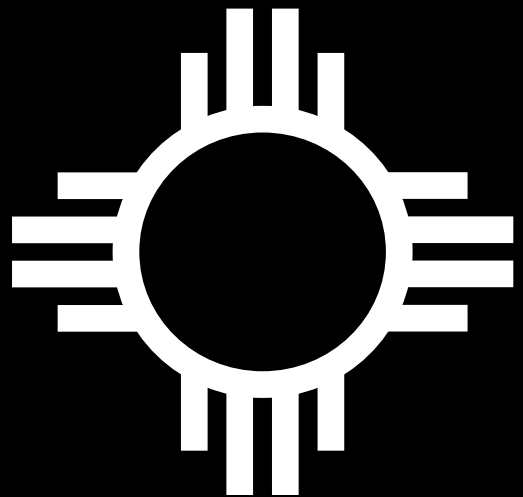


**NEW  
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REGISTER**

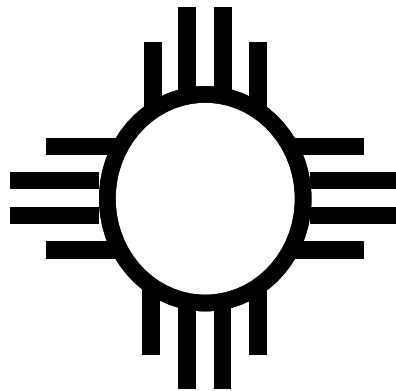


Volume XVIII  
Issue Number 22  
November 30, 2007



# **New Mexico Register**

**Volume XVIII, Issue Number 22  
November 30, 2007**



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

The Commission of Public Records  
Administrative Law Division  
Santa Fe, New Mexico  
2007

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# New Mexico Register

Volume XVIII, Number 22

November 30, 2007

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### Adopted Rules

#### Effective Date and Validity of Rule Filings

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

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO OFFICE OF THE ATTORNEY GENERAL

OFFICE OF THE NEW MEXICO  
ATTORNEY GENERAL  
NOTICE OF PROPOSED  
AMENDMENTS TO RULE

Office of the Attorney General  
P.O. Drawer 1508  
Santa Fe, NM 87504-1508  
(505) 827-6000  
[www.nmag.gov](http://www.nmag.gov)

The Attorney General is proposing amendments to the existing rule on comparative price advertisements and savings claims for the Native American jewelry and arts and crafts retail industry which can be found at 12.2.7. NMAC. Particularly, the attorney general proposes to change the rule by amending 12.2.7.14 (B) NMAC as it pertains to the marketing and offering of goods for particular prices and adding 12.2.7.14 (C) NMAC pertaining to required disclosures. The amendments to the existing rule are being promulgated by the authority vested in the Attorney General pursuant to the New Mexico Unfair Practices Act, NMSA 1978, Section 57- 12-13 (1967) and the New Mexico False Advertising Act, NMSA 1978, Section 57-15- 7 (1967).

The proposed amendments to the rule are available at the Office of the Attorney General located in the Paul Bardacke Attorney General Complex in Santa Fe located at 408 Galisteo Street, Consumer Protection Division, or at the Attorney General's Office located in Albuquerque at 111 Lomas Blvd. NW, Suite 300. The proposed amendments to the comparative price advertisements and savings claims rule are also posted on the Office of the Attorney General's website and may be accessed, free of charge, from the following website:

<http://www.nmag.gov/office/divisions/cp/ia/cruleamendment.aspx>

To request a copy of the proposed amendments to the rule concerning comparative price advertisements and savings claims for Native American jewelry, arts, and crafts be mailed to you, please submit your request in writing to:

**Office of the Attorney General  
Consumer Protection Division  
Attention: Amendments to the rule on comparative price advertisements and savings claims for Native American jewelry, arts, and crafts  
P.O. Drawer 1508**

Santa Fe, NM 87504-1508

You may also request a copy of the proposed amendments to the rule by calling the following telephone number:

**1 (800) 678-1508**

There is a \$.25 copying charge per page for written and telephone requests.

Any person who is or may be affected by these proposed amendments to the rule on comparative price advertisements and savings claims for Native American jewelry, arts, and crafts may submit written comments.

Written comments concerning the proposed amendments to the rule may be submitted by mail to:

Office Of the Attorney General  
Consumer Protection Division  
Attention: Amendments to rule on comparative price advertisements and savings claims for Native American jewelry, arts, and crafts  
P.O. Drawer 1508  
Santa Fe, NM 87504-1508

Written comments may also be submitted in person at:

Office of the Attorney General  
408 Galisteo St.  
Santa Fe, New Mexico 87501

The Office of the New Mexico Attorney General will accept written comments for consideration as provided above no later than December 31, 2007.

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

**NOTICE OF PUBLIC MEETING AND  
HEARING OF THE NEW MEXICO  
ENERGY, MINERALS AND  
NATURAL RESOURCES  
DEPARTMENT  
Solar Market Development Tax Credit**

The New Mexico Energy, Minerals and Natural Resources Department will hold a meeting and hearing at 9:00 A.M. Wednesday, December 26, 2007 in Porter Hall, Wendell Chino Building, 1220 S. St. Francis Drive, Santa Fe, New Mexico.

During the meeting, the New Mexico

Energy, Minerals and Natural Resources Department will conduct a public hearing on amended rule 3.3.28 NMAC for administration of the Solar Market Development Tax Credit.

Copies of the rules and the proposed changes are available from the New Mexico Energy, Minerals and Natural Resources Department, Energy Conservation and Management Division, 1220 South Saint Francis Drive, Santa Fe, NM 87505, on our [website](http://www.emnrd.state.nm.us/ecmd/), <http://www.emnrd.state.nm.us/ecmd/>, or by contacting Ryan Helton at 505-476-3318, [ryan.helton@state.nm.us](mailto:ryan.helton@state.nm.us), or Brian Johnson at 476-3313, [brian.k.johnson@state.nm.us](mailto:brian.k.johnson@state.nm.us).

All interested persons may participate in the hearing, and will be given an opportunity to submit relevant evidence, data, views, and arguments, orally or in writing.

A person who wishes to submit a written statement, in lieu of providing oral testimony at the hearing, shall submit the written statement prior to the hearing, or submit it at the hearing. No statements will be accepted after the conclusion of the hearing.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ryan Helton at least one week prior to the hearing or as soon as possible. Public documents can be provided in various accessible formats. Please contact Ryan Helton at 476-3318, through Relay New Mexico at 1-800-489-8536 Voice/ TTY, if a summary or other type of accessible format is needed.

### NEW MEXICO ENVIRONMENT DEPARTMENT

NEW MEXICO ENVIRONMENT  
DEPARTMENT  
NOTICE OF PUBLIC HEARING TO  
CONSIDER 20.12.2 NMAC, BOARD OF  
DIRECTOR TRAINING REQUIREMENTS

The New Mexico Environment Department will hold a public hearing at 9:00 a.m. on January 7<sup>th</sup>, 2008, and continuing thereafter as necessary, at the Marquez Building, Training Room, 525 Camino de los Marquez, Santa Fe, New Mexico to consider the Board of Director Training Requirements, 20.12.2 NMAC. The New

Mexico Environment Department is the proponent of the Board of Director Training Requirements. The proposed regulation governs the training required of members of the board of directors of mutual domestic associations pursuant to the Sanitary Projects Act, Sections 3-29-1 through 3-29-21 NMSA 1978.

The proposed regulation 20.12.2 NMAC may be reviewed during regular business hours at the office of the Hearing Clerk, New Mexico Environment Department, Harold Runnels Building, 1190 St. Francis Drive, Room N-2153, Santa Fe, NM, 87505. In addition, a copy of the proposed amendments is posted on the NMED website at <http://www.nmenv.state.nm.us/cpb/cpbtop.html>. Written comments may be submitted to the Hearing Clerk, Environment Department regarding the amendments at the above address, and should reference docket number NMED-07-01(R).

The hearing will be conducted in accordance with 20.1.9 NMAC (Rulemaking Procedures) Environment Department, the Environmental Improvement Act, Section 74-1-9, 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. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing. Persons wishing to present technical testimony must file with the Environment Department a written notice of intent to do so. The notice of intent shall:

- (1) identify the person or entity 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 his or her 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, including any proposed statement of reasons for adoption of the rules; and,
- (5) attach the text of any recommended modifications to the proposed changes.

Notices of intent for the hearing must be received by the Hearing Clerk in the Environment Department not later than 5:00 pm on December 21<sup>st</sup>, 2007, and should reference the name of the regulation

and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Felicia Orth  
Hearing Clerk, New Mexico Environment Department  
Harold Runnels Building  
1190 St. Francis Dr., Room N-2153  
Santa Fe, NM 87502

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 December 21<sup>st</sup>, 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.

NMED may make a decision on the proposed regulation at the conclusion of the hearing, or NMED may convene a meeting after the hearing to consider action on the proposal.

## NEW MEXICO DEPARTMENT OF HEALTH

### NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.1.26 NMAC "Volunteer Health Care Provider Tort Coverage Program". The Hearing will be held on January 3, 2008 at 9:00 a.m. in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico.

The public hearing will be conducted to provide guidance for the registration and administration of eligible licensed New Mexico health care providers with no liability insurance who will serve without compensation, and the eligible agencies who seek their health care services.

A copy of the proposed regulation can be obtained from:

Tres Schnell, Bureau Chief  
1301 Siler Rd. Room 200  
Santa Fe, NM 87507  
(505) 476-8333

Please submit any written comments

regarding the proposed regulation to:

Tres Schnell, Bureau Chief  
1301 Siler Rd. Room 200  
Santa Fe, NM 87507  
(505) 476-8333

The Department will accept public comment through the close of the hearing.

If you are an individual with a disability who is in need of special services to attend or participate in the hearing, please contact Tres Schnell by telephone at 505-476-8333. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

### NOTICE OF REGULAR MEETING

The NM Commission of Public Records has scheduled a regular meeting for Tuesday, December 4, 2007, at 9:00 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette Solano at 476-7902 by November 26, 2007. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

### NOTICE OF RULEMAKING

The Commission of Public Records may consider the following items of rulemaking at the meeting:

#### Amendment

1.18.333 NMAC	E R R D S ,
Taxation and Revenue Department	
1.18.630 NMAC	E R R D S ,
Human Services Department	
1.18.665 NMAC	E R R D S ,
Department of Health	

#### Repeal

1.17.216 NMAC	JRRDS, New Mexico Supreme Court
1.18.430 NMAC	E R R D S ,
Public Regulation Commission	
1.18.644 NMAC	E R R D S ,
Division of Vocational Rehabilitation	
1.18.926 NMAC	E R R D S ,
School for the Visually Handicapped	



**New-Replacement**

1.17.216 NMAC JRRDS, New Mexico Supreme Court  
 1.18.430 NMAC E R R D S , Public Regulation Commission  
 1.18.644 NMAC E R R D S , Division of Vocational Rehabilitation  
 1.18.926 NMAC E R R D S , School for the Blind and Visually Impaired

**NEW MEXICO  
 REGULATION AND  
 LICENSING DEPARTMENT  
 MANUFACTURED HOUSING  
 DIVISION**

**State Of New Mexico  
 Regulation and Licensing Department  
 Manufactured Housing Division**

**LEGAL NOTICE  
 NOTIFICATION OF PUBLIC  
 HEARING  
 RULEMAKING**

**Manufactured Housing Committee**

The Manufactured Housing Committee has scheduled a Public Hearing for January 8, 2008. The purpose of this hearing will be to receive public comment on proposed changes to the Manufactured Housing Rules and Regulations, Section 14.12.2.7, 14.2.64, and 14.12.2.65 New Mexico Administrative Code (NMAC).

The Hearing will be held at the Regulation and Licensing Department, located at 2550 Cerrillos Road, Santa Fe, New Mexico 87505, Toney Anaya Building, 2<sup>nd</sup> Floor, Hearing Room 1, at 9:00 a.m. - 10:30 p.m. The hearing will be conducted by the Manufactured Housing Committee.

In addition to receiving public comment at the January 8, 2008 public hearing, the Manufactured Housing Committee will receive written comments between the time period of November 30, 2007 and January 8, 2008. Written comments should be mailed, or delivered to, the Manufactured Housing Division of the Regulation and Licensing Department, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico, 87505. Written comments may also be faxed to (505) 476-4856.

Pursuant to the Americans with Disabilities Act, participants with special needs should contact the Manufactured Housing Division no later than January 4, 2008.

Benito J. Martinez, Jr., MHD Director  
 Manufactured Housing Division  
 2550 Cerrillos Road  
 P.O. Box 25101

Santa Fe, New Mexico 87505  
 (505) 476-4775

**NEW MEXICO WORKERS'  
 COMPENSATION  
 ADMINISTRATION**

**NOTICE OF RULEMAKING**

Notice is hereby given that the Workers' Compensation Administration (WCA) will amend Part 7 of the WCA Rules extending the dates in the temporary rule for one calendar year. Other proposed miscellaneous changes are contained therein. The WCA will also amend the following mandatory forms: Form Letter to Healthcare Provider, Healthcare Provider Disagreement Form and Medical Authorization (HIPAA Compliant). A public hearing will not be held. The proposed rule and form changes will be available on November 16, 2007. Written comments will be accepted until the close of business on December 7, 2007. Please submit written comments to: Director Glenn R. Smith, Workers' Compensation Administration, c/o General Counsel Office, 2410 Centre Avenue S.E., Albuquerque, New Mexico 87106.

For further information call (505) 841-6000. Please inquire at the WCA Clerk's Office, 2410 Centre Avenue S.E., Albuquerque, NM, 87106, for copies of the proposed rules or obtain a copy online at the WCA website at: [www.workerscomp.state.nm.us](http://www.workerscomp.state.nm.us). If you intend to request a copy by mail, please inquire at the WCA about the postage cost and envelope size needed to accommodate your request. Please plan to include a post-paid, self-addressed envelope with your request.

**End of Notices and  
 Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.1 NMAC Sections 7 and 10, effective 11-30-2007.

#### 16.60.1.7 DEFINITIONS:

**A. "Acceptance letter"** means a document issued by the administering entity indicating the type of report (unmodified, modified, or adverse) when all review documents and, if applicable, all remedial/corrective actions have been completed and accepted by the peer review committee.

**B. "Act"** means the New Mexico 1999 Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA1978.

**C. "Administering entity"** means an entity (any form of organization allowed by state law or professional organization or association of CPA's) that has met, and at all relevant times continues to meet, the standards specified by the board for administering the review. The board shall periodically publish a list of administering entities that have applied for and received approval.

**D. "Client"** means the person or entity who retains a licensee for the performance of professional services.

**E. "Enterprise"** means any person or entity who retains a licensee for the performance of professional services.

**F. "Financial statements"** means statements and footnotes related thereto that purport to show an actual or anticipated financial position or results of operations, cash flow, or changes in financial position based on generally accepted accounting principles or another comprehensive basis of accounting. The term includes specific elements, accounts, or items of such statements, but it does not include incidental financial data included in management advisory service reports which support recommendations made to clients. In addition, it does not include tax returns and supporting schedules.

**G. "He, his, him"** means masculine pronouns when used herein also include the feminine and the neuter.

**H. "Holding out to the public as a permit holder or registered firm"** means the phrase "holding himself out to the public as a permit holder or registered firm" as used in the definition or "practice of public accountancy" in Section 3G of the act, and in these rules it means any representation of the fact that a certificate holder holds a permit or is a registered

firm in connection with the performance of, or an offer to perform, services for the public. Any such representation is presumed to invite the public to rely upon the professional skills implied by the certificate, registration, or permit in connection with the professional services offered to be performed. For the purpose of this rule, a representation shall be deemed to include any oral or written communication conveying the fact that the person holds a certificate, permit or firm registration, including without limitation the use of titles or legends on letterheads, business cards, office doors, advertisements, internet, email, or other electronic media.

**I. "Manager"** has, when used in these rules, the same meaning as the term "manager" in a limited liability company.

**J. "Member"** has, when used in these rules, the same meaning as the term "member" in a limited liability company.

**K. "Peer review"** means a program to monitor compliance with applicable accounting and auditing standards adopted by generally recognized standard setting bodies.

**L. "Peer review committee"** means a committee comprised exclusively of CPAs practicing public accountancy and formed by an administering entity for the purpose of accepting peer review reports submitted by firms on peer review engagements.

**M. "Professional services"** means any service performed or offered to be performed by a licensee for a client in the course of the practice of public accountancy.

**N. "Public communication"** means a communication made in identical form to multiple persons or to the world at large, including but not limited to television, radio, motion pictures, newspaper, pamphlet, mass mailing, letterhead, business card, the internet, email or directory.

**O. "Quality review"** means an interchangeable term for peer review.

**P. "Report"** as defined in Section 61-28B3 (O) of the act and in these rules includes forms of language which refers to financial statements, when such forms of language express or deny any assurance as to the reliability of the financial statements to which they refer. Among the possible sources of such forms of language are pronouncements by authoritative bodies describing the work that should be performed and the responsibilities that should be assumed for specified kinds of

professional engagements. In addition, these pronouncements prescribe the form of report that should be issued upon completion of such engagements. A form of report prescribed by such a pronouncement will ordinarily constitute a form of language which is conventionally understood as implying assurance and expertise. For this reason, as provided in Section 17B of the act, the term "report" includes the issuance of reports using the forms of language set out in the American institute of certified public accountants (AICPA) statement on standards for accounting and review services (SSARS) No. 1 as amended, modified, or superseded from time to time, for reports with respect to both "reviews" of financial statements, and also compilations of financial statements, as well as the forms of language for "special reports" set out in the AICPA's statement on auditing standards (SAS) No. 14, No. 35 and No. 62 as amended, modified, or superseded from time to time. These statements on standards are incorporated in the AICPA professional standards: code of professional conduct.

**Q. "Review or review program"** as defined in Section 61-28A-31 NMSA 1978 means the review conducted under the relevant program, whether peer review or quality review.

**R. "Services involving accounting or auditing skills"** means "services involving accounting or auditing skills" as used in the definition of "practice of public accountancy" in ~~Section 3I~~ Sections 3L and M of the act. It includes the provision of advice or recommendations in connection with the sale or offer for sale of products, when the advice or recommendations require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting. Excluded from the practice of public accountancy is the provision of expert witness services in any adjudicatory proceeding, including the provision of oral or written testimony relating to the examination of documents housed in New Mexico; the investigation of the possibility of fraud on unusual corporate transactions; and the examination of potential loss or damages.

**S. "Statement of compliance"** means a certified statement from the human services department (HSD) stating that an applicant or licensee is in compliance with a judgment and order for support.

**T. "Statement of non-compliance"** means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support.

[16.60.1.7 NMAC - Rp 16 NMAC 60.1.7 and 16 NMAC 60.11.7, 02-14-2002; A, 11-

30-2007]

**16.60.1.10 FEES AND OBLIGATIONS:** Fees charged by the board shall be as follows.

**A.** Fees set by the board for CPA examination applicants shall not unreasonably exceed the amount required for the board to operate CPA examination administration on a break even basis, but in no case shall the fee be less than the state's cost of procuring and administering the exam.

**B.** Initial examination qualification review under Section 27F of the act shall be \$75.

**C.** Delinquency fee for incomplete or delinquent continuing education reports, certificate/license or firm permit renewals under Section 27D of the act shall be \$50.

