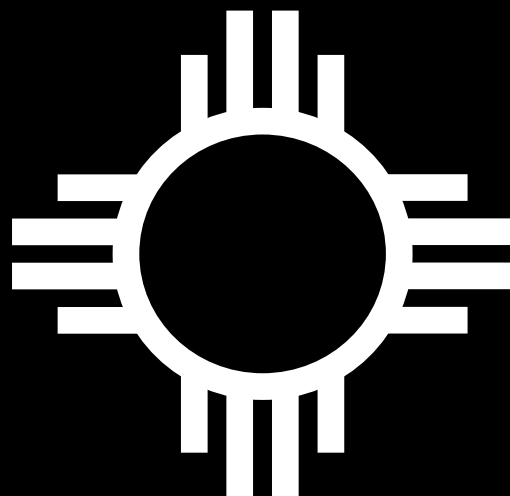


# **NEW MEXICO REGISTER**

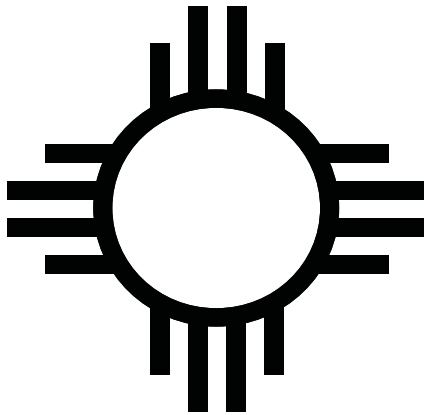


Volume XXI  
Issue Number 5  
March 15, 2010



# **New Mexico Register**

**Volume XXI, Issue Number 5**  
**March 15, 2010**



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  
2010

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# New Mexico Register

Volume XXI, Number 5

March 15, 2010

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

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

#### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

#### PROTECTIVE SERVICES DIVISION

#### NOTICE OF PUBLIC HEARING

Protective Services Division (PSD) of the Children, Youth and Families Department (CYFD) will hold a public hearing in Santa Fe on Monday, March 15, 2010 from 9:00 to 10:30 a.m. in the PERA Building, 1120 Paseo de Peralta, PS conference room, # 227, to take comments regarding the proposed changes to the following policies:

- \* 8.8.2 NMAC "Protective Services General Policies"
- \* 8.10.2 NMAC "Protective Services Intake"
- \* 8.10.3 NMAC "Child Protective Services Investigation" re-named "Protective Services Investigation"
- \* 8.10.7 NMAC "Child Protective Legal Services" re-named "Protective Services Legal Policies"
- \* 8.10.9 NMAC "Independent Living Program" re-named "Youth Services"
- \* 8.26.2 NMAC "Placement Services"
- \* 8.26.4 NMAC "Licensing Requirements for Foster and Adoptive Homes"
- \* 8.26.5 NMAC "Child Placement Agency Licensing Standards"

The PERA building is accessible to people with disabilities. Documents can be available in different formats to accommodate a particular disability upon request by calling 505-827-8400. If assistance is required to attend the hearing, please call 505-827-8400 to arrange accommodation. Written comments are provided the same weight as comments received during the public hearings.

The policies may also be reviewed between 8:00 a.m.-5:00 p.m. at the PS Director's office, Room 254, in the PERA building in Santa Fe. Copies of the policies may be purchased (for the cost of copying); contact Andrea Poole, Bureau Chief, CYFD-PS, at 505-827-8474.

### NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS LIBRARY DIVISION

#### NOTICE OF PUBLIC HEARING

The New Mexico State Library of the Department of Cultural Affairs, will hold a formal public hearing on April 26, 2010 at 10:00 a.m. in the Commission Room of the Library's Administrative Area, Garrey Carruther's State Library, 1209 Camino Carlos Rey, Santa Fe, New Mexico to receive public comment regarding the amendment of a rule that governs the distribution of state grants-in-aid funds to public libraries (4.5.2 NMAC.)

The proposed rule may be obtained on the New Mexico State Library web site (<http://www.stlib.state.nm.us/>) or by contacting Susan Oberlander at 505 476-9762. Interested persons may testify at the hearing or submit written comments no later than 5:00 p.m. on April 22, 2010. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Susan Oberlander, New Mexico State Library, 1209 Camino Carlos Rey, Santa Fe, NM 87507; faxed to 505 476-9761; or by electronic mail to: [susan.oberlander@state.nm.us](mailto:susan.oberlander@state.nm.us).

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact Susan Oberlander at 505 476-9762. The New Mexico State Library requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

### NEW MEXICO BOARD OF DENTAL HEALTH CARE

#### LEGAL NOTICE

Public Rule Hearing and Regular Board and Committee Meeting

The New Mexico Board of Dental Health Care will hold a Rule Hearing on Friday, April 23, 2010. Following the Rule Hearing the New Mexico Dental Hygienists Committee will convene a regular meeting; following the New Mexico Dental Hygienist Committee meeting the New Mexico Board of Dental Health Care will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board

of Dental Health Care Rule Hearing will begin at 9:00 a.m. and the Regular Meetings will convene following the rule hearing. The meetings will be held at the Regulation and Licensing Dept, Toney Anaya Building, West Capitol Complex, 2550 Cerrillos Road, Santa Fe, NM in the Rio Grande Room, 2<sup>nd</sup> Floor.

The purpose of the rule hearing is to consider adoption of proposed amendments, repeals and additions to the following Board Rules and Regulations in 16.5 NMAC: Part 1 General Provisions, Part 3 Mandatory Reporting Requirements, Part 6 Dentists Licensure by Examination, Part 7 Dentists Temporary License, Part 8 Dentists Licensure by Credentials, Part 10 Dentists Continuing Education Requirements, Part 12 Dentists Retirement, Inactive and Reinstatement, Part 16 Dentists Disciplinary Proceedings, Part 17 Dentists and Dental Hygienists, Collaborative Practice, Part 19 Dental Hygienists Licensure by Examination, Part 20 Dental Hygienists Licensure by Credentials, Part 21 Dental Hygienist Temporary License, Part 23 Dental Hygienists Continuing Education Requirements, Part 25 Dental Hygienists Requirements Inactive & Reinstatement, Part 28 Dental Hygienists Local Anesthesia Certification, Part 30 Dental Hygienists Disciplinary Proceedings, Part 33 Dental Assistants Requirements for Certification, Part 36 Dental Assistants Continuing Education Requirements and Part 40 Dental Assistants Disciplinary Proceedings.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office after March 23, 2010, you can contact the board office at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico 87504, call (505) 476-4680 or copies of the proposed rules are available on the Dental board's website: [www.RLD.state.nm.us/Dental](http://www.RLD.state.nm.us/Dental). In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than April 9, 2010. Persons wishing to present their comments at the hearing will need fifteen (15) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4680 at least two

weeks prior to the meeting or as soon as possible.

Kathy Ortiz, Administrator  
PO Box 25101- Santa Fe, New Mexico  
87504

## NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

### NOTICE OF ADOPTION OF EMERGENCY RULE NOTICE OF P.E.R.A. RULEMAKING

The Board of the New Mexico Public Employees Retirement Association (PERA) has adopted an emergency rule entitled Service Credit and Purchase of Service Credit, Title 2, Chapter 80, Part 600 of the New Mexico Administrative Code. The Board is proposing to adopt the rule permanently. The objective of the rule is to allow part-time employees who normally work 20 hours in a week and who were furloughed pursuant to executive order issued between July 1, 2009 and June 30, 2010 to acquire service credit they would otherwise be eligible for absent the executive order.

A copy of the emergency rule and proposed permanent rule is available for inspection in PERA's Office of General Counsel. Written comments or inquiries regarding the proposed rule should be directed to PERA's Office of General Counsel, P.O. Box 2123, Santa Fe, New Mexico, 87504-2123, (505) 476-9353 or 1-800-342-3422. Written comments or requests for a copy of the proposed rule may be submitted electronically to: [judy.olson@state.nm.us](mailto:judy.olson@state.nm.us). To be considered, written comments, arguments, views or relevant data should be submitted by 5:00 p.m. April 6, 2010. The PERA Board will review and consider all written comments addressing the proposed rule changes.

A formal rulemaking hearing will be held on April 13, 2010 at 9:00 a.m. in the Senator Fabian Chavez Jr. Board Room of the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico. Oral comments will be taken at the public hearing. Final action on the rules will occur at the monthly meeting of the PERA Board on April 29, 2010, which will be held at 9:00 a.m. in the Senator Fabian Chavez Jr. Board Room (33 La Prensa, Santa Fe). All interested parties are requested to attend. Lobbyists must comply with the Lobbyist Regulation Act, NMSA 1978, Section 2-11-1 et. seq. (1997), which applies to rulemaking proceedings.

Individuals with a disability who are in need of a reader, amplifier, qualified sign language

interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing may contact Jane Clifford at (505) 476-9305 or toll free at 1-800-342-3422 seven days prior to the hearing or as soon as possible.

## NEW MEXICO PUBLIC REGULATION COMMISSION

### BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE ADOPTION )  
OF AMENDMENTS TO THE COMMISSION'S )  
RULES REGARDING RAILROADS ) Case No. 09-00261-TR-R  
AND RAILROAD SAFETY )

### NOTICE OF PROPOSED RULEMAKING AND HEARING NOTICE

**NOTICE IS HEREBY GIVEN** that the New Mexico Public Regulation Commission ("NMPRC" or "Commission") proposes to amend its existing rules regarding railroads and railroad safety that are currently codified in the New Mexico Administrative Code ("NMAC") at 18.14.2 and 18.14.3 NMAC. This matter comes before the Commission upon the Staff Motion to Amend Notice and Comment Draft Rule that was filed on October 7, 2009; whereupon, being duly advised,

#### **THE COMMISSION FINDS AND CONCLUDES:**

1. Commission is charged, among other things, with enforcing railroad safety as provided by NMSA 1978, Section 63-7.1-1(A)(4), consistent with the Commission's jurisdiction as provided in the New Mexico Constitution, Art. XI, Section 2, and other applicable law.

2. On July 8, 2009, the Commission's Transportation Division Staff ("Staff") filed the Staff Motion to Initiate Rulemaking. In that Motion, Staff asserted that the States are preempted from adopting and enforcing railroad safety rules that are in conflict with federal law; that 49 C.F.R., Parts 200-268 (the "Federal Code") prescribes comprehensive, detailed requirements applicable to railroad operating practices, signal; and train control, motive power and equipment, hazardous materials, and track; and that States, like New Mexico, that enforce railroad safety in these areas must participate in the Federal Railroad Administration's federal/state railroad safety program. Staff Motion at 2, paragraphs 4-5.

3. In its Motion To Initiate Rulemaking, Staff further stated that this Commission, through two of its inspectors, does participate in the Federal Railroad Administration's federal/state railroad safety program; that those inspectors must enforce the Federal Code when they perform their inspection duties; and that as a requisite for participation in the federal/state railroad safety program, States, including New Mexico, are required to initially certify that they have adopted the Federal Code and must certify annually thereafter that they have the authority to enforce the Federal Code. Staff Motion at 2, paragraph 6.

4. Staff requested that the Commission issue a notice of proposed rulemaking to consider the repeal of Commission Rules 18.14.2 and 18.14.3 NMAC for replacement with Staff's proposed rule. Staff Motion at 3.

5. Attached to the Staff Motion was a rule proposed by Staff that would overall, if adopted, incorporate the Federal Code into the Commission's rules regarding railroads. That version of Staff's proposed rule would also allow for cease-and-desist orders and address certain specific matters set out in Staff's Motion, as follows:

- a. An allowance for waiver or variance from rule requirements when the Commission finds that such waiver or variance would be in the public interest;
- b. The formalization of long-standing Commission procedures for handling protests regarding the opening or closing of railroad/highway crossings;
- c. The adoption and incorporation by reference of the latest Engineering Standards for Clearances and Platforms from the Railway Engineering and Maintenance-Of-Way Association that, according to Staff, have not been updated since 1953; and
- d. Map and grade crossing list requirements; and the updating of Commission addresses and telephone numbers for the filing of documents and Commission contacts.

6. Staff's proposed rule, as presented with Staff's initial motion, also included provisions addressed to vegetation management and the imposition of administrative fines and penalties. However, on October 7, 2009, Staff filed the Staff Motion to Amend Notice and Comment Draft Rule. In that Motion, Staff asks to withdraw its proposed rule provisions regarding vegetation management and the imposition of administrative fines



and penalties in case of violation of the Commission's rules or orders.

7. With regard to vegetation management, Staff now requests that the Commission delete the Section of the proposed Notice And Comment Draft Rule entitled "Visual Obstructions at Public Grade Crossings," 18.14.2.15 NMAC, and Subsections A and D of "Administrative Penalties," 18.14.2.18 NMAC. As Staff states in its motion to amend, "Pursuant to the legislative direction provided in Senate Memorial 27, NMDOT sponsored and hosted a meeting on September 30, 2009 in Bernalillo, NM. In addition to many of the parties specifically mentioned in the Memorial, also present at that meeting was a representative of the Federal Railroad Administration ("FRA") and representatives of the New Mexico Public Regulation Commission ("PRC")." Staff explains that at the September workshop meeting the Federal Railroad Administration (FRA) representative "revealed that the FRA was in the process of promulgating a model rule relating to visual obstructions at public grade crossings. After considerable discussion by those present, a consensus was reached that it would be beneficial if the PRC were to delay the adoption of any rule on the topic of visual obstructions at public grade crossings until the FRA publishes its model rule and the Legislature has had an opportunity to receive a report from the working group." *Id.* at 2

8. With regard to the provision addressed to administrative penalties as set out in its Initial Motion And Proposed Rule, Staff states, in its Motion To Amend, "After careful review of the Commission's authority, Staff believes that monetary penalties for violations as well as prosecution of violations under federal law and regulations may not be allowed under the current statutory scheme provided under state law. For that reason, Staff respectfully requests that the Commission's Notice and Comment Draft Rule delete Subsections A and D of 18.14.2.18." *Id.* at 3.

9. Staff's current proposed rule would replace 18.14.2 NMAC and would repeal 18.14.3 NMAC.

10. A rulemaking should be commenced concerning whether and how the Commission's rules regarding railroads and railroad safety, as currently codified at 18.14.2 and 18.14.3 NMAC, should be amended.

11. The rulemaking should be conducted, and any rule amendments adopted, under the authority granted the Commission by the New Mexico Constitution, art. XI, Section 2, the Public Regulation Commission Act (*see* NMSA 1978, Sections 8-8-4 and 8-8-15), and applicable portions of Chapter 63, NMSA 1978, specifically including NMSA 1978,

Section 63-7.1-1(A)(4).

12. This Notice of Proposed Rulemaking should constitute due and lawful notice to all potentially interested parties.

13. The Commission's proposed rule should include the changes to Staff's initial draft rule requested by Staff in its Motion To Amend. The Commission's proposed rule should also include a provision to require any railroad contemplating the closure of an existing crossing to first notify the Transportation Division Director at least 60 days prior to such event, and to require the Transportation Division Director, in turn, to notice the pending closure for public comment and hearing. *See* Proposed Rule, at Section 18.14.2.12(C).

14. A copy of the proposed rule to be considered for promulgation as a replacement for the Railroad Rules is attached hereto as "Exhibit 1." The proposed rule has been formatted for inclusion in the New Mexico Administrative Code ("NMAC") pursuant to NMSA 1978, Section 14-4-3. Additional copies of the proposed rule can be obtained from:

Mr. Ron X. Montoya  
NMPRC Records Management Bureau  
1120 Paseo de Peralta  
Santa Fe, New Mexico 87501  
Telephone: 1-888-4ASK-PRC (1-888-427-5772).

#### IT IS THEREFORE ORDERED:

A. A rulemaking proceeding should be, and hereby is, instituted in this Docket concerning whether and how this Commission's rules regarding railroads and railroad safety, as currently codified in the New Mexico Administrative Code ("NMAC") at 18.14.2 and 18.14.3, should be amended.

B. This *Notice of Proposed Rulemaking* shall constitute due and lawful notice to all potentially interested parties.

C. Any person wishing to comment on the proposed amendments to 18.14.2 and 18.14.3 NMAC may do so by submitting written comments no later than **March 19, 2010**. Any person wishing to respond to comments may do so by submitting written response comments no later than **April 19, 2010**. Comments suggesting changes to the rule amendments as proposed shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule amendments shall be provided in a format consistent with that of the existing rule.

D. All pleadings, including comments, shall bear the caption and case number contained at the top of this Notice. Comments on the proposed rule shall be filed with the Commission's Records Division, at the address set out at ¶ 14 hereof.

E. A public hearing on the proposed rule amendments, to be presided over by Commission Chairman David W. King or his designee, shall be held beginning at **1:00 P.M. on May 4, 2010** at the offices of the Commission, at the following location:

**4<sup>th</sup> Floor Hearing Room**  
**1120 Paseo de Peralta**  
**Santa Fe, New Mexico 87501**  
**Tel. 1-888-4ASK-PRC (1-888-427-5772).**

F. Additional public comment hearings, also to be presided over by Commission Chairman David W. King or his designee, will be held at the following times and places:

**1:00 p.m., Monday, April 19, 2010**  
**Clovis City Hall**  
**321 N. Connelly**  
**Clovis, NM 88101**

**4:00 p.m., Wednesday, April 21, 2010**  
**Leveo Sanchez Lecture Hall (G35)**  
**802 National Avenue**  
**Las Vegas, NM 87701**

**10:00 a.m. to 12:00 Noon, Monday, April 26, 2010**  
**County Government Center, Room 113**  
**845 N. Motel Blvd.**  
**Las Cruces, NM 88007**

**3:00 p.m. to 5:00 p.m., Monday, April 26, 2010**  
**Belen City Council Chambers**  
**100 S. Main St.**  
**Belen, NM 87002**

**9:00 a.m. to 12:00 noon, Monday May 3, 2010**  
**Gallup City Hall Chambers**  
**110 W. Aztec**  
**Gallup, NM 87301**

G. Persons providing public comment and/or participating in any of these public hearings are encouraged to provide specific comment on the proposed rule. Commenters are also encouraged to address any other topic that may be relevant to this rulemaking.

H. Interested persons should contact the Commission to confirm the date, time and place of any public hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the Hearing should contact Ms. Cecilia Rios at (505) 827-4501 at least 48 hours prior to the commencement of the Hearing.

I. In accordance with NMSA 1978, Section 8-8-15(B), this *Notice of Proposed Rulemaking*, including Exhibit 1, shall be mailed **at least thirty days prior to the first hearing date** to all persons who have made a written request for advance notice.

J. In addition, copies of this *Notice of Proposed Rulemaking*, including Exhibit 1, shall be e-mailed to all persons on the attached Certificate Of Service if their e-mail addresses are known. If their e-mail addresses are not known, then the same materials shall be mailed to such persons via regular mail.

K. The Certificate Of Service for this proceeding shall include all railroad companies known by the Commission's Transportation Division Staff to be operating within the State of New Mexico; all members of the Senate Memorial 27 Working Group; the New Mexico Department Of Transportation (NMDOT); and a representative of each of the following: United States Forest Service, Bureau of Land Management, New Mexico Farm Bureau, and New Mexico Cattle Growers Association.

L. This *Notice of Proposed Rulemaking*, without Exhibit 1, shall be published in at least two newspapers of regular circulation in the State of New Mexico, and in the New Mexico Register. Affidavits attesting to the publication of this *Notice of Proposed Rulemaking* as described above shall be filed in this docket.

M. In addition, this Notice shall be posted on the Commission's official Web site.

N. Copies of any forthcoming final order adopting rule amendments shall be mailed, along with copies of the particular rules amended, to all railroad companies appearing on the Certificate of Service as it exists at the time of issuance of the final order in this Docket, to all commenters in this case, and to all individuals requesting such copies.

O. This *Notice of Proposed Rulemaking* is effective immediately.

**ISSUED** under the Seal of the Commission at Santa Fe, New Mexico, this 11<sup>th</sup> day of February, 2010.

#### **NEW MEXICO PUBLIC REGULATION COMMISSION**

**DAVID W. KING, CHAIRMAN**

**JEROME D. BLOCK, VICE CHAIRMAN**

**JASON A. MARKS, COMMISSIONER**

**CAROL K. SLOAN, COMMISSIONER**

**SANDY JONES, COMMISSIONER**

#### **NEW MEXICO DEPARTMENT OF PUBLIC SAFETY**

TRAINING AND RECRUITING  
DIVISION  
Law Enforcement Academy

Notice

**NEW MEXICO DEPARTMENT OF  
PUBLIC SAFETY**

#### **NM LAW ENFORCEMENT ACADEMY BOARD MEETING AND PUBLIC HEARING**

On Thursday March 25, 2010, at 9:00 a.m., the New Mexico Law Enforcement Academy Board will hold a Regular Board Meeting to include one Public Hearing. The Public Hearing will be include 10.29.1.11 (D) Grounds for Denial, Revocation or Suspension of Police Officer or Telecommunicator Certification; Reporting

Requirements.

The NMLEA Board Meeting and public hearing will be held at New Mexico Law Enforcement Academy, 4491 Cerrillos Rd. Santa Fe, NM 87507

Copies of the Regular Board Meeting Agenda's and proposed rule changes may be obtained by accessing our website at [www.dps.nm.org/training](http://www.dps.nm.org/training) or by calling Arthur Ortiz at (505) 827-9290, Gil Najar at (505) 827-9265 or Monique Croker at (505) 827-9255.

#### **NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

#### **NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

#### **NOTICE OF HEARING AND PROPOSED RULES**

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

#### **Gross Receipts and Compensating Tax Act**

3.2.1.12 NMAC Section 7-9-3.3 NMSA 1978

*(Engaging in Business)*

3.2.1.19 NMAC Section 7-9-3.5 NMSA 1978

*(Gross Receipts; Receipts of Agents)*

3.2.234.10 NMAC Section 7-9-73.2 NMSA 1978

*(Items That Are Not Prescription Drugs)*

The New Mexico Taxation and Revenue Department proposes to adopt the following regulations:

#### **Film Production Tax Credit Act**

3.13.9.7 NMAC Section 7-2F-2 NMSA 1978

*(Definitions)*

These proposals were placed on file in the Office of the Secretary on March 1, 2010. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of these proposals, if filed, will be filed as required by law on or about May 14, 2010.

A public hearing will be held on these proposals on Thursday, April 22, 2010, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon

request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before April 22, 2010.

### 3.2.1.12 ENGAGING IN BUSINESS

#### A. Affiliated corporations:

(1) When a corporation is carrying on or causing to be carried on, with a wholly owned subsidiary, any activity with the purpose of direct or indirect benefit, both the corporation and the subsidiary are "engaging in business".

(2) Example: B corporation, which operates a hotel supply house, sells supplies only to C Hotel Corporation, which owns all the stock in B Corporation. B claims that since it sells only to C, its parent corporation, it is not engaging in business. B and C are each engaging in business because the purpose of their activities is to benefit either or both corporations.

B. **Corporation not for profit:** When a corporation not for profit is carrying on or is causing to be carried on any activity with the purpose of direct or indirect benefit it is "engaging in business".

#### C. Leasing property:

(1) Persons leasing property employed in New Mexico are engaging in business within the state for the purpose of direct or indirect benefit.

(2) Example: X, an out-of-state business, leases construction machinery to Y who employs the leased property in New Mexico. X asks if X is engaged in business in New Mexico for purpose of registration, reporting and paying the gross receipts tax. X is engaged in business in New Mexico.

#### D. Hotels and motels providing interstate telecommunications service to guests:

(1) Hotels, motels and similar establishments offering interstate telecommunications service to guests in conjunction with the rental of rooms or other facilities are not "engaging in interstate telecommunications business" for purposes of the Interstate Telecommunications Gross Receipts Tax Act.

(2) A hotel, motel or similar establishment is primarily engaged in the business of renting rooms and meeting facilities to the general public. Providing interstate telephone service or other interstate telecommunications services to guests is incidental to the primary business of the hotel, motel or similar establishment. Receipts from providing such service are additional receipts from engaging in the primary business and are subject to

the provisions of the Gross Receipts and Compensating Tax Act.

(3) Subsection D of [Section] 3.2.1.12 NMAC is retroactively applicable to transactions occurring on or after July 1, 1992.

E. **Persons not engaging in business - foster parents:** Individuals who enter into an agreement with the state of New Mexico to provide foster family care for children placed with them by the state are not thereby engaging in business. Receipts of the individuals from providing foster care pursuant to such an agreement are not receipts from engaging in business.

F. **Persons not engaging in business - certain caretakers:** Individuals who enter into an agreement with the state of New Mexico to provide non-medical personal care and housekeeping assistance to low income disabled adults pursuant to the critical in home care program are not thereby engaging in business. Receipts of the individuals from such caretaking activities are not receipts from engaging in business.

G. **Persons not engaging in business - home care for developmentally disabled family members:** Any individual who enters into an agreement with the state of New Mexico to provide home based support services for developmentally disabled individuals in the home of the developmentally disabled individuals or the home of the support provider and receives payments which under 26 USCA 131 are "qualified foster care payments" is not thereby engaging in business. Receipts of the individuals which are "qualified foster care payments" from providing such home based support services pursuant to such an agreement are not receipts from engaging in business.

#### H. Owner engages in business when selling to owned entity:

(1) When an owner of an entity sells property in New Mexico to, leases property employed in New Mexico to, or performs services in New Mexico for the entity or other owners of the entity, the owner is engaging in business in New Mexico except when the transaction may be characterized for federal income tax purposes as a contribution of capital.

(2) For the purposes of Subsection H of [Section] 3.2.1.12 NMAC, an "entity" means any business organization or association other than a sole proprietorship.

I. **Persons not engaging in business - sale or exchange of renewable-fueled electricity generated from a system installed in a personal residence.** Any individual who sells or transfers electricity to an entity engaged in the business of selling electricity, for which the individual receives monetary compensation or credit against a future month's electricity use, is

not engaged in business if the electricity is generated from a renewable-fueled system installed in a personal residence.

