 8 NMAC 4.WAV.515, 5/1/02; A, 11/1/07]

8.290.500.23 ~~[MEDICAL CARE CREDIT]~~ POST ELIGIBILITY/MEDICAL CARE CREDIT: There are no medical care credits in the waiver programs. The applicant/recipient is allowed to keep all of ~~[his/her]~~ his income to maintain ~~[his/her]~~ his household in the community.
[2/1/95, 1/1/97; 8.290.500.23 NMAC - Rn, 8 NMAC 4.WAV.530, 5/1/02; A, 11/1/07]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.290.600 NMAC, Sections 6, 7, 10, 11, 12 and 14, which will be effective on November 1, 2007. The Chapter name has also been amended.

CHAPTER 290 MEDICAID ELIGIBILITY - HOME AND ~~[COMMUNITY-BASED WAIVER SERVICES]~~ COMMUNITY-BASED SERVICES WAIVER (CATEGORIES 090, 091, 092, 093, 094, 095 AND 096)

8.290.600.6 OBJECTIVE: The objective of these regulations is to provide eligibility ~~[policy and procedures]~~ criteria for the medicaid program.
[2/1/95; 8.290.600.6 NMAC - Rn, 8 NMAC 4.WAV.000.6, 5/1/02; A, 11/1/07]

8.290.600.7 DEFINITIONS: ~~[RESERVED]~~ See 8.290.400.7 NMAC.
[8.290.500.7 NMAC - N, 11/1/07]

8.290.600.10 BENEFIT DETERMINATION: Application for the waiver programs is made using the "application/redetermination of eligibility for medical assistance of aged, blind, and disabled individuals" (form MAD 381). Upon notification by the appropriate program manager that an unduplicated recipient (UDR) is available for waiver services, applicants are registered on the ISD2 system. Applications must be acted upon and notice of approval, denial, or delay sent out within ~~[thirty (30)]~~ 30 days from the date of application, or within ~~[sixty (60)]~~ 60 days if a disability determination is required from the DDC. The applicant/recipient must assist in completing the application, may complete the form ~~[him/herself]~~ himself, or may receive help from a relative, friend, guardian, or other designated representative. To avoid a conflict of interest, a case manager or any other medicaid provider may not complete the application or be a designated representative.

A. Representatives applying on behalf of individuals: If a representative makes application on behalf of the applicant/recipient, that representative will continue to be relied upon for information regarding the applicant's/recipient's circumstances. The ISD worker will send all notices to the applicant/recipient in care of the representative.

B. Additional forms: The following forms are also required as part of the application process:

(1) the applicant/recipient or representative must complete and sign the primary freedom of choice of case management agency form at the time of allocation; and

(2) the applicant/recipient or representative must sign the applicant's statement of understanding at the time waiver services are declined or terminated.

C. Additional information furnished during application: The ISD worker provides an explanation of the waiver programs, including, but not limited to, income and resource limits and possible alternatives, such as institutionalization. The ISD worker refers potentially eligible applicants/recipients to the social security administration to apply for supplemental security income (SSI) benefits. If a disability decision by the DDC is required, but has not been made, the ISD worker must follow established procedures to refer the case for evaluation.

[2/1/95; 1/1/97; 8.290.600.10 NMAC - Rn, 8 NMAC 4.WAV.620 & A, 5/1/02; A, 11/1/07]

8.290.600.11 INITIAL BENEFITS:
A. The application for home and community-based ~~[waiver]~~

Services] services waiver is approved when the following factors of eligibility have been met: financial, non-financial, and level of care. An application will be initiated when the ISD worker is notified by the appropriate program manager that a UDR position is available for the registrant (with the exception of the AIDS waiver). After the individualized service plan has been in effect for ~~[thirty (30) days]~~ 30 days or if it can be reasonably anticipated that services will be in effect for 30 days, the application is approved effective the first day of the month of the start date of the individualized service plan, unless income/resources deemed to a minor child from ~~[his/her]~~ his parents results in the child's ineligibility for the initial month. The eligibility start date is based on the date of application or the start date of the ISP, whichever is later. See 8.290.500.17 NMAC, DEEMING RESOURCES, and 8.290.500.21 NMAC, DEEMED INCOME.

B. Notice of determination: Applicants determined to be ineligible for waiver services are notified of the reason for the denial and provided with an explanation of appeal rights.

C. Applicants determined to be eligible for waiver services are notified of the approval.

[2/1/95; 1/1/97; 8.290.600.11 NMAC - Rn, 8 NMAC 4.WAV.623 & A, 5/1/02; A, 11/1/07]

8.290.600.12 ONGOING BENEFITS:

A. Regular reviews: A complete redetermination of eligibility must be performed annually by the ISD worker for each open case. The redetermination includes contact with the applicant/recipient or ~~[his/her]~~ his representative to review financial and non-financial eligibility.

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

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

(2) VA cost-of-living increases;

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

(4) level of care review.

[2/1/95; 1/1/97; 8.290.600.12 NMAC - Rn, 8 NMAC 4.WAV.624 & A, 5/1/02; A, 11/1/07]

8.290.600.14 CHANGES IN ELIGIBILITY: If the recipient ceases to meet any of the eligibility criteria, the case is closed following provision of advance

notice as appropriate. See 8.200.430.9 NMAC and following subsections for information about notices and hearing rights.

A. Non-provision of waiver services: To continue to be eligible for waiver services, an applicant/recipient must be receiving waiver services, EPSDT or salud managed care services, other than case management, [42 CFR Section 435.217]. If waiver services are no longer being provided (e.g., a suspension) and are not expected to be provided for ~~[sixty (60)]~~ 60 consecutive days, the recipient is **ineligible** for the waiver category and the case must be closed after appropriate notice is provided by the ISD worker.

B. Admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded (ICF-MR): If a waiver recipient enters an acute care hospital, a nursing facility, or an ICF-MR and remains for more than ~~[sixty (60)]~~ 60 consecutive days, the waiver case must be closed and an application for institutional care medicaid must be processed. The recipient is not required to complete a new application if the periodic review on the waiver case is not due in either the month of entry into the institution or the following month. If the waiver recipient is institutionalized within less than ~~[sixty (60)]~~ 60 consecutive days and still receives waiver services within that time frame, the waiver case is not closed and an application for institutional care medicaid need not be processed.

C. Reporting changes in circumstances: The primary responsibility for reporting changes in the recipient's circumstances rests with the recipient ~~[and/or]~~ and representative. At the initial eligibility determination and all on-going eligibility redeterminations, the ISD worker must explain the reporting responsibilities requirement to the applicant/recipient ~~[and/or]~~ and representative and document that such explanation was given. In the event that waiver services cease to be provided, the case manager or the waiver program manager (or designee) must immediately notify the income support division office of that fact by telephone. The telephone call is to be followed by a written notice to the ISD worker.

[2/1/95; 1/1/97; 8.290.600.14 NMAC - Rn, 8 NMAC 4.WAV.630 & A, 5/1/02; A, 11/1/07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

6.2.4 NMAC, The Alternative Licensure Review Panel, filed 9-29-2000, is hereby repealed effective 10/31/07.

6.60.3 NMAC, Alternative Licensure, filed 6-1-01, is repealed and replaced by the Public Education Department with the new 6.60.3 NMAC, Alternative Licensure, effective 10-31-07.

6.61.9 NMAC, Certificates of Waiver, filed 7-2-2001 is repealed and replaced by the Public Education Department with the new 6.61.9 NMAC, Certificates of Endorsement Waiver, effective 10-31-07.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 60 SCHOOL PERSONNEL - GENERAL PROVISIONS PART 3 ALTERNATIVE LICENSURE

6.60.3.1 ISSUING AGENCY: Public Education Department (PED)
[6.60.3.1 NMAC - Rp, 6.60.3.1 NMAC, 10-31-07]

6.60.3.2 SCOPE: This rule establishes a path to teacher licensure in early childhood education, elementary education, middle level education, pre K-12 specialty area education, secondary education, or special education for persons who have earned at least a baccalaureate degree from a regionally accredited college or university and for persons who hold a post-baccalaureate degree and have teaching experience at the post-secondary level but in neither case have ever completed an educator preparation program. This rule also establishes a path for alternative licensure in administration for persons who hold a post-baccalaureate degree and have administration experience at the post-secondary level but have never completed an administrator preparation program. The procedures in this rule may also be used by teachers employed in New Mexico public schools, charter schools, accredited or private schools who hold standard teaching licensure, to obtain additional licensure at the same level as their existing license or licenses.

[6.60.3.2 NMAC - Rp, 6.60.3.2 NMAC, 10-31-07]

6.60.3.3 STATUTORY AUTHORITY: 22-2-1, 22-2-2, 22-10A-6, and 22-10A-8, NMSA 1978.
[6.60.3.3 NMAC - Rp, 6.60.3.3 NMAC, 10-31-07]

6.60.3.4 DURATION: Permanent
[6.60.3.4 NMAC - Rp, 6.60.3.4 NMAC, 10-31-07]

6.60.3.5 EFFECTIVE DATE: October 31, 2007, unless a later date is cited in the history note at the end of a section.
[6.60.3.5 NMAC - Rp, 6.60.3.5 NMAC, 10-31-07]

6.60.3.6 OBJECTIVE: Through this rule the PED implements a state law that provides alternative routes to New Mexico teacher licensure for persons who hold at least a baccalaureate degree from a regionally accredited college or university but have not completed a traditional educator preparation program.
[6.60.3.6 NMAC - Rp, 6.60.3.6 NMAC, 10-31-07]

6.60.3.7 DEFINITIONS:

A. "Particular field" means the license and/or endorsement area being sought.

B. "Appertains and corresponds to the subject area of instruction and level of instruction" means:

- (1) that for early childhood licensure, the degree, including the credit hours, shall be related to early childhood education, birth through grade 3;
- (2) that for elementary licensure, the degree, including the credit hours, shall include completed course work in any combination of the subject areas of language arts, mathematics, science, social studies, history, fine or performing arts and foreign language;
- (3) that for middle level, secondary, and pre K-12 specialty area licensure the degree, including the credit hours, shall be in the license and/or endorsement area being sought; and,
- (4) that for special education licensure, the degree, including the credit hours, shall include completed course work in any combination of the subject areas of language arts, mathematics, science, social studies, history, fine or performing arts and foreign language, or shall be related to special education (such as general elementary or secondary education, special education, psychology, child development, reading education).

C. "A program approved by the PED" means that the same program approval standards and procedures used by the PED for approving university preparato-

ry programs shall be applied to alternative programs in New Mexico.

D. "Core academic subjects" means English, language arts, reading, mathematics, science, the arts, including music and visual arts, and social studies, which includes civics, government, economics, history, and geography, and modern and classical languages, except for the modern and classical Native American languages and cultures of New Mexico tribes or pueblos.

E. "A highly qualified, beginning early childhood, elementary, middle level, secondary, pre K-12 specialty area" teacher, under this rule, means a teacher who is fully qualified to teach the core academic subjects, who is new to the profession, who has pursued an alternative route to licensure and who:

- (1) meets the requirements for alternative licensure in 6.60.3.8 NMAC; and
- (2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason; and
- (3) has passed all applicable teacher testing requirements for the level of licensure under 6.60.5.8 NMAC.

F. "A highly qualified beginning middle or junior high school teacher holding alternative elementary K-8 licensure", under this rule, means a teacher who is fully qualified to teach the core academic subjects in a public middle or junior high school, and who is new to the profession and has pursued an alternative route to licensure, and who:

- (1) meets the requirements for alternative elementary K-8 licensure in 6.60.3.8 NMAC; and
- (2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason; and
- (3) has passed all applicable teacher testing requirements for elementary K-8 licensure in 6.60.5.8 NMAC; and
- (4) if the teacher is new to the profession after June 30, 2006, or if the teacher was hired after the first day of school of the 2002-2003 school year and assigned to work in a title I targeted assistance program or a title I school-wide program:

(a) has passed the content knowledge test(s) of the New Mexico teacher assessments or comparable licensure tests from another state in each subject area the teacher teaches; or

(b) has successfully completed an undergraduate academic major or coursework equivalent to an undergraduate major, or a graduate degree, in each core academic subject the teacher teaches.

G. "A highly qualified beginning pre K-12 special education

teacher," under this rule, means a teacher who is new to the profession and who has pursued an alternative route to licensure and who is fully qualified to teach special education students by either providing access for those students to a regular education classroom where instruction in the core academic subjects is delivered by a highly qualified regular education teacher, by being fully qualified to teach each core academic subject the special education teacher teaches, or by being fully qualified to teach either language arts or mathematics or science and becoming fully qualified to teach any other core academic subjects which the teacher teaches within two years after the date of initial employment and who:

(1) meets the requirements for pre K-12 special education licensure in Subsections A or B in 6.61.6.8 NMAC; and

(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason; and

(3) has passed all applicable teacher testing requirements for licensure in 6.60.5.8 NMAC.

H. "A highly qualified teacher candidate for level 1 alternative licensure" means a person participating in an alternative route to licensure, who meets all of the following requirements:

(1) has fulfilled the degree requirements set forth in Subsection A of 6.60.3.8 NMAC; and

(2) receives high-quality professional development that is sustained, intensive, and classroom-focused, and includes classroom management and lesson planning for teaching New Mexico's diverse student population, both before and while teaching; and

(3) participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program; and

(4) assumes duties as a teacher of record for a period of at least one full school year under the internship license not to exceed three years, and

(5) demonstrates satisfactory progress toward full alternative licensure by completing at least nine semester hours per year in an alternative licensure program or successfully demonstrating competency by way of portfolio assessment or by way of local evaluations for two full school years in an approved school district alternative program.

I. "Internship license" means a three-year non-renewable certificate or license issued by the PED authorizing a candidate to teach where the candidate does not yet meet the requirements for a level 1 alternative license but is satisfactorily participating in an alternative route to

licensure under 6.60.3 NMAC, or a three-year non-renewable administrator certificate or license authorizing the candidate to work as an administrator where the person does not yet meet the requirements for a level 3B alternative administrator license but is participating in an alternative route to licensure under Subsection D of 6.60.3.8 NMAC.

J. "Undergraduate academic major", under this rule, means thirty (30) semester hours in a subject area.

K. "Full school year" means a minimum of 160 instructional days or equivalent number of days in schools or school districts on alternative schedules over multiple school years of full-time or part-time teaching during which the teacher is the teacher of record in at least one class each school year while holding a standard teaching license. Instructional days may include teaching in summer school or similar educational setting.

L. "Teacher of record" is the person named in the standard teaching contract who will be covering the class and teaching the students in that classroom the majority of the time. This is the contracted individual who will plan the lessons, assign grades, meet with parents and other duties of the regular class room teacher according to the standard teaching contract.

[6.60.3.7 NMAC - Rp, 6.60.3.7 NMAC, 10-31-07]

6.60.3.8 REQUIREMENTS FOR ALTERNATIVE TEACHING LICENSURE:

To receive a level 1, five-year alternative teaching license, an applicant must meet the following requirements:

A. Degree requirements - An applicant for alternative licensure must meet the provisions of Subsection A, Paragraphs (1), (2) or (3).

(1) must possess a bachelor of arts or science degree from a regionally accredited college or university including completion of a minimum of thirty semester hours of graduate or undergraduate credit in a particular field that appertains and corresponds to the subject area of instruction and level of instruction that will enable the applicant to teach in a competent manner as determined by the PED; or

(2) must possess a master of arts or science degree from a regionally accredited college or university including completion of a minimum of twelve graduate credit hours in a particular field that appertains and corresponds to the subject area of instruction and level of instruction that will enable the applicant to teach in a competent manner as determined by the PED; or

(3) must possess a doctor's degree from a regionally accredited college or university; the degree shall correspond to the subject area of instruction and particular

grade level that will enable the applicant to teach in a competent manner as determined by the PED.

B. Professional teacher education requirements - An applicant for alternative licensure who has earned at least a baccalaureate degree from a regionally accredited college or university but has never completed an educator preparation program must meet the provisions of Paragraphs (1), (2), or (3) or (4) of this subsection.

(1) Persons seeking either early childhood birth-grade 3, elementary K-8, or special education pre K-12 licensure, must complete various semester hours of credit earned through a regionally accredited college or university that has a PED-approved alternative licensure program containing no less than twelve (12) nor more than twenty-one (21) semester hours of credit and meeting the following criteria:

(a) the credits must include six (6) semester hours of coursework in the teaching of reading; and

(b) the credits must include the PED competencies for entry level teachers that correspond to the license being sought; and

(c) the credits must be in a program approved by the PED; and

(d) the program must include a student teaching or field-based component.

(2) Persons seeking either middle level 5-9, secondary 7-12 or specialty area pre K-12 licensure, must complete various semester hours of credit earned through a regionally accredited college or university that has a PED-approved alternative licensure program containing no less than twelve (12) nor more than eighteen (18) semester hours of credit and meeting the following criteria:

(a) the credits must include three (3) semester hours of coursework in the teaching of reading; and

(b) the credits must include the PED's competencies for entry level teachers that correspond to the license being sought; and

(c) the credits must be in a program approved by the PED; and

(d) the program must include a student teaching or field-based component.

(3) Beginning February 1, 2007, successfully demonstrate the PED's approved competencies for entry level teachers that correspond to the license being sought by presenting for assessment by trained reviewers an internet web-based online portfolio which contains all of the components and fulfills all of the requirements described in Paragraph (3) of Subsection B of 6.60.3.8 NMAC. Such applicants shall also complete the reading coursework as set forth at Paragraphs (1) or (2) of this subsection and serve as the

teacher of record for a full school year prior to being granted a portfolio review. Under no circumstance shall an individual be granted a portfolio review unless that person has passed all sections of the current PED required New Mexico teacher licensure tests in 6.60.5 NMAC, completed all required reading coursework and submitted verification from administration of the public school, charter school, accredited private school that the individual has been the teacher of record for at least one full school year. Teachers employed in New Mexico public schools, charter schools, accredited private schools who already hold standard teaching licensure at levels 1, 2, or 3-A, may obtain additional licensure in early childhood education, elementary education, middle level education, pre K-12 specialty area education, secondary education, or special education by submitting an alternative licensure portfolio as long as they demonstrate the teaching competencies in 6.69.14 NMAC for the new license at the same level as their existing license or licenses.

(a) The portfolio shall include evidence of teaching competence that is collected from actual teaching experience as the teacher of record with pre K-12 students while the candidate is employed or works as the teacher of record in a New Mexico public, charter, private school or other early childhood, elementary, middle level or secondary educational setting. The portfolio shall be organized in the following five strands, with strands a, b and c presented together for review:

(i) an instruction strand that demonstrates knowledge of academic content, curriculum development, instructional planning, student assessment and appropriate use of technology and which includes specific evidence of: student achievement; and assessment techniques and procedures; and instructional plans and materials; and examples of student work and performance; and evidence of effective classroom management strategies and procedures; and evidence of implementation of state curriculum standards; and

(ii) a student learning stand that demonstrates knowledge of child or adolescent growth and development, classroom management techniques, communication skills and addressing the needs of diverse student needs and inclusion and which includes specific evidence of: adaptations/modifications for diverse learners; and classroom observation reports; and evidence of communication with students and parents;

(iii) a professional learning strand that demonstrates knowledge of professional growth and development and how the candidate works productively with parents, community and colleagues and which includes specific evi-

dence of: collaboration with professional community; or research undertaken to improve classroom practice; and

(iv) verification by the superintendent of a public school district or other education employer or supervisor, that the work product in the portfolio is that of the candidate and that the data submitted is reasonable and accurate, that the candidate has served as the teacher of record for one full school year by the time of submission of the portfolio; and

(v) the recommendation of a public school superintendent or other education employer or supervisor, that based on local evaluations that the candidate be granted a level 1 alternative license.

(b) Unless special accommodations are requested in writing to PED 30 days in advance of portfolio submission, the portfolio and associated fees in Subsection E of 6.60.7.8 NMAC shall be submitted electronically through the online portfolio submission system following procedures established by the PED.

(c) The portfolio shall be assessed for authenticity by the superintendent of the candidate's school district, (superintendent designee) or equivalent administrative officer of a school and shall be reviewed for demonstration of entry level teacher competencies by three independent reviewers, as follows:

(i) The superintendent or equivalent school administrator shall complete the verification and recommendation strands in items (iv) and (v) of Subparagraph (a) of Paragraph (3) of Subsection B of 6.60.3.8 NMAC and the independent reviewers will rate the three competency strands in items (i) - (iii) of Subparagraph (a) of Paragraph (3) of Subsection B of 6.60.3.8 NMAC as "meets" or "does not meet" the competencies.

(ii) The three competency strands of a candidate's portfolio must be rated as "meets" by at least two reviewers and the verification and recommendation strands completed by the superintendent (superintendent designee) or equivalent administrative officer or a school must indicate verification authenticity, recommendation for licensure and verification of full school year experience in order for a candidate to be granted a level 1 alternative license.

(iii) If one of the independent reviewers rates any of the three competency strands as "meets" and the other reviewer rates the same strand as "does not meet," the rating will remain as "does not meet"; if two of the reviewers rate any of the three competency strands as "meets" and the third reviewer rates a strand as "does not meet", the strand will remain as "meets" for that strand.

(iv) The director of professional licensure at the PED will evaluate the ratings of the superintendent or equivalent school administrator of a school along with the ratings of the independent reviewers and shall approve or deny the candidate's application for level 1 alternative licensure.

(v) A candidate who does not successfully demonstrate the competencies in all three strands in items (i) - (iii) of Subparagraph (a) of Paragraph (3) of Subsection B of 6.60.3.8 NMAC may submit any failed strand one time as long as the resubmission is completed within one calendar year of the date of the original submission.

(vi) A candidate's employing school or school district must act on strands in item (iv) - (v) of Subparagraph (a) of Paragraph (3) of Subsection B of 6.60.3.8 NMAC within 45 calendar days of the date of the portfolio submission or resubmission of any failed strands. Failure of an administrator to complete the process could cause the portfolio to become null and void.

(4) Demonstrate the PED's approved competencies for entry level teachers that correspond to the license being sought by way of evaluations conducted by a local school district over a period of at least two full school years as the teacher of record as part of a PED-approved school-based or statewide teacher preparation program that provides the professional development that is required to support a highly qualified teacher candidate for level 1 alternative licensure as defined in this rule. The professional development program shall be developed in collaboration with a college, university, or other professional development provider. Such applicants shall also complete the reading courses set forth at Paragraphs (1) or (2) of this subsection prior to being recommended for licensure by a local school district. Under no circumstance shall an individual be recommended for licensure by a local school district unless that person has passed all sections of the current PED-required New Mexico teacher test and serve as the teacher of record for at least one full school year.

C. Professional teacher education requirements - An applicant for alternative teaching licensure who has earned a post-baccalaureate degree and has at least five years of teaching experience at the post-secondary level but has never completed a teacher preparation program must meet the provisions of Paragraphs (1) or (2) and (3) of this subsection.

(1) Persons seeking either early childhood B-3, elementary K-8, or special education pre K-12 licensure, must complete six (6) semester hours of coursework

in the teaching of reading earned through a regionally accredited college or university.

(2) Persons seeking either middle level 5-9, or secondary 7-12 licensure, must complete three (3) semester hours of coursework in the teaching of reading earned through a regionally accredited college or university.

(3) Complete an internship of at least one full school year while holding an internship license and working as a teacher in a school district, charter school, private school or state agency education program.

(4) Upon completion of the requirements in Subsections A, D, and E; and Paragraphs (1) - (3) of Subsection C of 6.60.3.8 the candidate for alternative teaching licensure who has met PED-approved competencies as verified to the PED by the candidate's employer will be issued an alternative license as follows:

(a) level 2 for the teacher who has at least five years post-secondary teaching experience;

(b) level 3-A for the teacher who has at least six years post-secondary teaching experience.

D. Testing requirements: An applicant for alternative licensure must pass all of the New Mexico teacher assessments, including any applicable content knowledge assessment required by 6.60.5 NMAC, prior to receiving alternative licensure at any level.

E. An applicant for alternative teaching licensure must be a highly qualified, beginning early childhood, elementary, middle level, secondary, pre K-12, or special education teacher, or be a highly qualified beginning middle or junior high school teacher holding alternative elementary K-8 licensure.

[6.60.3.8 NMAC - Rp, 6.60.3.8 NMAC, 10-31-07]

6.60.3.9 REQUIREMENTS FOR ALTERNATIVE ADMINISTRATOR LICENSURE: Professional administrator education requirements - An applicant for alternative administrator licensure who has earned a post-baccalaureate degree and has at least six years administrator experience at the post-secondary level but has never completed an administrator preparation program must complete an internship of at least one full school year while holding an administrator internship license and working as an administrator in a school district, charter school, private school or state agency education program. Upon completion of the internship the candidate for alternative administrator licensure who has met PED-approved administrator competencies as verified to the PED by the candidate's employer will be issued an alternative level 3-B administrator

license
[6.60.3.9 NMAC - N, 10-31-07]

6.60.3.10 REQUIREMENTS FOR INTERNSHIP TEACHER LICENSURE:

A. A candidate for alternative licensure may be permitted to assume the functions of a teacher prior to completion of licensure requirements and be issued a three-year non-renewable internship license, if the candidate is a highly qualified teacher candidate for level 1 alternative licensure, as defined in this rule.

(1) Such a candidate may be issued a three-year non-renewable internship license to allow time to complete the teacher testing requirements of 6.60.5.8 NMAC, the reading coursework requirement set forth in Paragraphs (1) or (2) of Subsection B of 6.60.3.8, NMAC, the requirement to be the teacher of record for at least one full school year and to pass portfolio submission process or be evaluated for competency by a local school district.

(2) At the time of internship licensure application, the candidate must:

(a) present proof of registration for a New Mexico teacher assessment at the next available testing date, and

(b) present proof of enrollment in the required coursework for the teaching of reading or proof of having completed the required coursework.

(3) If a candidate for this licensure is not successful in demonstrating competency by way of portfolio assessment or by way of local public school district evaluations, the candidate may still proceed by way of the alternative route set forth in this subsection although the three-year non-renewable license issued under Paragraph (1) of Subsection B of 6.60.3.10 NMAC shall not be extended or renewed in order to provide additional time to complete an alternative licensure program.

B. A candidate enrolled in a PED approved post-baccalaureate teacher preparation program or advanced degree program with a teacher preparation component may be considered to be participating in an alternative route to licensure and be issued an internship license under Subsection A of 6.60.3.10 NMAC. Upon the completion of the approved teacher traditional preparation program requirements, and the testing requirements the candidate may be issued a standard level 1 alternative license if, in addition, the candidate meets the requirements for standard licensure within the three-year period allowed to complete an alternative route to licensure.

C. After June 30, 2003, the time that a person provides services under an internship license shall not be counted toward or considered for advancement to level 2 or level 3 licensure.

[6.60.3.10 NMAC - Rp, 6.60.3.9 NMAC, 10-31-07]

6.60.3.11 REQUIREMENTS FOR ADMINISTRATOR INTERNSHIP LICENSURE:

A three-year, non-renewable internship license in educational administration may be issued to any candidate who holds at least a master's degree and has at least six full school years of experience in administration at the post-secondary level.

[6.60.3.11 NMAC - N, 10-31-07]

6.60.3.12 ALTERNATIVE LEVEL 2 OR LEVEL 3 LICENSE:

A. A one-year internship license shall be issued to an applicant who meets the following requirements:

(1) is at least eighteen years of age; and

(2) provides an official transcript for a bachelor's degree from a regionally accredited college; and

(3) provides an official transcript for a post-baccalaureate degree from a regionally accredited college; and

(4) provides verification of experience on official letterhead and signed by a post secondary institution official for a minimum of five years experience teaching at the post-secondary level.

B. A level 2 standard teaching license shall be issued based on the following requirements:

(1) completion of Paragraphs (1), (2), (3) and (4) of Subsection A of 6.60.3.12, NMAC;

(2) verification from the superintendent of a public school district or administrator at a state agency, charter school or private school that the candidate has met the level 2 competencies for the grade level and subject area the person is teaching; and

(3) verification that the candidate has completed one full school year as the teacher of record under the internship license.

C. A level 3 standard teaching license shall be issued based on the following requirements:

(1) completion of Paragraphs (1), (2) and (3) of Subsection A of this section;

(2) verification as in Paragraph (2) of Subsection B of this section;

(3) same as in Paragraph (3) of Subsection B of this section;

(4) provides verification of experience on official letterhead and signed by a post secondary institution official for a minimum of six years experience teaching at the post-secondary level.

[6.60.3.12 NMAC - N, 10-31-07]

HISTORY OF 6.60.3 NMAC:

PRE-NMAC HISTORY: The material in this part was derived from that previously

filed with State Records Center and Archives under:

SBE Regulation No. 86-6, Alternative Licensure, filed July 14, 1986; and SBE Regulation No. 86-6, Amendment No. 1, Alternative Licensure filed December 4, 1990.

HISTORY OF REPEALED MATERIAL:

6 NMAC 4.2.2.1, Alternative Licensure, was repealed by the State Board of Education effective July 1, 2000 and repululated effective July 1, 2000.

6.60.3 NMAC, Alternative Licensure, filed June 1, 2001 - repealed effective 10-31-2007.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 61 SCHOOL PERSONNEL - SPECIFIC LICENSURE REQUIREMENTS FOR INSTRUCTORS**

PART 9 CERTIFICATES OF ENDORSEMENT WAIVER

6.61.9.1 ISSUING AGENCY: Public Education Department (PED)
[6.61.9.1 NMAC - Rp, 6.61.9.1 NMAC, 10-31-07]

6.61.9.2 SCOPE: This rule governs the circumstances for the issuance and duration of endorsement waivers to those individuals who do not meet the requirements for endorsements as required for providing instructional services in certain areas.

[6.61.9.2 NMAC - Rp, 6.61.9.2 NMAC, 10-31-07]

6.61.9.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, and 22-10A-14, NMSA 1978
[6.61.9.3 NMAC - Rp, 6.61.9.3 NMAC, 10-31-07]

6.61.9.4 DURATION: Permanent
[6.61.9.4 NMAC - Rp, 6.61.9.4 NMAC, 10-31-07]

6.61.9.5 EFFECTIVE DATE: October 31, 2007, unless a later date is cited in the history note at the end of a section.
[6.61.9.5 NMAC - Rp, 6.61.9.5 NMAC, 10-31-07]

6.61.9.6 OBJECTIVE: This rule establishes guidelines for local superin-

tendents, charter schools, or governing authorities of state institutions that seek to employ individuals under the authority of endorsement waivers. It is the objective of the secretary to ensure that all public school and state institution teaching positions are filled with only individuals holding valid standard, alternative, substitute or intern licenses and proper endorsements.

[6.61.9.6 NMAC - Rp, 6.61.9.6 NMAC, 10-31-07]

6.61.9.7 DEFINITIONS:

A. "Standard license" means a certificate or license issued by the secretary authorizing a person to teach, supervise an instructional program, counsel, provide special instructional services or administer in the public schools of the state and which are issued at five and nine year intervals.

B. "Emergency declaration" means the situation where a local superintendent, governing authority of a charter school or state institution, has declared that, due to circumstances beyond the control of the local superintendent, governing authority of a charter school or state institution, a vacancy or vacancies exist in a teaching position that requires the holding of a standard license for a position that must be filled immediately or as soon as practicable to avoid a deterioration of significant services.

C. "Endorsement waiver" means the situation where, for up to a school year, the secretary, through the professional licensure bureau ("PLB") of the PED, authorizes a local superintendent, a charter school or governing authority of a state institution to fill an existing licensed teaching position in a public school or state institution with an individual designated by the local superintendent, to receive an endorsement waiver.

D. "Certificate of assignment endorsement waiver" means the situation where, for up to a school year, the secretary authorizes a local superintendent, a charter school or governing authority of a state institution to fill an existing public school or state institution teaching vacancy with an individual holding a standard license who does not hold the specific endorsement required for that position.

E. "School year" means the total number of teaching days offered by public schools in a school district during a period of twelve consecutive months, but more specifically means the period of time, usually August through May of a year, in which a local school district is in session and has licensed teachers providing instructional services.

F. "Specific method, date and duration of recruitment" means the

media used to recruit the filling of a vacancy, the name of the media used, and the date(s) and duration the recruitment for a specific vacant position was disseminated by the media.

G. "Documentation supporting recent recruiting effort" means a paper copy of any medium or method used to recently recruit the filling of a vacancy, including but not limited to a newspaper listing, a bulletin board listing, an e-mail, a fax, or a memorandum actually sent or posted.

H. "Recent recruitment effort" means within 12 months preceding the date the request for endorsement waiver is submitted with the PLB.

I. "Core academic subjects" means English, language arts, reading, mathematics, science, modern and classical languages, except the modern and classical Native American languages and cultures of New Mexico tribes or pueblos, the arts, including music and visual arts, and social studies, which includes civics, government, economics, history, and geography.

J. "Highly qualified", under this rule, means a teacher of the core academic subjects who has had no certification or licensure requirements waived on an emergency basis.

[6.61.9.7 NMAC - Rp, 6.61.9.7 NMAC, 10-31-07]

6.61.9.8 TEACHER SHORTAGES:

A. Local superintendents, charter schools or state institutions faced with teacher shortages conclude that the best option is to fill a classroom for a year with a licensed teacher not possessing the endorsement required for a given area.

B. The PLB shall, on behalf of the secretary, receive and evaluate all requests for endorsement waivers. At least annually but no later than June 30th of each school year, the director of professional licensure ("director") shall for the preceding school year compile and present to the secretary the numbers of endorsement waivers it issued and declined to issue.

[6.61.9.8 NMAC - Rp, 6.61.9.8 NMAC, 10-31-07]

6.61.9.9 EVALUATION OF AN ENDORSEMENT WAIVER REQUEST:

To achieve consistent results, the PLB shall evaluate requests for endorsement waiver as follows:

A. The PLB consultants will determine whether local superintendents, charter schools, or state institutions have included documentation to support any assertion that they have been unsuccessful in recruiting qualified applicants;

for those districts that choose to submit a supporting certification, the consultants will determine if that certification attests to a specific method, date and duration of recruitment. Applications submitted either without supporting documentation or a certification attesting to a specific method, date and duration of recruitment will almost certainly result in a non-approval of the request.

B. The PLB consultants will identify the type of degree held by the applicant and whether the candidate for endorsement waiver, given that degree and coursework taken, could later reasonably be qualified to receive an endorsement in the area requested by the local school superintendents, charter schools, or state institutions. If the candidate's degree or college coursework are too far removed from the focus area of the endorsement waiver, the endorsement waiver request will almost certainly be not approved.

C. The PLB consultants will determine if the endorsement waiver candidate has a completed endorsement application packet, as determined by the PLB, on file with the PLB. If the PLB does not receive a completed endorsement application packet within 30 days of its receipt of the endorsement waiver request concerning that candidate, then the endorsement waiver request will be not approved.

D. Requests for endorsement waiver must be made with the knowledge and consent of the candidate. Any endorsement waiver request received without the unqualified written consent of the candidate for endorsement waiver will be not approved.

E. Completion of at least 9 college credit hours within a school year, including summers, is deemed to be a reasonable attempt to attain an endorsement waiver. Therefore, the PLB consultants will determine whether the local school plan contains a component requiring an endorsement waiver candidate to complete at least 9 college credit hours per year. Ultimately, the consultants shall evaluate endorsement waiver requests to determine if during the period of the endorsement waiver the candidate is reasonably capable of completing the coursework or passing the content test that would enable them to obtain the endorsement in the content area where the local superintendents, charter schools, or state institutions seeks to place the individual.

F. The PLB consultants will determine if a candidate for initial endorsement waiver has ever been issued an endorsement waiver. If such a candidate has held an endorsement waiver for more than three years, whether or not consecutive, further endorsement waiver will almost certainly be not approved.

G. The PLB consultants will determine if a candidate for initial endorsement waiver has ever been issued an endorsement waiver but failed to comply with any conditions established by the director. If such a candidate has previously failed to comply with conditions established by the director, including taking and passing required testing, further endorsement waiver will almost certainly be not approved.

H. The PLB consultants will notify the local school superintendents, of their approval or non-approval of the requested endorsement waiver for an individual. If the endorsement waiver is approved, the notification will detail the conditions under which the endorsement waiver is approved. If the endorsement waiver is not approved, the notification will state reasons why it was not approved. The non-approval notification will also state the superintendent's, charter school's, or state institution's rights for requesting a review.

I. A request not made within 60 days of the beginning date of the endorsement waiver candidate's employment contract with the local school superintendent, charter school, or state institution will almost certainly be not approved unless good cause is shown why it was submitted beyond the 60-day deadline.

[6.61.9.9 NMAC - Rp, 6.61.9.10 NMAC, 10-31-07]

6.61.9.10 NON-APPROVAL OF INITIAL ENDORSEMENT WAIVER:

Upon non-approval by the PLB of initial or renewed endorsement waiver request, a superintendent or administrative designee, a charter school or a state institution may seek review of the non-approval. To obtain review, the following procedure shall be used:

A. A request for review must be in writing, must be addressed to the director of the PLB, and must be received by the director within thirty days of the local school district's receipt of PLB's non-approval of the request for an endorsement waiver. During this review period, an individual may not provide instructional services in the classroom for which an endorsement waiver is being sought unless that individual is a duly licensed substitute and is performing services as a substitute teacher pursuant to Section 22-10A-15, NMSA 1978 and 6.63.10 NMAC ("Certification for Substitute Teachers").

B. A request for review must contain not only a statement of reasons why an endorsement waiver should be issued or renewed, but must contain a written plan from the district, charter school or state institution that details the endorsement waiver candidate's progress if any toward completion of the college coursework, or taking/retaking the testing necessary to

obtain the endorsement within the duration of the endorsement waiver if issued or renewed. The plan should address the candidate's progress to-date toward meeting the goals of completing college coursework, or taking/retaking necessary testing, and what steps will be taken to fulfill these goals.

C. The director shall issue a decision on the request for review and forward it to the local school district, charter school, or state institution as soon as practicable. The decision of the director shall be final and not subject to review, reversal, clarification or reconsideration.

[6.61.9.10 NMAC - Rp, 6.61.9.11 NMAC, 10-31-07]

6.61.9.11 RENEWAL OF AN ENDORSEMENT WAIVER:

Although an endorsement waiver is valid for one year and must be based on an emergency, it can be renewed if the teacher provides to the employer satisfactory evidence of continued progress toward meeting the requirements for the endorsement.

A. All requests for renewal of endorsement waiver shall be submitted by the local district's superintendent or designee, or a charter school or a state institution, on a form substantially similar to a form available from the PLB. No renewed endorsement waiver shall be issued to any individual who does not unqualifiedly consent to performing all or any instructional services by means of an endorsement waiver. Endorsement waiver renewal requests must be submitted together with documentary evidence that demonstrates the individual's compliance with all conditions imposed by the PLB for issuance of an endorsement waiver during the preceding school year. It shall be the sole responsibility of the local school charter school, or state institution to submit this documentary evidence to the PLB.

B. Provided that the holder of an endorsement waiver has complied with all conditions for the issuance of an endorsement waiver imposed during the preceding school year, there shall be no need for a local charter school, or state institution to reestablish the existence of an emergency.

C. Except for good reason shown, any individual who fails to complete and earn credit for their college coursework to obtain the requisite credentials or obtain the degree for the endorsement required in the area for which the local superintendent, charter school, or state institution seeks to place the individual, a renewal of their endorsement waiver, shall almost certainly be non-approved. Non-use of the endorsement waiver shall be deemed an invalid reason to renew an endorsement waiver.

D. Any endorsement waiver

approved by the PLB shall be valid for only the current school year and may be renewed, provided however, that a candidate for renewal must have satisfied all conditions imposed by the PLB for the issuance of an endorsement waiver during the preceding school year.