**D.** Certificate application under Section 27B of the act shall be: initial certificate, \$150; certificate renewal, \$100.

**E.** No annual renewal fee shall be assessed for an individual who holds an inactive certificate and who has reached the age of 70.

**F.** Firm permit application or renewal fee under Section 27C of the act shall be \$45 for each firm, regardless of form of entity.

**G.** Firm permit renewal delinquency fee under Section 27C of the act shall be \$50 and includes all practitioners whose renewal applications are delinquent.

**H.** Certificate/license reinstatement fee under Section 27G of the act shall be \$175 plus the current year's renewal fee. No delinquency fee shall be assessed.

**I.** No fee shall be charged for firm permit reinstatement, and no delinquency fee shall be assessed; only the current year's renewal fee shall be assessed.

**J.** Continuing professional education waiver and reentry into active certificate status and to comply with continuing professional education under Sections 27H and 27I of the act shall not exceed \$75 each occurrence.

**K.** Administrative fees for services under Section 27F shall be:

(1) list of certificate or permit holders, \$.25 per name or line item;

(2) duplicate or replacement certificate card or permit card, \$10 each;

(3) duplicate or replacement wall certificate, \$25 each;

(4) board evaluation of coursework for continuing professional education credit, \$50 per hour of board staff research and study;

(5) certificate application package for reciprocity and grade transfer candidates and replacement packages for by-examina-

tion candidates, \$20 each;

(6) copies of combined Accountancy Act and board rules, \$10 each;

(7) copies of records and documents, \$.25 per page;

(8) the board may, at its discretion, charge for other administrative costs as it deems appropriate.

**L.** Fee for the transfer of licensure or examination information to a third party under Section 27E of the act shall be \$20.

**M.** Fee for notification of intent to practice in New Mexico under Section 26 of the act shall be \$90.

**N.** Fee for criminal history background check under Section 8.1 of the act shall be \$29.25.

**[N] O.** The board may waive charges as it deems appropriate.

[16.60.1.10 NMAC - Rp 16 NMAC 60.2.8, 02-14-2002; A, 01-15-2004; A, 04-29-2005; A, 11-30-2007]

## NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.3 NMAC Section 9, effective 11-30-2007.

### 16.60.3.9 INITIAL CERTIFICATE/LICENSE REQUIREMENTS:

**A.** An applicant for initial certification/licensure shall demonstrate to the board's satisfaction that he:

(1) is of good moral character and lacks a history of dishonest or felonious acts;

(2) meets the education, experience and examination requirements of the board; and

(3) passes the American institute of certified public accountants ethics examination with a score of 90 percent or higher.

**B.** Moral character requirements: The board may assess moral character requirements based upon applicant-provided character references and background checks to determine an applicant's history of dishonest or felonious acts.

**C.** Criminal history background check: Pursuant to Section 61-28B-8.1 of the act, all applicants for initial issuance or reinstatement of a certificate and license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) An applicant shall submit two completed fingerprint cards to the board office with the initial application for licensure or the application for licensure reinstatement.

(2) Blank fingerprint cards shall be obtained from the board office.

(3) Fingerprints shall be taken:

(a) under the supervision of and certified by a New Mexico state police officer, a county sheriff, or a municipal chief of police;

(b) by comparable officers in the applicant's state of residence if the applicant is not a resident of New Mexico; or

(c) at the discretion of the board, by a private agency qualified to take and certify fingerprints, provided the agency submits to the board written authorization from any of the agencies referenced in subparagraphs (a) and (b) above.

(4) Completed fingerprint cards shall be submitted to the board office with the prescribed fee.

(5) The board shall not issue a certificate or license until an applicant's background check has been successfully completed.

**[E] D.** Education and examination requirements: Education and examination requirements are specified in the act, Section 61-28B7 and Section 61-28B8 (After July 1, 2004) and are further delineated in Part 2 of board rules. An applicant who has passed the uniform CPA examination prior to July 1, 2004, is exempt from the 150-semester-hour requirement.

**[D] E.** Experience required: Applicants documenting their required experience for issuance of an initial certificate pursuant to Section 7H of the act, and after July 1, 2004 Section 8H of the act shall:

(1) provide documentation of experience in providing any type of services or advice using accounting, attest, management advisory, financial advisory, tax or consulting skills; acceptable experience shall include experience gained through employment in industry, government, academia or public practice;

(2) have their experience verified by an active, licensed CPA as defined in the act or by an active, licensed CPA from another state; the board shall consider and evaluate factors such as complexity and diversity of the work in determining acceptability of experience submitted:

(a) one year of experience shall consist of full or part-time employment that extends over a period of no less than 1 year and no more than 3 years and includes no fewer than 2,000 hours of performance of services described above;

(b) experience documented in support of an initial application must be obtained within the 7 years immediately preceding passing of the examination or within 7 years of having passed the examination upon which the application is based; this does not apply to applicants who qualified and sat for the examination during or prior to the November 2001 administration;

(c) any licensee requested by an applicant to submit evidence of the appli-

cant's experience and who has refused to do so shall, upon request of the board, explain in writing or in person the basis for such refusal; the board may require any licensee who has furnished evidence of an applicant's experience to substantiate the information;

(d) the board may inspect documentation relating to an applicant's claimed experience; any applicant may be required to appear before the board or its representative to supplement or verify evidence of experience.

**[E] E.** Swearing in ceremony: Every new licensee must participate in a swearing in ceremony before the board within one year from the date of the issuance of the initial license. Swearing in ceremonies shall be held two times per year in locations to be determined by the board. Upon good cause presented in writing prior to the expiration of the one-year period of initial licensure, the board may extend the period for being sworn in or arrange an alternate method for the licensee to be sworn in. If an extension for good cause is granted, the licensee shall arrange with the board director to present him or herself for swearing in before the board within the time prescribed by the board. Failure to appear at a swearing in ceremony before the board may result in the imposition of a fine or other disciplinary action, as deemed appropriate by the board.

**[F] G.** Replacement wall certificates and licenses to practice: Replacement wall certificates and licenses to practice may be issued by the board in appropriate cases and upon payment by the CPA or RPA of the fee as set by the board. A certificate/license holder is specifically prohibited from possessing more than one wall certificate and more than one license to practice as a CPA or RPA. When a replacement wall certificate or license to practice is requested, the certificate/license holder must return the original certificate/license or submit a notarized affidavit describing the occurrence that necessitated the replacement certificate or license.

**[G] H.** Renewal requirements: Certificates/licenses for individuals will have staggered expiration dates based on the individual's birth month. Deadline for receipt of certificate/license renewal applications and supporting continuing professional education affidavits or reports is no later than the last day of the CPA or RPA certificate/license holder's birth month or the next business day if the deadline date falls on a weekend or holiday.

(1) The board may accept a sworn affidavit as evidence of certificate/license holder compliance with CPE requirements in support of renewal applications.

(2) Renewal applications and

CPE reports received after prescribed deadlines shall include prescribed delinquency fees.

(3) Applications will not be considered complete without satisfactory evidence to the board that the applicant has complied with the continuing professional education requirements of Sections 9E and 12A of the act and of these rules.

(4) The board shall mail renewal application notices no less than 30 days prior to the renewal deadline.

[16.60.3.9 NMAC - Rp 16 NMAC 60.4.8.2 & 16 NMAC 60.4.8.3, 02-14-2002; A, 01-15-2004; A, 06-15-2004; A, 12-30-2004; A, 04-29-2005; A, 07-29-2005; A, 11-30-2007]

**NEW MEXICO ENVIRONMENT DEPARTMENT**

**TITLE 20 ENVIRONMENTAL PROTECTION  
CHAPTER 1 ENVIRONMENTAL PROTECTION GENERAL PROVISIONS  
PART 9 R U L E M A K I N G PROCEDURES - ENVIRONMENT DEPARTMENT**

**20.1.9.1 ISSUING AGENCY:** New Mexico Environment Department. [20.1.9.1 NMAC - N, 12/01/07]

**20.1.9.2 S T A T U T O R Y AUTHORITY:** This part is adopted pursuant to Section 9-7A-6(D) NMSA 1978 and Section 3-29-9 NMSA 1978. [20.1.9.2 NMAC - N, 12/01/07]

**20.1.9.3 SCOPE:** This part governs the procedures in all regulatory change hearings before the department pursuant to the Department of Environment Act, Section 9-7A-6(D) NMSA 1978, and the Sanitary Projects Act, Sections 3-29-1 through 3-29-20 NMSA 1978. [20.1.9.3 NMAC - N, 12/01/07]

**20.1.9.4 D U R A T I O N :** Permanent. [20.1.9.4 NMAC - N, 12/01/07]

**20.1.9.5 EFFECTIVE DATE:** December 1, 2007 unless a later date is cited at the end of a section. [20.1.9.5 NMAC - N, 12/01/07]

**20.1.9.6 OBJECTIVE:** The purposes of this part are:

**A.** to standardize the procedures used in regulatory change hearings before the department pursuant to the Department of Environment Act and Sanitary Projects Act;

**B.** to encourage participation in the regulatory change hearings conducted by the department pursuant to the Department of Environment Act and Sanitary Projects Act; and

**C.** to assure that the regulatory change hearings pursuant to the Department of Environment Act and Sanitary Projects Act are conducted by the department in a fair and equitable manner. [20.1.9.6 NMAC - N, 12/01/07]

**20.1.9.7 DEFINITIONS:** As used in this part:

**A. "department"** means the New Mexico environment department;

**B. "hearing clerk"** means the department employee designated by the secretary as the hearing clerk for the department;

**C. "hearing officer"** means the person designated by the secretary of the department to conduct a hearing under this part; the hearing officer may be an employee of the department;

**D. "hearing record"** means the transcript of proceedings or tape record and the record proper;

**E. "person"** means an individual or entity, including federal, state, local and tribal governmental entities, however organized;

**F. "petitioner"** means the person who petitioned the secretary for the regulatory change that is the subject of the regulatory change hearing;

**G. "record proper"** means all documents related to the hearing and received or generated by the secretary including but not limited to:

(1) the petition for hearing, including the proposed regulatory change;

(2) affidavits of publication;

(3) written comments and documents from the public;

(4) the hearing officer's report, if any;

(5) post-hearing submissions, if allowed; and

(6) the secretary's final decision and statement of reasons;

**H. "regulation"** means any regulation, rule, or standard promulgated by the secretary pursuant to this part;

**I. "regulatory change"** means the adoption, amendment or repeal of a regulation;

**J. "secretary"** means the secretary of the New Mexico environment department, the secretary's designee, or any person who properly assumes the role of the secretary in the event of the secretary's recusal or disqualification.

[20.1.9.7 NMAC - N, 12/01/07]

**20.1.9.8 POWERS AND**

**DUTIES OF DEPARTMENT AND HEARING OFFICER:**

**A.** Department: The secretary of the department shall exercise all powers and duties prescribed by Section 9-7A-6(D) and/or Section 3-29-9 NMSA 1978, and by this part and not otherwise delegated to the hearing officer. The secretary shall have the authority to take all measures necessary and appropriate to maintain an orderly, efficient and fair proceeding.

**B.** Hearing officer: The secretary shall designate a hearing officer for each hearing who shall exercise all powers and duties prescribed or delegated under this part. The hearing officer shall conduct a fair and impartial proceeding. The hearing officer shall have the authority to take all measures necessary and appropriate to maintain an orderly, efficient and fair proceeding. The authority of the hearing officer includes, but is not limited to:

(1) conducting public hearings under this part;

(2) accepting comments as provided for under this part;

(3) making such orders as may be necessary to ensure an orderly, efficient and fair proceeding; and

(4) if requested by the secretary, preparing and filing a report of the proceeding, with recommendations for action by the secretary.

[20.1.9.8 NMAC - N, 12/01/07]

**20.1.9.9 GENERAL PROVISIONS:**

**A.** Liberal construction: This part shall be liberally construed to carry out its purpose.

**B.** Severability: If any part or application of this part is held invalid, the remainder of this part or its application to other persons or situations shall not be affected.

[20.1.9.9 NMAC - N, 12/01/07]

**20.1.9.10 DOCUMENT REQUIREMENTS:**

**A.** Filing and service of documents.

(1) The filing of any document required by this part shall be accomplished by delivering the document to the hearing clerk or by transmitting the document by mail, facsimile or electronic mail to the hearing clerk. If a document is filed by facsimile or electronic mail, the original document shall be delivered or mailed to the hearing clerk.

(2) Filing by mail shall be complete upon receipt of the document by the hearing clerk. Filing by facsimile or electronic mail shall be complete when transmission of the document is completed.

(3) Any person filing a document

shall serve a copy on the petitioner.

(4) Service of a document shall be made by delivering a copy of the document to the person, by mailing it to the person or, if the person agrees, by transmitting the document by facsimile or electronic mail to the person. If the person is represented by an attorney, service of the document shall be made on the attorney.

(5) Service by mail shall be complete upon mailing of the document. Service by facsimile or electronic mail shall be complete when transmission of the document is completed.

**B.** Examination of documents.

(1) Examination allowed: Subject to the provisions of law restricting public disclosure, any person may during normal business hours inspect and copy any document filed in a rulemaking proceeding before the secretary.

(2) Cost of duplication: The cost of duplicating documents shall be borne by the person requesting copies of such documents.

[20.1.9.10 NMAC - N, 12/01/07]

**20.1.9.11 EX PARTE DISCUSSIONS:** At no time after the filing of a petition under this part shall any petitioner or member of the public discuss ex parte the merits of the proceeding with the secretary or hearing officer. This prohibition does not preclude department staff who are not and have not been involved in the petition from conferring with the secretary or hearing officer.

[20.1.9.11 NMAC - N, 12/01/07]

**20.1.9.12 PREHEARING PROCEDURES:**

**A.** Petition for regulatory changes.

(1) Any person, including the department, may file a petition with the secretary to adopt, amend or repeal any regulation within the jurisdiction of the secretary.

(2) If the department is the petitioner and intends to file a petition under the Sanitary Projects Act, the department shall prepare the proposed regulatory change in consultation with representatives of the associations as defined in Section 3-29-2 NMSA 1978.

(3) The petition shall be in writing and shall include a statement of reasons for the regulatory change. The proposed regulatory change, indicating any language to be added or deleted, shall be attached to the petition.

(4) The secretary shall determine no later than 60 days after receipt of the petition whether or not to hold a public hearing on the petition.

(5) If the secretary determines to hold a public hearing on the petition, the

secretary may issue such orders specifying procedures for the conduct of the hearing, in addition to those provided by this part, as may be necessary and appropriate.

**B.** Notice of hearings.

(1) The secretary shall give public notice of the hearing at least 30 days prior to the hearing. Public notice shall include publication in at least one newspaper of general circulation in the state, publication in the New Mexico register, the department's website, and such other means as the secretary may direct or are required by law.

(2) The secretary shall make reasonable efforts to give notice to persons who have made a written request for advance notice of regulatory change hearings. Requests for such notice shall be addressed to the hearing clerk.

(3) Notice of the hearing shall state:

(a) the subject of the hearing, including a general description of the proposed regulatory change; and the time and place of the hearing;

(b) the statutes, regulations and procedural rules governing the conduct of the hearing;

(c) the manner in which persons may present their comments to the secretary; and

(d) the location where persons may secure a copy of the proposed regulatory change.

**C.** Participation by public.

(1) Any member of the public may give oral comments at the hearing. Any such member may also submit documents in connection with his or her comments.

(2) Any member of the public who wishes to submit a written statement, in lieu of giving oral comments, shall file the written statement prior to the hearing or submit it at the hearing.

**D.** Location of hearing:

The secretary shall hold hearings on proposed regulatory changes in Santa Fe.

[20.1.9.12 NMAC - N, 12/01/07]

**20.1.9.13 HEARING PROCEDURES:**

**A.** Conduct of hearings.

(1) The hearing officer shall conduct the hearing so as to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome or burdening the record with unnecessary repetition or irrelevant comments or documents.

(2) The hearing shall proceed as follows:

(a) the hearing shall begin with an opening statement from the hearing officer identifying the nature and subject matter of the hearing and explaining the procedures that will be followed;

(b) the hearing officer may allow a brief opening statement from the petitioner;

(c) the hearing officer shall establish the order for receiving comments from the public and the department, if the department is not the petitioner; the order may be based on a sign-in sheet or the availability of members of the public.

**B.** Transcript of proceedings.

(1) A verbatim transcript, tape or electronic recording shall be made of the hearing unless otherwise specified by the hearing officer.

(2) The cost of the transcript of proceedings for the secretary shall be borne by the petitioner.

**C.** Post hearing submissions: The hearing officer may allow the record to remain open for a reasonable period of time following conclusion of the hearing for written submission of additional comments, documents, arguments and proposed statements of reasons. The hearing officer's determination shall be announced at the conclusion of the hearing. In considering whether to keep the record open, the hearing officer may consider the reasons why the material was not presented during the hearing, the significance of material to be submitted and the necessity for a prompt decision. If the record is kept open, the hearing officer shall determine and announce the subject(s) on which submittals will be allowed and the deadline for filing the submittals.

**D.** Hearing officer's report: If the secretary directs, the hearing officer shall file a report of the hearing within 30 days following close of the record. The report shall identify the issues addressed at the hearing, explain the comments, and make a recommendation for action by the secretary. The hearing officer report shall be filed with the hearing clerk, with a copy served on the petitioner. The hearing clerk shall promptly notify each person who submitted comments that the hearing officer's report has been filed and shall provide a copy upon request.

**E.** Decision.

(1) The secretary shall render his final decision on the proposed regulatory changes within 60 days following close of the record.

(2) The secretary shall issue the final decision on the proposed regulatory changes in a suitable format. The final decision shall include a statement of reasons for the action taken.

(3) The hearing clerk shall provide notice of the secretary's final decision to all persons who submitted oral or written comments, and to all other persons who have made written request to the hearing clerk for notification of the action taken.

[20.1.9.13 NMAC - N, 12/01/07]

**20.1.9.14 APPEALS AND STAYS:**

**A.** Appeal of regulations.

(1) Appeal of any final decision of the secretary shall be taken in accordance with governing law.

(2) The appellant shall service a copy of the appeal on the secretary and the petitioner.

(3) The appellant shall be responsible for preparation of a sufficient number of copies of the hearing record at the appellant's expense.

**B.** Stay of secretary regulations.

(1) Unless otherwise ordered by the secretary in accordance with this paragraph or otherwise provided by law, the filing of an appeal shall not act as a stay on the regulatory change being appealed.

(2) The secretary may grant a stay of the regulatory change pending appeal only if good cause is shown after a motion is filed and hearing is held.

(3) In determining whether good cause is present for the granting of a stay, the secretary shall consider:

(a) the likelihood that the moving party will prevail on the merits of the appeal;

(b) whether the moving party will suffer irreparable harm if a stay is not granted;

(c) whether substantial harm will result to other interested persons; and

(d) the public interest.

(4) If no action is taken within 60 days after filing the motion for stay, the secretary shall be deemed to have denied the motion.