[12/5/69, 3/9/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 9/3/92, 7/19/94, 11/15/96, 5/14/99, 6/15/99, 10/29/99; 3.2.1.12 NMAC - Rn & A, 3 NMAC 2.1.12, 4/30/01; A, XXX]

### 3.2.1.19 GROSS RECEIPTS; RECEIPTS OF AGENTS.

#### A. Nonemployee agents.

(1) The receipts of nonemployee agents are subject to the gross receipts tax to the extent the education provided by Section 7-9-66 NMSA 1978 is not applicable. The indicia outlined in [Section] 3.2.105.7 NMAC will be considered in determining whether a person is an employee or a nonemployee agent.

(2) *Example 1:* S is a nonemployee salesperson for Z Corporation, an out-of-state business. Z Corporation arranges for S to sell securities belonging to corporation shareholders. Z accepts payment from the purchasers of the security, deposits this payment in a trust account, pays S the commission and then distributes the balance to the seller of the securities. Z does not incur gross receipts tax liability as the result of its activity because it is not selling property or performing services in New Mexico for a consideration. The commissions received by S for selling securities in New Mexico are receipts for performing services in New Mexico and are subject to the gross receipts tax.

(3) *Example 2:* The receipts of a nonemployee agent or sub-agent derived from commissions received from (a) correspondence schools for enrolling persons in those schools, (b) freight companies, bus transportation firms, and similar business concerns for rendering services, and (c) the owner of trailers [and/or] or trucks for leasing those trailers or trucks, are subject to gross receipts tax.

#### B. Receipts of condominium and other real property owners associations.

(1) As of March 8, 1988, the provisions of this subsection do not apply to receipts which are exempt under the provisions of Section 7-9-20 NMSA 1978.

#### (2) Associations in which common areas are owned by unit owners.

(a) Amounts received by this type of association from unit owners (owners of homes, offices, apartments or other real property) for accumulation in a trust account owned by the unit owners and expended to provide insurance and pay taxes on the common areas, elements or facilities are not taxable gross receipts since such amounts are not receipts of the association.

(b) Amounts received by an association of this type from unit owners for



accumulation in a trust account owned by the unit owners for current or future expenditures for the improvement, maintenance or rehabilitation of the common areas, elements or facilities are not taxable gross receipts since such amounts are not receipts of the association. However, with respect to receipts not exempt under Section 7-9-20 NMSA 1978, when payments are made from the trust account to the association or its employees, officers or representatives for the improvement, maintenance or rehabilitation, these payments are taxable gross receipts of the association under Section 7-9-3.5 NMSA 1978. When payments are made directly from the account to third parties, those third parties will be liable for the gross receipts tax on those receipts.

(c) With respect to receipts which are not exempt under Section 7-9-20 NMSA 1978, associations of this type which bill unit owners may issue nontaxable transaction certificates (NTTCs) when appropriate under Section 7-9-48 NMSA 1978 (sale of a service for resale) to suppliers of these services, unless the service is deductible by the association under the Internal Revenue Code as an ordinary and necessary business expense. The association must report and pay gross receipts taxes on all its receipts for services, including those for which NTTCs are given. This version of Paragraph (2) of Subsection B of [Section] 3.2.1.19 NMAC applies to transactions occurring on or after July 1, 2000.

(3) *Example A 1:* Property Owners Association A receives monthly payments from each individual owner of property located in XYZ condominiums. The funds are held in a separate trust account by Association A for the XYZ unit owners to pay, on behalf of themselves, the property tax accruing to the common areas, insurance covering the common areas, maintenance and repair of the common areas and future improvements and additions to the common areas. On November 10, Association A, as trustee of such funds, issues a check directly from the trust account to the county treasurer for payment of property taxes on the common areas. This payment goes from the trust account directly to the county treasurer with Association A acting as agent for the actual owners of property; therefore, these funds do not become a part of Association A's gross receipts.

(4) *Example A 2:* Association A employs a maintenance person to maintain and clean the common areas. The maintenance person is responsible for mowing lawns, maintaining the landscape, cleaning halls, lobbies and other common areas and making minor repairs to common facilities. Funds received by Association A from the trust account to pay the maintenance person's wages and to pay various payroll taxes and employee benefits are gross

receipts for the performance of service on which Association A is required to pay tax.

(5) *Example A 3:* NMO Construction Co. contracts to paint and remodel the halls, lobbies and other common areas of the condominiums. Association A, acting as agent, draws funds from the trust account which are paid directly to NMO Construction Co. Since such funds do not become receipts of Association A, the association is not liable for tax on these funds. The funds pass directly to NMO Construction Co. who becomes liable for the gross receipts tax on its receipts for performing construction services.

(6) *Example A 4:* For the last ten years, funds have accumulated in the trust for construction of a swimming pool. A Pool Co. builds the pool and is paid directly from the trust account. A Pool Co. is subject to gross receipts tax on the receipts from the construction of the pool. Association A, acting as agent for the property owners, has no receipts and pays no tax on this transaction.

(7) *Example A 5:* Association A purchases, with its own funds, chemicals which its employee will use to maintain the new swimming pool. To recover this expense, Association A increases the amount it charges the property owners each month and draws funds from the trust account which it places with its own funds. These receipts of Association A are subject to the tax since Association A is performing services for the property owners. This treatment of receipts applies to purchases of other maintenance or cleaning supplies which Association A consumes in the performance of maintenance and cleaning services. Association A may not execute a non-taxable transaction certificate for the purchase of these chemicals or other cleaning supplies, because the chemicals and supplies are consumed in the performance of services by the association.

(8) **Associations in which common areas are owned by the association with long-term real property rights held by individual unit owners.**

(a) An association of unit owners in a real estate development in which the common elements, areas or facilities are owned by the association but subject to long-term (10 or more years) real property rights of the unit owners (as defined in Paragraph (2) of Subsection B of [Section] 3.2.1.19 NMAC) granted by deed or covenant, appurtenant to and inseparable from unit ownership, transferable only by the unit owner or upon acceptance of deed, and not extinguishable by the association shall be subject to tax in the same manner as associations described in Subsection B of this section [(3.2.1.19 NMAC)]. If the unit owners cease to hold or possess such real property rights, the association shall become subject to tax in the same manner

as associations described in Paragraph (9) of Subsection B of [Section] 3.2.1.19 NMAC.

(b) All examples in Paragraphs (3) through (7) of Subsection B of [Section] 3.2.1.19 NMAC also apply to associations of unit owners identified in Paragraph (8) of Subsection B of [Section] 3.2.1.19 NMAC.

(9) **Associations in which common areas are owned by association.** Different treatment is required for an association of unit owners in a real estate development in which the common elements, areas or facilities are owned by the association and the unit owners (as defined in Subparagraph (a) of Paragraph (2) of Subsection B of [Section] 3.2.1.19 NMAC) do not possess the real property rights to the common elements described in Paragraphs (2) and (8) of Subsection B of [Section] 3.2.1.19 NMAC. All receipts of this type of association (e.g., payments by unit owners for maintenance and use of the common areas) are fully taxable and no NTTCs may be issued for services purchased. Because of the association's status as owner and the absence of real property rights of the unit owners in the common areas, the association is not acting as the unit owners' agent, nor is it reselling a service.

(10) *Example C 1:* Association C holds title to all common areas of a development which includes a clubhouse, golf course, swimming pool and tennis courts. Each owner of property within the development is a member of Association C and pays a membership fee. In consideration for the fees received, Association C grants each member a license to use facilities owned by the association. Association C is liable for gross receipts tax on its receipts from granting the licenses to use the facilities.

(11) *Example C 2:* Association C contracts with a security services company to provide a security officer to patrol the facilities which the association owns. Association C does not resell these services provided by the security services company and may not execute a non-taxable transaction certificate to purchase these services.

(12) *Example C 3:* Association A, Association B and Association C maintain vending machines from which soft drinks, snacks and other items of tangible personal property are sold. The associations are deriving gross receipts from the sale of tangible personal property and must pay gross receipts tax on these receipts. However, they may also execute a non-taxable transaction certificate when purchasing the soft drinks, snacks and other tangibles, since these items are resold by the associations.

(13) Repealed.

**C. Reimbursed expenditures.**

(1) The receipts of any person received as a reimbursement of expenditures

incurred in connection with the performance of a service or the sale or lease of property are gross receipts as defined by Section 7-9-3.5 NMSA 1978, unless that person incurs such expense as agent on behalf of a principal while acting in a disclosed agency capacity. An agency relationship exists if a person has the power to bind a principal in a contract with a third party so that the third party can enforce the contractual obligation against the principal.

(2) Receipts from the reimbursement of expenses incurred as agent on behalf of a principal while acting in a disclosed agency capacity are not included in the agent's gross receipts if:

(a) ~~the agent accounts for such receipts in the agent's books and records as a reduction of the expense and not as revenue; and~~

(b) ~~the expenses are separately stated on the agent's billing to the client and are identified in the agent's books and records as reimbursements of expenses incurred on behalf of the principal party.~~

(3) If these requirements are not met, the reimbursement of expenses are included in the agent's gross receipts.

(4) *Example 1:* A, an accountant, whose office location is in Albuquerque is engaged to audit the financial statements of C, A's client. To facilitate the audit A must travel to Deming to examine the operations and records of C's business location in Deming. In addition to the normal fee for A's service, A charges C for A's expenses for travel, meals and lodging which A incurred in traveling to Deming. A's gross receipts include the total amount of consideration received from C, including amounts received to cover A's expense of travel.

(5) *Example 2:* L, an attorney, pays a filing fee to the clerk of the district court on behalf of C, L's client. In billing for the professional services rendered, L separately states on the billing the amount of the filing fee which was paid to the court clerk. L is an agent for C in the instance of filing documents with the court. When L paid the filing fee, L was acting within the terms of a disclosed agency relationship. L should exclude the amount received for reimbursement for L's expenditure in paying the court filing fee.

(6) *Example 3:* R, an architect, whose office is located in Santa Fe, is engaged by C to design and oversee the construction of a project in Albuquerque. In the course of performing those services for C, R incurs charges for long distance telephone calls. R charges C for the long distance telephone calls under the terms of R's contract with C. R's gross receipts include the amounts it collects from C for long distance calls. No disclosed agency relationship exists which would enable the telephone company to hold C liable for the

long distance charges incurred by R.

(7) *Example 4:* A, an employee leasing business, enters into a contract agreement with B, its client. The contract provides that the client can maintain control of A's actions. In addition, the contract grants A the authority to bind B in dealing with prospective employees which includes the power to legally bind B to pay the employees. The employees, as beneficiaries of such obligations, are informed by contract that they have the right to proceed against B to enforce B's obligation to pay the employees. To satisfy its obligation to pay employees, B transfers reimbursement funds to A for wages paid to employees. By separate payment, B pays A a commission for its services. To the extent of reimbursement to satisfy payroll, A is not liable for gross receipts tax. To the extent A receives pay or a commission for services A performs, A is liable for gross receipts tax.

(8) *Example 5:* A, an employee leasing business, enters into an agreement with its client B. The agreement provides that A retains the right to replace employees, to control when the employees are paid, and the right to replace employees. The employees looked to A for their pay. The employees are unaware of any principal-agent relationship between A and B. All receipts A receives, including any commission for services from B are for its own use and benefit. Accordingly, all receipts A receives from B are subject to gross receipts tax.

(7)(9) All receipts or fees for services provided by an agent are subject to the gross receipts tax.

#### D. Reimbursement of expenditures made to volunteers.

(1) A volunteer who contributes time, effort or talent without expectation of consideration or remuneration is not selling the services performed. When a volunteer receives reimbursement for out-of-pocket expenses incurred in the performance of a service as a volunteer which were directly related to the work volunteered, reimbursement of those expenses is not gross receipts.

(2) For purposes of Paragraph (1) of Subsection D of [Section] 3.2.1.19 NMAC, the term "volunteer" means any person who contributes time, effort or talent for the direct benefit of an organization which is exempt from taxation under the Internal Revenue Code. The term also extends to any person who contributes time, effort or talent without the receipt of consideration or remuneration to the state of New Mexico or any agency or any political subdivision of the state, or to the United States or any agency of the United States. "Volunteer" further includes any elected official serving without consideration or remuneration and any appointive non-employee member of any public commission or board serving without

consideration or remuneration, whether the appointment was made by the governor, any other elected official or a public body.

(3) For purposes of Paragraph (1) of Subsection D of [Section] 3.2.1.19 NMAC, "reimbursement" includes per diem amounts set by statute to reimburse uncompensated elected and appointed governmental officials for the expense of carrying out official duties.

#### [E. Employee leasing:

(1) A person who engages in the leased employee business in New Mexico is performing services in New Mexico. The person's receipts from performing the employee leasing services in New Mexico are subject to the gross receipts tax, except as provided otherwise in Paragraph (2) of Subsection E of Section 3.2.1.19 NMAC:

(2) When a person engaging in the leased employee business is a "joint employer", as that term is used by the United States department of labor for purposes of enforcing federal labor law, then the person's receipts of amounts comprising wages, taxes withheld with respect to the wages, Federal Insurance Contributions Act payments, unemployment compensation payments and the like with respect to the joint employees of the client and the person engaging in the leased employee business are not receipts from performing employee leasing services and are not subject to the gross receipts tax. Such receipts instead are receipts of a disclosed agent on behalf of others:

(3) *Example:* X engages in the leased employee business in New Mexico. Under the terms of its contracts, X is primarily responsible and liable for payment of employee wages, all payroll taxes, employer contributions required under the Federal Insurance Contributions Act and for providing an employee benefits package which includes health insurance and other benefits as specified in each contract. If X fails to properly pay the payroll, payroll taxes or unemployment insurance or if X fails to comply with other administrative functions, X's client, as joint employer, is responsible for such compliance or payment. X has determined itself to be a "joint employer" as that term is used by the United States department of labor for the purpose of enforcing federal labor law. The client is also required to place a cash deposit to guarantee payment of the client's obligations under the contract. Every week each of X's clients is required to pay X the client's payroll obligation for the week plus an additional two percent (2%) as X's fee. X has no gross receipts from the amount representing the payroll obligation; this amount is not subject to the gross receipts tax. The additional two percent (2%), however is X's fee for performing employee leasing services and is subject to tax.]

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79,

4/7/82, 5/4/84, 4/2/86, 6/8/87, 1/29/88, 12/14/88, 12/29/89, 4/20/90, 11/26/90, 11/15/96, 10/31/97, 9/30/98, 3.2.1.19 NMAC - Rn & A, 3 NMAC 2.1.19, 10/31/2000; A, 12/30/03; A, XXX]

### 3.2.234.10 ITEMS THAT ARE NOT PRESCRIPTION DRUGS:

Tangible personal property that may be sold or dispensed for human consumption or administered to a human without a prescription of a person, such as a medical doctor, licensed to prescribe the property's use or to administer it are not "prescription drugs". Items that do not require a prescription, such as medical equipment, vitamins and aspirin are not "prescription drugs" even if prescribed by a licensed medical doctor. Tangible personal property sold or dispensed for non-human consumption or administered to a non-human are not "prescription drugs" [unless a veterinarian is required to prescribe the use of or to administer the property].

[3.2.234.10 NMAC - N, 10/31/2000; A, 5/15/2008; A, XXX]

### TITLE 3: TAXATION CHAPTER 13: BUSINESS TAX CREDITS PART 9: FILM PRODUCTION TAX CREDIT

#### 3.13.9.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630

[3.13.9.1 NMAC - N, XXX]

3.13.9.2 **SCOPE:** This part applies to all film production companies who may be eligible to obtain the film production tax credit.

[3.13.9.2 NMAC - N, XXX]

3.13.9.3 **STATUTORY AUTHORITY:** Sections 7-2F-1 and 9-11-6.2 NMSA 1978.

[3.13.9.3 NMAC - N, XXX]

3.13.9.4 **DURATION:** Permanent.

[3.13.9.4 NMAC - N, XXX]

3.13.9.5 **EFFECTIVE DATE:** XXX, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.13.9.5 NMAC - N, XXX]

3.13.9.6 **OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the film production tax credit.

[3.13.9.6 NMAC - N, XXX]

3.13.9.7 **DEFINITIONS:** The terms defined in 3.13.9.7 NMAC apply to the implementation of the film production tax credit.

A. "Direct production expenditures" as defined in Subsection B of Section 7-2F-2 NMSA 1978 includes only those expenditures incurred and paid by the qualified production company and does not include expenditures incurred and paid by a third party and claimed by the qualified production company.

B. "Performing artist" as used in Paragraph 2 of Subsection B of Section 7-2F-2 NMSA 1978 includes "stunt coordinators" when the stunt coordinator contracts with the production company under a screen actor's guild standard stunt performer's freelance contract.

[3.13.9.7 NMAC - N, XXX]

## NEW MEXICO WATER TRUST BOARD

### NEW MEXICO WATER TRUST BOARD NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE REGULATIONS FOR REVIEW AND ELIGIBILITY OF PROPOSED WATER PROJECTS, 19.25.10 NMAC

The New Mexico Water Trust Board (the "Board") will hold a public hearing to consider proposed amendments to 19.25.10 NMAC, Review and Eligibility of Proposed Water Projects. The Board is the proponent of the proposed amendments.

The proposed amendments relate to the review and eligibility of applications to the Water Trust Board for grants and loans to fund proposed water projects under the Water Project Finance Act, Section 72-4A-1 et seq., NMSA 1978.

The proposed amendments to the regulations may be reviewed during regular business hours at the office of the New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501. Copies of the proposed amendments may be obtained by contacting Jana Amacher, NMFA Senior Program Administrator, at (505) 984-1454 or 1-877-ASK-NMFA, or by e-mail to jamacher@nmfa.net.

The public hearing will be conducted beginning at 1:00 p.m. MDT on Wednesday, April 7, 2010, in the Second Floor Conference Room at the offices of the New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501.

All interested persons are invited to attend

the hearing and will be given reasonable opportunity to submit relevant evidence, data, views and comments, orally or in writing, and to introduce exhibits and examine witnesses. Any person who wishes to submit a written statement for the record in lieu of oral testimony must file such statement no later than 5:00 p.m., MDT, on Friday, April 9, 2010. Written statements for the record should be submitted to:

Jana Amacher  
Senior Program Administrator  
New Mexico Finance Authority  
207 Shelby Street  
Santa Fe, New Mexico 87501

If you are an individual with a disability and you require assistance or an auxiliary aid, such as a sign language interpreter, to participate in the hearing, please contact the New Mexico Finance Authority so that appropriate arrangements can be made. Jana Amacher, the designated hearing officer, can be reached at 207 Shelby Street, Santa Fe, New Mexico 87501, (505) 984-1454 or 1-877-ASK-NMFA, or by e-mail to jamacher@nmfa.net. TDD or TDY users may access these numbers via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779).

The New Mexico Water Trust Board will consider and take formal action on the proposed amendments at a duly called regular or special meeting following the conclusion of the hearing, taking into account the testimony, evidence and other materials presented during the hearing process.

## End of Notices and Proposed Rules Section



## Adopted Rules

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

This is an amendment to 1.5.23 NMAC, Sections 2, 3 and 7 through 11, effective March 15, 2010.

**1.5.23.2 SCOPE:** Any transfer of funds, capital outlay project, or acquisition, donation to, or purchase, sale, trade or lease or other disposition of [-] real property by public bodies that by law requires state board of finance approval, except as otherwise indicated, or unless already addressed in a separate board rule.  
[1.5.23.2 NMAC - N, 2-14-2001; A, 3-15-2010]

#### **1.5.23.3 S T A T U T O R Y AUTHORITY:**

A. Section 13-6-2.1 NMSA 1978 provides generally, with certain exceptions, that any state agency, local public body, or school district that sells, trades or leases real property belonging to that public entity requires state board of finance approval prior to the effective date of such sale, trade or lease. Section 16-6-15, NMSA 1978, makes Section 13-6-2.1 expressly applicable to the state fair.

B. Sections 15-3B-8 NMSA 1978 provide that the property control division is authorized to acquire land by purchase, gift or donation subject to prior approval by the state board of finance.

C. Section 15-3B-7(B) NMSA 1978 provides that the property control division, subject to the approval of the state board of finance and after following the bidding procedures required by the Procurement Code for the purchase of personal tangible property, is authorized to enter into long-term leases not exceeding ten years of vacant lands when the lessor contracts with the state to construct and complete buildings, subject to approval of the state architect, as a condition precedent to the start of the rental term.

D. Section 17-1-22.1 NMSA 1978 provides that the state game commission, upon approval from the state board of finance, may transfer money from the game and fish bond retirement fund to the game and fish capital outlay fund. Money in the game and fish capital outlay fund may be expended for fish hatcheries and rearing facilities, habitat acquisition, development and improvements and other similar capital projects. All projects funded by the game and fish capital outlay fund shall be approved by the state board of finance.

E. Section 3-46-34(B) NMSA 1978 provides that a municipality may dispose of real property in an urban renewal or land development area to private persons only under reasonably competitive bidding procedures as it shall prescribe or as provided in this subsection. The municipality may accept any proposal it deems to be in the best interest and in furtherance of the purposes of the urban renewal law; provided, that a notification of intention to accept the proposal shall be filed with the governing body not less than thirty days prior to any acceptance. Thereafter, the municipality may execute a contract in accordance with the provisions of the urban renewal law, and deliver deeds, leases and other instruments and take all steps necessary to effectuate the contract; provided that if the municipality accepts other than the highest bid, the acceptance must be approved by the state board of finance before the municipality may proceed.

F. Section 16-2-11(J) NMSA 1978 provides that any acquisition of lands adjacent or contiguous to existing state parks or recreational areas or necessary for successful park or recreational area protection and development and will become part of the park or recreational area may be acquired by the state following consultation with local government entities on the acquisition and approval of the acquisition by the state board of finance, and funds for acquisition is available to state parks division or land is being donated to the division.  
[1.5.23.3 NMAC - N, 2-14-2001; A, 9-30-2004; A, 3-15-2010]

#### **1.5.23.7 DEFINITIONS:**

A. "Acquisition" means, unless usage indicates otherwise, obtaining title in fee simple absolute to real estate by purchase, trade, gift or donation.

B. "Board" means state board of finance.

C. "Consideration" means something which is of a value at least equal to the value of the real property interest being conveyed, including but not limited to cash, another piece of real estate, services, or other form of compensation.

D. "Current" means:  
(1) in the context of an appraisal, dated within one year of the date of submission of the proposed transaction to the board for approval, and

(2) in the context of a title binder, dated within six months of the proposed closing date.

E. "General certified appraiser" means a person who holds a valid, current general certificate as a state certified real estate appraiser issued by the

real estate appraisers board pursuant to the Real Estate Appraisers Act (who has met the qualifications required in section 61-30-12 (D) NMSA 1978 and 16.62.5.8 NMAC).

F. "Local public body" means all political subdivisions, [except] but not including municipalities except for those transactions where board approval is required by law and school districts, of the state and their agencies, instrumentalities and institutions.

G. "Private entity" means any non-public entity, including but not limited to persons, associations, and both for-profit and non-profit corporations. It does not include Indian nations, tribes and pueblos.

H. "Public body" means a local public body, a state agency, a school district or state educational institution.

I. "Real property" means any interest in real estate, including but not limited to estates in fee simple, leaseholds (including subleaseholds and any leases entered into pursuant to section 4-38-13.1 NMSA 1978), water rights and permanent easements.

J. "Residential certified appraiser" means a person who holds a valid, current residential certificate as a state certified real estate appraiser issued by the real estate appraisers board pursuant to the Real Estate Appraisers Act (who has met the qualification required in sections 60-30-12 (C) NMSA 1978 and 16.62.4.8 NMAC).

K. "Sale, trade or lease" means any disposition of real property, including but not limited to donations by one governmental entity to another governmental entity, but disposition does not include demolition of buildings or other improvements on real property owned by the public body.

[K:] L. "State agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities, or institutions other than state educational institutions.

[L:] M. "School districts" means those political subdivisions of the state established for the administration of public schools.

[M:] N. "State educational institution" means Article XII, Section 11 educational institutions.

[N:] O. "Term" means the period of time during which a lease is in effect, and includes all renewal options or extensions.

[1.5.23.7 NMAC - N, 2-14-2001; A, 6-28-2002; A, 9-30-2004; A, 3-15-2010]

#### **1.5.23.8 ACQUISITION OF REAL PROPERTY:**

A. Public bodies requiring board approval before acquiring real property include, but are not limited to, the following:

(1) general services department;  
(2) department of game and fish for expenditures from the game and fish capital outlay fund;

(3) the state for state parks or recreational areas pursuant to section 16-11(J) NMSA 1978.

B. In order to attain approval for acquisition of real property, the board requires that the following information be provided at the time of submission to the board:

(1) the form of general warranty deed by which the public entity will take title in fee simple absolute containing legal description of the property and warranty covenants; reversions or other forfeiture provisions in the deed shall be accepted only under extraordinary circumstances; special warranty deeds will be accepted only under extraordinary circumstances; when the seller is a public body, transfer of title shall be by quitclaim deed;

(2) a copy of a current appraisal completed by a general certified appraiser for commercial property or a general certified appraiser or a residential certified appraiser for residential property and report of review from the property tax division of the taxation and revenue department if appraisal was not done by the division; the public entity seeking division review must submit necessary information to division within time frame specified by division; when the seller is another ~~[public body]~~ governmental entity, neither an appraisal nor department review is required;

(3) site improvement survey plat to verify legal description and to identify the existence of recorded easements and encroachments, if applicable;

(4) a description of the proposed use;

(5) sources of funds used for the purchase;

(6) current title binder evidencing clear title with no non-standard exceptions, and agreement by the title company that it will delete general exceptions 1 through 6, and the first two-thirds of 7 and, to the extent that special exceptions are listed, an explanation of each special exception shown in Schedule B Section II and a statement of impact on intended use as to each;

(7) purchase agreement, if applicable;

(8) phase 1 environmental assessment for all properties, and a phase II environmental assessment if recommended by the phase I assessment;

(9) resolution or minutes of the governing body, if applicable, authorizing the purchase and containing a provision

making the acquisition subject to approval by the board; and

(10) approval of the disposition by the local government division of the department of finance and administration pursuant to section 3-54-2(D) NMSA 1978 if the entity selling, exchanging or donating the real property is a municipality.

C. Acquisition of real property for more than fair market value, as determined by the requirements of Paragraph (2) of Subsection B of 1.5.23.8 NMAC, is not permitted.