[6.61.9.11 NMAC - Rp, 6.61.9.12 NMAC, 10-31-07]

6.61.9.12 NON-APPROVAL OF AN ENDORSEMENT WAIVER: The procedure for seeking a review of any non-approval of renewal of an endorsement waiver, shall be as follows:

A. A request for review must be in writing, must be addressed to the director the PLB, and must be received by the director within thirty days of the local school district's receipt of the PLB's non-approval of the request for an endorsement renewal of an endorsement waiver. During this review period, an individual may not provide instructional services in the classroom for which an endorsement waiver is being sought unless that individual is a duly certified substitute and is performing services as a substitute teacher pursuant to 6.63.10 NMAC ("Licensure for Substitute Teachers") or Section 22-10A-15 NMSA 1978.

B. A request for review must contain a statement of reasons why the endorsement waiver should be renewed together with any documents not previously submitted that justify the individual's failure to satisfy all conditions imposed by the PLB for the issuance of an endorsement waiver during the preceding school year.

C. The director shall issue a decision on the request for review and forward it to the local school district, charter school, or state institution as soon as practicable. The decision of the director shall be final and not subject to review, reversal, clarification or reconsideration.

[6.61.9.12 NMAC - Rp, 6.61.9.13 NMAC, 10-31-07]

6.61.9.13 RESTRICTIONS ON THE USE AND ISSUANCE OF AN ENDORSEMENT WAIVER:

A. Consistent with Title I, Sec. 1119(a)(1) and Title IX, Sec. 9101(23)(A)(ii) of the No Child Left Behind Act, if a teacher was initially employed after the first day of school of the 2002-2003 school year and is not highly qualified, the teacher shall not be issued an endorsement waiver by the secretary in the core academic subjects, and local education agencies receiving funds under Title I of the Act shall not assign that teacher to teach the core academic subjects in a Title I targeted assistance program or schoolwide program.

B. Consistent with Title I, Sec. 1119(a)(2) and Title IX, Sec.

9101(23)(A)(ii) of the No Child Left Behind Act, which requires that all teachers of the core academic subjects be highly qualified by the end of the 2005-2006 school year, the secretary will not issue endorsement waivers to teachers who teach the core academic subjects after June 30, 2006.

C. Consistent with Subsection D of Section 22-10A-14 NMSA 1978, no teacher holding an endorsement waiver shall be assigned to a school that has not made adequately yearly progress for two consecutive years.
[6.61.9.13 NMAC - Rp, 6.61.9.17 NMAC, 10-31-07]

HISTORY OF 6.61.9 NMAC:

History of Repealed Material:

6.61.9 NMAC, Certificates of Waiver, filed 7-2-2001 - Repealed effective 10-31-07.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.60.4 NMAC, Sections 2, and 6 through 10, 12 and 13, effective 10-31-07.

6.60.4.2 SCOPE: All persons who possess a minimum of a baccalaureate degree, have completed their education preparation programs at educational institutions outside the state or hold a valid out-of-state license, and are now seeking a teaching or administrative license or an endorsement from the ~~[public education department]~~ PED.

[6.60.4.2 NMAC - Rp 6 NMAC 4.2.2.3.2, 07-01-01; A, 10-14-04; A, 10-31-07]

6.60.4.6 OBJECTIVE: This ~~[regulation]~~ rule governs the requirements for providing limited reciprocity to obtain teaching or administrative licensure, or licensure endorsement, for those persons having completed their education preparation programs at educational institutions outside the state or holding valid out-of-state licensure.

[6.60.4.6 NMAC - Rp 6 NMAC 4.2.2.3.6, 07-01-01; A, 10-31-07]

6.60.4.7 DEFINITIONS:

A. "Core academic subjects" means English, language arts, reading, mathematics, science, modern and classical languages, except the modern and classical Native American languages and cultures of New Mexico tribes and pueblos, the arts, including music and visual arts, and social studies, which includes civics, government, economics, history, and geography.

B. "Academic major," under this rule, means twenty-four (24) to thirty-six (36) semester hours in a core academic subject area, twelve hours of which must be upper division for secondary 7-12, middle level 5-9, and ~~[k-12]~~ pre-K-12 specialty area licenses.

C. "Full school year" means a minimum of 160 instructional days in a school year or 480 instructional days or equivalent number of days in schools or school districts on alternative schedules over multiple school years of full-time or part-time teaching during which the teacher is the teacher of record in at least one class each school year while holding a standard teaching license. Instructional days may include teaching in summer school or similar educational setting.

[6.60.4.7 NMAC - N, 10-14-04; A, 10-31-07]

6.60.4.8 REQUIREMENTS:

A. Persons seeking a reciprocal level ~~[one]~~ 1 license for elementary k-8, early childhood ~~[b-3, secondary 7-12, middle level 5-9, special education k-12, or grade k-12 specialty area, or grade k-12]~~ birth-grade 3, secondary or secondary vocational technical 7-12, middle level 5-9, special education pre K-12, or grade pre K-12 specialty area, or grade pre K-12 blind and visually impaired, through reciprocity, shall meet the following requirements:

(1) hold a bachelor's degree or higher degree from a regionally accredited or ~~[public education department]~~ (PED) approved college or university; and

(2) hold and provide a copy of ~~[a]~~ at least one current valid teaching license issued by a state education agency or department of defense dependent schools or foreign country that is comparable to the license they are seeking; and

(3) have completed a standard or alternative teacher preparation program accepted by the PED; and

(4) provide copies of test scores for exams required to receive the license; and

~~[(4)]~~ (5) if applying for:

(a) early childhood ~~[b-grade-3]~~ birth-grade 3 or k-8 elementary licensure, provide evidence of having passed a content knowledge or professional knowledge test on the basic early childhood or elementary school curriculum and on any additional core academic endorsement areas or have completed 24 lower or upper division credit hours across the elementary education core academic subjects of language arts, social studies, mathematics, and science with at least six credit hours in each core area;

(b) secondary or secondary vocational and technical 7-12, middle level 5-9,

or grades ~~[k-12]~~ pre K-12 specialty area licensure in the core academic areas, provide evidence of having passed a content knowledge test in each of the core academic subjects in which the applicant seeks licensure or having completed an academic major, a graduate degree, or coursework equivalent to an academic major in each of the core academic subjects in which the applicant seeks licensure;

(c) licensure in non-core academic subjects, special education ~~[k-12,]~~ pre K-12, or blind and visually impaired ~~[k-12]~~ pre K-12 licensure, have, on a form acceptable to the PED, provided evidence of having satisfactorily taught under their out of state license or licenses or have passed the applicable New Mexico teacher assessment ("NMTA") ~~[or other teacher competency test(s) satisfying requirements for teacher licensure in another state;]~~ and

~~[(5)]~~ (6) have, on a form acceptable to the professional licensure bureau ("PLB") of the PED, provided evidence of having satisfactorily taught under their out of state ~~[license]~~ licenses; or combination of valid licenses for fewer than three ~~[complete]~~ full school years; and

~~[(6)]~~ (7) submit to and satisfactorily clear a fingerprint-based background check pursuant to Section 22-10A-5, NMSA 1978.

B. Persons seeking a level ~~[two]~~ 2 license for elementary k-8, early childhood ~~[b-grade-3, secondary]~~ birth-grade 3, secondary or secondary vocational technical 7-12, middle level 5-9, special education ~~[k-12,]~~ pre K-12, or grade ~~[k-12]~~ pre K-12 specialty area, or grade ~~[k-12]~~ pre K-12 blind and visually impaired, through reciprocity, shall meet the following requirements:

(1) hold a bachelor's degree or higher degree from a regionally accredited or state approved college or university; and either

(2) hold a valid certificate issued by the national board for professional teaching standards; or

(3) hold and provide a copy of a valid teaching license or licenses issued by a state education agency or department of defense dependent schools or foreign country that is comparable to the license they are seeking; and

(4) have completed a standard or alternative teacher preparation program accepted by the PED; and

(5) have, on a form acceptable to the ~~[PLU]~~ PED, provided evidence of having satisfactorily taught under their out of state license for at least three ~~[complete]~~ full school years at any time preceding their application for licensure; and

(6) ~~[meet the requirements of Paragraph (4) of Subsection A of 6.60.4.8]~~

~~NMAC and~~ provide copies of test scores for exams required to receive the license and have the credit hours or passed test for endorsement areas; and

(7) submit to and satisfactorily clear a fingerprint-based background check pursuant to Section 22-10-3.3, NMSA 1978.

C. Persons seeking a level ~~three A~~ 3-A license for elementary k-8, early childhood ~~b-3, secondary,~~ birth-grade 3, secondary or secondary vocational technical 7-12, middle level 5-9, special education ~~k-12~~ pre K-12 or grade ~~k-12~~ pre K-12 specialty area, or grade ~~k-12~~ pre K-12 blind and visually impaired, through reciprocity, shall meet the following requirements:

(1) hold a master's degree or higher from a regionally accredited or state approved college or university; or

(2) hold a valid certificate issued by the national board for professional teaching standards; and

(3) hold and provide a copy of a valid teaching license or licenses issued by a state education agency or department of defense dependent schools or foreign country that is comparable to the license they are seeking; and

(4) have completed a standard or alternative teacher preparation program accepted by the PED and

(5) have, on a form acceptable to the ~~PLU~~ PED, provided evidence of having satisfactorily taught under their out of state license or licenses for at least six ~~complete~~ full school years at any time preceding their application for licensure; and

(6) ~~meet the requirements of 6.60.4.8 NMAC; and~~ provide copies of test scores for exams required to receive the license and have completed the credit hours or passed the test for the endorsement areas; and

(7) submit to and satisfactorily clear a fingerprint-based background check pursuant to section 22-10A-5, NMSA 1978.

D. A teacher who is granted level ~~three A~~ 3-A licensure under this rule who does not demonstrate competency at level ~~three A~~ 3-A indicators in Subsection D of 6.69.4.12 NMAC for a given school year may have ~~his~~ the license suspended under Subsection F of 6.69.4.10 NMAC.

E. Persons seeking reciprocal administrative licensure shall meet the following requirements:

(1) hold a master's degree or higher degree from a regionally accredited or PED approved college or university; and ~~either,~~

(2) hold a valid administrator's license or licenses issued by a state education agency or department of defense dependent schools or foreign country; ~~or~~

(3) have completed a regionally

accredited college or university education administrator preparation program accepted by the PED; ~~and~~

(4) hold and provide a copy of a valid teaching license or licenses issued by a state education agency; ~~and~~ department of defense dependent schools or foreign country;

(5) provide on a form acceptable to the PED, evidence of having satisfactorily ~~taught~~ worked under their out of state teaching or administrative license or licenses for at least seven ~~complete~~ full years at any time preceding their application for New Mexico licensure in education administration.

F. Persons holding a valid education administration license from another state or department of defense dependent schools or foreign country who are seeking reciprocal education administration licensure in New Mexico shall be exempt from satisfying the requirements of Paragraph (5) of Subsection ~~D~~ E of ~~section 8 of~~ 6.60.4.8 NMAC above, provided that they began their administrator preparation program prior to April 4, 2003.

[6.60.4.8 NMAC - Rp 6 NMAC 4.2.2.3.8, 07-01-01; A, 06-01-02; A, 08-30-02; A, 10-14-04; A, 10-31-07]

6.60.4.9 LICENSURE ENDORSEMENTS: Persons seeking to add an endorsement on the basis of ~~out of state college coursework or experience~~ regionally accredited college coursework, passage of a content test or showing the endorsement on an out-of-state license shall meet the following requirements:

A. hold the underlying license required for that endorsement; and

B. provide the out-of state documentation supporting their having satisfied the endorsement-appropriate PED requirements for the requested endorsement; and

C. if they are also seeking ~~level one, level two, or level 3~~ level 1, level 2, or level 3 reciprocal licensure under this rule, meet the requirements of either Subsections A, B or C of Section 8 of 6.60.4 NMAC above for the respective level of licensure sought.

[6.60.4.9 NMAC - N, 07-01-01; A, 10-14-04; A, 10-31-07]

6.60.4.10 BURDEN OF PROOF ON SUBMISSIONS: Consistent with the criteria enumerated above, it shall be the burden of the individual seeking the reciprocal licensure or licensure endorsement to provide supporting documentation to the PED. Individuals would have one calendar year after application receipt date in the licensure bureau to provide the documentation to have the level of license changed. After that time, the person would need to

reapply and provide all proper documentation.

[6.60.4.10 NMAC - N, 07-01-01; A, 10-14-04; A, 10-31-07]

6.60.4.12 IMPLEMENTATION: Persons who meet the requirements in this rule may obtain a license at a level established by the PED unless otherwise barred by statute or PED rule. ~~Anyone with a reciprocal based licensure application pending before the PED at the time this rule becomes effective shall be evaluated under the requirements of this rule. Persons issued licenses under this rule between June 1, 2002 and the effective date of this section, may request the PED to reassess their level of licensure based on the amended rules provided that they do so by June 30, 2005.~~ The PED may issue new licenses to persons impacted by amendments in this rule with the same beginning effective dates as their original licenses. Out of state licenses that are expired will ~~not~~ only be considered in determining a person's eligibility to receive licensure or licensure endorsement under this rule if the person has provided at least one currently valid license. Except for a certificate issued by the national board for professional teaching standards, the fact that a person seeking reciprocal licensure holds a valid out of state license or endorsement shall not in itself entitle that person to any presumption regarding the issuance of a PED license or endorsement. Nothing in this rule shall prevent a local superintendent from establishing a policy requiring a person who receives reciprocal licensure to participate in a mentorship program.

[6.60.4.12 NMAC - Rp 6 NMAC 4.2.2.3.9, 07-01-01; A, 10-14-04; A, 10-31-07]

6.60.4.13 FOREIGN COUNTRY LICENSURE RECIPROCALITY:

A. Foreign country teachers seeking a reciprocal level ~~one~~ 1 license for elementary k-8, early childhood ~~b-3, secondary 7-12, middle level 5-9, special education k-12 or grade k-12 specialty area, or grade k-12~~ birth-grade 3, secondary or secondary vocational technical 7-12, middle level 5-9, special education pre K-2, or grade pre K-12 specialty area, or grade pre K-12 blind and visually impaired who are licensed or hold authorization to teach in a country outside of the United States of America here after referred to as United States shall meet the following requirements:

(1) hold a bachelor's degree ~~or equivalent from a college or university, which if located in the United States must be regionally accredited~~ from a United States regionally accredited college or university or an equivalent to a bachelor's degree from another country as verified by

an official translation and evaluation from a PED accepted agency as posted on www.ped.state.nm.us; and,

(2) hold and provide a copy of a valid teaching license or authorization to teach in another country or countries that is comparable to the New Mexico license they are seeking; and,

(3) have completed a standard or alternative college or university teacher preparation program accepted by the PED; and,

(4) if applying for:

(a) early childhood [~~b-grade 3~~] birth-grade 3 or k-8 elementary licensure, have passed the applicable New Mexico teacher assessments ("NMTA") or other teacher competency test(s) satisfying requirements for teacher licensure in another state or country, or have completed 24 lower or upper division credit hours across the elementary education core academic subjects of language arts, social studies, mathematics, and science with at least six credit hours in each core area [~~or successfully complete the portion of the HOUSSE process required in Subsections C and D of 6.69.4.9 NMAC prior to the expiration of the level one license;~~];

(b) secondary or secondary vocational technical 7-12, middle level 5-9, and grades [~~k-12~~] pre K-12 specialty area licensure in the core academic areas, provide evidence of having completed an academic major, a graduate degree, or coursework equivalent to an academic major in each of the core academic subjects in which the applicant seeks licensure, or having passed the applicable New Mexico teacher assessments ("NMTA") or other teacher competency test(s) satisfying requirements for teacher licensure in another state or country; [~~or successfully completed the portion of the HOUSSE process required in Subsection D of 6.69.4.9 NMAC prior to the expiration of the level one license;~~]

(c) licensure in non-core academic subjects, special education [~~k-12;~~] pre K-12, or blind and visually impaired [~~k-12~~] pre K-12 licensure, have, on a form acceptable to the PED, provided evidence of having satisfactorily taught under their foreign country licensure or authorization, or have passed the applicable New Mexico teacher assessments ("NMTA") or other teacher competency test(s) satisfying requirements for teacher licensure in another state or country [~~or successfully complete the portion of the HOUSSE process required in Subsection D of 6.69.4.9 NMAC prior to the expiration of the level one license;~~]; and,

(5) have, on a form acceptable to the ~~[PLU]~~ PED, provided evidence of having satisfactorily taught under their out of country license(s) or authorization(s) for fewer than three ~~[complete]~~ full school

years at any time preceding their application for licensure; and

(6) submit to and satisfactorily clear a fingerprint-based background check pursuant to Section 22-10A-5, NMSA 1978 or provide proof of a criminal history background clearance from their country of residence.

B. Persons seeking a level [~~two~~] 2 license for elementary k-8, early childhood [~~b-3 secondary 7-12, middle level 5-9, special education k-12, or grade k-12 specialty area, or grade k-12~~] birth-grade 3, secondary or secondary vocational technical 7-12, middle level 5-9, special education pre K-12, or grade pre K-12 specialty area, or grade pre K-12 blind and visually impaired, through reciprocity, shall meet the following requirements:

(1) hold a bachelor's degree or equivalent from a college or university, which if located in the United States must be regionally accredited; and either

(2) hold a valid certificate issued by the national board for professional teaching standards; or

(3) hold and provide a copy of a valid teaching license or authorization to teach in another country or countries that is comparable to the New Mexico license they are seeking; and

(4) provide a valid translation and evaluation of transcripts and other documentation from outside of the United States; and

~~[(4)]~~ (5) have completed a standard or alternative college or university teacher preparation program accepted by the PED; and

~~[(5)]~~ (6) meet the requirements of Paragraph (4) of Subsection A of 6.60.4.13, NMAC; and

~~[(6)]~~ (7) submit to and satisfactorily clear a fingerprint-based background check pursuant to section 22-10A-5, NMSA 1978 or provide proof of a criminal history background clearance from their country of residence.

C. Persons seeking a level [~~three~~] 3 license for elementary k-8, early childhood [~~b-3, secondary 7-12, middle level 5-9, special education k-12, or grade k-12 specialty area, or k-12~~] birth-grade 3, secondary or secondary vocational technical 7-12, middle level 5-9, special education pre K-12, or grade pre K-12 specialty area, or pre K-12 blind and visually impaired, through reciprocity, shall meet the following requirements:

(1) hold a master's degree or higher degree or equivalent from a college or university, which if located in the United States must be regionally accredited; and either

(2) hold a valid certificate issued by the national board for professional teach-

ing standards; or

(3) hold and provide a copy of a valid teaching license or authorization to teach in another country or countries that is comparable to the New Mexico license they are seeking; and

(4) have completed a standard or alternative college or university teacher preparation program accepted by the PED; and

(6) provide a valid translation of transcripts and other documentation; and

~~[(5)]~~ (6) meet the requirements of ~~[Paragraph (4) of subsection A of 6.60.4.13 A.]~~ Paragraphs (4) and (5) of Subsection A of 6.60.4.13 NMAC; and

~~[(6)]~~ (7) have, on a form acceptable to the ~~[PLB]~~ PED, provided evidence of having satisfactorily taught under their out of country license or authorization for at least six ~~[complete]~~ full school years at any time preceding their application for licensure and

~~[(7)]~~ (8) submit to and satisfactorily clear a fingerprint-based background check pursuant to section 22-10A-5, NMSA 1978 or provide proof of a criminal history background clearance from their country of residence.

D. A teacher who is granted level ~~[three-A]~~ 3-A licensure under this rule who does not demonstrate competency at level ~~[three-A]~~ 3-A indicators of Subsection D of 6.69.4.12 for a given school year may have ~~[his]~~ the license suspended under Subsection F of 6.69.4.10 NMAC.

[6.60.4.13 NMAC - N, 06-01-02; A, 08-15-03; A, 10-14-04; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.60.5 NMAC, Sections 2, and 6 through 14, effective 10-31-07

6.60.5.2 SCOPE: All persons seeking teaching licensure, certain licensure endorsements, and bilingual education endorsement on or after July 30, 1999; all persons seeking administrator, school counselor, educational diagnostician licensure after September 1, 2007, and all persons who have registered to take or have taken any portion of the New Mexico teacher assessments.

[12-31-98, 07-30-99; 6.60.5.2 NMAC - Rn, 6 NMAC 4.2.2.2.2 & A, 10-13-00; A, 07-01-01; A, 07-15-02; A, 04-29-05; A, 10-31-07]

6.60.5.6 OBJECTIVE: This rule is adopted by the ~~[public education]~~

~~department (hereinafter department")~~ "PED" for the purpose of establishing the New Mexico teacher assessments ("NMTA") as the primary acceptable examination for educator licensure in New Mexico. Although the ~~department~~ PED adopts the New Mexico teacher assessments as the successor examination to the core battery of the national teachers examination, this rule also provides for acceptance of passing test scores from those applicants who took the core battery of the national teachers examination and have applied for licensure on or after July 30, 1999. This rule also establishes the New Mexico content knowledge assessments ("NMCKA"), which is part of the NMTA, as the content tests required to be taken to hold certain endorsements on teaching licenses or to receive an initial elementary ~~pre~~ K-8 license or pre K-12 special education license. This rule also establishes Prueba de Español para la Certificación Bilingüe as the ~~department's~~ PED's required Spanish language proficiency examination for persons seeking an endorsement to a teaching license in Spanish/English bilingual education and allows that test or its predecessor to be used as the content knowledge test to be taken for an endorsement in ~~modern and classical~~ modern, classical and native languages for Spanish. This rule also allows the national family and consumer sciences test to be used as the content knowledge test to be taken for an endorsement in family and consumer sciences. Lastly, this ~~regulation~~ rule establishes procedures for investigating NMTA testing irregularities and taking corrective action.

[12-31-98, 07-30-99; 6.60.5.6 NMAC - Rn, 6 NMAC 4.2.2.2.6 & A, 10-13-00; A, 07-01-01; A, 07-15-02; A, 02-14-03; A, 04-29-05; A, 05-31-06; A, 10-31-07]

6.60.5.7 DEFINITIONS:

A. "NMCKA" means the New Mexico content knowledge assessments, which are the teacher-tests approved by the ~~department, portions of~~ PED which individuals must take and pass in order to receive endorsements on an initial license or as an option to add endorsements to an existing license in language arts, reading, mathematics, science, social studies, the arts (music or visual arts), modern, classical and native languages, (Spanish, French, German); health, physical education, library/media, teaching English to speakers of other languages (TESOL), and family and consumer sciences, or to receive initial licensure in elementary education from grades ~~pre~~ K-8 or special education pre K-12.

B. "NMTA" means the New Mexico teacher assessments, which are the ~~teacher~~ tests approved by the

~~department~~ PED that all individuals must take and pass in order to receive initial educator licensure; the NMTA consists of the New Mexico assessment of teacher basic skills, the New Mexico assessment of teacher competency (~~both at the elementary and secondary levels~~) (at the early childhood, elementary and secondary levels), and the New Mexico content knowledge assessments ("NMCKA"); it shall include any test materials related to a testing applicant's taking of or registration for the NMTA.

C. "Test administrator" means the business entity, namely, the national evaluation systems, inc. or NES that developed the NMTA, administers the NMTA at testing centers throughout New Mexico, scores the NMTA, and reports NMTA testing results to the ~~department~~ PED.

D. "Testing applicant" means a person who has filed an NMTA registration form with the test administrator, or ~~has~~ who has not yet taken a portion of the NMTA.

E. "Testing irregularity" means any circumstance within or beyond the control of a testing applicant that, in the sole opinion of the ~~department~~ PED or NES raises doubts about the propriety of a testing applicant's NMTA registration, NMTA score, or conduct during an NMTA test.

F. "Withheld NMTA score(s)" means the suspension of use by and disclosure to a testing applicant of ~~his~~ an NMTA score(s) for up to 120 days upon a determination made by the ~~department~~ PED professional licensure bureau director that a testing irregularity is likely to have occurred.

G. "Voided NMTA score(s)" means the cancellation, invalidation and non-disclosure of a testing applicant of ~~his~~ an NMTA score(s) after a final determination of testing irregularity by the ~~department's~~ PED's professional licensure bureau director or by a hearing officer of the secretary of education.

H. "Rules of test participation" means any written rules in the applicable NMTA registration bulletin that a testing applicant has expressly agreed to comply with as a condition of registering for or taking the NMTA.

I. "Educator licensure application" means an application for any professional teaching ~~or administrative license~~, administrator, or instructional support provider license, excluding licensure for an athletic coach, educational assistant, or substitute teacher ~~[, or instructional support providers]~~.

J. "Core academic subjects" ~~[English,]~~ language arts, reading, mathematics, science, modern and classical

languages, except the ~~modern and classical~~ Native American languages and cultures of New Mexico tribes or pueblos, the arts, including music and visual arts, and social studies[;] which includes history, geography, economics, civics and government, and modern and classical languages.

K. "Highly qualified", under this rule, means a teacher of the core academic subjects who has ~~[no certification or licensure requirements waived on a temporary basis]~~ met all license or endorsement requirements and is not teaching under an endorsement waiver.

L. "Specialty area examination" means the New Mexico specialty area assessments, which are the tests approved by the ~~department~~ PED for instructional support providers and administrators, which identified providers must take and pass in order to receive licensure as instructional support providers or administrators.

[6.60.5.7 NMAC - N, 07-01-01; A, 07-15-02; A, 02-14-03; A, 06-30-03; A, 04-29-05; A, 03-15-06; A, 05-31-06; A, 10-31-07]

6.60.5.8 REQUIREMENTS:

The NMTA consists of two generic categories of assessments. The first category is the basic ~~[knowledge,]~~ skills and competency assessments identified at Subsection A of 6.60.5.8 NMAC below. The second category is the content knowledge assessments, sometimes called content tests, identified at Subsection B of 6.60.5.8 NMAC below.

A. Beginning July 30, 1999 except for those individuals covered by Subsection C of 6.60.5.8 NMAC, below all applicants for initial licensure in addition to meeting all other licensure and background check requirements of the ~~department~~ PED, are required to take the basic ~~[knowledge,]~~ skills and competency assessments of the New Mexico teacher assessments, which consist of the following tests and obtaining the following passing scores:

(1) assessment of teacher basic skills: passing score = 240; and

(2) either:

(a) assessment of teacher competency, elementary level (for those seeking ~~early childhood B-3 through the testing date in July, 2004, or elementary pre K-8 licensure including special education pre K-12 until September, 2007, as provided in Paragraph (8) of Subsection B of 6.60.5.8 NMAC, middle level 5-9 and~~ elementary K-8 licensure, middle level 5-9, special education pre K-12 licensure or grade pre K-12 licensure): passing score = 240; or

(b) assessment of teacher competency, secondary level (for those seeking secondary 7-12 licensure including special education pre K-12 ~~[until September, 2007, as provided in Paragraph (8) of Subsection B of 6.60.5.8 NMAC, middle level 5-9 and~~

~~grade pre K-12 until September 2007, as provided in 6.60.5.8~~ licensure, middle level 5-9 or grade pre K-12, or special education pre K-12): passing score = 240; or

(c) assessment of teacher competency, early childhood level (for those seeking early childhood ~~[B-3] birth-grade 3~~ licensure beginning with the testing date in September, 2004): passing score = 240.

B. In addition to the testing requirement above, all applicants for initial teacher licensure must take and pass a test in their content area subject according to the following schedule:

(1) Beginning with the September, 2002, administration of the ~~[department's] PED's~~ content testing, if ~~they~~ applicants are seeking licensure in elementary ~~[pre] K-8~~, they shall take and pass the ~~[department's] PED's~~ content knowledge assessment in elementary education prior to issuance of that license except as provided in Paragraph (6) of Subsection B of 6.60.5.8 NMAC.

(2) Beginning with the September, 2002, administration of the ~~[department's] PED's~~ content testing, if ~~they~~ applicants are applying for licensure in early childhood birth-grade 3 or elementary ~~[pre] K-8~~ and are also seeking an endorsement in reading, they shall take and pass the ~~[department's] PED's~~ content knowledge assessment in that content area prior to issuance of that ~~[license] endorsement~~.

(3) Beginning with the September, 2004, administration of the ~~[department's] PED's~~ content testing, if ~~they~~ applicants are applying for licensure in early childhood ~~[B-3] birth-grade 3~~, elementary ~~[pre] K-8~~, secondary 7-12, middle level 5-9, special education pre K-12 and/or grade pre K-12, and are also seeking an endorsement in the arts (music or visual arts) or ~~[modern and classical] modern, classical and native~~ languages (Spanish, French, or German) they must take and pass the ~~[department's] PED's~~ content knowledge assessment(s) in the respective content area prior to issuance of the endorsement(s).

(4) Beginning with the September, 2002, administration of the ~~[department's] PED's~~ content testing, if they are applying for licensure in secondary 7-12, middle level 5-9 and/or grade pre K-12 and are also seeking endorsement in language arts, reading, mathematics, science or social studies, or any combination thereof, they shall take and pass the ~~[department's] PED's~~ content knowledge assessment in that content area prior to issuance of that license.

(5) Beginning with the September, 2006, administration of the ~~[department's] PED's~~ content testing if they are applying for licensure in early childhood

~~[B-3] birth-grade 3~~, elementary ~~[pre] K-8~~, secondary 7-12, middle level 5-9, special education pre K-12 and/or grade pre K-12, and are also seeking an endorsement in the health, physical education, library/media, teaching English to speakers of other languages (TESOL), or family and consumer sciences, they must take and pass the ~~[department's] PED's~~ content knowledge assessment(s) in the respective content area prior to issuance of the endorsement(s).

(6) An elementary ~~[pre] K-8~~ licensed teacher who is new to the profession and who ~~[teaches] will be teaching~~ language arts, social studies, mathematics, or science in a middle school or junior high school must either:

(a) take and pass the ~~[department's] PED's~~ middle level content knowledge assessment(s) in each core subject area the teacher ~~[teaches] will be teaching~~; or

(b) complete twenty-four semester hours of coursework, ~~[upper or lower] at least 12 hours of which is upper division~~, in each core academic subject the teacher ~~[teaches] will teach~~ and take and pass the content knowledge assessment in elementary education.

(7) If they currently hold a license and seek to add an endorsement in language arts, reading, mathematics, science, social studies, the arts (music or visual arts), modern, classical and native languages (Spanish, French, or German), health, physical education, library/media, teaching English to speakers of other languages (TESOL), or family and consumer sciences, they may be issued an endorsement in the content area upon passage of the ~~[department's] PED's~~ content knowledge assessment(s) in the respective content area except that a candidate who has passed the Prueba de Español para la Certificación Bilingüe must also complete required coursework in order to add an endorsement in ~~[modern and classical] modern, classical and native~~ languages (Spanish).

(8) Beginning with the September, 2007, administration of ~~[the department's teacher competency testing, if they are] PED's teacher testing~~ if applicants are applying for licensure in special education ~~[grades] pre K-12~~, they shall take and pass the ~~[department's teacher competency] PED's teacher content~~ assessment in special education prior to issuance of that license.

(9) Beginning with the September, 2007, administration of ~~[the department's] PED's~~ specialty area examinations, if they are applying for licensure ~~[in guidance counseling, education diagnosis, or administration,] as a school counselor, educational diagnostician or administrator~~, grades pre K-12, they shall take and pass the ~~[department's] PED's~~ specialty area examinations in those fields prior to the

issuance of those licenses.

C. Applicants for an initial Spanish/English bilingual endorsement to a teaching license must, in addition to meeting all other ~~[department] PED~~ requirements for the endorsement, pass Prueba de Español para la Certificación Bilingüe by obtaining a score of 2 or higher on any 12 of the 15 subsections. Applicants seeking this endorsement through licensure reciprocity should consult 6.60.4 NMAC for guidance. [12-31-98, 07-30-99, 02-14-00; 6.60.5.8 NMAC - Rn, 6 NMAC 4.2.2.2.8 & A, 10-13-00; A, 07-15-02; A, 02-14-03; A, 06-30-03; A, 04-29-05; A, 03-15-06; A 05-31-06; A, 10-31-07]

6.60.5.9 IMPLEMENTATION: ~~[Except as provided in Subsection B of this section, applicants described in Section 6.60.5.8 NMAC who have not completed all testing requirements but have met all other licensure and background check requirements of the department except for those who have previously held a three-year license will be granted a nonrenewable one-year license, effective on July 1 of the year of application and expiring on June 30 of the following year.~~

A. Consistent with Title I, Section 1119 (a) (1) and Title IX, Section 9101 (23) (A) (ii) of the No Child Left Behind Act, if a teacher is not highly qualified and has been issued a one-year license by the department in the core academic subjects under this section, local education agencies receiving funds under title I of the act shall not assign that teacher to teach the core academic subjects in a title I targeted assistance program or schoolwide program, if he/she was initially employed after the first day of school of the 2002-2003 school year.

B. Consistent with Title I, Section 1119 (a) (2) and Title IX, Section 9101 (23) (A) (ii) of the No Child Left Behind Act, which requires that all teachers of the core academic subjects be highly qualified by the end of the 2005-2006 school year, the department will not issue one year licenses in the core academic subjects under this section after June 30, 2006. [07-30-99; 6.60.5.9 NMAC - Rn, 6 NMAC 4.2.2.2.9, 10-13-00; A, 06-30-03; A, 04-29-05; A 05-31-06; A, 10-31-07]

6.60.5.10 SAVINGS CLAUSE: ~~[Applicants described in Section 6.60.5.8 NMAC applying for licensure after July 30, 1999, who have taken the professional knowledge, communications skills or general knowledge tests of the core battery of the national teachers examination that correspond with portions of the NMTA as indicated below, will be exempt from taking the same portions of the NMTA provided they~~

~~have obtained the following minimum scaled score that correspond with each test of the core battery of the national teachers examination:~~

A. professional knowledge
630 corresponds with NMTA teacher proficiency 240

B. communication skills
644 corresponds with NMTA basic skills 240]

A. Applicants described in 6.60.5.8 NMAC applying for licensure after July 30, 1999, who have taken the professional knowledge, or communications skills tests of the core battery of the national teachers examination that correspond with portions of the NMTA as indicated below, will be exempt from taking the same portions of the NMTA provided they have obtained the following minimum scaled score that correspond with each test of the core battery of the national teachers examination:

(1) professional knowledge 630
corresponds with NMTA-teacher competency 240

(2) communication skills 644
corresponds with NMTA basic skills 240

B. Those applicants not applying for licensure under reciprocity but presenting test scores from out of state may be excused from taking NMTA basic skills, teacher competency or a content area test. [07-30-99; 6.60.5.10 NMAC - Rn, 6 NMAC 4.2.2.2.10 & A, 10-13-00; A, 07-15-02; A, 02-14-03; A, 04-29-05; A, 05-31-06, A, 10-31-07]

6.60.5.11 TESTING IRREGULARITIES: Where a potential testing irregularity is reported to the ~~[department, the department]~~ PED, the PED shall make a preliminary inquiry to determine if further investigation is warranted.

A. If after a preliminary inquiry the ~~[department]~~ PED determines that a potential testing irregularity warrants further investigation, the ~~[department]~~ PED may cause that testing applicant's NMTA score to be withheld pending the completion of an investigation. The ~~[department]~~ PED shall notify a testing applicant that any NMTA score suspected of being obtained by means of or following a testing irregularity may be withheld for up to 120 days pending an investigation. At the conclusion of its investigation, the ~~[department]~~ PED shall notify the test administrator and the testing applicant of its findings and conclusions, whether or not a testing irregularity has been substantiated.

B. If after an investigation the ~~[department]~~ PED finds and concludes that a testing irregularity is substantiated by the evidence, it may, after notifying the test administrator and the testing applicant of its findings, conclusions and intended action:

(1) void the applicant's test score(s);

(2) bar the applicant from retaking the NMTA for up to five (5) years;

(3) direct that the applicant's registration fee be forfeited;

(4) direct that the applicant's registration fee be refunded;

(5) permit the applicant to retake all or portions of the NMTA under controlled conditions; or

(6) impose any combination of the foregoing options.

C. If after an investigation the ~~[department]~~ PED finds and concludes that no testing irregularity is substantiated by the evidence, it shall promptly notify the test administrator and the testing applicant and direct that any withheld NMTA be released and available for use in the educator licensure process.

[6.60.5.11 NMAC - N, 07-01-01; A, 04-29-05; A, 10-31-07]

6.60.5.12 RIGHTS OF A TESTING APPLICANT: The ~~[department]~~ PED shall advise the testing applicant at the time ~~[he is notified that his]~~ of notification that ~~the~~ NMTA score will be withheld or voided, that ~~[he can]~~ the applicant ~~can~~ at any time provide the ~~[department]~~ PED with a statement or documentary evidence rebutting the likely or substantiated existence of a testing irregularity. However, the testing applicant shall be cautioned that any statement or document ~~[he provides may later be used against him at a department administrative proceeding, a civil proceeding or a criminal proceeding.]~~ provided by the applicant may later be used against the applicant at a PED ~~administrative proceeding, a civil proceeding or a criminal proceeding.~~

A. Where a testing applicant has an initial educator licensure application on file with the ~~[department at the time he is notified]~~ PED at the time of notification that a testing irregularity has been substantiated, ~~[he]~~ the applicant shall have a right to request a hearing within 30 days of the notification and shall be afforded all the procedural and substantive due process rights contained in 6.68.2 NMAC ("Denial of Applications for Licenses for School Personnel"), which ~~[regulation]~~ rule shall govern the proceedings. The ~~[department]~~ PED may combine this hearing with a licensure denial hearing. The right to discovery shall be limited as set forth in section 13 of 6.60.5 NMAC below.

B. Where a testing applicant does not have an initial educator licensure application on file with the ~~[department at the time he is notified]~~ PED at the time of notification that a testing irregularity has been substantiated, ~~[he]~~ the applicant shall have 20 days to notify the ~~[department]~~ PED professional licensure director of ~~[his]~~

~~the~~ desire to schedule a telephonic conference-call or in-person meeting with the director. Such request must be in writing. Any relevant documents may be introduced and either side may be represented by an attorney and up to three witnesses may be called. The formal rules of evidence shall not apply and either side may at their own expense request that any witness statements be sworn and that a record be made of the meeting. The director shall issue a written decision consisting of written findings, conclusions and action to be taken. The decision will be issued to the testing applicant within 14 days of the meeting. The decision of the director, which must be based on a preponderance of the evidence, shall be final and not subject to review, appeal, or reconsideration by the agency.

C. A testing applicant with an initial educator licensure application on file with the ~~[department]~~ PED at the time ~~[he is notified]~~ of notification that a testing irregularity has been substantiated, may waive ~~[his]~~ the right to a hearing and proceed by way of a meeting with the director as set forth in the immediately preceding paragraph.

[6.60.5.12 NMAC - N, 07-01-01; A, 04-29-05; A, 10-31-07]

6.60.5.13 LIMITED DISCOVERY RIGHTS: The NMTA is the primary ~~[department approved]~~ PED-approved teacher test for the state of New Mexico. It was developed by the test administrator under contract with the ~~[department]~~ PED to help identify candidates for educator licensure who have demonstrated the level of knowledge and skills necessary for performing the duties of a teacher in New Mexico's public schools. The ~~[department]~~ PED holds the exclusive copyright on the NMTA. As such, the ~~[department]~~ PED must safeguard not only the copyright but also the confidentiality of the NMTA. Any testing applicant who timely requests a meeting or a hearing as permitted by this ~~[regulation,]~~ rule shall have only limited access to the questions and answers of ~~[his]~~ the applicant's NMTA and/or related materials.

A. Given the proprietary nature of the NMTA and/or related materials, under no circumstance shall a testing applicant's disputed or undisputed NMTA be released to a testing applicant, ~~[his attorney, his representative]~~ attorney, representative, or the general public.