[20.1.9.14 NMAC - N, 12/01/07]

**HISTORY OF 20.1.9 NMAC: [RESERVED]**

**NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD**

**TITLE 20 ENVIRONMENTAL PROTECTION  
CHAPTER 4 HAZARDOUS WASTE  
PART 5 CLANDESTINE DRUG LABORATORY REMEDIATION**

**20.4.5.1 ISSUING AGENCY.** Environmental Improvement Board. [20.4.5.1 NMAC - N, 1/01/2008]

**20.4.5.2 SCOPE.** This part applies to all law enforcement agencies who discover a clandestine drug laboratory, all

persons who own a clandestine drug laboratory property, and all persons engaging in remediation of a clandestine drug laboratory.

[20.4.5.2 NMAC - N, 1/01/2008]

**20.4.5.3 STATUTORY AUTHORITY.** Section 74-4-4.B NMSA 1978 and Section 74-1-8.A(7) NMSA 1978 (as amended).

[20.4.5.3 NMAC - N, 1/01/2008]

**20.4.5.4 DURATION.** Permanent.

[20.4.5.4 NMAC - N, 1/01/2008]

**20.4.5.5 EFFECTIVE DATE.** January 1, 2008 unless a later date is cited at the end of a section.

[20.4.5.5 NMAC - N, 1/01/2008]

**20.4.5.6 OBJECTIVE.** Contamination from the operation of clandestine drug laboratories is a serious health and environmental threat. Remediation of the residually contaminated portions of clandestine drug laboratory properties is essential to assure the health, safety and welfare of people and the environment. The objective of this part is to provide for the notice of such contamination to potential occupants of the residually contaminated portion of these properties and standards for the assessment and remediation of such properties.

[20.4.5.6 NMAC - N, 1/01/2008]

**20.4.5.7 DEFINITIONS.** Unless otherwise defined in this part, the words and phrases used in this part have the same meanings as in Sections 74-4-1 through 74-4-14 NMSA 1978 (as amended), and 20.4.1 NMAC. As used in this part.

**A.** "Certified industrial hygienist" means a person certified in the comprehensive practice of industrial hygiene by the American board of industrial hygiene.

**B.** "Chemicals and equipment" means the bulk or containerized chemicals, illegal drugs and their precursors drugs, equipment and other items that are found in a clandestine drug laboratory that were used in the manufacture of any controlled substance.

**C.** "Clandestine drug laboratory" means property on which any controlled substance is being unlawfully manufactured or on which there is an attempt to unlawfully manufacture, or where a person is arrested for having on any property any chemicals or equipment used in manufacturing any controlled substance. In the case of a space rental mobile home or recreational vehicle park, clandestine drug laboratory means the mobile home or recreational

vehicle in which any controlled substance is being manufactured or where a person is arrested for having in the mobile home or recreational vehicle any chemicals or equipment used in manufacturing any controlled substance. Clandestine drug laboratory shall include any place or area where chemicals or other waste materials used in clandestine drug laboratories have been located.

**D.** "Controlled substance" means any drug or substance or counterfeit substance listed in the Controlled Substances Act, 30-31-1 NMSA 1978, or regulations adopted thereunder.

**E.** "Department" means the New Mexico environment department or its successor agency under the Department of Environment Act, 9-7A-1 NMSA 1978.

**F.** "Law enforcement officer" means any employee of a police or public safety department administered by the state or any political subdivision of the state where the employee is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this state as defined in Section 30-20A-2.D NMSA 1978, and specifically includes Albuquerque police department nuisance abatement inspectors.

**G.** "Owner" means any person, firm, corporation or other entity that owns, in whole or in part, the property subject to this part.

**H.** "Owner's agent" means person designated by the owner to act on behalf of the owner.

**I.** "Property" means real or personal property, which includes the following:

(1) the area within a structure and the area that surrounds a structure and that is within the land boundary or property lines of any property that can be used for residential purposes or is occupied by people for any length of time for any purpose, and

(2) a vehicle as defined in Section 66-1-4.19 NMSA 1978 (as amended).

**J.** "Remediation" means the cleanup, removal, or destruction of chemicals and equipment or residual contamination at a clandestine drug laboratory to conform with the remediation standards required by 20.4.5.16 NMAC and any action, including the destruction of property, necessary to investigate, prevent, minimize or mitigate potential damages or injury to human health, the environment, or property that may result from the chemicals or residual contamination.

**K.** "Remediation firm" means a person or firm that:

(1) performs remediation of residual contamination from the manufacture of any controlled substance or the storage of chemicals or equipment used in manufacturing any controlled substance, or

(2) conducts preliminary assessments or post-remediation assessments, including testing, for the presence of residual contamination from the manufacture of any controlled substance or the storage of chemicals or equipment used in manufacturing any controlled substance.

**L.** "Residual contamination" means any contaminants associated with manufacturing any controlled substance that are left at a property after the initial removal of chemicals and equipment.

**M.** "Residually contaminated portion of the property" means the structure or unit where chemicals and equipment were removed and the area of any adjacent structure, unit or land where evidence of residual contamination is observed by a law enforcement agency.

(1) Where chemicals and equipment are removed from a house, mobile home or vehicle, then the entire property, not just the room or rooms in which the chemicals and equipment are found, shall be deemed the residually contaminated portion of the property.

(2) Where chemicals and equipment are removed from a detached shed, garage or other structure and other property on the land are not affected, then the detached structure shall be deemed the residually contaminated portion of the property.

(3) Where chemicals and equipment are removed from a hotel or motel room, apartment unit, storage locker or other similar property with controlled-access units and the adjacent rooms or units are not affected, then the contaminated room or unit shall be deemed the residually contaminated portion of the property.

[20.4.5.7 NMAC - N, 1/01/2008]

**20.4.5.8 COMPLIANCE WITH OTHER LAW.** Compliance with this part does not relieve a person from the obligation to comply with other applicable federal, state and local laws and regulations. [20.4.5.8 NMAC - N, 1/01/2008]

**20.4.5.9 DECLARATION OF HAZARDOUS SUBSTANCE INCIDENT AND PUBLIC NUISANCE.** Upon identification by a law enforcement agency of a clandestine drug laboratory where chemicals and equipment were removed or residual contamination was observed, the property is presumed to constitute a site of a hazardous substance incident and a public nuisance until such time as the remediation required by this part is completed.

[20.4.5.9 NMAC - N, 1/01/2008]

**20.4.5.10 NOTICE OF CONTAMINATION.**

**A.** Upon identification of a clandestine drug laboratory by a law

enforcement agency where chemicals and equipment were removed or residual contamination was observed, the agency shall take the following actions.

(1) Post a notice of contamination in a conspicuous place at the clandestine drug laboratory.

(2) Deliver a copy of the notice of contamination to the owner of the property if the owner is on the site at the time of delivery, the on-site manager if the manager is on the site at the time of delivery or the on-site drop box if available. In the case of a tenant-owned unit in a space rental mobile home or recreational vehicle park, the agency shall deliver a copy of the notice of removal to the occupant of the unit if the occupant is on site at the time of delivery and to the on-site park landlord if the park landlord is on site at the time of delivery.

(3) Document proof of posting the notice of contamination, which proof of posting shall be considered notice to the owner if the owner of the clandestine drug laboratory cannot be identified.

(4) Deliver a copy of the notice of contamination to the department's hazardous waste bureau chief within seven days after identification of the clandestine drug laboratory. The law enforcement agency shall inform the department whether or not the agency was able to personally deliver the notice to the owner or on-site manager of the property.

**B.** Upon receiving a copy of the notice of contamination from a law enforcement agency, the department shall send a copy of the notice of contamination by certified mail, return receipt requested, to the owner at the owner's last known address contained in records of the county assessor where the clandestine drug laboratory is located if the owner of the clandestine drug laboratory or, if the clandestine drug laboratory is a mobile home or recreational vehicle, the owner of a mobile home or recreational vehicle space-rental or space-purchase park where the clandestine drug laboratory may be located, is not personally provided a copy of the notice of contamination pursuant to Subsection A of this section. Proof of mailing shall be considered notice to the owner. The owner is presumed to have received the notice of contamination five days after the notice is mailed.

[20.4.5.10 NMAC - N, 1/01/2008]

**20.4.5.11 CONTENTS OF NOTICE OF CONTAMINATION.** The notice of contamination required by 20.4.5.10 NMAC shall contain the following in both English and Spanish or other appropriate tribal language.

**A.** The word "warning" in large bold type at the top and bottom of the notice.



**B.** A statement that a clandestine drug laboratory was identified at the property.

**C.** The date of the identification.

**D.** The address or location of the property where the clandestine drug laboratory was identified. A description of the residually contaminated portion of the property, including a structure, room, apartment or unit number if not the entire or a vehicle registration or vehicle identification number if appropriate.

**E.** The name of the law enforcement agency that identified the clandestine drug laboratory and that agency's telephone number.

**F.** A statement that hazardous substances, toxic chemicals, or other residual contamination from operation of the clandestine drug laboratory may still be present.

**G.** A statement that a person other than the owner or the owner's agent may not enter, occupy, or use the clandestine drug laboratory property or otherwise knowingly and intentionally violate the provisions of the notice of contamination until remediation of the residually contaminated portion of the property has taken place in accordance with 20.4.5.16 NMAC and such remediation has been approved by the department.

**H.** A statement that a person may not knowingly and intentionally disturb the notice of contamination posted at the clandestine drug laboratory.

**I.** A statement that the owner of the property shall remediate the residually contaminated portion of the property in compliance with 20.4.5.16 NMAC.

**J.** A statement that until remediation is complete, the owner or the owner's agent shall not sell, lease, rent, loan, assign, exchange, or otherwise transfer the residually contaminated portion of the property without providing notice of its existence as required by 20.4.5.13 NMAC.

**K.** A statement that failure of the owner to comply with the requirements of this part may result in a fine of up to \$10,000 per day pursuant to Section 74-4-12 NMSA 1978, and is a petty misdemeanor pursuant to Section 74-1-10 NMSA 1978.

**L.** Contact information for the department.  
[20.4.5.11 NMAC - N, 1/01/2008]

#### **20.4.5.12 VACATING NOTICE OF CONTAMINATION.**

**A.** The owner of a clandestine drug laboratory is responsible for providing proof to the department that the property has been remediated in compliance with 20.4.5.16 NMAC.

**B.** Within seven days of the department determining that a clandestine drug laboratory has been remediated in accordance with this part, or that no remediation is required, the department shall notify the owner of the clandestine drug laboratory that the notice of contamination can be removed from the property.

[20.4.5.12 NMAC - N, 1/01/2008]

#### **20.4.5.13 USE AND TRANSFER OF CLANDESTINE DRUG LABORATORY.**

**A.** An owner shall not sell, lease, rent, loan, assign, exchange or otherwise transfer the clandestine drug laboratory property unless the owner does the following:

(1) provides written notice to the purchaser, lessee, renter, borrower, assignee, exchange partner or other transferee, with a copy to the department's hazardous waste bureau, of the existence of the clandestine drug laboratory; and

(2) receives a written acknowledgment, and provides a copy to the department's hazardous waste bureau, that the notice was received by the purchaser, lessee, renter, borrower, assignee, exchange partner or other transferee.

**B.** A person other than the owner or the owner's agent may not enter, occupy, or use the clandestine drug laboratory or otherwise knowingly and intentionally violate the provisions of the notice of contamination until remediation of the residually contaminated portion of the property has taken place in accordance with 20.4.5.16 NMAC. Persons performing work for a law enforcement agency, the department, or a remediation firm are excepted from this prohibition.

[20.4.5.13 NMAC - N, 1/01/2008]

#### **20.4.5.14 CLANDESTINE DRUG LABORATORY LIST.**

**A.** The department shall maintain a list of clandestine drug laboratory sites on the department's web site based on information received from law enforcement agencies.

**B.** Within ten days of the department notifying the owner of its approval pursuant to Subsection B of 20.4.5.18 NMAC, the department shall indicate on its website whether the property has been remediated in accordance with this part.

[20.4.5.14 NMAC - N, 1/01/2008]

#### **20.4.5.15 OWNER RESPONSIBILITIES FOR REMEDIATION.**

**A.** The owner of the property shall retain a remediation firm to perform a preliminary assessment of the residually contaminated portion of the property

to determine the extent of the contamination and the nature of the required remediation within seven days of the day of delivery of the notice of contamination to the owner. The preliminary assessment shall be completed within 21 days after delivery of the notice of contamination to the owner.

(1) If the preliminary assessment determines that remediation is not required, the owner shall send a copy of the assessment to the department's hazardous waste bureau chief within seven days of receipt of the results of the preliminary assessment, which shall be reviewed in accordance with 20.4.5.18 NMAC.

(2) The owner may choose to forego a preliminary assessment and conduct the remediation in accordance with Subsection B of this section.

**B.** The owner shall retain a remediation firm to conduct the remediation within 14 days of receipt of the results of the preliminary assessment when this preliminary assessment determines that remediation is required or, in event where a preliminary assessment was not performed pursuant to Paragraph (2) of Subsection A of this section, within 30 days of the day of delivery of the notice of contamination to the owner.

**C.** The owner shall complete remediation and the post remediation assessment in accordance with the requirements of this part within 90 days of the day of delivery of service of the notice of contamination to the owner or for such other period of time that is approved in writing by the department.

**D.** The owner shall retain a remediation firm to perform a post-remediation assessment of the residually contaminated portion of the property to determine that the requirements for remediation of residual contamination in this part have been met within seven days of receiving notice from the remediation firm that the residually contaminated portion of the property has been remediated.

**E.** After the department has approved the remediation and vacated the notice of contamination, the owner or owner's agent is not required to comply with 20.4.5.13 NMAC and may remove the notice of contamination and allow any person to enter, use, occupy, rent, or sell the property.

[20.4.5.15 NMAC - N, 1/01/2008]

#### **20.4.5.16 REQUIREMENTS FOR REMEDIATION OF RESIDUAL CONTAMINATION.**

The evaluation and cleanup of residual contamination found at clandestine drug laboratories after chemicals and equipment have been removed shall meet the following standards.

**A. Remediation Firms.**

(1) Any preliminary assessment, remediation, and post-remediation assessment of a clandestine drug laboratory for the purpose of complying with this part shall be performed by a remediation firm that meets the requirements of this subsection. The department recommends that the remediation firm performing the preliminary and post-remediation assessments be a different firm than the one that performs the remediation, to ensure independent evaluation of work required and thoroughness of the remediation.

(2) The remediation firm shall be under the direction of a certified industrial hygienist or be approved and currently registered to perform such work with a state, county, or municipal agency during the time the firm participates in the assessment or remediation of residual contamination. A firm's approval, certification, or registration with another state to perform assessments of residually contaminated properties will be accepted as meeting this requirement.

(3) The department may reject or require replacement of a remediation firm if one of the following findings is made:

(a) criminal activity,

(b) disregard for public health or the environment,

(c) failure to comply with this section or local ordinances, or

(d) noncompliance with health and safety, or environmental rules or standards.

#### **B. Preliminary Assessment of the Property.**

(1) The preliminary assessment shall include, but not be limited to, the following elements.

(a) A review of available information such as law enforcement reports and hazardous materials team reports that provide information regarding the manufacturing method, chemicals present, cooking areas, chemical storage areas, and observed areas of contamination or waste disposal.

(b) A physical inspection of the property, including but not limited to living areas, storage areas, plumbing, ventilation systems, septic systems, and outdoor areas, as necessary based on knowledge of the clandestine drug laboratory operation.

(c) Sampling and testing to determine the residual levels of contamination if the preliminary assessment results in a recommendation that no further remediation is required.

(2) A proposed work plan for remediating the residually contaminated portion of the property shall be prepared by the remediation firm that includes a description of the areas to be remediated and a description of the recommended cleanup methods.

(3) The remediation firm shall provide the owner with a written preliminary

assessment report that includes the following elements.

(a) Identification of manufacturing methods, chemicals used, and actual and suspected areas of residual contamination or waste disposal based on law enforcement reports, visual observations, and knowledge of manufacturing method(s).

(b) The results of testing for residual contamination.

(c) A copy of the proposed work plan.

(4) In the event the remediation firm determines that remediation is not required, the firm shall provide the owner and the department's hazardous waste bureau with a written basis for the determination that includes the following statement signed by a certified industrial hygienist or principal in the remediation firm certifying the property meets the requirements in this section and that the no remediation is required. **Remediation firm's certification:** "I hereby declare that I am a certified industrial hygienist or a principle in an approved remediation firm and that this report fully and accurately describes the preliminary assessment of the clandestine drug laboratory property named in the report. I certify that I have reviewed the results of the assessment, including the sampling and testing results, and find that the property meets the clearance levels in 20.4.5.17 NMAC for remediation of residual contamination and does not require further remediation."

#### **C. Remediation of the Residually Contaminated Portion of the Property.**

Once chemicals and equipment removal is completed by the law enforcement agency or hazardous materials team, the owner shall have a remediation firm remove and dispose of, or clean, the portions of the property with residual contamination. Both the interior and exterior residually contaminated portions of the property shall be decontaminated in accordance with this section. Cleanup activities must be repeated until testing indicates that contamination levels are below the clearance levels in 20.4.5.17 NMAC.

##### **(1) Interior Decontamination.**

The decontamination of the interior of the residually contaminated portion of a property that will be occupied by people for any length of time for any purpose shall meet the clearance levels listed in 20.4.5.17 NMAC. At a minimum, the following steps shall be taken to decontaminate the interior of a clandestine drug laboratory property.

(a) Ventilate the property to remove or lower levels of residual volatile organic compounds in indoor air.

(b) Decontaminate or discard interior furnishings and household contents including, but not limited to, carpets, drapes, and furniture.

(c) Decontaminate structural features and surfaces paying particular attention to heavily contaminated areas such as those locations where the manufacturing occurred, or where chemicals were stored, mixed or disposed.

(d) Decontaminate interior surfaces of heating, ventilation and air conditioning systems and plumbing drain lines and traps that are impacted by residual contamination.

(e) Remove or seal interior surfaces where residual contamination can not be effectively removed by cleaning.

##### **(2) Exterior Decontamination.**

Waste from clandestine drug laboratories are typically disposed of by dumping into indoor plumbing drains that empty either into a city sewer system or an onsite septic system or dumping on the ground into burn or burial pits. If evidence of exterior contamination is found at a clandestine drug laboratory property, the remediation firm shall respond as follows.

(a) Collect and analyze soil samples from areas where there is evidence that clandestine drug laboratory wastes have been directly disposed on the ground.

(b) Collect and analyze samples from septic tanks and drain fields if present.

(c) Collect and analyze samples from all wells within 100 feet of impacted septic systems, drain fields, and disposal areas for contaminants of concern.

(d) Contact the department's hazardous waste bureau for information on media-specific cleanup requirements.

##### **(3) Vehicle Decontamination.**

For vehicles, including recreational vehicles, campers and trailers, the remediation firm shall follow the requirements listed in Paragraph (1) of Subsection C of 20.4.5.16 NMAC for interior decontamination. The cost of remediation may not make decontamination cost effective for many vehicles, in which case the entire vehicle shall be demolished.

(4) After the remediation is complete, the remediation firm shall notify the owner that the property is ready for post-remediation inspection.

#### **D. Post-Remediation Assessment of the Property.**

(1) The post-remediation assessment shall include, but not be limited to, a visual inspection, review of the scope of remediation work performed, and testing necessary to certify compliance with the requirements for remediation of residual contamination in this section.

(2) Samples must be collected from the property interior and submitted to a laboratory for analysis. If the results show that the clearance levels listed in 20.4.5.17 NMAC have not been achieved, further remediation shall be performed as necessary to achieve the clearance levels.