[1.5.23.8 NMAC - N, 2-14-2001; A, 6-28-2002; A, 9-30-2004; A, 3-15-2010]

### **1.5.23.9 SALE OR TRADE OF REAL PROPERTY:**

A. If the sale or trade of real property is for a consideration of more than twenty-five thousand dollars (\$25,000), then prior board approval is necessary for:

(1) state agencies (unless the consideration is one hundred thousand dollars (\$100,000) or more, in which case require approval by the legislature is required);

(2) school districts; and

(3) local public bodies, ~~[include]~~ including, but not limited to:

(a) counties;

(b) community colleges (but not including branch community colleges) and technical vocational institutes;

(c) conservancy districts; and

(d) flood control authorities; ~~and~~

~~\_\_\_\_\_ (e) municipalities, when board approval is required pursuant to Section 3-46-34, NMSA].~~

B. In order to obtain approval for the sale or trade of real property, the board requires that the following information be provided at the time of submission to the board:

(1) the form of quitclaim deed from the public body transferring title to purchaser containing the legal description of the property;

(2) a copy of a current appraisal completed by a general certified appraiser for commercial property or a general certified appraiser or a residential certified appraiser for residential property and report of review from the property tax division of the taxation and revenue department if the appraisal was not done by the division (for both properties if trade); the public entity seeking division review must submit necessary information to division within time frame specified by division; when the buyer is another ~~[public body]~~ governmental entity, neither an appraisal nor department review is required;

(3) a description of the reason for the sale or trade;

(4) selection process used to determine purchaser; competitive sealed bid, public auction, or negotiation;

(5) purchase price and if applicable, cost per square foot, cost per acre, or cost per acre foot of water rights, etc. (for both properties if trade);

(6) sale agreements, if applicable;

(7) resolution or minutes of the governing body, if applicable, authorizing the sale or trade and containing a provision making the sale or trade subject to approval by the board; [and]

(8) approval by the state engineer of any transfer of water rights; and

(9) if a school district is seeking approval of a disposition of real property that includes a building, it must submit evidence that the building does not meet public school capital outlay council occupancy standards or that all charter schools located in the district have declined within a reasonable period of time set by the school district, use of the building pursuant to Section 22-8B-4(F) NMSA 1978.

C. Transfer for less than fair market value, as determined by the requirements of Paragraph (2) of Subsection B of 1.5.23.9 NMAC, of real property owned by a public entity to any private entity is not permitted, except as authorized by legislation implementing the economic development and affordable housing exceptions to the Anti-donation Clause of Article IX, Section 14 of the New Mexico constitution [1.5.23.9 NMAC - N, 2-14-2001; A, 6-28-2002; A, 7-15-2003; A, 9-30-2004; A, 3-15-2010]

### **1.5.23.10 LEASE OF REAL PROPERTY:**

A. Board approval is required whenever certain public bodies wish to lease ~~(or sub-lease)~~ properties they own ~~[if the lease is] (or are leasing):~~ if (1) the term of the lease or sublease is for a period of more than five years, OR (2) [for a] the consideration [of] over the lease term is more than twenty-five thousand dollars (\$25,000) [or more]. Prior board approval is necessary for:

(1) state agencies (unless consideration is one hundred thousand dollars (\$100,000) or more and the term is for a period of more than twenty-five years, in which case approval by the legislature is required);

(2) counties;

(3) school districts; and

(4) local public bodies, which include, but are not limited to, the following:

(a) community colleges (but not including branch community colleges) and technical vocational institutes;

(b) conservancy districts; [and]

(c) flood control authorities; and

(d) special hospital districts and county hospitals pursuant to the Hospital Funding Act.

B. In order to obtain



approval for leases of real property, the board requires that at least the following information be provided:

(1) current appraisal completed by a general certified appraiser for commercial property or a general certified appraiser or a residential certified appraiser for residential property or other evidence of fair market value and report of review from the property tax division of the taxation and revenue department if appraisal was not done by the division; the public entity seeking division review must submit necessary information to division within time frame specified by division; when the lessee/tenant is another public body, neither an appraisal nor department review is required;

(2) copy of the lease;

(3) resolution from the governing body, if applicable, approving the lease, and containing a provision making the lease subject to board approval;

(4) the reason for leasing;

(5) description of the selection process used to determine lessee: competitive sealed bid, public auction, or negotiation;

(6) if consideration is being provided by the lessee (or sub-lessee), partially or completely, in the form of services, tangible personal property or construction, evidence that the selection of the lessee (or sub-lessee) complied with the procurement code or is expressly exempted and the term of the lease complies with, section 13-1-150 NMSA 1978, as it may be amended from time to time; and

(7) if a school district is seeking approval of a lease of real property that includes a building, evidence the building does not meet public school capital outlay council occupancy standards or that all charter schools located in the district have declined within a reasonable period of time set by the school district use of the building pursuant to section 22-8B-4(F) NMSA 1978.

C. Rent or other consideration at less than fair market value~~[tø]~~, as determined by the requirements of Paragraph (1) of Subsection B of 1.5.23.10 NMAC, from a private entity is not permitted, except as authorized by legislation implementing the economic development and affordable housing exceptions to the Anti-donation Clause of Article IX, Section 14 of the New Mexico constitution.

[1.5.23.10 NMAC - N, 2-14-2001; A, 6-28-2002; A, 7-15-2003; A, 9-30-2004; A, 3-15-2010]

#### **1.5.23.11 SUBMISSION OF REQUESTS TO THE STATE BOARD OF FINANCE:**

A. Real property transaction requests submitted to the board should address each of the specific items in this policy, if applicable~~[, and packages]~~. One hard copy and one identical electronic

version should be submitted to the board. The hard copy should be tabbed for easy reference and the electronic version should be bookmarked.

~~[B. The original and ten copies of the request package should be submitted to the board:]~~

~~[C.] B.~~ Completed packages, in their entirety, must be submitted on or before the board's meeting deadline, as ~~[set by the board]~~ published on the board's website, and must meet application-formatting criteria. ~~[Packages must be three-hole-punched, and page length]~~ The hard copy must be standard letter size, 8 1/2 inches by 11 inches.

~~[D.] C.~~ Upon request, the board, in its discretion, may waive provision of any information otherwise required by this rule provided that the requesting party can demonstrate that other documents that are provided are equivalent to or satisfy the rationale for submitting the item and that the state's interest still will be sufficiently protected.

~~[E.] D.~~ The board, in its discretion, may require additional information be provided as may be relevant to a specific transaction.

[1.5.23.11 NMAC -N, 2-14-2001; A, 3-15-2010]

### **NEW MEXICO DEPARTMENT OF GAME AND FISH**

Explanatory paragraph: This is an amendment to 19.31.13 NMAC, Sections 6, 7, 8, 9, 10, 14 and 15, effective 3-15-2010. The effect of the amendment to 19.31.13 Section 15A is to substitute the term 'permit' with the term 'license'. The effect of the amendment to 19.31.13 Section 15B is to substitute the term 'permit' with the term 'license' and to correct three 2010 hunt beginning dates. There are no other changes to 19.31.13.15.

**19.31.13.6 OBJECTIVE :** Establishing open hunting seasons and regulation, rules, and procedures governing the distribution and issuance of deer ~~[permits and]~~ licenses by the department.  
[19.31.13.6 NMAC - Rp, 19.31.13.6 NMAC, 4-1-09; A, 3-15-10]

#### **19.31.13.7 DEFINITIONS:**

A. "Arrows" shall mean only those arrows or bolts having broadheads with steel cutting edges.

B. "Baiting" shall mean the placing, exposing, depositing, distributing, or scattering of any salt, grain, scent or other feed on or over areas where hunters are attempting to take deer.

C. "Bow" shall mean compound, recurve, or long bow. Sights on bows shall not project light nor magnify.

D. "Crossbows" shall mean a device with a bow limb or band of flexible material that is attached horizontally to a stock and has a mechanism to hold the string in a cocked position. Sights on crossbows shall not project light nor magnify.

E. "Deer" shall mean all or any deer species found in New Mexico.

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

G. "Deer enhancement program" as used herein, shall mean the department activity that allows the issuance of not more than two permits for the taking of one buck deer per permit with the purpose of raising funds for programs and projects to benefit deer.

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

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

J. "ES or either sex" shall mean any one animal of the species.

K. "FAD or forked antlered deer" shall mean a deer possessing antlers, one of which shall have a definite fork showing two or more distinct points. A burr at the base does not constitute a point or fork.

L. "FAMD or forked antlered mule deer" shall mean a mule deer possessing antlers, one of which shall have a definite fork showing two or more distinct points. A burr at the base does not constitute a point or fork.

M. "FAWTD or forked antlered white-tailed deer" shall mean a white-tailed deer possessing antlers, one of which shall have a definite fork showing two or more distinct points. A burr at the base does not constitute a point or fork.

N. "Game management unit" or "GMU" shall mean those areas as described in the state game commission's rule 19.30.4 NMAC Boundary Descriptions for Wildlife Management Areas.

O. "High demand hunt" is hereby defined as a special draw hunt where the total number of non-resident applicants for a deer hunt in each unit exceeds twenty-two percent of the total applicants based on data for the two immediately preceding years.

P. "License year" shall mean the period from April 1 through March 31.

Q. "Modern firearms" shall mean center-fire firearms, not to include any fully automatic firearms. Legal shotguns shall be only those shotguns capable of being fired from the shoulder.

**R. “Muzzle-loader or muzzle-loading firearms”** shall mean those rifles and shotguns in which the charge and projectile are loaded through the muzzle. Only black powder, Pyrodex or equivalent black powder substitute may be used. Use of smokeless powder is prohibited. Legal muzzle-loader shotguns shall be only those shotguns capable of being fired from the shoulder.

**S. “Private land-only deer [permit] license”** shall mean the valid official document containing a carcass tag and harvest reporting instructions for hunting deer on private deeded land during designated private land-only hunts. This [permit] license shall entitle the holder [of a deer license] to hunt deer only on private deeded land and only for the sporting arms type, hunt period, and GMU for which it is validated.

**T. “Public draw [permit] license”** shall mean the valid official document containing a carcass tag and harvest reporting instructions awarded through a public drawing for hunting deer. This valid official [permit] license shall entitle the holder [of a deer license] to hunt where hunter numbers are limited by rule.

**U. “Quality hunt”** is hereby defined as a hunt designed to provide a hunter with an opportunity to achieve one or more of the following: a potential harvest from a wider selection of buck deer, a pleasurable experience based on timing and length of hunt season, lower hunter density, and an increased opportunity for success.

**V. “Restricted muzzle-loading rifle”** shall mean any muzzle-loading rifle using open sights, black powder or equivalent and firing a traditional lead bullet. The use of in-line ignition, scopes, pelleted powder, smokeless powder and sabots, including powerbelt-type projectiles, are prohibited.

**W. “TBD or to be determined”** shall mean the details of hunt dates or hunt areas will be provided by the department to the hunter when the designated population reduction hunt is initiated.

**X. “Unlimited”** shall mean there is no set limit on the number of [permits or] licenses established for the described hunt areas.

**Y. “Web sale” or “web site”** shall refer to accessing the department’s internet address.

**Z. “Wildlife management areas” or “WMAs”** shall mean those areas as described in the state game commission’s rule 19.30.4 NMAC Boundary Descriptions for Wildlife Management Areas.

**AA. “ESWTD or either sex white-tailed deer”** shall mean any one white-tailed deer.  
[19.31.13.7 NMAC - Rp, 19.31.13.7 NMAC, 4-1-09; A, 3-15-10]

**19.31.13.8 ADJUSTMENT OF LICENSES, [PERMITS;] AUTHORIZATIONS, AND HARVEST LIMITS:** The director, with the verbal concurrence of the chairman or his designee, may adjust the number of licenses[, permits;] or authorization certificates up or down by no more than 20 percent of the total [permits] licenses available in the GMU to address significant changes in population levels or habitat availability. This adjustment may be applied to any or all of the specific hunt codes for deer.  
[19.31.13.8 NMAC - Rp, 19.31.13.8 NMAC, 4-1-09; A, 3-15-10]

#### **19.31.13.9 DEER LICENSE APPLICATION REQUIREMENTS AND RESTRICTIONS:**

**A. Hunt code validations:** Whenever a license vendor issues a private land-only deer [permit] license, the vendor shall record the hunter’s selected DER hunt code on the [permit] license. Valid DER hunt codes are listed in 19.31.13.15 NMAC. Vendors shall not validate private land-only deer [permits] licenses with hunt codes for deer hunts on wildlife management areas or for private land hunts in Units 2A, 2B, 2C, 4 or 5A. For GMUs that are private land-only, valid hunt codes are listed in 19.31.13.15 NMAC.

**B. Change of validation:** No one other than a department representative may change the hunt code validation marked on any deer [permit] license. Such changes must be made on the face of the [permit] license using the director’s approved procedures. No changes in the hunt code may be made after the start of the first deer season for which the [permit] license is validated. [Permits] Licenses issued through the draw system are not eligible for validation changes.

**C. One deer [permit or] license per year:** It shall be unlawful for anyone to hold more than one [permit or] license to hunt deer during the current license year unless otherwise specifically allowed by rule.

**D. Validity of license [or permit]:** All deer [entry permits or] licenses shall be valid only for the specified dates, eligibility requirements or restrictions, legal sporting arms, bag limit, and area specified by the hunt code printed on the [permit; license;] license or carcass tag. Over-the-counter licenses shall be valid only for the specified dates, eligibility requirements or restrictions, legal sporting arms, bag limit, and area specified by rule or regulation. Except that a [permit or] license will be valid on the contiguous deeded land of private property that extends into an adjacent GMU that is open to hunting for deer. This exception shall only apply when the adjacent unit has the same restrictions as to weapon

type, bag limit, season dates and license availability.

**E. Deer hunts:** It shall be unlawful for any person:

(1) to hunt with any sporting arms type other than that for which his/her deer [permit] license is validated;

(2) to hunt during any season other than that for which his/her deer [permit] license is validated;

(3) to hunt in any GMU other than that for which his/her deer [permit] license is validated;

(4) to hunt deer on public land in any GMU with a private land-only deer [permit] license, except in conjunction with this subsection, if it is on state land where there is a valid agreement for unitizing state leased and privately owned or leased lands;

(5) to knowingly hunt private property without possessing a valid deer [permit and the proper deer] license; or

(6) to hunt with any license [or permit] issued originally to another person, except as specifically allowed by rule or law.

**F. Mobility impaired (MI) deer hunts:** It shall be unlawful for anyone to apply for a mobility impaired (MI) deer [permit] license, except as allowed by 19.31.3.11 NMAC.

**G. Youth only (YO) deer hunts:** It shall be unlawful for anyone to apply for youth only (YO) deer [permit] license except as allowed by 19.31.3.11 NMAC.

**H. Military only deer hunts:** It shall be unlawful for anyone to apply for a military only deer [permit] license, except as allowed by 19.31.3.11 NMAC.

**I. GMUs 2A, 2B, 2C, 4 and 5A private land-only hunts:**

(1) Persons applying for private land-only deer [permits] licenses in GMUs 2A, 2B, 2C, 4 and 5A must do so on a special application form that may only be obtained from landowners in these GMUs.

(2) GMU 2A, 2B, 2C, 4 and 5A landowners may be required to provide proof of land ownership to obtain special application forms from the department’s northwest area office in Albuquerque.

(3) For GMU 5A, the department may use input from landowners to develop a process to distribute special application forms to private landowners that provides reasonable and equitable participation opportunities for landowners.

(4) When applying for private land hunts in GMU 5A, no more than one (1) person may apply on each application form.  
[19.31.13.9 NMAC - Rp, 19.31.13.9 NMAC, 4-1-09; A, 3-15-10]

#### **19.31.13.10 DEER MANNER AND METHOD REQUIREMENTS AND RESTRICTIONS:**

- A. Season and hours:** Deer 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 deer during a current license year unless otherwise provided by regulation.
- C. Tagging:**
- (1) Any [permit] license that permits the taking of deer shall be issued with a deer carcass tag.
  - (2) It shall be unlawful to possess more than one deer carcass tag per year, except as specifically permitted by rule.
  - (3) It shall be unlawful for any licensee to fail to tag the deer as prescribed below:
    - (a) Immediately after killing any deer; the licensee killing the deer shall notch the proper day and month of kill from the deer tag.
    - (b) The tag shall be attached to the deer carcass and remain attached 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 deer tag, when attached to the carcass of legally taken deer, 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 any deer carcasses that are improperly tagged.
- E. Proof of sex:** It shall be unlawful for anyone to transport or possess the carcass of a deer without proof of sex. The antlers of any buck deer taken shall remain attached to the skull plate until arriving at a residence, taxidermist, meat processing place, or place of final storage. The scalp and both ears of female or immature male shall accompany the carcass in the same manner.
- F. Use of dogs in hunting:** It shall be unlawful to use dogs to hunt deer, except leashed dogs may be used to locate wounded or dead deer. Hunters must register with the appropriate department area office for the GMU they will be hunting before their hunt begins to use a dog in this manner.
- G. Use of baits or scents:** It shall be unlawful for anyone to take or attempt to take any deer by use of baits or scents as defined in 19.31.10.7 NMAC. Scent masking agents on one's person are allowed.
- H. Live animals:** It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any deer.
- I. Use of calling devices:** It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any deer.
- J. Killing out-of-season:** It shall be unlawful to kill any deer out of deer hunting season.
- K. Bullets:** It shall be unlawful to take or attempt to take deer by the use of tracer ammunition or any ammunition loaded with a full metal jacketed bullet. Only soft-nosed or hollow-pointed bullets may be used in hunting or taking deer.
- L. Drugs and explosives:** It shall be unlawful to use any form of drug on an arrow or use arrows driven by explosives.
- M. Legal sporting arms or weapon types** for deer 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 for certified mobility impaired hunters or as otherwise allowed in rule).
- N. Areas closed to deer hunting:** The following areas shall remain closed to deer hunting, 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).  
[19.31.13.10 NMAC - Rp, 19.31.13.10 NMAC, 4-1-09; A, 3-15-10]

#### 19.31.13.14 DEER POPULATION MANAGEMENT HUNTS:

- A.** The respective area chief may authorize population management hunts for deer when justified in writing by department personnel.
- B.** The respective area chief shall designate the sporting arms, season dates, season lengths, bag limits, hunt boundaries, and number of licenses [or permits]. No qualifying [permit] license holder shall take more than one deer per license year.
- C.** The specific hunt dates, hunt area, the name of the department representative providing the information and the date and time of notification shall be written on the license [or permit] after notification by telephone.
- D.** Application may be made either on-line or through the special hunt application form provided by the department. On-line applications must be submitted by the deadline date set by the department. Application forms postmarked by the deadline date will be accepted up to five working days after the deadline date.
- E.** Applications for [permits] licenses may be rejected, and fees returned to an applicant, if such applications are not on the proper form or do not supply adequate information.
- F.** In the event that an applicant is not able to hunt on the dates specified, the applicant's name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.
- G.** No more than one person may apply under each application.
- H.** Population management hunts for deer may be anywhere in the state with dates, number of [permits] licenses, bag limit, and specific hunt areas to be determined by the department. The hunt code to apply for deer population management hunts shall be DER-5-100.
- I.** In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunter's names to the department for licensing consideration. No more than ½ of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department.  
[19.31.13.14 NMAC - Rp, 19.31.13.14 NMAC, 4-1-09; A, 3-15-10]

#### 19.31.13.15 DEER HUNTS:

- A.** Public land (and private lands in GMUs 2A, 2B, 2C, 4 and 5A) deer hunts, listing the open GMUs or areas, eligibility requirements or restrictions, hunt dates, hunt code, weapon type, number of [permits] licenses and bag limit shall be as indicated below.

Military only hunters must be full time active military and proof of military status must accompany application or, if applying online, forwarded to the department by the application deadline date. The Sandia ranger district of the Cibola national forest in GMU 14 is restricted to bows only. Youth hunters must provide hunter education certificate number on application.

open GMUs or areas	2009-2010 hunt seasons		2010-2011 hunt seasons		hunt code	[permits] licenses	bag limit
	hunt start	hunt end	hunt start	hunt end			

**B. Private land-only deer hunts:** Private land-only deer [permits] licenses shall be restricted to the season dates, eligibility requirements or restrictions, sporting arms type, and bag limit that corresponds to the public land hunt code listed in 19.31.13.15 NMAC for the GMU where the private landowner's property lies. Private land-only deer [permits] licenses shall be unlimited and available from any license vendor and the department's web site; however, only one private land-only deer [permit] license will be issued [per license]. Private land-only hunters in GMUs 2A, 2B, 2C, 4 and 5A must obtain a special application form from landowner and apply through the draw. Private land-only hunts in GMUs 8, 46, 54, and 55 shall be as indicated below:

open GMUs or areas	2009-2010 hunt seasons		2010-2011 hunt seasons		hunt code	[permits] licenses	bag limit
	hunt start	hunt end	hunt start	hunt end			
8 for any legal sporting arm	10/17/2009	10/21/2009	10/16/2010	10/20/2010	DER-1-450	unlimited	FAD
8 for legal muzzle loading rifles or bows	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-451	unlimited	FAD
46 for any legal sporting arm	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-452	unlimited	FAD
46 for any legal sporting arm	10/31/2009	11/04/2009	[10/30/2009] 10/30/2010	11/03/2010	DER-1-453	unlimited	FAD
46 for bows only	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-454	unlimited	FAD
46 for legal muzzle loading rifles or bows	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-455	unlimited	FAD
54 for any legal sporting arm	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-456	unlimited	FAD
54 for any legal sporting arm	10/31/2009	11/04/2009	[10/30/2009] 10/30/2010	11/03/2010	DER-1-457	unlimited	FAD
54 for any legal sporting arm	11/26/2009	11/29/2009	11/25/2010	11/28/2010	DER-1-458	unlimited	FAWTD
54 for bows only	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-459	unlimited	FAD
54 for legal muzzle loading rifles or bows	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-460	unlimited	FAD
55 for any legal sporting arm	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-461	unlimited	FAD
55 for any legal sporting arm	10/31/2009	11/04/2009	[10/30/2009] 10/30/2010	11/03/2010	DER-1-462	unlimited	FAD
55 for bows only	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-463	unlimited	FAD
55 for legal muzzle loading rifles or bows	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-464	unlimited	FAD
55B for any legal sporting arm	11/26/2009	11/29/2009	11/25/2010	11/28/2010	DER-1-465	unlimited	FAWTD

[19.31.13.15 NMAC - Rp, 19.31.13.15 NMAC, 4-1-09; A, 3-15-10]

## NEW MEXICO DEPARTMENT OF HEALTH

### TITLE 7 HEALTH CHAPTER 27 E M E R G E N C Y MEDICAL SERVICES PART 10 CERTIFICATION OF EMERGENCY MEDICAL SERVICES AGENCIES

#### 7.27.10.1 ISSUING AGENCY: New Mexico Department of Health, Division

of Epidemiology and Response, Emergency Medical Systems Bureau.  
[7.27.10.1 NMAC - N, 3/15/2010]

#### 7.27.10.2 SCOPE:

**A.** This rule applies to any emergency medical service (EMS) agency that provides emergency medical services within the state of New Mexico, including but not limited to special event EMS agencies; emergency medical dispatch agencies, and transport and non-transport medical rescue

agencies. This rule also applies to out-of-state EMS agencies (including but not limited to seasonal agencies) that routinely respond within or transport patients into or out of the state of New Mexico to provide emergency medical care or to pick up or deliver patients.

**B.** This rule does not apply to ambulance services regulated by the transportation division of the New Mexico public regulation commission or its successor agency (see 18.3.14 NMAC); federal



agencies; the NM department of military affairs; tribal agencies and organizations that provide EMS entirely within the boundaries of tribal lands; ski patrols providing first aid pursuant to the Ski Safety Act, NMSA 1978, Section 24-15-1; search and rescue operations conducted pursuant to the Search and Rescue Act, NMSA 1978, Section 24-15A-1; private businesses providing emergency response teams and initial first aid solely for their employees; or EMS agencies from adjoining states (properly licensed in their respective jurisdictions) that are either 1) responding into New Mexico to assist in a mass casualty or disaster situation that exceeds the capacity or capability of the NM EMS agency in an affected area, or 2) responding into New Mexico on a non-routine basis for emergency mutual aid assistance when requested to do so by a certified EMS agency whose service area includes areas along a mutual state border. [7.27.10.2 NMAC - N, 3/15/2010]

**7.27.10.3 STATUTORY AUTHORITY:** This rule is promulgated pursuant to the New Mexico Department of Health Act at NMSA 1978, Section 9-7-6 E, and the Emergency Medical Services Act at NMSA 1978, Section 24-10B-4 L. [7.27.10.3 NMAC - N, 3/15/2010]

**7.27.10.4 DURATION:** Permanent. [7.27.10.4 NMAC - N, 3/15/2010]

**7.27.10.5 EFFECTIVE DATE:** 3/15/2010, unless a later date is cited at the end of a section. [7.27.10.5 NMAC - N, 3/15/2010]

**7.27.10.6 OBJECTIVE:** The purpose of this rule is to establish standards for the certification of EMS agencies that conduct operations within New Mexico, and to identify the process and procedures for certification and enforcement. Administration and enforcement of this rule is the responsibility of the emergency medical systems bureau of the division of epidemiology and response, department of health. [7.27.10.6 NMAC - N, 3/15/2010]

**7.27.10.7 DEFINITIONS:**

**A. "Air ambulance service"** means any governmental or private service that provides air transportation specifically designed to accommodate the medical needs of a person who is ill, injured or otherwise mentally or physically incapacitated and who requires in-flight medical supervision.

**B. "Applicant"** means an applicant for EMS agency certification under this rule.

**C. "Bureau"** means the

emergency medical systems bureau of the epidemiology and response division, of the department of health.

**D. "Call routing"** means the reception of emergency calls where the purpose is to only determine the course of direction of routing (police, fire, and medical) resulting in rapid transfer of medical callers to the emergency medical dispatch agency or the emergency medical dispatch call taker for emergency medical dispatching.

**E. "Certified ambulance service"** means a publicly or privately owned entity holding a current certificate from the New Mexico public regulation commission that identifies it as an emergency response ambulance service, and that is subject to the rules of the public regulation commission or its successor agency.