B. Upon request made to the director, a testing applicant, ~~[his]~~ and an attorney, or representative shall be given as much access to the applicant's disputed or undisputed NMTA and/or related materials as is deemed reasonably necessary by the director, or hearing officer as the case may be, to prepare for ~~[his]~~ pending meeting or

hearing.

C. Anyone given permission to view a testing applicant's disputed or undisputed NMTA and/or related materials, must sign a confidentiality agreement offered by the [department] PED. An NMTA and/or related materials may only be viewed during routine office hours of the [department] PED under supervision of [an department] a PED employee and on the [department] PED premises. No NMTA and/or related materials may be written on, marked, electronically copied, hand-duplicated, or otherwise removed from the premises of the [department] PED. The form, subject matter, substance and wording of any NMTA test question or answer may also not be removed from the premises of the [department] PED nor may they be further disclosed in any other way. A person granted permission to review the materials covered by this section may not bring any manual or electronic copying devices to the location where the materials are offered. Such copying devices referred to in the preceding sentence shall include but not be limited to cameras, camcorders, tape recorders, writing utensils, hand-held computers, paper, briefcases, etc. The said confidentiality agreement shall accomplish this as well as other test-security goals. Anyone who enters the [department] PED premises to review the materials covered by this section and who violates or attempts to violate any protected security measure may [be], at the discretion of the [department] PED, be removed from the premises and be considered to have forfeited any additional access to an applicant's disputed or undisputed NMTA and/or related materials.

D. The original or copy of any NMTA and/or related materials used as evidence at any meeting or hearing shall also be subject to confidentiality by all attendees and participants. Accordingly, all such meetings or hearings shall be closed to the public.

[6.60.5.13 NMAC - N, 07-01-01; A, 04-29-05; A, 10-31-07]

6.60.5.14 LICENSURE DENIAL OR REVOCATION: Engaging in a testing irregularity shall constitute a good and just ground to deny a testing applicant's licensure application or to revoke or suspend any license held by a testing applicant that was issued by the [department] PED. In the case of licensure revocation or suspension, the [department] PED shall proceed under authority and procedure of 6.68.3 NMAC ("Suspension or Revocation of a License Held by a Licensed School Individual") and the Uniform Licensing Act [Sections 61-1-1 through 61-1-31 NMSA 1978].

[6.60.5.14 NMAC - N, 07-01-01; A, 04-29-05; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.60.6 NMAC, Sections 1 and 7 through 12, effective 10-31-07.

6.60.6.1 ISSUING AGENCY: Public Education Department (PED).

[6.60.6.1 NMAC - Rp 6.60.6.1 NMAC, 09-30-03; A, 08-31-04; A, 10-31-07]

6.60.6.7 DEFINITIONS:

A. "Level 1 teaching license" means a provisional teaching license issued for the first five years of teaching that gives a beginning teacher the opportunity, through a formal mentorship program, for additional preparation to be a quality teacher.

B. "Level 2 teaching license" means a professional teaching license given to a teacher who is a fully qualified professional who is primarily responsible for ensuring that students meet and exceed [public education department] (PED) academic content and performance standards; a teacher may choose to remain at level 2 for the remainder of [his/her] that teacher's career.

C. "Level 3-A teaching license" means a master teaching license and is the highest level of teaching competence for those teachers who choose to advance as instructional leaders in the teaching profession and undertake greater responsibilities such as curriculum development, peer intervention, and mentoring.

D. "Full school year" means a minimum of 160 instructional days in a school year or 480 instructional days or equivalent number of days in schools or school districts on alternative schedules over multiple school years of full-time or part-time teaching during which the teacher is the teacher of record in at least one class each school year while holding a standard teaching license. Instructional days may include teaching in summer school or similar educational setting.

[6.60.6.7 NMAC - N, 09-30-03; A, 04-29-05; A, 05-31-06; A, 10-31-07]

6.60.6.8 [REQUIREMENTS FOR ADVANCEMENT AND RENEWAL OF TEACHING LICENSES PRIOR TO JULY 1, 2004:

A. ~~A person holding a valid level 1 license and seeking a level 2 license prior to July 1, 2004, pursuant to the provisions of this rule shall meet the following requirements:~~

~~(1) a completed application for continuing licensure shall be submitted to~~

~~the director of the professional licensure unit (hereinafter referred to as the "director");~~

~~(2) the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated the competencies required by the public education department for a level 2 license of the type sought;~~

~~(3) successfully complete the three year level 1 license.~~

~~B. A person holding a valid level 2 license and seeking a level 3 A license pursuant to the provisions of this rule shall meet the following requirements:~~

~~(1) a completed application for continuing licensure shall be submitted to the director;~~

~~(2) the applicant must hold a master's degree from a regionally accredited college or university or hold certification from the national board for professional teaching standards;~~

~~(3) the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant was most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated the competencies required by the public education department for a level 3 A license; and~~

~~(4) has been a level 2 teacher for at least three years.~~

~~C. A person holding a valid level 2 and/or level 3 A license and seeking continuing licensure pursuant to the provisions of this rule shall meet the following requirements:~~

~~(1) a completed application for continuing licensure shall be submitted to the director;~~

~~(2) the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated those level 2 and/or level 3 A competencies required by the public education department.] [RESERVED]~~

[6.60.6.8 NMAC - Rp 6.60.6.8 NMAC, 09-30-03; A, 08-31-04; A, 05-31-06; Repealed, 10-31-07]

6.60.6.9 REQUIREMENTS FOR ADVANCEMENT AND RENEWAL OF TEACHING LICENSES

[AFTER JUNE 30, 2004]:

A. A teacher holding a valid level 1 license and ~~[after June 30, 2004]~~ seeking a level 2 license pursuant to the provisions of this rule shall meet the following requirements, which may not be waived or substituted by any other experience:

(1) complete three full school years of teaching experience as the teacher of record at standard level 1 New Mexico licensure with successful annual evaluations, except that a teacher who has completed two full school years of teaching experience while holding standard teaching licensure in New Mexico or in another state or country or has obtained level 1 New Mexico teaching licensure through reciprocity in 6.60.4 NMAC and is seeking advancement to level 2 may be required by a local New Mexico school district to complete up to two full years of teaching experience in New Mexico before being eligible for licensure advancement to level 2 except that a person who has completed one full school year of teaching in another state or country must teach for two full school years under standard level 1 New Mexico licensure; and

(2) submit, in a form acceptable to the director, a completed licensure application and either a professional development dossier (PDD), as provided in 6.69.4.11 NMAC only between February 1st and March 1st, June 1st and July 1st, and October 15th and November 15th of any year or certification from the national board for professional teaching standards; the PDD may be submitted up to three months in advance of the completion of the requirement in Paragraph (1) of Subsection A of 6.60.6.9 NMAC with final PDD approval dependent upon the completion of three full years of teaching experience at level 1 licensure. Administrators will have until April 15th, August 11th and December 27th respectively to complete strands D and E.

(3) complete the mentorship requirement for beginning teachers in 6.60.10 NMAC.

B. A teacher holding a valid level 2 license and seeking a level 3-A license pursuant to the provisions of this rule shall meet the following requirements, which may not be waived or substituted by any other experience:

(1) complete three full school years of teaching experience as the teacher of record at standard level 2 New Mexico licensure with successful annual evaluations, except that a teacher who has four or more full school years of teaching experience while holding standard teaching licensure in New Mexico or in another state or country or has obtained level 2 New Mexico teaching licensure through reciprocity in 6.60.4 NMAC and who is seeking advance-

ment to level 3-A may be required by a local New Mexico school district to complete up to two full years of teaching experience in New Mexico before being eligible for licensure advancement to level 3-A; and

(2) hold a post-baccalaureate degree from a regionally accredited college or university or hold certification from the national board for professional teaching standards; and

(3) submit, in a form acceptable to the director, a completed licensure application and either a professional development dossier (PDD), as provided in 6.69.4.11 NMAC only between February 1st and March 1st, June 1st and July 1st, and October 15th and November 15th of any year or certification from the national board for professional teaching standards, and beginning in 2005, where the PDD may be submitted up to three months in advance of the completion of the requirement in Paragraph (1) of Subsection B of 6.60.6.9 NMAC with final PDD approval dependent upon the completion of three full years of teaching experience at level 2 licensure. Administrators will have until April 15th, August 11th and December 27th respectively to complete strands D and E.

C. A teacher holding a valid level 2 or level 3-A teaching license and seeking licensure renewal at the same level as ~~[his]~~ the current license shall meet the requirements of either (1) or (2) below:

(1) If renewing a license through the ~~[public education department (department)]~~ (PED), submit, along with the fee specified in 6.60.7.8 NMAC, a completed application for licensure renewal to the director and verification from the superintendent of the local school district or the governing authority of the state institution, ~~[or]~~ charter school, or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal, that the applicant has satisfactorily demonstrated the competencies for ~~[his]~~ the current level of licensure and has met other requirements of the high objective uniform standard of evaluation for ~~[his]~~ the current level of licensure as evidenced by the teacher's annual evaluations.

(2) If renewing a license through a local New Mexico school district, state institution, ~~[or charter school, complete the departments]~~ charter school, or private school, complete the PED's application for licensure renewal. The employing school district, ~~[or]~~ charter school, state institution, or private school shall attach to the application the ~~[department's]~~ PED's verification by the superintendent of the local school district or the governing authority of the state institution, ~~[or]~~ charter school, or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal, that the

applicant has satisfactorily demonstrated the competencies for ~~[his level of licensure]~~ the level of licensure sought and has met other requirements of the high objective uniform standard of evaluation for ~~[his]~~ the level of licensure as is evidenced by the teacher's annual evaluations. These documents will be maintained on file in the teacher's personnel file in the local school district, state institution, ~~[or]~~ charter school, or private school. The superintendent or ~~[his designee will authorize the department]~~ the superintendent's designee will authorize the PED to issue the renewal of licensure through electronic notification procedures established by the ~~[department]~~ PED when the ~~[department]~~ PED determines such an electronic system is viable and operational. The license shall be printed by, and mailed to the license holder from, the ~~[department]~~ PED. Under no circumstances will local school districts directly issue or print a New Mexico educator license. The ~~[department]~~ PED shall determine how or if renewal fees authorized in 6.60.7.8 NMAC shall be paid by an applicant who renews ~~[his]~~ the license under Paragraph (2) of Subsection C of 6.60.6.9 NMAC.

(3) If a teacher does not satisfactorily demonstrate the competencies for ~~[his]~~ the level of licensure or other requirements of the high objective uniform standard of evaluation for licensure renewal, the applicant, depending on the outcome of any due process proceeding under the Uniform Licensing Act, sections 61-1-1 through 61-1-31, NMSA 1978, might not be issued a license.

D. A person holding a valid level 3-A license may choose not to renew ~~[his or her]~~ the level 3-A license and apply for a level 2 license. The superintendent of the local school district or the governing authority of the state institution, charter school, or private school by which the applicant has been most recently employed as of the date of the application for licensure must submit to the director a verification that the applicant has satisfactorily met the high objective uniform standard of evaluation for level 2 license as is evidenced by the teacher's annual evaluations.

E. If a level 3-A teacher does not satisfactorily meet the high objective uniform standard of evaluation for level 3-A licensure renewal, the applicant, depending on the outcome of any due process proceeding under the Uniform Licensing Act, sections 61-1-1 through 61-1-3-1, NMSA 1978, might not be issued a level 3-A license. In that case, the applicant may be issued a level 2 license if the superintendent of the local school district or the governing authority of the state institution, charter school, or private school by which the applicant has been most recently employed as of the date of the application

for licensure renewal, submits to the director a verification that the applicant has satisfactorily met the high objective uniform standards of evaluation for level 2 licensure as is evidenced by the teacher's annual evaluations.

[6.60.6.9 NMAC - N, 09-30-03; A, 08-31-04; A, 04-29-05; A, 05-31-06; A, 10-31-07]

6.60.6.10 REQUIREMENTS FOR RENEWAL AND ADVANCEMENT FOR EDUCATORS OTHER THAN TEACHERS:

A. A person holding a valid level 1 license and seeking a level 2 license pursuant to the provisions of this rule shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director;

(2) the superintendent of the local school district, ~~[charter school administrator]~~ or the governing authority of the state institution, charter school, or private school by which the applicant has been most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated the competencies required by the ~~[public education department]~~ PED for a level 2 license of the type sought.

B. A person holding a valid level 2 license and seeking a level 3 license pursuant to the provisions of this rule shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director;

(2) the applicant must hold a master's degree from a regionally accredited college or university;

(3) the superintendent of the local school district, ~~[charter school administrator]~~ or the governing authority of the state institution, charter school, or private school by which the applicant was most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated the competencies required by the ~~[public education department]~~ PED for a level 3-A license.

C. A person holding a valid level 2 and/or level 3-A license and seeking continuing licensure pursuant to the provisions of this rule shall meet the requirements of either (1) or (2) below:

(1) If renewing licensure through the ~~[department]~~ PED, submit, along with the fee specified in 6.60.7.8 NMAC, a completed application for continuing licensure to the director and verification from the superintendent of the local school district or the governing authority of the state institution, charter school, or private school by

which the applicant has been most recently employed as of the date of the application for licensure renewal, that the applicant has satisfactorily demonstrated the competencies required by the ~~[department]~~ PED.

(2) If renewing through a local school district, state institution, charter school, or private school, complete the ~~[department's]~~ PED's application for continuing licensure. The employing school or school district shall attach to the application the ~~[department's]~~ PED's verification by the superintendent of the local school district, ~~[charter school administrator or]~~ the governing authority of the state institution, charter school, or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal, that the applicant has satisfactorily demonstrated the competencies required by the ~~[department]~~ PED. These documents will be maintained on file in the individual's personnel file in the local school district or school. The superintendent or ~~[his]~~ the superintendent's designee will authorize the issuance of the renewal of licensure through procedures established by the ~~[department]~~ PED. The license shall be printed by, and mailed to the teacher from, the ~~[department]~~ PED. Under no circumstances will local school districts print a license. The ~~[department]~~ PED shall determine how or if renewal fees authorized in 6.60.7.8 NMAC shall be paid by an applicant who renews ~~[his]~~ the license under Paragraph (2) of Subsection C of 6.60.6.9 NMAC.

[6.60.6.10 NMAC - N, 09-30-03; A, 08-31-04; A, 04-29-05; A, 05-31-06; A, 10-31-07]

6.60.6.11 EXCEPTIONS:

A. Exceptions for "exigent circumstances":

(1) The provisions of this paragraph shall apply to an individual holding a valid New Mexico license who, in exigent circumstances, is unable to secure a verification of the required competencies for licensure renewal.

(2) As used in this paragraph, "exigent circumstance" means:

(a) the non-availability of the superintendent of the local school district, charter school administrator or of an authorized representative of the state institution, charter school, or private school by which the applicant has been most recently employed; or

(b) the licensed individual has not been employed in elementary or secondary education during the term of the license(s); or ~~[when as a level 1 teacher has been employed and completes less than three full school years in a New Mexico school district or combination of school districts.]~~

(c) when a level 1 teacher has not

been employed as the teacher of record in a New Mexico or out-of-state school district or combination of school districts for the total number of years authorized by the license.

(3) A person seeking to renew ~~[his or her]~~ the current level of licensure who, in exigent circumstances, is unable to secure verification of the required competencies shall submit a sworn statement asserting the exigent circumstance(s). ~~[In this situation, an applicant may be granted a five-year level 1 license.]~~ In the situation of Subparagraphs (a) - (b) of Paragraph (2) of Subsection A of 6.60.6.11 NMAC the applicant may be granted a five-year level 1 license. In the situations in Subparagraphs (b) - (c) of Paragraph (2) of Subsection A of 6.60.6.11 NMAC, an applicant may be granted a one-time level 1 license renewal with an effective period equal to five years less the amount of time of non-employment, except that any period of non-employment less than a full school year shall be rounded up to the next higher number of years. Persons who remain unemployed through the period of this one-time license may renew subsequent licenses at level 1 following Subparagraph (b) of Paragraph (2) of Subsection A of 6.60.11 NMAC.

B. Exceptions for persons unable to demonstrate "exigent circumstances": A person seeking licensure renewal pursuant to this rule and who cannot show exigent circumstances for the lack of verification of the satisfactory demonstration of the competencies required by the ~~[public education department]~~ PED may, upon the expiration of a period of three years from the date of expiration of the valid New Mexico license, apply to the director for a level 1 license. Level 1 licenses granted pursuant to this paragraph shall be subject to advancement at level 2 in the same manner as other such licenses.

C. A person seeking level 2, 3-A, or 3-B licensure renewal pursuant to this rule who has worked in education but not in an elementary or secondary school setting or who has retired from or has not continued to work in elementary and secondary education under a New Mexico license during the effective period of the license shall submit a sworn statement asserting that ~~[he or she]~~ the person has not worked in an elementary or secondary school setting during the effective period of the license, and may renew the license at the current level ~~[he or she holds]~~ held.

[6.60.6.11 NMAC - Rp 6.60.6.9 NMAC, 09-30-03; A, 08-31-04; A, 04-29-05; A, 05-31-06; A, 10-31-07]

6.60.6.12 IMPLEMENTATION: Persons meeting these requirements may obtain a license at the level and

for the duration as adopted by the ~~[public education department]~~ PED.

A. Absent the exceptions provided in 6.60.6.11, a level 1 license shall not be renewed.

B. Continuing level 2 and level 3-A licenses granted pursuant to 6.60.6.8 NMAC of this rule shall be granted for nine years.

C. Applications and requirements for licensure advancement or renewal must be completed no later than June 30 of the year following expiration of the license. After that date the license is deemed to have lapsed.

D. A license that has lapsed may be renewed at the same level of the lapsed license if the applicant submits evidence of having satisfactorily carried out ~~[his]~~ the duties as previously authorized by the lapsed license for five complete school years and submits a verification from the superintendent of the local school district or the governing authority of the state institution, charter school, or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal, that the applicant has satisfactorily demonstrated the competencies for ~~[his]~~ the level of lapsed licensure as evidenced by annual evaluations. If the applicant cannot provide both the verification of five years experience and competency from the superintendent of the local school district, ~~[or]~~ the governing authority of the state institution, charter school, or private school by which the applicant has been most recently employed, the applicant shall be issued only a level 1 license.

[6.60.6.12 NMAC - Rp 6.60.6.11 NMAC, 09-30-03; A, 08-31-04; A, 04-29-05; A, 05-31-06; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.60.7 NMAC, Sections 1 and 7 through 10, effective 10-31-07.

6.60.7.1 ISSUING AGENCY:
Public Education Department (PED)
[6-15-98, 7-30-99; 6.60.7.1 NMAC - Rn, 6 NMAC 4.2.4.7.1, 10-13-00; A, 08-31-04; A, 10-31-07]

6.60.7.7 DEFINITIONS:
"Indigency" means the inability, as determined by the professional licensure ~~[unit of the public education department]~~ bureau (PLB) of the (PED), to pay a licensure fee from available present income and assets without due hardship.

[6-15-98; 6.60.7.7 NMAC - Rn, 6 NMAC 4.2.4.7.7 & A, 10-13-00; A, 08-31-04; A,

10-31-07]

6.60.7.8 REQUIREMENTS:

A. Beginning July 1, 2006, applicants seeking an initial educator license shall pay by money order or certified check or other form acceptable to the ~~[public education department]~~ PED the following fees ~~[prior to or]~~ at the time of submission of their applications:

(1) all applicants, except those described in Paragraphs (2) or (3) below, shall pay an application fee of \$65.00.

(2) applicants for educational assistant, school health assistant licensure or substitute teacher certification shall pay an application fee of \$25.00.

(3) applicants for athletic coaching licensure who are seeking a coaching license only shall pay a fee of \$25.00.

B. Beginning July 1, 2006, applicants seeking the renewal of an existing educator license through the ~~[public education department]~~ PED shall pay by money order or certified check or other form acceptable to the ~~[public education department]~~ PED the following fees at the time of submission of their applications:

(1) all applicants, except those described in Paragraphs (2) or (3) below, shall pay an application fee of \$35.00.

(2) applicants for educational assistant, school health assistant licensure or substitute teacher certification shall pay an application fee of \$25.00.

(3) applicants for athletic coaching licensure who are seeking a coaching license only shall pay a fee of \$25.00.

C. Beginning July 1, 2006, applicants seeking advancement to higher levels of teacher licensure by initial submission of a professional development dossier (PDD) as provided in 6.69.4.11 NMAC shall pay \$185.00 by money order, certified check or other payment method acceptable to the ~~[public education department]~~ PED or its contractor at the time of submission of their PDD. Applicants who resubmit previously failed PDD strands shall pay a fee of \$65 for one strand, \$115 for two strands and \$165 for three strands. If submission of the PDD corresponds with the renewal of licensure, the fee for renewal in Subsection B of this section shall be waived.

D. Beginning July 1, 2006, applicants seeking to add an endorsement or endorsements to an existing license shall pay by money order or certified check or other form acceptable to the ~~[public education department]~~ PED a fee of \$35.00.

E. Beginning February 1, 2007, applicants seeking ~~[a]~~ alternative teaching licensure by way of portfolio review in Paragraph (3) of Subsection B of 6.60.3.8 NMAC shall pay upon registration by money order, certified check or other payment method applicable to the ~~[public~~

~~education department]~~ PED or its contractor a \$300.00 fee, ~~[\$50.00 of which shall be non-refundable in the event the candidate does not submit a portfolio]~~ which shall be non-refundable. Applicants who resubmit previously failed portfolio strands shall pay a fee of \$100.00 per strand

[6-15-98; 6.60.7.8 NMAC - Rn, 6 NMAC 4.2.4.7.8 & A, 10-13-00; A, 09-30-03; A, 08-31-04; A, 04-29-05; A, 05-31-06; A, 10-31-06; A, 10-31-07]

6.60.7.9 IMPLEMENTATION:

A. An applicant for initial or renewal educator licensure or for adding an endorsement may apply for multiple licenses or endorsements through one application and pay one application fee. Subsequent initial or renewal applications for additional licenses or endorsements will require the payment of another full fee.

B. An applicant for initial licensure shall pay a single application fee. Additional application fees will not be charged when ~~[a one-year license is changed to a three-year level]~~ an intern license is changed to a five-year level 1 standard license after the applicant has completed the requirements for licensure.

~~[C. A person who already holds a New Mexico educator license and for whom a superintendent is seeking a one-year waiver, will not be charged a fee for that license, nor for subsequent one-year waiver, if any, while removing licensure deficiencies. When an applicant meets all requirements for a license, he/she will submit an application for an initial license and pay the fee provided in Subsection A of Section 6.60.7.8 NMAC.]~~

~~[D.]~~ C. An applicant whose license has been expired for more than one year must submit an initial application for a new license and ~~[pays]~~ pay the initial application fee established in Subsection A of Section 6.60.7.8 NMAC.

~~[E.]~~ D. All application fees are non-refundable.

[6-15-98; 6.60.7.9 NMAC - Rn, 6 NMAC 4.2.4.7.9, 10-13-00; A, 04-29-05; A, 10-31-07]

6.60.7.10 EXEMPTIONS:

A. An application fee shall not be charged for changing name or address, or for replacing lost or misplaced licenses ~~[and for waivers of assignment]~~.

B. An application fee shall not be charged to an individual who qualifies as being indigent. An applicant can qualify for relief from the application fee on the grounds of indigency by providing the PED with documentation which establishes that the applicant is not now, nor was in the previous year, the dependent of another person and that the fee represents more than

three percent of the applicant's total income for the previous year.
[6.15-98; 6.60.7.10 NMAC - Rn, 6 NMAC 4.2.4.7.10, 10-13-00; A, 08-31-04; A, 04-29-05; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.60.10 NMAC, Sections 1, 7, 9 and 10, effective 10-31-07.

6.60.10.1 ISSUING AGENCY:
Public Education Department (PED)
[6.60.10.1 NMAC - N, 07-01-02; A, 11-30-05; A, 10-31-07]

6.60.10.7 DEFINITIONS:
A. **"Beginning teacher"**
means a teacher holding a New Mexico waiver, internship license, or level 1 teaching license who has less than three complete years, full-or part-time, of classroom teaching experience. For the purpose of this rule, teachers with more than three complete years, full-or part-time, of classroom teaching experience but who hold a waiver, internship license, or level 1 licensure are not beginning teachers.

B. **"Teaching license"**
means a ~~[public education department]~~ (PED) license issued in early childhood, birth-grade 3; elementary education, grades K-8; middle level, grades 5-9; secondary education, grades 7-12; special education, grades pre K-12; licensure for pre K-12 in specialty areas; blind and visually impaired, birth-grade 12; and secondary vocational-technical education.
[6.60.10.7 NMAC - N, 07-01-02; A, 11-30-05; A, 10-31-07]

6.60.10.9 COMPLETION OF MENTORSHIP PROGRAM: All beginning teachers must successfully complete a minimum of a one-year mentorship program to be eligible for a level 2 license. Successful completion of the program shall be documented on a form available from the professional licensure unit and shall be maintained in each teacher's licensure file in the professional licensure ~~[unit]~~ bureau (PLB). Under no circumstance shall a beginning teacher who is otherwise eligible to receive a level 2 license unless he or she has been certified as having successfully completed a mentorship program.
[6.60.10.9 NMAC - N, 07-01-02; A, 10-31-07]

6.60.10.10 PROGRAM EVALUATION AND FUNDING: All mentorship programs shall be evaluated locally every three years to determine the effectiveness of the program based on teacher retention.

Annually the PED shall review and make public teacher retention rates statewide and by district. Annual state funding of local district mentorship programs shall be based ~~[primarily]~~ on the number of beginning teachers who received mentorship services ~~[in the previous school year]~~ in the current school year as reported to the PED by the school districts annually on the 40th day of school, if funds are appropriated for that purpose by the legislature.

[6.60.10.10 NMAC - N, 07-01-02; A, 11-30-05; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.61.2 NMAC, Sections 1, 6, 8, and 10, effective 10-31-07.

6.61.2.1 ISSUING AGENCY:
Public Education Department (PED)
[11-14-98, 7-30-99; 6.61.2.1 NMAC - Rn, 6 NMAC 4.2.3.2.1, 10-31-00; A, 05-28-04; A, 10-31-07]

6.61.2.6 OBJECTIVE: This ~~[regulation]~~ rule governs licensure requirements in elementary education for persons seeking such licensure.
[11-14-98; 6.61.2.6 NMAC - Rn, 6 NMAC 4.2.3.2.6, 10-31-00; A, 10-31-07]

6.61.2.8 REQUIREMENTS:
A. Persons seeking licensure in elementary education pursuant to the provisions of this ~~[regulation]~~ rule shall meet the requirements enumerated in Subsection A or Subsection B of this section.

(1) bachelor's degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, the following:

- (a) twelve (12) semester hours in English;
- (b) twelve (12) semester hours in history including American history and western civilization;
- (c) six (6) semester hours in mathematics;
- (d) six (6) semester hours in government, economics or sociology;
- (e) twelve (12) semester hours in science, including biology, chemistry, physics, geology, zoology, or botany;
- (f) six (6) semester hours in fine arts; and

(2) credits from a regionally accredited college or university which include thirty to thirty-six (30-36) semester hours of professional education in an elementary education program approved by

the ~~[public education department ("department")]~~ PED, including completion of the ~~[department's]~~ PED's approved functional areas and related competencies in professional education; and

(3) a mandatory student teaching component; and

(4) twenty-four to thirty-six (24-36) semester hours in one teaching field such as mathematics, science(s), language arts, reading, and social studies (or other content related areas). Individuals must also complete the ~~[department's]~~ PED's approved functional areas and related competencies in the teaching field; and

(5) in addition to the requirements specified in Subsection A, Paragraphs (1), (3), (4), (6) and (7) of 6.61.2.8 NMAC, six (6) hours in the teaching of reading for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(6) pass all required portions of the New Mexico teacher assessments or any successor teacher examination adopted by the department; and

(7) if ~~[new to the profession after June 30, 2006, or hired after the first day of school of the 2002-2003 school year and assigned to work in a Title I targeted assistance program or a Title I school wide, and]~~ teaching in an elementary school, satisfy the requirements of a highly qualified beginning elementary teacher, and

(8) if ~~[new to the profession after June 30, 2006, or hired after the first day of school of the 2002-2003 school year and assigned to work in a Title I targeted assistance program or a Title I school wide]~~ teaching the core academic subjects in a middle or junior high school, satisfy the requirements of a highly qualified beginning middle or junior high school teacher holding elementary K-8 licensure, or

B. ~~[Persons seeking licensure in elementary education grades K-8 pursuant to the provisions of this rule must possess]~~ Possess a valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type.

[11-14-98; 6.61.2.8 NMAC - Rn, 6 NMAC 4.2.3.2.8 & A, 10-31-00; A, 06-01-02; A, 06-30-03; A, 05-28-04; A, 10-31-07]

6.61.2.10 REFERENCED MATERIAL: Competencies for entry level elementary teachers

A. Professionalism

(1) The teacher reflects on, analyzes, and evaluates the effect of his or her choices and actions on others, including students, parents, and other professionals in the learning community, and will be able to use this knowledge to improve the learning

process.

(2) The teacher is aware of the need to actively seek out opportunities to grow professionally, including participation in professional organizations and professional development such as conferences, workshops, classes and research, and use this information to improve professional practices and to become a life-long learner.

(3) The teacher participates in an on-going process of researching current educational issues and practices, applying them in the classroom, and monitoring their effects.

(4) The teacher understands [~~his or her~~] their role in the educational decision-making process as an advocate for children, school, district, community, and self.

(5) The teacher is aware of and adheres to the educator code of ethics and professional standards.

(6) The teacher demonstrates an awareness of relevant legal requirements of teachers and schools.

(7) The teacher demonstrates an awareness of the structure of local, state, and federal agencies and educational systems.

(8) The teacher critically reviews, selects, and adapts materials, resources, and technologies and analyzes them for:

- (a) age appropriateness;
- (b) developmental level;
- (c) cultural and linguistic background;
- (d) exceptionalities;
- (e) biases and stereotypes;
- (f) content appropriateness in regard to curriculum;

(g) reading level;

(h) relevance to students.

B. Instructional planning and implementation:

(1) The teacher understands learning theory, subject matter, and curriculum development and uses this knowledge in planning instruction to meet curriculum goals.

(2) The teacher takes into account the physical, social, emotional, cognitive, and linguistic development of students when planning instruction.

(3) The teacher plans learning opportunities, recognizing the various learning styles of individuals/groups, according to the nature of the content being taught.

(4) The teacher creates short- and long-term plans that are linked to student needs, performance, and learning styles.

(5) The teacher becomes familiar with students' families, cultures and communities, and plans related learning activities.

(6) The teacher plans lessons that provide for the success of students with

exceptionalities, including learning disabilities, visual and perceptual difficulties, and physical or mental challenges.

(7) The teacher integrates a variety of technologies into planned activities including software, applications, and other learning tools.

(8) The teacher plans activities to promote higher order thinking skills, creativity, and independent thinking.

(9) The teacher plans and uses assessment strategies and instruments appropriate to the learning outcomes being evaluated.

(10) The teacher evaluates lesson plans by observing classroom interactions, questioning, and analyzing student work.

(11) The teacher develops sequential lessons that include knowledge of the discipline, student diversity, the local community, and the district/state curriculum goals.

C. Classroom management:

(1) The teacher knows effective models of classroom management and has the opportunity to observe these in classroom situations.

(2) The teacher develops and implements a classroom management plan.

(3) The teacher responds to children as individuals.

(4) The teacher provides a safe classroom environment where individual differences are respected.

(5) The teacher arranges the classroom environment for optimal learning and students' success.

(6) The teacher seeks student understanding and input for classroom procedures, rules, and consequences.

(7) The teacher models and encourages positive social interaction.

(8) The teacher collaborates with specialists, support personnel, parents, and administrators in an interdisciplinary manner for the success of the individual student.

(9) The teacher uses data collection techniques to document classroom management.

(10) The teacher manages time and materials effectively to minimize distractions and disruptions.

(11) The teacher develops activities and transitions that guide students to be focused.

D. Assessment:

(1) The teacher understands and uses formal and informal assessment strategies to evaluate and ensure the continuous intellectual, social, physical, and aesthetic development of the learner.

(2) The teacher develops valid evaluation tools to measure student outcomes.

(3) The teacher selects materials and means for measuring progress.

(4) The teacher assesses students' current knowledge in order to plan instruction.

(5) The teacher uses assessment of student learning to improve [~~his or her~~] their own teaching and to revise curriculum.

(6) The teacher interprets and uses results of standardized instruments, including and understanding of percentiles, means, stanines, grade equivalence, and item analysis.

(7) The teacher uses observation skills for informal assessment.

(8) The teacher is able to use effective questioning techniques to better assess the student's knowledge.

(9) The teacher recognizes developmental levels of student knowledge and skills including typical and atypical patterns.

(10) The teacher recognizes unethical, illegal, and otherwise inappropriate assessment methods and uses of assessment information.

(11) The teacher demonstrates familiarity with a variety of assessment tools, including but not limited to portfolios, performance-based assessment, and student writing.

(12) The teacher uses student responses, explanations, and demonstrations, to analyze misunderstandings that led to errors (error analysis).

(13) The teacher is aware that there may be a variety of methods, strategies, or procedures that will give a correct answer.

(14) The teacher is skilled in communicating assessment results to students, parents, lay audiences, and other educators.

E. Technology:

(1) Basic computer and technology operations and concepts - the teacher uses computer systems to: run software, access, generate, and manipulate data; and publish results. The teacher evaluates performance of hardware and software components of computer systems and applies basic troubleshooting strategies as needed.

(a) operates a multimedia computer system with related peripheral devices to successfully install and use a variety of software packages;

(b) uses terminology related to technology appropriate to the teaching field in written and oral communication;

(c) describes and implement basic troubleshooting techniques for multimedia computer systems with related peripheral devices;

(d) uses imaging devices;

(e) demonstrates knowledge of uses of computers and technology in business, industry, and society;

(f) operates a variety of audio-visual devices.

(2) Personal and professional use

of technology - the teacher will apply tools for enhancing ~~his/her~~ their own professional growth and productivity. The teacher will use technology in communicating, collaborating, conducting research, and solving problems. In addition, the teacher will plan and participate in activities that encourage lifelong learning and will promote equitable, ethical, and legal use of computer and technology resources.

(a) uses productivity tools for word processing, database management, and spreadsheet applications when developmentally appropriate;

(b) applies productivity tools for creating a multimedia presentation;

(c) uses computer-based technologies including telecommunications to access information and enhance personal and professional productivity;

(d) uses computers to support problem solving, data collection, information management, communications, presentations, and decision making;

(e) demonstrates awareness of resources for adaptive assistive devices and software for students with special needs;

(f) demonstrates awareness of resources for culturally and linguistically diverse students;

(g) demonstrates knowledge of equity, ethics, legal, and human issues concerning use of computers and technology;

(h) demonstrates awareness of computer and related technology resources for facilitating lifelong learning and emerging roles of the learner and the educator;

(i) demonstrates awareness of broadcast instruction, audio/video conferencing, and other distant learning applications.

(3) Application of technology to support teaching and learning - the teacher applies computers and related technologies to support teaching and learning in the grade level and subject areas. The teacher will integrate a variety of software, applications, and learning tools in the teaching and learning process. Lessons developed must reflect effective grouping and assessment strategies for diverse populations.

(a) explores, evaluates, and uses technology resources including applications, tools, educational software, and assorted documentation;

(b) describes best practice and appropriate assessment as related to the use of technology resources in the curriculum;

(c) designs, implements, and assesses learning activities that integrate technology for a variety of grouping strategies for diverse populations;

(d) designs learning activities that foster equitable, ethical, and legal use of technology by students;

(e) practices responsible, ethical,

and legal use of technology, information, and software resources.

F. Diversity:

(1) The teacher understands how students differ in their approaches to learning and creates instructional opportunities that are adapted to diverse learners.

(2) The teacher organizes and manages varied learning groups as appropriate in each of the disciplines as appropriate to the needs and/or interests of students and the goals of the lesson.

(3) The teacher is aware of and can apply current research findings regarding individual differences such as linguistic backgrounds, developmental levels, exceptionalities, and gender.

(4) The teacher identifies stereotypes in curriculum materials and adapts instruction appropriately.

(5) The teacher helps students develop critical perspectives on biased materials.

(6) The teacher identifies and develops appropriate responses to differences among language learners.

(7) The teacher demonstrates sensitivity to New Mexico's unique linguistic and cultural diversity.

G. Family and community:

(1) The teacher is aware of the culture, history, and values of the community in which he or she teaches.

(2) The teacher understands, respects, and values the central role that community and family play in the learning process of a child and will be able to utilize these experiences to enhance learning.

(3) The teacher understands that there must be a reciprocal relationship between the school and the community.

(4) The teacher values and utilizes the knowledge that all community members have something to contribute to the classroom to assist in the educational process.

(5) The teacher recognizes that families and community can be used as teaching resources to enhance learning and children's self value.

(6) The teacher communicates to parents and community members student progress, important events, and school activities.

(7) The teacher understands the importance of inviting parents and community members to participate in classroom and school curriculum development and the decision making process.

(8) The teacher conveys and demonstrates to students the importance of being an active part of the community.

H. Inclusion:

(1) The teacher understands special education ~~regulations~~ rules.

(2) The teacher understands the differing levels of disabilities.

(3) The teacher understands the development and use of individualized education plans (IEPs).

(4) The teacher understands ~~his/her~~ their responsibilities in implementing objectives set in an IEP.

(5) The teacher develops lessons according to IEPs.

(6) The teacher monitors achievement and growth as set by an IEP and recommends changes when necessary.

(7) The teacher collaborates with special education teachers for individualized program implementation.

(8) The teacher adjusts lessons and strategies for students with exceptionalities with regard to academic levels, physical environment, and emotional needs.

(9) The teacher understands the social, emotional, physical, and academic needs of students with exceptionalities.

(10) The teacher assists students to understand social responsibilities.

(11) The teacher assists students with exceptionalities to have positive experiences in the regular classroom.

I. Development of student:

(1) The teacher understands various theories of cognitive, social, aesthetic, emotional and physical development.

(2) The teacher understands how children learn and develop, and provides learning opportunities that support their cognitive, social, aesthetic, emotional, and physical development.

(3) The teacher develops curriculum and implements instructional strategies appropriate to the developmental level of each child, leading to continuous progress.

J. Knowledge of content:

(1) Mathematics

(a) The teacher understands mathematical concepts including but not limited to:

(i) the arithmetic of real numbers and their subsets of rational numbers, integers, and whole numbers;

(ii) three dimensional geometry based on the concept of distance, and two dimensional geometry as a method of drawing plans and representing three dimensional objects;

(iii) elements of algebra including elementary functions;

(iv) measurement of length, angles, time, weights, and temperature; and

(v) handling money problems such as cost and unit price.

(b) The teacher demonstrates skill including but not limited to:

(i) mental computations and proper use of four operation and non-programmable scientific calculators in the context of problem-solving;

(ii) constructions of solids, measurements of their volumes and surface areas, drawing their projections, and making plans for their construction;

(iii) defining relevant variables and writing formulas describing their relationships in problem-solving activities; and

(iv) using measurement tools and appropriate techniques for recording data and displaying results.

(c) The teacher demonstrates adequate communication skills to be able to discuss mathematical ideas verbally and in writing.

(d) The teacher knows a variety of teaching techniques and chooses ones appropriate to the topic of study and the level and needs of students.

(e) The teacher constructs situations in which students learn to use a variety of mathematical skills and concepts, including problem solving, reasoning, and logic.

(f) The teacher provides opportunities for students to learn how to use tools, technology, and manipulatives in problem solving.

(g) The teacher uses measurements and other data gathered by students as a basis for classroom activities.