(3) When the remediation firm determines that the remediation of the residually contaminated portion of the property was completed pursuant to the requirements for remediation of residual contamination in this section, a final remediation report with a statement signed by a certified industrial hygienist or principal in the remediation firm certifying the remediation of the residually contaminated portion of the property was completed pursuant to the requirements for remediation of residual contamination shall be prepared. The remediation firm shall deliver the remediation report or send the report by certified mail to the owner and the department's hazardous waste bureau chief within 21 days of completion of the remediation pursuant to Subsection C of 20.4.5.16 NMAC. The remediation report certifying that remediation of the residually contaminated portion of the property shall not be in lieu of any certificate of occupancy or any building inspection, if required by a county or municipality.

(4) The remediation firm preparing the remediation report shall maintain that document and all supporting materials for three years.

**E. Remediation Report.**

The remediation report shall include the following information and documentation.

(1) Information demonstrating the remediation firm's qualifications, the name and qualifications of the certified industrial hygienist or other principal of the remediation firm, and the names and training records of the onsite supervisor and workers that performed the remediation services on the residually contaminated portion of the real property.

(2) Complete identifying information of the real property such as street address, mailing address, owner of record, legal description, county tax or parcel identification number, or vehicle identification number if appropriate.

(3) A copy of the final remediation work plan.

(4) A summary of the remediation services completed on the residually contaminated portion of the real property, and any deviations from the approved work plan.

(5) Photographs documenting the remediation services and showing each of the sample locations, and a drawing or sketch of the residually contaminated areas that depict the sample locations.

(6) Diagram showing locations of all wells on the property and all wells on properties within 250 feet of any septic system, drain field, waste disposal areas on the subject property.

(7) A copy of the sampling and testing results and a copy of the chain-of-custody documents for all samples from the

residually contaminated portion of the real property.

(8) A summary of the waste characterization work, any waste sampling and testing results, and transportation and disposal documents, including bills of lading or manifest, weight tickets and waste receipts for all materials removed from the property.

(9) The following statement signed by a certified industrial hygienist or principal in the remediation firm certifying that the residually contaminated portion of the property has been remediated in accordance with 20.4.5.16 NMAC. **Remediation firm's certification:** "I hereby declare that I am a certified industrial hygienist or a principle in an approved remediation firm and that this report fully and accurately describes the remediation of the clandestine drug laboratory property named in the report. I certify that I have reviewed the results of the remediation, including the post-remediation assessment results, and find that the remediation was completed pursuant to the requirements for remediation of residual contamination in 20.4.5 600 NMAC."

[20.4.5.16 NMAC - N, 1/01/2008]

**20.4.5.17 CLEARANCE LEVELS FOR RESIDUAL CONTAMINATION.**

At a minimum, the remediation firm shall conduct sampling and testing for all of the constituents listed below unless evidence indicates that such constituents were not used in the operation of the clandestine drug laboratory. All interior areas of the residually contaminated portion of a property that will be occupied by people for any length of time for any purpose and all furnishings and materials intended for reuse shall meet the following post-remediation clearance levels.

Constituent	Clearance Level
Unlawfully manufactured controlled substance or its precursor drugs	Surface area wipe < 1.0 ÷ g/ft <sup>2</sup>
Volatile organic compounds (total)	Indoor air ≤ 1 part per million
Lead (total)	Surface area wipe ≤ 40 ÷ g/ft <sup>2</sup>
Mercury (vapor)	Indoor air < 0.3 ÷ g/m <sup>3</sup>
Corrosives	Surface pH of 6.0 to 8.0

[20.4.5.17 NMAC - N, 1/01/2008]

**20.4.5.18 APPROVAL OF REMEDIATION.**

A. Upon receipt of the remediation report, the department shall review the report to determine if the remediation of the residually contaminated portion of the property was completed pursuant to the requirements in this part within 30 days.

B. The department shall notify the owner or the owner's agent whether or not it approves the remediation report and agrees that the remediation is complete within seven days of completion of the department's review.

C. If the department does not approve the remediation report, it shall inform the owner or the owner's agent and state the reasons for disapproval. The owner shall take the appropriate corrective action within a time period allowed by the department.

[20.4.5.18 NMAC - N, 1/01/2008]

**20.4.5.19 PREEMPTION OF CLANDESTINE DRUG LABORATORY REMEDIATION RULES.**

A. Where a county or municipality has adopted an ordinance or other rule regarding the remediation of clandestine drug laboratories before the effective date of this part, the county or municipality may continue to apply and enforce such rules in lieu of the rules in this part.

B. Where a county or municipality has adopted an ordinance or other rules regarding the remediation of clandestine drug laboratories and remediation is performed under such ordinance or rule, the cognizant law enforcement agency shall still deliver notice of contamination to the department in accordance with Paragraph (4) of Subsection A of 20.4.5.10 NMAC.

[20.4.5.19 NMAC - N, 1/01/2008]

**20.4.5.20 FAILURE TO COMPLY.**

A. Failure to comply with the remediation standards required by this part may result in enforcement proceedings under Section 74-4-10 NMSA 1978, including but not limited to the following actions.

(1) Issuing a compliance order requiring compliance immediately or within a specified time period or assessing a civil penalty up to \$10,000 per day of noncompliance for each violation or both.

(2) Commencing a civil action in district court for appropriate relief, including a

temporary or permanent injunction.

**B.** A person who fails to comply with the remediation standards required by this part is guilty of a petty misdemeanor under Section 74-1-10 NMSA 1978.

[20.4.5.20 NMAC - N, 1/01/2008]

**20.4.5.21 SEVERABILITY.** If any provision or application of this part is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[20.4.5.21 NMAC - N, 1/01/2008]

**HISTORY OF 20.4.5 NMAC:**  
[RESERVED]

**NEW MEXICO  
DEPARTMENT OF GAME  
AND FISH**

**TITLE 19 N A T U R A L  
RESOURCES AND WILDLIFE  
CHAPTER 30 WILDLIFE ADMIN-  
ISTRATION  
PART 13 ARTIFICIAL LIGHT  
PERMIT SYSTEM**

**19.30.13.1 ISSUING AGENCY:**  
New Mexico Department of Game and Fish.

[19.30.13.1 NMAC - N, 11/30/07]

**19.30.13.2 SCOPE:** Issue permit for the use of artificial light as provided is 17-2-31 E

[19.30.13.2 NMAC - N, 11/30/07]

**19.30.13.3 S T A T U T O R Y  
AUTHORITY:** Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species.

[19.30.13.3 NMAC - N, 11/30/07]

**19.30.13.4 D U R A T I O N :**  
Permanent.

[19.30.13.4 NMAC - N, 11/30/07]

**19.30.13.5 EFFECTIVE DATE:**  
November 30, 2007, unless a later date is cited at the end of a section.

[19.30.13.5 NMAC - N, 11/30/07]

**19.30.13.6 OBJECTIVE:** To permit and regulate any person requesting a permit for using artificial light within New Mexico as exempted 17-2-31.E.

[19.30.13.6 NMAC - N, 11/30/07]

**19.30.13.7 DEFINITIONS:**

**A.** "History of violation" means any one court conviction or multiple convictions totaling up to 20 administrative points against a person violating any federal or state hunting law or regulation during the three-year period immediately preceding the application for permitting, provided that the violation committed, if committed in New Mexico, would equal or exceed revocation requirements as found in 19.31.2 NMAC. It shall also include any conviction for any felony, no matter when the felony was committed. It shall include any convictions as an accessory for the described crimes.

**B.** "Director" shall mean the director of the department of game and fish.

**C.** "Division" shall mean the New Mexico department of game and fish, law enforcement division.

**D.** "Landowner" shall be a person who owns or controls private land in New Mexico.

**E.** "Permit" shall mean an official document issued by the department for purposes exempted by 17-2-31.E.  
[19.30.13.7 NMAC - N, 11/30/07]

**19.30.13.8 PROCEDURES AND REQUIREMENTS:**

**A.** Application form and permit: Permits to use artificial light as defined in Section 17-2-31 NMSA 1978 and Title 19 Chapter 30 Part 13, shall be made only on forms provided by the department as prescribed and approved by the director.

**B.** Application deadlines: All applications must be received at least 5 working days before the requested period. All materials will be forwarded to the division for further background checking and processing.

**C.** Signature: Applications shall be signed by the applicant.

**D.** Provide verifiable written permission from a landowner(s).

**E.** Permit fee  
(1) All permit fees shall be submitted with the application.  
(2) All permit fees are non refundable.

(3) Each permit fee shall be \$15.00

**F.** Applicant must be at least 21 years of age.

**G.** Applicant cannot have a history of violation of any related federal or state game and fish laws or regulations and applicant must give appropriate proof that no conviction exists.

**H.** A permit shall only be valid for the specified dates and area(s) listed on the permit and only valid on the private land with accompanying written permission. When participating in exemption activities, the permittee must possess a valid

permit and valid written, landowner permission and produce both when requested by a conservation officer.

**I.** A permit shall be valid for maximum of 14 consecutive days. Permits may be extended only once and extensions are limited to 30 days. Extensions must be based on emergency or exigent circumstances and must be approved by the director.

**J.** A person may hold more than 1 permit provided that all of the application and permitting process is followed and approved.  
19.30.13.8 NMAC - N, 11/30/07]

**19.30.13.9 PROHIBITIONS:**

**A.** It is unlawful to cast the ray of any artificial light in any location or area other than the area(s) specified on the permit.

**B.** It is unlawful for any person to attempt to take, pursue, or take protected game (17-2-3 NMSA 1978) with the use of artificial light.

[19.30.13.9 NMAC - N, 11/30/07]

**19.30.13.10 PERMIT CANCEL-**

**LATION:** If a landowner officially withdraws their permission in writing to the division for their property, the permit will be cancelled and the division shall contact the permittee informing them of the withdrawn permission by the landowner and cancellation of the permit.

[19.30.13.10 NMAC - N, 11/30/07]

**HISTORY OF 19.30.13 NMAC:**  
[RESERVED]

**NEW MEXICO  
DEPARTMENT OF GAME  
AND FISH**

**TITLE 19 N A T U R A L  
RESOURCES AND WILDLIFE  
CHAPTER 31 HUNTING AND  
FISHING  
PART 20 GOULD'S TURKEY  
ENHANCEMENT PERMITS**

**19.31.20.1 ISSUING AGENCY:**  
New Mexico Department of Game and Fish.

[19.31.20.1 NMAC - N, 11-30-2007]

**19.31.20.2 SCOPE:** Turkey hunters. Additional requirements may be found in Chapter 17, NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19.

[19.31.20.2 NMAC - N, 11-30-2007]

**19.31.20.3 S T A T U T O R Y  
AUTHORITY:** 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to

establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.

[19.31.20.3 NMAC - N, 11-30-2007]

**19.31.20.4 DURATION:**  
Permanent.

[19.31.20.4 NMAC - N, 11-30-2007]

**19.31.20.5 EFFECTIVE DATE:**  
November 30, 2007, unless a later date is cited at the end of individual sections.

[19.31.20.5 NMAC - N, 11-30-2007]

**19.31.20.6 OBJECTIVE:** To establish and define the procedures and restrictions for the issuance, sale, and use of not more than two Gould's turkey enhancement permits.

[19.31.20.6 NMAC - N, 11-30-2007]

**19.31.20.7 DEFINITIONS:**

A. "Department" shall mean the New Mexico department of game and fish.

B. "Director" shall mean the director of the New Mexico department of game and fish.

C. "Gould's turkey permit" as used herein, shall mean a document issued by the department that authorizes the holder to participate in the activity as specified on the permit.

D. "Bearded Gould's turkey" shall mean a turkey with a visible beard of the species *meleagris gallopavo mexicana*.

E. "Turkey license" shall mean a valid official document that is issued or approved by the director that each person hunting turkey in New Mexico must have or obtain prior to hunting.

[19.31.20.7 NMAC - N, 11-30-2007]

**19.31.20.8 GOULD'S TURKEY HABITAT ENHANCEMENT PROGRAM:** The director of the department shall collect all proceeds generated through the auction or lottery or both, not more than 2 Gould's turkey enhancement permits annually. These monies shall be deposited into the game protection fund and made available for expenditure by the department to be used exclusively for activities, projects, and programs aimed at the restoration and management of Gould's turkeys and Gould's turkey habitat.

[19.31.20.8 NMAC - N, 11-30-2007]

**19.31.20.9 REQUIREMENTS FOR ISSUANCE, SALE, AND USE:**

A. Issuance: The director of the department may issue up to 2 Gould's turkey enhancement permits annually. Prior to permit issuance each year, the director

must document that the prospective harvest of up to 2 bearded Gould's turkeys will not jeopardize the prospects for survival and recruitment of Gould's turkeys in New Mexico or conflict with the Wildlife Conservation Act [17-2-37 NMSA 1978].

B. Sale:

(1) Upon fulfillment of the required annual documentation as described in Subsection A of 19.31.20.9 NMAC, the director shall issue up to 2 Gould's turkey enhancement permits, to be sold via auction or lottery or both.

(2) The auction or lottery or both may be conducted by an incorporated non-profit organization dedicated to the conservation of wildlife, in cooperation with and overseen by the department.

(3) Selection of an organization to administer the auction or lottery or both of the Gould's turkey enhancement permits shall be pursuant to Procurement Code Regulations described in 1.4.1.31-44 NMAC.

C. Use:

(1) Each permit may be transferred through sale, barter, donation, or gift by the successful purchaser of the permit to other individuals qualified to purchase a license and hunt.

(2) Individuals hunting pursuant to a Gould's turkey enhancement permit must purchase and have in their possession a valid turkey hunting license and any other stamps or permits required by rule.

(3) Unless his/her hunting privileges have been revoked pursuant to law, any resident of New Mexico, nonresident, or alien is eligible to bid on and purchase a Gould's turkey enhancement permit.

(4) Individuals holding a Gould's turkey enhancement permit shall not be prohibited from hunting other species of turkeys in New Mexico as allowed in 19.31.16 NMAC.

(5) Only individuals who possess a valid turkey license and a Gould's turkey enhancement permit may hunt Gould's turkeys.

(6) The bag limit for each permit shall be one bearded Gould's turkey.

(7) The season dates for each permit shall be no more than 30 consecutive days between April 1 and May 31 as specified by the permit each license year.

(8) The hunt area for each permit shall be any legally accessible public lands where hunting is allowed and private land with written permission.

(9) All manner and method restrictions and requirements set forth in 19.31.16.10 NMAC shall apply to individuals hunting turkey pursuant to Gould's turkey enhancement permits.

[19.31.20.9 NMAC - N, 11-30-2007]

History of 19.31.20 NMAC: [Reserved]

## NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.11 NMAC, Sections 12, 14 and 17, effective 11-30-2007.

**19.31.11.12 COUGAR HUNTING SEASONS:**

A. Cougar hunts within each cougar zone shall be October 1 through March 31, or until the cougar sport harvest limit has been met within the specific cougar zone, whichever occurs first. Exceptions shall be as follows:

(1) Cougar season shall be April 1 through March 31 in GMUs 29, 30, and 34 and in the bighorn sheep range of cougar zones G, H, ~~J~~, K, ~~L~~ and ~~L~~ and P. These ranges include the Ladron, Manzano, Peloncillo, Little Hatchets, Big Hatchets (including Big Hatchet WMA), Animas, Alamo Hueco, Saliz, Mogollon, Organ, Caballo, and San Andres mountains, and the Dry Cimarron drainage as described in ~~subsection D of~~ 19.31.11.14 NMAC.

(2) The Sandia ranger district of the Cibola national forest portion of zone F shall be open for hunting with bow only.

(3) Cougar season on private land shall be April 1 through March 31 (bag limits still apply). Private landowners and their designees may hunt on the landowner's private property. Cougars harvested pursuant to private land only hunting shall not count against the sport harvest limit for that zone however, private land cougar harvest shall count toward the sustainable total mortality established for the zone in which the private land lies. All cougar hunters on private land must be legally licensed.

B. **Cougar zones, sustainable total mortality and sport harvest limits** as established by the 'cougar population assessment and harvest management matrix (September 29, 2006)' are as follows:

*[See Table on page 1122]*

zone	open GMUs or areas	sustainable total mortality (relative to management objective.)	sport harvest limit
A	2 and 7	20	16
B	5, 50, and 51	15	12
C	43, 44, 45, 46, 48, 49, 53, 54, and 55	39	20
D	41, 42, and 47	19	6
E	9 (except the Marquez and Water Canyon WMAs) and 10	22	10
F	6 and 8 (bow only in the Sandia ranger district of the Cibola national forest).	14	12
G	13, 14 (bow only in the Sandia ranger district of the Cibola national forest), and 17	35	22
H	19, 20, 28, and 29	43	10
I	18, 30, 34, 36, 37, and 38	55	25
J	15, 16, 21, and 25	51	38
K	22, 23, and 24	57	20
L	26 and 27	20	6
M	31, 32, 33, 39, and 40	26	14
N	4 and 52	7	3
O	12	5	2
P	56, 57, and 58	8	4

C. Bag limits shall be as indicated below:

(1) One cougar, except any female accompanied by a spotted kitten(s), and except any spotted kitten.