**F. "Commission on the accreditation of ambulance services (CAAS)"** means the national accrediting organization that establishes ambulance industry standards and evaluates ambulance services based upon those standards.

**G. "Committee on accreditation of educational programs for the EMS professions (CoAEMSP)"** means the national accrediting organization that establishes standards for educational programs for EMS professions, and that evaluates training programs based on those standards.

**H. "Commission on the accreditation of medical transport systems (CAMTS)"** means the national accrediting organization that establishes industry standards and evaluates air and ground ambulance services based upon those standards.

**I. "Conviction"** means a plea or adjudication of guilt, a plea of *nolo contendere*, an *Alford* plea, or any plea or adjudication that results in a conditional discharge or a suspended or deferred conviction.

**J. "Days"** means calendar days, unless otherwise specified.

**K. "Department"** means the New Mexico department of health.

**L. "Department of transportation (DOT)"** means the federal department of transportation.

**M. "Emergency"** means an individual's need for immediate medical care to prevent loss of life or aggravation of physical or psychological illness or injury.

**N. "Emergency medical dispatch"** means the reception, evaluation, processing, and provision of dispatch life support, management of requests for emergency medical assistance, and participation in ongoing evaluation and improvement of the emergency medical dispatch process. The emergency medical dispatch process is not limited to call routing

only, but includes identifying the nature of the request, prioritizing the severity of the request, dispatching the necessary resources, providing medical aid and safety instructions to the callers, and coordinating the responding resources as needed.

**O. "Emergency medical dispatch agency (EMDA)"** means any organization, or a combination of organizations working cooperatively, that routinely accepts calls for emergency medical assistance and employs emergency medical dispatch priority reference system (EMDPRS) techniques.

**P. "Emergency medical dispatch priority reference system (EMDPRS)"** means a bureau approved reference system used by an emergency medical dispatch agency (EMDA) to dispatch aid to medical emergencies, which includes systemized caller interrogation; systemized pre-arrival instructions to the caller based upon protocols matching the dispatcher's evaluation of injury or illness severity; and prioritized vehicle response.

**Q. "Emergency medical dispatcher (EMD)"** means a provider who is trained and licensed pursuant to the EMS Act, NMSA 1978, Section 24-10B-4 F, to receive calls for emergency medical assistance, provide pre-arrival medical instructions, dispatch emergency medical assistance and coordinate its response.

**R. "Emergency medical service(s) (EMS)"** means the medical services rendered by licensed providers in response to an emergency.

**S. "Emergency medical services agency (EMS agency, agency)"** means an organization that provides emergency medical services. EMS agencies include emergency medical dispatch agencies, pre-hospital agencies with defined geographical boundaries for their response, inter-facility care agencies, and special event EMS agencies organized to provide emergency medical services. For the purposes of disciplinary actions taken pursuant to the enforcement provisions of this rule, unless otherwise specified, actions taken by an "EMS agency" shall include actions taken by EMS agency personnel and its medical director(s).

**T. "Emergency medical technician (EMT)"** means a provider who has been licensed by the department to provide patient care in accordance with the current EMS scopes of practice (7.27.2.14 NMAC).

**U. "Emergency medical service agency certification (EMS agency certification, certification, certificate)"** means a legal document issued to an EMS agency by the department as evidence that the applicant meets the requirements for certification to operate an EMS agency in accordance with this rule.

**V. “EMS bureau (bureau)”** means the emergency medical systems bureau of the epidemiology and response division of the New Mexico department of health, and includes the bureau’s agents.

**W. “EMS first responder (first responder)”** means a provider who has been licensed by the department to provide initial patient care in accordance with the current EMS scopes of practice (7.27.2.14 NMAC).

**X. “EMS Act (Act)”** means the Emergency Medical Services Act, NMSA 1978, Section 24-10B-1 *et seq.*

**Y. “EMS fund”** means the fund established by the EMS Fund Act, NMSA 1978, Section 24-10A-1 *et seq.*, that is administered by the department of health.

**Z. “EMS Fund Act”** means the Emergency Medical Services Fund Act, NMSA 1978, Section 24-10A-1 *et seq.*

**AA. “EMS medical director (medical director)”** means a physician licensed in New Mexico who is responsible for all aspects of patient care for an EMS system or EMS agency, including providing for or ensuring the medical control of EMS providers; the development, implementation, and evaluation of medical protocols; emergency medical dispatch; and oversight of quality assurance activities.

**BB. “GSA standards”** means the minimum standards and specifications for ambulances contained in the United States general services administration (GSA) standard KKK-A-1822F or most current GSA standard.

**CC. “Level of care”** means the most advanced level of emergency medical services that an emergency medical technician (EMT) is permitted to administer in accordance with the most current NM EMS scopes of practice.

**DD. “Level of service”** means the most advanced level of emergency medical service at which an EMS agency is certified to function in accordance with this rule.

**EE. “Medical control”** means EMS supervision provided by or under the direction of physicians to providers by written protocol or direct communication.

**FF. “Medical direction”** means guidance or supervision provided by a physician to an agency, provider or emergency medical services system and includes authority over and responsibility for emergency medical dispatch, direct patient care and transport of patients, arrangements for medical control and all other aspects of patient care delivered by an EMS provider or agency.

**GG. “Medical direction committee”** means the committee of physicians and emergency medical

technicians created under the EMS Act, at NMSA 1978, Section 24-10B-7 C, whose members are appointed by the secretary to advise the bureau on all matters relating to medical control and medical direction.

**HH. “Medical protocol”** means a predetermined, written medical care plan and includes standing orders from a medical director.

**II. “Mutual aid”** means aid provided pursuant to a written agreement between one municipality, county or private EMS agency and one or more other municipalities, counties or private EMS agencies for the purpose of ensuring that adequate emergency medical services exist locally or throughout the state in order to assure a timely response to the call for emergency medical care. Mutual aid agreements may be utilized to address (among other things) coordinated response to catastrophic events, as well as common system demand and staffing situations.

**JJ. “National EMD standard-setting and certification organization (NESSCO)”** means the organization that provides and maintains a comprehensive EMD protocol and training system development process. Organizations accredited under NESSCO are required to maintain current and up-to-date emergency medical dispatch priority reference system (EMDPRS) curriculum, training, testing, certification, recertification, instructor, quality improvement and accreditation programs and standards.

**KK. “Non-transport medical rescue vehicle”** means any EMS agency representative vehicle (motor vehicle or watercraft) that is not a privately owned vehicle and that carries EMS equipment that is not included in the EMS agency’s medical protocols to transport patients.

**LL. “Non-transport medical rescue agency”** means an EMS agency that does not transport patients and is organized under a New Mexico political subdivision or a private entity performing services solely for its employees.

**MM. “Out-of-state EMS agency”** means an EMS agency that is organized under the laws of another state, or whose principal place of business is located in another state.

**NN. “Patient care report”** means a medical record of an encounter between any patient and a provider of medical care.

**OO. “Personnel”** means any employee, agent, representative, volunteer, or intern of an EMS agency who provides emergency medical services.

**PP. “Privately owned vehicle” (POV)** means a privately owned vehicle not registered to a governmental entity or EMS agency.

**QQ. “Physician”** means a

doctor of medicine or doctor of osteopathy who is licensed or otherwise authorized to practice medicine or osteopathic medicine in New Mexico.

**RR. “Post-dispatch instructions”** means case-specific advice, warnings, and treatments given by trained EMDs to responders whenever possible and appropriate after dispatch of field responders.

**SS. “Pre-arrival instructions”** means the scripted medical instructions provided to callers in emergency situations by licensed emergency medical dispatchers prior to the arrival of EMS agency personnel.

**TT. “Primary response area”** means the specific primary geographic area designated or prescribed by a jurisdiction in which an EMS agency provides emergency medical service.

**UU. “Provider”** means a person who has been licensed by the department to provide patient care pursuant to the EMS Act, NMSA 1978, Section 24-10B-1 *et seq.*

**VV. “Quality assurance”** means a retrospective review or inspection of EMS records to determine if appropriate care is being provided.

**WW. “Regional office”** means an emergency medical services planning and development organization formally recognized and contracted by the bureau.

**XX. “Required records”** means records, logs, data sets, forms, agreements, plans, procedures, policies, titles, certificates and other documents required to be retained by an EMS agency under this rule, whether in electronic or printed form.

**YY. “Scope of practice”** means the skills, techniques, medications, and procedures identified by rule of the department (7.27.2.14 NMAC) that are allowed for the practice of emergency medical services in New Mexico, that apply to all EMS personnel, EMS services, and EMS medical directors.

**ZZ. “Secondary response area”** means a geographic area in which an EMS agency provides emergency medical service beyond their primary response area, established by local jurisdictions or mutual aid agreements.

**AAA. “Secretary”** means the secretary of the New Mexico department of health.

**BBB. “Special event emergency medical services (special event EMS)”** means emergency medical services provided outside the emergency response system at scheduled, contractual events. Special event services include but are not limited to: medical services provided at movie sets, sporting events, mass gatherings, concert venues, adventure programs,

religious events, guest ranches and wild-land fires.

**CCC. “Special event EMS agency”** means an organization that provides special event emergency medical services to the public by licensed EMS providers.

**DDD. “Special skill”** means a set of procedures or therapies that are beyond the usual scope of practice for a given level of licensure and that have been approved by the medical direction committee for use by a specified provider.

**EEE. “Standing orders”** means defined written orders for actions, techniques or drug administration, signed by the medical director, to be utilized when communication has not been made with an on-line medical control physician.

**FFF. “Transport capable medical rescue”** means any vehicle (motor vehicle or watercraft) that carries EMS protocols for transporting patients in a patient care compartment.

**GGG. “Transport medical rescue agency”** means an EMS agency that transports patients under certain circumstances and without compensation, and is organized under a New Mexico political subdivision or a private entity. [7.27.10.7 NMAC - N, 3/15/2010]

**7.27.10.8 USE OF TERMS AND ADVERTISING:** It shall be prohibited for any EMS agency to advertise or perform emergency medical services, or to use the title “certified emergency medical services agency,” in New Mexico, unless the EMS agency has been certified by the bureau in accordance with this rule. [7.27.10.8 NMAC - N, 3/15/2010]

**7.27.10.9 DISCLOSURE TO THE PUBLIC:** If requested by a potential client, a patient or a member of the public, a certified emergency medical services agency shall disclose its current level of New Mexico certification and what level of service it can provide. [7.27.10.9 NMAC - N, 3/15/2010]

**7.27.10.10 EMS BUREAU CERTIFICATION REQUIRED:** An EMS agency shall, prior to beginning emergency medical services operations within the state of New Mexico, obtain either a temporary or full emergency medical services certification from the bureau. Certification by the EMS bureau shall not in itself qualify an EMS agency for EMS fund distribution. [7.27.10.10 NMAC - N, 3/15/2010]

**7.27.10.11 F U L L CERTIFICATION PERIOD:** Certification periods are twenty-four months in length except for the initial period, which shall vary according to the date of initial certification. The second or subsequent

period of certification shall be for a full twenty-four month period, regardless of the date of application for renewal or the date for processing of the renewal certificate. This period shall begin on January 1 of the renewal year. Requirements for renewal of licensure shall be completed by the December 1st that occurs prior to expiration of certification. The certification period for emergency medical agencies may be adjusted by the bureau to correspond with the CAMTS, CAAS or other bureau-approved accreditation period. EMS agencies may be subject to audit. EMS agencies shall complete an annual report form that contains the same elements as the annual service report required of ambulance services by PRC rule (18.3.14.22 NMAC). The bureau shall issue the annual report form to EMS agencies by November 1 of each year, and EMS agencies shall complete the form and return it to the bureau no later than January 15 of the following year. [7.27.10.11 NMAC - N, 3/15/2010]

#### **7.27.10.12 RECORDS AND DATA COLLECTION:**

**A. Patient care reports.** All certified EMS agencies except special event EMS shall complete in a timely manner and keep on file a clearly written or computer-generated patient care report for each patient who is provided with emergency medical care or transported. Each patient care report shall be authored by the provider(s) actually responsible for the patient care, and shall be completed within forty-eight hours of the provision of care to the patient.

**B. Submission of minimum pre-hospital data.** An EMS agency shall compile and submit minimum data required pursuant to this rule on a quarterly basis, or as required by the bureau.

**C. Minimum data elements; general EMS agency information.** An EMS agency shall submit the following general data to the EMS bureau:

- (1) EMS agency number;
- (2) EMS agency state;
- (3) EMS agency county;
- (4) level of service;
- (5) organizational type;
- (6) organization status;
- (7) statistical year;
- (8) total service size area;
- (9) total service area population;
- (10) 911 call volume per year;
- (11) EMS dispatch volume per year;
- (12) EMS transport volume per year;
- (13) EMS patient contact volume per year;
- (14) EMS agency time zone;
- (15) national provider identifier;

(16) EMS agency contact zip code.

**D. Minimum pre-hospital data elements:** An EMS agency shall compile and submit to the EMS bureau the following minimum pre-hospital data for every instance that patient care is provided by the EMS agency:

- (1) vehicle type;
- (2) patient care report number;
- (3) software creator;
- (4) software name;
- (5) software version;
- (6) EMS agency number;
- (7) incident number;
- (8) type of service requested;
- (9) primary role of the unit;
- (10) type of dispatch delay;
- (11) type of response delay;
- (12) type of scene delay;
- (13) type of transport delay;
- (14) type of turn-around delay;
- (15) EMS unit call sign (radio number);
- (16) response mode to scene;
- (17) complaint reported by dispatch;
- (18) EMD performed;
- (19) crew member role;
- (20) crew member level;
- (21) PSAP call date/time;
- (22) dispatch notified date/time;
- (23) unit notified by dispatch date/time;
- (24) unit en route date/time;
- (25) unit arrived on scene date/time;
- (26) arrived at patient date/time;
- (27) unit left scene date/time;
- (28) patient arrived at destination date/time;
- (29) unit back in service date/time;
- (30) unit back at home location date/time;
- (31) patient’s last name;
- (32) patient’s first name;
- (33) patient’s home zip code;
- (34) patient’s home country;
- (35) patient’s social security number;
- (36) patient’s gender;
- (37) patient’s race;
- (38) patient’s ethnicity;
- (39) patient’s age;
- (40) patient’s age units;
- (41) patient’s date of birth;
- (42) patient’s primary method of payment;
- (43) patient’s insurance company ID/name;
- (44) CMS service level;
- (45) condition code number;
- (46) number of patients at scene;
- (47) mass casualty incident;
- (48) incident location type;
- (49) scene GPS location;
- (50) incident address;



aid;  
 (51) incident city;  
 (52) incident county;  
 (53) incident state;  
 (54) prior aid;  
 (55) person who performed prior aid;  
 (56) outcome of the prior aid;  
 (57) possible injury;  
 (58) patient's chief complaint;  
 (59) chief complaint anatomic location;  
 (60) chief complaint organ system;  
 (61) primary symptom;  
 (62) other associated symptoms;  
 (63) provider's primary impression;  
 (64) provider's secondary impression;  
 (65) cause of injury;  
 (66) whether injury was caused intentionally;  
 (67) mechanism of injury;  
 (68) use of occupant safety equipment;  
 (69) airbag deployment;  
 (70) height of fall;  
 (71) cardiac arrest;  
 (72) cardiac arrest etiology;  
 (73) resuscitation attempted;  
 (74) barriers to patient care;  
 (75) alcohol/drug use indicators;  
 (76) run report narrative;  
 (77) total Glasgow coma score;  
 (78) medication given;  
 (79) medication complication;  
 (80) procedure;  
 (81) number of procedure attempts;  
 (82) procedure successful;  
 (83) procedure complication;  
 (84) destination/transferred to, name;  
 (85) destination/transferred to, code;  
 (86) destination zip code;  
 (87) incident/patient disposition;  
 (88) transport mode from scene;  
 (89) reason for choosing destination;  
 (90) type of destination;  
 (91) emergency department disposition;  
 (92) hospital disposition.

**E. Updates.** An EMS agency shall maintain current operational information by providing regular updates to the bureau through the EMS reporting software and the application and renewal process. Review of completed patient care reports may be required during initial and subsequent inspections.

**F. Location of records.** An EMS agency shall maintain all required records at the agency's principal place of business within the state of New Mexico. All required records are subject to inspection by the bureau and shall be maintained so that

they are reasonably accessible. The EMS bureau may, upon a showing of good cause, allow an EMS agency to maintain required records at a location outside the state of New Mexico, provided that the EMS agency demonstrates to the satisfaction of the EMS bureau that the records will be reasonably accessible for the bureau's inspection.

**G. Completed patient care records.** An EMS agency that transports a patient shall, upon delivery of the patient to the hospital, deliver a copy of the completed pre-hospital patient care record to the receiving facility's emergency department for inclusion in the patient's permanent medical record. In the event that the transporting unit is dispatched on another call before the pre-hospital patient care record can be transmitted, the pre-hospital patient care record shall be delivered to the receiving hospital's emergency department no later than forty-eight hours after the transportation and treatment of the patient.

**H. Current records requirements.**

**(1) Current records for all EMS agencies.** An EMS agency shall at all times maintain current copies of the following records:

- (a) medical protocols signed by the EMS agency's medical director;
- (b) operation plans and standard operating procedures and guidelines for the EMS agency;
- (c) rosters of EMS agency personnel;
- (d) applications of EMS agency employees and other personnel;
- (e) copies of certification and licensure documentation for all EMS agency personnel;
- (f) HIPAA documentation for all EMS agency personnel;
- (g) service area maps with global positioning system (GPS) coordinates of EMS agency stations;
- (h) board of pharmacy clinic license and pharmacy license, if applicable;
- (i) federal drug enforcement administration (DEA) license, if applicable;
- (j) driver's license and driver certification copies for each employee / volunteer; and
- (k) infection control policy.

**(2) Additional current records for all medical rescue agencies.** Additionally, a medical rescue agency shall at all times maintain a current, valid copy of the title for each vehicle owned by the medical rescue agency.

**(3) Additional current records for all emergency medical dispatch agencies.** Additionally, an emergency medical dispatch agency shall at all times maintain current copies of the following documents:

- (a) training records (rosters,

course outlines, etc.);

- (b) E-911 updates street mapping / maps; and

- (c) a public safety answering points (PSAP) directory.

**I. Other records required (extended retention).**

**(1) Medical records.** An EMS agency other than special event EMS shall retain all adult medical records (including patient care reports) for at least ten years. An EMS agency other than special event EMS shall retain all medical records of minors (including patient care reports) for at least ten years, or at least one year after the person reaches the age of majority, whichever period of time is greater.

**(2) Other records.** An EMS agency shall retain the following records for a period of not less than seven years:

- (a) a copy of the EMS agency's application for certification from the EMS bureau;
- (b) certificate of insurance for the EMS agency;
- (c) business license and incorporation documents for the EMS agency, as applicable, or documentation verifying the EMS agency's status as a governmental entity;
- (d) all current and expired mutual aid agreements and memoranda of agreement entered into by the EMS agency;
- (e) medical director contract or professional agreement;
- (f) criminal background check documentation for EMS agency personnel, as applicable;
- (g) copies of EMS agency certification updates; and
- (h) quality assurance documentation.

**(3) Additional medical rescue agency records.** Additionally, a medical rescue agency shall retain the following records for a period of not less than seven years:

- (a) vehicle maintenance records;
- (b) annual safety inspection certificates for each vehicle operated by the EMS agency; and
- (c) consultant pharmacist contract or professional agreement.

**(4) Additional emergency medical dispatch agency records.** Additionally, an emergency medical dispatch agency shall retain the following records for a period of not less than seven years:

- (a) telephone and radio audio recordings, including magnetic tapes and digital file format recordings (DAT, CD, DVD, etc.);
- (b) 911 system and call records (printed output, electronic files, etc.);
- (c) CAD files; and
- (d) hand-written (manual) reports.

**J. Extension of**



**retention period; contingencies.** If at the end of a stated retention period an EMS agency is involved in or is aware of pending legal obligations (contractual or otherwise), litigation, administrative action, governmental investigation, insurance claims, or court orders that relate in whole or in part to a required record, the EMS agency shall continue to retain the required record for at least six months after said contingency has been resolved or concluded.

**K. Protection of records.**

An EMS agency shall take reasonable precautions to protect required records from destruction and damage. If an EMS agency's required records are destroyed or damaged prior to the end of the retention period established in this rule, the EMS agency shall immediately notify the bureau. [7.27.10.12 NMAC - N, 3/15/2010]

**7.27.10.13 E M E R G E N C Y INFORMATION REQUIRED:**

When applying for initial certification or renewal of certification, an EMS agency shall provide to the bureau emergency contact information for the EMS agency. This information shall be used by the bureau to provide effective communications and resource management in the event of a statewide or localized disaster or emergency situation. [7.27.10.13 NMAC - N, 3/15/2010]

**7.27.10.14 G E N E R A L STANDARDS:**

**A. Personnel licensure required.** An EMS agency shall ensure that EMS providers at all times maintain current EMS licensure in accordance with 7.27.2 NMAC ("Licensing of Emergency Medical Services Personnel").

**B. Scopes of practice.** An EMS agency providing emergency medical services shall ensure that EMS providers comply with the current EMS scopes of practice in accordance with 7.27.2 NMAC ("Licensing of Emergency Medical Services Personnel").

**C. Other required personnel for emergency medical services.** An EMS agency shall designate an EMS medical director, a designated training coordinator, and a service director, as provided below:

**(1) training coordinator:** each EMS agency shall designate a training coordinator, who shall coordinate the availability of appropriate training programs and continuing education for EMS providers;

**(2) medical direction required:** each EMS agency shall retain a medical director, who shall provide medical direction to the agency that is consistent with the requirements of 7.27.3 NMAC ("Medical Direction for Emergency Medical Services");

**(3) service director:** each EMS

agency shall designate a service director who shall serve as the single point of contact for the EMS agency, who shall provide operational oversight for the entire EMS agency; the EMS agency's service director shall be responsible for the EMS agency's adherence to the standards of this rule.

**D. Pharmaceutical license.** An EMS agency shall comply with NM board of pharmacy requirements regarding all medications utilized and stored, including oxygen. An EMS agency shall maintain and display copies of its federal drug enforcement administration license, NM board of pharmacy clinic license, and NM board of pharmacy license in plain sight at its primary business location.

**E. Proof of financial responsibility.** An EMS agency shall maintain at a minimum both vehicle and general liability insurance, either through self-indemnity or an insurance company. Proof of insurance shall be filed with the bureau, along with the application for EMS agency certification as required by this rule. At any time that said insurance is required to be renewed, proof of renewal shall be submitted to the bureau.

**F. Communications.** An EMS agency shall maintain EMS communication capabilities sufficient to ensure interoperability and interconnectivity with dispatch centers, hospitals and other EMS and rescue providers.

**G. Quality assurance review.** An EMS agency shall implement a quality assurance program, which shall be planned, developed and implemented by the EMS agency's medical director in a manner consistent with 7.27.3 NMAC ("Medical Direction for Emergency Medical Services"). The quality assurance program shall include review of documentation of patient care in a pre-determined set of circumstances to ensure a feedback and training loop for the EMS providers.

**H. Personnel hours and safety.** An EMS agency shall adopt rules consistent with applicable federal employment standards (e.g., Fair Labor Standards Act (FLSA), 29 USC Section 201 *et seq.*, Occupational Safety and Health Act (OSHA), 29 USC Section 651 *et seq.*).

**I. Internships.** An EMS agency may provide clinical internships only through a bureau-approved or CoAEMSP accredited EMS training program. [7.27.10.14 NMAC - N, 3/15/2010]

**7.27.10.15 DUTY TO PROVIDE SERVICE:**

**A.** An EMS agency and any of its personnel or agents shall provide service to a person in need of emergency medical treatment or transportation.

**B.** An EMS agency shall, in accordance with the EMS agency's

level of care, transport a patient requiring medical treatment and transport to the closest appropriate facility capable of providing appropriate care and treatment, as determined by the EMS agency's medical director.

**C.** An EMS agency shall give priority to emergency response calls.

**D.** An EMS agency shall be available 24 hours a day, 365 days a year unless the provision of services is otherwise addressed within mutual aid agreements or a memorandum of understanding. Certified special event EMS agencies may address the provision of duty hours based upon the EMS agency's contracts or agreements. [7.27.10.15 NMAC - N, 3/15/2010]

**7.27.10.16 MEDICAL RESCUE AGENCIES:**

**A. General requirements for all medical rescue agencies.**

**(1) Certification required.** A medical rescue agency shall not provide treatment to any patient, nor shall a transport medical rescue agency transport any patient, unless the medical rescue agency holds a valid certificate in accordance with this rule.

**(2) Level of service.** Any medical rescue agency that represents itself as providing any EMS level of service shall make that level of service available.

**(3) Fees prohibited.** Medical rescue agencies shall not charge a fee to the patient. Nothing in this rule shall be construed to prevent a medical rescue agency from negotiating reimbursement agreements.

**(4) Hygiene and cleanliness.** Medical rescue agencies shall maintain clean and hygienic work environments, and shall adopt and implement reasonable infection control practices to prevent the spread of communicable diseases. Medical rescue agencies shall properly maintain and dispose of all biohazard material.

**(5) Medical rescue emergency motor vehicles.** Medical rescue emergency motor vehicles shall provide safe and adequate service, and shall utilize equipment, supplies and facilities that are safe and adequate for the provision of emergency medical services and otherwise consistent with the requirements of this rule. Motor vehicles shall be safe, dependable and suitable for the services rendered. Each motor vehicle shall be maintained in good mechanical and operating condition. The bureau may remove from operation any medical rescue agency vehicle that the bureau determines to be either not road worthy or not response worthy. Transport-capable medical rescue vehicles shall be equipped with a heating, cooling and ventilation system capable of providing a reasonable level of comfort inside the motor vehicle.

**(6) Documentation.** EMS

agencies certified under this rule shall annually submit to the bureau a certificate of safety for each of their medical rescue vehicles, to include the date, name, contact telephone number and location of the certified mechanic performing the inspection.