(h) The teacher provides a classroom environment in which students develop skills in communicating, discussing, and displaying mathematical ideas.

(i) The teacher provides enough open-ended problems and activities to allow students to expand creatively on the material learned in classrooms.

(2) Reading and language arts:

(a) Foundations: the teacher understands the foundations of reading and language arts development, including but not limited to:

(i) research on reading;

(ii) how children learn to speak, read, write, and listen;

(iii) cultural, linguistic, environmental, and physiological factors in reading and language arts development;

(iv) children's developmental processes;

(v) characteristics of proficient and non-proficient readers;

(vi) relationship between oral and written language;

(vii) language structure including graphophonics, semantics, syntax, and pragmatics systems.

(b) Assessment:

(i) The teacher understands the use of classroom reading assessment to diagnose students' instructional needs and modify instruction appropriately.

(ii) The teacher links assessment and instruction to New Mexico language arts content standards, benchmarks and performance standards.

(c) Methods of instruction: the teacher differentiates methods of instruction based on needs of students and designs instruction based on the following reading and language arts components:

(i) oral language development;

(ii) phonemic awareness and phoneme manipulations, such as blending, segmentation, and substitution;

(iii) phonics instruction, including a variety of strategies such as systematic, explicit instruction and the use of phonics in reading and writing;

(iv) vocabulary development, including both explicit instruction and indirect vocabulary development through authentic literature and students' experiences;

(v) comprehension strategies, including: instruction on predicting, re-reading, questioning, sequencing, summarizing, retelling, reading for pleasure and analytical and critical reading; activities to develop fluency, the ability to read text accurately and rapidly; and study strategies, for example, planning, accessing and organizing information from a variety of texts and sources;

(vi) writing instruction, including: different types of writing for different audiences and purposes; spelling generalizations; grammar instruction within authentic contexts; and writing processes, including drafting, revising, and editing;

(d) Teacher designs comprehensive reading and writing instruction that results in students becoming proficient in the language arts content standards, benchmarks, and performance standards, including:

(i) the use of culturally relevant pedagogy that promotes an understanding of the importance of resources students bring to the classroom;

(ii) evaluation of text for quality, cultural, and linguistic appropriateness;

(iii) connecting identified needs of students based on data with appropriate research-based resources and materials;

(iv) creation of opportunities for students to consider, respond to and discuss spoken and written materials;

(v) the use of a variety of reading materials, including children's literature, non-fiction, technological media, stories, poems, biographies, texts from various subject areas;

(3) Science:

(a) The teacher knows, understands, and uses the fundamental concepts in the subject matter of science including physical, life, and earth and space sciences as well as concepts in science and technology, science in personal and social perspectives,

the history and nature of science, the unifying concepts of science, and the inquiry process scientists use in discovery of new knowledge to build a base for scientific inquiry.

(b) The teacher is familiar with the scientific method and uses it to develop students' abilities to identify and communicate a problem, and to design, implement, and evaluate a solution.

(c) The teacher integrates a variety of technologies into planned science activities.

(d) The teacher helps children build understanding about science and technology.

(e) The teacher recognizes and responds to student diversity and encourages all students to participate fully in science learning.

(4) Social studies:

(a) The teacher understands the principles of teaching and learning processes that underlie social studies concepts and can translate these into meaningful learning activities focusing on inquiry, authenticity, and collaboration.

(b) The teacher understands that the social studies encompass history, geography, anthropology, archeology, economics, political science, psychology, sociology, and the interdisciplinary relationship of all facets of the social studies.

(c) The teacher understands that the definition of social studies requires that students are socially aware of and are active participants in local, state, national, and global issues.

(d) The teacher helps students understand the relationship between social studies and other disciplines.

(e) The teacher helps students to recognize and respect diverse local and global perspectives concerning cultures other than their own.

(f) The teacher implements a variety of strategies for helping students use multiple resources including primary (e.g., documents, artifacts/regalia, direct observation, human resources, personal background) and secondary (e.g. books, newspapers, internet) as part of the inquiry/research process.

(g) The teacher constructs experiences that provide opportunities for students to appreciate the historical development of democratic values, institutions, nations, and cultures.

(h) The teacher engages students in activities that require them to formulate, analyze, synthesize, and critique issues by using well-reasoned, clearly supported arguments, policies, and positions.

(i) The teacher constructs activities that encourage students to present social studies knowledge using a variety of sign systems including writing, charts, graphs,

maps, art, music, drama, dance, and technology.

(5) Arts:

(a) The teacher understands and implements arts activities such as history, art making, appreciation, and criticism through dance, music, theater, and the visual arts, appropriate to students developmental levels.

(b) The teacher uses the arts as interdisciplinary units and themes.

(c) The teacher understands distinctions and connections between arts disciplines and arts experiences, and encourages study and active participation that leads to skill development and appreciation.

(d) The teacher enables students to communicate at a basic level in the four art disciplines of dance, music, theater, and visual arts, including knowledge and skills in the use of basic vocabularies, materials, tools, techniques, and thinking processes of each discipline.

(e) The teacher enables students to develop and present basic analyses of works of art from structural, historical, and cultural perspectives.

(f) The teacher exposes students to exemplary works of art from a variety of cultures and historical periods and provides opportunities for students to discuss and respond to them.

(g) The teacher relates basic types of arts knowledge and skills within and across the arts disciplines and makes connections with other disciplines.

K. Communication:

(1) The teacher uses knowledge of effective verbal, nonverbal, technological, and media communication techniques to foster active inquiry, collaboration, problem solving, and supportive interaction in the learning community.

(2) The teacher effectively communicates orally and in writing using appropriate standard written and spoken English with a variety of audiences (e.g., peers, school, community) and encourage this in students.

(3) The teacher understands communications theories, language development, and the role of language in student learning.

(4) The teacher understands how to use a variety of strategies to facilitate language acquisition and development.

(5) The teacher recognizes that the conventions and skills of language need to be taught in meaningful and authentic contexts rather than in isolation.

(6) The teacher recognizes that writing is critical to other areas of language acquisition, cognitive growth, and expression.

(7) The teacher recognizes that the focus of reading is communication of

meaning through interaction between the reader and the text.

(8) The teacher recognizes that humans communicate through a variety of verbal and non-verbal sign systems and can provide exposure to and experiences in multiple expressive modes across the curriculum.

(9) The teacher recognizes that social interaction enhances thinking and learning.

(10) The teacher understands how cultural, dialectic, and gender differences affect communication and encourage expression that is context appropriate.

(11) The teacher encourages culturally sensitive communication by and among all students.

(12) The teacher is a thoughtful and responsive listener and encourages this quality in students.

(13) The teacher understands the role of multiple questioning strategies and student inquiry as communication tools.

(14) The teacher recognizes the importance of technology as a tool for learning and communication.

[11-14-98; 6.61.2.10 NMAC - Rn, 6 NMAC 4.2.3.2.10 & A, 10-31-00; A, 05-28-04; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.61.3 NMAC, Sections 1, 6 and 8, effective 10-31-07.

6.61.3.1 ISSUING AGENCY: Public Education Department (PED) [09-30-96; 07-30-99; 6.61.3.1 NMAC - Rn, 6 NMAC 4.2.3.3.1, 10-31-01; A, 05-13-05; A, 10-31-07]

6.61.3.6 OBJECTIVE: This [regulation] rule governs the requirements for New Mexico licensure for persons seeking licensure in middle level education, grades 5-9. [09-30-96; 6.61.3.6 NMAC - Rn, 6 NMAC 4.2.3.3.6, 10-31-01; A, 10-31-07]

6.61.3.8 REQUIREMENTS:

A. persons seeking a teaching license or licensure endorsements pursuant to the provisions of this [regulation] rule shall meet the following requirements of Subsection A, Paragraph (1) of 6.61.3.8 NMAC, or Subsection B of 6.61.3.8 NMAC, or Subsection C of 6.61.3.8 NMAC.

(1) bachelor's degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, the following:

(a) twelve (12) semester hours in English;

(b) twelve (12) semester hours in history including American history and western civilization;

(c) six (6) semester hours in mathematics;

(d) six (6) semester hours in government, economics, or sociology;

(e) twelve (12) semester hours in science, including biology, chemistry, physics, geology, zoology, or botany;

(f) six (6) semester hours in fine arts; and

(2) thirty - thirty-six (30-36) semester hours of professional education in a middle level education program approved by the [public education department] (PED), including completion of the PED's New Mexico middle level teacher competencies and a mandatory student teaching experience; and

(3) twenty-four (24) semester hours in at least one (1) teaching field such as mathematics, science(s), language arts, reading, and social studies (or other content related areas), twelve (12) semester hours of which must be in upper division courses as defined by the college or university; individuals must also complete the PED's approved competencies in the teaching field; and

(4) in addition to the requirements specified in Subsection A, Paragraphs (1), (3) and (5) of 6.61.3.8 NMAC, three (3) hours in the teaching of reading in subject matter content for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(5) passage of all applicable portions of the current PED-approved teacher test; and

(6) [if new to the profession after June 30, 2006, or hired after the first day of school of the 2002-2003 school year and assigned to work in a title I targeted assistance program or a title I school-wide, shall] satisfy the requirements of a highly qualified beginning middle level teacher, or

B. persons holding a standard New Mexico license in K-8 elementary education, 7-12 secondary education pre K-12 specialty area education, or pre K-12 special education, and

(1) five years (5) of documented, successful teaching experience at the middle school level during the ten-year period immediately preceding the date of application for middle level education licensure; and

(2) has demonstrated competency in the academic subjects the teacher teaches by:

(a) passing the content knowledge test(s) of the New Mexico teacher assess-

ments or predecessor New Mexico teacher licensure examinations, or accepted comparable licensure tests from another state in each subject the teacher teaches; or

(b) successfully completing an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major, or a graduate degree in each subject area the teacher teaches; or

~~(c) demonstrating competence in each of the subject areas the teacher teaches based on the state's high objective uniform standard of evaluation for subject area competence as provided in Subsections C or D of 6.69.4.9 NMAC; or~~

C. possess a valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type.

[09-30-96; 6.61.3.8 NMAC - Rn, 6 NMAC 4.2.3.3.8, 10-31-01; A, 06-01-02; A, 06-30-03; A, 05-13-05; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.61.4 NMAC, Sections 1, 8 and 10, effective 10-31-07.

6.61.4.1 ISSUING AGENCY:

Public Education Department (PED)
[11-14-98, 7-30-99; 6.61.4.1 NMAC - Rn, 6 NMAC 4.2.3.4.1, 10-31-00; A, 06-15-06; A, 10-31-07]

6.61.4.8 REQUIREMENTS:

A. persons seeking licensure in secondary education pursuant to the provisions of this rule shall meet the requirements of Subsection A or Subsection B of 6.61.4.8 NMAC.

(1) bachelor's degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, the following:

(a) twelve (12) semester hours in English;

(b) twelve (12) semester hours in history including American history and western civilization;

(c) six (6) semester hours in mathematics;

(d) six (6) semester hours in government, economics or sociology;

(e) twelve (12) semester hour in science, including biology, chemistry, physics, geology, zoology, or botany;

(f) six (6) semester hours in fine arts; and

(2) credits from a regionally accredited college or university which include twenty-four to thirty (24-30) semes-

ter hours of professional education in a secondary education program approved by the ~~[public education department]~~ (PED) including completion of the PED's approved functional areas and related competencies in professional education; and including:

(3) a mandatory student teaching component; and

(4) twenty-four to thirty-six (24-36) semester hours in at least one teaching field such as mathematics, science(s), language arts, reading, or from among history, geography, economics, civics and government (or other content related areas), twelve (12) hours of which must be in upper division courses as defined by the college or university; individuals must also complete the PED approved functional areas and related competencies in the teaching field; and

(5) in addition to the requirements specified in Subsection A, Paragraphs (1), (3), (4), (6) and (7) of 6.61.4.8 NMAC, three (3) hours in the teaching of reading for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(6) passage of all portions of the current PED approved teacher test; and

(7) ~~[if new to the profession after June 30, 2006, or hired after the first day of school of the 2002-2003 school year and assigned to work in a title I targeted assistance program or a title I school-wide,]~~ satisfy the requirements of a highly qualified beginning secondary teacher; or

B. possess a valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type.

[11-14-98; 6.61.4.8 NMAC - Rn, 6 NMAC 4.2.3.4.8 & A, 10-31-00; A, 06-01-02; A, 08-15-03; A, 06-15-06; A, 10-31-07]

6.61.4.10 REFERENCED MATERIAL:

Competencies for entry level secondary teachers

A. Professionalism

(1) The teacher is knowledgeable of and understands the expectations for educators as positive community members.

(2) The teacher reflects on, analyzes, and evaluates the effect of choices and actions on others, including students, parents, and other professionals in the learning community, and uses this knowledge to improve the learning process.

(3) The teacher seeks opportunities to grow professionally, including participation in professional organizations and development opportunities such as conferences, workshops, classes and research, and uses this information to improve professional practices.

(4) The teacher researches current

educational issues then practices and applies them in the classroom.

(5) The teacher understands his/her role in the educational decision-making process as an advocate for children, school, district, community, and self.

(6) The teacher is aware of and adheres to the New Mexico code of ethics for educators.

(7) The teacher demonstrates awareness of relevant legal requirements of teachers and schools.

(8) The teacher demonstrates an awareness of the structure of local, state, and federal agencies and educational systems.

(9) The teacher utilizes professional organizations as a learning tool to increase professional knowledge.

(10) The teacher interacts as a member of a school - and/or district-wide instructional team.

B. Instructional planning and implementation

(1) The teacher understands learning theory, subject matter, and curriculum development and uses this knowledge in planning instruction to meet curriculum goals.

(2) The teacher takes into account the physical, social, emotional, cognitive, and linguistic development of students when planning instruction.

(3) The teacher plans learning opportunities, recognizing the various learning styles of individuals/groups, according to the nature of the content being taught.

(4) The teacher creates short- and long-term plans that are linked to student needs, performance, and learning styles.

(5) The teacher integrates into all curriculum planning, delivery, assessment strategies, and materials that recognize and build upon the strengths of diverse cultures, languages, traditions, environment, and background.

(6) The teacher understands areas of exceptionality in learning.

(7) The teacher integrates a variety of technologies into planned activities.

(8) The teacher plans activities to promote creativity and independent thinking.

(9) The teacher prepares and uses assessment strategies and instruments appropriate to the learning outcomes being evaluated.

(10) The teacher evaluates lesson plans through observation of classroom interactions, questioning, and analysis of student work.

(11) The teacher utilizes diagnostic data to help develop instructional programs as part of an instructional team.

(12) The teacher integrates and applies content area concepts across all

areas of the curriculum.

(13) The teacher understands that federal statutes, state statutes, state board [regulations] rules, and local curriculum guidelines are the basis for instruction for all content areas.

(14) The teacher demonstrates the ability to use academic content in planning, implementation, instruction, and assessment.

C. Classroom management

(1) The teacher arranges the physical environment for optimal learning and safety.

(2) The teacher provides a safe classroom environment where individual differences are respected.

(3) The teacher develops and implements effective classroom management techniques.

(4) The teacher demonstrates an awareness of classroom interactions.

(5) The teacher demonstrates effective use of preventive management techniques.

(6) The teacher uses various signals and cues to assist in effective classroom management.

(7) The teacher effectively manages transition times.

(8) The teacher models and expects positive social interaction with students that encourages a productive learning environment.

(9) The teacher uses techniques that develop positive self-esteem, social and emotional skills, and character traits necessary for healthy, productive individuals and positive social interactions.

(10) The teacher manages time and materials effectively to minimize distraction and disruptions for optimal student involvement.

(11) The teacher collaborates with specialists, support personnel, parents, and administrators in an interdisciplinary manner for the success of the individual student.

(12) The teacher uses data collection techniques to document student behavior.

D. Assessment

(1) The teacher understands and uses formal and informal aptitude and interest assessment strategies to evaluate and ensure the continuous development of the learner.

(2) The teacher develops valid evaluation tools to measure student outcomes.

(3) The teacher selects materials and means for measuring progress.

(4) The teacher determines the entry level of students in a learning continuum.

(5) The teacher uses assessment

of student learning to improve his or her own teaching and to revise curriculum.

(6) The teacher interprets and uses results of standardized instruments, including and understanding of percentiles, means, stanines, grade equivalence, and item analysis.

(7) The teacher is aware of transition processes including different diploma choices in New Mexico as it relates to students with special needs.

(8) The teacher uses formal and informal observation skills for information gathering.

(9) The teacher is able to use effective questioning techniques to better assess the student's knowledge.

(10) The teacher designs assessment strategies which are specific to the developmental levels of student knowledge and skills including typical and atypical patterns.

(11) The teacher employs only ethical, legal, and otherwise appropriate assessment methods and uses of assessment information.

(12) The teacher demonstrates familiarity with a variety of assessment tools, including but not limited to portfolio, performance-based assessment, and student writing.

(13) The teacher uses student responses, explanations, and demonstrations, to analyze misunderstandings that led to errors.

(14) The teacher is aware of and accepts that there may be a variety of methods or procedures that will give a correct answer.

(15) The teacher maintains useful and meaningful records of student work and communicates results to students, parents, and other educators.

(16) The teacher uses effective questioning techniques to better assess the student's knowledge.

E. Technology

(1) Basic computer and technology operations and concepts - the teacher uses computer systems to: run software, access, generate, and manipulate data; and publish results. The teacher evaluates performance of hardware and software components of computer systems and applies basic troubleshooting strategies as needed.

(a) Operates a multimedia computer system with related peripheral devices to successfully install and use a variety of software packages.

(b) Uses terminology related to technology appropriate to the teaching field in written and oral communication.

(c) Describes and implements basic troubleshooting techniques for multimedia computer systems with related peripheral devices.

(d) Uses imaging devices.

(e) Demonstrates knowledge of uses of computers and technology in business, industry, and society.

(f) Operates a variety of audio-visual devices.

(2) Personal and professional use of technology - the teacher will apply tools for enhancing his/her own professional growth and productivity. The teacher will use technology in communicating, collaborating, conducting research, and solving problems. In addition, the teacher will plan and participate in activities that encourage lifelong learning and will promote equitable, ethical, and legal use of computer and technology resources.

(a) Uses productivity tools for word processing, database management, and spreadsheet applications.

(b) Applies productivity tools for creating a multimedia presentation.

(c) Uses computer -based technologies including telecommunications to access information and enhance personal and professional productivity.

(d) Uses computers to support problem solving, data collection, information management, communications, presentations, and decision making.

(e) Demonstrates awareness of resources for adaptive assistive devices and software for students with special needs.

(f) Demonstrates awareness of resources for culturally and linguistically diverse students.

(g) Demonstrates knowledge of equity, ethics, legal, and human issues concerning use of computers and technology.

(h) Demonstrates awareness of computer and related technology resources for facilitating lifelong learning and emerging roles of the learner and the educator.

(i) Demonstrates awareness of broadcast instruction, audio/video conferencing, and other distant learning applications.

(3) Application of technology to support teaching and learning - the teacher applies computers and related technologies to support teaching and learning in the grade level and subject areas. The teacher will integrate a variety of software, applications, and learning tools in the teaching and learning process. Lessons developed must reflect effective grouping and assessment strategies for diverse populations.

(a) Explores, evaluates, and uses technology resources including applications, tools, educational software, and assorted documentation.

(b) Describes best practice and appropriate assessment as related to the use of technology resources in the curriculum.

(c) Designs, implements, and assesses learning activities that integrate

technology for a variety of grouping strategies for diverse populations.

(d) Designs learning activities that foster equitable, ethical, and legal use of technology by students.

(e) Practices responsible, ethical, and legal use of technology, information, and software resources.

F. Diversity

(1) The teacher responds to students as individuals.

(2) The teacher identifies and develops appropriate responses that build upon the strengths of diverse students and addresses diverse needs and differences.

(3) The teacher applies current research findings about social and cultural environments, individual differences, linguistically diverse populations, students of different ages, students with exceptionalities, and gender differences.

(4) The teacher understands how students differ in their approaches to learning and creates instructional approaches that are adaptive to diverse learners.

(5) The teacher organizes and manages varied group learning strategies, as appropriate, to diverse strengths, needs, and/or interests of students and to the goals of the lesson.

(6) The teacher identifies stereotypes in curriculum materials and adapts instruction appropriately.

(7) The teacher helps students develop critical perspectives on biased materials.

(8) The teacher demonstrates sensitivity to New Mexico's unique linguistic and cultural diversity.

G. Family and community

(1) The teacher demonstrates an awareness of the diverse cultures, histories, and values of the community.

(2) The teacher demonstrates understanding, respects, and values for the central role that community and family play in the learning process of a child and is able to utilize these experiences to enhance learning.

(3) The teacher values and utilizes the knowledge that all community members have something to contribute to the classroom to assist in the educational process.

(4) The teacher recognizes that families and community can be used as teaching resources to enhance learning and children's self value.

(5) The teacher effectively communicates to student's parents progress involving academic, behavioral, and social issues that influence learning.

(6) The teacher communicates to community members about important events and school activities.

(7) The teacher understands the importance of including parents and community members in classroom and school

curriculum development and the decision making process.

(8) The teacher conveys good citizenship and demonstrates to students the importance of being an active part of the community.

(9) The teacher participates and attends various after school functions.

H. Inclusion

(1) The teacher understands special education [regulations] rules.

(2) The teacher understands the different levels of disabilities.

(3) The teacher understands the development and use of individualized education plans (IEPs) and individualizes transition plans/504 plans.

(4) The teacher understands the responsibilities in implementing objectives set in an IEP, an individualized transition plan/504 plan and utilizes modifications.

(5) The teacher develops lessons according to IEPs, an individualized transition plan/504 plan and utilizes modifications.

(6) The teacher monitors achievement and growth as set by an IEP, an individualized transition plan/504 plan and uses appropriate procedures to recommend changes when necessary.

(7) The teacher partners with special education teachers and others as necessary for implementation of the IEP.

(8) The teacher adjusts lessons and strategies as specified by the modifications for students with exceptionalities with regard to academic levels, physical environment, emotional, and transition needs.

(9) The teacher understands the social, emotional, physical, academic, and transition needs of students with exceptionalities.

(10) The teacher assists students with exceptionalities to understand social responsibilities to the environments in which they are engaged such as the school, community, and workplace.

(11) The teacher assists students with exceptionalities to have positive experiences in the regular classroom.

I. Development of student

(1) The teacher understands various theories of cognitive, social, aesthetic, emotional and physical development as it relates to the student's needs and strengths.

(2) The teacher understands how the student learns and develops, and provides learning opportunities to support their cognitive, social, aesthetic, emotional, and physical development as it relates to the student's needs and strengths.

(3) The teacher develops curriculum and implements instructional strategies appropriate to the developmental level of each student, leading to effective management of transitional time.

(4) The teacher creates learning

experiences in his/her discipline that demonstrates knowledge of student learning styles, diversity, and cognitive development.

J. Communication

(1) The teacher uses knowledge of effective verbal, nonverbal, technological, and media communication techniques to foster active inquiry, collaboration, problem solving, and supportive interaction in the learning community.

(2) The teacher effectively communicates orally and in writing using appropriate standard written and spoken English and encourages this in students.

(3) The teacher understands communications theory, language development, and the role of language appropriate to student learning styles.

(4) The teacher understands how to use a variety of strategies to facilitate language acquisition and development.

(5) The teacher recognizes that the conventions and skills of language need to be taught in meaningful and authentic contexts rather than in isolation.

(6) The teacher recognizes that writing is critical to other areas of language acquisition, cognitive growth, and expression and is an empowering personal internalization process.

(7) The teacher recognizes that the focus of reading is communication of meaning through interaction between the reader and the text.

(8) The teacher recognizes that humans communicate through a variety of verbal and non-verbal sign systems and can provide exposure to and experiences in multiple expressive modes across the curriculum.

(9) The teacher recognizes that all modes of communication are enhanced by social interaction and that speaking and writing help process and refine thinking and learning.

(10) The teacher understands how cultural, dialectic, and gender differences affect communication and encourage expression that is context appropriate.

(11) The teacher encourages culturally sensitive communication by and among all students in the class.

(12) The teacher is a thoughtful and responsive listener and encourages this quality in students.

(13) The teacher understands the role of multiple questioning strategies and student inquiry as communication tools.

(14) The teacher recognizes the importance of technology as a tool for learning and communication.

(15) The teacher uses appropriate public relations skills, particularly in relation to parent and community members.

K. Motivation

(1) The teacher uses verbal, non-

verbal, and other communication techniques that enhance the motivation of students.

(2) The teacher varies teaching strategies and modifies learning activities to facilitate student motivation.

(3) The teacher establishes a classroom environment and utilizes feedback in a manner that encourages motivation.

(4) The teacher demonstrates an enthusiasm for teaching.

(5) The teacher maintains high expectations for the success of all students while establishing a classroom environment where students believe they can be successful.

(6) The teacher projects a positive attitude toward the subject and students.

(7) The teacher uses a variety of student assessment techniques to encourage student learning.

(8) The teacher uses assessment strategies to involve learners in self-assessment activities, to help them become aware of their strengths and needs, and to encourage them to set personal goals for learning. [11-14-98; 6.61.4.10 NMAC - Rn, 6 NMAC 4.2.3.4.10 & A, 10-31-00; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.61.5 NMAC, Sections 1, 2 and 8, effective 10-31-07. The Part name is also amended.

PART 5 LICENSURE FOR GRADES ~~[PRE-KINDERGARTEN THROUGH 12]~~ PRE K-12

6.61.5.1 ISSUING AGENCY: Public Education Department (PED) [11-14-98; 07-30-99; 6.61.5.1 NMAC - Rn, 6 NMAC 4.2.3.5.1, 06-01-02; A, 06-15-06; A, 10-31-07]

6.61.5.2 SCOPE: Chapter 61, Part 5, governs licensure in grades [~~pre kindergarten pre k through 12~~] pre K-12, for those persons seeking such licensure. [11-14-98; 6.61.5.2 NMAC - Rn, 6 NMAC 4.2.3.5.2, 06-01-02; A, 06-15-06; A, 10-31-07]

6.61.5.8 REQUIREMENTS:
A. persons seeking pre K-12 licensure pursuant to the provisions of this rule shall meet the requirements of Subsection A of 6.61.5.8 NMAC or Subsection B of 6.61.5.8 NMAC.

(1) bachelor's degree from a regionally accredited college or university and including, for those students first enter-

ing a college or university beginning in the fall of 1986, the following:

(a) twelve semester hours in English;

(b) twelve semester hours in history including American history and western civilization;

(c) six semester hours in mathematics;

(d) six semester hours in government, economics or sociology;

(e) twelve semester hours in science, including biology, chemistry, physics, geology, zoology, or botany;

(f) six semester hours in fine arts; and

(2) credits from a regionally accredited college or university which include twenty-four to thirty-six semester hours of professional education in an education program approved by the public education department (PED), including completion of the PED approved functional areas and related competencies in professional education for grades pre K-12; and including

(a) a mandatory student teaching component; and

(b) twenty-four to thirty-six semester hours in at least one teaching field such as mathematics, science(s), language arts, reading, or from among history, geography, economics, civics and government (or other content related areas), twelve hours of which must be in upper division courses as defined by the college or university; individuals must also complete the PED approved functional areas and related competencies in the teaching field; and

(3) in addition to the requirements specified in Subsection A, Paragraphs (1), (2) and (4) of 6.61.5.8 NMAC, three (3) hours in the teaching of reading in subject matter content for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(4) passage of all portions of the New Mexico teacher assessments or any successor teacher examination adopted by the PED; and

(5) [~~if new to the profession after June 30, 2006, or hired after the first day of school of the 2002-2003 school year and assigned to work in a title I targeted assistance program or a title I school-wide,~~] satisfy the requirements of a highly qualified beginning pre K-12 teacher; or

B. possess a valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type.

[11-14-98; 6.61.5.8 NMAC - Rn, 6 NMAC 4.2.3.5.8 & A, 06-01-02; A, 08-15-03; A, 06-15-06; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.61.6 NMAC, Sections 1 and 8, effective 10-31-07.

6.61.6.1 ISSUING AGENCY: Public Education Department (PED) [11-14-98, 7-30-99; 6.61.6.1 NMAC - Rn, 6 NMAC 4.2.3.6.1, 10-31-00; A, 05-28-04; A, 10-31-07]

6.61.6.8 REQUIREMENTS:
A. Persons seeking licensure in special education pursuant to the provisions of this rule shall meet all the requirements enumerated in Subsections A or B of this section.

(1) bachelor's degree from a regionally accredited college or university and including, for those licensees or applicants first entering a college or university beginning in the fall of 1986, the following:

(a) twelve (12) semester hours in English;

(b) twelve (12) semester hours in history including American history and western civilization;

(c) six (6) semester hours in mathematics;

(d) six (6) semester hours in government, economics or sociology;

(e) twelve (12) semester hours in science, including biology, chemistry, physics, geology, zoology, or botany;

(f) six (6) semester hours in fine arts; and

(2) credits from a regionally accredited college or university which include: thirty (30) semester hours of professional education in a special education program approved by the public education department ("PED") ("department"), including completion of the department's approved functional areas and related competencies; and including

(3) a mandatory student teaching component and at the option of the college or university, a practicum component; and

(4) twenty-four (24) semester hours in one of the following teaching fields: mathematics, science(s), language arts, reading, and social studies (or other content related areas); and

(5) in addition to the requirements specified in Subsection A of this section, six (6) hours of reading in subject matter content for those licensees or applicants who first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(6) passage of all required portions of the current New Mexico teacher test or any successor teacher test adopted by the

department; and

(7) ~~[if new to the profession and hired after the first day of school of the 2003-2004 school year,]~~ satisfy the requirements of a highly qualified beginning pre K-12 special education teacher; or

B. possess a valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type.

[11-14-98; 6.61.6.8 NMAC - Rn, 6 NMAC 4.2.3.6.8 & A, 10-31-00; A, 06-01-02; A, 05-28-04; A, 04-29-05; A, 06-15-06; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.62.2 NMAC, Sections 1, 7 and 8, effective 10-31-07.

6.62.2.1 ISSUING AGENCY:

Public Education Department (PED)
[6-15-98; 7-30-99; 6.62.2.1 NMAC - Rn, 6 NMAC 4.2.3.18.1, 08-15-03; A, 06-15-06; A, 10-31-07]

6.62.2.7 DEFINITIONS: “Full school year” means a minimum of 160 instructional days in a school year or 480 instructional days or equivalent number of days in schools or school districts on alternative schedules over multiple school years of full-time or part-time teaching during which the teacher is the teacher of record in at least one class each school year while holding a standard teaching license. Instructional days may include teaching in summer school or similar educational setting.

[6.62.2.7 NMAC - N, 10-31-07]

6.62.2.8 REQUIREMENTS:

Persons seeking licensure in educational administration pursuant to the provisions of this rule shall meet the following requirements.

A. bachelor’s degree and master’s degree from a regionally accredited college or university ~~[and including, for those students first entering a college or university beginning in the fall of 1986, an apprenticeship; the apprenticeship must]~~ to include an apprenticeship/internship must:

(1) be completed at a college or university with an educational administration program approved by the “PED” and consist of a minimum of 180 clock hours for one calendar year to include time at the beginning and end of the school year; a passing grade on the apprenticeship will verify completion of this requirement; OR

(2) be completed under the supervision of a local school superintendent ~~[or a private school official at the school]~~, pri-

ate school official, charter school licensed administrator and consist of a minimum of 180 clock hours for one calendar year to include time at the beginning and end of the school year; the local school superintendent will verify that the apprenticeship has met the PED’s adopted competencies for educational administration; such verification will be considered completion of this requirement;

B. a candidate who entered an administrator preparation program on or after April 4, 2003, must teach while holding a valid level 3-A New Mexico teaching license for at least one full school year or hold a current level 2 teaching license and for at least four years have held a level 3 school counselor’s license while working as a teacher or school counselor; a candidate who entered an administrator preparation program prior to April 4, 2003, must hold a valid level 2 New Mexico teaching license; ~~[and]~~

C. a minimum of eighteen semester hours of graduate credit in an educational administration program approved by the [public education department] (PED); the eighteen semester hour program must address the PED’s approved functional areas and related competencies in educational administration; colleges and universities may offer these hours through their educational administration, educational leadership, public administration, business administration, or other appropriate departments;

D. a candidate who applies for licensure in educational administration on or after the September, 2007 administration of the PED’s specialty area licensure examinations shall take and pass the licensure test in administration ~~[in Paragraph (9) of Subsection B of 6.60.5 NMAC]~~ as stated in 6.60.5 NMAC prior to the issuance of the license.

[6-15-98; 6.62.2.8 NMAC - Rn, 6 NMAC 4.2.3.18.8 & A, 08-15-03; A, 06-15-06; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.63.3 NMAC, Sections 1, 7 and 8, effective 10-31-07. The part name is also amended.

PART 3 LICENSURE FOR INSTRUCTIONAL SUPPORT PROVIDERS PRE-[K-12 NOT COVERED IN OTHER RULES

6.63.3.1 ISSUING AGENCY:

Public Education Department (PED)
[11-14-98, 07-30-99; 6.63.3.1 NMAC - Rn, 6 NMAC 4.2.3.8.1, 03-31-01; A, 08-31-04; A, 10-31-07]

6.63.3.7 DEFINITIONS:

“Instructional support providers” formerly referred to as related services or ancillary providers, shall mean anyone who provides services for a public school or state institution as an educational assistant, school counselor, school social worker, school nurse, speech-language pathologist, psychologist, physical therapist, physical therapy assistant, occupational therapist, occupational therapy assistant, recreational therapist, ~~[interpreter for the deaf, diagnostician]~~ signed language interpreter, educational, alcohol and drug abuse counselor, substance abuse associate and other service providers who are employed to support the instructional program of a school district or charter school.

[6.63.3.7 NMAC - N, 08-31-04; A, 06-30-06; A, 10-31-07]

6.63.3.8 REQUIREMENTS:

All persons who perform any duties as instructional support provider identified in Subsections A through H of this section in public schools, including charter schools, or in those special state-supported schools within state agencies, must hold valid licensure issued by the public education department (“PED”). A person seeking an initial, instructional support provider license shall file a completed application for an initial license with the professional licensure bureau (PLB) of the PED, and shall provide a copy of their current license from their respective licensing authority or a copy of any optional certification listed below, and an official transcript of their coursework. A person seeking instructional support provider licensure shall hold the licensure or certification issued by the named authority as follows:

A. Interpreter for the deaf:
(1) Professional interpreter
(a) obtain certification from the national registry for interpreters for the deaf; or

(b) obtain certification from the national association for the deaf national interpreter certification at levels III, IV, or V.

(2) Education interpreter: Attain educational interpreter performance assessment levels 3.5 or above.

B. Orientation and mobility specialists:

(1) obtain certification from the association for education and rehabilitation of the blind and visually impaired, or

(2) obtain certification from the academy for certification of vision rehabilitation and education professionals.

C. Physical therapist: Obtain licensure from the New Mexico physical therapy licensing board.

D. Occupational therapist:

(1) obtain licensure from the New Mexico occupational therapy licensing board; or

(2) obtain certification from the American occupational therapy certification board.

E. Certified occupational therapy assistant:

(1) obtain licensure from the New Mexico occupational therapy licensing board; or

(2) obtain certification from the American occupational therapy certification board.

F. Physical therapy assistant: obtain licensure from the New Mexico physical therapists licensing board.

G. Recreational therapist: obtain national council for therapeutic recreation certification.

H. Speech language pathologist: obtain licensure from the New Mexico speech language pathology and audiology board.

I. Alcohol abuse counselor: obtain licensure from the New Mexico counseling and therapy practices board.

J. Drug abuse counselor: obtain licensure from the New Mexico counseling and therapy practices board.

K. Alcohol and drug abuse counselor: obtain licensure from the New Mexico counseling and therapy practices board.

L. Substance abuse associate: obtain licensure from the New Mexico counseling and therapy practices board.

[11-14-98; 6.63.3.8 NMAC - Rn, 6 NMAC 4.2.3.8.8 & A, 03-31-01; A, 08-15-03; A, 08-31-04; A, 06-30-06; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.63.7 NMAC, Sections 1, 10 and 11, effective 10-31-07.

6.63.7.1 ISSUING AGENCY:
Public Education Department (PED)
[11-14-98; 07-30-99; 6.63.7.1 NMAC - Rn, 6 NMAC 4.2.3.13.1, 10-31-01; A, 10-17-05; A, 10-31-07]

6.63.7.10 PROVISIONAL LICENSE FOR SCHOOL SOCIAL WORKER: When the social work examiners board has issued a provisional license to an applicant, because the applicant has not completed the social work examiners board licensure exam or the required three credit hour course in New Mexico cultures, the PED can issue a one year temporary

license to the applicant for a school social worker license. When the applicant receives the standard social work examiners board license, a copy must be sent to PED to update the school social worker license.

[11-14-98; 6.63.7.10 NMAC - Rn, 6 NMAC 4.2.3.10, 10-31-01; A, 06-30-06; 6.63.7.10 NMAC - N, 10-31-07]

~~[6.63.7.10]~~ **6.63.7.11 R E F E R - ENCED MATERIAL:** Competencies for school social workers

A. Competencies for entry level school social workers

(1) The school social worker shall demonstrate professional knowledge and skills in dealing with social phenomena as they relate to students' functioning and achievement in school by:

(a) interpreting to school personnel the relationship between the student's social, emotional, ~~and/or~~ or home problems, and ~~his/her~~ the social workers academic performance;

(b) interpreting to school personnel the wide range of social, emotional, cultural, and economic differences among children, families, and communities;

(c) consulting with school personnel on current mental health practices and concepts;

(d) expanding knowledge through consultation with coordinators, specialists, psychologists, psychiatrists, and colleagues, as well as through reading, research, and course work; and

(e) keeping abreast of current community resources, and determining how their services may be beneficial to the student, ~~his/her~~ their family, and the family's involvement in the academic process.

(2) The school social worker shall establish basic case management procedures for effective social work intervention by:

(a) opening a case as soon after referral as possible;

(b) prioritizing cases according to severity and seriousness of identified concerns;

(c) establishing routines for the assessment of case referrals;

(d) coordinating multidisciplinary efforts for the management of cases, when appropriate;

(e) consulting with and assisting school and community personnel regarding case management;

(f) participating in interdisciplinary team meetings relevant to the assessment and disposition of individual cases;

(g) presenting and interpreting social work assessment results and recommendations to school and community agency personnel; and

(h) employing the process of ter-

minating and closing cases upon completion of social work services.

(3) The school social worker shall structure the method of social intervention by appropriate planning and preparation by:

(a) investigating all relevant information regarding a referred case;

(b) consulting with school personnel, community agencies, ~~and/or~~ or family members to assess the identified concerns;

(c) conducting an individualized social, emotional, and adaptive assessment of the student, the student's family, and the educational and social communities;

(d) formulating individual goals and objectives for the management of each case; and

(e) consulting with the social work supervisor, psychologist, ~~and/or~~ or psychiatrist regarding individual cases as needed.

(4) The school social worker shall employ appropriate methods of practice which enables students and families to function adequately within their educational and community settings by:

(a) providing individual, group, and family counseling to students and families;

(b) providing intensive crisis intervention to remedy effects of abuse, neglect, or exploitation of children;

(c) preparing and interpreting social histories or assessments;

(d) participating in planning for student transitions to help ensure continuity of services appropriate to the unique needs of individual students leaving school or transferring between programs;

(e) helping ensure parents' understanding of decisions, procedures, and meetings affecting their children, particularly when cultural differences make communication between school staff and parents difficult;

(f) helping ensure participation of parents in school conferences which affect their children through home visits, telephone calls, correspondence, and other means;

(g) identifying school district and community services appropriate to the needs of students and families, executing referrals, and providing follow-up;

(h) serving as an advocate for parents to ensure that their wishes and concerns regarding their children are registered and considered by school personnel and agencies; and

(i) recognizing the need for, and actively seeking the supervision of, and independent school social worker or clinically supervising school psychologist when providing psychological counseling services for children with severe emotional distur-

bances and behavior disorders as designated by the student's individual education program.