(2) A second cougar, except any female accompanied by a spotted kitten(s), and except any spotted kitten, may be taken in any of the bighorn sheep ranges outlined above in Paragraph (1) of Subsection A of 19.31.11.12 NMAC and in GMUs 29, 30, and 34. [19.31.11.12 NMAC - Rp, 19.31.8.12 & 23 NMAC, 4-1-2007; A, 11-30-2007]

**19.31.11.14 BIGHORN SHEEP RANGES OPEN TO YEARLONG COUGAR HUNTING:** That portion of GMU 13 including Mesa Sarca, the entire Ladron mountain range, including the area along the Rio Salado west of the Sevilleta national wildlife refuge (SNWR) border to Riley road to include the area 3 miles north of the Rio Salado and 1 mile south of the Rio Salado; a 2 mile wide area from the west boundary of the SNWR from the Rio Salado to the southwest corner of the SNWR; and an area south of the SNWR to include Polvadera mountain and Socorro mountain in a line directly south of the southwest corner of the SNWR to NM highway 60 and east on NM highway 60 to interstate 25 and north on interstate 25 to the southeast corner of the SNWR and then west along the south border of the SNWR to the southwest corner of the SNWR<sup>[5]</sup>. SNWR and New Mexico tech property <sup>[is]</sup> **are** closed to all cougar hunting; that portion of the Manzano mountains in GMU 14 from Comanche canyon south to US 60 and from the western base of the mountains east to the ridge comprised of Capilla, Osha and Manzano peaks and all of Sand, Priest and Abo canyons; that portion of GMU 19 beginning at the intersection of US 70 and interstate 25 (I-25) running south along I-25 to its intersection with I-10, thence south along I-10 to its intersection with the Texas/New Mexico state line, thence east along the state line to its intersection with NM 213, thence north along NM 213, which in turn becomes White Sands missile range (WSMR) range road 1 to its intersections with US 70, thence east along US 70 to its intersection with WSMR range road 7, thence north along WSMR range road 7 to its intersection with WSMR range road 306 (Hembrillo canyon), thence west along WSMR range road 306 to its intersection with the western boundary of WSMR, thence south along the WSMR boundary to its intersection with US 70, then west along US 70 to its intersection with I-25; that portion of GMU subunit 16B west of the west fork of the Gila river and south of the Catron/Grant county line; all of GMU 22; that portion of GMU 23 that is south of the Apache and Gila national forest boundary and north of NM 78; that portion of GMU 24 that is west of NM 15; **that portion of GMU 20 including all of the Caballo mountain range south of highway 51, east and north of I-25, and west of the BNSF railroad tracks; that portion of GMU 58 including all of the Dry Cimarron drainage from the Colorado border to 6 miles south of highway 456, east to the Oklahoma border and west to highway 551,** and all of GMU's 26 and 27. [19.31.11.14 NMAC - N, 4-1-2007; A, 11-30-2007]

**19.31.11.17 PROCEDURES FOR CONDUCTING PREVENTIVE COUGAR CONTROL IN BIGHORN SHEEP RANGES.**

A. The New Mexico department of game and fish <sup>[with]</sup> **may** conduct preventive cougar control within bighorn sheep ranges <sup>[in the Manzano, Ladron, Peloncillo, Hatchet, Animas, Alamo Hueco, and San Andres mountains, beginning October 1, 1999 through October 31, 2007. Bighorn sheep ranges include: Mesa Sarca and the entire Ladron mountains in game management unit 13 including the area along the Rio Salado west of the Sevilleta national wildlife refuge (SANWR) border to the Riley road to include the area 3 miles north of the Rio Salado and 1 mile south of the Rio Salado; a 2 mile wide area from the west boundary of the SNWR from the Rio Salado to the southwest corner of the SNWR; and an area south of the SNWR to include Polvadera mountain and Socorro mountain in a line directly south of the southwest corner of the SNWR to NM highway 60 and east on NM highway 60 to interstate 25 and north on interstate 25 to the southeast corner of the SNWR and then west along the south border of the SNWR to the southwest corner of the SNWR, except that portion on the SNWR and except New Mexico tech property; that portion of the Manzano mountains in game management unit 14 from Comanche canyon south to US highway 60 and from the western base of the mountains east to the ridge comprised of Capilla, Osha and Manzano peaks and all of Sand, Priest and Abo canyons; all of the San Andres mountain range within Unit 19 and all of units 26 and 27.] **identified in 19.31.11.14 NMAC.**</sup>

**B.** The total number of cougars removed per license year from any zone containing bighorn ranges will not exceed the sustainable mortality limit for that zone unless approved by the director pursuant to 19.31.11.8 NMAC.

**C.** The department will obtain the services of houndsmen or trappers either from the department's depredation list or through private contract.

**D.** A decision to hunt with hounds or to use snares will be made by department personnel.

**E.** All cougars taken for preventive control will be reported to the department.

**F.** ~~[An interim report on the first 2 years effective cougar control was completed by March 31, 2005. An evaluation of the effectiveness of preventive control of cougars in improving the condition of the bighorn sheep populations will be completed by March 31, 2008.]~~ The department will provide a program evaluation update to the commission no later than December biennially beginning in December 2010.

**G.** A final report on the effectiveness of the program from 1999 through 2007 will be presented to the commission by March 31, 2008.

[19.31.11.17 NMAC - Rp, 19.30.6.11 NMAC, 4-1-2007; A, 11-30-2007]

## NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.12 NMAC, Section 10, effective 11/30/07.

### 19.31.12.10 BARBARY SHEEP, ORYX, AND PERSIAN IBEX MANNER AND METHOD REQUIREMENTS AND RESTRICTIONS:

**A. Season and hours:** Barbary sheep, oryx or Persian ibex may be hunted or taken only during open seasons and only during the period from one-half hour before sunrise to sunset.

**B. Bag limit:** It is unlawful for any person to hunt for or take more than one Barbary sheep, oryx or Persian ibex during a current license year unless otherwise provided by regulation.

**C. Tagging:**

(1) Any license that permits the taking of Barbary sheep, oryx, or Persian ibex shall be issued with a carcass tag bearing the name of the species.

(2) It shall be unlawful to possess more than one carcass tag per Barbary sheep, oryx or Persian ibex except as permitted by regulation. Multiple Persian ibex carcass tags are allowed to persons holding

an official, valid license for the off-mountain Persian ibex hunt (IBX-1-528).

(3) It shall be unlawful for any licensee to fail to tag the Barbary sheep, oryx, or Persian ibex as prescribed below:

(a) Immediately after killing any Barbary sheep, oryx or Persian ibex the licensee killing the game shall notch the proper day and month of kill from the Barbary sheep, oryx or Persian ibex tag.

(b) The tag shall be attached to the carcass of Barbary sheep, oryx or Persian ibex and the tag shall remain attached to the carcass while the carcass is in any vehicle, left unattended in the field, or while it is in camp or at a residence or other place of storage. The notched tag may be removed from the carcass while the carcass is being removed from the field to a camp or vehicle. In situations where numerous trips are required to remove the carcass from the field, the tag shall remain attached to that portion of the carcass left in a camp or vehicle.

(4) A Barbary sheep, oryx or Persian ibex tag, when attached to the carcass of legally taken game, shall authorize possession and storage for the period designated on the tag.

**D. Seizure:** Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcasses of Barbary sheep, oryx or Persian ibex that are improperly tagged.

**E. Proof of sex:** It shall be unlawful for anyone to transport or possess the carcass of any Persian ibex without proof of sex. The horns of any Persian ibex shall remain attached to the skull until arriving at a residence, taxidermist, meat processing facility, or place of final storage. The scalp and both ears of females or immature males of Persian ibex shall accompany the carcass in the same manner.

**F. Proof of bag limit:** It shall be unlawful for anyone to transport or possess the carcass of any oryx without proof of bag limit. The horns of any oryx taken shall remain attached to the skull until arriving at a residence, taxidermist, meat processing facility, or place of final storage.

**G. Use of dogs in hunting:** It shall be unlawful to use dogs to hunt any Barbary sheep, oryx or Persian ibex.

**H. Use of baits or scents:** It shall be unlawful for anyone to take or attempt to take any Barbary sheep, oryx or Persian ibex by use of baits or scents as defined in Subsection P of 19.31.10.7 NMAC. Scent masking agents on one's person are allowed.

**I. Live animals:** It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any Barbary sheep, oryx or Persian ibex.

**J. Use of calling devices:**

It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any Barbary sheep, oryx or Persian ibex.

**K. Killing out-of-season:**

It shall be unlawful to kill any Barbary sheep, oryx or Persian ibex out of their respective hunting seasons.

**L. Legal sporting arms**

for oryx are as follows: any center-fire rifle of .24 caliber or larger; any center-fire handgun of .24 caliber or larger; shotguns not smaller than 28 gauge, firing a single slug; muzzle-loading rifles not smaller than .45 caliber; bows and arrows; and crossbows and bolts, (as designated by the director).

**M. Legal sporting arms**

for Barbary sheep and Persian ibex are as follows: any center-fire rifle; any center-fire handgun; shotguns not smaller than 28 gauge, firing a single slug; muzzle-loading rifles; bows and arrows; and crossbows and bolts, (as designated by the director).

**N. Areas closed to hunting:**

the following areas shall remain closed to hunting Barbary sheep, oryx, and Persian ibex, except as permitted by regulation: Sugarite canyon state park; Rio Grande wild and scenic river area, including the Taos valley overlook; all wildlife management areas; the Valle Vidal area; and sub-unit 6B (Valles Caldera national preserve).

**O. Restricted areas on**

White Sands missile range: It shall be unlawful:

(1) to drive or ride in a motor vehicle into an area signed *no hunting* or otherwise restricting hunting or as documented on a map or as presented during the hunt's briefing, except if the hunter or driver is escorted by official personnel;

(2) for a licensed hunter to enter an area signed *no hunting* or otherwise restricting hunting except if the hunter is escorted by official personnel.

[19.31.12.10 NMAC - N, 4-1-2007; A, 11-30-2007]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

### TITLE 8 SOCIAL SERVICES CHAPTER 322 ENHANCED EPSDT - COMMUNITY MENTAL HEALTH SERVICES PART 6 MULTI-SYSTEMIC THERAPY

**8.322.6.1 ISSUING AGENCY:** New Mexico Human Services Department.  
[8.322.6.1 NMAC - N, 12/1/07]

**8.322.6.2 SCOPE:** The rule applies to the general public.  
[8.322.6.2 NMAC - N, 12/1/07]

**8.322.6.3 STATUTORY**

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

[8.322.6.3 NMAC - N, 12/1/07]

**8.322.6.4 DURATION:**

Permanent

[8.322.6.4 NMAC - N, 12/1/07]

**8.322.6.5 EFFECTIVE DATE:**

December 1, 2007, unless a later date is cited at the end of a section.

[8.322.6.5 NMAC - N, 12/1/07]

**8.322.6.6 OBJECTIVE:**

The objective of these regulations is to provide policies for the service portion of the New Mexico medical assistance programs.

[8.322.6.6 NMAC - N, 12/1/07]

**8.322.6.7 DEFINITIONS:****A. Early and periodic screening, diagnosis and treatment (EPSDT):**

A medical assistance program for children consisting of diagnostic, treatment, and other necessary health care measures needed to correct or ameliorate physical and mental illnesses or conditions discovered during the tot to teen healthcheck by the screening providers or during a healthcheck referral.

**B. MST services, inc:** A national organization located in Mt. Pleasant, South Carolina, deemed by the human services department (HSD) or its authorized agents, to be the primary authority on licensure of New Mexico multi-systemic therapy (MST) programs.

**C. Multi-systemic therapy:** MST provides an intensive home/family and community-based treatment for eligible recipients who are at risk of out-of-home placement or are returning home from placement, and their families. The MST model is based on empirical data and evidence-based interventions that target specific behaviors with individualized behavioral interventions.

**D. Tot to teen healthcheck:** The health screening service component of EPSDT.

[8.322.6.7 NMAC - N, 12/1/07]

**8.322.6.8 MISSION STATEMENT:**

The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of eligible recipients by furnishing payment for quality health services at levels comparable to private health plans.

[8.322.6.8 NMAC - N, 12/1/07]

**8.322.6.9 MULTI-SYSTEMIC THERAPY:**

MAD pays for medically necessary health services furnished to eligible recipients. To help New Mexico eligible recipients under 21 years of age receive the level of services needed, MAD pays for MST services as part of EPSDT services [42 CFR Section 441.57]. The need for MST services must be identified in the tot to teen healthcheck screen or other diagnostic evaluations.

[8.322.6.9 NMAC - N, 12/1/07]

**8.322.6.10 ELIGIBLE PROVIDERS:**

**A.** Upon approval of New Mexico MAD provider participation agreement by MAD or its designee, licensed practitioners or facilities that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the appropriate MAD claims processing contractor. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program policies, billing instructions, utilization review instructions, and other pertinent materials. When enrolled, providers receive instructions on how to access these documents. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to request hard copies of any program policy manuals, billing and utilization review instructions, and other pertinent materials and to obtain answers to questions on or not covered by these materials. To be eligible for reimbursement, a provider is bound to the provisions of the MAD provider participation agreement. Reimbursement for MST services provided can be made when the service is rendered by one of the following providers:

(1) the agency is licensed by MST services, inc. of Mt. Pleasant, S.C., or any of its approved subsidiaries; and

(2) the agency is certified by the licensing and certification unit of HSD or its authorized agent.

**B.** Both clinical services and supervision by licensed behavioral health practitioners must be in accord with their respective licensing board regulations.

**C.** MST team members must include at minimum:

(1) a master's level clinical supervisor who is an independently licensed behavioral health professional;

(2) licensed master's and bachelor's level behavioral health staff able to provide 24 hour coverage, seven days per week;

(3) licensed master's level behavioral health practitioners are required to perform all therapeutic interventions; bachelor's level behavioral health practitioners are limited to performing functions defined within the scope of their licensure or practice;

(4) bachelor's level staff must have a degree in social work, counseling, psychology or a related human services field and must have at least three years' experience working with the target population of children/adolescents and their families;

(5) staffing for MST services shall be comprised of no more than one-third bachelor's level staff and, at minimum, two-thirds licensed master's level staff.

**D.** Clinical supervision must include at a minimum:

(1) weekly supervision provided by an independently licensed master's level behavioral health practitioner who is MST trained; this supervision, following the MST supervisory protocol, is provided to team members on topics directly related to the needs of MST eligible recipients and their families on an ongoing basis; and

(2) one hour of local group supervision per week and one hour of telephone consultation per week with an MST systems supervisor, provided to team members on topics directly related to the needs of MST individuals and their families on an ongoing basis.

**E.** All clinical staff are required to participate in and complete a prescribed five-day MST introductory training and subsequent quarterly trainings.

**F.** The MST direct-service staff-to-family ratio shall not exceed 1:6.

[8.322.6.10 NMAC - N, 12/1/07]

**8.322.6.11 PROVIDER RESPONSIBILITIES:**

A provider who furnishes services to medicaid and other health care program eligible recipients agree to comply with all federal and state laws and regulations relevant to the provision of medical services as specified in the MAD provider participation agreement. A provider also agrees to conform to MAD program policies and instructions as specified in this part and its appendices, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and CMS correct coding initiatives, including not improperly unbundling or up-coding services.

[8.322.6.11 NMAC - N, 12/1/07]



**8.322.6.12 ELIGIBLE RECIPIENTS:**

A. MST is provided to MAD eligible recipients ten to 18 years of age, and their families, who are diagnosed with serious emotional/behavioral disturbances; involved in or at serious risk of involvement with the juvenile justice system; have antisocial, aggressive/violent, substance-abusing behaviors; are at risk for out-of-home placement; or are returning from out-of-home placement where the above behaviors were the focus of treatment.

B. A co-occurring diagnosis of substance abuse shall not exclude an eligible recipient from the program.

[8.322.6.12 NMAC - N, 12/1/07]

**8.322.6.13 COVERAGE CRITERIA:**

A. MAD covers medically necessary MST required by the condition of the eligible recipient.

B. This culturally sensitive service provides an intensive home/family and community-based treatment for eligible recipients, and their families, who are at risk of out-of-home placement or are returning home from placement. Services are primarily provided in the home, but workers also intervene at school and other community settings.

C. The MST model is based on empirical data and evidence-based interventions that target specific behaviors with individualized behavioral interventions. Specialized therapeutic and rehabilitative interventions are used to address specific areas of need, such as substance abuse, delinquency and violent behavior.

D. All MST services must be furnished within the limits of MAD benefits, within the scope and practice of the eligible provider's respective profession, as defined by state law, and in accordance with applicable federal, state and local laws and regulations.

E. All MST services must be provided in compliance with the current MAD definition of medical necessity.

[8.322.6.13 NMAC - N, 12/1/07]

**8.322.6.14 COVERED SERVICES AND SERVICE LIMITATIONS:**

A. The following services must be furnished by MST providers to receive reimbursement from the appropriate MAD contractor. Payment for performance of these services is included in the providing agency's reimbursement rate:

(1) an initial assessment to identify the focus of the MST intervention;

(2) therapeutic interventions with the eligible recipient and his family;

(3) case management; and

(4) crisis stabilization.

B. An available team of practitioners, using a team approach are available to provide MST services to eligible recipients and their families. MST providers must have the ability to deliver services in various environments, such as homes, schools, homeless shelters, street locations, etc. MST services:

(1) promote the family's capacity to monitor and manage the eligible recipient's behavior;

(2) involve families and other systems, such as the school, probation officers, extended families and community connections;

(3) provide access to a variety of interventions 24 hours a day, seven days a week, by staff that will maintain contact and intervene as one organizational unit; and

(4) include structured face-to-face therapeutic interventions to provide support and guidance in all areas of functional domains: adaptive, communication, psychosocial, problem solving, behavior management, etc.

C. The duration of MST intervention is typically three to six months. Weekly interventions may range from three to 20 hours a week, less as a case nears closure.

[8.322.6.14 NMAC - N, 12/1/07]

**8.322.6.15 NONCOVERED SERVICES:** MST services are subject to the limitations and coverage restrictions that exist for other MAD services. See 8.301.3 NMAC, *General Noncovered Services*. MAD does not cover the following mental health specific services:

A. hypnotherapy;

B. biofeedback;

C. conditions that do not meet the standard of medical necessity as defined in MAD policies;

D. treatment for personality disorders;

E. milieu therapy;

F. educational or vocational services related to traditional academic subjects or vocational training;

G. experimental or investigational procedures, technologies or non-drug therapies and related services;

H. activity therapy, group activities and other services which are primarily recreational or diversional in nature;

I. electroconvulsive therapy; or

J. treatment of mental retardation alone.

[8.322.6.15 NMAC - N, 12/1/07]

**8.322.6.16 PRIOR AUTHORIZATION AND UTILIZATION REVIEW:** All services are subject to uti-

lization review for medical necessity and program compliance. Reviews can be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior Authorization and Utilization Review*. Once enrolled, the provider receives instructions on how to access provider program policies, billing instructions, utilization review instructions, and other pertinent material and to obtain answers to questions on or not covered by these materials. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided and to comply with the requirements.

A. **Prior authorization:** Certain procedures or services may require prior authorization from MAD or its designee. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

B. **Eligibility determination:** Prior authorization of services does not guarantee that individuals are eligible for medicaid or other health care programs. Providers must verify that individual is eligible for a specific program at the time services are furnished and determine if eligible recipient has other health insurance.

C. **Reconsideration:** Providers who disagree with prior authorization request denials or other review decisions can request a re-review and a reconsideration. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953].

[8.322.6.16 NMAC - N, 12/1/07]

**8.322.6.17 REIMBURSEMENT:**

MST agencies must submit claims for reimbursement on the HCFA/CMS form or its successor. See 8.302.2 NMAC, *Billing for Medicaid Services*. Once enrolled, providers receive instructions on documentation, billing, and claims processing.

A. Reimbursement is made to MST agencies for covered services at the lesser of the following:

(1) the provider's billed charge;

or  
(2) the MAD fee schedule for the specific service or procedure.

B. The provider's billed charge must be its usual and customary charge for services.

C. "Usual and customary charge" refers to the amount that the eligible provider charges the general public in the majority of cases for a specific procedure or service.

D. Reimbursement for Indian health service agencies and federally-qualified health centers follow the guide-

lines and special provisions for those entities.

[8.322.6.17 NMAC - N, 12/1/07]

**HISTORY OF 8.322.6 NMAC:  
[RESERVED]**

**NEW MEXICO PUBLIC  
REGULATION  
COMMISSION  
INSURANCE DIVISION**

**This is an amendment to 13.10.17 NMAC Sections 2, 3, 7, 9, 10, 12, 13, 14, 16, 18, 19, 20, 22, 23, 24, 25, 26, 29, 30, 31, 32, 34, 35, 38, 39, 40, effective February 1, 2008.**

**13.10.17.2 SCOPE:**

**A. Applicability.** This rule applies to all health care insurers that provide, offer, or administer health benefits plans including health benefits plans:

(1) with a point-of-service option that allows covered persons to obtain health care services out of network;

(2) provided by an entity that purchases or is authorized to purchase health care benefits pursuant to the New Mexico Health Care Purchasing Act; and

~~(3) provided through the medicaid program, subject to the limitations in NMSA 1978 Section 59A-57-10.]~~

(3) utilizing a preferred provider network, as defined under NMSA 1978 Section 59A-22A-3.