**(7) Drivers.** Any person who regularly drives a certified medical rescue (transport or non-transport) vehicle shall:

**(a)** be at least 18 years of age;

**(b)** hold a valid New Mexico driver's license or equivalent out-of-state driver's license, equivalent to a class "D" or higher;

**(c)** be in compliance with bureau requirements for an emergency vehicle operator's course;

**(d)** not have received a driving while intoxicated, driving under the influence, or reckless driving conviction within the past year;

**(e)** not be prohibited by law from driving without a breath alcohol ignition interlock device;

**(f)** not be prohibited by law from operating a motor vehicle for any other reason;

**(g)** annually provide to their EMS agency a copy of the person's motor vehicle driving record; the medical rescue agency shall validate and submit to the bureau a list of all drivers authorized by the agency together with the agency's annual report; all driver infractions resulting in the loss or potential loss of driving privileges shall be reported to the bureau.

**(8) Safety belts.** Safety belts shall be utilized by all persons in the forward compartment of emergency motor vehicles. Attending personnel shall wear seat belts when feasible. Safety belts or other safety restraining devices shall be available for patients being transported, and shall be utilized for patients at all times during patient transport, unless extenuating circumstances prevent their usage.

**(9) Child restraint systems.** Attending personnel shall utilize child restraint systems when feasible and necessary. Child restraint systems shall satisfy all federal and state requirements when in use.

**(10) Minimum personnel requirements.** All medical rescue agencies (transport and non-transport) shall maintain the following minimum personnel requirements during patient treatment and transportation:

**(a)** a minimum of one New Mexico licensed EMS provider shall be present at the scene of an emergency;

**(b)** for transport of a patient, a minimum of one qualified New Mexico-licensed EMS provider shall be present in the patient compartment of the medical rescue vehicle at all times while the compartment is occupied by a patient;

**(c)** healthcare personnel not licensed as an EMS provider may accompany and monitor a patient in the patient compartment of a medical rescue vehicle, provided that at least one qualified New Mexico-licensed EMS provider is also present in the patient compartment, subject to the policies of the EMS agency.

**(11) Mutual aid.** All medical rescue agencies (transport and non-transport) shall develop mutual aid plans with appropriate EMS agencies and PRC regulated ambulance services. A medical rescue agency may provide mutual aid to another EMS agency pursuant to a mutual aid agreement only in the event that the other agency cannot respond to a call for service, and only in the following circumstances:

**(a)** in mass casualty or disaster situations, when requested by state or local authorities in accordance with established local emergency plans;

**(b)** when requested by another EMS agency or a licensed EMS provider during an emergency and in accordance with established mutual aid agreements;

**(c)** when requested by a law enforcement agency or officer; or

**(d)** in a non-emergency, when the responsible local provider's resources are exhausted, pursuant to arrangements made by the responsible local provider for (and for the coordination of) such necessary mutual aid.

**(12) Unauthorized persons.** A medical rescue agency shall not transport any person who is not a patient (including but not limited to a hitchhiker), other than an on-duty employee of the medical rescue agency, a person authorized by the medical rescue agency to be transported, or a bureau representative on official business, unless the person's transport is necessitated by an emergency.

**(13) Accident reports.** Every medical rescue agency shall report to the bureau every accident that occurs in the course of the medical rescue agency's operations within the state on either public or private property that results in the death of a person, injury to a person that requires treatment by a physician, or damage to property belonging to either the medical rescue agency or any other person to an apparent extent of two thousand five hundred dollars (\$2,500.00) or more.

**(a)** In the event that an EMS vehicle operated by a medical rescue agency is involved in a collision that results in a person's death, the medical rescue agency shall, within twenty-four hours of learning of the person's death, submit a copy of the police report of the collision to the bureau.

**(b)** Police reports of all other collisions involving an EMS vehicle operated by a medical rescue agency shall be submitted to the bureau by the medical

rescue agency no later than fifteen days after the date of the collision.

**(c)** If a medical rescue agency learns after submitting a police report to the bureau that an individual who was involved in a collision involving an EMS vehicle operated by the agency has died, the agency shall file an amended copy of the police report with the bureau no later than fifteen days after learning of the person's death.

**(d)** For the purposes of this section, a medical rescue agency that has submitted a uniform accident report of the collision to the motor vehicle division of the New Mexico taxation and revenue department may submit a copy of that report to the bureau instead of a police report; provided that the deadline for the submission to the bureau of a uniform accident report shall be the same as the deadline for the submission of a police report.

**B. Additional requirements for transport medical rescue agencies.** Transport medical rescue agencies shall meet the following requirements in order to be certified by the bureau.

**(1)** All transport medical rescue vehicles shall carry appropriate supplies and equipment, including the minimum required equipment identified in this rule.

**(2)** Patient transport is allowed in two distinct situations:

**(a)** saving of life or limb: when a transport medical rescue agency is dispatched without the intent to transport, but transports patient(s) due to life or limb-saving necessity;

**(b)** system demand: a transport medical rescue agency may transport a patient when there is no ambulance service available, or may intercept with any air or ground ambulance service when it is beneficial for the patient.

**(3)** All transport medical rescue agencies shall additionally maintain the following agreements and protocols:

**(a)** a fully executed written agreement between the public regulation commission-certificated ambulance service serving the area and the transport medical rescue agency that describes the transport protocol to be followed;

**(b)** a written medical protocol that clearly specifies situations when transport is allowed and has been approved by the transport rescue agency medical director.

[7.27.10.16 NMAC - N, 3/15/2010]

**7.27.10.17 MINIMUM REQUIRED EQUIPMENT FOR NON-TRANSPORT MEDICAL RESCUE VEHICLES:** All non-transport medical rescue agencies shall stock and equip non-transport medical rescue vehicles with the following minimum required equipment and supplies. Supplies shall be maintained in sufficient quantities to assure the safe and

adequate provision of emergency medical services in response to one or multiple incidents.

**A. Forward compartment:**

- (1) vehicle registration;
- (2) *U. S. department of transportation emergency response guidebook* (most current edition);
- (3) maps or navigational equipment;
- (4) service specific protocols and resource guides;
- (5) patient care reports or reporting system;
- (6) hand sanitizer;
- (7) flashlight (battery powered, hand crank, with mounted battery charging system);
- (8) fire extinguisher (ten pounds, ABC type or functional equivalent, charged);
- (9) spotlight or auxiliary lighting system;
- (10) roadway warning devices (safety flares, emergency lights, safety cones);
- (11) vehicle jack;
- (12) spare tire; and
- (13) tire wrench.

**B. Communications equipment:**

- (1) radio communications (portable or affixed);
- (2) equipment sufficient to establish and maintain direct or repeated communications with area dispatch and secondary providers; and
- (3) N.M. EMSCOM radio system capable of cellular and text/data transmissions (optional), spare batteries / charger system.

**C. Personal protective equipment (PPE):**

- (1) EMS turnout gear;
- (2) helmets with face shield;
- (3) gloves (work gloves or leather gloves);
- (4) eye protection (glasses or goggles);
- (5) hearing protection;
- (6) safety vest / jacket (ANSI 2008 compliant; break-away, reflective, high visibility coloration);
- (7) exam gloves (assorted sizes);
- (8) disposable splash protection (gowns, scrubs, eye shielding, etc.);
- (9) tyvek coveralls (optional); and
- (10) N-95 mask (or a mask better than a particulate mask).

**D. Diagnostic equipment:**

- (1) aneroid sphygmomanometer, blood pressure cuffs (with infant, pediatric, adult, and obese sizes);
- (2) stethoscope (more than one);
- (3) glucose monitoring instrument (portable);
- (4) pulse oximeter (portable);

(5) end-tidal CO<sub>2</sub> monitoring device (disposable, colormetric);

(6) penlights; and

(7) shears (trauma or equivalent).

**E. Cardiac equipment:**

(1) semi-auto external defibrillator;

(2) defibrillator pads (extra); and

(3) defibrillator batteries (extra).

**F. Bandages/dressings:**

(1) triangular bandages;

(2) universal dressings (approximately ten inches by thirty inches);

(3) gauze pads (four inches by four inches);

(4) bandages - soft roller (self-adhering);

(5) bandages - elastic (band aids, assorted sizes);

(6) occlusive dressings (sterile, individually wrapped);

(7) adhesive tape (various sizes: one inch, two inch, duct tape ('medical' - white);

(8) cold packs;

(9) heat packs; and

(10) burn sheets.

**G. Respiratory equipment:**

(1) mounted electric or manifold operation suction aspirator (that meets GSA standard);

(2) portable suction aspirator (as approved by the bureau);

(3) sterile suction catheters and tubing (rigid and soft, if applicable; assorted sizes);

(4) bag-valve-mask resuscitator (BVM) (disposable, with transparent adult mask); the BVM shall be capable of operation in cold weather, shall be capable of use with an oxygen supply and shall be capable of delivering approximately 100% oxygen;

(5) pediatric bag-valve-mask resuscitator (disposable, with transparent child and infant mask); the pediatric BVM shall be capable of operation in cold weather, shall be capable of use with an oxygen supply, and shall be capable of delivering 100% oxygen;

(6) adult oxygen masks with reservoir (non-rebreather or partial non-rebreather);

(7) adult oxygen masks (simple);

(8) pediatric oxygen masks with reservoir (non-rebreather or partial non-rebreather);

(9) pediatric oxygen masks (simple);

(10) nasal cannulas;

(11) oxygen supply tubing;

(12) oropharyngeal airways (with adult, child and infant sizes);

(13) nasopharyngeal airways (with adult, child and infant sizes);

(14) laryngeal, supraglottic, multi-lumen or laryngeal airway devices (device

not intended to be placed into the trachea);

(15) oxygen: fixed system (minimum of two wall-mounted oxygen outlets and one flow meter); system shall include a yoke-type pressure reducer gauge and an approved cylinder retaining device that meets DOT standards; the system shall be capable of delivering an oxygen flow of at least 15 liters per minute; if oxygen source is of a size less than "M" cylinder, an additional full spare cylinder for the fixed system shall be carried in the ambulance; and

(16) oxygen: two portable cylinders; each unit shall consist of at least a "D" cylinder or equivalent, yoke, pressure gauge, flowmeter and cylinder wrench; the unit shall be capable of delivering an oxygen flow of at least 15 liters per minute; cylinder holders with a quick-release fitting shall be furnished to allow the use of the portable unit outside the vehicle.

[7.27.10.17 NMAC - N, 3/15/2010]

**7.27.10.18 MINIMUM REQUIRED EQUIPMENT FOR TRANSPORT MEDICAL RESCUE VEHICLES:**

All transport medical rescue agencies shall stock and equip transport medical rescue vehicles with the minimum equipment and supplies required in this rule to be stocked in non-transport medical rescue vehicles by non-transport medical rescue agencies. Additionally, all transport medical rescue agencies shall stock and equip transport medical rescue vehicles with the following minimum equipment and supplies. Supplies shall be maintained in sufficient quantities to assure the safe and adequate provision of emergency medical services in response to one or multiple incidents.

**A. Patient compartment:**

(1) multi-level stretcher (may be power assisted, two-person);

(2) shoulder / chest and lower extremity straps (capable of securing adult and pediatric patients);

(3) pillow (disposable, with a vinyl cover or a rolled blanket);

(4) blankets;

(5) stretcher pad (bed) covers (e.g., sheets);

(6) patient restraints (two ankle and two wrist, leather or nylon);

(7) sharps container;

(8) emesis basins (emesis bags or equivalent); and

(9) body bags.

**B. Pharmacological equipment for first response through ALS:**

(1) appropriate medications with the contents established and approved by the service medical director, within applicable N.M. scopes of practice, with a list of contents and earliest expiration dates affixed to the outside of the kit; drug kits must



be maintained in a temperate, controlled environment and shall not be left unsecured; and

(2) mark I plus kit.

**C. Pediatrics:**

(1) pediatric restraint system or car seat (may be a fold-down jumpseat with a child restraint system);

(2) obstetrical kit (sterile package), to include at a minimum: a receiving blanket, a sterile bulb aspirator, a wrapped sanitary napkin, a sterile pair of scissors or scalpel blade, four-inch gauze pads, one pair of sterile gloves, two cord clamps and a plastic bag for placenta; all items shall be kept in a container with an identifying label that specifies the contents;

(3) foil blanket; and

(4) pediatric drug dosage tape or chart.

**D. Intravenous therapy:**

(1) intravenous solution (normal saline) (1000 ml);

(2) intravenous catheters (various sizes);

(3) intraosseous needles;

(4) tubing/infusion kits;

(5) pediatric fluid volume control device (i.e., buretrol or volutrol); and

(6) arm boards (for pediatrics).

**E. Immobilization devices:**

(1) extremity immobilization devices (two full arms and two full legs, or equivalent);

(2) short spinal extrication device (KED or equivalent), infant or pediatric immobilization; equipment shall be identified for the safe transport of infant / pediatric patients, as approved by the EMS agency's medical director with guidelines and operating procedures provided by the agency / department;

(3) pediatric immobilization device (as approved by the department); equipment shall be identified for the safe transport of infant / pediatric patients, as approved by the EMS agency's medical director with guidelines and operating procedures provided by the agency / department;

(4) spine boards (long; at least 16" wide by 72" in length with a minimum of three straps);

(5) lateral cervical immobilization devices (commercial devices, foam blocks, blanket rolls);

(6) cervical immobilization collars (hard type, minimum two adult, two medium, two child); and

(7) traction splint (lower extremity, adjustable).

**F. Rescue/extrication equipment:**

(1) tarp or blankets;

(2) seatbelt cutter or trauma shears;

(3) spring loaded center punch / window punch;

(4) rescue ax or halligan tool;

(5) flathead screwdriver (minimum six inches);

(6) three-pound hammer;

(7) hacksaw with extra bimetal-type blades;

(8) duct tape;

(9) one ton "come-a-long" winch;

(10) rescue-rated chains or straps (minimum of two);

(11) hydraulic spreader / cutter / ram (combi-tool);

(12) air chisel-air cylinder, regulator, air hose (optional);

(13) air bags-air cylinder, regulator, air hose (optional);

(14) winch with recovery straps and blocking equipment; and

(15) stabilization equipment (cribbing, blocks, struts).

[7.27.10.18 NMAC - N, 3/15/2010]

**7.27.10.19 SPECIAL EVENT EMS:**

**A. Certification required.**

A special event EMS agency shall not provide medical treatment or transport to any patient unless the special event EMS agency holds a valid certificate in accordance with this rule. A special event EMS agency shall not charge a fee to the patient for services provided. Nothing in this rule shall be construed to prevent a special event EMS agency from negotiating reimbursement agreements.

**B. Minimum personnel requirements.** The exact number and licensure of New Mexico-licensed EMS personnel to be utilized at any event shall be established and approved by the special event EMS agency and the agency's medical director, based on estimated attendance, geography, venue and environmental factors for each event. At a minimum, one medical team consisting of two New Mexico-licensed EMS personnel equipped with a defibrillator shall be provided for every 5,000 participants and spectators. EMS providers assigned to a patient transport unit shall not be included in the staffing levels required at an event.

**C. Level of service.** The highest level of care that may be practiced under the licensure of special event EMS providers shall determine the level of service provided by a medical team.

**D. Special event EMS agency transport.** Special event EMS may be provided by an EMS agency irrespective of whether the EMS agency is transport capable. If an EMS agency that provides special event EMS is not transport capable, transport shall be provided by a public regulation commission-certificated ambulance service for the territory where the event takes place. Medical rescue agencies performing special event EMS shall follow

the appropriate section in this rule.

**E. Minimum supplies, equipment, medications and kits required.** All special event EMS agencies shall have available and utilize supplies and equipment appropriate to the level of service to be provided, per the direction of the EMS agency's service director and medical director. At a minimum, a medical team shall be equipped with a defibrillator and trauma and airway supplies.  
[7.27.10.19 NMAC - N, 3/15/2010]

**7.27.10.20 E M E R G E N C Y MEDICAL DISPATCH:**

**A. Certification required.**

An emergency medical dispatch agency shall not operate within the state of New Mexico, nor dispatch calls within or from the state of New Mexico, nor represent itself to be an emergency medical dispatch agency operating in the state of New Mexico or dispatching calls within or from the state of New Mexico, unless the emergency medical dispatch agency holds a valid certificate in accordance with this rule.

**B. Minimum requirements for medical dispatch agencies.** A certified medical dispatch agency shall utilize an emergency medical dispatch priority reference system that is published by a bureau-approved source and that is used by licensed emergency medical dispatchers. A medical dispatch agency shall utilize only licensed EMDs for emergency medical dispatch.

**C. Exceptions for medical dispatch agencies.** In the event of a large scale emergency or mass casualty incident, emergency medical dispatch agencies may suspend emergency medical dispatch for the duration of the incident to accommodate the unusual increase in call volume.

**D. Emergency medical dispatch agency performance and certification.** A medical dispatch agency shall be operated in a safe, efficient, and effective manner in accordance with this rule, and shall further comply with the following minimum standards:

(1) an emergency medical dispatch agency shall, in accordance with any applicable requirements of this rule, implement and ensure that the agency's medical director reviews, approves, and oversees:

(a) an emergency medical dispatch priority reference system;

(b) an emergency medical dispatch training program;

(c) a quality assurance program;

(d) an emergency medical dispatch oversight committee; and

(e) an emergency medical dispatch continuing education program;

(2) any emergency medical dispatch priority reference system, including

but not limited to its questions, instructions, codes, and protocols, shall be utilized in its entirety, rather than in limited parts;

(3) an emergency medical dispatch agency shall ensure that emergency medical dispatchers follow the questions and decision-making processes (flowcharts) within their emergency medical dispatch priority reference system in compliance with the written policies and procedures of their emergency medical dispatch agency, and as approved by the agency's medical director;

(4) an emergency medical dispatch agency shall use a bureau-approved emergency medical dispatch priority reference system on every request for medical assistance;

(5) an emergency medical dispatch agency shall ensure that each emergency medical dispatcher provides dispatch life support (including but not limited to pre-arrival instructions) in compliance with the written text or scripts and other processes within the approved emergency medical dispatch priority reference system;

(6) an emergency medical dispatch agency shall maintain and utilize policies and procedures for the safe and effective use of the agency's approved emergency medical dispatch priority reference system;

(7) an emergency medical dispatch agency shall ensure that emergency medical dispatchers maintain valid licensure in accordance with 7.27.2 NMAC ("Licensing of Emergency Medical Services Personnel");

(8) an emergency medical dispatch agency shall set minimum training requirements that meet state standards for emergency medical dispatcher certification;

(9) an emergency medical dispatch agency shall, with the written approval and supervision of the agency's medical director and with the input of the agency's emergency medical dispatch oversight committee, establish a continuous quality assurance program that measures various areas of compliance with the emergency medical dispatch priority reference system;

(10) an emergency medical dispatch agency shall maintain and utilize the most current version of the bureau-approved emergency medical dispatch priority reference system selected for use by the emergency medical dispatch agency within six months of its publication; the most current version of the priority reference system shall also be approved in writing by the emergency medical dispatch medical director;

(11) an emergency medical dispatch agency's emergency medical dispatch oversight committee shall:

(a) establish local medical standards for dispatch procedures to assure the appropriate EMS response units are dispatched to the medical emergency scene;

(b) develop a relevant emergency

medical dispatch system;

(c) develop relevant local standing orders and protocol as needed;

(d) establish and monitor training standards for initial and continuing education; and

(e) plan, develop and implement the EMS agency's quality assurance program.

**E. Pre-approved EMD priority reference systems.** The bureau shall identify pre-approved standardized emergency medical dispatch priority reference systems for selection and use by local emergency medical dispatch agencies. [7.27.10.20 NMAC - N, 3/15/2010]

#### **7.27.10.21 APPLICATION FOR CERTIFICATION:**

**A. Application.** An EMS agency shall apply for certification using an approved application form, and shall provide completed and legible responses to every applicable element of the application form.

**B. Application form.** Applications for certification shall include at a minimum the following elements:

(1) name and contact information of the applicant EMS agency, including at a minimum the EMS agency's mailing and physical addresses, primary telephone number, facsimile number, and e-mail address;

(2) name and contact information of the applicant EMS agency's medical director, including at a minimum the medical director's mailing address, primary telephone number, facsimile number, and e-mail address;

(3) name and contact information of the director or chief/chief or individual primarily responsible for the operation of the applicant EMS agency, including at a minimum the person's mailing address, primary telephone number, facsimile number, and e-mail address;

(4) name and contact information of the applicant EMS agency's dispatch center, including at a minimum the dispatch center's mailing address, primary telephone number, facsimile number, and e-mail address;

(5) name and contact information of the applicant EMS agency's insurance carrier, including at a minimum the insurance carrier's mailing address, primary telephone number, facsimile number, and e-mail address;

(6) the county in which the applicant EMS agency wishes to be certified, and the number of medical rescue units operated by the applicant EMS agency; and

(7) a notarized attestation by the individual who submits the application that certifies that the information provided in the submitted application form is true and correct to the best of the individual's

knowledge.

[7.27.10.21 NMAC - N, 3/15/2010]

#### **7.27.10.22 CERTIFICATION PROCESS:**

**A. Temporary certification.** The bureau may issue a temporary certification to an EMS agency for a period not to exceed three continuous months upon submission of a fully completed initial certification application and payment of appropriate fees. The bureau may in its sole discretion grant a temporary certification to an EMS agency in order to:

(1) allow the EMS agency to begin or continue operations while awaiting full certification;

(2) provide the EMS agency additional time to submit information requested by the bureau;

(3) provide the EMS agency additional time to meet other certification standards; or

(4) provide the EMS agency time to appeal an initial determination or denial of certification.

**B. Full certification.** To become fully certified, an EMS agency shall:

(1) comply with applicable federal, state, and local laws regarding the operation of a business in the state of New Mexico or the counties or municipalities thereof;

(2) if the agency is an out-of-state EMS agency, submit to the bureau a copy of a bureau-approved accreditation certificate;

(3) complete an initial or renewal certification application and submit it to the bureau along with the required application fee;

(4) submit to any inspections that may be conducted by the bureau;

(5) comply with all applicable federal and state regulatory requirements, including but not limited to insurance requirements, state board of pharmacy permitting requirements, and drug enforcement administration permitting requirements;

(6) verify the driving records of the EMS agency personnel;

(7) conduct criminal background checks of the EMS agency personnel, if requested by the bureau;

(8) furnish insurance documentation as required in this rule;

(9) if the EMS agency is an emergency medical dispatch agency, provide documentation that the agency is using the most current version of its bureau-approved EMDPRS by submitting the name, version number, and date of last revision of the EMDPRS used by the dispatch agency; and

(10) satisfy all other certification requirements applicable under this rule.

**C. Renewal of certification.** An EMS agency shall submit a certification renewal package to the bureau

at least thirty calendar days prior to the expiration of the EMS agency's certification.

(1) To obtain renewal certification, an EMS agency shall:

(a) submit to the bureau a completed renewal certification application form;

(b) submit to the bureau the applicable certification fee;

(c) comply with all applicable federal and state regulatory requirements, including but not limited to insurance requirements, state board of pharmacy permitting requirements, and drug enforcement administration permitting requirements;

(d) if the agency is an out-of-state EMS agency, submit to the bureau a copy of a bureau-approved accreditation certificate;

(e) comply with all other certification requirements applicable under this rule.

**D. Determinations regarding certification renewal.** The bureau shall review a certification renewal application in the order in which it is received, provided that the application is complete and is submitted by the EMS agency in a timely manner.

(1) If there is a delay by the bureau in notifying an EMS agency of whether the agency's certification renewal application is approved or denied, and if that delay extends beyond the expiration date of the EMS agency's existing certification, that certification shall continue in effect beyond its expiration date until either:

(a) the bureau issues a written notice to the EMS agency stating that the renewal certification application has been denied; or

(b) the bureau issues a renewed certificate to the EMS agency.

(2) If an EMS agency's renewal packet is incomplete, the department shall notify the EMS agency in writing.

**E. Certification updates.** An EMS agency shall provide updates to the bureau of any organizational changes in the following areas within thirty days of said change:

(1) changes in management structure;

(2) changes in the EMS agency's medical direction;

(3) additions to or removals from the EMS agency's service vehicle fleet;

(4) changes of address for the EMS agency and changes in EMS agency contact information;

(5) any change that impacts the EMS agency's certification status.

**F. Change of ownership.** Any change of an EMS agency's ownership shall require the EMS agency to reapply with the bureau for certification, which shall require the EMS agency's submission of of

any fees associated with a new certification application. The sale or exchange of fifty percent (50%) or more of the total outstanding stock of a corporation shall be deemed a change of ownership for purposes of this rule.

**G. Issuance of EMS agency certificate.** Upon the bureau's approval of an EMS agency's application for certification, the bureau shall provide the EMS agency with a certificate that authorizes the EMS agency to operate in New Mexico. The EMS agency shall prominently display the certificate at the EMS agency's primary business location so that it is in full public view at all times.

**H. Identification of vehicles.** The bureau shall provide certification decals to the EMS agency for each of the EMS agency's vehicles, which the EMS agency shall prominently display on the vehicle(s) so that the decals are in plain sight at all times.

**I. Transfer of certificate or decal prohibited.** An EMS agency shall not assign, sell or otherwise transfer a bureau-issued certificate, decal or other symbol that signifies the EMS agency's certification to any other person or entity.

**J. Reciprocal certification.** An out-of-state EMS agency that holds a valid accreditation from the commission on accreditation of ambulance services (CAAS), the commission on accreditation of medical transport systems (CAMTS), the national EMD standard setting certification organization (NESSCO), or another organization approved by the bureau as having equivalent expertise and competency in the accreditation of EMS agencies, shall be deemed to meet the standards for EMS agency certification in the state of New Mexico under this rule.

(1) The bureau shall certify an out-of-state EMS agency that holds a bureau-approved accreditation or certification following the review and approval of the certification application, bureau verification of the EMS agency's liability insurance coverage, and payment of appropriate fees by the EMS agency.

(2) An accredited or certified out-of-state EMS agency shall attach to its initial or renewal certification application evidence of current accreditation. Accreditation of an out-of-state EMS agency shall not preclude the bureau from conducting a certification inspection or from requesting additional information from the agency to ensure compliance with this rule.

**K. Exemptions to certification requirements.**

(1) Federal agencies and entities, including but not limited to the United States department of defense, shall be exempt from this rule.

(2) The New Mexico department

of military affairs shall be exempt from this rule.

(3) Tribal agencies and organizations that provide EMS services entirely within the boundaries of tribal lands shall be exempt from this rule.