(5) The school social worker shall demonstrate a professional and helpful demeanor in relationships with students, parents, and school personnel by:

(a) providing support and encouragement to students, parents, and staff in an atmosphere of mutual respect;

(b) developing a caring relationship with students and parents and showing consideration of their feelings;

(c) communicating openly with students and parents by listening and responding to their opinions and suggestions;

(d) promoting respect and positive interpersonal relationships among students and families;

(e) working cooperatively with fellow employees to develop and maintain effective interaction;

(f) promoting free and easy communication between home and school;

(g) communicating to parents the significance of school program; and

(h) emphasizing positive achievements of students.

(6) The school social worker shall utilize appropriate methods to continuously evaluate his/her the student's services by:

(a) keeping a personal, confidential file on all cases;

(b) completing a social worker activity form which will be included in the student's permanent record;

(c) maintaining an up-to-date log, indicating types of referrals received, dates, and status of referral and referral sources;

(d) completing any written reports that may be required, such as family assessments, as promptly as possible; and

(e) assessing the effectiveness of and further need for social work services.

B. Competencies for level 3 independent school social workers

(1) The school social worker shall demonstrate professional knowledge and skills in dealing with social phenomena as they relate to students' functioning and achievement in school by:

(a) interpreting to school personnel the relationship between the student's social, emotional, and/or or home problems, and his/her the student's academic performance;

(b) interpreting to school personnel the wide range of social, emotional, cultural, and economic differences among children, families, and communities;

(c) consulting with school personnel on current mental health practices and concepts;

(d) expanding knowledge through consultation with coordinators, specialists, psychologists, psychiatrists, and colleagues,

as well as through reading, research, and course work; and

(e) keeping abreast of current community resources, and determining how their services may be beneficial to the student, his/her their family, and the family's involvement in the academic process.

(2) The school social worker shall establish basic case management procedures for effective social work intervention by:

(a) opening a case as soon after referral as possible;

(b) prioritizing cases according to severity and seriousness of identified concerns;

(c) establishing routines for the assessment of case referrals;

(d) coordinating multidisciplinary efforts for the management of cases, when appropriate;

(e) consulting with and assisting school and community personnel regarding case management;

(f) participating in interdisciplinary team meetings relevant to the assessment and disposition of individual cases;

(g) presenting and interpreting social work assessment results and recommendations to school and community agency personnel; and

(h) employing the process of terminating and closing cases upon completion of social work services.

(3) The school social worker shall structure the method of social intervention by appropriate planning and preparation by:

(a) investigating all relevant information regarding a referred case;

(b) consulting with school personnel, community agencies, and/or or family members to assess the identified concerns;

(c) conducting an individualized social, emotional, and adaptive assessment of the student, the student's family, and the educational and social communities;

(d) formulating individual goals and objectives for the management of each case; and

(e) consulting with the social work supervisor, psychologist, and/or or psychiatrist regarding individual cases as needed.

(4) The school social worker shall employ appropriate methods of practice which enables students and families to function adequately within their educational and community settings by:

(a) providing individual, group, and family counseling to students and families;

(b) providing intensive crisis intervention to remedy effects of abuse, neglect, or exploitation of children;

(c) preparing and interpreting social histories or assessments;

(d) participating in planning for student transitions to help ensure continuity of services appropriate to the unique needs of individual students leaving school or transferring between programs;

(e) helping ensure parents' understanding of decisions, procedures, and meetings affecting their children, particularly when cultural differences make communication between school staff and parents difficult;

(f) helping ensure participation of parents in school conferences which affect their children through home visits, telephone calls, correspondence, and other means;

(g) identifying school district and community services appropriate to the needs of students and families, executing referrals, and providing follow-up ;

(h) serving as an advocate for parents to ensure that their wishes and concerns regarding their children are registered and considered by school personnel and agencies; and

(i) demonstrating skill in interventions directed to interpersonal interactions, intrapsychic dynamics, or life support and management issues in the provision of psychological counseling services for children with severe emotional disturbances and behavior disorders; and

(j) supervising level 1 and level 2 school social workers who are providing psychological counseling services as designated by the student's individual education program for children with severe emotional disturbances and behavior disorders.

(5) The school social worker shall demonstrate a professional and helpful demeanor in relationships with students, parents, and school personnel by:

(a) providing support and encouragement to students, parents, and staff in an atmosphere of mutual respect;

(b) developing a caring relationship with students and parents and showing consideration of their feelings;

(c) communicating openly with students and parents by listening and responding to their opinions and suggestions;

(d) promoting respect and positive interpersonal relationships among students and families;

(e) working cooperatively with fellow employees to develop and maintain effective interaction;

(f) promoting free and easy communication between home and school;

(g) communicating to parents the significance of school program; and

(h) emphasizing positive achievements of students.

(6) The school social worker shall utilize appropriate methods to continuously evaluate his/her the student's services by:

(a) keeping a personal, confidential file on all cases;

(b) completing a social worker activity form which will be included in the student's permanent record;

(c) maintaining an up-to-date log, indicating types of referrals received, dates, and status of referral and referral sources;

(d) completing any written reports that may be required, such as family assessments, as promptly as possible; and

(e) assessing the effectiveness of and further need for social work services. [6.63.7.11 NMAC - Rn & A, 6.63.7.10 NMAC, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.63.9 NMAC, Sections 1, and 8 through 12, effective 10-31-07.

6.63.9.1 ISSUING AGENCY:

Public Education Department (PED)
[11-14-98, 07-30-99; 6.63.9.1 NMAC - Rn, 6 NMAC 4.2.3.15.1, 03-31-01; A, 06-30-06; A, 10-31-07]

6.63.9.8 LEVEL 1 AND LEVEL 2 REQUIREMENTS:

All persons who perform services as educational assistants ("EAs") in public schools [or], in those special state-supported schools within state agencies, must hold valid, educational assistants licensure issued by the [public education department] ("PED"). EAs shall be assigned, and serve as assistants, to school staff duly licensed by the PED. While there may be brief periods when EAs are alone with and in control of a classroom of students, their primary use shall be to work alongside or under the direct supervision of duly licensed staff.

A. Persons seeking licensure in level 1 educational assistance pursuant to the provisions of this rule shall meet the following requirements:

(1) high school diploma or equivalency; and

(2) eighteen years of age; and

(3) certification by the public school superintendent, state-supported school superintendent, charter school administrator [or], private school official that the educational assistant has satisfactorily completed an orientation session pertinent to [his or her] the assignment.

B. Persons seeking licensure in level 2 educational assistance pursuant to the provisions of this rule shall meet the following requirements:

(1) high school diploma or equivalency; and

(2) eighteen years of age; and

(3) certification by the public school superintendent, state-supported school superintendent, charter school administrator or private school official that the educational assistant has satisfactorily completed an orientation session pertinent to [his or her] the assignment; and

(4) certification by the public school superintendent, state-supported school superintendent, charter school administrator [or], private school official that the educational assistant has satisfactorily demonstrated the PED's educational assistant competencies.

[11-14-98; 6.63.9.8 NMAC - Rn, 6 NMAC 4.2.3.15.8, 03-31-01; A, 06-30-03; A, 06-30-06; A, 10-31-07]

6.63.9.9 [PRE JANUARY 8, 2002] LEVEL 3/PARAPROFESSIONAL REQUIREMENTS:

EAs hired prior to January 8, 2002 who are assigned to work in a title I targeted assistance program or in a title I school-wide program under the federal Elementary and Secondary Education Act of 1965 ["Act"] (20 U.S.C. 6301 et seq., PL 107-110), must hold a level 3 license no later than January 8, 2006. Level 3 EAs shall be assigned and serve as assistants to school staff duly licensed by the PED. While there may be brief periods when EAs are alone with and in control of a classroom of students, their primary use shall be to work alongside or under the direct supervision of duly licensed staff.

A. A person hired prior to January 8, 2002 who seeks a level 3 educational assistant license shall meet the following requirements:

(1) hold a high school diploma or equivalency; and

(2) be eighteen years of age; and

(3) provide certification from the public school superintendent, state-supported school superintendent, charter school administrator or private school official that the educational assistant has satisfactorily completed an orientation session pertinent to his or her assignment; and

(4) if the EA holds a level 2 EA license, provide certification from the public school superintendent, state-supported school superintendent, charter school administrator or private school official that the educational assistant has satisfactorily demonstrated the PED's educational assistant competencies.

B. In addition to satisfying the requirements of Subsection A of 6.63.9.9 NMAC, a person hired prior to January 8, 2002 who seeks a level 3 educational assistant license, shall meet the requirements of Paragraph (1) or Paragraph (2) or Paragraph (3) or Paragraph (4) of Subsection B prior to June 30, 2006:

(1) earn an associate degree from a nationally or regionally accredited college or university that includes at least 15 semester hours in non remedial degree coursework, broken down as follows:

(a) 3 hours of language arts/reading or language arts/reading pedagogy;

(b) 3 hours of writing or writing pedagogy;

(c) 3 hours of mathematics or mathematics pedagogy;

(d) 6 hours of reading, writing, and math readiness, or professional education, or classroom management, or teaching assistance, or special education; or

(2) complete forty eight (48) semester hours of academic credit awarded by a nationally or regionally accredited college or university that includes at least 12 semester hours in non remedial coursework, broken down as follows:

(a) 3 hours of language arts/reading or language arts/reading pedagogy;

(b) 3 hours of writing or writing pedagogy;

(c) 3 hours of mathematics or mathematics pedagogy;

(d) 6 hours of reading, writing, and math readiness, or professional education, or classroom management, or teaching assistance, or special education; or,

(3) obtain a passing score of at least seventy (70) percent on a test administered pursuant to Section 11 of 6.63.9 NMAC; or

(4) successfully demonstrate competency through a portfolio assessment administered pursuant to Section 12 of 6.63.9 NMAC. [Reserved]

[11-14-98; 6.63.9.9 NMAC - Rn, 6 NMAC 4.2.3.15.9, 03-31-01; N, 06-30-03; A, 06-30-06; Repealed, 10-31-07]

6.63.9.10 [POST JANUARY 8, 2002] LEVEL 3/PARAPROFESSIONAL REQUIREMENTS:

EAs [hired on or after January 8, 2002] who are assigned to work in a title I targeted assistance program or in a title I school-wide program under the act, must hold a level 3 license. Level 3 EAs shall be assigned and serve as assistants to school staff duly licensed by the PED. While there may be brief periods when EAs are alone with and in control of a classroom of students, their primary use shall be to work alongside or under the direct supervision of duly licensed staff.

A. A person [hired on or after January 8, 2002] who seeks a level 3 educational assistant license, shall meet the following requirements:

(1) hold a high school diploma or equivalency; and

(2) be eighteen years of age; and

(3) provide certification from the public school superintendent, state support-

ed school superintendent, charter school administrator ~~[or]~~, private school official that the educational assistant has satisfactorily completed an orientation session pertinent to ~~[his or her]~~ the assignment; and

(4) if the EA holds a level 2 EA license, provide certification from the public school superintendent, state supported school superintendent, charter school administrator ~~[or]~~, private school official that the educational assistant has satisfactorily demonstrated the PED's educational assistant competencies.

B. In addition to satisfying the requirements of Subsection A of 6.63.9.10 NMAC, a person ~~[hired on or after January 8, 2002]~~ who seeks a level 3 educational assistant license, shall meet the requirements of Paragraph (1) or Paragraph (2) or Paragraph (3) of Subsection B before being hired to work in a title I program:

(1) earn an associate degree from a nationally or regionally accredited college or university that includes at least 15 semester hours in non-remedial degree coursework, broken down as follows:

(a) 3 hours of language arts/reading or language arts/reading pedagogy;

(b) 3 hours of writing or writing pedagogy;

(c) 3 hours of mathematics or mathematics pedagogy;

(d) 6 hours of reading, writing, and math readiness, or professional education, or classroom management, or teaching assistance, or special education; or

(2) complete forty-eight (48) semester hours of academic credit awarded by a nationally or regionally accredited college or university that includes at least ~~[42]~~ 15 semester hours in non-remedial coursework, broken down as follows:

(a) 3 hours of language arts/reading, or language arts/reading pedagogy;

(b) 3 hours of writing or writing pedagogy;

(c) 3 hours of mathematics or mathematics pedagogy;

(d) 6 hours of reading, writing, and math readiness, or professional education, or classroom management, or teaching assistance, or special education; or

(3) obtain a passing score of at least seventy (70) percent on a test administered pursuant to Section 11 of 6.63.9 NMAC.

[11-14-98; 6.63.9.10 NMAC - Rn, 6 NMAC 4.2.3.15.10, 03-31-01; N, 06-30-03; A, 06-30-06; A, 10-31-07]

6.63.9.11 LOCAL DISTRICT TESTING TO OBTAIN LEVEL 3 LICENSURE:

A. A local district shall develop or obtain a test for the purpose of determining if an EA/paraprofessional has demonstrated a knowledge of and ability to

assist in instructing in reading/language arts, writing, and mathematics; or reading readiness, writing readiness, and mathematics readiness, provided that any such test contains at a minimum:

(1) an assessment of basic skill in reading, writing, and mathematics at an 8th grade level as established in the New Mexico Content Standards and Benchmarks for Language Arts and Mathematics set forth in 6.30.2 NMAC; and

(2) an assessment of the ability to assist in instruction in reading, writing, and mathematics, which may include knowledge of professional education practices, or classroom management, or teaching assistance techniques, or special education, and

(3) a sufficient number of high quality, reliable test items that demonstrate that the test is a valid measure of competence and knowledge.

B. The ~~[state department of education]~~ PED is hereby authorized to approve a local district's EA test and shall approve such test provided that it contains at least each of the factors set forth in Subsection A of 6.63.9.11 NMAC.

C. Once approved as described in this section, a local district shall administer its EA test as frequently as it determines is necessary, under conditions ensuring test security.

D. The local district shall file a record of the candidate's test results with the PED along with the application for level 3 EA licensure and shall maintain a documented record of the test results on file in the local district.

[11-14-98; 6.63.9.11 NMAC - Rn, 6 NMAC 4.2.3.15.11 & A, 03-31-01; N, 06-30-03; A, 06-30-06; A, 10-31-07]

6.63.9.12 ~~[PORTFOLIO ASSESSMENT TO OBTAIN LEVEL 3 LICENSURE PURSUANT TO PARAGRAPH (4) OF SUBSECTION B OF 6.63.9.9 NMAC:~~ A local district may administer portfolio assessment for the purpose of determining if an EA/paraprofessional has sufficient knowledge of, and the ability to assist in, instructing in reading/language arts, writing, and mathematics; or reading readiness, writing readiness, and mathematics readiness, or special education, provided that any such portfolio assessment shall at least require the use of demonstration of items from among the following:

A. lesson/unit plans, projects, samples of student work/portfolios, teaching aids, multi-media materials, and visuals;

B. evidence, which could include use of videotaped lessons, that the EA/paraprofessional understands the reading, writing, and mathematics concepts identified in New Mexico standards and

benchmarks for the grade level at which he/she assists or intends to assist in instruction;

C. a copy of classroom management plans, discipline referral forms, rules, photos, charts, posters, letters of appreciation from parents, certificates of achievement, completion of training certificates, case studies, observation reports;

D. evidence of ability to help students use instructional resources, hands-on materials, and technology;

E. a portfolio assessment under this section may be conducted by either:

(1) the principal of the school where the EA/paraprofessional is employed forming a portfolio assessment team of at least three (3) members, two of which must be licensed teachers, one chosen by the education assistant and the other named by the principal, and a licensed administrator agreed upon by the principal and EA/paraprofessional; or

(2) the EA/paraprofessional completing a class in EA portfolio preparation and assessment with a grade of "C" or better at a regionally or nationally accredited college or university.

F. The local district shall file a record of the candidate's portfolio assessment results with the PED along with the application for level 3 EA licensure and shall maintain a documented record of the assessment results on file in the local district. ~~[Reserved]~~

[6.63.9.12 NMAC - N, 06-30-03; A, 06-30-06; Repealed, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.63.10 NMAC, Sections 1, 2, 6 through 8, 11 and 12, effective 10-31-07.

6.63.10.1 ISSUING AGENCY: Public Education Department. (PED)

[6.63.10.1 NMAC - N, 09-29-00; A, 08-31-04; A, 10-31-07]

6.63.10.2 SCOPE: All certified substitute teachers and all applicants for substitute teacher certification. This ~~[regulation]~~ rule governs standards and qualifications for those persons seeking initial or renewed certification as a substitute teacher. [6.63.10.2 NMAC - N, 09-29-00; A, 09-30-03; A, 10-31-07]

6.63.10.6 OBJECTIVE: This ~~[regulation]~~ rule establishes licensure requirements for substitute teachers who provide temporary instructional services when an assigned licensed instructor is

absent from class. This ~~[regulation]~~ rule also seeks to comply with amended legislation that set a minimum age requirement and allowed the ~~[public education department]~~ PED to establish the duration of a substitute teaching license.
[6.63.10.6 NMAC - N, 09-29-00; A, 08-31-04; A, 10-31-07]

6.63.10.7 DEFINITIONS:

A. "High school diploma equivalency" means a New Mexico high school diploma issued after a person has passed all five (5) subtests of the general education diploma ("GED"), a GED issued by the proper authority from any other state, an international baccalaureate ("IB"), and any other diploma issued by any schools accredited by the ~~[public education department]~~ PED, the north central accreditation ("NCA") or western states accreditation ("WSA").

B. "Teaching experience" means any person as of the effective date of this rule, who shall have taught a minimum of 3 hours per day for 60 days as a paid substitute teacher in any school classroom in New Mexico during a regular school year.
[6.63.10.7 NMAC - N, 09-29-00; A, 08-31-04; A, 10-31-07]

6.63.10.8 REQUIREMENTS:

Unless otherwise stated in this rule, any person seeking to perform services as a substitute teacher must hold a certificate authorizing that person to perform the duties of a substitute teacher. Substitute teacher certificates shall be issued by the ~~[public education department]~~ PED to persons who at a minimum meet the requirements of this section. Such certificates authorize the substitute teacher to work as a substitute teacher in any public school district or charter school in New Mexico. At the very minimum, all applicants for initial substitute teacher licensure shall have attained eighteen (18) years of age for those seeking to perform instructional services in grades K-8, and twenty-one (21) years of age for those seeking to perform instructional services in grades 9-12, and have earned a high school diploma or high school diploma equivalency. Any such certificate issued by the ~~[public education department]~~ PED shall be in writing. Additionally, each applicant shall meet the requirements of either Subsection H or I below, or shall meet the requirements of two or more of Subsections A through G:

A. have, within 12 months of their date for initial employment with a local district, received on the job training by serving as a voluntary assistant to a licensed teacher in a school classroom for a minimum of three hours during three days;

B. have observed 3 hours

or more of teaching in a school system and at the grade level of students in which the substitute will serve;

C. have completed a substitute teacher workshop conducted by or acceptable to the local school district in which the substitute teacher is employed or seeking employment;

D. have, within the past three school years of application for employment or licensure, performed at least three hours of instructional services as a substitute teacher in any school accredited or recognized by the New Mexico ~~[public education department]~~ PED;

E. have engaged in any paid employment in the three years prior to applying for substitute teaching licensure or employment, which, after verification by and in the opinion of the superintendent of the local district, invests that applicant with relevant work or life experience;

F. have completed at least 60 hours of college-credit courses in a regionally accredited college;

G. have completed or currently be enrolled in an approved college course or program from a regionally accredited college, where the course or program is structured to provide primary/secondary school teacher preparation;

H. have completed an approved teacher preparation program from a regionally accredited college or university;

I. is in possession of a current substitute or standard teaching license issued by another state's educator licensure issuing agency.

[6.63.10.8 NMAC - N, 09-29-00; A, 09-30-03; A, 08-31-04; A, 10-31-07]

6.63.10.11 VERIFICATION OF REQUIREMENTS:

As part of the initial and continuing licensure process for substitutes, the superintendent or ~~[his/her]~~ the superintendent's appointed designee of the local district seeking to employ a substitute, is hereby authorized to verify that applicant's qualifications set forth at Sections 8 and 12 herein. When an unlicensed individual seeks substitute teaching employment or consideration for future employment in a local school district, state institution, or nonpublic school, the superintendent or ~~[his/her]~~ the superintendent's appointed designee shall verify the various requirements set forth at Sections 8 and 12 herein. Such verification shall be maintained by the local school districts.

[6.63.10.11 NMAC - N, 09-29-00; A, 09-30-03; A, 10-31-07]

6.63.10.12 CONTINUING CERTIFICATION: An initial substitute teaching certificate is considered to be a level ~~[H]~~

~~[1]~~ certificate and all renewed certificates are considered to be level ~~[H]~~ ~~[2]~~ certificates.

A. An initial substitute teacher certificate is valid for three (3) years and commences on July first of a year and expires the 30th of June three years thereafter.

B. A renewed substitute teacher certificate is valid for nine (9) years and commences on July first of a year and expires the 30th of June nine years thereafter.

C. Local school districts and state institutions that utilize substitute teachers shall each develop and promulgate substitute teacher advancement policies for level ~~[H]~~ ~~[2]~~ certification that requires substitutes at a minimum:

(1) to complete with a passing grade three (3) semester hours of credit from a regionally accredited college or university in areas related to the school's long range plan, student standards, or the substitute teacher's classroom assignment; or,

(2) to complete forty-eight (48) contact hours in professional development activities approved by the local school district, state educational institutions, or nonpublic schools in areas related to the school's long range plan, student standards, or the substitute teacher's classroom assignment; or,

(3) obtain written verification from the superintendent of a local district, or from the governing authority of the state institution or nonpublic school where that substitute is employed that ~~[he/she]~~ the substitute has satisfactorily completed at least 270 hours of providing instructional services.

D. Substitute teachers who, on the effective date of this rule, hold valid, current school district or charter school issued certificates, shall present the certificates along with an application for state certification and application fee to the ~~[public education department]~~ PED and be issued new certificates by the ~~[department]~~ PED.

[6.63.10.12 NMAC - N, 09-29-00; A, 09-30-03; A, 08-31-04; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.63.12 NMAC, Sections 1, 6, 8, 9, 11 and 12, effective 10-31-07.

6.63.12.1 ISSUING AGENCY: Public Education Department (PED)
[6.63.12.1 NMAC - N, 01-01-03; A, 05-28-04; A, 10-31-07]

6.63.12.6 OBJECTIVE: This ~~regulation~~ rule establishes guidelines, procedures and competencies for those individuals serving or seeking to serve as the school business official of a local school district, including charter schools. It also establishes guidelines, procedures and competencies for those individuals serving or seeking to serve at the district level in a local school district, charter school district, or in a charter school not within a charter school district, in the capacity of a supervisor or director or manager of accounting ~~and/or~~ or bookkeeping.
[6.63.12.6 NMAC - N, 01-01-03; A, 10-31-07]

6.63.12.8 REQUIREMENTS FOR RECEIVING THIS LICENSE:

A. Any person serving or seeking to serve as the school business official of a local school district, including charter schools, and any person seeking to serve in a local school district, including charter schools, in the capacity of a business manager, or any district official charged with the direct management of the business of a school district, excluding the superintendent, or a supervisor or director or manager of accounting ~~and/or~~ or bookkeeping shall be required to hold this license. A person seeking this license shall have earned or completed one or more of the following:

- (1) a current certified public accountant certificate; or
- (2) a bachelor's, master's, or doctorate degree in accounting, business, or a related field with at least twenty four semester hours in accounting or business coursework from a regionally accredited or department approved college or university; or
- (3) an associate's degree in accounting or a related field from a regionally accredited or department approved college or university including at least twenty-four semester hours in accounting or business courses from a regionally accredited or approved college or university plus at least three (3) years of verifiable, employment experience as a school business official.

B. In addition to satisfying the requirements contained in Subsection A of Section 8 of this rule, a person receiving

an initial school business license shall be issued a one-year conditional license that shall convert automatically to a three-year level [H] 1 license provided that during this first year the person satisfactorily completes a training program approved by the ~~public education department ("department")~~ PED.

C. A business manager of a school district with a membership in excess of three thousand students must hold or be eligible to hold a level [H] 2 school business official license.
[6.63.12.8 NMAC - N, 01-01-03; A, 05-28-04; A, 10-31-07]

6.63.12.9 COMPETENCIES: To qualify for receipt of a level [H] 2 license, a person shall comply with the competency requirements enumerated as follows:

A. Legal issues: The school business official understands and demonstrates the ability to:

- (1) identify the state and federal constitutional rights that apply to individuals within the public education system;
- (2) review and analyze appropriate statutory and constitutional authority regarding the administration of public schools;
- (3) review and analyze significant statutory issues relative to financial resource management.

B. Financial resource management: School business officials must be able to demonstrate, understand, and comprehend the principles associated with school finance, budgeting, financial planning, accounting, auditing, financial reporting, cash management, investments, debt management and technology for school business operations.

(1) Principles of school finance: The school business official understands and demonstrates the ability to apply all New Mexico state statutes and regulations as they apply to public schools including but not limited to:

- (a) Procurement Code, Sections 13-1-28 to 13-1-199, NMSA 1978, as may be amended or reenacted;
- (b) New Mexico ~~public education department~~ PED manual of procedures in its most current form;
- (c) department of finance and administration rules as set forth in Title 2 of the NMAC, as may be amended, replaced, or otherwise changed; and
- (d) New Mexico state auditor rules as set forth in Title 2 of the NMAC, as may be amended, replaced, or otherwise changed;

(2) Budgeting and financial planning: The school business official understands and demonstrates the ability to:

- (a) apply the legal requirements for budget adoption;

(b) prepare a local budget calendar to meet the time constraints of budget preparation;

(c) recognize and analyze significant social, demographic and economic changes which may impact the financial plan of the district;

(d) recognize and forecast the major sources of revenue available to public schools from local, state and federal levels of government;

(e) analyze the impact of shifts in local, state and federal funding and its effect on local spending plans;

(f) recognize and explain internal and external influences on the budget;

(g) recognize multiple approaches to determine reliable enrollment and personnel projections;

(h) interpret the state funding model;

(i) prepare revenue projections and estimates of expenditures for school sites and district-wide budgets;

(j) identify various methods of budget analysis and management;

(k) exercise budgetary management; and

(l) apply analytical procedures for budgetary analysis;

(3) Accounting, auditing, and financial reporting: The school business official understands and demonstrates the ability to:

(a) understand the use and role of internal and external audits;

(b) prepare and analyze interim and annual financial statements;

(c) report the financial status and operating results to the local board of education;

(d) determine revenues and expenditures by fund using state-approved charts of accounts;

(e) develop and maintain all fixed assets inventory in accordance with applicable governmental accounting standards board pronouncements;

(f) use the annual audit report to improve financial tracking and reporting; and

(g) apply the appropriate basis of accounting in accordance with applicable governmental accounting standards board pronouncements in measuring financial position and operating results.

(4) Cash management, investments, and debt management: If applicable to the school district in which he or she is employed, the school business official understands and demonstrates the ability to:

(a) use lease purchasing and joint powers agreements;

(b) select banking and other financial services;

(c) recognize the statutory limitations on investment options available to a

school district;

(d) apply procedures for implementing and monitoring internal transfers and loans; and

(e) apply the process of issuing long-term general obligation bonds including the bond rating process and the role of the bonding attorney and rating services. [6.63.12.9 NMAC - N, 01-01-03; A, 05-28-04; A, 10-31-07]

6.63.12.11 CONTINUING LICENSURE: An initial school business license is considered to be a level [F] 1 license and renewed licenses shall be level [H] 2 licenses except as provided in 6.60.6 NMAC, Continuing Licensure for Licensed Educators in New Mexico.

A. The one-year conditional license shall be considered as part of the three-year level [F] 1 license. The initial school business official license is valid for three (3) years and becomes effective on July first of a year and expires the 30th of June three years thereafter.

B. As a condition for receipt of a level [H] 2 license, a person applying for such licensure shall satisfactorily demonstrate the competencies contained in this rule and must have three (3) full school years of experience under a level [F] 1 license.

C. All renewed level [H] 2 school business official licenses are valid for nine (9) years and become effective on July first of a year and expire the 30th of June nine years thereafter.

D. The holder of a level [F] 1 or level [H] 2 school business official license must complete sixteen (16) contact hours per year of training or coursework in any combination of subjects identified in section 9 of this rule.

[6.63.12.11 NMAC - N, 01-01-03; A, 05-28-04; A, 10-31-07]

6.63.12.12 SAVINGS CLAUSE:

A. Upon the effective date of this rule, individuals who have been employed in any local district(s) for at least (3) three school years as a school business official, may receive a level [H] 2 license provided they obtain verification from a superintendent of a school district in which the individual has been employed, that they have satisfied the competencies contained in this rule.

B. Anyone employed as a school business official in a local district who, at the effective date of this rule, does not qualify for a level [H] 2 license under this section, shall be required to obtain a school business license pursuant to the other provisions of this rule.

[6.63.12.12 NMAC - N, 01-01-03; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.64.2 NMAC, Sections 1, 6, and 8, effective 10-31-07.

6.64.2.1 ISSUING AGENCY: Public Education Department (PED) [07-15-99; 6.64.2.1 NMAC - Rn, 6 NMAC 4.7.1.1.1, 10-31-01; A, 06-30-06; A, 10-31-07]

6.64.2.6 OBJECTIVE: This rule is adopted by the [public education department ("PED")] (PED) for the purpose of establishing entry-level language arts competencies that are based on what beginning language arts teachers must know and be able to do to provide effective language arts programs in New Mexico schools. The competencies were developed to ensure alignment with the New Mexico's content standards and benchmarks for language arts and with the national standards of the national council of teachers of English. [07-15-99; 6.64.2.6 NMAC - Rn, 6 NMAC 4.7.1.1.6, 10-31-01; A, 06-30-06; A, 10-31-07]

6.64.2.8 REQUIREMENTS:

A. Beginning teachers seeking an endorsement in language arts to an initial level 1 New Mexico teaching license, must satisfy all of the requirements of the license as provided in PED rule for that license, which includes, among other requirements, 24-36 semester hours in language arts and passage of a content area test in language arts.

B. Teachers seeking to add an endorsement in language arts to an existing New Mexico teaching license of any level [where the candidate has fewer than two full school years of teaching experience,] shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments as provided in 6.60.5.8 NMAC, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state in language arts; or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major, or a graduate degree in language arts; or

(3) obtain certification in language arts for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

[E: Persons seeking to add an endorsement in language arts to an exist-

ing New Mexico teaching license of any level where the candidate has at least two full school years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.2.8 NMAC, or by demonstrating the teaching competencies for entry level language arts teachers as provided in 6.64.2.9 NMAC through the state's high objective uniform statewide standard of evaluation (HOUSSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC.]

[07-15-99; 6.64.2.8 NMAC - Rn, 6 NMAC 4.7.1.1.8, 10-31-01; A, 09-30-03; A, 06-30-06; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.64.3 NMAC, Sections 1, 6, and 8, effective 10-31-07.

6.64.3.1 ISSUING AGENCY: Public Education Department (PED) [07-15-99; 6.64.3.1 NMAC - Rn, 6 NMAC 4.7.1.2.1, 10-31-01; A, 06-30-06; A, 10-31-07]

6.64.3.6 OBJECTIVE: This rule is adopted by the [public education department ("PED")] (PED) for the purpose of establishing entry-level reading competencies that are based on what beginning reading teachers must know and be able to do to provide effective reading programs in New Mexico schools. The competencies were developed to ensure alignment with the New Mexico's content standards and benchmarks for reading and with the national standards of the international reading association.

[07-15-99; 6.64.3.6 NMAC - Rn, 6 NMAC 4.7.1.2.6, 10-31-01; A, 06-30-06; A, 10-31-07]

6.64.3.8 REQUIREMENTS:

A. Beginning teachers seeking an endorsement in reading to an initial level 1 New Mexico teaching license, must satisfy all of the requirements of the license as provided in PED rule for that license, which includes, among other requirements, 24-36 semester hours in the teaching of reading and passage of a content area test in the teaching of reading.

B. Teachers seeking to add an endorsement in the teaching of reading to an existing New Mexico teaching license of any level [where the candidate has fewer than two full school years of teaching experience] shall meet one of the following requirements:

(1) pass the content knowledge

test(s) of the New Mexico teacher assessments as provided in 6.60.5.8 NMAC, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state in reading; or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major or a graduate degree in the teaching of reading; or

(3) obtain certification in reading for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

~~[C. Persons seeking to add an endorsement in reading to an existing New Mexico teaching license of any level where the candidate has at least two full school years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.3.8 NMAC, or by demonstrating the teaching competencies for entry level reading teachers as provided in 6.64.3.9 NMAC through the state's high objective uniform statewide standard of evaluation (HOUSSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC.]~~

~~[07-15-99; 6.64.3.8 NMAC - Rn, 6 NMAC 4.7.1.2.8, 10-31-01; A, 09-30-03; A, 06-30-06; A, 10-31-07]~~

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.64.4 NMAC, Sections 1, 6, and 8, effective 10-31-07.

6.64.4.1 ISSUING AGENCY: Public Education Department (PED)

[07-15-99; 6.64.4.1 NMAC - Rn, 6 NMAC 4.7.1.3.1, 10-31-01; A, 06-30-06; A, 10-31-07]

6.64.4.6 OBJECTIVE: This rule is adopted by the ~~[public education department ("PED")]~~ (PED) for the purpose of establishing entry-level mathematics competencies that are based on what beginning mathematics teachers must know and be able to do to provide effective mathematics programs in New Mexico schools. The competencies were developed to ensure alignment with the New Mexico's content standards and benchmarks for mathematics and with the national standards of the national council of teachers of mathematics. [07-15-99; 6.64.4.6 NMAC - Rn, 6 NMAC 4.7.1.3.6, 10-31-01; A, 06-30-06; A, 10-31-07]

6.64.4.8 REQUIREMENTS:

A. Beginning teachers

seeking an endorsement in mathematics to an initial level 1 New Mexico teaching license, must satisfy all of the requirements of the license as provided in PED rule for that license, which includes, among other requirements, 24-36 semester hours in mathematics and passage of a content area test in mathematics.

B. Teachers seeking to add an endorsement in mathematics to an existing New Mexico teaching license of any level ~~[where the candidate has fewer than two full school years of teaching experience,]~~ shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments as provided in 6.60.5.8 NMAC, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state in mathematics; or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major or a graduate degree in mathematics; or

(3) obtain certification in mathematics for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

~~[C. Persons seeking to add an endorsement in mathematics to an existing New Mexico teaching license of any level where the candidate has at least two full school years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.4.8 NMAC, or by demonstrating the teaching competencies for entry level mathematics teachers as provided in 6.64.4.9 NMAC through the state's high objective uniform statewide standard of evaluation (HOUSSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC.]~~

~~[07-15-99; 6.64.4.8 NMAC - Rn, 6 NMAC 4.7.1.3.8, 10-31-01; A, 09-30-03; A, 06-30-06; A, 10-31-07]~~

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.64.5 NMAC, Sections 1, and 8, effective 10-31-07.

6.64.5.1 ISSUING AGENCY: Public Education Department (PED)

[01-14-00; 6.64.5.1 NMAC - Rn, 6 NMAC 4.7.1.4.1, 07-31-01; A, 06-30-06; A, 10-31-07]

6.64.5.8 REQUIREMENTS:

A. Beginning teachers

seeking an endorsement in science to an initial level 1 New Mexico teaching license, must satisfy all of the requirements of the license as provided in ~~[public education department ("PED")]~~ (PED) rule for that license, which includes, among other requirements, 24-36 semester hours in science and passage of a content area test in science.

B. Teachers seeking to add an endorsement in science to an existing New Mexico teaching license of any level ~~[where the candidate has fewer than two full school years of teaching experience]~~ shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments as provided in 6.60.5.8 NMAC, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state in science; or

(2) successfully complete an undergraduate academic major 24-36 semester hours, or coursework equivalent to an undergraduate major or a graduate degree in science; or

(3) obtain certification in science for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

~~[C. Persons seeking to add an endorsement in science to an existing New Mexico teaching license of any level where the candidate has at least two full school years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.5.8 NMAC, or by demonstrating the teaching competencies for entry level science teachers as provided in 6.64.5.9 NMAC through the state's high objective uniform statewide standard of evaluation (HOUSSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC.]~~

~~[01-14-00; 6.64.5.8 NMAC - Rn, 6 NMAC 4.7.1.4.8 & A, 07-31-01; A, 09-30-03; A, 06-30-06; A, 10-31-07]~~

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.64.6 NMAC, Sections 1, 6, and 8, effective 10-31-07.

6.64.6.1 ISSUING AGENCY: Public Education Department (PED)

[07-15-99; 6.64.6.1 NMAC - Rn, 6 NMAC 4.7.1.5.1, 10-31-01; A, 02-28-06; A, 10-31-07]

6.64.6.6 OBJECTIVE: This ~~[regulation]~~ rule is adopted by the ~~[public education department (hereinafter the~~

“~~PED~~” (hereinafter the PED) for the purpose of establishing entry-level competencies that are based on what beginning history, geography, economics, civics and government teachers must know and be able to do to provide effective history, geography, economics, civics and government programs in New Mexico pre K-12 schools. The competencies were developed to ensure alignment with the New Mexico’s content standards and benchmarks for social studies and with the national standards of the national council for social studies.

[07-15-99; 6.64.6.6 NMAC - Rn, 6 NMAC 4.7.1.5.6, 10-31-01; A, 02-28-06; A, 10-31-07]

6.64.6.8 REQUIREMENTS:

A. Beginning teachers seeking an endorsement in history, geography, economics, civics and government to an initial level ~~[H]~~ 1 New Mexico teaching license, must satisfy all of the requirements of the license as provided in PED rule for that license, which includes, among other requirements, 24-36 semester hours from among history, geography, economics, civics and government and other social sciences and passage of a content area test that examines the candidate’s knowledge of history, geography, economics, civics and government.

B. Teachers seeking to add an endorsement in history, geography, economics, civics and government to an existing New Mexico teaching license of any level ~~[where the candidate has less than five full academic years of teaching experience]~~ shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments as provided in 6.60.5.8 NMAC, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state in history, geography, economics, civics and government; or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major or a graduate degree in history, geography, economics, civics or government; or

(3) obtain certification in social studies which includes content knowledge in history, geography, economics, civics and government for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

~~[C. Persons seeking to add an endorsement in history, geography, economics, civics and government to an existing New Mexico teaching license of any level where the candidate has at least five full academic years of teaching experience,~~

~~may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.6.8 NMAC, or by demonstrating the teaching competencies for entry level history, geography, economics, civics and government teachers as provided in 6.64.6.9 NMAC through the state’s high objective uniform statewide standard of evaluation (HOUSSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC.]~~

[07-15-99; 6.64.6.8 NMAC - Rn, 6 NMAC 4.7.1.5.8, 10-31-01; A, 09-30-03; A, 02-28-06; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.64.7 NMAC, Sections 1, 6, and 8, effective 10-31-07.

6.64.7.1 ISSUING AGENCY:

Public Education Department (PED)

[07-15-99; 6.64.7.1 NMAC - Rn, 6 NMAC 4.7.1.6.1, 10-31-01; A, 06-30-06; A, 10-31-07]

6.64.7.6 OBJECTIVE:

This rule is adopted by the ~~[public education department (“PED”)]~~ (PED) for the purpose of establishing entry-level health education competencies that are based on what beginning health education teachers must know and be able to do to provide effective health education programs in New Mexico schools. The competencies were developed to ensure alignment with the New Mexico’s content standards and benchmarks for health education and with the national standards of the American alliance for health, physical education, recreation and dance.