**B. Exemptions.** This rule does not apply to policies or certificates that provide coverage for:

(1) traditional fee-for-service indemnity plans;

(2) only short-term travel, accident-only, student health, specified disease, or other limited benefits; or

(3) credit, disability income, hospital indemnity, long-term care insurance, vision care or any other limited supplemental benefit.

**C. Conflicts.** For purposes of this rule, if any provision in this rule conflicts with any provision in 13.10.13 NMAC, Managed Health Care[;] or 13.10.16 NMAC, Provider Grievances, the provisions in this rule shall apply.

[13.10.17.2 NMAC - Rp, 13.10.17.2 NMAC, 5-3-04; A, 2-1-08]

**13.10.17.3 STATUTORY AUTHORITY:** NMSA 1978 Sections 59A-1-16, 59A-2-8, 59A-2-9, 59A-15-16, 59A-16-3, 59A-16-11, 59A-16-12, 59A-16-12.1, 59A-16-20, 59A-16-22, 59A-19-4, 59A-19-6, 59A-22A-7, 59A-46-10, 59A-46-11, 59A-57-2, 59A-57-4, and 59A-57-5. [13.10.17.3 NMAC - Rp, 13.10.17.3 NMAC, 5-3-04; A, 2-1-08]

**13.10.17.7 DEFINITIONS:** As used in this rule:

**A. administrative grievance** means an oral or written complaint submitted by or on behalf of a covered person regarding any aspect of a health benefits plan other than a request for health care services, including but not limited to:

(1) administrative practices of the health care insurer that affects the availability, delivery, or quality of health care services;

(2) claims payment, handling or reimbursement for health care services; and

(3) terminations of coverage;

**B. adverse determination** means a decision made either pre-service or post-service, by a health care insurer that a health care service requested by a provider or covered person has been reviewed and, based upon the information available, does not meet the health care insurer's requirements for coverage or medical necessity, and the requested health care service is therefore denied, reduced or terminated;

**C. adverse determination grievance** means an oral or written complaint submitted by or on behalf of a covered person regarding an adverse determination;

**D. certification** means a decision by a health care insurer that a health care service requested by a provider or covered person has been reviewed and, based upon the information available, meets the health care insurer's requirements for coverage and medical necessity, and the requested health care service is therefore approved;

**E. covered person** means a policyholder, subscriber, enrollee, or other individual entitled to receive health care benefits provided by a health benefits plan, and includes medicaid recipients enrolled in a health care insurer's medicaid plan and individuals whose health insurance coverage is provided by an entity that purchases or is authorized to purchase health care benefits pursuant to the New Mexico Health Care Purchasing Act;

**F. grievant** means a covered person, a covered person's authorized representative, or a provider acting on behalf of a covered person with the covered person's consent;

**G. health benefits plan** means a policy, contract, certificate or agreement offered or issued by a health care insurer or plan administrator to provide, deliver, arrange for, pay for, or reimburse the costs of health care services; this includes a health benefits plan as defined under NMSA 1978 Section 59A-22A-3(D) as "the health insurance policy or subscriber agreement between the covered person or the policyholder and the health care insurer

which defines the covered services and benefit levels available";

**H. health care insurer** means a person that has a valid certificate of authority in good standing issued pursuant to the Insurance Code to act as an insurer, health maintenance organization, nonprofit health care plan, fraternal benefit society, vision plan, or pre-paid dental plan;

**I. health care professional** means a physician or other health care practitioner, including a pharmacist, who is licensed, certified or otherwise authorized by the state to provide health care services consistent with state law;

**J. health care services** means services, supplies, and procedures for the diagnosis, prevention, treatment, cure or relief of a health condition, illness, injury, or disease, and includes, to the extent offered by the health benefits plan, physical and mental health services, including community-based mental health services, and services for developmental disability or developmental delay;

**K. hearing officer, independent co-hearing officer or ICO** means a health care or other professional licensed to practice medicine or another profession who is willing to assist the superintendent as a hearing officer in understanding and analyzing medical necessity and coverage issues that arise in external review hearings;

**L. medical necessity or medically necessary** means health care services determined by a provider, in consultation with the health care insurer, to be appropriate or necessary, according to any applicable generally accepted principles and practices of good medical care or practice guidelines developed by the federal government, national or professional medical societies, boards and associations, or any applicable clinical protocols or practice guidelines developed by the health care insurer consistent with such federal, national, and professional practice guidelines, for the diagnosis or direct care and treatment of a physical, behavioral, or mental health condition, illness, injury, or disease;

**M. provider** means a duly licensed hospital or other licensed facility, physician, or other health care professional authorized to furnish health care services within the scope of ~~her~~ their license;

**N. summary of benefits** means the written materials required by NMSA 1978 Section 59A-57-4 to be given to the covered person by the health care insurer or group contract holder;

**O. termination of coverage** means the cancellation or non-renewal of coverage provided by a health care insurer to a covered person but does not include a voluntary termination by a covered person or termination of a health benefits plan that does not contain a renewal provision;

**P. traditional fee-for-service indemnity benefit** means a fee-for-service indemnity benefit, not associated with any financial incentives that encourage covered persons to utilize preferred providers, to follow pre-authorization rules, to utilize prescription drug formularies or other cost-saving procedures to obtain prescription drugs, or to otherwise comply with a plan's incentive program to lower cost and improve quality, regardless of whether the benefit is based on an indemnity form of reimbursement for services;

**[P] Q. uniform standards** means all generally accepted practice guidelines, evidence-based practice guidelines or practice guidelines developed by the federal government or national and professional medical societies, boards and associations, and any applicable clinical review criteria, policies, practice guidelines, or protocols developed by the health care insurer consistent with the federal, national, and professional practice guidelines that are used by a health care insurer in determining whether to certify or deny a requested health care service.

[13.10.17.7 NMAC - Rp, 13.10.17.7 NMAC, 5-3-04; A, 2-1-08]

### 13.10.17.9 G E N E R A L REQUIREMENTS REGARDING GRIEVANCE PROCEDURES:

**A. Written grievance procedures required.** Every health care insurer shall establish and maintain separate written procedures to provide for the presentation, review, and resolution of:

(1) adverse determination grievances; a health care insurer shall establish procedures for both standard and expedited review of adverse determination grievances that comply with the requirements of 13.10.17.17 NMAC through 13.10.17.22 NMAC;

(2) administrative grievances; a health care insurer shall establish procedures for reviewing administrative grievances that comply with the requirements of 13.10.17.33 NMAC through 13.10.17.36 NMAC; and

(3) if a grievance contains clearly divisible administrative and adverse decision issues, then the health care insurer shall initiate separate complaints for each issue; with an explanation of the insurer's actions contained in one acknowledgement letter.

**B. Assistance to covered persons.** In those instances where a covered person makes an oral grievance or request for internal review to the health care insurer, or expresses interest in pursuing a written grievance, the health care insurer shall assist the covered person to complete all the forms required to pursue internal review and shall advise the covered person

that the managed health care bureau of the insurance division is available for assistance.

**C. Retaliatory action prohibited.** No person shall be subject to retaliatory action by the health care insurer for any reason related to a grievance. [13.10.17.9 NMAC - Rp, 13.10.17.9 NMAC, 5-3-04; A, 2-1-08]

### 13.10.17.10 I N F O R M A T I O N ABOUT GRIEVANCE PROCEDURES:

**A. For covered persons.** A health care insurer shall:

(1) include a clear and concise description of all grievance procedures in boldface type in the enrollment materials [~~and summary of benefits~~], including in member handbooks or evidences of coverage, issued to covered persons;

(2) notify covered persons that a representative of the health care insurer and the managed health care bureau of the insurance division are available upon request to assist covered persons with grievance procedures by including such information, and a toll-free telephone number for obtaining such assistance, in the enrollment materials and summary of benefits issued to covered persons;

(3) provide a copy of its grievance procedures and all necessary grievance forms at each decision point in the grievance process and immediately upon request, at any time, to a covered person, provider or other interested person; [~~and~~]

(4) provide a detailed written explanation of the appropriate grievance procedure and a copy of the grievance form to a grievant or provider when the health care insurer makes either an adverse determination or adverse administrative decision; the written explanation shall describe how the health care insurer reviews and resolves grievances and provide a toll-free telephone number, facsimile number, e-mail address, and mailing address of the health care insurer's consumer assistance office; and

(5) provide consumer education brochures and materials developed and approved by the superintendent, annually or as directed by the superintendent in consultation with the insurer for distribution.

**B. For providers.** A health care insurer shall inform all providers of the grievance procedures available to covered persons and providers acting on behalf of covered persons, and shall make all necessary forms available to providers, including consumer education brochures and materials developed and approved by the superintendent, annually or as directed by the superintendent in consultation with the insurer for distribution.

**C. Special needs.**

Information about grievance procedures must be provided in accordance with the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq., and 13.10.13 NMAC, Managed Health Care, particularly 13.10.13.29 NMAC, Cultural and Linguistic Diversity. [13.10.17.10 NMAC - Rp, 13.10.17.10 NMAC, 5-3-04; A, 2-1-08]

### 13.10.17.12 R E C O R D O F GRIEVANCES:

**A. Record required.** The health care insurer shall maintain a grievance register to record all grievances received and handled during the calendar year. The register shall be maintained in a manner that is reasonably clear and accessible to the superintendent.

**B. Contents.** For each grievance received, the grievance register shall:

(1) assign a grievance number;  
(2) indicate whether the grievance is an adverse determination or administrative grievance, or a combination of both;  
(3) state the date, and for an expedited review the time, the grievance was received;

(4) state the name and address of the grievant, if different from the covered person;

(5) identify by name and member number the covered person making the grievance or for whom the grievance was made;

(6) indicate whether the grievant's coverage is provided by an entity that purchases or is authorized to purchase health care benefits pursuant to the New Mexico Health Care Purchasing Act, the medicaid program, or a commercial health care insurer;

(7) identify the health insurance policy number and the group if the policy is a group policy;

(8) identify the individual employee of the health care insurer to whom the grievance was made;

(9) describe the grievance;

(10) for adverse determination grievances, indicate whether the grievance received expedited or standard review;

(11) indicate [~~who resolved the grievance~~] at what level the grievance was resolved and what the actual outcome was; and

(12) state the date the grievance was resolved and the date the covered person was notified of the outcome.

**C. Annual report.** Each year, the superintendent shall issue a data call for information based on the grievances received and handled by a health care insurer during the prior calendar year. The data call will be based on the information con-

tained in the grievance register.

**D. Retention.** The health care insurer shall maintain such records for at least three (3) years.

**E. Submittal.** The health care insurer shall submit information regarding all grievances involving quality of care issues to the health care insurer's continuous quality improvement committee and to the superintendent and shall document the qualifications and background of the continuous quality improvement committee members.

[13.10.17.12 NMAC - Rp, 13.10.17.12 NMAC, 5-3-04; A, 2-1-08]

**13.10.17.13 PRELIMINARY DETERMINATION.** Upon receipt of a grievance, a health care insurer shall first determine the type of grievance at hand.

**A.** If the grievance seeks review of an adverse determination of a ~~requested~~ pre- or post- health care service, it is an adverse determination grievance and the health care insurer shall review the grievance in accordance with its procedures for adverse determination grievances and the requirements of 13.10.17.17 NMAC through 13.10.17.22 NMAC.

**B.** If the grievance is not based on an adverse determination of a ~~requested~~ pre- or post- health care service, it is an administrative grievance and the health care insurer shall review the grievance in accordance with its procedures for administrative grievances and the requirements of 13.10.17.33 NMAC through 13.10.17.36 NMAC.

[13.10.17.13 NMAC - N, 5-3-04; A, 2-1-08]

**13.10.17.14 TIMEFRAMES FOR INITIAL DETERMINATIONS:**

**A. Expedited decision.** A health care insurer shall make its initial certification or adverse determination decision in accordance with the medical exigencies of the case. The health care insurer shall make decisions within twenty-four (24) hours of the written or verbal receipt of the request for an expedited decision whenever:

(1) the life or health of a covered person would be jeopardized;

(2) the covered person's ability to regain maximum function would be jeopardized;

(3) the provider reasonably requests an expedited decision; or

(4) the medical exigencies of the case require an expedited decision.

**B. Standard decision.** A health care insurer shall make all other initial utilization management decisions within five (5) working days. The health care insurer may extend the review period for a maximum of ten (10) working days if it:

(1) can demonstrate reasonable cause beyond its control for the delay;

(2) can demonstrate that the delay will not result in increased medical risk to the covered person; and

(3) provides a written progress report and explanation for the delay to the covered person and provider within the original five (5) working day review period. [13.10.17.14 NMAC - Rp, 13.10.17.14 NMAC, 5-3-04; A, 2-1-08]

**13.10.17.16 NOTICE OF INITIAL DETERMINATION:**

**A. Certification.** The health care insurer shall notify the covered person and provider of the certification by written or electronic communication ~~sent~~ within two (2) working days of the date the health care service was certified, unless earlier notice is required by the medical exigencies of the case.

**B. Adverse determination.** The health care insurer shall notify a covered person and provider of an adverse determination by telephone or as required by the medical exigencies of the case, but in no case later than twenty-four (24) hours after making the adverse determination. Additionally, the health care insurer shall notify the covered person and provider of the adverse determination by written or electronic communication sent within one (1) working day of the telephone notice. The notice shall:

(1) if the adverse determination is based on a lack of medical necessity, clearly and completely explain why the requested health care service is not medically necessary. A statement that the health care service is not medically necessary will not be sufficient;

(2) if the adverse determination is based on a lack of coverage, identify all health benefits plan provisions relied on in making the adverse determination, and clearly and completely explain why the requested health care service is not covered by any provision of the health benefits plan. A statement that the requested health care service is not covered by the health benefits plan will not be sufficient;

(3) advise the ~~grievant~~ covered person that he or she may request internal review of the health care insurer's adverse determination; and

(4) describe the procedures and provide all necessary forms to the ~~grievant~~ covered person for requesting internal review.

[13.10.17.16 NMAC - Rp, 13.10.17.17 NMAC, 5-3-04; A, 2-1-08]

**13.10.17.18 TIMEFRAMES FOR INTERNAL REVIEW OF ADVERSE DETERMINATIONS:** Upon receipt of a request for internal review of an adverse determination, the health care insurer shall conduct either a standard or expedited

review, as appropriate.

**A. Expedited review.** A health care insurer shall complete its internal review as required by the medical exigencies of the case but in no case later than seventy-two (72) hours from the time the internal review request was received whenever:

(1) the life or health of a covered person would be jeopardized; or

(2) the covered person's ability to regain maximum function would be jeopardized.

**B. Standard review.** A health care insurer shall complete a standard review of both internal reviews as described in 13.10.17.19 NMAC and 13.10.17.20 NMAC within twenty (20) working days of receipt of the request for internal review in all cases ~~not requiring~~ in which the request for review is made prior to the service requested, and does not require expedited review, and within forty (40) working days of receipt of the request in all post-service requests for internal review. The health care insurer may extend the review period for a maximum of ten (10) working days in pre-service cases, and twenty (20) working days for post-service cases if it:

(1) can demonstrate reasonable cause beyond its control for the delay;

(2) can demonstrate that the delay will not result in increased medical risk to the covered person; and

(3) provides a written progress report and explanation for the delay to the covered person and provider within the original thirty (30) day for pre-service or sixty (60) day for post-service review period;

(4) if the grievance contains clearly divisible administrative and adverse decision issues, then the health care insurer shall initiate separate complaints for each decision.

**C. Failure to comply with deadline.** If the health care insurer fails to comply with the deadline for completion of an internal review, the requested health care service shall be deemed approved unless the grievant, after being fully informed of his or her rights, has agreed in writing to extend the deadline.

[13.10.17.18 NMAC - Rp, 13.10.17.19 NMAC, 5-3-04; A, 2-1-08]

**13.10.17.19 INTERNAL REVIEW OF ADVERSE DETERMINATIONS BY MEDICAL DIRECTOR:**

**A. Scope of review.** The medical director, or an appropriate person designated by the medical director, shall complete his or her review of the adverse determination within the timeframes required by the medical exigencies of the case.

(1) **Coverage.** If the initial

adverse determination was based on a lack of coverage, the medical director, or an appropriate person designated by the medical director, shall review the health benefits plan and determine whether there is any provision in the plan under which the requested health care service could be certified.

(2) **Medical necessity.** If the initial adverse determination was based on a lack of medical necessity, the medical director shall render an opinion as to medical necessity, either after consultation with specialists who are experts in the area that is the subject of review, or after application of uniform standards used by the health care insurer.

**B. Decision to reverse.** If the medical director reverses the initial adverse determination and certifies the requested health care service, the health care insurer shall notify the covered person and provider as required by 13.10.17.16 NMAC.

**C. Decision to uphold.** If the medical director upholds the initial adverse determination to deny the requested health care service, the health care insurer shall notify the covered person and provider as required by 13.10.17.16 NMAC and shall ascertain whether the grievant wishes to pursue the grievance.

(1) If the grievant does not wish to pursue the grievance, the health care insurer shall mail written notification of the medical director's decision, and confirmation of the grievant's decision not to pursue the matter further, to the grievant within three (3) working days of the medical director's decision.

(2) If the health care insurer is unable to contact the grievant by telephone within seventy-two (72) hours of making the decision to uphold the determination, the health care insurer shall notify the grievant by mail of the medical director's decision and shall include in the notification a self-addressed stamped response form which asks the grievant whether he or she wishes to pursue the grievance further and provides a box for checking "yes" and a box for checking "no." If the grievant does not return the response form within ten (10) working days, the health care insurer shall again contact the grievant by telephone.

(3) If the grievant responds affirmatively to the telephone inquiry or by response form, the health care insurer will select a medical panel to further review the adverse determination.

(4) If the grievant does not respond to the health care insurer's telephone inquiries or return the response form, the health care insurer shall:

(a) when the review is an expedited review, select a medical panel to further

review the adverse determination;

(b) when the review is a standard review, close the file if the health care insurer can document its efforts to contact the grievant and the grievant has not responded within twenty (20) working days.

**D. Extending the Timeframe for Standard Review.** If the grievant does not make an immediate decision to pursue the grievance, or the grievant has requested additional time to supply supporting documents or information, or postponement pursuant to Subsection E of 13.10.17.20 NMAC, the timeframe described in Subsection B of 13.10.17.18 NMAC shall be extended to include the additional time required by the grievant. [13.10.17.19 NMAC - Rp, 13.10.17.20 NMAC, 5-3-04; A, 2-1-08]

### 13.10.17.20 INTERNAL PANEL REVIEW OF ADVERSE DETERMINATIONS:

**A. Notice of review.** Unless the grievant chooses not to pursue the grievance, the health care insurer shall notify the grievant of the date, time, and place of the internal panel review. The notice shall advise the grievant of the rights specified in Subsection E of this section. If the health care insurer indicates that it will have an attorney represent its interests, the notice shall advise the grievant that an attorney will represent the health care insurer and that the grievant may wish to obtain legal representation of ~~her~~ their own.

**B. Panel membership.** The health care insurer shall select one or more representatives of the health care insurer and one or more health care or other professionals who have not been previously involved in the adverse determination being reviewed to serve on the internal panel. At least one of the health care professionals selected shall practice in a specialty that would typically manage the case that is the subject of the grievance or be mutually agreed upon by the grievant and the health care insurer.