(4) An EMS agency from any state adjoining the state of New Mexico shall be exempt from this rule if that agency responds into New Mexico to assist in a mass casualty or disaster situation that exceeds the capacity or capability of the New Mexico EMS agency in the affected area, or if that agency responds into New Mexico on a non-routine basis for emergency mutual aid assistance when requested to do so by the certified EMS agency whose service area includes areas along the mutual state line. The out-of-state EMS agency shall hold a valid certificate or authorization issued by the EMS regulatory authority that has jurisdiction in the adjoining state where the agency is located, and may provide emergency medical care, emergency medical communication and transport commensurate with that existing authority.

(5) Ambulance services regulated by the transportation division of the New Mexico public regulation commission (see 18.3.14 NMAC) shall be exempt from this rule.

**L. Inspections and audits.** Inspections or audits of an EMS agency shall be conducted and reviewed by the bureau or the bureau's agent(s). Only individuals who hold valid NM emergency medical technician licensure shall be assigned to conduct an investigation of an EMS agency on behalf of the bureau.

(1) The bureau may conduct on-site inspections or audits of an EMS agency at any time, at the bureau's discretion.

(2) The bureau may investigate and inspect the land, buildings, improvements to real property, vehicles, equipment, records, or documents of an EMS agency as the bureau deems necessary to determine an EMS agency's compliance or non-compliance with this rule.

(3) An EMS agency shall provide the bureau complete access at all times to the land, buildings, improvements to real property, vehicles, and equipment owned by or within the control of the EMS agency.

(4) An EMS agency shall allow the bureau at any time to freely inspect and copy all records and documents in the agency's possession.

(5) An EMS agency that has been certified by the bureau shall submit ongoing annual reports that shall be completed via a self-assessment method, and that shall affirm that the agency meets all standards identified in this rule.

(6) Bureau investigations or audits of an EMS agency may be conducted with or without notice.

(7) An EMS agency that applies for certification from the bureau and that fails an initial inspection may be subject to additional inspections by the bureau to determine whether the EMS agency satisfies certification requirements in accordance with this rule. An EMS agency that fails an initial inspection shall reimburse the bureau for each additional inspection made by the bureau to determine the EMS agency's compliance with certification requirements, in an amount equivalent to the per diem and mileage rates permitted for nonsalaried public officers in the NM Per Diem and Mileage Act, NMSA 1978, Section 10-8-1 *et seq.* Per diem and mileage rates shall be assessed to the EMS agency per each individual bureau employee or agent assigned to inspect the EMS agency.

**M. Changes of name and address.** An EMS agency shall notify the bureau of any change of the EMS agency's name or address no later than ten business days after said change is made.

[7.27.10.22 NMAC - N, 3/15/2010]

#### **7.27.10.23 FEES:**

**A. Determination and assessment.** The bureau shall determine and assess fees for the certification of EMS agencies. An agency shall register for only one category of EMS certification, based upon its primary scope of responsibility. However, an agency that qualifies under more than one category of EMS certification shall pay the greater of the applicable fees; for example, a fire department that has more than three vehicles and that also has an in-house dispatch center shall pay the fee applicable to an EMS agency.

#### **B. Applicable fees.**

(1) The following table identifies the certification fees applicable to EMS agencies for both initial and renewal certification. These fees are non-refundable.

DESCRIPTION	APPLICATION FEE (INITIAL and RENEWAL)
<b>EMS AGENCY (transport-capable medical rescue and non-transport medical rescue ) WITH:</b>	
Up to 3 vehicles	\$100.00
4-10 vehicles	\$150.00
More than 11 vehicles	\$200.00
<b>SPECIAL EVENT EMS</b>	\$100.00
<b>EMERGENCY MEDICAL DISPATCH</b>	\$100.00
<b>LATE FEE (postmarked or hand-delivered after January 15)</b>	25% increase over the primary fee

(2) An out-of-state EMS agency that applies for certification (reciprocal or otherwise) under this rule shall pay the same fee applicable to an in-state EMS agency.

(3) If an EMS agency adds an additional vehicle to its fleet, and if that addition increases the fee applicable to that agency, the increased fee shall not be assessed until the time of the EMS agency's next certification renewal.

(4) EMS agency vehicles that have a gross vehicle weight rating (GVWR) of less than 5,000 pounds (motor vehicles, utility carts, etc.) shall not be included among the total number of EMS agency vehicles in assessing fees under this section.

(5) Privately owned vehicles shall not be included among the total number of EMS agency vehicles in assessing fees under this section.

#### **C. Fee exemptions and reductions.**

(1) Any EMS agency seeking certification that can document that it will incur a financial hardship in meeting the fee requirements of this rule may request a fee reduction from the bureau, if either of the following criteria is met:

(a) the service is entirely staffed by volunteer EMS providers; or

(b) the total fees to be paid by the EMS agency pursuant to this rule comprise more than 5% of the EMS agency's annual EMS operational budget.

(2) The bureau may waive or reduce certification fees at its sole discretion. Requested waivers shall be considered by the bureau on a case by case basis.

**D. Use of fees.** Certification fees collected by the bureau under this rule shall be used expressly to improve the EMS system.

**E. Payment of fees.** An EMS agency shall submit payment for certification fees along with the agency's application for certification. The EMS agency shall submit payment in a form approved by the bureau. An EMS agency's certification application shall not be processed unless and until full payment of the required fees is made.

[7.27.10.23 NMAC - N, 3/15/2010]

#### **7.27.10.24 ENFORCEMENT:**

#### **A. Complaint/incident procedures.**

(1) Any person may communicate a written complaint or knowledge of an incident concerning an EMS agency or applicant to the bureau.

(2) Complaints shall be submitted in signed, written form to the bureau as soon as practical.

(3) The bureau shall notify in a timely manner an affected EMS agency or applicant that the bureau is conducting an investigation, unless extenuating circumstances reasonably preclude notification.



**B. Investigations.**

Investigations shall be conducted by the bureau or its agent(s). The bureau shall issue to any person whom it designates as an inspector or investigator credentials to evidence the person's authority that shall bear the person's photograph. The bureau may initiate an investigation if an inspection reveals, or if the bureau otherwise becomes aware of, facts indicating a possible violation of this rule. Upon completion of the investigation, the bureau may pursue further appropriate action.

**(1) Preliminary investigations.**

When the bureau receives information that might form the basis for disciplinary action against an EMS agency or applicant, it may begin a preliminary investigation. A preliminary investigation is a fact-finding/information-gathering investigation that will attempt to determine whether justification exists to initiate an action or to conduct a formal investigation.

**(2) Formal investigations.** The bureau may undertake a formal investigation for the purpose of obtaining additional information to allow the bureau to determine whether to initiate an action. The bureau shall notify the EMS agency that is the subject of the formal investigation of the pendency of that investigation, unless doing so could substantially impair the bureau's investigation, or unless other extenuating circumstances exist that would reasonably preclude notification.

**(3) Confidentiality.** The bureau shall take precautions to ensure that investigations are conducted in a confidential manner.

**(4) Records.** An official record shall be maintained for every EMS agency certified under this rule. If the bureau begins an investigation, a separate confidential record shall be created containing all investigative material. If the bureau initiates an action, all records not exempt from disclosure under the Inspection of Public Records Act, NMSA 1978, 14-2-1 *et seq.*, shall be placed in the EMS agency's official record. Any request for records maintained by the bureau shall be processed in accordance with the Inspection of Public Records Act.

**C. Waivers.** The bureau, upon a showing of good cause or extenuating circumstances by an EMS agency, may waive any portion of this rule in whole or in part.

**(1)** An EMS agency that requests a waiver shall submit written justification to the bureau explaining what good cause or extenuating circumstances exist to grant the waiver. The EMS agency shall include any supporting documentation relevant to the request.

**(2)** The bureau shall determine whether to grant a requested waiver as soon

as practicable. The bureau shall evaluate the request and any pertinent attached documentation. The bureau may request additional documentation in support of the EMS agency's request as the bureau deems necessary.

**(3)** Upon determining whether to grant or deny a waiver request, the bureau shall notify the requesting EMS agency of the bureau's decision in writing within twenty calendar days.

**D. Disciplinary action; other action.** The bureau may take disciplinary action against an EMS agency or applicant, including denial, suspension, or revocation of certification, or imposition of any lesser restriction or condition upon certification, in accordance with the following:

**(1)** if the bureau takes final disciplinary action against an EMS agency or applicant, the bureau may publish notice of the action in a periodical, internet website, or other medium that has statewide distribution;

**(2)** the bureau may take immediate action to suspend an EMS agency's certification to prevent the EMS agency from operating in New Mexico if the bureau determines that the health and safety of the public would be jeopardized if it did not take such action; the suspended EMS agency shall be afforded the right to an expedited hearing in accordance with this rule;

**(3)** the bureau may take disciplinary action against an EMS agency, or may refuse to distribute EMS fund monies to an EMS agency, for any of the following reasons:

**(a)** knowingly allowing a person to perform emergency medical services in the state of New Mexico when the person is not licensed or otherwise authorized by the department of health to perform emergency medical services;

**(b)** any instance of inappropriate billing practices, including but not limited to the following:

**(i)** administering unnecessary treatment or supplies to a patient for the purpose of increasing the patient's bill;

**(ii)** charging for treatment or supplies not actually provided to a patient; and

**(iii)** engaging in medicare or medicaid fraud;

**(c)** financial insolvency of the EMS agency;

**(d)** fraud, deceit, or misrepresentation by an EMS agency in obtaining certification, including but not limited to misrepresentation during the initial or renewal certification process;

**(e)** expenditure of EMS fund monies in any manner or for any purpose not authorized by the bureau, or in any

manner prohibited by the EMS Fund Act, NMSA 1978, Section 24-10A-1 *et seq.*, or applicable rules (see 7.27.4 NMAC);

**(f)** loss of federal drug enforcement administration or NM board of pharmacy licensure or failure to notify the bureau of such loss of licensure;

**(g)** failure to ensure that the EMS agency receives and complies with medical direction that conforms to applicable medical direction guidelines (see 7.27.3 NMAC);

**(h)** failure to pay required certification fees or to pay an outstanding balance owed to the bureau;

**(i)** operating as an EMS agency in the state of New Mexico for any period of time without holding valid certification from the bureau, unless the EMS agency previously obtained an applicable waiver from the bureau;

**(j)** failure to implement reasonable infection control practices, failure to maintain a clean and hygienic work environment, or failure to properly maintain and dispose of biohazard material;

**(k)** failure to make a required submission to the bureau, including but not limited to the submission of patient run report data;

**(l)** permitting an individual who is not a student at bureau-approved or CoAEMSP-accredited EMS training program to perform as an intern with the EMS agency;

**(m)** the conviction of an EMS agency's principals of a felony or a misdemeanor, as shown by a copy of the record of the court conviction;

**(n)** failure of an EMS agency's principals to notify the bureau upon learning that an EMS provider has been convicted of a felony or misdemeanor while employed by the EMS agency;

**(o)** failure of an EMS agency to cooperate with a bureau investigation, including but not limited to failure to furnish the bureau with requested information, or failure of agency personnel to appear at an interview as requested;

**(p)** attempting, either directly or through an agent, to intimidate, threaten, injure or take any adverse action against a person for providing information to the bureau;

**(q)** conduct on the part of EMS agency personnel that constitutes a significant threat to the health or safety of individuals receiving emergency care;

**(r)** negligence on the part of EMS agency personnel in the delivery of emergency medical services, including but not limited to the following:

**(i)** malpractice or substandard medical care or treatment;

**(ii)** incompetence;

**(iii)** abandonment;

**(iv)** practicing without



a valid NM EMT license; or performing outside an applicable standard of care/scope of practice;

(v) failure to retain, transport or use required equipment, or inappropriate use of equipment during treatment or transport of patients; or

(vi) unauthorized disclosure of medical or other confidential information;

(s) unprofessional conduct on the part of EMS agency personnel, including but not limited to the following:

(i) dissemination of a patient's health information to individuals not entitled to such information where such information is protected by law from disclosure;

(ii) falsification or alteration of patient records or EMS agency records;

(iii) misappropriation of money, drugs or property;

(iv) obtaining or attempting to obtain any fee for patient services for one's self or for another through fraud, misrepresentation, or deceit;

(v) aiding, abetting, assisting or hiring an individual to violate the EMS Act or these duly promulgated rules;

(vi) failure to follow established procedure and documentation regarding controlled substances;

(vii) failure to make or keep accurate, intelligible entries in records as required by law, policy and standards for the practice of pre-hospital emergency care;

(viii) failure to report an EMT who is suspected of violating the New Mexico EMS Act (NMSA 1978, Section 24-10B-4 ) or New Mexico licensing rules for EMS personnel (7.27.2 NMAC);

(ix) intentionally engaging in sexual contact with or toward a patient;

(t) failure of EMS agency personnel to report revocation, suspension, denial, or other adverse action relating to a license, permit, designation or certification taken in any other state or jurisdiction affecting the ability to provide emergency medical services in that state;

(u) the making of any false, fraudulent, or deceptive statement by EMS agency personnel in any document connected with EMS agency operations;

(v) the dispensation, administration, or distribution of any controlled substance (as defined in the New Mexico Controlled Substances Act, NMSA 1978, Section 30-31-1 *et seq.*, other than a controlled substance authorized in an applicable scope of practice, by EMS agency personnel;

(w) willful and deliberate failure of EMS agency personnel to respond to a

call;

(x) willful and deliberate failure of EMS agency personnel to transport a patient when required;

(y) except as otherwise provided in this rule, failure of EMS agency personnel to deliver a patient to the most appropriate medical facility as determined by the medical director, dependent upon the patient's medical needs; and

(z) failure to comply with any requirement of this rule;

(4) denial of certification for failure to properly apply or failure to pay a required fee shall not constitute a disciplinary action for purposes of this section, and shall not entitle an applicant to a hearing;

(5) the bureau's refusal to distribute EMS fund monies to an EMS agency shall not constitute a "disciplinary action" for purposes of this section, and an EMS agency that is refused a distribution of EMS fund monies shall not be entitled to a hearing under this section; an EMS agency may appeal the bureau's determination to refuse a distribution of EMS fund monies by following the appeal provisions of the EMS Fund Act rule, 7.27.4 NMAC.

#### **E. Records management.**

A certification record is maintained for every certified EMS agency in New Mexico; any request for records maintained by the bureau shall be processed in accordance with the Inspection of Public Records Act, NMSA 1978, Section 14-2-1 *et seq.*

(1) **Confidentiality of investigations.** The bureau shall take every precaution to ensure that preliminary and formal investigations are conducted in a confidential manner. If the bureau initiates an action, all records not exempt from disclosure under the Inspection of Public Records Act, NMSA 1978, Section 14-2-1 *et seq.*, shall be placed in the EMS agency's certification record, if one exists.

(2) **Records confidentiality.** Any files or records in the possession of the bureau, a regional office or a provider containing identifying information about individuals requesting or receiving treatment or other health services and any unsubstantiated complaints received by the bureau regarding any provider shall be confidential and not subject to public inspection; such files, records and complaints may be subject to subpoena for use in any pending cause, in any administrative proceeding, or in any of the courts of this state, unless otherwise provided by state or federal law.

**F. Notice of contemplated action.** When the bureau contemplates taking disciplinary action against an EMS agency or applicant, it shall serve upon the EMS agency or applicant a written notice containing a statement of the grounds or subject upon which the proposed action is based and identifying any rule(s) violated.

**G. Injunctions.** The department may apply to a district court of New Mexico to enjoin an EMS agency from engaging in business in the state. [7.27.10.24 NMAC - N, 3/15/2010]

#### **7.27.10.25 HEARINGS:**

**A. Right to appeal.** An EMS agency or applicant may appeal a decision by the department to take a disciplinary action against the EMS agency or applicant under this rule.

**B. Right to hearing.** An EMS agency or applicant may request a hearing before a hearing officer appointed by the secretary to contest a proposed action or immediate suspension under this rule, by mailing a certified letter, return receipt requested, to the bureau within twenty days after service of the notice of the contemplated action or immediate suspension.

**C. Scheduling the hearing.**

(1) **Appointment of hearing officer.** Upon the bureau's receipt of a timely request for a hearing, the department shall appoint a hearing officer and schedule a hearing.

(2) **Hearing date.** The hearing shall be held not more than sixty days and not less than fifteen days from the date of service of the notice of hearing. **Exception for immediate suspensions:** in the event that the bureau immediately suspends an EMS agency's certification, the department shall afford the suspended EMS agency an expedited hearing within twenty days of the bureau's timely receipt of the EMS agency's request for a hearing, unless the suspended EMS agency waives this provision.

(3) **Notice of hearing.** The department shall notify the EMS agency or applicant of the date, time, and place of the hearing and the identity of the hearing officer within twenty days of the bureau's timely receipt of the request for hearing. **Exception for immediate suspensions:** in the event that the bureau immediately suspends an EMS agency's certification, the department shall notify the suspended EMS agency of the expedited hearing not less than seven days prior to the scheduled date of the expedited hearing.

(4) **Hearing venue.** The hearing shall be held in Santa Fe, New Mexico.

**D. Method of service.** Any notice or decision required to be served under this section may be served either personally or by certified mail, return receipt requested, directed to the EMS agency or applicant at the last known mailing address (or, if service is made personally, by the last known physical address) shown by the records of the bureau. If the notice or decision is served personally, service shall be made in the same manner allowed by the rules of civil procedure for the state district

courts of New Mexico. Where the notice or decision is served by certified mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery, or the date of the last attempted delivery of the notice or decision, or the date of the addressee's refusal to accept delivery.

**E. Excusal of hearing officer for good cause shown.** A party may request that a hearing officer be excused for good cause by submitting to the secretary a motion of excusal for good cause at least twenty days prior to the date of the hearing, or at least five days prior to an expedited hearing concerning the immediate suspension of an EMS agency's certification.

**F. Hearing officer duties.** The hearing officer shall conduct the hearing, rule on any motions or other matters that arise prior to the hearing, and issue a written report and recommendation(s) to the secretary following the close of the hearing.

**G. Official file.** Upon appointment, the hearing officer shall establish an official file which shall contain all notices, hearing requests, pleadings, motions, written stipulations, evidence, briefs, and correspondence received in the case. The official file shall also contain proffered items not admitted into evidence, which shall be so identified and shall be separately maintained. Upon conclusion of the proceeding and following issuance of the final decision, the hearing officer shall tender the complete official file to the department for its retention as an official record of the proceedings.

**H. Powers of hearing officer.** The hearing officer shall have all the powers necessary to conduct a hearing and to take all necessary action to avoid delay, maintain order, and assure development of a clear and complete record, including but not limited to the power to: administer oaths or affirmations; schedule continuances; direct discovery; examine witnesses and direct witnesses to testify; limit repetitious and cumulative testimony; set reasonable limits on the amount of time a witness may testify; decide objections to the admissibility of evidence or receive the evidence subject to later ruling; receive offers of proof for the record; direct parties to appear and confer for the settlement or simplification of issues, and otherwise conduct pre-hearing conferences; take notice of judicially cognizable facts or take notice of general, technical or scientific facts within the hearing officer's specialized knowledge (provided that the hearing officer notifies the parties beforehand and offers the parties an opportunity to contest the fact so noticed); dispose of procedural requests or similar matters; and enter proposed findings of fact and conclusions of law, orders, reports and recommendations. The hearing officer may utilize his or her experience, technical competence or specialized knowledge in the

evaluation of evidence presented.

**I. Minimum discovery; inspection and copying of documents.** Upon written request to another party, any party shall have access to documents in the possession of the other party that are relevant to the subject matter of the appeal, except confidential or privileged documents.

**J. Minimum discovery; witnesses.** The parties shall each disclose to each other and to the hearing officer, either orally or in writing, the names of witnesses to be called, together with a brief summary of the testimony of each witness. In situations where written statements will be offered into evidence in lieu of a witness's oral testimony, the names of the persons making the statements and a brief summary of the statements shall be disclosed.

**K. Additional discovery.** At the hearing officer's discretion, upon a written request by a party that explains why additional discovery is needed, further discovery in the form of production and review of documents and other tangible things, interviews, depositions or written interrogatories may be ordered. In exercising his authority to determine whether further discovery is necessary or desirable, the hearing officer should consider whether the complexity of fact or law reasonably requires further discovery to ensure a fair opportunity to prepare for the hearing, and whether such request will result in unnecessary hardship, cost, or delay in holding the hearing. Depositions shall not be allowed, except by order of the hearing officer upon a showing that the deposition is necessary to preserve the testimony of persons who are sick or elderly, or who will not be able to attend the hearing.

**L. Pre-hearing disposition.** The subject matter of any hearing may be disposed of by stipulation, settlement or consent order, unless otherwise precluded by law. Any stipulation, settlement or consent order reached between the parties shall be written and shall be signed by the hearing officer and the parties or their attorneys.

**M. Postponement or continuance.** The hearing officer, at his or her discretion, may postpone or continue a hearing upon his or her own motion, or upon the motion of a party, for good cause shown. Notice of any postponement or continuance shall be given in person, by telephone, or by mail to all parties within a reasonable time in advance of the previously scheduled hearing date.

**N. Conduct of hearing.** Pursuant to the NM Open Meetings Act, NMSA 1978, Section 10-15-1 *et seq.*, hearings shall be open to the public; provided, however, that hearings may be closed in part to prevent the disclosure of confidential information, including but not

limited to health information protected by state and federal laws.

**O. Telephonic testimony.** Upon timely notice to the opposing party and the hearing officer, and with the approval of the hearing officer, the parties may present witnesses by telephone or live video (if available).

**P. Legal representation.** The department and EMS agencies or applicants may appear by an officer or employee, or may be represented by an attorney licensed to practice in New Mexico.

**Q. Recording.** The hearing officer or a designee shall record the hearing by means of a mechanical sound recording device provided by the department for a record of the hearing. Such recording need not be transcribed, unless requested by a party who shall arrange and pay for the transcription.

**R. Burden of proof.** The department has the burden of proving by a preponderance of the evidence the basis for the proposed action. **Exception:** in cases arising from the proposed denial of initial certification, the applicant for initial certification shall bear the initial burden of proving by a preponderance of the evidence that the application was improperly denied by the department and should be approved.

**S. Order of presentation; general rule.** Except as provided in an exception in this rule, the order of presentation for hearings in all cases shall be:

(1) **appearances:** opening of proceeding and taking of appearances by the hearing officer;

(2) **pending matters:** disposition by the hearing officer of preliminary and pending matters;

(3) **opening statements:** the opening statement of the department; and then the opening statement of the party challenging the department's action or proposed action;

(4) **cases:** the department's case-in-chief, and then the case-in-chief of the party challenging the department's action;

(5) **rebuttal:** the department's case-in-rebuttal;

(6) **closing argument:** the department's closing statement, which may include legal argument; and then the closing statement of the party opposing the department's action or proposed action, which may include legal argument; and

(7) **close:** close of proceedings by the hearing officer.

**T. Order of presentation in initial certification cases.** The order of presentation in cases arising from the proposed denial of initial certification shall be:

(1) **appearances:** opening of proceeding and taking of appearances by the

hearing officer;

(2) **pending matters:** disposition by the hearing officer of preliminary and pending matters;

(3) **opening statements:** applicant's opening statement; and then the opening statement of the department;

(4) **cases:** the applicant's case-in-chief, and then the department's case-in-chief;

(5) **rebuttal:** the applicant's case-in-rebuttal.

**U. Closing argument.** The applicant's closing statement, which may include legal argument; and then the department's closing statement, which may include legal argument.

**V. Close.** Close of proceedings by the hearing officer.

**W. Admissible evidence; rules of evidence not applicable.** The hearing officer may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs. Rules of evidence, such as the New Mexico rules of evidence for the district courts, shall not apply but may be considered in determining the weight to be given any item of evidence. The hearing officer may at his or her discretion, upon his or her motion or the motion of a party or a party's representative, exclude incompetent, irrelevant, immaterial or unduly repetitious evidence, including testimony, and may exclude confidential or privileged evidence.

**X. Objections.** A party may timely object to evidentiary offers by stating the objection together with a succinct statement of the grounds for the objection. The hearing officer may rule on the admissibility of evidence at the time an objection is made or may receive the evidence subject to later ruling.

**Y. Official notice.** The hearing officer may take notice of any facts of which judicial notice may be taken, and may take notice of general, technical or scientific facts within his or her specialized knowledge. When the hearing officer takes notice of a fact, the parties shall be notified either before or during the hearing of the fact so noticed and its source, and the parties shall be afforded an opportunity to contest the fact so noticed.

**Z. Record content.** The record of a hearing shall include all documents contained in the official file maintained by the hearing officer, including all evidence received during the course of the hearing, proposed findings of fact and conclusions of law, the recommendations of the hearing officer, and the final decision of the secretary.

**AA. Written evidence from witnesses.** The hearing officer may admit evidence in the form of a written statement

made by a witness, when doing so will serve to expedite the hearing and will not substantially prejudice the interests of the parties.

**BB. Failure to appear.** If a party who has requested a hearing or a party's representative fails to appear on the date, time or location announced for a hearing, and if no continuance was previously granted, the hearing officer may proceed to hear the evidence of such witnesses as may have appeared or may accept offers of proof regarding anticipated testimony and other evidence, and the hearing officer may further proceed to consider the matter and issue his report and recommendation(s) based on the evidence presented; and the secretary may subsequently render a final decision. Where a person fails to appear at a hearing because of accident, sickness or other cause, the person may within a reasonable time apply to the hearing officer to reopen the proceeding, and the hearing officer may, upon finding sufficient cause, fix a time and place for a hearing and give notice to the parties.

**CC. Hearing officer written report and recommendation(s).** The hearing officer shall submit a written report and recommendation(s) to the secretary that contains a statement of the issues raised at the hearing, proposed findings of fact and conclusions of law, and a recommended determination. Proposed findings of fact shall be based upon the evidence presented at the hearing or known to all parties, including matters officially noticed by the hearing officer. The hearing officer's recommended decision is a recommendation to the secretary of the New Mexico department of health and is not a final order.

**DD. Submission for final decision.** The hearing officer's report and recommendation(s) shall be submitted together with the complete official file to the secretary of the New Mexico department of health for a final decision no later than thirty days after the hearing.