[07-15-99; 6.64.7.6 NMAC - Rn, 6 NMAC 4.7.1.6.6, 10-31-01; A, 06-30-06; A, 10-31-07]

6.64.7.8 REQUIREMENTS:

A. Beginning teachers seeking an endorsement in health education to an initial level 1 New Mexico teaching license, must satisfy all of the requirements of the license as provided in PED rule for that license, which includes, among other requirements, 24-36 semester hours in health or health education.

B. Teachers seeking to add an endorsement in health education to an existing New Mexico teaching license of any level ~~[where the candidate has fewer than two full school years of teaching experience,]~~ shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments if provided in 6.60.5.8 NMAC, or

predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state, if available, in health education; or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major in health or health education or a graduate degree in health or health education; or

(3) obtain certification in health education for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

~~[C. Persons seeking to add an endorsement in health education to an existing New Mexico teaching license of any level where the candidate has at least two full school years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.7.8 NMAC, or by demonstrating the teaching competencies for entry level health education teachers as provided in 6.64.7.9 NMAC through the state’s high objective uniform statewide standard of evaluation (HOUSSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC.]~~

[07-15-99; 6.64.7.8 NMAC - Rn, 6 NMAC 4.7.1.6.8, 10-31-01; A, 09-30-03; A, 06-30-06; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.64.8 NMAC, Sections 1, 6, and 8, effective 10-31-07.

6.64.8.1 ISSUING AGENCY:

Public Education Department (PED)

[07-15-99; 6.64.8.1 NMAC - Rn, 6 NMAC 4.7.1.7.1, 10-31-01; A, 06-30-06; A, 10-31-07]

6.64.8.6 OBJECTIVE:

This rule is adopted by the ~~[public education department (“PED”)]~~ (PED) for the purpose of establishing entry-level library media competencies that are based on what beginning librarian-teachers must know and be able to do to provide effective library media programs in New Mexico schools. The competencies were developed to ensure alignment with the New Mexico’s content standards and benchmarks and with the national standards of the American library association and the American association of school librarians.

[07-15-99; 6.64.8.6 NMAC - Rn, 6 NMAC 4.7.1.7.6, 10-31-01; A, 06-30-06; A, 10-31-07]

6.64.8.8 REQUIREMENTS:

A. Beginning librarian-teachers seeking an endorsement in library/media to an initial level 1 New Mexico teaching license, must satisfy all of the requirements of the license as provided in PED rule for that license, which includes, among other requirements, completing an academic major in library/media.

B. Teachers seeking to add an endorsement in library/media to an existing New Mexico teaching license of any level ~~[where the candidate has fewer than two full school years of teaching experience.]~~ shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments if provided in 6.60.5.8 NMAC, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state, if available, in library/media; or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major in library media or a graduate degree in library/media; or

(3) obtain certification in library/media for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

~~[C. Persons seeking to add an endorsement in library/media to an existing New Mexico educator license of any level where the candidate has at least two full school years of teaching or school library experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.8.8 NMAC, or by demonstrating the competencies for entry level library/media specialists as provided in 6.64.8.9 NMAC through the state's high objective uniform statewide standard of evaluation (HOUSSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC.]~~

[07-15-99; 6.64.8.8 NMAC - Rn, 6 NMAC 4.7.1.7.8, 10-31-01; A, 09-30-03; A, 06-30-06; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.64.11 NMAC, Sections 1, and 8, effective 10-31-07

6.64.11.1 ISSUING AGENCY:
Public Education Department (PED)
[6.64.11.1 NMAC - N, 09-29-00; A, 06-30-06; A, 10-31-07]

6.64.11.8 REQUIREMENTS:
A. Beginning teachers seeking an endorsement in TESOL to an ini-

tial level 1 New Mexico teaching license, must satisfy all of the requirements of the license as provided in ~~[public education department ("PED")] (PED)~~ rule for that license, which includes, among other requirements, 24-36 semester hours in TESOL.

B. Teachers seeking to add an endorsement in TESOL to an existing New Mexico teaching license of any level ~~[where the candidate has fewer than two full school years of teaching experience.]~~ shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments if provided in Subsection B of 6.60.5.8 NMAC, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state in TESOL; or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major or a graduate degree in TESOL; or

(3) obtain certification in TESOL for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

~~[C. Persons seeking to add an endorsement in TESOL to an existing New Mexico teaching license of any level where the candidate has at least two full school years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.11.8 NMAC, or by demonstrating the teaching competencies for entry level TESOL teachers as provided in 6.64.11.9 NMAC through the state's high objective uniform statewide standard of evaluation (HOUSSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC.]~~

[6.64.11.8 NMAC - N, 09-29-00; A, 09-30-03; A, 06-30-06; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.64.12 NMAC, Sections 1 and 8, effective 10-31-07. The part name is also changed.

PART 12 [LICENSURE IN MODERN, CLASSICAL, AND NATIVE LANGUAGES] COMPETENCIES FOR ENTRY LEVEL MODERN, CLASSI- CAL AND NATIVE LANGUAGE TEACHERS

6.64.12.1 ISSUING AGENCY:
Public Education Department (PED)

[6.64.12.1 NMAC - N, 02-14-03; A, 06-30-06; A, 10-31-07]

6.64.12.8 REQUIREMENTS:

A. Beginning teachers seeking an endorsement in modern, classical, and native languages to an initial level 1 New Mexico teaching license, must satisfy all of the requirements of the license as provided in ~~[public education department ("PED")] (PED)~~ rule for that license, which includes, among other requirements, 24-36 semester hours in a single modern, classical, or native language and passage of a content area test in the same single language if required or provided in Paragraph (3) of Subsection B of 6.60.5.8 NMAC.

B. Teachers seeking to add an endorsement in modern, classical, and native languages to an existing New Mexico teaching license of any level ~~[where the candidate has fewer than two full school years of teaching experience]~~ shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state in a single language if required or provided in Paragraph (3) of Subsection B of 6.60.5.8 NMAC; or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major in a single modern, classical or native language or a graduate degree in a single modern, classical, or native language; or

(3) obtain certification in modern, classical, and native languages in a single language for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

~~[C. Persons seeking to add an endorsement in modern, classical, and native languages to an existing New Mexico teaching license of any level where the candidate has at least two full school years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.12.8 NMAC, or by demonstrating the teaching competencies for entry level modern, classical, and native languages teachers as provided in 6.64.12.9 NMAC through the state's high objective uniform statewide standard of evaluation (HOUSSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC.]~~

[6.64.12.8 NMAC - N, 02-14-03; A, 09-30-03; A, 06-30-06; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.64.13 NMAC, Sections 1 and 8, effective 10-31-07.

6.64.13.1 ISSUING AGENCY:
Public Education Department (PED)
[6.64.13.1 NMAC - N, 07-01-02; A, 06-30-06; A, 10-31-07]

6.64.13.8 REQUIREMENTS:
A. Beginning teachers seeking an endorsement in performing arts or visual arts to an initial level 1 New Mexico teaching license, must satisfy all of the requirements of the license as provided in ~~[public education department (“PED”)] (PED)~~ rule for that license, which includes, among other requirements, 24-36 semester hours in performing arts or visual arts and passage of a content area test in performing arts or visual arts as provided in Subsection B of 6.60.5.8 NMAC.

B. Teachers seeking to add an endorsement in performing arts or visual arts to an existing New Mexico teaching license of any level ~~[where the candidate has fewer than two full school years of teaching experience]~~ shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state in performing arts or visual arts as provided in Subsection B of 6.60.5.8 NMAC; or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major or a graduate degree in performing arts or visual arts; or

(3) obtain certification in performing arts or visual arts for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

~~[C. Persons seeking to add an endorsement in performing arts or visual arts to an existing New Mexico teaching license of any level where the candidate has at least two full school years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.13.8 NMAC, or by demonstrating the teaching competencies for entry level performing arts or visual arts teachers as provided in 6.64.13.9 and 6.64.13.10 NMAC through the state’s high objective uniform statewide standard of evaluation (HOUSSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in~~

~~6.69.4.9 NMAC.]~~

[6.64.13.8 NMAC - N, 07-01-02; A, 09-30-03; A, 06-30-06; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.64.14 NMAC, Sections 1 and 8, effective 10-31-07.

6.64.14.1 ISSUING AGENCY:
Public Education Department (PED)
[6.64.14.1 NMAC - N, 07-01-02; A, 06-30-06; A, 10-31-07]

6.64.14.8 REQUIREMENTS:
A. Beginning teachers seeking an endorsement in physical education to an initial level 1 New Mexico teaching license, must satisfy all of the requirements of the license as provided in ~~[public education department (“PED”)] (PED)~~ rule for that license, which includes, among other requirements, 24-36 semester hours in physical education.

B. Teachers seeking to add an endorsement in physical education to an existing New Mexico teaching license of any level ~~[where the candidate has fewer than two full school years of teaching experience,]~~ shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments if provided in Subsection B of 6.60.5.8 NMAC, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state in physical education; or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major or a graduate degree in physical education; or

(3) obtain certification in physical education for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

~~[C. Persons seeking to add an endorsement in physical education to an existing New Mexico teaching license of any level where the candidate has at least two full school years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.14.8 NMAC, or by demonstrating the teaching competencies for entry level physical education teachers as provided in 6.64.14.9 NMAC through the state’s high objective uniform statewide standard of evaluation (HOUSSE) for demonstrating competence in the core academic subjects and other endorsement areas~~

~~as set forth in 6.69.4.9 NMAC.]~~

[6.64.14.8 NMAC - N, 07-01-02; A, 09-30-03; A, 06-30-06; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.64.15 NMAC Sections 1, 6, 8, and 10, effective 10-31-07.

6.64.15.1 ISSUING AGENCY:
Public Education Department (PED)
[6.64.15.1 NMAC - N, 05-28-04; A, 10-31-07]

6.64.15.6 OBJECTIVE: This ~~[regulation]~~ rule establishes entry-level competencies that are based on what family and consumer sciences teachers must know and be able to do to provide effective family and consumer sciences programs in New Mexico schools. The competencies were developed to ensure alignment with the New Mexico content standards and benchmarks, the national family and consumer sciences standards, and must be used by New Mexico institutions of higher education to establish family and consumer sciences preparatory programs.
[6.64.15.6 NMAC - N, 05-28-04; A, 10-31-07]

6.64.15.8 CORE LICENSURE REQUIREMENTS: Persons seeking an endorsement in family and consumer sciences to a New Mexico educator license must complete the following core requirements:

A. Beginning teachers seeking an endorsement in family and consumer sciences to an initial level 1 New Mexico teaching license, must satisfy all of the requirements of the license as provided in the ~~[public education department’s (“department”)] (PED)~~ rule for that license, which includes, among other requirements, 24-36 semester hours in family and consumer sciences.

B. Teachers seeking to add an endorsement in family and consumer sciences to an existing New Mexico teaching license of any level ~~[where the candidate has less than five full academic years of teaching experience,]~~ shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state, if available, in family and consumer sciences; or

(2) successfully complete an undergraduate academic major (24-36

semester hours), or coursework equivalent to an undergraduate major or a graduate degree in family and consumer sciences; or

(3) obtain certification in family and consumer sciences for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

~~[C. Persons seeking to add an endorsement in family and consumer sciences to an existing New Mexico teaching license of any level where the candidate has at least five full academic years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2), or (3) of Subsection B of 6.64.15.8 NMAC, or by demonstrating the teaching competencies for entry level family and consumer sciences teachers as provided in 6.64.2.9 NMAC through the state's high objective uniform standard of evaluation (HOUSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC.]~~

[6.64.15.8 NMAC - N, 05-28-04; A, 10-31-07]

6.64.15.10 IMPLEMENTATION:

Institutions of higher education that prepare teachers shall deliver these competencies in a department-approved endorsement program within a range of twenty-four (24) to thirty-six (36) semester hours of credit. For secondary and pre K-12 licensed teachers, a minimum of twelve (12) semester hours must be upper-division credit.

[6.64.15.10 NMAC - N, 05-28-04; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.64.16 NMAC, Sections 1, 6, 8 and 10, effective 10-31-07.

6.64.16.1 ISSUING AGENCY: Public Education Department (PED)

[6.64.16.1 NMAC - N, 04-29-05; A, 10-31-07]

6.64.16.6 OBJECTIVE: This ~~[regulation]~~ rule establishes entry-level competencies that are based on what beginning technology studies/education teachers must know and be able to do to provide effective technology education programs in New Mexico schools. These competencies should be incorporated into all college or university curricula for persons seeking a technology studies/education endorsement to their state educator license.

[6.64.16.6 NMAC - N, 04-29-05; A, 10-31-07]

6.64.16.8 REQUIREMENTS:

A. Beginning teachers seeking an endorsement in technology education to an initial level [F] 1 New Mexico teaching license must satisfy all of the requirements of the license as provided in the ~~[public education department]~~ (PED) rule for that license, which include, among other requirements, 24-36 semester hours in technology education.

B. Teachers seeking to add an endorsement in technology education to an existing New Mexico teaching license of any level ~~[where the candidate has less than five full academic years of teaching experience]~~ shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments, the predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state, if available, in technology education; or

(2) successfully complete an undergraduate academic major (24-36 semester hours), coursework equivalent to an undergraduate major or a graduate degree in technology education; or

(3) obtain certification in technology education for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

~~[C. Persons seeking to add an endorsement in technology education to an existing New Mexico teaching license of any level where the candidate has at least five full academic years of teaching experience may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.16.8 NMAC or by demonstrating the teaching competencies for entry level technology education teachers as provided in 6.64.16.9 NMAC through the state's high objective uniform standard of evaluation (HOUSE) for demonstrating competence in the core academic subjects and other endorsement areas.]~~

[6.64.16.8 NMAC - N, 04-29-05; A, 10-31-07]

6.64.16.10 IMPLEMENTATION:

Institutions of higher education that prepare teachers shall deliver the competencies in a PED approved endorsement program within a range of twenty-four (24) to thirty-six (36) semester hours of credit. For secondary and pre K-12 licensed teachers, a minimum of twelve (12) semester hours must be upper division credit.

[6.64.16.10 NMAC - N, 04-29-05; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.64.17 NMAC, Sections 1, 6, and 8 through 10, effective 10-31-07.

6.64.17.1 ISSUING AGENCY: Public Education Department (PED)

[6.64.17.1 NMAC - N, 04-29-05; A, 10-31-07]

6.64.17.6 OBJECTIVE: This ~~[regulation]~~ rule establishes entry-level competencies that are based on what beginning agricultural education teachers must know and be able to do to provide effective agricultural education programs in New Mexico schools. These competencies were developed to ensure alignment with the New Mexico academic standards and benchmarks and the national career cluster knowledge and skills for agricultural, food and natural resources. These competencies should be incorporated into all college or university curricula for persons seeking an agricultural education endorsement to their state educator license.

[6.64.17.6 NMAC - N, 04-29-05; A, 10-31-07]

6.64.17.8 REQUIREMENTS:

A. Beginning teachers seeking an endorsement in agricultural education to an initial level [F] 1 New Mexico teaching license must satisfy all of the requirements of the license as provided in ~~[public education department]~~ (PED) rule for that license, which include, among other requirements, 24-36 semester hours in agricultural education.

B. Teachers seeking to add an endorsement in agricultural education to an existing New Mexico teaching license of any level ~~[where the candidate has less than five full academic years of teaching experience]~~ shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state, if available, in agricultural education, or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major or a graduate degree in agricultural education; or

(3) obtain certification in agricultural education for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

~~[C. Persons seeking to add~~

~~an endorsement in agricultural education to an existing New Mexico teaching license of any level where the candidate has at least five full academic years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of this section, or by demonstrating the teaching competencies for entry level agricultural education teachers as provided in 6.64.17.9 NMAC through the state's high objective uniform standard of evaluation (HOUSE) for demonstrating competence in the core academic subjects and other endorsement areas.]~~

[6.64.17.8 NMAC - N, 04-29-05; A, 10-31-07]

6.64.17.9 COMPETENCIES FOR ENTRY-LEVEL AGRICULTURAL EDUCATION TEACHERS:

A. Agriculture, food and natural resources ("AFNR") career cluster competencies: Preparation to teach agricultural education will result in individuals who can teach others competencies in agricultural, food, and natural resource careers:

(1) achieve specific academic knowledge and skills required to pursue the full range of careers and post-secondary education opportunities within AFNR;

(2) use oral and written communication skills in creating, expressing and interpreting information and ideas including technical terminology and information within AFNR;

(3) employ technical communications effectively to maintain good records and reporting procedures;

(4) solve problems using critical thinking skills (e.g., analyze, synthesize, and evaluate) independently and in teams;

(5) access suitable resources to identify public policies, issues, and [regulations] rules impacting AFNR management;

(6) use information technology tools specific to AFNR to access, manage, integrate, and create information;

(7) understand roles within teams, work units, departments, organizations, inter-organizational systems, and the larger environment;

(8) identify how key organizational systems affect organizational performance and the quality of products and services;

(9) understand the importance of health, safety, and environmental management systems in organizations and their importance to organizational performance and regulatory compliance;

(10) identify health goals and safety procedures for AFNR occupations;

(11) use leadership skills in collaborating with others to accomplish organizational goals and objectives;

(12) know and understand the

importance of professional ethics and legal responsibilities;

(13) know and understand the importance of employability skills;

(14) use the technical knowledge and skills required to pursue the full range of careers for all AFNR career pathways.

B. Local program success competencies:

(1) Instruction: Preparation to teach agricultural education will result in individuals who can fulfill the instructional role in the agricultural education program:

(a) develop an appropriate and accountable curriculum pattern and courses for the program resulting in industry certifications upon completion where appropriate;

(b) demonstrate teacher behaviors documented by research to be related to student achievement including: clarity, variability, enthusiasm, task-oriented/business like behavior, and student opportunity to learn criterion material;

(c) demonstrate master teacher competencies including with-it-ness, student centeredness, and an in-charge image.

(2) Supervised agricultural experience program ("SAE"): Preparation to teach agricultural education will result in individuals who can fulfill the SAE supervisory role in the agricultural education program:

(a) demonstrate knowledge of SAEs;

(b) can plan, implement, and supervise appropriate SAEs;

(c) demonstrate sound judgment when supervising SAEs.

(3) Future farmers of America (FFA): Preparation to teach agricultural education will result in individuals who can fulfill the FFA advisory role in the agricultural education program:

(a) can plan, implement, and supervise the activities of an active FFA chapter;

(b) undertake advisory responsibilities necessary for operating an active FFA chapter;

(c) demonstrate sound judgment in the role of a FFA advisor;

(d) link FFA leadership activities, award programs, and competitive events to high quality agricultural education curriculum.

(4) Partnerships: Preparation to teach agricultural education will result in individuals who can fulfill a partnership-building role in the agricultural education program:

(a) identify potential partners;

(b) utilize stakeholder groups within and outside of the school and community to improve the program (e.g., students, administrators, parents/guardians, colleagues, community members, advisory

committee members, FFA alumni members, state agricultural education leaders, and others);

(c) utilize resources from within and outside of the school and community to improve the program;

(d) recognize stakeholders for their contributions and support.

(5) Program marketing: Preparation to teach agricultural education will result in individuals who can fulfill a marketing role in the agricultural education program:

(a) demonstrate an ability to market their program to the school and community;

(b) demonstrate an understanding of how to recruit potential students into the program;

(c) identify and meet business and industry needs.

(6) Professional growth: Preparation to teach agricultural education will result in individuals who can fulfill a professional role in the agricultural education program:

(a) join and participate in appropriate state and national agricultural education and career and technical education professional organizations;

(b) incorporate new ideas and technologies learned through in-service into their teaching and program;

(c) develop a personal professional growth plan.

(7) Program planning: Preparation to teach agricultural education will result in individuals who can fulfill a program-planning role in the agricultural education program:

(a) utilize stakeholder groups like an advisory committee in program planning;

(b) inform school administrators about stakeholder group recommendations;

(c) inform stakeholders of federal, state, and local laws and/or [regulations] rules relating to the agricultural education program;

(d) understand and integrate New Mexico core academic content standards and benchmarks into the AFNR curricula where appropriate.

C. Program management competencies: Preparation to teach agricultural education will result in individuals who can manage the agricultural education program:

(1) maintain facilities, equipment, and materials;

(2) demonstrate knowledge of departmental budgeting;

(3) can complete required program records and reports;

(4) can balance all aspects of a strong program.

D. AFNR career pathway competencies: The following areas are designed to allow potential agricultural education teachers to construct their pre-service education with an emphasis in two or more content domain pathways, while insuring they receive agricultural education in any area which they might be required to teach.

(1) The domain of food products and processing systems: Preparation to teach agricultural education will result in individuals who can teach others competencies in food products and processing systems:

(a) apply principles of food processing to the food industry;

(b) apply principles of food science to the food industry;

(c) plan, implement, manage, and/or provide services for the preservation and packaging of food and food products;

(d) identify processing, handling, and storage factors to show how they impact product quality and safety.

(2) The domain of plant systems: Preparation to teach agricultural education will result in individuals who can teach others competencies in plant systems:

(a) apply principles of anatomy and physiology to produce and manage plants in both a domesticated and natural environment;

(b) address taxonomic or other classifications to explain basic plant anatomy and physiology;

(c) apply fundamentals of production and harvesting to produce plants;

(d) exercise elements of design to enhance an environment (e.g., floral, forest, landscape, farm).

(3) The domain of animal systems: Preparation to teach agricultural education will result in individuals who can teach others competencies in animal systems:

(a) apply knowledge of anatomy and physiology to produce and/or manage animals in a domesticated or natural environment;

(b) recognize animal behaviors to facilitate working with animals safely;

(c) provide proper nutrition to maintain animal performance;

(d) know the factors that influence an animal's reproductive cycle to explain species response;

(e) identify environmental factors that affect an animal's performance.

(4) The domain of power, structural, and technical systems: Preparation to teach agricultural education will result in individuals who can teach others competencies in power, structural, and technical systems:

(a) apply physical science principles to engineering applications with mechanical equipment, structures, biologi-

cal systems, land treatment, power utilization, and technology;

(b) apply principles of safe operation and maintenance to mechanical equipment, structures, biological systems, land treatment, power utilization, and technology;

(c) apply principles of safe service and repair to mechanical equipment, structures, biological systems, land treatment, power utilization, and technology;

(d) exercise basic skills in blueprint and design development to create sketches, drawings and plans;

(e) read and relate structural plans to specifications and building codes;

(f) examine structural requirements to estimate project costs;

(g) develop skills required to safely use construction/fabrication equipment and tools;

(h) plan, implement, manage, and/or provide support services to facility design and construction; equipment design, manufacture, repair, and service; and agricultural technology;

(i) use the variety of tools available in computer systems to accomplish fast, accurate production in the workplace;

(j) safely use available power sources to plan and apply control systems;

(k) explain geospatial technology to demonstrate its applications.

(5) The domain of natural resources and environmental service systems: Preparation to teach agricultural education will result in individuals who can teach others competencies in natural resources and environmental service systems:

(a) recognize importance of resource and human interrelations to conduct management activities in natural habitats;

(b) use effective venues to communicate natural phenomena to the public;

(c) apply scientific principles to natural resource management activities;

(d) employ knowledge of natural resource industries to describe production practices and processing procedures;

(e) practice responsible conduct to protect natural resources;

(f) identify public policies and ~~regulations~~ rules impacting environmental services to determine their effect on facility operation;

(g) apply scientific principles to environmental services;

(h) understand environmental service systems.

(6) The domain of agribusiness systems: Preparation to teach agricultural education will result in individuals who can teach others competencies in agribusiness systems:

(a) employ leadership skills to

accomplish goals and objectives in an AFNR business environment;

(b) practice good record keeping to accomplish AFNR business objectives;

(c) apply generally accepted accounting principles and skills to manage budget, credit, and optimal application of AFNR business assets;

(d) employ AFNR industry concepts and practices to manage inventory;

(e) utilize technology to accomplish AFNR business objectives;

(f) use sales and marketing principles to accomplish AFNR business objectives.

[6.64.17.9 NMAC - N, 04-29-05; A, 10-31-07]

6.64.17.10 IMPLEMENTATION: Institutions of higher education that prepare teachers shall deliver the competencies in a PED approved endorsement program within a range of twenty-four (24) to thirty-six (36) semester hours of credit. For secondary and pre K-12 licensed teachers, a minimum of twelve (12) semester hours must be upper division credit.

[6.64.17.10 NMAC - N, 04-29-05; A, 10-31-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.69.4 NMAC, Sections 1, and 7 through 12, effective 10-31-07.

6.69.4.1 ISSUING AGENCY: Public Education Department. (PED)

[6.69.4.1 NMAC - N, 09-30-03; A, 10-14-04; A, 10-31-07]

6.69.4.7 DEFINITIONS:

A. "Core academic subjects" means English, language arts, reading, mathematics, science, the arts, including music and visual arts, and social studies, which includes civics, government, economics, history, and geography, and modern and classical languages, ~~except the modern and classical~~ Native American languages and cultures of New Mexico tribes and pueblos.

B. "A highly qualified early childhood ~~[birth-grade-three]~~ birth-grade 3 or elementary teacher (K-8)", under this rule, means a teacher who is fully qualified for teaching ~~[birth-to-grade-three]~~ birth-grade 3 and grades K-8, and who:

(1) meets the requirements for ~~his/her~~ the license; and

(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason; and

(3) has demonstrated competency

in the core academic subjects the teacher teaches by:

(a) passing the elementary teacher competency or the elementary content knowledge test of the New Mexico teacher assessments or comparable predecessor New Mexico teacher licensure examinations, or accepted comparable licensure test(s) from another state; or

(b) holding national board for professional teaching standards certification for the appropriate grade level and type; or

(c) demonstrating competence in all of the core academic subjects the teacher teaches based on the state's high objective uniform standard of evaluation for subject area competence as provided in 6.69.4.9 NMAC.

C. "A highly qualified middle or junior high school teacher holding elementary K-8 licensure", under this rule, means a teacher who is fully qualified to teach the core academic subjects in a public middle or junior high school, and who:

(1) meets all of the requirements for elementary K-8 licensure; and

(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason; and

(3) has demonstrated competency in each of the core academic subjects the teacher teaches by either:

(a) passing the content knowledge test(s) of the New Mexico teacher assessments or predecessor New Mexico teacher licensure examinations, or accepted comparable licensure tests from another state in each subject area the teacher teaches; or

(b) successfully completing an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major, or a graduate degree in each subject area the teacher teaches, or

(c) obtaining advanced credentials, which means certification by the national board for professional teaching standards for the appropriate grade level and type; or

(d) demonstrating competence in all of the core academic subjects the teacher teaches based on the state's high objective uniform standard of evaluation for subject area competence as provided in 6.69.4.9 NMAC.

D. "A highly qualified middle level (5-9), secondary (7-12), or pre K-12 specialty area teacher," under this rule, means a teacher who is fully qualified to teach the core academic subjects, and who:

(1) meets all of the requirements for ~~his/her~~ the license; and

(2) has no licensure requirements waived on an emergency or temporary

basis, or for any other reason; and

(3) has demonstrated competency in the core academic subjects the teacher teaches by:

(a) passing the content knowledge test(s) of the New Mexico teacher assessments or predecessor New Mexico teacher licensure examinations, or accepted comparable licensure tests from another state in each subject area the teacher teaches; or

(b) successfully completing an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major, or a graduate degree in each subject area the teacher teaches; or

(c) obtaining advanced credentials, which means certification by the national board for professional teaching standards for the appropriate grade level and type; or

(d) demonstrating competence in all of the core academic subjects the teacher teaches based on the state's high objective uniform standard of evaluation for subject area competence as provided in 6.69.4.9 NMAC.

E. "A highly qualified pre K-12 special education teacher," under this rule, means a teacher who is fully qualified to teach special education students by either providing access for those students to a regular education classroom where instruction in the core academic subjects is delivered by a highly qualified regular education teacher, and where the special education teacher shall meet the requirements of Paragraphs (1) and (2) below; or, if the special education teacher teaches the core academic subjects to special education students who are assessed under regular education standards, and is fully qualified to teach each core academic subject the teacher teaches, and where that teacher also meets the requirements of Paragraphs (1) and (2) and (3) below; or if the special education teacher teaches the core academic subjects exclusively to children who are assessed against alternate achievement standards and where the teacher also meets the requirements of Paragraphs (1) and (2) and either (3) or (4):

(1) the teacher meets the requirements for ~~his/her~~ the special education license;

(2) the teacher has no special education licensure requirements waived on an emergency or temporary basis, or for any other reason;

(3) the teacher has demonstrated competency in any core academic subjects the teacher teaches by:

(a) passing the elementary teacher competency or the elementary content knowledge test of the New Mexico teacher assessments or predecessor New Mexico

teacher licensure examinations, or accepted comparable licensure tests offered in New Mexico or in another state, if the special education teacher teaches in an elementary school; or

(b) by passing the content knowledge test(s) of the New Mexico teacher assessments or predecessor New Mexico teacher licensure examinations, or accepted comparable licensure tests from another state in each subject area the teacher teaches if the teacher teaches in a middle or high school; or

(c) successfully completing an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major, or a graduate degree in each subject area the teacher teaches; or

(d) obtaining advanced credentials, which means content area or special education certification by the national board for professional teaching standards for the appropriate grade level and type; or

(e) demonstrating competence in all of the core academic subjects the teacher teaches based on the state's high objective uniform standard of evaluation for subject area competence as provided in 6.69.4.9 NMAC.

(4) the teacher has demonstrated competency in the core academic subjects, regardless of the grade level taught, by passing the elementary or secondary teacher competency test, or the elementary content knowledge test, or any one of the middle level or secondary level content knowledge tests in the core academic areas of the New Mexico teacher assessments or comparable predecessor New Mexico teacher licensure examinations, or accepted comparable licensure test(s) from another state.

F. "Full school year" means a minimum of 160 instructional days in a school year or 480 instructional days or equivalent number of days in schools or school districts on alternative schedules over multiple school years of full-time or part-time teaching during which the teacher is the teacher of record in at least one class each school year while holding a standard teaching license. Instructional days may include teaching in summer school or similar educational setting.

[6.69.4.7 NMAC - N, 09-30-03; A, 10-14-04; A, 05-13-05; A, 10-31-06; A, 10-31-07]

6.69.4.8 REQUIREMENTS:

A. ~~[If a teacher was hired after the first day of school of the 2002-2003 school year and is assigned to teach the core academic subjects in a title I targeted assistance program or a title I school wide, the teacher must be highly qualified, as defined in this rule.] All teachers of the core academic subjects must be highly qual-~~

ified, as defined in this rule.

~~[B. If a teacher was hired prior to the first day of school of the 2002-2003 school year and is assigned to teach in the core academic subjects in any public school, the teacher must be highly qualified, as defined in this rule, by June 30, 2006, unless the school district where the teacher is employed qualifies for the rural education achievement program under Title VI of the Elementary and Secondary Education Act 20 USC 7345, in which case the teacher must be highly qualified, as defined in this rule, by June 30, 2007.]~~

~~[C.] B. The school district must ensure, through proper annual teaching assignment and through annual professional development plans and evaluations that all teachers assigned to teach in core academic subjects are highly qualified [as provided in subsections A and B of this section and as required in section 1119 of the No Child Left Behind Act in Title I of 20 USC 6301.]~~

~~[D.] C. Every public school teacher must have an annual performance evaluation based on an annual professional development plan that meets the requirements of the state's high objective uniform standard of evaluation as provided in 6.69.4.10 NMAC. The format for this evaluation shall be established by the [department] PED and shall be uniform throughout the state in all public school districts.~~

~~[E.] D. [Except as provided in subsection F of this section, in] In order for a teacher to advance from licensure level 1 to level 2 and from licensure level 2 to level 3-A, a teacher who applies for licensure after June 30, 2004 must successfully meet the requirements of the state's high objective uniform standard of evaluation as provided in 6.69.4.11 NMAC.~~

~~[F. Those teachers who are in the third year of a level 1 license in the 2003-2004 school year may advance to level 2 through the rules in place prior to the adoption of this rule by the local superintendent verifying that the teacher has met the nine essential competencies required for renewal of licensure by June 30, 2004.~~

~~G. Those teachers who hold a level 2 license in the 2003-2004 school year may advance to level 3-A through the rules in place prior to the adoption of this rule by the local superintendent verifying that the teacher has met the nine essential competencies required for renewal of licensure by June 30, 2004.~~

~~H. On the effective date of this rule, teachers holding level 1, level 2, or level 3-A licenses will continue to hold those licenses at the same level and shall meet the requirements for their level of licensure as provided in 6.69.4.12 NMAC by September 1, 2006, as established through local annual evaluations.]~~

[6.69.4.8 NMAC - N, 09-30-03; A, 05-13-

05; A, 10-31-06; A, 10-31-07]

6.69.4.9 IMPLEMENTATION OF THE HIGH OBJECTIVE UNIFORM STATEWIDE STANDARD OF EVALUATION-FOR DEMONSTRATING COMPETENCE IN THE CORE ACADEMIC SUBJECTS [AND OTHER ENDORSEMENT AREAS]: ~~[To meet the requirements of subject area competence by means of the high objective uniform statewide standard of evaluation (HOUSSE), a candidate employed as a general education teacher in a school district that does not qualify for the small rural school achievement program under title VI, Part B of the No Child Left Behind Act, 20 USC 7341, must fulfill the requirements in Subsections A and B of 6.69.4.9 NMAC and either the requirements of Subsections C or D of 6.69.4.9 NMAC by June 30, 2007. A candidate employed as a general education teacher in a school district that does qualify for the small rural school achievement program under title VI, Part B of the No Child Left Behind Act, 20 USC 7341,] A teacher of the core academic subjects employed as a general education teacher in a school district that qualifies as a rural school district under the current authorization of the Elementary and Secondary Education Act of 1965 (20) U.S.C. 6301, may fulfill the requirements in Subsections A and B of 6.69.4.9 NMAC and either the requirement of Paragraphs (2)-(3) of Subsections C or Paragraphs (2)-(3) of Subsection D of 6.69.4.9 NMAC within three full school years of the date of hire as long as [he or she] the teacher is highly qualified in at least one core academic subject when hired in a qualifying rural school district. A new to the profession special education teacher employed in any school district may fulfill the requirements in Paragraphs (2)-(3) of Subsection C or Paragraphs (2)-(3) of Subsection D of 6.69.4.9 NMAC within two full school years of initial employment in any district as long as [he or she] the teacher is highly qualified in either language arts, mathematics or science when hired. The candidate must:~~

A. have successful annual evaluations for two school years prior to the evaluation, as is defined in Subsection D of 6.60.6.7 NMAC; and

B. have two complete school years of successful teaching and either;

C. complete credit hours at a regionally accredited college or university in the core academic subject in which the candidate is seeking to demonstrate competence, as follows:

(1) for K-8 elementary licensed teachers or pre K-12 special education licensed teachers teaching in a self-contained elementary classroom, 24 lower or

upper division credit hours across the elementary education core academic subjects of language arts, social studies, mathematics, and science with at least six credit hours in each core area;

(2) for K-8 elementary licensed teachers teaching in a middle school, and pre K-12 special education licensed teachers teaching in a middle or high school, 18 lower or upper division credit hours in each core academic subject the teacher teaches;

(3) for 7-12 secondary, 5-9 middle level, and pre K-12 specialty area licensed teachers teaching in a middle school, junior high school, or high school, 18 credit hours, 12 of which must be upper division in each core academic subject the teacher teaches; or

D. complete the following combination of coursework through a regionally accredited college or university and by portfolio:

(1) for K-8 licensed elementary teachers teaching in a self-contained elementary classroom, and for a pre K-12 special education licensed teachers teaching special education students at any grade level who are assessed against alternative achievement standards, 12 lower or upper division credit hours across the elementary education curriculum areas;

(2) for K-8 licensed elementary teachers teaching in a middle school, and for a pre K-12 special education licensed teachers teaching special education students in a middle school or high school, upper or lower division credit hours as follows:

(a) 12 semester hours in a single core subject area; or

(b) 15 semester hours in two core subject areas, with at least 6 hours in each one; or

(c) 18 semester hours in three core subject areas, with at least 6 hours in each one; or

(d) 24 semester hours in four core subject areas, with at least 6 hours in each one;

(3) for 7-12 secondary, 5-9 middle level, and pre K-12 specialty area licensed teachers, the credit hours, specified in Paragraph (2) of Subsection D of 6.69.4.9 NMAC all at the upper division level;

(4) demonstrate to a local panel of teachers the requirements of Sub-paragraphs (a) or (b) below:

(a) mastery of the competence in the instructional strand of the [public education department's] PED's teacher competencies and indicators for the level of licensure the candidate holds in each core academic subject in which the teacher seeks to demonstrate that [he or she] the teacher is highly qualified by submitting evidence from (1), (2) and (3) as follows:

(i) documentation from Paragraph (1) of Subsection E of 6.69.4.11

NMAC; and

(ii) observation summaries, by each panel member, of the candidate teaching in the area for which ~~he or she~~ the teacher is applying; observations by the panel may be done in person or by video; and

(iii) at least two observation summaries, completed by the candidate, of a teacher(s) teaching in the subject area for which the candidate is seeking to be highly qualified;

(b) provide an analysis of student achievement in each core academic subject in which the teacher seeks to demonstrate that ~~he or she~~ the teacher is highly qualified by submitting evidence as follows:

(i) explain (350 word maximum) the way(s) in which a class of students demonstrated their achievement (e.g., test, work sample, performance) related to a segment of instruction; include examples of different materials used and student work;

(ii) provide the criteria (350 word maximum) for determining different levels of achievement and how this was communicated to the students; the criteria may be in a handout or other means of communication to students;

(iii) to illustrate relative levels of achievement in the class, provide examples of the work of three unidentified students who represent "high," "mid range," and "low" levels of achievement; these examples may include unidentified student written or drawn work, photographs, audio recordings (5 minute maximum), or video recordings (5 minute maximum and written parental consent to video child);

(iv) explain (350 word maximum) how the three unidentified students differed in their achievement levels and how this achievement relates to the state's standards ~~and/or~~ and benchmarks;

(v) explain (350 word maximum) how this data could be taken into account in a subsequent instructional segment for the class;

(c) the local panel of teachers shall consist of two teachers:

(i) one teacher will be appointed by the principal in the school where the teacher seeking to be highly qualified is teaching; the second teacher will be appointed by the candidate;

(ii) panelists must be highly qualified, as defined in Subsection B, C or D of 6.69.4.7 NMAC, hold a current level 2 or 3-A license, and have an endorsement or license in the subject area or areas to be evaluated;

(iii) panelists may be from the candidate's same school, or same district, or from another school or district in New Mexico;

(5) both teachers on the panel must agree that the candidate has met, or exceeds, the competencies and indicators for the level of licensure the teacher being evaluated holds or that the students of the teacher being evaluated have demonstrated growth and progress in each core academic subject the teacher teaches;

(6) the panel shall submit their recommendation to the local superintendent and records of the panel's findings shall be kept on file locally and available to the public upon request; ~~verification of the panel's findings shall be submitted to the public education department in a form acceptable to the department if the candidate is seeking to add an endorsement on his/her license based on Subsection C of 6.69.4.9 NMAC;~~

~~(7) if permitted in the public education department's rules governing the subject area the candidate may be issued an endorsement in the evaluated subject area if the candidate has completed the entire process of one of the options in 6.69.4.9 NMAC].~~

[6.69.4.9 NMAC - N, 09-30-03; A, 10-14-04; A, 05-13-05; A, 10-31-06; A, 10-31-07]

6.69.4.10 IMPLEMENTATION OF THE HIGH OBJECTIVE UNIFORM STANDARD OF EVALUATION-ANNUAL:

A. No later than October 15, 2004, each school district shall adopt policies, guidelines, and procedures for annual teacher performance evaluation that meet the requirements of this rule. The annual evaluation plan will be combined with the evaluation plan for licensure advancement provided in Subsection A of 6.69.4.11 NMAC to form an overall system for teacher evaluation and support.