**C. Scope of review.**  
(1) **Coverage.** The internal review panel shall review the health benefits plan and determine whether there is any provision in the plan under which the requested health care service could be certified.

(2) **Medical necessity.** The internal review panel shall render an opinion as to medical necessity, either after consultation with specialists who are experts in the area that is the subject of review, or after application of uniform standards used by the health care insurer.

**D. Information to grievant.** No fewer than three (3) working days prior to the internal panel review, the health

care insurer shall provide to the grievant copies of:

(1) the covered person's pertinent medical records;

(2) the treating provider's recommendation;

(3) the covered person's health benefits plan;

(4) the health care insurer's notice of adverse determination;

(5) uniform standards relevant to the grievant's medical condition that is used by the internal panel in reviewing the adverse determination;

(6) questions sent to or reports received from any medical consultants retained by the health care insurer; and

(7) all other evidence or documentation relevant to reviewing the adverse determination.

**E. Request for postponement.** The health care insurer shall not unreasonably deny a request for postponement of the internal panel review made by the grievant. The timeframes for internal panel review shall be extended during the period of any postponement.

**F. Rights of grievant.** A grievant has the right to:

(1) attend and participate in the internal panel review;

(2) present her case to the internal panel;

(3) submit supporting material both before and at the internal panel review;

(4) ask questions of any representative of the health care insurer;

(5) ask questions of any health care professionals on the internal panel;

(6) be assisted or represented by a person of her choice, including legal representation; and

(7) hire a specialist to participate in the internal panel review at his or her own expense, but such specialist may not participate in making the decision.

**G. Timeframe for review; attendance.** The internal panel will complete its review of the adverse determination as required by the medical exigencies of the case and within the timeframes set forth in 13.10.17.18 NMAC. Panel members must be present physically or by video or telephone conferencing to hear the grievance. A panel member who is not present to hear the grievance either physically or by video or telephone conferencing shall not participate in the decision. [13.10.17.20 NMAC - Rp, 13.10.17.21 NMAC, 5-3-04; A, 2-1-08]

### 13.10.17.22 NOTICE OF INTERNAL PANEL DECISION:

**A. Notice required.** Within the time period allotted for completion of its internal review, the health care

insurer shall notify the grievant and provider of the internal panel's decision by telephone within twenty-four (24) hours of the panel's decision and in writing or by electronic means within one (1) working day of the telephone notice.

**B. Contents of notice.**

The written notice shall contain:

(1) the names, titles, and qualifying credentials of the persons on the internal review panel;

(2) a statement of the internal panel's understanding of the nature of the grievance and all pertinent facts;

(3) a clear and complete explanation of the rationale for the ~~medical~~ internal review panel's decision;

(a) the notice shall identify every provision of the grievant's health benefits plan relevant to the issue of coverage in the case under review, and explain why each provision did or did not support the panel's decision regarding coverage of the requested health care service;

(b) the notice shall cite the uniform standards relevant to the grievant's medical condition and explain whether each supported or did not support the panel's decision regarding the medical necessity of the requested health care service;

(4) reference to any other evidence or documentation considered by the internal panel in making its decision;

(5) notice of the grievant's right to request external review by the superintendent, including the address and telephone number of the managed health care bureau of the insurance division, a description of all procedures and time deadlines necessary to pursue external review, and copies of any forms required to initiate external review.

[13.10.17.22 NMAC - Rp, 13.10.17.23 NMAC, 5-3-04; A, 2-1-08]

**13.10.17.23 EXTERNAL REVIEW OF ADVERSE DETERMINATIONS:**

**A. Right to external review.** Every grievant who is dissatisfied with the results of a medical panel review of an adverse determination by a health care insurer ~~and where applicable~~, with the results of a grievance review by an entity that purchases or is authorized to purchase health care benefits pursuant to the New Mexico Health Care Purchasing Act, may request external review by the superintendent.

**B. Exhaustion of remedies.** The superintendent may require the grievant to exhaust any grievance procedures adopted by the health care insurer or the entity that purchases health care benefits pursuant to the New Mexico Health Care Purchasing Act, as appropriate, before accepting a grievance for external review.

[13.10.17.23 NMAC - Rp, 13.10.17.24

NMAC, 5-3-04; A, 2-1-08]

**13.10.17.24 FILING REQUIREMENTS FOR EXTERNAL REVIEW OF ADVERSE DETERMINATIONS:**

**A. Deadline for filing request.**

(1) **When required by the medical exigencies of the case.** If required by the medical exigencies of the case, a covered person or provider may telephonically request an expedited review by calling the managed health care bureau at (505) 827-3928 or 1-877-673-1732.

(2) **In all other cases.** To initiate an external review, a grievant must file a written request for external review with the superintendent within twenty (20) working days from receipt of the written notice of internal review decision unless extended by the superintendent for good cause shown. The request shall be:

(a) mailed to the Superintendent of Insurance, Attn: Managed Health Care Bureau - External Review Request, New Mexico Public Regulation Commission, Post Office Box 1269, 1120 Paseo de Peralta, Santa Fe, New Mexico 87504-1269; or

(b) e-mailed to mhcb.grievance@state.nm.us, subject External Review Request; ~~or~~

(c) faxed to the Superintendent of Insurance, Attn: Managed Health Care Bureau - External Review Request, at (505) 827-4734; or

(d) completed on-line with a NM PRC, Division of Insurance Complaint Form available at <http://www.nmprc.state.nm.us>.

**B. Documents required to be filed by the grievant.** The grievant shall file the request for external review on the forms provided to the grievant by the health care insurer or entity that purchases health care benefits pursuant to the New Mexico Health Care Purchasing Act pursuant to Paragraph 5 of Subsection B of 13.10.17.22 NMAC, and shall also file:

(1) a copy of the notice of internal review decision;

(2) a fully executed release form authorizing the superintendent to obtain any necessary medical records from the health care insurer or any other relevant provider; and

(3) if the grievance involves an experimental or investigational treatment adverse determination, the provider's certification and recommendation as described in Subsection B of 13.10.17.28 NMAC.

**C. Other filings.** The grievant may also file any other supporting documents or information the grievant wishes to submit to the superintendent for review.

**D. Extending timeframes**

**for external review.** If a grievant wishes to supply supporting documents or information subsequent to the filing of the request for external review, the timeframes for external review shall be extended up to 90 days from the receipt of the complaint form, or until the grievant submits all supporting documents, whichever occurs first.

[13.10.17.24 NMAC - Rp, 13.10.17.25 NMAC, 5-3-04; A, 2-1-08]

**13.10.17.25 ACKNOWLEDGEMENT OF REQUEST FOR EXTERNAL REVIEW OF ADVERSE DETERMINATION AND COPY TO HEALTH CARE INSURER:**

**A.** Upon receipt of a request for external review, the superintendent shall immediately send:

(1) the grievant an acknowledgment that the request has been received;

(2) the health care insurer a copy of the request for external review.

**B.** Upon receipt of the copy of the request for external review, the health care insurer shall, within five (5) working days for standard review or the time limit set by the superintendent for expedited review, provide to the superintendent and the grievant by any available expeditious method:

(1) the summary of benefits;

(2) the complete health benefits plan, which may be in the form of a member handbook/evidence of coverage;

(3) all pertinent medical records, internal review decisions and rationales, consulting physician reports, and documents and information submitted by the grievant and health care insurer;

(4) uniform standards relevant to the grievant's medical condition that were used by the internal panel in reviewing the adverse determination; and

(5) any other documents, records, and information relevant to the adverse determination and the internal review decision or intended to be relied on at the external review hearing.

**C.** If the health care insurer fails to comply with the requirements of Subsection B of this section, the superintendent may reverse the adverse determination.

**D.** The superintendent may waive the requirements of this section if necessitated by the medical exigencies of the case.

[13.10.17.25 NMAC - Rp, 13.10.17.26 NMAC, 5-3-04; A, 2-1-08]

**13.10.17.26 TIMEFRAMES FOR EXTERNAL REVIEW OF ADVERSE DETERMINATIONS:**

The superintendent shall conduct either a standard or expedited external review of the adverse determination, as required by the medical exigencies of the case.

**A. Expedited review.** The superintendent shall complete an external review as required by the medical exigencies of the case but in no case later than seventy-two (72) hours of receipt of the external review request whenever:

(1) the life or health of a covered person would be jeopardized; or

(2) the covered person's ability to regain maximum function would be jeopardized.

**B. Standard review.** The superintendent shall conduct a standard review in all cases not requiring expedited review. Insurance division staff shall complete the initial review within ten (10) working days from receipt of the request for external review and the information required of the grievant and health care insurer in Subsection B of 13.10.17.24 and Subsection B of 13.10.17.25 NMAC respectively. If a hearing is held in accordance with 13.10.17.30 NMAC, the superintendent shall complete the external review within thirty (30) working days from receipt of the complete request for external review in compliance with 13.10.17.24 NMAC. The superintendent may extend the external review period for up to an additional ten (10) working days when the superintendent has been unable to schedule the hearing within the required timeframe and the delay will not result in increased medical risk to the covered person.

[13.10.17.26 NMAC - Rp, 13.10.17.27 NMAC, 5-3-04; A, 2-1-08]

### 13.10.17.29 INITIAL EXTERNAL REVIEW OF ADVERSE DETERMINATION BY INSURANCE DIVISION STAFF:

**A. Request incomplete.** If the request for external review is incomplete, insurance division staff shall immediately notify the grievant and require the grievant to submit the information required by Subsection B of 13.10.17.25 NMAC within a specified period of time.

**B. Request does not meet criteria.** If the request for external review does not meet the criteria prescribed by 13.10.17.27 and, if applicable, 13.10.17.28 NMAC, insurance division staff shall so inform the superintendent. The superintendent shall notify the grievant and the health care insurer that the request does not meet the criteria for external review and is thereby denied, and that the grievant has the right to request a hearing in the manner provided by NMSA 1978 Sections 59A-4-15 and 59A-4-18 within thirty-three (33) days from the date the notice was mailed.

**C. Request meets criteria.** If the request for external review is complete and meets the criteria prescribed by 13.10.17.27 and, if applicable,

13.10.17.28 NMAC, insurance division staff shall so inform the superintendent. The superintendent shall notify the grievant and the health care insurer that the request meets the criteria for external review and that an informal hearing pursuant to NMSA 1978 Section 59A-4-18 and 13.10.17.30 NMAC has been set to determine whether, as a result of the health care insurer's adverse determination, the covered person was deprived of medically necessary covered services. Prior to the hearing, insurance division staff shall attempt to informally resolve the grievance in accordance with NMSA 1978 Section 12-8-10.

**D. Notice of hearing.** The notice of hearing shall be mailed no later than eight (8) working days prior to the hearing date. The notice ~~[of hearing]~~ shall state the date, time, and place of the hearing and the matters to be considered and shall advise the grievant and the health care insurer of the rights specified in Subsection G of 13.10.17.30 NMAC. The superintendent shall not unreasonably deny a request for postponement of the hearing made by the grievant or the health care insurer.

[13.10.17.29 NMAC - Rp, 13.10.17.30 NMAC, 5-3-04; A, 2-1-08]

### 13.10.17.30 HEARING PROCEDURES FOR EXTERNAL REVIEW OF ADVERSE DETERMINATIONS:

**A. Conduct of hearing.** The superintendent may designate a hearing officer who shall be an attorney licensed to practice in New Mexico. The hearing may be conducted by telephone conference call, video conferencing, or other appropriate technology at the insurance division's expense.

**B. Co-hearing officers.** The superintendent may designate two (2) independent co-hearing officers who shall be licensed health care professionals. If the superintendent designates two (2) independent ~~[health care professionals as]~~ co-hearing officers, at least one of them shall practice in a specialty that would typically manage the case that is the subject of the grievance.

**C. Powers.** The superintendent or attorney hearing officer shall regulate the proceedings and perform all acts and take all measures necessary or proper for the efficient conduct of the hearing. The superintendent or attorney hearing officer may:

(1) require the production of additional records, documents, and writings relevant to the subject of the grievance;

(2) exclude any irrelevant, immaterial, or unduly repetitious evidence; and

(3) if the grievant or health care insurer fails to appear, proceed with the hearing or adjourn the proceedings to a

future date, giving notice of the adjournment to the absent party.

**D. Staff participation.** Staff may attend the hearing, ask questions, and otherwise solicit evidence from the parties, but shall not be present during deliberations among the superintendent or his designated hearing officer and any independent co-hearing officers.

**E. Testimony.** Testimony at the hearing shall be taken under oath. The superintendent or hearing officers may call and examine the grievant, the health care insurer, and other witnesses.

**F. Hearing recorded.** The hearing shall be stenographically recorded at the insurance division's expense.

**G. Rights of parties.** Both the grievant and the health care insurer have the right to:

(1) attend the hearing; the health care insurer shall designate a person to attend on its behalf and the grievant may designate a person to attend on her behalf if the grievant chooses not to attend personally;

(2) be assisted or represented by an attorney or other person; and

(3) call, examine and cross-examine witnesses.

**H. Stipulation.** The grievant and the health care insurer shall each stipulate on the record that the hearing officers shall be released from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of the external review.

[13.10.17.30 NMAC - Rp, 13.10.17.31 NMAC, 5-3-04; A, 2-1-08]

### 13.10.17.31 INDEPENDENT CO-HEARING OFFICERS (ICOs):

**A. Identification of ICOs.** The superintendent shall consult with appropriate professional societies, organizations, or associations to identify licensed health care and other professionals who are willing to serve as independent co-hearing officers in external reviews.

**B. Disclosure of interests.** Prior to accepting designation as an ICO, each potential ICO shall provide to the superintendent a list identifying all health care insurers and providers with whom the potential ICO maintains any health care related or other professional business arrangements and briefly describe the nature of each arrangement. Each potential ICO shall disclose to the superintendent any other potential conflict of interest that may arise in hearing a particular case, including any personal or professional relationship to the covered person or to the health care insurer or providers involved in a particular external review.

**C. Compensation of Hearing Officers and ICOs.**

**(1) Compensation schedule.**

The superintendent shall consult with appropriate professional societies, organizations, or associations in New Mexico to determine reasonable compensation for health care and other professionals who are appointed as ICOs for external grievance reviews and shall annually publish a schedule of ICO compensation in a bulletin.

**(2) Statement of ICO compensation.** Upon completion of an external review, the attorney and co-hearing officers shall each complete a statement of ICO compensation form prescribed by the superintendent detailing the amount of time spent participating in the external review and submit it to the superintendent for approval. The superintendent shall send the approved statement of ICO compensation to the covered person's health care insurer.

**(3) Direct payment to ICOs.** Within thirty (30) days of receipt of the statement of ICO compensation, the covered person's health care insurer shall remit the approved compensation directly to the ICO.

**(4) No compensation with early settlement.** If the parties provide written notice of a settlement up to three (3) working days prior to the date set for external review hearing, compensation will be unavailable to the hearing officers or ICOs. [13.10.17.31 NMAC - Rp, 13.10.17.32 NMAC, 5-3-04; A, 2-1-08]

**13.10.17.32 SUPERINTENDENT'S DECISION ON EXTERNAL REVIEW OF ADVERSE DETERMINATION:**

**A. Deliberation.** At the close of the hearing, the hearing officers shall review and consider the entire record and prepare findings of fact, conclusions of law, and a recommended decision. Any hearing officer may submit a supplementary or dissenting opinion to the recommended decision.

**B. Order.** Within the time period allotted for external review, the superintendent shall issue an appropriate order. If the order requires action on the part of the health care insurer, the order shall specify the timeframe for compliance.

**(1)** The order shall be binding on the grievant and the health care insurer and shall state that the grievant and the health care insurer have the right to judicial review pursuant to NMSA 1978 Section 59A-4-20 and that state and federal law may provide other remedies.

**(2)** Neither the grievant nor the health care insurer may file a subsequent request for external review of the same adverse determination that was the subject of the superintendent's order.

[13.10.17.32 NMAC - Rp, 13.10.17.33 NMAC, 5-3-04; A, 2-1-08]

**13.10.17.34 INITIAL INTERNAL REVIEW DECISION ON ADMINISTRATIVE GRIEVANCE:**

The health care insurer shall mail a written decision to the grievant within fifteen (15) working days of receipt of the administrative grievance. The fifteen (15) working day period may be extended when there is a delay in obtaining documents or records necessary for the review of the administrative grievance, provided that the health care insurer notifies the grievant in writing of the need and reasons for the extension and the expected date of resolution, or by mutual written agreement of the health care insurer and the grievant. The written decision shall contain:

**A.** the name, title, and qualifications of the person conducting the initial review;

**B.** a statement of the reviewer's understanding of the nature of the administrative grievance and all pertinent facts;

**C.** a clear and complete explanation of the rationale for the reviewer's decision;

**D.** identification of the health benefits plan provisions relied upon in reaching the decision;

**E.** reference to evidence or documentation considered by the reviewer in making the decision;

**F.** a statement that the initial decision will be binding unless the grievant submits a request for reconsideration within twenty (20) working days of receipt of the initial decision; and

**G.** a description of the procedures and deadlines for requesting reconsideration of the initial decision, including any necessary forms.

[13.10.17.34 NMAC - Rp, 13.10.17.35 NMAC, 5-3-04; A, 2-1-08]

**13.10.17.35 RECONSIDERATION OF INTERNAL REVIEW OF ADMINISTRATIVE GRIEVANCE:**

**A. Committee.** Upon receipt of a request for reconsideration, the health care insurer shall appoint a reconsideration committee consisting of one or more employees of the health care insurer who have not participated in the initial decision. The health care insurer may include one or more covered persons other than the grievant to participate on the reconsideration committee.

**B. Hearing.** The reconsideration committee shall schedule and hold a hearing within fifteen (15) working days after receipt of a request for reconsideration. The hearing shall be held during regular business hours at a location reasonably accessible to the grievant, and the

health care insurer shall offer the grievant the opportunity to communicate with the committee, at the health care insurer's expense, by conference call, video conferencing, or other appropriate technology. The health care insurer shall not unreasonably deny a request for postponement of the hearing made by a grievant.

**C. Notice.** The health care insurer shall notify the grievant in writing of the hearing date, time and place at least ten (10) working days in advance. The notice shall advise the grievant of the rights specified in Subsection E of this section. If the health care insurer will have an attorney represent its interests, the notice shall advise the grievant that the health care insurer will be represented by an attorney and that the grievant may wish to obtain legal representation of her own.

**D. Information to grievant.** No fewer than three (3) working days prior to the hearing, the health care insurer shall provide to the grievant all documents and information that the committee will rely on in reviewing the case.

**E. Rights of grievant.** A grievant has the right to:

**(1)** attend the reconsideration committee hearing;

**(2)** present ~~her~~ their case to the reconsideration committee;

**(3)** submit supporting material both before and at the reconsideration committee hearing;

**(4)** ask questions of any representative of the health care insurer; and

**(5)** be assisted or represented by a person of ~~her~~ their choice.

[13.10.17.35 NMAC - Rp, 13.10.17.36 NMAC, 5-3-04; A, 2-1-08]

**13.10.17.38 FILING REQUIREMENTS FOR EXTERNAL REVIEW OF ADMINISTRATIVE GRIEVANCE:**

**A. Deadline for filing request.** To initiate an external review, a grievant must file a written request for external review with the superintendent within twenty (20) working days from receipt of the written notice of reconsideration decision. The request shall either be:

**(1)** mailed to the Superintendent of Insurance, Attn: Managed Health Care Bureau – External Review Request, New Mexico Public Regulation Commission, Post Office Box 1269, 1120 Paseo de Peralta, Santa Fe, New Mexico 87504-1269;

**(2)** e-mailed to mhcb.grievance@state.nm.us, subject External Review Request; ~~or~~

**(3)** faxed to the Superintendent of Insurance, Attn: Managed Health Care Bureau - External Review Request, (505) 827-4734; or

**(4)** completed on-line using a NM



PRC, Division of Insurance Complaint Form available at http://www.nmprc.state.nm.us.