**EE. Secretary's final decision.** The secretary shall render a final decision within forty-five calendar days of the receipt of the hearing officer's written report. A copy of the final decision shall be mailed to the appealing party by certified mail, return receipt requested, within fifteen days after the final decision is rendered and signed. A copy shall be provided to legal counsel for the bureau. **Exception for immediate suspensions:** In the event that the EMS agency's certification has been immediately suspended, the secretary shall render a final decision within ten business days of the receipt of the hearing officer's written report, and a copy of the final decision shall be mailed to the appealing party by certified mail, return receipt requested, within five business days after the final decision is rendered and signed.

**FF. Right to judicial review.** Pursuant to NMSA 1978, Section 39-3-1.1, an EMS agency or applicant that is entitled to a hearing under this rule and that is aggrieved by an adverse final decision may obtain a judicial review of the decision by filing in state district court a notice of appeal within thirty days of the rendition and signing of the final decision by the secretary.

**GG. Court-ordered stay.** Filing for judicial review shall not itself stay enforcement of the final decision. Any party may petition the court whose jurisdiction has been properly invoked for an order staying enforcement.

[7.27.10.25 NMAC - N, 3/15/2010]

**HISTORY OF 7.27.10 NMAC:**  
**[RESERVED]**

## NEW MEXICO DEPARTMENT OF HEALTH

This is an amendment to 7.27.2 NMAC, Sections 7, 9, 10, 13, 14, 15, 16, 17, and adds new section 19, effective 3/15/2010.

### 7.27.2.7 DEFINITIONS:

**A. "Academy"** means a separately funded emergency medical services training program administered through the department of emergency medicine of the university of New Mexico school of medicine.

**B. "Act"** means the Emergency Medical Services Act, Section 24-10B-1, et seq., NMSA 1978.

**C. "Advance directive"** means a written instruction, such as a living will, durable power of attorney for health care, or emergency medical services do not resuscitate form recognizable under state law and relating to the provision of health care when an individual is incapacitated.

**D. "Advisory committee"** means the statewide emergency medical services advisory committee appointed by the secretary of health.

**E. "Ambulance service"** means any provider of ambulance service subject to the jurisdiction of the department of health pursuant to and subject to the jurisdiction of the New Mexico public regulation commission, pursuant to the Ambulance Standards Act, Section 65-6-1, et seq., NMSA 1978, Article XI of the New Mexico Constitution, the Municipal Transit Law Section 3-52-1, et seq., NMSA 1978, and other laws.

**F. "Applicant"** means a person who has indicated an intention to gain licensure as an EMS first responder, emergency medical dispatcher, emergency medical dispatcher instructor or an EMT in the state of New Mexico, as evidenced by submission of the proper fees, documentation,



and bureau approved application form.

**G. “Approved emergency medical services training program”** means an emergency medical services training program that is sponsored by a post-secondary educational institution, accredited by a national educational accrediting organization for emergency medical services or active in the accreditation process and is approved by the joint organization on education committee and participates in the joint organization on education committee.

**H. “Basic emergency medical technician” or “EMT-B”** means a provider who has been licensed by the department to provide patient care according to the current scopes of practice.

**I. “Bureau”** means the emergency medical systems bureau of the epidemiology and response division of the New Mexico department of health.

**J. “Bureau approved”** means any course, form, or official document that has received the approval of the bureau for use in a training or licensure context.

**K. “Cardio-pulmonary resuscitation (CPR)”** means training required for licensure that meets the intent of the current national emergency cardiac care (ECC) guidelines for professional rescuers, as approved by the bureau.

**L. “Certified emergency medical service”** means an organization that meets minimum standards to provide emergency services and is approved by the bureau, including emergency medical dispatch agencies, pre-hospital or inter-facility care services and special event services organized to provide emergency medical services.

**M. “Contact hour”** means a unit of measurement of between fifty (50) and sixty (60) minutes of bureau-approved organized learning experience which is designed to meet educational objectives for continuing education.

**N. “Commission”** means the New Mexico emergency medical services licensing commission appointed by the secretary of health.

**O. “Continuing education” or “CE”** means EMS training that is approved by the bureau and is required every two years for renewal of licensure.

**P. “Conviction”** means a plea or adjudication of guilt, a plea of *nolo contendere*, an Alford plea, or any plea or adjudication that results in a conditional discharge order or a suspended or deferred conviction.

**[P:] Q. “Curriculum”** means a program of study utilizing approved minimum curricula content based on the national standard curriculum for EMS as published by the national highway and traffic safety administration (NHTSA) and approved by the joint organization

on education for formal training courses required for EMS first responder, EMT-basic, EMT-intermediate and EMT-paramedic.

**[Q:] R. “Department”** means the New Mexico department of health.

**[R:] S. “Distributive education”** means training and education accomplished outside the classroom through computer-based-training, self study modules, web-casts via the internet and other methods of out-of-classroom didactic education that includes an evaluation component. Distributive education is synonymous with distance education.

**[S:] T. “Emergency medical dispatcher” or “EMD”** means a person who is trained and licensed pursuant to Subsection G of Section 24-10B-4 NMSA 1978 to receive calls for emergency medical assistance, provide pre-arrival medical instructions, dispatch emergency medical assistance and coordinate its response.

**[T:] U. “Emergency medical dispatch agency” or “EMDA”** means any organization, or a combination of organizations working cooperatively, that routinely accepts calls for emergency medical assistance and employs emergency medical dispatch priority reference system (EMDPRS) techniques.

**[U:] V. “Emergency medical dispatch priority reference system” or “EMDPRS”** means a medically approved reference system used by an emergency medical dispatch agency (EMDA) to dispatch aid to medical emergencies, which includes systematized caller interrogation; systematized pre-arrival instructions to the caller based upon protocols matching the dispatcher’s evaluation of injury or illness severity; and prioritized vehicle response.

**[V:] W. “Emergency medical services” or “EMS”** means the services rendered by licensed providers in response to an individual’s need for immediate medical care to prevent loss of life or aggravation of physical or psychological illness or injury.

**[W:] X. “Emergency medical services first responder” or “EMSFR”** means a person who is licensed by the department, and who functions within the emergency medical services system to provide initial emergency aid according to the current scopes of practice.

**[X:] Y. “Emergency medical services instructor/coordinator” or “EMT-I/C”** means an individual approved by an EMS training institution and registered by the bureau to conduct and instruct EMS education programs.

**[Y:] Z. “Emergency medical technician” or “EMT”** means a provider who has been licensed by the department to provide patient care according to the current scopes of practice.

**[Z:] AA. “EMT skill evaluator”** means a health care provider trained and

approved by the bureau to participate in EMT licensing examinations to observe and evaluate the performance of an applicant’s skills for licensure as an EMT.

**[A-A-:] B B .**

**“Examination attempt”** means an attempt to successfully complete the New Mexico EMT licensing examination. An attempt constitutes taking a written or practical examination. Retests of either a written or practical examination are considered an examination attempt.

**[BB:] CC. “Fully licensed”** means an individual licensed to practice medical patient care at a specified level.

**[CC:] DD. “Graduate license”** means a license issued to in-state and out-of-state graduates of a bureau approved EMS training program used for performing EMS duties under supervision and direct observation prior to full licensure. The graduate license shall be valid for a period of up to six (6) months from the date of course completion or until failure of any part of the licensing examination.

**[DD:] EE. “Initial licensure”** means the first time a person is licensed in New Mexico as an EMD, EMD instructor, EMS first responder, EMT, or subsequent licensure of a previously licensed New Mexico EMT, who has either established residence in another state or has retaken a full curriculum or accomplished re-entry procedures to regain an expired license.

**[EE:] FF. “Intermediate emergency medical technician” or “EMT-I”** means a provider who has been licensed by the department to provide patient care according to the current scopes of practice.

**[FF:] GG. “License”** means a full, temporary or graduate license issued by the department to all EMD’s, first responders, and EMT’s pursuant to the Emergency Medical Services Act, Section 24-10B-5 NMSA 1978.

**[GG:] HH. “Medical control”** means supervision provided by or under the direction of physicians to providers by written protocols or direct communication.

**[HH:] II. “Medical direction”** means guidance or supervision provided by a physician to a provider or emergency medical services system and which includes authority over and responsibility for emergency medical dispatch, direct patient care and transport of patients, arrangements for medical control and all other aspects of patient care delivered by a provider.

**[H:] JJ. “Medical direction committee”** means a committee of physicians and EMT’s, appointed by the secretary of health to advise the bureau on all matters relating to medical control and



medical direction.

~~[JJ:]~~ **KK.** “**Medical director**” means a physician who is responsible for all aspects of patient care provided by an EMS system or EMS provider service, in accordance with 7.27.3 NMAC.

~~[KK:]~~ **LL.** “**M o r a l turpitude**” means conduct contrary to justice, honesty, modesty or good morals including such acts as domestic abuse, drunk driving or other similar convictions.

~~[LL:]~~ **MM.** “**National registry**” means the national registry of emergency medical technicians based in Columbus, Ohio.

~~[MM:]~~ **NN.** “**O f f l i n e medical control**” means performing EMS actions or medication administration under standing orders or protocols.

~~[NN:]~~ **OO.** “**O n l i n e medical control**” means direct voice contact with a medical control physician.

~~[OO:]~~ **PP.** “**Out-of-state transition course**” means a standardized training course required and approved by the bureau for an out-of-state EMT applicant seeking licensure in New Mexico.

~~[PP:]~~ **QQ.** “**Paramedic**” or “**EMT-P**” means a provider who has been licensed by the department to provide patient care according to the current scopes of practice.

~~[QQ:]~~ **RR.** “**Physician**” means a doctor of medicine or doctor of osteopathy who is licensed or otherwise authorized to practice medicine or osteopathic medicine in New Mexico.

~~[RR:]~~ **SS.** “**Protocol**” means a predetermined, written medical care plan approved by the medical director and includes standing orders.

~~[SS:]~~ **TT.** “**Provider**” means a person who has been licensed by the department to provide patient care pursuant to the Emergency Medical Services Act.

~~[TT:]~~ **UU.** “**Re-entry**” means a process for a person, whose license has been expired for less than ~~[three]~~ **two** years, to accomplish a given set of requirements to re-enter a previously held level of licensure.

~~[UU:]~~ **VV.** “**Regional office**” means an emergency medical services planning and development agency formally recognized and supported by the bureau.

~~[VV:]~~ **WW.** “**R e - instatement**” means a process for those persons who have completed the renewal requirements before the December 31st deadline, but fail to renew licensure by March 31st, to renew licensure between April 1st and May 31st of the expiration year.

~~[WW:]~~ **XX.** “**Renewal**” means re-licensure every two years, including completion of all requirements

for specified levels by December 31st that occurs prior to expiration of licensure. Renewal applications shall be received by the bureau by the last day of February prior to expiration of licensure and may be postmarked and submitted by March 31 prior to expiration of licensure for a higher fee.

~~[XX:]~~ **YY.** “**R e t e s t**” means a written or practical examination given after failure of the applicant’s initial examination.

~~[YY:]~~ **ZZ.** “**Secretary**” means the New Mexico secretary of health.

~~[ZZ:]~~ **AAA.** “**S p e c i a l skills**” means a set of procedures or therapies that are beyond the usual scope of practice of a given level of licensure and that have been approved by the medical direction committee for use by a specified provider.

~~[AAA:]~~ **BBB.** “**Standing orders**” means strictly defined written orders for actions, techniques or drug administration, signed by the medical director, to be utilized when communication has not been made with an on-line medical control physician.

~~[BBB:]~~ **CCC.** “**S t a t e emergency medical services medical director**” means a physician designated by the department to provide overall medical direction to the statewide emergency medical services system, whose duties include serving as a liaison to the medical community and chairing the medical direction committee.

~~[CCC:]~~ **DDD.** “**Temporary license**” means a license issued by the department to applicants that are fully licensed in another state or certified with the national registry of EMTs, as determined by the bureau. The temporary license shall be valid for a period of up to six months from the date issued, or until failure of any part of the licensing examination.

[7.27.2.7 NMAC - Rp, 7.27.2.7 NMAC, 12/15/2008; A, 3/15/2010]

## 7.27.2.9 I N I T I A L L I C E N S U R E:

**A. General:** This section specifies requirements for initial licensure. This section applies to all applicants who are graduates of bureau approved EMS training programs. Any person applying for New Mexico licensure from out-of-state, other programs, or with national registry certification shall be considered for licensure under this section. Specific time periods apply for EMS licensing examinations, according to Subsection O of 7.27.2.8 NMAC.

**B. Recognition:** Each out-of-state applicant shall be assessed on a case-by-case basis for recognition of initial licensure requirements. The bureau may legally recognize other states, programs,

or the national registry of emergency medical technicians requirements, where accreditation, EMS scope of practice, training standards, certification or licensure standards meet or exceed those of New Mexico.

**C. Licensed emergency medical dispatcher (EMD):** Licensure as an emergency medical dispatcher in New Mexico is mandatory for all persons who provide pre-arrival medical instructions to the emergency and non-emergency caller.

(1) An applicant for licensure as an EMD shall:

(a) be eighteen (18) years of age, and be of good character;

(b) provide evidence of a current bureau approved CPR certification; or, if physically unable to be CPR certified, provide written documentation of current knowledge and practical applications of CPR, as defined in these rules;

(c) successfully complete an EMD training course, which has been approved by the bureau, that meets or exceeds the U.S. department of transportation (USDOT) standards for EMD, within the previous twelve (12) months;

(d) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules; and

(e) submit the required application and licensure fees as required by these rules.

(2) Persons who do not have a certificate of completion from a New Mexico approved EMD training program but are currently certified or licensed in another state as an EMD, or have successfully completed an equivalent out-of-state EMD training course as determined by the bureau, within the previous twelve (12) months, may apply for licensure by submitting an application along with documentation of current out-of-state certification or licensure, or an out-of-state EMD course completion certificate.

(3) Upon recognition by the bureau, the person may be fully licensed as an EMD.

**D. Licensed EMD-instructor:** An applicant for licensure as an EMD-instructor shall:

(1) be a licensed EMT-basic, or higher level of licensure; or, if physically unable to be licensed as an EMT-basic, provide verification of successful course completion from an EMT-B training program;

(2) have graduated from high school or possess a GED;

(3) be eighteen (18) years of age, and be of good character;

(4) provide evidence of a current bureau approved CPR certification; or, if physically unable to be certified for CPR, provide written documentation of current knowledge and practical applications of CPR, as defined by these regulations;

(5) be currently licensed as an EMD;

(6) have successfully completed an EMD-instructor training course from an EMD program which is approved by the bureau;

(7) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules; and

(8) submit the required application and licensure fees as required by these rules.

**E. Licensed emergency medical services first responder:** An applicant for licensure as an EMS first responder shall:

(1) be of good character; and

(2) be at least eighteen (18) years of age; or

(3) be at least sixteen (16) years of age and meet the following requirements:

(a) be affiliated with a service, and shall submit a letter of support from the service director;

(b) shall notify the bureau, in writing, of any change of service affiliation; and

(c) shall submit a notarized parental or guardian consent;

(4) all applicants shall meet the following requirements:

(a) submit a completed, bureau approved license application form;

(b) provide evidence of current bureau approved CPR certification;

(c) present a certificate of completion from an EMSFR course completed at a bureau approved EMS training program;

(d) successfully complete the New Mexico EMSFR licensing examination; the initial state licensing examination shall be completed within nine (9) months from the date of course completion; successful completion of the licensing examination process that results in the issuance of a license shall be completed within twenty-four (24) months from the date of course completion;

(e) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules; and

(f) pay all examination and licensure fees as required by these rules;

(5) all persons who do not have a certificate of completion from a New Mexico approved EMSFR training program, but are currently certified or licensed in another state at the first responder level, or have successfully completed an approved equivalent out-of-state EMS first responder course as determined by the bureau, within the previous twelve (12) months, may apply to the bureau in writing for New Mexico licensure in accordance with Subsection B of this section.

**F. Emergency medical technician basic (EMT-B):** An applicant

for licensure as an EMT-B shall meet the following requirements:

(1) shall be of good character; and

(2) be at least eighteen (18) years old; or

(3) be at least seventeen (17) years of age and meet the following requirements:

(a) be affiliated with a service and shall submit a letter of support from the service director;

(b) shall notify the bureau, in writing, of any change of service affiliation; and

(c) shall submit a notarized parental or guardian consent;

(4) all applicants who are graduates of a bureau approved EMS training program may apply for graduate licensing, which allows them to work temporarily under supervision, as outlined in 7.27.2.8 NMAC of these rules;

(5) all applicants applying to be licensed, shall meet the following requirements:

(a) submit a completed, bureau approved license application form;

(b) provide evidence of current bureau approved CPR certification;

(c) present a certificate of completion from an EMT-B course completed at a bureau approved EMS training program, and accomplished within the previous nine (9) months;

(d) successfully complete the New Mexico EMT-B licensing examination; the initial state licensing examination shall be completed within nine (9) months based on the date of course completion; successful completion of the licensing examination process that results in the issuance of a license shall be completed within twenty-four (24) months based on the date of course completion;

(e) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules;

(f) pay all examination and licensure fees as required by these rules;

(g) all applicants who are graduates of a bureau approved EMS training program may apply for graduate licensing which allows them to work temporarily under supervision, as outlined in 7.27.2.8 NMAC of these rules;

(6) persons who do not have a certificate of completion from a bureau approved EMT-B training program, but are currently licensed or certified in another state or certified with the national registry at the EMT-B level, may apply for New Mexico licensure as provided below:

(a) submit an application along with documentation of current out-of-state certification or licensure, or national registry certification;

(b) provide evidence of current bureau approved CPR certification;

(c) pay all examination and licensure fees as required by these rules;

(d) successfully complete a bureau approved out-of-state transition course, as determined by the bureau;

(e) successfully complete the New Mexico EMT-B licensing examination; the initial state licensing examination shall be completed within nine (9) months based on the date of application; successful completion of the licensing examination process that results in the issuance of a license shall be completed within twenty-four (24) months based on the date of course application;

(f) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules;

(g) upon approval by the bureau, the person may be fully licensed as an EMT-B for the remainder of the previous certification/licensure authority's certification/licensure period, as determined by the bureau;

(h) the person may be granted a temporary license to practice as an EMT-B for a period of up to six (6) months or until failure of an EMT-B licensure examination, whichever occurs first; while under a temporary license, those applicants seeking full New Mexico licensure shall complete an out-of-state transition course approved by the bureau and complete the New Mexico EMT-B licensure examination; the temporary license also facilitates licensure of an out-of-state seasonal EMT-B and shall only be issued once in a twelve (12) month period, as determined by the bureau; in this case, the seasonal license is valid for six (6) months from the date of issue and may be issued again, but only once in every subsequent twelve (12) month period;

(i) temporary licensure commences on the issue date of the temporary license from the bureau;

(ii) a temporary license may be issued only upon application and payment of required fees;

(7) persons holding a temporary license shall be fully licensed when they have:

(a) successfully completed the New Mexico EMT-B licensure written and practical examination; and

(b) remit payment of all required fees.

**G. Emergency medical technician-intermediate (EMT-I):** An applicant for licensure as an EMT-I shall meet the following requirements:

(1) be eighteen (18) years old, and be of good character;

(2) submit a completed, bureau approved license application form;

(3) provide evidence of current bureau approved CPR certification;

(4) be fully licensed as an EMT-basic;

(5) present a certificate of completion from an EMT-I course completed at a bureau approved EMS training program, and accomplished within the previous nine (9) months;

(6) successfully complete the New Mexico EMT-I licensing examination; the initial state licensing examination shall be completed within nine (9) months based on the date of course completion; successful completion of the licensing examination process that results in the issuance of a license shall be completed within twenty-four (24) months based on the date of course completion;

(7) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules;

(8) pay all examination and licensure fees as required by these rules;

(9) all applicants who are graduates of a bureau approved EMS training program may apply for graduate licensing which allows them to work temporarily under supervision, as outlined in 7.27.2.8 NMAC;

(10) persons who do not have a certificate of completion from a bureau approved EMT-I training program, but are currently certified or licensed in another state or certified with the national registry at the EMT-I level, may apply for licensure as provided below:

(a) submit an application along with documentation of current out-of-state certification/license or national registry certification;

(b) provide evidence of current bureau approved CPR certification;

(c) pay all examination and licensure fees as required by these rules;

(d) successfully complete a bureau approved out-of-state transition course, as determined by the bureau;

(e) successfully complete the New Mexico EMT-I licensing examination; the initial state licensing examination shall be completed within nine (9) months based on the date of application; successful completion of the licensing examination process that results in the issuance of a license shall be completed within twenty-four (24) months based on the date of application;

(f) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules;

(g) upon approval by the bureau, the person may be fully licensed as an EMT-I for the remainder of the previous certification/licensure authority's certification/licensure period, as determined by the bureau;

(h) the person may be granted a temporary license to practice as an EMT-I for a period of up to six (6) months or until failure of an EMT-I licensure examination, whichever occurs first; while under a temporary license, those applicants seeking

full New Mexico licensure may be required to complete an out-of-state transition course approved by the bureau and complete the New Mexico EMT-I licensure examination; the temporary license also facilitates licensure of an out-of-state seasonal EMT-I and shall only be issued once in a twelve (12) month period, as determined by the bureau; in this case, the seasonal license is valid for six (6) months from the date of issue and may be issued again, but only once in every subsequent twelve (12) month period;

(i) temporary licensure commences on the issue date of the temporary license from the bureau;

(ii) a temporary license may be issued only upon application and payment of required fees;

(11) persons holding a temporary license shall be fully licensed when they have:

(a) successfully completed the New Mexico EMT-I licensure written and practical examination; and

(b) remit payment of all required fees;

(12) upon failure of the initial state EMT-I examination or the expiration of the graduate or temporary licensure period, the applicant:

(a) if from out-of-state, may apply to the bureau in writing for a temporary license at the EMT-B level for up to sixty (60) days, provided the applicant is qualified to be licensed as an EMT-B in New Mexico;

(b) during this time the applicant may apply for full EMT-B licensure and will be evaluated based upon their credentials according to these rules; the application must be in writing; and

(c) at the end of the 60 days, the applicant will no longer be licensed at any level unless evidence of meeting the requirements at some level has been submitted and approved.

**H. Emergency medical technician paramedic (EMT-P):** All applicants applying to be licensed at the EMT-P level shall meet the following requirements:

(1) be eighteen (18) years old, and be of good character;

(2) present, at a minimum, a high school diploma or GED;

~~[(3) be fully licensed as an EMT-B or EMT-I;]~~

~~[(4)]~~ (3) submit a completed bureau approved license application form;

~~[(5)]~~ (4) provide evidence of current bureau approved CPR certification;

~~[(6)]~~ (5) present proof of current bureau approved training which meets or exceeds the current national standard for advanced cardiac life support (ACLS) on emergency cardiac care (ECC);

~~[(7)]~~ (6) pay all examination and licensure fees as required by these rules;

~~[(8)]~~ (7) graduates of an accredited training program: applicants who have graduated ~~[after January 1, 2006]~~ from a bureau approved, CoAEMSP (committee on accreditation of educational programs for the EMS professions) ~~[nationally]~~ accredited in-state or out-of-state EMS training program shall:

(a) ~~[present]~~ submit a certificate of completion from ~~[an nationally accredited EMT-P course completed at a bureau approved, CoAEMSP accredited EMS training program or equivalent, nationally accredited out-of-state EMT-P]~~ the training program ~~[as determined by the bureau]~~; successful completion of the EMT-P training program must be accomplished within the previous twenty-four (24) months;

(b) successfully complete the New Mexico EMT-P licensing examination;

(c) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules; and

(d) all applicants who are graduates of a bureau approved EMS training program may apply for graduate licensing which allows them to work temporarily under supervision, as outlined in 7.27.2.8 NMAC;

(e) be fully licensed as an EMT-B or EMT-I;

~~[(9)]~~ (8) graduates of ~~[an]~~ a non-accredited training program: applicants who have graduated from a non-CoAEMSP accredited~~[-out-of-state]~~ EMS training program ~~[after January 1, 2006]~~ shall:

(a) submit a ~~[copy of the initial paramedic course completion certificate, if available, or identify the EMS training program where the individual graduated along with the date of graduation; the training program will be evaluated for recognition in accordance with Subsection B of 7.27.2.9 NMAC of these rules]~~ certificate of completion from the EMS training program; successful completion of the EMT-P training program must be accomplished within the previous twenty-four (24) months;

(b) successfully complete the New Mexico EMT-P licensing examination and other examinations as determined by the bureau;

(c) meet all other general licensing requirements found in 7.27.2.8 NMAC of these rules;

(d) upon approval by the bureau, the person may be fully licensed as an EMT-P for the remainder of the previous certification/licensure authority's certification/licensure period, as determined by the bureau; or

(e) the person may be granted a temporary license to practice as an EMT-P for a period of up to six (6) months from the date of application or until failure of an EMT-P equivalency examination, whichever occurs first;

(f) be fully licensed as an EMT-B



or EMT-I;

~~[(40)]~~ **(9)** out of state applicants licensed or certified prior to January 1, 2006: applicants who are currently certified or licensed in another state or who are certified with the national registry of EMTs prior to January 1, 2006 may apply for licensure as follows:

(a) submit documentation of current out-of-state certification or licensure, or national registry certification;

(b) successfully complete the New Mexico EMT-P licensing examination, as determined by the bureau; and

(c) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules;

(d) upon approval by the bureau, the person may be fully licensed as an EMT-P for the remainder of the previous certification/licensure authority's certification/licensure period, as determined by the bureau; or

(e) the person may be granted a temporary license to practice as an EMT-P for a period of up to six (6) months or until failure of the New Mexico EMT-P licensing examination, if applicable;

~~[(41)]~~ **(10)** out of state applicants licensed or certified after January 1, 2006: applicants who are currently certified or licensed in another state or who were certified with the national registry of EMTs after January 1, 2006 may apply for licensure as follows:

(a) applicants shall submit documentation of current out-of-state certification or licensure, or national registry certification;

(b) submit a copy of the initial paramedic course completion certificate, if available, or identify the EMS training program where the individual graduated along with the date of graduation; the training program will be evaluated for recognition in accordance with Subsection B of 7.27.2.9 NMAC of these rules;

(c) successfully complete the New Mexico EMT-P licensing examination and other applicable examinations, as determined by the bureau;

(d) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules;

(e) upon approval by the bureau, the person may be fully licensed as an EMT-P for the remainder of the previous certification/licensure authority's certification/licensure period, as determined by the bureau; or

(f) the person may be granted a temporary license to practice as an EMT-P for a period of up to six (6) months or until failure of the New Mexico EMT-P licensing examination, if applicable;

~~[(42)]~~ **(11)** upon failure of the New Mexico EMT-P examination or equivalency

exam, or upon expiration of the temporary or graduate license period, the following condition will apply:

(a) if previously New Mexico state licensed, the licensee shall maintain the original level of licensure (EMT-B or EMT-I), and the applicant may practice at that level until expiration of licensure; or

(b) if from out-of-state, the applicant may apply to the bureau in writing for temporary licensure at a lower level (EMT-B or EMT-I) for up to sixty (60) days, provided that the applicant is qualified to be licensed as an EMT-B or EMT-I in New Mexico;

(i) during this time the applicant may apply for full EMT-B or EMT-I licensure in accordance with these rules;

(ii) at the end of the sixty (60) days, the applicant will no longer be licensed at any level.