B. No later than forty school days after the first day of school of each school year, each teacher and his or her school principal shall establish a professional development plan for the teacher, with measurable objectives, for the coming year based on, among other things:

(1) the ~~public education department's~~ PED's nine teaching competencies and indicators for the teacher's licensure level; and

(2) the previous year's annual evaluation, if applicable; and

(3) assurance that the teacher is highly qualified in the core academic subject(s) the teacher teaches and that the district has appropriately assigned the teacher to teach in the subject(s) in which the teacher is highly qualified, as defined in this rule.

C. Annual performance evaluations shall be based on, among other things, how well the professional development plan was carried out and the measur-

able objectives were achieved.

D. The school principal shall observe each teacher's classroom or program practice at least once annually to determine the teacher's ability to demonstrate state adopted competencies and indicators for each teacher's licensure level.

E. If a level 2 or level 3-A teacher does not demonstrate essential competencies for a given school year, the school district shall provide the teacher with professional development and peer intervention, including mentoring, for a period the school principal deems necessary. If by the end of that school year the teacher still fails to demonstrate essential competencies, a district may choose not to contract with that teacher.

F. If a level 3-A teacher does not demonstrate essential competencies at level 3-A for a given school year, the school district shall provide the teacher with professional development and peer intervention, including mentoring, for a period the school principal deems necessary. If by the end of the following school year the teacher still fails to demonstrate essential level 3-A competencies, the superintendent may recommend to the secretary of education that the teacher's level 3-A license be suspended until such time as the teacher demonstrates the essential competencies at level 3-A. Depending on the outcome of any due process proceeding under the Uniform Licensing Act, Sections 61-1-1 through 61-1-31, NMSA 1978, and if the superintendent verifies that the teacher meets the standards for a level 2 license, the teacher may be issued a level 2 license during the period of level 3-A licensure suspension. A suspended level 3-A license may be reinstated by the secretary of education either upon verification by a local superintendent that the teacher now demonstrates the essential competencies at level 3-A or through the process described in 6.69.4.11 NMAC.

G. Any teacher who held a level 2 or level 3-A license prior to July 1, 2004, shall meet the requirements of the high objective uniform standard of evaluation for ~~his/her~~ the level of licensure through the annual evaluation process by September 1, 2006 or shall not be eligible for the increased base salary provided in 22-10A-11(C), NMSA 1978.

H. At least every two years, school principals shall attend a training program approved by the ~~department~~ PED to improve their teacher evaluation skills.

[6.69.4.10 NMAC - N, 09-30-03; A, 10-14-04; A, 05-13-05; A, 10-31-06; A, 10-31-07]

6.69.4.11 IMPLEMENTATION OF THE HIGH OBJECTIVE UNIFORM STANDARD OF EVALUATION-ANNUAL:

FORM STANDARD OF EVALUATION FOR ADVANCEMENT TO LEVEL 2 OR LEVEL 3 LICENSURE:

A. No later than October 15, 2004, each school district shall adopt policies, guidelines, and procedures for teacher performance evaluation for licensure advancement that meet the requirements of this rule. The licensure advancement plan will be combined with the annual evaluation plan provided in Subsection A of 6.69.4.9 NMAC to form an overall system for teacher evaluation and support.

B. With the adoption of this rule by the PED, the minimum salaries associated with licensure levels provided in Chapter 22, Article 10A, NMSA 1978 shall become effective.

C. The teacher shall develop and submit a complete professional development dossier (PDD) consisting of three strands set forth in Paragraph (2) of Subsection D of 6.69.4.11 NMAC according to the following schedule:

(1) if advancing to level 2, not earlier than three months prior to the completion of the third year at level 1;

(2) if advancing to level 3, not earlier than three months prior to the completion of the third year at level 2.

D. The PDD shall include:

(1) evidence of competence that may be collected over multiple school years, including the year the PDD is being developed;

(2) evidence in the following format that demonstrates how the teacher meets the PED's nine teacher competencies and indicators for the level of licensure to which the teacher is advancing; evidence that demonstrates how the teacher meets competencies related to an:

(a) instruction strand (competencies 1, 2, 5); and a

(b) student learning strand (competencies 3, 4, 6, and 7); and a

(c) professional learning strand (competencies 8 and 9);

(3) evidence from an evaluation strand that includes the teacher's annual evaluations from at least the two years prior to the application for advancement and the superintendent's recommendation for advancement to the next licensure level;

(4) a verification strand that includes:

(a) for a level 1 teacher advancing to level 2:

(i) verification of participation in a district's formal mentorship program;

(ii) verification of three years successful teaching experience at level 1;

(iii) verification by the superintendent that the work product in the dossier is that of the teacher and that the

data submitted is accurate;

(b) for a level 2 teacher advancing to level 3-A:

(i) verification of a post baccalaureate degree or national board professional teaching certification;

(ii) verification of a minimum three years of successful teaching experience at level 2;

(iii) verification by the superintendent that the work product in the dossier is that of the teacher and that the data submitted is accurate.

E. Evidence in the PDD competency strands:

(1) The instruction strand shall include evidence of:

(a) student achievement data; and

(b) assessment techniques and procedures; and

(c) instructional plans and materials; and

(d) examples of student work and performance; and

(e) evidence of implementation of state curriculum standards.

(2) The student learning strand shall include mandatory evidence and may include optional evidence as follows:

(a) the student learning strand shall include evidence of:

(i) adaptations/modification for diverse learners; and

(ii) evidence of effective classroom management strategies and procedures; and

(iii) classroom observation reports; and

(iv) evidence of communication with students and parents.

(b) the student learning strand may include evidence in the form of:

(i) student surveys; and/or

(ii) video tapes with reflections/analysis.

(3) The professional learning strand shall include evidence of at least one of the following:

(a) professional development activities associated with the teachers annual professional development plan (PDP); or

(b) evidence of collaborating with professional community; or

(c) parent surveys; or

(d) research publications; or

(e) professional presentations.

(4) Evidence comparable and equivalent to Paragraphs (1), (2) and (3) of Subsection E of this section may be developed through certification by the national board of professional teaching standards (NBPTS).

F. Unless special accommodations are requested in writing to the PED 30 days in advance of a submission, the PDD and associated fees in Subsection

C of 6.60.7.8 NMAC shall be submitted electronically following procedures established by the PED.

G. The PDD shall be evaluated by the superintendent of the teacher's school district and by two external reviewers, one of whom shall hold the same grade level licensure and subject area endorsement as the candidate, as follows:

(1) The superintendent will complete the verification and evaluation strands in order to make ~~his~~ a recommendation for licensure advancement and the two external reviewers will rate the three competency strands as "exceeds standards," "meets standards" or "does not meet standards in order to make their recommendations for licensure advancement."

(2) Each one of the three competency strands of a teacher's PDD reviewed by the independent reviewers must be rated as either "exceeds standards" or "meets standards" and each one of the strands completed by the superintendent must be verified and have a positive recommendation in order for the teacher to advance to the next higher level of licensure.

(3) The superintendent and the reviewers will submit the PDD to the PED or its contractor with their ratings.

(4) PED will evaluate the ratings of the superintendent and the external reviewers and approve or deny the teacher's application for licensure advancement:

(a) If one of the external reviewers rates one of the competency strands of the PDD as "exceeds standards" and the other external reviewer rates the same strand as "meets standards", the strand will be deemed passed.

(b) If one of the external reviewers rates one of the competency strands of the PDD as "does not meet standards" and the other rates the same strand as "exceeds standards", the finding will be that the candidate "meets standards" and the strand will be deemed passed.

(c) If one of the external reviewers rates one of the competency strands of the PDD as "does not meet standards" and the other rates the same strand as "meets standards," a third reviewer will resolve the discrepancy in order to determine if the strand will be passed.

(d) If both of the external reviewers rate the competency strand(s) of PDD the same, that rating will be their finding. If, however, both of the external reviewers rate the competency strand(s) of the PDD as "does not meet standards," a third trainer/reviewer may review the strand(s) to confirm or reject their ratings.

H. A candidate for licensure advancement who is not successful in the PDD may continue to submit a new PDD.

I. If a candidate for licen-

sure advancement meets or exceeds standards in one or some of the strands, but not in all of them, the teacher's score(s) of "meets standards" or "exceeds standards" may be retained for a period of two calendar years. Any resubmission of a PDD during that two-year period need only address those strands rated "does not meet standards" in order to determine a final passing score for all strands for licensure advancement.

[6.69.4.11 NMAC - N, 09-30-03; A, 05-13-05; A, 10-31-06; A, 10-31-07]

6.69.4.12 NEW MEXICO TEACHER COMPETENCIES AND INDICATORS FOR LICENSURE LEVELS 1, 2, 3:

A. New Mexico is one of the most diverse states in the nation, and this diversity is reflected in the strengths and needs of New Mexico's students. The ability of a highly qualified teacher to address the learning needs of all of New Mexico's students, including those who learn differently as a result of disability, culture, language, or socioeconomic status, forms the framework for the New Mexico teacher competencies for licensure levels 1, 2, and 3-A assessment criteria indicators.

B. Beginning July 1, 2004, the high objective standard of evaluation shall include the following standards and indicators as part of the evaluation criteria for level 1 teachers.

(1) The teacher accurately demonstrates knowledge of the content area and approved curriculum:

(a) utilizes and enhances approved curriculum;

(b) gives clear explanations relating to lesson content and procedure;

(c) communicates accurately in the content area;

(d) shows interrelatedness of one content area to another.

(2) The teacher appropriately utilizes a variety of teaching methods and resources for each area taught:

(a) provides opportunities for students to work independently, in small groups, and in large groups, as appropriate;

(b) uses a variety of methods such as demonstrations, lecture, student initiated work, group work, questioning, independent practice, etc., as appropriate;

(c) uses a variety of resources such as field trips, supplemental printed materials, manipulatives, etc., as appropriate;

(d) provides opportunities for students to apply, practice, and demonstrate knowledge and skills learned through various modalities;

(e) implements necessary modifications and adaptations in instruction and curriculum so that students with disabilities have access to the general education curriculum in the least restrictive environment.

(3) The teacher communicates with and obtains feedback from students in a manner that enhances student learning and understanding:

(a) explains and/or demonstrates the relevance of topics and activities;

(b) communicates to students the instructional intent, directions or plan at the appropriate time;

(c) establishes and states expectations for student performance;

(d) clarifies actions, directions, and explanations when students do not understand;

(e) actively solicits communication from students about their learning;

(f) communicates regularly with students about their progress.

(4) The teacher comprehends the principles of student growth, development and learning, and applies them appropriately:

(a) uses and instructs students in the use of cognitive thinking skills such as critical thinking, problem-solving, divergent thinking, inquiry, decision-making, etc.;

(b) uses teaching techniques which address student learning levels, rates, and styles;

(c) uses materials and media which address student learning levels, rates and styles;

(d) uses resources such as community service agencies, school personnel, parents, etc., to meet students' learning levels, rates, and styles.

(5) The teacher effectively utilizes student assessment techniques and procedures:

(a) uses a variety of assessment tools and strategies, as appropriate;

(b) uses information gained from ongoing assessment for remediation and instructional planning;

(c) maintains documentation of student progress;

(d) communicates student progress with students and families in a timely manner.

(6) The teacher manages the educational setting in a manner that promotes positive student behavior, and a safe and healthy environment:

(a) serves as a model for constructive behavior patterns;

(b) executes routine tasks effectively and efficiently;

(c) establishes and states expectations for student behavior;

(d) handles transitions effective-

ly;

(e) has materials and media ready for student use;

(f) minimizes distractions and interruptions;

(g) manages student behavior effectively and appropriately;

(h) identifies hazards, assesses risks, and takes appropriate action.

(7) The teacher recognizes student diversity and creates an atmosphere conducive to the promotion of positive student involvement and self-concept:

(a) demonstrates sensitivity and responsiveness to the personal ideas, learning needs, interests, and feelings of students with disabilities, and/or from culturally and linguistically diverse backgrounds (e.g., Native Americans, Hispanic Americans, African Americans, Asian Americans, as well as other recent immigrant groups.);

(b) acknowledges student performance and achievement;

(c) acknowledges that every student can learn;

(d) provides opportunities for each student to succeed;

(e) provides students with opportunities for active involvement and creativity;

(f) provides opportunities for students to be responsible for their own behavior and learning;

(g) promotes positive student/teacher relationships;

(h) encourages high student expectations;

(i) demonstrates an awareness and respect for each student's background, experience, learning ability, language and culture.

(8) The teacher demonstrates a willingness to examine and implement change, as appropriate:

(a) seeks out information on methodology, research, and current trends in education to enhance and improve the quality of learning;

(b) implements a variety of strategies to enhance learning;

(c) recognizes that change entails risk and that modifications may be needed.

(9) The teacher works ~~[productively]~~ productively with colleagues, parents, and community members:

(a) collaborates with colleagues;

(b) communicates with parents on a regular basis;

(c) uses conflict resolving strategies when necessary;

(d) involves parents and community in their learning environment;

(e) communicates in a professional manner with colleagues, parents, and community members regarding educational matters.

C. Beginning July 1, 2004, the high objective standard of evaluation shall include the following standards and indicators as part of the evaluation criteria for level 2 teachers.

(1) The teacher accurately demonstrates knowledge of the content area and approved curriculum:

(a) enhances and extends approved curriculum;

(b) gives clear explanations relating to lesson content and procedures;

(c) communicates accurately in the content area;

(d) integrates other subjects into the content curriculum.

(2) The teacher appropriately utilizes a variety of teaching methods and resources for each area taught:

(a) designs appropriate opportunities for large group, small group, and independent student learning experiences;

(b) selects from a variety of teaching methods (demonstrations, lectures, student projects, group work, independent practice) for specific instructional goals and purposes;

(c) integrates a variety of resources into instruction, including field trips, supplemental printed materials, manipulatives, and technology;

(d) demonstrates understanding and appropriate application of learning styles, modalities, and intelligences theories;

(e) designs and implements necessary modifications and adaptations in instruction and curriculum so that students with disabilities have access to the general education curriculum in the least restrictive environment.

(3) The teacher communicates with and obtains feedback from students in a manner that enhances student learning and understanding:

(a) effectively explains, demonstrates or communicates the relevance of topics and activities;

(b) consistently communicates to students the instructional intent, directions, and plans;

(c) establishes and states expectations for student performance;

(d) presents directions and explanations in a variety of ways to insure student understanding;

(e) solicits communication from students about their learning for the purposes of ongoing instructional planning;

(f) communicates regularly with students about their progress.

(4) The teacher comprehends the principles of student growth, development and learning, and applies them appropriately:

(a) consistently integrates the use of cognitive thinking skills such as critical

thinking, problem-solving, divergent thinking, inquiry, and decision-making into instruction;

(b) adapts teaching techniques to accommodate a range of student learning levels, rates, styles and special needs;

(c) adapts materials and media to address a range of student learning levels, rates, styles and special needs;

(d) selects from a variety of community service agencies, specialized school personnel, and parents to address different learning levels, rates, styles, and needs.

(5) The teacher effectively utilizes student assessment techniques and procedures:

(a) selects appropriate assessment tools and strategies for specific learning outcomes;

(b) uses formative and summative assessment for remediation and instructional planning;

(c) maintains documentation of student progress;

(d) consistently maintains communication with students and families about student progress.

(6) The teacher manages the educational setting in a manner that promotes positive student behavior, and a safe and healthy environment:

(a) identifies, explains, and models constructive behavior patterns;

(b) establishes and teaches effective and efficient routines;

(c) establishes and reinforces expectations for student behaviors that promote citizenship in a classroom community;

(d) maintains smoothness and momentum during classroom transitions;

(e) prepares and arranges material in advance for easy student accessibility;

(f) minimizes distractions and interruptions;

(g) monitors and directs student behavior effectively and appropriately;

(h) identifies hazards, assesses risks, and takes appropriate action.

(7) The teacher recognizes student diversity and creates an atmosphere conducive to the promotion of positive student involvement and self-concept:

(a) acknowledges and validates the ideas, learning needs, interests, and feelings of students with disabilities and/or from culturally and linguistically diverse backgrounds (e.g., Native Americans, Hispanic Americans, African Americans, Asian Americans, as well as other recent immigrant groups);

(b) consistently recognizes student performance and achievements;

(c) understands how students differ in their approaches to learning and adjusts instruction to meet diverse needs;

(d) designs opportunities for each student to succeed, based on individual

learning needs;

(e) designs specific activities that require active involvement and creativity;

(f) designs opportunities that require and reinforce student responsibility for learning;

(g) develops students' self-esteem, motivation, character, and sense of civic responsibility;

(h) establishes and communicates high expectations for all students;

(i) demonstrates knowledge of different student backgrounds, experiences, learning abilities, languages and cultures and incorporates this knowledge into curricular decisions and instructional methodology.

(8) The teacher demonstrates a willingness to examine and implement change, as appropriate:

(a) seeks out information on methodology, research and current trends in education to enhance and improve the quality of learning;

(b) demonstrates knowledge of best practices that enhance learning;

(c) participates in instructional improvement and school reform initiatives;

(9) The teacher works ~~[productively]~~ productively with colleagues, parents, and community members:

(a) actively promotes collegial relations with other school personnel;

(b) provides a system for interactive communication between teacher and parents;

(c) uses conflict resolution strategies as appropriate;

(d) promotes active roles for parents and community members in student learning;

(e) communicates in a professional manner with colleagues, parents, and community members regarding educational matters.

D. Beginning July 1, 2004, the high objective standard of evaluation shall include the following standards and indicators as part of the evaluation criteria for level 3-A teachers:

(1) The teacher accurately demonstrates knowledge of the content area and approved curriculum:

(a) contributes to the refinement and development of the approved curriculum;

(b) provides clear explanations relating to lesson content and procedures in multiple ways and is aware of knowledge and preconceptions that students can bring to the subject;

(c) communicates accurately in the content area and can create multiple paths to the subject matter;

(d) can articulate to students the interrelatedness of the disciplines.

(2) The teacher appropriately uti-

lizes a variety of teaching methods and resources for each area taught:

(a) designs and engages students in large group, small group, and independent work activities;

(b) demonstrates effective selection and use of a variety of methods to make knowledge accessible to all students;

(c) demonstrates effective integration of a variety of resources and learning experiences into the curriculum;

(d) designs opportunities for students to apply, practice, and demonstrate knowledge and skills based on knowledge of learning modalities, style preferences, and intelligences;

(e) engages with colleagues and parents to collaboratively design and implement necessary modifications and adaptations in instruction and curriculum so that students with disabilities have access to the general education curriculum in the least restrictive environment.

(3) The teacher communicates with and obtains feedback from students in a manner that enhances student learning and understanding:

(a) engages students in explaining and/or demonstrating the relevance of topics and activities;

(b) involves students in establishing instructional direction and plans;

(c) establishes and states expectations for student performance;

(d) presents directions and explanations in a variety of ways to insure student understanding;

(e) engages students in the analysis and evaluation of their learning and adjusts instruction based on student feedback;

(f) communicates regularly with students about their progress.

(4) The teacher comprehends the principles of student growth, development and learning, and applies them appropriately:

(a) consistently integrates the use of cognitive thinking skills such as critical thinking, problem-solving, divergent thinking, inquiry, and decision-making into instruction;

(b) selects the most effective teaching techniques to address a variety of student learning levels, rates, styles and needs as well as diverse interests and backgrounds;

(c) selects the most effective materials and media to address a variety of student learning levels, rates, styles and needs;

(d) integrates community resources, service agencies, other school personnel, parents, and community members into the curriculum.

(5) The teacher effectively uti-

lizes student assessment techniques and procedures:

(a) designs and uses multiple methods of measuring student understanding and growth;

(b) integrates assessment data from multiple sources into instructional planning and improvement;

(c) maintains documentation of student progress;

(d) develops a two-way system of communicating with students and families about student progress.

(6) The teacher manages the educational setting in a manner that promotes positive student behavior, and a safe and healthy environment:

(a) integrates the teaching of constructive, pro-social behaviors into regular instruction;

(b) establishes and teaches effective and efficient routines;

(c) engages students in establishing expectations for building a learning community in the classroom;

(d) maintains smoothness and momentum during instructional transitions;

(e) establishes an environment where materials and media are available and ready for student use;

(f) minimizes distractions and interruptions;

(g) develops a classroom management system that promotes acceptable and appropriate student behavior;

(h) identifies hazards, assesses risks and takes appropriate action.

(7) The teacher recognizes student diversity and creates an atmosphere conducive to the promotion of positive student involvement and self-concept:

(a) adjusts practice based on observation and knowledge of students with disabilities and/or from culturally and linguistically diverse groups (e.g., Native Americans, Hispanic Americans, African Americans, Asian Americans, as well other recent immigrant groups);

(b) creates curriculum designs that include student performance and acknowledgment of achievement;

(c) demonstrates an awareness of the influences of context disability, language, and culture on student learning;

(d) provides accommodations and interventions that allow each student to succeed based on individual learning needs;

(e) engages students in learning experiences that promote creativity, critical and divergent thinking;

(f) designs opportunities that require and reinforce student responsibility for learning;

(g) fosters the development of respect for individual, cultural, linguistic, disability, and religious differences;

(h) engages students in setting high standards for performance;

(i) treats all students equitably, recognizing and planning for individual differences in cultures, languages, learning abilities, backgrounds, and experiences.

(8) The teacher demonstrates a willingness to examine and implement change, as appropriate:

(a) demonstrates the ability to reason, take multiple perspectives, be creative, and take reasoned risks to improve teaching;

(b) collaborates with colleagues in the research and design of improved instructional strategies;

(c) assumes a leadership role in the study and implementation of instructional improvement and school reform initiatives.

(9) The teacher works productively with colleagues, parents, and community members:

(a) serves as a role model for collaborative working relations across the profession;

(b) demonstrates knowledge of specific school, family, and community resources that can support student learning;

(c) assists colleagues in the use of conflict resolution strategies;

(d) engages parents and community members productively in the work of the school;

(e) works collaboratively and creatively with colleagues, parents, and community members regarding educational matters.

E. A school district may select and/or develop additional standards and indicators determined appropriate by the local school district to complete the local teacher performance evaluation system.

F. Each school district shall provide training in evaluation of performance, classroom observation techniques, conference skills, and growth planning to all teachers and personnel assigned performance evaluation duties.

G. Teachers whose leadership roles are primarily outside of the classroom will be evaluated on their ability to lead other teachers in meeting the competencies and indicators in their level of licensure.

[6.69.4.12 NMAC - N, 09-30-03; A, 10-14-04; A, 10-31-06; A, 10-31-07]

**NEW MEXICO
DEPARTMENT OF PUBLIC
SAFETY**

**TRAINING AND RECRUITING
DIVISION**

Law Enforcement Academy

This is an amendment to 10.29.7 NMAC, Sections 7, 8 and 9, effective October 31, 2007.

10.29.7.7 DEFINITIONS:
[Reserved]

A. "Academy" means the New Mexico law enforcement academy.

B. "NHTSA" means the national highway traffic safety administration.

[10.29.7.7 NMAC - N, 10/31/07]

**10.29.7.8 [2006-2007] 2008-2009
IN-SERVICE TRAINING CYCLE FOR
LAW ENFORCEMENT OFFICERS**

~~**A.** A minimum of twenty (20) hours of maintenance training/education may apply toward the 40-hour requirement. This is training/education which insures that previously learned knowledge, skills, and abilities of a critical nature are maintained at an acceptable level of proficiency. Four (4) hours shall be in safe pursuit procedures pursuant to Section 29-20-3 NMSA 1978. A minimum of one (1) hour shall be in domestic abuse incident training pursuant to Section 29-7-4.1 NMSA 1978. For all officers who may be involved in the arrest of DWI offenders, eight (8) hours shall be in NHTSA approved standardized field sobriety testing (SFST) protocols. For SFST instructors, sixteen (16) hours shall be in NHTSA approved SFST instructor recertification. A minimum of two (2) hours shall be in the detection, investigation and reporting of a crime motivated by hate pursuant to Section 31-18B-5 NMSA 1978. Remaining hours may include firearms, first aid, defensive tactics, driving, and DWI measuring devices or other areas where periodic maintenance is measured and/or tested. Any training conducted in this area must be accredited by the academy.~~

B. A minimum of twenty (20) hours are required of advanced and specialized training/education. This is training/education which is designed to improve upon or add to the knowledge, skills, and abilities of the law enforcement officer. Of the twenty hours above, a minimum of eight (8) hours are required from one or any combination of the following subjects: cultural awareness, critical incident response, ethics, legal update, first line supervision, mid management, executive management, animal cruelty, amber alert, racial profiling, homeland security, natural disaster preparedness, and identity theft.

~~Training courses that are conducted in critical incident response or amber alert must be accredited by the academy.]~~

A. All New Mexico certified law enforcement officers shall receive a minimum of forty (40) hours of training bi-annually.

(1) A minimum of four (4) hours shall be in safe pursuit pursuant to Section 29-20-3 NMSA 1978.

(2) A minimum of one (1) hour shall be in domestic abuse incident training pursuant to Section 29-7-4.1 NMSA 1978.

(3) A minimum of two (2) hours shall be in the detection, investigation and reporting of a crime motivated by hate pursuant to Section 31-18B-5 NMSA 1978.

(4) For all officers who may be involved in the arrest of DWI offenders as a normal part of their duties, eight (8) hours shall be in NHTSA approved standardized field sobriety testing (SFST) protocols.

(5) A minimum of four (4) hours shall be in ensuring child safety upon arrest pursuant to the Law Enforcement Training Act and Criminal Procedure Act.

(6) Eight (8) hours of academy approved firearms training. This curriculum will include: safety briefing, fundamentals of marksmanship, shooting on the move, shooting from barricade/vehicle positions (standing, kneeling and prone, weak and strong side), malfunction clearances, reloading (tactical and speed), engaging multiple adversaries, decisional shooting, one handed (strong and weak side) malfunction clearances and reloading, weapons retention/disengagement shooting, and shooting with flashlight techniques. This training shall be divided into four (4) hours of day and four (4) hours of night training. This training can include the use of simunition, airsoft or other "force-on-force" training equipment that utilizes realistic police weapons firing non-lethal munitions such as marking cartridges or pellets.

(7) Remaining hours may be in maintenance or advanced areas.

~~**C.**~~ **B.** Required training may be received through the following means.

(1) The advanced training bureau will contract for course instruction at the regional training sites.

(2) Where scheduling will allow, the training and recruiting division will assign staff to instruct the course at the regional training sites.

(3) Curriculum developed by the training and recruiting division will be provided to individual agencies upon request for their own certified instructors to present to their officers, provided the instructor is qualified in the subject matter.

(4) The training and recruiting division will provide instructional video tapes which can be loaned to agencies. Agency instructors or facilitators will con-

duct the training using the same guidelines for other video training. Facilitator guidelines and exams will accompany the video tape.

(5) Individual agencies develop curriculum for review and approval (accreditation) by the academy which meets the criteria established by the board.

~~**D.**~~ **C.** This five-pronged approach gives all agencies the flexibility they need to address individual training needs. It also allows the board to implement a planned program of in-service training that is responsive to the changing demands placed upon law enforcement and the opportunity to have statewide consistency in certain critical areas.

~~**E.**~~ **D.** Implementation is to begin on ~~January 1, 2006. This two-year period consists of the twenty (20) hours of maintenance training required in Subsection A of 10.29.7.8 NMAC, and the twenty (20) hours of advanced training required in Subsection B of 10.29.7.8 NMAC~~ January 1, 2008.

~~**F.**~~ **E.** Officers obtaining certification between January 1, ~~2006~~ 2008 and December 31, ~~2006~~ 2008, will be required to obtain one-half of the in-service training requirements. Officers obtaining certification between January 1, ~~2007~~ 2009, and December 31, ~~2007~~ 2009, will be required to meet the next two-year requirement which will go into effect on January 1, ~~2008~~ 2010. This policy will apply in subsequent two-year cycles. Officers transferring from one agency to another will carry with them the responsibility for in-service training.

[1/30/93, 12/15/93, 1/17/94, 12/7/95, 10/1/97, 1/1/98, 1/1/00; 10.29.7.8 NMAC - Rn, 10 NMAC 29.7.8, 7/1/01; A, 1/1/02; A, 6/14/02; A, 01/01/04; A, 04/15/04; A, 12/30/05; A, 12/14/06; A, 10/31/07]

**10.29.7.9 [2006-2007] 2008-2009
TRAINING CYCLE FOR TELECOM-
MUNICATORS**

A. Eight (8) hours of maintenance training/education may apply towards the 20-hour requirement. This is training/education which insures that previously learned knowledge, skills, and abilities of a critical nature are maintained at an acceptable level of proficiency. NCIC-NMLETs, CPR, call handling, emergency medical dispatching are examples of areas where periodic maintenance is measured and/or tested.

B. A minimum of eight (8) hours are required of advanced and specialized training/education. This is training/education which is designed to improve upon or add to the knowledge, skills, and abilities of the telecommunicator. Any accredited advanced, specialized, departmental in-service, college, or video

training would qualify.

C. A minimum of four (4) hours are required from one or any combination of the following subjects: cultural awareness, stress/anger management, domestic violence, critical incident response, ethics, suicide call handling, violence in the work place, legal update and amber alert.

D. Required training may be received through the following means:

(1) The [advanced training] CIRT bureau will [contract] arrange for course instruction at [the] regional training sites.

(2) Where scheduling will allow, the training and recruiting division will assign staff to instruct the course at [the] regional training sites.

(3) The curriculum will be developed by the training and recruiting division and provided to individual agencies for their own certified instructors to present to their telecommunicators, provided the instructor is qualified in the subject matter.

(4) The training and recruiting division will produce instructional video tapes which can be loaned to agencies. Agency instructors will facilitate the training using the same guidelines for other video training. Facilitator guidelines and exams would accompany the video tape.

(5) Individual agencies develop curriculum for review and approval (accreditation) by the academy which meets the criteria established by the board.

E. This five-pronged approach gives all agencies the flexibility they need to address individual training needs. It also allows the board to implement a planned program of in-service training that is responsive to the changing demands placed upon telecommunicators and the opportunity to have statewide consistency in certain critical areas.

F. Implementation is to begin on January 1, [2006] 2008. This two-year period consists of the eight (8) hours of maintenance training required in Subsection A of 10.29.7.9 NMAC, the eight (8) hours of advanced training required in Subsection B of 10.29.7.9 NMAC, and the four (4) hours of training required in Subsection C of 10.29.7.9 NMAC.

G. Telecommunicators obtaining certification between January 1, [2006] 2008 and December 31, [2006] 2008, will be required to obtain one-half of the in-service training requirement. Telecommunicators obtaining certification between January 1, [2007] 2009, and December 31, [2007] 2009, will be required to meet the next two-year requirement which will go into effect on January 1, [2008] 2010. This policy will apply in subsequent two-year cycles. Telecommunicators transferring from one

agency to another will carry with them the responsibility for in-service training.

[10.29.7.9 NMAC - N, 01/01/04; A, 12/30/05; A, 10/31/07]

**NEW MEXICO
DEPARTMENT OF PUBLIC
SAFETY
TRAINING AND RECRUITING
DIVISION
Law Enforcement Academy**

This is an amendment to 10.29.9 NMAC, Section 12, effective October 31, 2007.

10.29.9.12 PSYCHOLOGICAL EXAMINATION

A. Procedure

(1) Prior to admission to training and/or certification as a law enforcement officer in the state of New Mexico, it shall be necessary for each applicant to be examined by a licensed/certified psychologist who shall certify to the individual's emotional and mental condition on a form prescribed by the director and entitled "mental examination certification".

(2) Private firms who administer psychological examinations for law enforcement officers shall be acceptable if, however, a qualified representative as stated in Paragraph 1 of Subsection A of 10.29.9.12 NMAC completes the appropriate form as prescribed by the director.

(3) The applicant shall also prepare and submit a form prescribed by the director and entitled "psychological statement of applicant".

(4) False or incorrect statements in either form are grounds for revocation of any certificate granted.

(5) Evaluations cannot be more than one year old for admission/certification purposes.

(6) The psychological evaluation/written report will be required to be attached to the LEA-4 form. The written evaluation shall be returned to the department head at the time of certification and shall not be maintained in student training files.

(7) The applicant shall not hold the privilege of obtaining the evaluation; evaluations are the property of the referring agency and shall be held in the strictest of confidence. A self-sponsored applicant may hold the privilege of obtaining the evaluation however, the original report must still be sent directly to the academy upon completion by the psychologist.

(8) If any information concerning psychological screening/evaluation provided to the director or the person evaluating the applicant's suitability is found to be false or not truthful, the applicant will be

either refused enrollment or if certified, decertified in accordance with 10.29.1.10 NMAC through 10.29.1.17 NMAC.

(9) Applicant failure of psychological examination must be reported to the New Mexico law enforcement academy within 30 days.

B. Screening process

(1) Purpose: The intent of these guidelines is to set minimally acceptable standards for pre-employment psychological testing of persons seeking certification as peace officers in New Mexico.

(2) Examiner standard: Pre-employment psychological testing shall be conducted by a licensed/certified psychologist. In the event the psychologist does not have appropriate training in this area, he/she should seek supervision as per the guidelines of the American psychological association ethical standards and code of conduct.

(3) Overview of process: At a minimum, the pre-employment psychological testing process shall consist of the following:

- (a) psychological testing
- (b) face-to-face interview
- (c) written narrative report
- (d) completed New Mexico LEA-4 form

(e) informed consent/release of information form

(4) Psychological testing: The pre-employment psychological testing shall include, at a minimum, testing across the following areas:

(a) a measure of reading ability such as the WRAT, the Nelson-Denny reading test, or other comprehensive measure which yields a grade-level score;

(b) a measure of psychopathology, such as the MMPI-2, the PAI or the Millon-3;

(c) a measure of normal personality functioning, such as the 16PF, the LEADER or the Inwald personality inventory;

(5) Interview: The interview shall be conducted in person by the licensed/certified psychologist in a face-to-face setting with the candidate. At a minimum, the interview will cover the following areas:

- (a) a brief mental status exam;
- (b) gather or review a social history, to include relevant information regarding early development, schooling, military service, job history and potential problems issues, such as drug and alcohol use, driving, fighting, domestic violence, and past critical life events;

(c) explore areas of judgment and reliability, such as impulse control, communication, appropriate use of force, social skills, common sense, and credit history;

(d) any other aspects of personal development (i.e. medical history) that the

examiner deems important.

(6) **Written report:** The report shall incorporate all information gathered in the interview and testing. Any clinically significant elevations in test scores shall be discussed and their impact upon job performance explored. The examiner should address the ability of the candidate to perform the essential job functions, some of which may be unique to the sponsoring agency. If the candidate is not recommended, the report should enumerate which essential job functions he/she is incapable of performing.

(7) All psychologists performing pre-employment testing must conform to the guidelines of the American psychological association regarding storage of records.

C. Rejection of applicant and subsequent psychological evaluation within twelve months

(1) In the event an applicant receives a psychological rejection a subsequent or additional psychological evaluation may only be obtained as provided for in Paragraph (1) of Subsection D of this section, and this subsequent psychological evaluation must first be approved by the director through the appeal process as outlined and provided for in Paragraph (1) of Subsection D of this section. This evaluation must be requested within thirty (30) days of the rejection.

(2) A psychological evaluation obtained without the approval of the director within twelve (12) months of the rejection will not be accepted.

(3) Any rejected applicant who does not appeal the rejection may reapply to a New Mexico law enforcement agency twelve months from the signature date of the rejection.

[C] D. Appeal process

(1) In the event an applicant receives a rejection, the applicant or agency may request that the rejection be reviewed [c] within 30 days of signature date [y] [may request that the rejection be reviewed]. This request shall be [c] submitted to the New Mexico law enforcement academy director [~~must be~~] in writing and state the reason that an appeal is warranted.

(a) Reviewing authority will be a New Mexico licensed psychologist(s) designated by the director.

(b) Results of this review will be communicated in writing to the New Mexico law enforcement academy.

(2) If the reviewer concurs with the rejection, the applicant will be eligible to reapply to a New Mexico law enforcement agency twelve months from the signature date of the original evaluation.

(3) If, in the judgment of the reviewer, a second psychological opinion is warranted.

(a) The second opinion will be

rendered by a New Mexico licensed psychologist chosen by the New Mexico law enforcement academy director or his/her designee.

(b) Psychologist will review all test data and other information that was available to the initial psychologist (i.e., background investigation and polygraph results).

(c) The second evaluation, at minimum, will follow the guidelines for pre-employment evaluations as outlined by the New Mexico law enforcement academy. The psychologist may review the original test data and will use, at a minimum, one additional testing instrument for the second evaluation.

(d) Psychologist may request other information from the applicant, the agency, or the New Mexico law enforcement academy prior to conducting the evaluation.

(e) The cost of this evaluation will be borne by the agency or the applicant.

(f) If the results of the second evaluation are negative, the applicant may reapply to a New Mexico law enforcement agency twelve months from the signature date of the second opinion.

(g) If the results of the second evaluation are positive, the applicant's name will be removed from the list of failed applicants.

[12/4/83...12/15/93; 10.29.9.12 NMAC - Rn & A, 10 NMAC 29.9.12, 4/30/01; A, 10/31/07]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
FINANCIAL INSTITUTIONS
DIVISION**

12.18.7 NMAC, Terms and Conditions of Payday Loan Agreements (filed 07/31/06) is repealed and replaced by 12.18.7 NMAC, Terms and Conditions of Payday Loan Agreements, effective 11/01/07.

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
FINANCIAL INSTITUTIONS
DIVISION**

**TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 18 LOAN COMPANIES
PART 7 TERMS AND CONDITIONS OF PAYDAY LOAN AGREEMENTS**

12.18.7.1 ISSUING AGENCY:
Financial Institutions Division of the

Regulation and Licensing Department.
[12.18.7.1 NMAC - Rp, 12.18.7.1 NMAC, 11/01/07]

12.18.7.2 SCOPE: Small loan licensees conducting payday loan business in the state of New Mexico.
[12.18.7.2 NMAC - Rp, 12.18.7.2 NMAC, 11/01/07]

12.18.7.3 STATUTORY AUTHORITY: Section 58-15-11 NMSA 1978.
[12.18.7.3 NMAC - Rp, 12.18.7.3 NMAC, 11/01/07]

12.18.7.4 DURATION: Permanent.
[12.18.7.4 NMAC - Rp, 12.18.7.4 NMAC, 11/01/07]

12.18.7.5 EFFECTIVE DATE: November 1, 2007 unless a later date is cited at the end of a section.
[12.18.7.5 NMAC - Rp, 12.18.7.5 NMAC, 11/01/07]

12.18.7.6 OBJECTIVE: The objective of this part is to establish regulations governing the conduct of small loan licensees who provide payday loan products.
[12.18.7.6 NMAC - Rp, 12.18.7.6 NMAC, 11/01/07]

12.18.7.7 DEFINITIONS: [RESERVED]
[12.18.7.7 NMAC - Rp, 12.18.7.7 NMAC, 11/01/07]

12.18.7.8 EXEMPTIONS: The exemption from the New Mexico Small Loan Act of 1955 provided by Section 58-15-3B shall not apply to a loan or line of credit in excess of two thousand five hundred dollars (\$2,500) if the borrower, or anyone acting for the benefit of the borrower, provides, as a condition of the loan, a debit authorization, draft authorization, wage assignment or a postdated check. If the borrower, or the person acting for the benefit of the borrower, chooses to provide a wage assignment, or a debit or draft authorization, such authorization may be revoked at any time upon the written request of the person providing the authorization. If the borrower, or the person acting for the benefit of the borrower, has provided one or more post dated checks, any such checks that have not been deposited shall be returned upon the written request of the person providing such checks.
[12.18.7.8 NMAC - N, 11/01/07]

12.18.7.9 HEARING PROCEDURES:
A. Venue for all hearings

held pursuant to the New Mexico Small Loan Act of 1955 shall be in Santa Fe, New Mexico unless the director, upon motion by a party, finds that it would be appropriate to hold the hearing elsewhere in New Mexico.