**B. Documents required to be filed by the grievant.** The grievant shall file the request for external review on the forms provided to the grievant by the health care insurer pursuant to Subsection G of 13.10.17.36 NMAC [~~and shall include in the filing a copy of the reconsideration decision~~].

**C. Other filings.** The grievant may also file any other supporting documents or information the grievant wishes to submit to the superintendent for review.

**D. Extending timeframes for external review.** If a grievant wishes to supply supporting documents or information subsequent to the filing of the request for external review, the timeframes for external review shall be extended up to 90 days from the receipt of the complaint form, or until the grievant submits all supporting documents, whichever occurs first. [13.10.17.38 NMAC - Rp, 13.10.17.39 NMAC, 5-3-04; A, 2-1-08]

**13.10.17.39 ACKNOWLEDGEMENT OF REQUEST FOR EXTERNAL REVIEW OF ADMINISTRATIVE GRIEVANCE AND COPY TO HEALTH CARE INSURER:**

**A.** Upon receipt of a request for external review, the superintendent shall immediately send the:

- (1) grievant an acknowledgment that the request has been received;
- (2) health care insurer a copy of the request for external review.

**B.** Upon receipt of the copy of the request for external review, the health care insurer shall provide to the superintendent and the grievant by any available expeditious method within five (5) working days all necessary documents and information considered in arriving at the administrative grievance decision. [13.10.17.39 NMAC - Rp, 13.10.17.40 NMAC, 5-3-04; A, 2-1-08]

**13.10.17.40 REVIEW OF ADMINISTRATIVE GRIEVANCE BY SUPERINTENDENT:** The superintendent shall review the documents submitted by the health care insurer and the grievant, and may conduct an investigation or inquiry or consult with the grievant, as appropriate. The superintendent shall issue a written decision on the administrative grievance within twenty (20) working days of receipt of the complete request for external review in compliance with 13.10.17.38 NMAC. [13.10.17.40 NMAC - Rp, 13.10.17.41 NMAC, 5-3-04; A, 2-1-08]

**NEW MEXICO PUBLIC REGULATION COMMISSION**

TRANSPORTATION DIVISION

**This is an amendment to Section 18.3.1 NMAC Section 7, effective November 30, 2007.**

**18.3.1.7 DEFINITIONS:** In addition to the definitions in NMSA 1978 Sections 24-10B-3, 65-2A-3, and 65-6-2, as used in these rules:

**A. ambulance services** means the scheduled or unscheduled compensated transportation over irregular routes of passengers in ambulances;

**B. bingo bus service** means the scheduled or unscheduled compensated transportation of passengers in motor vehicles over regular or irregular routes to and from legal gambling establishments at rates that apply to each individual passenger;

**C. cadaver** means a dead human body;

**D. charter service** means the compensated transportation of a group of persons in a motor vehicle who, pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle and driver, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin;

**E. director** means the director of the transportation division of the New Mexico public regulation commission or his designee;

**F. endorsement** means the document evidencing the amendment of a certificate or permit;

**G. facilities** includes lands, buildings, and improvements to real property owned, leased, or used in the operations of a motor carrier;

**H. FMCSA** means the federal motor carrier safety administration or any predecessor or successor agency;

**I. hazardous matter** has the meanings given in 49 CFR Section 390.5 for the terms hazardous material, hazardous substance, and hazardous waste;

**J. household goods carrier (HGC)** means a person who transports household goods;

~~**K. incidental carrier** means a motor carrier of persons that provides services for which the customer pays either directly or indirectly and that transports passengers in conjunction with the primary service that it provides, including but not limited to: (1) businesses that transport passengers in conjunction with services such as~~

~~boating, river rafting, kayaking, canoeing, cycling, hiking, bird watching, camping, fishing, or hunting, where customers pay directly or indirectly for either the transportation or the primary service; (2) hotels and other lodging establishments that provide their customers shuttle service from airports or other locations to their places of business and from their places of business to airports or other locations, where customers pay directly or indirectly for either the transportation or the lodging; (3) private schools and private pre-schools that provide transportation to students in conjunction with the schools' educational or extracurricular programs or activities, where customers (including students' parents) pay directly or indirectly for either the transportation or the educational or extracurricular services; (4) casinos and bingo halls that transport customers to and from their places of business where customers pay directly or indirectly for either the transportation or the primary services offered; (5) automobile dealerships that provide shuttle service to transport customers from their places of business to the customers' homes, offices or other locations where the customers pay directly or indirectly for either the transportation or the primary services offered by the dealership; the term "incidental carrier" does not include, for example, (a) automobile dealers that permit potential customers to test drive motor vehicles but do not provide shuttle service or transport customers or potential customers from point to point; (b) individuals such as family members or friends who transport passengers but are not engaged or employed in a paid primary service in conjunction with which the transportation services are offered; and (c) car-pools and similar arrangements where participants may share expenses such as fuel costs, but do not make payments beyond payment for such expenses.]~~

~~**L. inspection** means the examination by the commission, the motor transportation division, or other lawful entity of a motor carrier's operations, including the facilities and equipment used in connection with its operations, and all pertinent records;~~

~~**M. L. limousine service** means the unscheduled compensated transportation over irregular routes of passengers in a chauffeur-driven luxury motor vehicle at the exclusive use of one individual or group at a fixed charge for the motor vehicle and chauffeur for a period of time that is not less than thirty (30) minutes by pre-arrangement and not by soliciting on the streets;~~

~~**N. M. MTD** means the motor transportation division of the New Mexico department of public safety;~~

~~**O. N. non-emergency med-**~~

**ical transport service** means the unscheduled medically necessary transportation of passengers in a motor vehicle over irregular routes, to or from medical facilities only, at rates that apply to each individual passenger;

**[P.] Q. on duty time** has the meaning given in 49 CFR Part 395.2;

**[Q.] P. principal place of business** means the mailing address of the motor carrier and the street address and other physical locations of a motor carrier's business office and stationing points;

**[R.] Q. public liability insurance** means automobile bodily injury and property damage liability insurance;

**[S.] R. repossession service** means the compensated transportation of a motor vehicle lawfully seized without consent from the owner or operator;

**[T.] S. shared ride service** means the unscheduled compensated transportation of passengers to or from bus, train, or airport terminals over irregular routes in motor vehicles with a seating capacity of nine (9) or more persons at rates for each individual passenger that are generated from a grid-based zone rate structure;

**[U.] T. shuttle service** means the scheduled compensated transportation of passengers in motor vehicles over regular routes at rates that apply to each individual passenger;

**[V.] U. these rules** means the rules codified in Title 18, Chapter 3 of the New Mexico Administrative Code;

**[W.] V. tour and sightseeing service** means the scheduled or unscheduled guided compensated transportation of passengers over regular or irregular routes in motor vehicles to scenic points or other points of interest at rates that apply to each individual passenger;

**[X.] W. transfer of control** means a change in control of a motor carrier as control is defined in Paragraphs (1) through (5) of Subsection N of NMSA 1978 Section 65-2A-3;

**[Y.] X. volunteer driver** means a person who drives for an ambulance or commuter service without remuneration; the provision of or reimbursement for training, equipment, uniforms, and supplies necessary to the performance of driving duties are incidental and do not constitute remuneration for purposes of these rules.

[18.3.1.7 NMAC - Rp, SCC Rules 202.03 & 207.03, 12-30-02; A, 1-1-05; A, 11-30-06; A, 11-30-07]

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
FINANCIAL INSTITUTIONS  
DIVISION**

**TITLE 12 TRADE, COMMERCE AND BANKING  
CHAPTER 15 FINANCIAL INSTITUTIONS - GENERAL  
PART 15 LINKED DEPOSIT PROGRAM**

**12.15.15.1 ISSUING AGENCY:** Financial Institutions Division of the Regulation and Licensing Department.  
[12.15.15.1 NMAC - N, 11/30/07]

**12.15.15.2 SCOPE:** Insured banks, (trust and) thrift institutions, and credit unions participating in and/or desiring to participate in the Linked Deposit Program.  
[12.15.15.2 NMAC - N, 11/30/07]

**12.15.15.3 STATUTORY AUTHORITY:** Section 6-10-24.2 NMSA 1978.  
[12.15.15.3 NMAC - N, 11/30/07]

**12.15.15.4 DURATION:** Permanent.  
[12.15.15.4 NMAC - N, 11/30/07]

**12.15.15.5 EFFECTIVE DATE:** November 30, 2007 unless a later date is cited at the end of a section.  
[12.15.15.5 NMAC - N, 11/30/07]

**12.15.15.6 OBJECTIVE:** The objective of this rule is to provide rules implementing Section 6-10-24.2 NMSA 1978, including eligibility criteria, application procedures, and verification criteria.  
[12.15.15.6 NMAC - N, 11/30/07]

**12.15.15.7 DEFINITIONS:**

A. "Depository institution" means any bank, [trust institution,] savings and loan association (thrift), or credit union whose deposits, including but not limited to deposits of public money, are insured by an agency of the United States.

B. "Linked deposit program" means a qualified depository institution's participation in the deposit program established pursuant to Section 6-10-24.2 NMSA 1978.

C. "Qualified depository institution" means a depository institution qualified pursuant to Section 6-10-15 NMSA 1978.

D. "Qualifying branch" means an office of a qualified depository institution that is regularly open five days a week (except for federal holidays), has a

night deposit box, and provides banking services to residents of a financially at risk rural community.

E. "Financially at risk rural community" means a community in New Mexico with the following characteristics:

(1) no more than one depository institution within the community;

(2) a population not exceeding three thousand five hundred (3500); and either

(3) a declining population, as evidenced by a decrease in population as shown by the two most recent federal decennial censuses; or

(4) a median household income less than 80% of the state median household income.

F. "residents" of a financially at risk rural community include individuals living there.

G. "market rate" means the rate of return established by the state board of finance for deposits held by qualified depository institutions.

H. "state deposits" means public funds under the control of the state treasurer or the state treasurer's designee, and held by qualified depository institutions.

[12.15.15.7 NMAC - N, 11/30/07]

**12.15.15.8 ELIGIBILITY CRITERIA:** To participate in the linked deposit program a qualified depository institution must have a qualifying branch located in a financially at risk rural community.

[12.15.15.8 NMAC - N, 11/30/07]

**12.15.15.9 APPLICATION PROCEDURES:** Qualified depository institutions desiring to participate in the linked deposit program must submit the following information to the director of the financial institutions division of the regulation and licensing department (the "director"):

A. a letter from the depository institution requesting certification of eligibility to participate in the linked deposit program;

B. an affidavit from an officer of the depository institution verifying the following information:

(1) that the depository institution is a qualified depository institution pursuant to Section 6-10-15 NMSA 1978;

(2) that the depository institution has a qualifying branch (an office that is regularly open five days a week [except for federal holidays], has a night deposit box, and provides banking services to residents of a financially at risk rural community);

(3) that the qualifying branch is located in a financially at risk rural commu-

ity (as that term is used in Section 6-10-24.2 NMSA 1978); and (4) that the depository institution and the qualifying branch are meeting the banking service needs of the rural community where the qualifying branch is located;

C. some sort of documentation reasonably acceptable to the director indicating:

(1) that the population of the financially at risk rural community does not exceed 3500 people;

(2) that the financially at risk rural community has either a declining population (as shown by the two most recent federal decennial censuses) or a median household income less than 80% of the state median household income;

(3) the address and phone number of the qualifying branch; and

(4) that the depository institution and the qualifying branch are meeting the banking service needs of the rural community where the qualifying branch is located; meeting the banking service needs of the financially at risk rural community may be shown by a summary statement listing the current number of deposit accounts at the depository institution held by residents of said rural community, the number of current loans to residents of said rural community, and a summary of other services provided to residents of the rural community by the depository institution.

[12.15.15.9 NMAC - N, 11/30/07]

#### 12.15.15.10 VERIFICATION

**CRITERIA:** Upon receipt of an application from a qualified depository institution the director shall promptly review the application and the documentation submitted therewith. The director may request additional information or clarification from an applicant. The director may, but shall not be required to, investigate any fact alleged in an application and/or obtain additional information from any source.

[12.15.15.10 NMAC - N, 11/30/07]

#### 12.15.15.11 CERTIFICATION

**TO STATE TREASURER:** Based upon the information provided by a qualified depository institution, and any additional information obtained by the director from any source, if the director reasonably believes that the qualified depository institution is eligible to participate in the linked deposit program the director shall promptly certify said eligibility to the state treasurer. Unless a qualified depository institution is decertified by the director, any such certification of eligibility shall remain effective without any need for recertification by the director.

[12.15.15.11 NMAC - N, 11/30/07]

**12.15.15.12 ANNUAL REPORTING BY QUALIFIED DEPOSITORY INSTITUTIONS:** Each qualified depository institution certified by the director as eligible to participate in the linked deposit program shall on an annual basis after certification of eligibility provide the director with the following information.

A. An affidavit from an officer of the depository institution verifying the following information:

(1) that the depository institution is a qualified depository institution pursuant to Section 6-10-15 NMSA 1978;

(2) that the depository institution has a qualifying branch (an office that is regularly open five days a week [except for federal holidays], has a night deposit box, and provides banking services to residents of a financially at risk rural community);

(3) that the qualifying branch is located in a financially at risk rural community (as that term is used in Section 6-10-24.2 NMSA 1978); and

(4) that the depository institution and the qualifying branch are meeting the banking service needs of the rural community where the qualifying branch is located.

B. Documentation reasonably acceptable to the director indicating:

(1) that the population of the financially at risk rural community does not exceed 3500 people;

(2) that the financially at risk rural community has either a declining population (as shown by the two most recent federal decennial censuses) or a median household income less than 80% of the state median household income;

(3) the address and phone number of the qualifying branch; and

(4) that the depository institution and the qualifying branch are meeting the banking service needs of the rural community where the qualifying branch is located.

[12.15.15.12 NMAC - N, 11/30/07]

#### 12.15.15.13 ANNUAL REVIEW BY DIRECTOR; AND DECERTIFICATION:

Upon receipt of annual reporting information from a qualified depository institution the director shall promptly review the information and the documentation submitted therewith. The director may request additional information or clarification. The director may, but shall not be required to, investigate any fact alleged and/or obtain additional information from any source. No further action is required if the director reasonably believes that the qualified depository institution is eligible to participate in the linked deposit program. However, if after written request by the director a qualified depository institution fails to provide the required annual reporting information, or if the director reason-

ably believes the depository institution is no longer eligible to participate in the linked deposit program, the director shall so notify the state treasurer and the depository institution of said decertification.

[12.15.15.13 NMAC - N, 11/30/07]

**HISTORY OF 12.15.15 NMAC:**  
[RESERVED]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.9.1 NMAC, Section 7, effective 11/30/07.

### 3.9.1.7 DEFINITIONS:

~~[SMALL CIGARS DEFINED: For purposes of the Cigarette Tax Act, small cigars are subject to the same requirements that apply to cigarettes. A "small cigar" is a roll of tobacco or any substitute for tobacco wrapped in paper or in anything that is not one hundred percent tobacco and weighs less than three pounds per thousand.]~~ **CIGARETTES DEFINED:** For purposes of the Cigarette Tax Act, a "cigarette" is:

A. a roll of tobacco wrapped in paper or any substance not containing tobacco; or

B. a roll of tobacco that is wrapped in a substance containing tobacco other than one hundred percent natural leaf tobacco, that weighs no more than three pounds per thousand sticks, and that has three or more of the following characteristics:

(1) it has a typical cigarette size and shape;

(2) it has a cellulose acetate or other cigarette-type integrated filter;

(3) it has a filler primarily consisting of flue-cured, burley, oriental, or unfermented tobaccos or has a filler material yielding the smoking characteristics of any of those tobaccos;

(4) it has a filler, binder and wrapper that together contain three percent or more by weight of total reducing sugars and four percent or less by weight of non-reducing sugars;

(5) it is sold in soft packs, hard packs, flip-top boxes, clam shells, or other cigarette-type packages;

(6) it is sold in a package that labels the product as a cigarette or a cigarette substitute, or in a package that does not clearly and conspicuously declare that the product is a cigar;

(7) it is available for sale in packages of five, ten, twenty or twenty-five sticks;

(8) it is available for sale in cartons of ten packages;

(9) it is marketed or advertised to consumers as a cigarette or cigarette substitute; or

C. a bidi or kretek.

[3.9.1.7 NMAC - N, 11/15/06; A, 11/30/07]

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**End of Adopted Rules Section**

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## Other Material Related to Administrative Law

### NEW MEXICO GAME COMMISSION

#### STATE GAME COMMISSION PUBLIC MEETING

On Wednesday, December 12, 2007, beginning at 9:00 a.m., at the New Mexico Military Institute-Daniels Leadership Center, 101 W. College Blvd., Roswell, NM 88201, the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: Revocations; Draft Recovery Plan for Narrow-headed Garter Snake listed as Threatened under the Wildlife Conservation Act (Section 17-2-40.14, NMSA, 1978); Warm Water Hatchery Construction Status Briefing; Implications of Climate Change Effects on Wildlife and Habitat in New Mexico; Mexican Wolf Reintroduction Program Update; General Public Comments; Current Status of Wild Turkey Populations in New Mexico; Presentation for Approval of Final Draft - Quail Habitat Guidelines and Long-Range Plan for Management of Wild Turkey in New Mexico 2007-2011; Review of Golden Algae Distribution and Affected Fisheries; Closed Executive Session pursuant to Section 10-15-1(H), NMSA, 1978, to discuss litigation, personnel, acquisition or disposal of real property or water rights, and pursuant to Section 10-15-1(H)(1), NMSA, 1978, to discuss matters related to the determination of sending "Notice of Commission Contemplated Action" for outfitter and/or guide registration to any identified individual(s) that may have violated regulating procedures and conduct as per 19.30.8, and 19.31.2, NMAC; Review and Approval of Game Commission Lands for Disposal; Land Conservation Appropriation Update and Action as Needed; State Game Commission Appointment of Citizen Advisors to the Habitat Stamp Program; and Request to Amend Easement by San Ignacio Joint Venture.

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

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other

form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Shirley Baker at (505) 476-8030. Please contact Ms. Baker at least 3 working days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please contact Shirley Baker if a summary or other type of accessible form is needed.

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**End of Other Related  
Material Section**

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**SUBMITTAL DEADLINES AND PUBLICATION DATES****2007**

<b>Volume XVIII</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 3	December 14
Issue Number 24	December 17	December 31

**2008**

<b>Volume XIX</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 29
Issue Number 5	March 3	March 14
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 30
Issue Number 11	June 2	June 16
Issue Number 12	June 17	June 30
Issue Number 13	July 1	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 14
Issue Number 16	August 15	August 29
Issue Number 17	September 2	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	October 31	November 14
Issue Number 22	November 17	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 31

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.