B. Service of subpoenas, summary orders, findings, and final orders shall be made either:

- (1) personally;
- (2) by certified mail, return receipt requested, sent to the last known address of the person; or
- (3) by such other means as are reasonably calculated to give actual notice.

C. Upon written request to another party, any party is entitled to:

- (1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and
- (2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

D. Default orders: A respondent that has received actual or constructive notice of a hearing having been set and fails to appear, either in person or through counsel, at the time and place set for such hearing shall be deemed to have admitted the allegations set forth in the summary order or notice of intent that was entered in the matter before the hearing officer and shall be deemed to have consented to entry of a final order.

[12.18.7.9 NMAC - N, 11/01/07]

12.18.7.10 PROOF OF GROSS

MONTHLY INCOME: Any licensee who makes a payday loan as defined in Section 58-15-2H shall retain a copy of the documentation used to determine the consumer's gross monthly income as required by Section 58-15-32A.

[12.18.7.10 NMAC - Rp, 12.18.7.8 NMAC, 11/01/07]

12.18.7.11 CALCULATION OF ADMINISTRATIVE FEES FOR PAY-DAY LOANS:

The administrative fee of fifteen dollars and fifty cents (\$15.50) per one hundred dollars (\$100) of principal permitted by Section 58-15-33B shall be prorated for principal amounts not evenly divisible by 100. The following chart exemplifies the administrative fee permitted on loans from \$100 to \$2,500 in \$5.00 increments.

Principal Amount	Administrative Fee
100	15.5
105	16.27
110	17.05
115	17.82
120	18.6
125	19.37

130	20.15	460	71.3
135	20.92	465	72.07
140	21.7	470	72.85
145	22.47	475	73.62
150	23.25	480	74.4
155	24.02	485	75.17
160	24.8	490	75.95
165	25.57	495	76.72
170	26.35	500	77.5
175	27.12	505	78.27
180	27.9	510	79.05
185	28.67	515	79.82
190	29.45	520	80.6
195	30.22	525	81.37
200	31	530	82.15
205	31.77	535	82.92
210	32.55	540	83.7
215	33.32	545	84.47
220	34.1	550	85.25
225	34.87	555	86.02
230	35.65	560	86.8
235	36.42	565	87.57
240	37.2	570	88.35
245	37.97	575	89.12
250	38.75	580	89.9
255	39.52	585	90.67
260	40.3	590	91.45
265	41.07	595	92.22
270	41.85	600	93
275	42.62	605	93.77
280	43.4	610	94.55
285	44.17	615	95.32
290	44.95	620	96.1
295	45.72	625	96.87
300	46.5	630	97.65
305	47.27	635	98.42
310	48.05	640	99.2
315	48.82	645	99.97
320	49.6	650	100.75
325	50.37	655	101.52
330	51.15	660	102.3
335	51.92	665	103.07
340	52.7	670	103.85
345	53.47	675	104.62
350	54.25	680	105.4
355	55.02	685	106.17
360	55.8	690	106.95
365	56.57	695	107.72
370	57.35	700	108.5
375	58.12	705	109.27
380	58.9	710	110.05
385	59.67	715	110.82
390	60.45	720	111.6
395	61.22	725	112.37
400	62	730	113.15
405	62.77	735	113.92
410	63.55	740	114.7
415	64.32	745	115.47
420	65.1	750	116.25
425	65.87	755	117.02
430	66.65	760	117.8
435	67.42	765	118.57
440	68.2	770	119.35
445	68.97	775	120.12
450	69.75	780	120.9
455	70.52	785	121.67

790	122.45	1125	174.37	1460	226.3
795	123.22	1130	175.15	1465	227.07
800	124	1135	175.92	1470	227.85
805	124.77	1140	176.7	1475	228.62
810	125.55	1145	177.47	1480	229.4
815	126.32	1150	178.25	1485	230.17
820	127.1	1155	179.02	1490	230.95
825	127.87	1160	179.8	1495	231.72
830	128.65	1165	180.57	1500	232.5
835	129.42	1170	181.35	1505	233.27
840	130.2	1175	182.12	1510	234.05
845	130.97	1180	182.9	1515	234.82
850	131.75	1185	183.67	1520	235.6
855	132.52	1190	184.45	1525	236.37
860	133.3	1195	185.22	1530	237.15
865	134.07	1200	186	1535	237.92
870	134.85	1205	186.77	1540	238.7
875	135.62	1210	187.55	1545	239.47
880	136.4	1215	188.32	1550	240.25
885	137.17	1220	189.1	1555	241.02
890	137.95	1225	189.87	1560	241.8
895	138.72	1230	190.65	1565	242.57
900	139.5	1235	191.42	1570	243.35
905	140.27	1240	192.2	1575	244.12
910	141.05	1245	192.97	1580	244.9
915	141.82	1250	193.75	1585	245.67
920	142.6	1255	194.52	1590	246.45
925	143.37	1260	195.3	1595	247.22
930	144.15	1265	196.07	1600	248
935	144.92	1270	196.85	1605	248.77
940	145.7	1275	197.62	1610	249.55
945	146.47	1280	198.4	1615	250.32
950	147.25	1285	199.17	1620	251.1
955	148.02	1290	199.95	1625	251.87
960	148.8	1295	200.72	1630	252.65
965	149.57	1300	201.5	1635	253.42
970	150.35	1305	202.27	1640	254.2
975	151.12	1310	203.05	1645	254.97
980	151.9	1315	203.82	1650	255.75
985	152.67	1320	204.6	1655	256.52
990	153.45	1325	205.37	1660	257.3
995	154.22	1330	206.15	1665	258.07
1000	155	1335	206.92	1670	258.85
1005	155.77	1340	207.7	1675	259.62
1010	156.55	1345	208.47	1680	260.4
1015	157.32	1350	209.25	1685	261.17
1020	158.1	1355	210.02	1690	261.95
1025	158.87	1360	210.8	1695	262.72
1030	159.65	1365	211.57	1700	263.5
1035	160.42	1370	212.35	1705	264.27
1040	161.2	1375	213.12	1710	265.05
1045	161.97	1380	213.9	1715	265.82
1050	162.75	1385	214.67	1720	266.6
1055	163.52	1390	215.45	1725	267.37
1060	164.3	1395	216.22	1730	268.15
1065	165.07	1400	217	1735	268.92
1070	165.85	1405	217.77	1740	269.7
1075	166.62	1410	218.55	1745	270.47
1080	167.4	1415	219.32	1750	271.25
1085	168.17	1420	220.1	1755	272.02
1090	168.95	1425	220.87	1760	272.8
1095	169.72	1430	221.65	1765	273.57
1100	170.5	1435	222.42	1770	274.35
1105	171.27	1440	223.2	1775	275.12
1110	172.05	1445	223.97	1780	275.9
1115	172.82	1450	224.75	1785	276.67
1120	173.6	1455	225.52	1790	277.45

1795	278.22	2125	329.37
1800	279	2130	330.15
1805	279.77	2135	330.92
1810	280.55	2140	331.7
1815	281.32	2145	332.47
1820	282.1	2150	333.25
1825	282.87	2155	334.02
1830	283.65	2160	334.8
1835	284.42	2165	335.57
1840	285.2	2170	336.35
1845	285.97	2175	337.12
1850	286.75	2180	337.9
1855	287.52	2185	338.67
1860	288.3	2190	339.45
1865	289.07	2195	340.22
1870	289.85	2200	341
1875	290.62	2205	341.77
1880	291.4	2210	342.55
1885	292.17	2215	343.32
1890	292.95	2220	344.1
1895	293.72	2225	344.87
1900	294.5	2230	345.65
1905	295.27	2235	346.42
1910	296.05	2240	347.2
1915	296.82	2245	347.97
1920	297.6	2250	348.75
1925	298.37	2255	349.52
1930	299.15	2260	350.3
1935	299.92	2265	351.07
1940	300.7	2270	351.85
1945	301.47	2275	352.62
1950	302.25	2280	353.4
1955	303.02	2285	354.17
1960	303.8	2290	354.95
1965	304.57	2295	355.72
1970	305.35	2300	356.5
1975	306.12	2305	357.27
1980	306.9	2310	358.05
1985	307.67	2315	358.82
1990	308.45	2320	359.6
1995	309.22	2325	360.37
2000	310	2330	361.15
2005	310.77	2335	361.92
2010	311.55	2340	362.7
2015	312.32	2345	363.47
2020	313.1	2350	364.25
2025	313.87	2355	365.02
2030	314.65	2360	365.8
2035	315.42	2365	366.57
2040	316.2	2370	367.35
2045	316.97	2375	368.12
2050	317.75	2380	368.9
2055	318.52	2385	369.67
2060	319.3	2390	370.45
2065	320.07	2395	371.22
2070	320.85	2400	372
2075	321.62	2405	372.77
2080	322.4	2410	373.55
2085	323.17	2415	374.32
2090	323.95	2420	375.1
2095	324.72	2425	375.87
2100	325.5	2430	376.65
2105	326.27	2435	377.42
2110	327.05	2440	378.2
2115	327.82	2445	378.97
2120	328.6	2450	379.75

2455	380.52
2460	381.3
2465	382.07
2470	382.85
2475	383.62
2480	384.4
2485	385.17
2490	385.95
2495	386.72
2500	387.5

[12.18.7.11 NMAC - Rp, 12.18.7.8 NMAC, 11/01/07]

12.18.7.12 PAYDAY LOAN PRODUCTS - PROHIBITED ACTS:

A. The term “debt authorizations” as used in Section 58-15-34J includes debit authorizations and draft authorizations.

B. A licensee shall not deposit a post dated check before the date stated on the face of the check.

[12.18.7.12 NMAC - Rp, 12.18.7.10 NMAC, 11/01/07]

12.18.7.13 DISCLOSURE OF CONSUMER’S RIGHT TO PAYMENT PLAN:

Licensees who offer payday loan products shall provide the consumer with a notice of the consumer’s right to enter into a payment plan at the time such payday loan is made as provided by Section 58-15-35. Such notice shall be on a form prescribed by the director. The licensee shall give a copy of the form to the consumer and retain a copy in the licensee’s file. In addition to providing the written form to the consumer, the licensee shall read the notice orally to the consumer in either English or Spanish at the option of the consumer.

[12.18.7.13 NMAC - Rp, 12.18.7.12 NMAC, 11/01/07]

12.18.7.14 PAYDAY LOAN VERIFICATION: Before entering into a payday loan agreement, a licensee shall:

A. conduct a search on the database of a certified consumer reporting service to determine the consumer’s eligibility for a payday loan; the search shall be based on the consumer’s date of birth and one of the following: social security number; alien registration number; or individual tax identification number (ITIN);

B. if the consumer is eligible for a payday loan, enter all of the required information necessary to have the payday loan registered on the database of the certified consumer reporting service;

C. if the certified consumer reporting service indicates that the proposed payday loan is eligible for funding, the licensee shall record a transaction identification number, generated by the certified consumer reporting service, on the

loan document before entering into the payday loan.

[12.18.7.14 NMAC - Rp, 12.18.7.14 NMAC, 11/01/07]

12.18.7.15 MAINTENANCE OF PAYDAY LOAN INFORMATION:

A. Licensees who provide payday loan products shall immediately update all information that they have entered on the database of the certified consumer reporting service, if they become aware of any changes to information regarding the transaction or the identity of the borrower.

B. Licensees who provide payday loan products shall immediately update the information stored on the database of the certified consumer reporting service whenever:

(1) a payment on the payday loan has been made, including the date on which the payment check was deposited by the licensee or the date the ACH was submitted; if the payment completes the consumer's payment obligations under the payday loan product, the licensee shall indicate that the transaction is closed;

(2) a consumer's check or ACH submission is returned to the lender as not collected and shall specify the return date; in addition, the licensee shall update the status of the payday loan product to change the status of the loan to "open" or "outstanding" if such status has changed.

C. If a consumer elects to rescind a payday loan agreement pursuant to Section 58-15-32C, the licensee shall immediately update the database of the certified consumer reporting service to indicate that the advance was rescinded, no fees were charged to the consumer and that the loan status is changed to "closed."

[12.18.7.15 NMAC - Rp, 12.18.7.14 NMAC, 11/01/07]

12.18.7.16 INFORMATION REGARDING CONSUMER INELIGIBILITY:

If an inquiry to the certified consumer reporting service results in a consumer being deemed ineligible for a proposed payday loan, the certified consumer reporting service shall provide notification to the licensee stating that the consumer is ineligible for such loan and further providing contact information regarding the consumer reporting service to enable the consumer to directly contact the consumer reporting service.

[12.18.7.16 NMAC - N, 11/01/07]

HISTORY OF 12.18.7 NMAC: [RESERVED]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.1.4 NMAC, Sections 10 and 12, effective 10/31/07.

3.1.4.10 DUE DATES AND TIMELINESS

A. FILING RETURNS - DUE DATE: A taxpayer becomes liable for tax as soon as the taxable event occurs; payment is not due, however, until on and after the date established by tax acts for the payment of tax. The statutory words "and after" used in the preceding sentence mean that taxes remain due until paid. A taxpayer becomes liable for interest if the tax is not paid when it becomes due. If the tax is not paid when it becomes due or if a report is not filed when due because of negligence of the taxpayer or taxpayer's representative, the taxpayer will also become liable for penalty. The fact that a taxpayer has not registered as a taxpayer is not material to the taxpayer's liability for payment of tax.

B. TIMELINESS OF ELECTRONIC TRANSMISSIONS: Notices, returns and applications authorized or required to be made or given by electronic transmission, are timely if the notice, return or application is electronically transmitted to the department and accepted on or before the last date prescribed for filing the notice, return or application. Accordingly, the sender who relies upon the applicability of Section 7-1-13 NMSA 1978 assumes the responsibility to provide the department proof that the electronic transmission to the department was initiated on or before the last date prescribed for filing the notice, return or application.

~~B.~~ C. DETERMINATION OF TIMELINESS:

(1) Notices, returns, applications and payments, other than payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by mail are timely if the postmark on the envelope made by the United States postal service bears the date on or before the last date prescribed for filing the notice, return or application or for making the payment. The date affixed on an envelope by a postage meter stamp will be considered the postmark date if it is not superseded by a postmark made by the United States postal service. If the postmark does not bear a date on or before the last date prescribed for filing the notice, return or application, or for making the payment, the notice, return, application or payment will be presumed to be late. Accordingly, the sender who relies upon the applicability of Section 7-1-9 NMSA 1978 assumes the responsibility that the postmark will bear a date on or before

the last date prescribed for filing the notice, return or application, or for making the payment.

(2) If a mailing is not received by the department, the contents of the mailing are not timely. If an envelope is improperly addressed and is returned to the sender by the post office, there has been no timely mailing within the meaning of the statute. The postmark date on the improperly addressed envelope will not be deemed the date of receipt by the department.

(3) A facsimile transmittal of a notice, return or application will be considered a timely filing of the notice, return or application only if:

(a) the facsimile is received by the due date for filing the notice, return or application; and

(b) the original is delivered by the due date or, if mailed, postmarked on or before the due date.

~~C.~~ D. ILLEGIBLE POST-MARK:

(1) If the postmark on the envelope is not legible and the contents are received by the department by the second business day following the due date, filing of the return, payment or other action will be deemed timely. If the contents are received by the department after the second business day following the due date, the person who is required to file notices, returns or applications, or make payments, has the burden of proving the time when the postmark was made.

(2) The provisions of Subsection ~~C.~~ D of 3.1.4.10 NMAC apply only to actions required or permitted to be performed by mail.

(3) If the notice, return, application or payment other than payments specified by Section 7-1-13.1 NMSA 1978 is sent or delivered to the department by any means other than by mailing with the United States postal service, it must be received by the department on or before the due date for filing the notice, return or application or making the payment.

~~D.~~ E. SATURDAY, SUNDAY OR HOLIDAY DUE DATE:

(1) If the last date for filing notices, returns or applications or for making payment of taxes falls on Saturday, Sunday or a state of New Mexico or national holiday, the filing of notices, returns and applications or the making of the payment of taxes, other than payments specified by Section 7-1-13.1 NMSA 1978, shall be considered timely if postmarked on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

(2) Example: The due date for taxpayers to file gross receipts tax returns for April receipts is May 25. If May 25th is a Saturday and the following Monday is Memorial Day, a legal holiday designated in

Section 12-5-2 NMSA 1978, the due date for filing the gross receipts tax returns is Tuesday, May 28th. The first banking day preceding Tuesday, May 28th is Friday, May 24th.

[E.] F. STATE OBSERVANCE OF STATE HOLIDAY ON DAY OTHER THAN THAT DESIGNATED FOR PUBLIC OBSERVANCE:

(1) Whenever the New Mexico state government and its employees are directed by competent authority to observe a state legal public holiday on a day other than that specified in Section 12-5-2 NMSA 1978 for that holiday, the day upon which the holiday is observed by the New Mexico state government is deemed to be a "legal state holiday" for the purposes of the Tax Administration Act.

(2) Example: Section 12-5-2 NMSA 1978 designates the third Monday in February as a legal holiday, President's Day. Traditionally, state offices are open on the third Monday in February and the holiday is observed by state government on the Friday following Thanksgiving. Accordingly, when state government is closed on the Friday after Thanksgiving in a delayed observance of President's Day, the due date for any notices, returns, applications or payments to be made by taxpayers on the Friday after Thanksgiving is the following Monday. For purposes of making payment of tax in accordance with Section 7-1-13.1 NMSA 1978 in this situation, the first banking day preceding the due date is the Friday after Thanksgiving. Because the third Monday in February is observed by the United States postal service and by the national banks, any notices, returns, applications or payments to be made by taxpayers on that date are due the following day, even though state offices are open on President's Day.

[F.] G. "RECEIVED BY THE DEPARTMENT" DEFINED:

(1) Unless the secretary by instruction or other directive permits or requires otherwise, "received by the department" for the purposes of Section 7-1-13.1 NMSA 1978 means received at the Santa Fe headquarters of the department during the department's normal business hours.

(2) The secretary through instruction or other directive may permit or require payment by check of taxes subject to the provisions of Section 7-1-13.1 NMSA 1978 at any other location of the department or at the location of the state fiscal agent or other agent of the department or during times other than normal business hours of the department. When the secretary has so permitted or required payment by check at such locations or times, "received by the department" for the purposes of Section 7-1-13.1 NMSA 1978 includes such locations or times.

[G.] H. "BANKING DAY"

DEFINED:

(1) A banking day is a day which is not a Saturday, Sunday, national bank holiday or a day deemed by regulation of the secretary to be a state legal holiday for purposes of making payment under Subsection 7-1-13.1B NMSA 1978.

(2) Examples:

(a) When Memorial Day falls on Monday, May 27th, the preceding banking day is Friday, May 24th.

(b) The Wednesday immediately prior to Thanksgiving is the first banking day preceding Thanksgiving.

I. TIMELINESS OF ELECTRONIC PAYMENTS:

(1) Payments, other than payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by electronic payment, are timely if the payment is electronically transmitted to the department and accepted, on or before the last date prescribed for making the payment. Accordingly, the sender who relies upon the applicability of Section 7-1-13.4 NMSA 1978 assumes the responsibility to provide the department proof that the electronic transmission to the department was initiated on or before the last date prescribed for making the payment.

(2) Payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by electronic payment, are timely if the result of the electronic payment is that the funds are available to the state of New Mexico on or before the last date prescribed for making the payment. The date that an electronic payment was transmitted to the department is not an indicator of whether the payment was timely. The sender who relies upon the applicability of Section 7-1-13.4 NMSA 1978 assumes the responsibility that the funds were available to the department on or before the last date prescribed for making the payment.

[7/19/67, 9/9/71, 11/5/85, 8/15/90, 11/7/90, 12/13/91, 9/20/93, 10/31/96; 3.1.4.10 NMAC - Rn & A, 3 NMAC 1.4.10, 12/29/00; A, 10/31/07]

3.1.4.12 EXTENSIONS

A. GOOD CAUSE FOR EXTENSIONS:

(1) "Good cause" for which the secretary or secretary's delegate may grant extensions is construed strictly. Such extensions for no more than a total of 12 months will be granted only in situations in which the taxpayer shows a good faith effort to comply with the statute.

(2) Example 1: If the taxpayer operates a multistate business and the filing of returns for New Mexico taxes at the statutory due date would cause the taxpayer unreasonable bookwork and recordkeeping, an extension will be given favorable consid-

eration by the secretary or secretary's delegate.

(3) Example 2: If the taxpayer is temporarily disabled because of injury or prolonged illness and the taxpayer can show that the taxpayer is unable to procure the services of a person to complete the taxpayer's return, an extension will be given favorable consideration.

(4) Example 3: If the conduct of the taxpayer's business has been substantially impaired due to the disability of a principal officer of the taxpayer, physical damage to the taxpayer's business or other similar impairments to the conduct of the taxpayer's business causing the taxpayer an inability to compute taxes before the due date, an extension of time will be given favorable consideration.

(5) Example 4: If the taxpayer's accountant has suddenly died or has become disabled and unable to perform services for the taxpayer and the taxpayer can show that the taxpayer is unable either to complete the return or to procure the services of a person to complete the return before the due date, an extension will be given favorable consideration.

(6) Example 5: If the taxpayer is awaiting the outcome of a court or administrative proceeding or the action of the internal revenue service on a federal tax claim, an extension will be given favorable consideration provided that the extension does not contravene the time limits established by this statute or other New Mexico or federal statute.

B. PROCEDURE FOR OBTAINING EXTENSIONS - PERIOD OF EXTENSION:

(1) The procedures in Subsection B of 3.1.4.12 NMAC apply only to extensions which the applicant must request; these procedures do not apply to automatic extensions under Subsection E of 3.1.4.12 NMAC.

(2) Any taxpayer may request an extension of time in which to file a tax return. Such a request must be in writing and must be received by the department on or before the date that the tax is due. The application for extension must clearly set forth:

(a) the tax or tax return to which the extension, if granted, will apply;

(b) a clear statement of the reasons for the requested extension; and

(c) the signature of the taxpayer or the taxpayer's authorized representative.

(3) The extension will not be granted unless a reason satisfactory to the secretary or secretary's delegate appears in the request.

(4) An approved extension will ordinarily be granted for a period of 30 days. A request for longer extensions must state the reason why the 30 days is insuffi-

cient. Additional 30-day extensions or a longer extension may be granted by the secretary or secretary's delegate for up to a maximum aggregate extension of 12 months.

(5) Example 1: P is in the business of preparing tax returns. P realizes that, because of the great volume of business, P will be unable to complete all of P's customers' tax returns before the due date. P submits to the secretary a request for an extension of time on behalf of each customer whose return P is unable to complete. The request will be denied. It is irrelevant to consider whether or not P's request states a good cause because an extension will not be granted unless the taxpayer's personal necessity is the basis of the request. In this case, each of the taxpayers must request an extension and give "good cause" for this privilege.

(6) Example 2: On April 20, 20XX, T is granted a 30-day extension for payment of March, 20XX, taxes due April 25, 20XX. On May 20, 20XX, T, showing good cause, requests a further extension of the March taxes for 12 months. A 12-month extension will not be granted because the payment or filing date for any tax liability may not be extended for more than 12 months after the date on which the taxes were due and no series of extensions exceeding 12 months when aggregated will be granted to any taxpayer. The maximum extension that could be granted to T is until April 25 of the year following 20XX.

C. EXTENSIONS GRANTED WHEN NO LIABILITY HAS ARISEN:

(1) An extension may be granted even though the tax liability has not yet arisen. The following examples illustrate the application of Subsection E of 7-1-13 NMSA 1978.

(2) Example 1: B's business is destroyed by flood on June 1, 20XX. B, a cash-basis taxpayer, is expecting to receive payment in July for items sold in May. In June B requests a six-month extension for those taxes for which B will be liable in July and which will become due August 25, 20XX. Upon a showing of good cause, the request may be granted notwithstanding that the liability for the tax has not yet arisen.

(3) Example 2: Under the same facts as in Example 1, in January of the following year, B, showing good cause, requests a further extension of the July, 20XX taxes for a period of nine months to September 25 of the year following 20XX. The nine-month extension will not be granted because the reporting period for any tax liability may not be extended for an aggregate period of more than 12 months after the date the taxes were due. The maximum extension which could have been granted

was until August 25 of the year following 20XX.

D. **AUTOMATIC EXTENSION FOR REPORT OF FEDERAL FORM 990-T INCOME:** A taxpayer who is required to file a New Mexico corporate income and franchise tax return to report taxable income from unrelated activities included in a federal Form 990-T is hereby granted an automatic extension to the 15th day of the fifth month following the close of the taxable year to file a return reporting that income ~~[and to pay the tax owed]~~. Interest will accrue during the period of the automatic extension.

E. AUTOMATIC FEDERAL INCOME TAX EXTENSIONS - GENERAL:

(1) An automatic extension of time to file a federal income tax return as provided in the Internal Revenue Code shall be considered to be an approved federal extension of time and shall be sufficient to extend the time for filing the New Mexico income tax return. If it is necessary to submit a form to the internal revenue service to claim an automatic extension for filing the federal income tax return, then a copy of the federal form claiming the automatic extension for federal tax purposes shall be attached to the taxpayer's New Mexico income tax return and shall serve as the basis for extending the time for filing the New Mexico return to the date of filing the federal return under the automatic extension provided by the Internal Revenue Code. If it is not necessary to submit a form to the internal revenue service to claim an automatic extension for filing the federal income tax return, then the due date for filing the New Mexico income tax return shall be extended automatically to the same date as the extension for the federal return unless the federal extended date is more than ~~[four]~~ six months from the original due date, in which case the extended due date for the New Mexico return shall be ~~[four]~~ six months after the original due date.

(2) If the taxpayer desires additional time beyond the automatic extension for filing the New Mexico income tax return, a written request for the additional time must be made by the taxpayer prior to the expiration of the extended federal date. If it is necessary to submit a form to the internal revenue service to claim an automatic extension for filing the federal return, then a copy of the federal form requesting the automatic extension for filing the federal return must accompany the taxpayer's request for additional time to file the New Mexico income tax return beyond the extended federal date. The total combined extension for filing the New Mexico return shall not exceed 12 months beyond the actual due date for that return.

F. INVALIDATION OF

FEDERAL EXTENSION: If an extension of time to file a federal income tax return is invalidated for any reason for federal income tax purposes, it is also invalidated for New Mexico income tax purposes.

G. FAILURE TO FILE, PAY OR PROTEST BY EXTENDED DUE DATE:

(1) The term "extended due date" means:

(a) for income tax returns, the latest date to which the due date for filing the New Mexico income tax return has been extended by either an extension granted by the internal revenue service with respect to the taxpayer's federal income tax return or by an extension granted by the department; and

(b) for all other tax returns, the latest date to which the due date for filing the tax return has been extended by the department.

(2) A taxpayer becomes a delinquent taxpayer if the taxpayer fails by the extended due date either to file the required return and, if a tax is due, to pay the tax due or to protest in accordance with Section 7-1-24 NMSA 1978 the payment or filing requirement.

[7/19/67, 11/5/85, 3/31/86, 8/22/88, 8/15/90, 12/13/91, 9/20/93, 10/31/96; 3.1.4.12 NMAC - Rn & A, 3 NMAC 1.4.12, 12/29/00; A, 12/30/03; A, 10/31/07]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.1.12 NMAC, Section 13, effective 10/31/07.

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

A. In the case of community tax debt arising from a jointly-filed income tax return, the secretary or the secretary's delegate may decline to bring an action or proceeding to collect such taxes against the spouse or former spouse of a taxpayer who is granted relief by the internal revenue service (IRS) pursuant to 26 U.S.C. Section 6015. Where relief is granted in writing by the IRS, the spouse who received such relief may provide a copy of the IRS's determination and request that the secretary cease any collection activity against that spouse or former spouse to the extent such relief was allowed by the IRS. The secretary or the secretary's delegate

may decline to pursue collection activity against a spouse or former spouse for community debt while an application for such relief is pending before the IRS, but the failure to seek or obtain such relief shall not preclude the secretary or secretary's delegate from declining to bring an action or proceeding against a spouse or former spouse for collection of a community debt when bringing an action or proceeding would be inequitable. The secretary or the secretary's delegate shall consider the following facts and circumstances when determining whether to bring an action or proceeding to collect community debt:

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

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

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

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

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

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

B. In addition to the facts and circumstances listed in Subsection A above, in the case of a community debt arising from the conduct of a business within the state, including taxes collected under the combined reporting system, the secretary or the secretary's delegate shall also consider the following facts and circumstances when determining whether to bring an action or proceeding to collect community debt:

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

(2) Has the spouse or former spouse benefited from the conduct of the business?

(3) Did the spouse or former spouse know that the other spouse or former spouse had a business?

C. The secretary or the secretary's delegate shall weigh all applicable factors when determining whether to decline to bring an action or proceeding. No one factor shall be considered determinative. Each of these factors may be given different relative weight, depending on the facts and circumstances of each case, there-

fore the presence of a majority of said factors tending to indicate "innocent spouse" in a particular case may not necessarily indicate that the taxpayer in question qualifies as an "innocent spouse" for New Mexico tax purposes.

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

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

[3.1.12.13 NMAC - N, 10/31/07]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.220 NMAC, Section 13, effective 10/31/07.

3.2.220.13 [CONSTRUCTION OF IRRIGATION PIPELINES:

A. The receipts from building irrigation pipelines for persons engaged in the business of farming or ranching are receipts from performing a construction service. The receipts from the sale of completed construction projects are subject to the gross receipts tax.

B. The deduction provided for by Section 7-9-62 NMSA 1978 does not apply to irrigation pipe which becomes an ingredient or component part of a completed construction project. [RESERVED]

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.220.13 NMAC - Rn, 3 NMAC 2.62.13 & A, 6/14/01; Repealed, 10/31/07]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.16.109 NMAC, Sections 8 through 13, effective 10/31/07.

3.16.109.8 [CALCULATION OF SPECIAL FUEL EXCISE TAX LIABILITY: In computing the special fuel excise tax due, a special fuel excise tax taxpayer, in addition to the deductions provided in Section 7-16A-10 NMSA 1978, may deduct

from the total amount of special fuel received in New Mexico during the tax period, the amount of special fuel sold or delivered when the receipt or use of the special fuel is subject to gross receipts tax under the provisions of either Section 7-16A-8 NMSA 1978 or Section 3.16.102.9 NMAC.] [RESERVED]

[2/1/93, 12/31/96, 12/31/97; 3.16.109.8 NMAC - Rn, 3 NMAC 20.10.8 & A, 6/14/01; Repealed, 10/31/07]

3.16.109.9 [PROOF SATISFACTORY TO THE DEPARTMENT:

A. For exports on or after June 1, 1997, proof satisfactory to the department of the export of special fuel consists of a manifest or bill of lading showing the amount of special fuel, the name and address of the person to whom the special fuel is sent and the destination outside New Mexico. The person exporting special fuel must also comply with the requirements of Subsection A of Section 7-16A-10 NMSA 1978.

B. Proof satisfactory to the department of sale to the United States, a NATO force, the state of New Mexico (including its agencies, instrumentalities and political subdivisions), or an Indian nation, tribe or pueblo or any agency or instrumentality thereof shall be furnished to the department on request. Proof includes documentation, such as contracts, purchase orders and invoices, showing that the purchaser was the United States, a NATO force, the state of New Mexico, or an Indian nation, tribe or pueblo or an agency or instrumentality thereof.

C. Copies of all documents supporting deductible sales must be retained for at least three years from the end of the calendar year in which the special fuel was sold. [RESERVED]

[2/1/93, 12/31/96, 12/31/97; 3.16.109.9 NMAC - Rn, 3 NMAC 20.10.9 & A, 6/14/01; Repealed, 10/31/07]

3.16.109.10 [DEDUCTION SALES TO OTHER SUPPLIERS:

A. Special fuel received by one supplier and sold to another supplier may not be deducted from the amount of special fuel received in New Mexico, even though the second supplier is bonded and registered, because the second supplier did not "receive" special fuel within the meaning of the act.

B. Example: A, a registered special fuel supplier in New Mexico, received one thousand (1,000) gallons of special fuel in June. B, also a registered special fuel supplier located in the same city as A, needed one thousand (1,000) gallons of special fuel of the type A had received and arranged to purchase the one thousand (1,000) gallons from A in that same month.

A may not deduct the one thousand (1,000) gallons from the amount of special fuel A received in June. B is not liable for tax on this special fuel because B did not receive it. [RESERVED]

[2/1/93, 12/31/96; 3.16.109.10 NMAC - Rn, 3 NMAC 20.10.10 & A, 6/14/01; Repealed, 10/31/07]

3.16.109.11 ~~[INDIRECT SALES TO THE UNITED STATES, THE STATE OF NEW MEXICO, INDIAN NATIONS, TRIBES OR PUEBLOS OR FOR EXPORT:~~

A. The tax consequences of sales of special fuel to the United States, the state of New Mexico, or Indian nations, tribes or pueblos or for export are illustrated by the following examples. These examples concern only the liability of the parties to the department and do not affect the obligation of any party to pay the price for the special fuel to the seller. The fact that the price may include an amount corresponding to the tax does not make that amount a tax on the purchaser.

B. Example: X, a supplier, received one hundred (100) gallons of special fuel in May, paid the special fuel excise tax and resold the special fuel to Y, a wholesaler. Y then in the same month of May sold the special fuel to the United States. If Y furnishes proof satisfactory to the department to X, X may either deduct the one hundred (100) gallons from the amount of special fuel received for that month of May or may elect to take the deduction in any subsequent month in which special fuel is received. Proof satisfactory to the department of Y's sale to the government is required to be retained by both X and Y for at least three years from the end of the calendar year in which the special fuel was sold to the United States.

C. Example 2: X, a supplier, received one hundred (100) gallons of special fuel in May paid the special fuel excise tax and resold the special fuel to Y, a wholesaler, who resold it to Z, a dealer. Z sold ten (10) gallons to the United States in that same month of May when a United States government vehicle filled up at Z's station. Z reports to Y that this amount of special fuel has been sold to the United States. If Y furnishes proof satisfactory to the department to X, X may deduct ten (10) gallons from the amount of special fuel received in that May or any subsequent month in which special fuel is received. Proof satisfactory to the department of Z's sale to the United States is required to be retained by X, Y and Z for at least three years from the end of the calendar year in which the special fuel was sold.

D. Example 3: X, a supplier, received one hundred (100) gallons of special fuel in May, paid the special fuel

excise tax and resold the special fuel to Y, a wholesaler. That same month Y delivers the one hundred (100) gallons of special fuel to a customer in Texas. If Y furnishes proof satisfactory to the department to X, X may deduct one hundred (100) gallons from the amount of special fuel received in May or any subsequent month in which special fuel is received. Proof satisfactory to the department of Y's export is required to be retained by both X and Y for at least three years from the end of the calendar year in which the sale was made. [RESERVED]

[2/1/93, 12/31/96; 3.16.109.11 NMAC - Rn, 3 NMAC 20.10.11 & A, 6/14/01; Repealed, 10/31/07]

3.16.109.12 ~~[DEDUCTION SALES TO A NON UNITED STATES SIGNATORY OF THE NORTH ATLANTIC TREATY:~~

A. For purposes of Section 3.16.109.12 NMAC:

(1) "NATO signatory" means a nation, other than the United States, that is a contracting party to the North Atlantic Treaty.

(2) "NATO force" means any NATO signatory's military unit or force or civilian component thereof present in New Mexico in accordance with the North Atlantic Treaty; and

(3) "Member of a NATO force" means the military and civilian personnel of the NATO force and their dependents.

B. Pursuant to Article XI, Section 11 of the North Atlantic Treaty, special fuel sold to a NATO force may be deducted from the total amount of special fuel received in New Mexico.

C. Pursuant to Article IX, Section 8 of the North Atlantic Treaty, special fuel sold to a member of a NATO force for the private use of that member and not for the use of the NATO force are not deductible and are subject to the special fuel excise tax.

D. Section 3.16.109.12 NMAC is retroactively applicable to sales on or after July 1, 1995. [RESERVED] [12/22/95, 12/31/96; 3.16.109.12 NMAC - Rn, 3 NMAC 20.10.12 & A, 6/14/01; Repealed, 10/31/07]

3.16.109.13 ~~[SPECIAL FUEL USED IN SCHOOL BUSES: Receipts from the sale of special fuel dyed in accordance with federal regulations for use in school buses is subject to gross receipts tax and not the special fuel excise tax.] [RESERVED]~~

[3.16.109.13 NMAC - N, 10/15/02; Repealed, 10/31/07]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 18.19.5 NMAC, Section 7, effective 10/31/07.

18.19.5.7 DEFINITIONS: [COMMERCIAL DRIVER'S LICENSE DEFINITIONS:]

A. As used in regulations under the provisions of the New Mexico Commercial Driver's License Act:

[A:] (1) "commercial driver's license" means a license issued by a state or other jurisdiction which authorizes the holder to operate a commercial motor vehicle;

[B:] (2) "commercial motor vehicle" means a motor vehicle of a type used in commerce:

[H] (a) if the vehicle has a gross vehicle weight rating of 26,001 or more pounds;

[2] (b) if the vehicle is designed to transport sixteen or more passengers, including the driver; or

[3] (c) if the vehicle is transporting hazardous materials and is required to be placarded pursuant to applicable law;

[C:] (3) "combination vehicle" means a power or tractor unit with one or more semi-trailers, trailers or semi-trailers converted to trailers by means of a converter gear;

[D:] (4) "disqualified" means a driver who has had the qualification to drive a commercial motor vehicle removed and whose New Mexico commercial driver's license is canceled; for purposes of this definition and Section 66-5-68 NMSA 1978, "canceled" shall mean that the commercial driver's license is in "revocation" as that term is defined in Subsection B of Section 66-5-1 NMSA 1978, and the driver is not eligible to apply for a commercial driver's license until the period of time for which the driver was disqualified has elapsed; and

[E:] (5) "resident" means a person who intends to reside in New Mexico evidenced by registration to vote or other action acceptable to the motor vehicle division.

B. As used in Subsection C of Section 66-5-6 NMSA 1978, "healing arts practitioner" means a person licensed to practice in this state medicine, osteopathic medicine, oriental medicine, chiropractic, or similar medical services for human beings. The term also includes a person licensed to practice in this state as a certified nurse practitioner, clinical nurse specialist, physician assistant or osteopathic physician assistant.

[2/28/90, 8/20/93, 10/31/96; 18.19.5.7
NMAC - Rn & A, 18 NMAC 19.5.7,
9/14/00; A, 10/31/07]

End of Adopted Rules Section

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Other Material Related to Administrative Law

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

NMAC Chapter Name Change

By request of the Human Services Department, the State Records Administrator considered and approved to change the name of Chapter 290 of Title 8 from "MEDICAID ELIGIBILITY - HOME AND COMMUNITY BASED WAIVER SERVICES (Categories 090, 091, 093, 094, 095 and 096)" to "MEDICAID ELIGIBILITY - HOME AND COMMUNITY-BASED SERVICES WAIVER(Categories 090, 091, 092, 093, 094, 095 and 096)". This name change will take effect on 1 November 2007.

**End of Other Related
Material Section**

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Issue Number 23	December 3	December 14
Issue Number 24	December 17	December 31

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Issue Number 8	April 16	April 30
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