[7.27.2.9 NMAC - Rp, 7.27.2.9 NMAC, 12/15/2008; A, 3/15/2010]

#### **7.27.2.10 L I C E N S U R E**

**RENEWAL:** New licensing renewal fees, as outlined in 7.27.2.12 NMAC, shall be effective July 1, 2006. Individuals renewing their New Mexico EMS provider's license shall submit a bureau approved refresher course completion certificate from an in-state or out-of-state training institution that is equivalent to the refresher course blueprints found in this section; or, use the alternative to a refresher course as outlined for each level of EMSFR and EMT in this section. Carded courses, such as ACLS or PALS, received as part of a bureau approved refresher course shall not be used to fulfill any CE hour requirements.

**A. Receipt of licensure renewal from the EMS bureau:** Licensing renewal is the responsibility of each individual licensee. If an individual licensee fails to notify the bureau of a change of address within one (1) year from the date of relocation, as determined by the bureau, a bad address fee may be assessed by the bureau. For individuals who have submitted their complete licensure renewal packet to the bureau in a timely manner, the bureau will review the renewal requests in the order they are received.

(1) If there is a delay in notification from the bureau about the status of the licensure renewal beyond the expiration of the license, the individual shall remain licensed until:

(a) notified by the bureau [~~by certified, return receipt requested mail~~] that the license application has been denied or the license expired without renewal; or

(b) they receive their license from the bureau.

(2) If an individual's renewal packet is incomplete, the individual shall be

notified by the bureau by [~~certified, return receipt requested~~] U.S. postal mail or by electronic mail.

(3) If an individual licensee is notified [~~by certified mail~~] that a renewal problem exists with their license, and the license has expired, the individual shall not remain licensed.

#### **B. Renewal deadlines:**

Specific renewal requirements must be completed no later than the December 31 that occurs prior to licensure expiration. CPR and ACLS certifications are exempt from the December 31 deadline and must be current at the time of renewal. Renewal applications must be received by the bureau by the last day of February prior to expiration of licensure but may be postmarked and submitted by March 31 prior to expiration of licensure for a higher fee.

(1) The applicant may submit the complete renewal application to the bureau as soon as requirements are complete, but the complete renewal application shall be postmarked no later than the final month of licensure. A normal renewal fee is assessed for renewal applications postmarked prior to the final month of licensure.

(2) Renewal applications received during the final month of licensure will be accepted, but will be assessed a higher renewal fee due to the requirement for speedier processing.

(3) Applications for renewal of licensure shall be postmarked no later than the last day of licensure (March 31).

#### **C. Mandatory updates:**

The bureau may require mandatory updates to training in any given year of licensure. Mandatory updates may include required content hours during refresher courses, required continuing education, or mandatory classes.

**D. Downgrading to a lower level of licensure:** EMS personnel may petition the bureau to downgrade to a lower level of licensure if:

(1) they are in good standing at the current level of licensure;

(2) the eligibility requirements have been met for the lower EMS level (i.e., current refresher course, CE, CPR, etc.); and

(3) if the provider requests that the downgraded license be upgraded to the original or EMT-intermediate level of licensure, the provider must meet the re-entry or re-licensure requirements to upgrade to the original level of licensure in accordance with Subsection L of 7.27.2.10 NMAC of these rules.

**E. Waivers:** The licensing commission may, for good cause shown, waive portions of these rules pertaining to licensure renewal pursuant to 7.27.2.13 NMAC of these rules. Persons requesting waivers for licensure renewal shall submit requests in writing to the EMS licensing



commission, in care of the bureau.

**F. Licensed emergency medical dispatcher (EMD):** Renewal for a licensed EMD is required within each licensure period. Documentation must show that all renewal requirements have been completed before the December 31 that occurs prior to expiration of licensure. CPR certification is exempt from the December 31 deadline and must be current at the time of renewal. If the EMD is concurrently licensed as an EMT-B, EMT-I or EMT-P, the renewal dates for EMD licensure may be adjusted by the bureau to match the renewal dates for the EMT-B, EMT-I, or EMT-P license. The following requirements are necessary for a person to renew their EMD license:

(1) submit copies of course completion certificates or verification showing a minimum of twenty-four (24) contact hours of continuing education activity; of which at least twelve (12) hours shall be medical subjects/skills of bureau approved continuing education activity and twelve (12) hours of dispatch related subjects/skills, unless the EMD is also licensed at the EMT-B, EMT-I or EMT-P level; the EMD may then use those contact hours of continuing education activity obtained during the renewal period for the EMT-B, EMT-I or EMT-P licensure toward the medical renewal requirements;

(2) provide evidence of current bureau approved CPR certification; or, if physically unable to be certified for CPR, provide written documentation of current knowledge and practical applications of CPR; and

(3) submit required application and payment of all license renewal fees as required by 7.27.2.12 NMAC of these rules.

**G. Licensed emergency medical dispatcher-instructor:** Renewal of a licensed EMD-instructor is required within each licensure period. Documentation must show that all renewal requirements have been completed before the December 31 that occurs prior to expiration of licensure. CPR certification is exempt from the December 31 deadline and must be current at the time of renewal. The following requirements are necessary for a person to renew their EMD-I license:

(1) submit verification from a bureau approved EMD training program showing that the EMD-instructor is current and in good standing with the approved EMD training program;

(2) submit documentation showing completion of all EMD continuing education renewal requirements;

(3) submit a copy of current licensure at the EMT-B or higher level;

(4) provide evidence of current bureau approved CPR certification; or, if physically unable to be certified for CPR, provide written documentation of current

knowledge and practical applications of CPR; and

(5) submit the required application and payment of all licensure renewal fees as required by 7.27.2.12 NMAC of these rules.

**H. Emergency medical services first responder:** Renewal of the EMSFR license is required within each licensure period. Documentation must show that all renewal requirements have been completed on or before the December 31 that occurs prior to expiration of licensure. CPR certification is exempt from the December 31 deadline and shall be current at the time of renewal. The following requirements are necessary for a person to renew their license:

(1) submit a completed renewal application;

(2) submit documentation showing a minimum of eight (8) contact hours of bureau approved continuing education activity, of which two (2) contact hours shall consist of pediatric content;

(3) submit a copy of a course completion certificate from a bureau approved EMSFR refresher course that includes a minimum of sixteen (16) contact hours, as outlined in the refresher course blueprint below; or

(a) preparatory, one (1) hour

(b) airway and ventilation, two (2) hours

(c) patient assessment, two (2) hours

(d) medical emergencies, four (4) hours

(e) trauma emergencies, four (4) hours

(f) special considerations, two (2) hours

(g) operations, one (1) hour

(4) as an alternative to a formal refresher course, submit a total of sixteen (16) contact hours of additional bureau approved CE that adheres to the refresher course blueprint above; the medical content shall be at the basic life support level;

(5) provide evidence of current bureau approved CPR certification;

(6) provide a statement of verification, signed by the service medical director, that the applicant is competent in all EMSFR skills listed in 7.27.2.14 NMAC, current scopes of practice, that require medical direction; and

(7) submit payment of all licensure renewal fees as required by 7.27.2.12 NMAC of these rules.

**I. Emergency medical technician basic (EMT-B):** Renewal of the EMT-B license is required within each licensure period. Documentation must show that all renewal requirements have been completed on or before the December 31 that occurs prior to expiration of licensure. CPR certification is exempt from the December 31 deadline and shall be current at the time

of renewal. The following requirements are necessary for an EMT-B to renew their license:

(1) submit a completed renewal application;

(2) submit documentation showing a minimum of twenty-four (24) contact hours of bureau approved continuing education activity, of which four (4) contact hours shall consist of pediatric content;

(3) submit a copy of a course completion certificate from a bureau approved EMT-basic refresher course that includes a minimum of twenty-four (24) contact hours, as outlined in the refresher course blueprint below; or

(a) preparatory, one (1) hour

(b) airway and ventilation, two (2) hours

(c) patient assessment, three (3) hours

(d) medical emergencies, six (6) hours

(e) trauma emergencies, six (6) hours

(f) special considerations, four (4) hours

(g) operations, two (2) hours

(4) as an alternative to a formal refresher course, submit a total of twenty-four (24) contact hours of bureau approved CE that adheres to the refresher course blueprint above; the medical content shall be at the basic life support level;

(5) provide evidence of current bureau approved CPR certification;

(6) provide a statement of verification, signed by the service medical director, that the applicant is competent in all EMT-basic skills listed in 7.27.2.14 NMAC, current scopes of practice, that require medical direction;

(7) submit payment of all licensure renewal fees as required by 7.27.2.12 NMAC of these rules; and

(8) applicants who have completed a bureau approved EMT-I or EMT-P course or completed appropriate sections of the EMT-I or EMT-P course, as determined by the bureau, may fulfill the refresher and continuing education requirement.

**J. Emergency medical technician intermediate (EMT-I):** Renewal of the EMT-I license is required within each licensure period. Documentation must show that all renewal requirements have been met on or before the December 31 that occurs prior to expiration of licensure. CPR certification is exempt from the December 31 deadline and shall be current at the time of renewal. The following requirements are necessary for an EMT-I to renew their license:

(1) submit a completed renewal application;

(2) submit documentation showing a minimum of thirty (30) contact hours

of bureau approved continuing education activity, of which five (5) contact hours shall consist of pediatric content;

(3) submit a copy of a course completion certificate from a bureau approved EMT-intermediate refresher course that includes a minimum of twenty-four (24) contact hours, as outlined in the refresher course blueprint below; or

(a) preparatory, one (1) hours

(b) airway and ventilation, two (2) hours

(c) patient assessment, three (3) hours

(d) medical emergencies, six (6) hours

(e) trauma emergencies, six (6) hours

(f) special considerations, four (4) hours

(g) operations, two (2) hours

(4) as an alternative to a formal refresher course, submit a total of twenty-four (24) contact hours of bureau approved CE that adheres to the refresher course blueprint above; the medical content shall be at the advanced life support level;

(5) provide evidence of current bureau approved CPR certification;

(6) provide a statement of verification, signed by the service medical director, that the applicant is competent in all EMT-intermediate skills listed in 7.27.2.14 NMAC, current scopes of practice, that require medical direction; persons who are not currently providing care through an EMS provider service and do not have a service medical director, may for good cause, petition the bureau for an exception of this requirement;

(7) submit payment of all licensure renewal fees as required by 7.27.2.12 NMAC of these rules; and

(8) applicants who have completed a bureau approved EMT-P course or completed appropriate sections of the EMT-P course, as determined by the bureau, may fulfill the refresher and continuing education requirement.

**K. Emergency medical technician paramedic (EMT-P):** Renewal of the EMT-P license is required within each licensure period. Documentation must show that all renewal requirements have been completed on or before the December 31 that occurs prior to the expiration of licensure. CPR and ACLS certifications are exempt from the December 31 deadline and shall be current at the time of renewal. The following requirements are necessary for an EMT-P to renew their license:

(1) submit a completed renewal application;

(2) submit documentation showing a minimum of twenty-four (24) contact hours of bureau approved continuing education activity at any level, of which six (6) contact

hours shall consist of pediatric content;

(3) submit a copy of a course completion certificate from a bureau approved EMT-paramedic refresher course that includes a minimum of forty-eight (48) contact hours, as outlined in the refresher course blueprint below; or

(a) preparatory, three (3) hours

(b) airway and ventilation, four (4) hours

(c) patient assessment, four (4) hours

(d) medical emergencies, eighteen (18) hours

(e) trauma emergencies, ten (10) hours

(f) special considerations, six (6) hours

(g) operations, three (3) hours

(4) as an alternative to a formal refresher course, submit a total of forty-eight (48) contact hours of bureau approved CE that adheres to the refresher course blueprint above; the medical content shall be at the advanced life support level;

(5) provide a statement of verification, signed by the service medical director, that the applicant is competent in all EMT-paramedic skills listed in 7.27.2.14 NMAC, current scopes of practice, that require medical direction; persons who are not currently providing care through an EMS provider service and do not have a service medical director, may for good cause, petition the bureau for an exception of this requirement;

(6) submit proof of current bureau approved training which meets or exceeds the current national standards for advanced training which is equivalent to or exceeds the advanced cardiac life support (ACLS) certification on emergency cardiac care;

(7) provide evidence of current bureau approved CPR certification; and

(8) submit payment of all licensure renewal fees as required by 7.27.2.12 NMAC of these rules.

**L. Late renewal for all categories:** The bureau provides three (3) methods for expired licensees to regain their licensure; reinstatement, re-entry, and re-licensure.

(1) **Reinstatement:** Those persons who have completed the renewal requirements on or before the December 31 cutoff, but failed to renew licensure by March 31, may renew between April 1 and May 31 of the expiration year. A complete renewal application for reinstatement must be received at the bureau by May 31. Paperwork postmarked after March 31 will be assessed with an additional late fee. See Fees, 7.27.2.12 NMAC of these rules.

(2) **Re-entry:** A person whose license is expired, who does not meet the circumstances of Paragraph (1) of Subsection L of 7.27.2.10 NMAC above, but

whose date of expiration of the previously held certification or license is less than [~~three (3)~~] two (2) years, may re-enter EMS at the previously held or lower level if the person left EMS in good standing and successfully completes the following:

(a) complete a bureau approved refresher training course at the appropriate level (except EMD or EMD-I), or, alternatively, submit proof of bureau approved CE credit that adheres to the refresher course blueprint at the appropriate level; the refresher course or CE must have been completed within the last fifteen (15) months;

(b) provide evidence of current bureau approved BLS CPR training;

(c) successfully complete the New Mexico licensing examination and other examinations, as determined by the bureau, at the appropriate provider licensure level (maximum of two (2) examination attempts allowed), if applicable;

(d) if EMD or EMD-I applicant, provide verification of a minimum of twenty-four (24) contact hours of bureau approved continuing education activity, of which twelve (12) hours shall be medical subjects/skills and twelve (12) hours shall be dispatch related subjects/skills of bureau approved continuing education activity;

(e) if an EMT-P applicant, provide evidence of current advanced cardiac life support training; and

(f) submit required application and payment of licensure fees as identified for the appropriate level in 7.27.2.12 NMAC of these rules.

**(3) Re-licensure:** A person whose license has been expired for more than [~~three (3)~~] two (2) years from the date of expiration shall be considered an initial licensure applicant. To become licensed, a person must complete the requirements of 7.27.2.9 NMAC of these rules.

**M. Expiration of licensure:** All New Mexico EMS personnel, whose licensure expires on March 31 of any given year, shall be removed from the New Mexico active registry of emergency medical services personnel on the first business day of April of that given year. The bureau will send a notice to the address of record notifying the former licensee of removal from the New Mexico registry of EMS personnel.

**N. Continuing education:** Continuing education (CE) credit may be granted for any training that has been approved in advance by the bureau. All individuals or EMS services wishing to grant continuing education credit to licensed EMD's, EMD-I's, EMSFRs and EMT's in New Mexico shall submit the appropriate documentation to the bureau at least thirty (30) days in advance. CE's submitted to the bureau after training has been completed

is discouraged and will be reviewed for approval or disapproval on a case-by-case basis. Application for continuing education approval shall be made utilizing the bureau's "notification of intent to conduct a continuing education program" application form available from the bureau. More detailed information about New Mexico's EMS continuing education program may be found in the "EMS continuing education user's guide", available from the bureau.

**(1) Purpose:** Continuing education is designed to meet three main objectives:

**(a)** to provide exposure to new and current trends in the area of patient care;

**(b)** to review areas of patient assessment and management that are not used on a frequent basis; and

**(c)** to meet licensure renewal requirements.

**(2) Continuing education categories:** The EMS bureau has adopted the CE category designations published by the national highway and traffic safety administration (NHTSA) and utilized by many states and national EMS organizations. A more detailed explanation of these categories can be found in the "EMS continuing education user's guide" available from the bureau. These categories apply only to formal and alternative refresher courses. The CE categories are:

**(a)** preparatory topics: general topics include roles and responsibilities, well-being of the EMT, injury prevention, medical/legal issues, ethics, anatomy/physiology, principles of pathophysiology, principles of pharmacology, IV therapy and medication administration, therapeutic communications;

**(b)** airway and ventilation;

**(c)** patient assessment: general topics include history taking, techniques of the physical examination, patient assessment, clinical decision making, EMS communications, documentation;

**(d)** medical emergencies: general topics include pulmonary, cardiology, neurology, endocrinology, allergies and anaphylaxis, gastroenterology, urology/renal, toxicology, hematology, environmental conditions, infectious and communicable diseases, behavioral and psychiatric disorders, gynecology, obstetrics;

**(e)** trauma emergencies: general topics include kinematics, blunt trauma, penetrating trauma, hemorrhage and shock, soft tissue trauma, burns, head and facial trauma, spinal trauma, thoracic trauma, abdominal trauma, musculoskeletal trauma;

**(f)** special considerations: general topics include neonatology, pediatrics, geriatrics, abuse and neglect, patients with special challenges, acute interventions for the home health care patient; and

**(g)** operations: general topics

include ambulance operations, medical incident command, rescue awareness and operations, hazardous materials incidents, crime scene awareness.

**(3) Forms of continuing education:** The following forms of continuing education are currently recognized by the bureau. The bureau reserves the right to approve additional forms of continuing education as necessary. More detailed information may be found in the "EMS continuing education user's guide" available from the bureau.

**(a)** Classroom instruction: Standard instructor-student relationship in the classroom or field setting.

**(b)** Pre-approved courses: This list of national and statewide recognized courses are pre-approved for CE credit. Individuals completing any of these courses need only to submit their course completion certificate or card when renewing their licenses. Courses that are approved by CECBEMS are pre-approved for credit in New Mexico.

**(c)** EMS related college courses: Credit may be awarded to individuals who are attending college courses relevant to EMS. Individuals who are interested in receiving credit should submit a copy of their unofficial student transcript and course syllabus. A maximum of twelve (12) hours of CE credit may come from EMS-related college courses.

**(d)** EMS video presentations: EMS video presentations may be used for continuing education. In order to do so, the "notification of intent to conduct a continuing education program" application form must be submitted, along with a list of the videos intended for presentation with their corresponding copyright dates. ~~[No more than one-half of the CE requirement for any given level may be accomplished by EMS video presentations.]~~ A maximum of twelve (12) hours of CE credit may come from EMS video presentations.

**(e)** State skill evaluator participation: ~~[A maximum of twenty (20) hours of credit may be used for skill evaluation at state licensing examination sites]~~ A maximum of twelve (12) hours of CE credit may come from skill evaluator participation; these credits cannot be applied toward refresher course blueprint requirements.

**(f)** Teaching bureau approved courses: Licensed individuals who teach bureau approved courses may receive the same number of CE hours as students who are taking the program; refer to the "EMS continuing education user's guide" for a more complete description.

**(g)** Field or clinical preceptorship: A maximum of ~~[twenty (20)]~~ twelve (12) hours of additional CE may be allowed for EMS preceptor activities; documentation of preceptor activities must be on letterhead

from an approved New Mexico EMS training institution or EMS service director; these credits cannot be applied toward refresher course blueprint requirements.

**(h)** Distributive learning programs: ~~[A list of recognized internet, web-based and EMS professional journal CE programs can be found in the "EMS continuing education user's guide"; a maximum of twelve (12) hours of credit may be acquired for the additional CE component.]~~ Refer to the "EMS continuing education user's guide" for a definition of distributed learning programs. A maximum of twelve (12) hours of CE credit may come from distributive learning programs.

**(i)** Distance learning programs: Refer to the "EMS continuing education user's guide" for a definition of distance learning programs.

**(4) Record keeping:** Once approval of a CE program is obtained and the course is presented, records of attendance must be maintained. The bureau may audit the CE records of an approved CE program. Attendance records with original signatures of course participants and a copy of any course presentation material must be kept for a minimum of thirty-six (36) months by the service, for bureau audit purposes.

**(a)** In order for participating EMS personnel to receive credit, each individual shall be given a certificate, letter of attendance/completion, or copy of course attendance roster and advised to retain it until their licensure renewal. Many EMD Agencies (EMDA) and EMS services have computerized records of their personnel concerning CE. The EMS bureau will recognize CE summary documentation, on letterhead, from EMDA or EMS service directors, training coordinators, medical directors, or CE coordinators with appropriate original signatures.

**(b)** Course completion letters, certificates and course rosters shall contain the following information:

**(i)** location and date of the CE program;

**(ii)** title of the class or course;

**(iii)** number of actual contact hours (half hour increments are acceptable);

**(iv)** CE category;

**(v)** name of participant;

**(vi)** CE coordinator's name with designation "CE coordinator" placed after the name;

**(vii)** signature of CE coordinator;

**(viii)** the statement: "reviewed and approved by the New Mexico EMS bureau for continuing education"; and

**(ix)** EMS bureau approval number.

**(5) CE audits for EMS services**



**and personnel:** The bureau may periodically perform audits of CE programs. These audits are usually provided as a way for services to evaluate their current program, identify areas in which the program excels, as well as areas that may be problematic. The following types of CE audits may be conducted by the bureau:

(a) **CE course audit:** this audit evaluates the actual class or course being conducted; the purpose of this audit is to provide written feedback to the instructor on presentation, content and participant evaluations conducted at the end of the class; this audit is usually unannounced;

(b) **CE recordkeeping audit:** this audit evaluates the CE program sponsor recordkeeping process; the bureau may audit refresher course certificates for compliance with the refresher course blueprint; records of prior classes or courses conducted are inspected for completeness and feedback is provided to the CE program sponsor that identify areas for improvement; CE program sponsors will be given at least five (5) days advance notification of these audits; records that will be inspected include:

(i) original copies of attendance rosters with the signatures of course participants;

(ii) course presentation materials/outlines or learning objectives;

(iii) handouts that were given to participants;

(iv) any evaluation tools, including written exams or practical skill forms; and

(v) CE approval letter or approval numbers;

(c) **CE complaint audit:** this audit is a preliminary investigation conducted by the EMS bureau based on a complaint concerning falsification of the CE process. [7.27.2.10 NMAC - Rp, 7.27.2.10 NMAC, 12/15/2008; A, 3/15/2010]

#### **7.27.2.13 ENFORCEMENT:** **A. EMS licensing commission:**

(1) **Statutory basis:** The emergency medical services licensing commission is established pursuant to Section 24-10B-5.1 NMSA 1978 of the act.

(2) **Duties:** The duties of the commission are to:

(a) provide a forum for the receipt of public comment regarding emergency medical services licensing matters;

(b) oversee the bureau's licensing and enforcement functions;

(c) receive complaints, direct investigations and authorize the initiation of actions by the bureau regarding contemplated refusal to grant initial licensure and for disciplinary actions against licensees; and

(d) grant waivers, for good cause shown, of regulations pertaining to licensure

renewal.

(3) **Organization:** Members of the commission are appointed by the secretary as provided by law.

(a) Commission members shall serve until their successors have been appointed by the secretary.

(b) In the event of a vacancy on the commission by resignation or removal, the bureau shall immediately notify the secretary so as to expedite the appointment of a new commission member. The secretary shall appoint such vacancies.

(c) The commission may recommend to the secretary removal of any commission member for the following reasons:

(i) failing to attend or otherwise participate in two (2) consecutive meetings without a valid reason; or

(ii) any other good cause.

(d) The commission shall elect a chair and vice-chair annually. The term of office begins with the meeting at which the officer is elected.

(e) The bureau shall serve as staff for the commission.

(4) **Commission meetings:** The commission shall meet as needed, but not less than semi-annually.

(a) Commission meetings for receipt of public comment regarding emergency medical services licensing functions and oversight of the bureau's licensure function shall be subject to the Open Meetings Act, Section 10-15-1, et seq., NMSA 1978.

(b) Meetings pertaining to the issuance, suspension, renewal or revocation of a license, or other personnel matters, are closed meetings as provided by the Open Meetings Act.

(c) A meeting notice resolution, consistent with the provisions of the Open Meetings Act, shall be adopted by the commission and shall be reviewed in November of each year at a regularly scheduled meeting of the commission.

(d) Minutes of meetings shall be taken and maintained in accordance with the Open Meetings Act.

(5) **Receipt of public comment:** There shall be an opportunity for receipt of public comment regarding licensure matters, in writing or orally, at each open commission meeting.

(a) Written public comment intended for consideration by the commission shall be mailed to the bureau. The comments must include the person's name, address, and telephone number, if available. Unidentified comments may or may not be considered by the commission.

(b) The commission, upon receipt of public comments, may make an appropriate recommendation to the bureau

to take action based on those comments.

(6) **Oversight:** During each regularly scheduled meeting, the bureau will provide a report of its licensure functions to the commission. Commission members may, at any time, request information about licensure functions from the bureau.

**B. Complaint/incident procedures:** Any person may communicate a written complaint or knowledge of an incident to the bureau or the commission.

(1) When the bureau has knowledge of a complaint that may affect a person's license, it shall notify the chair of the commission as soon as practicable.

(2) Similarly, when the commission has knowledge of a complaint or incident affecting licensure, it shall notify the bureau.

(3) Other complaints, which would not affect licensure, will be directed to, and examined by the bureau.

(4) The bureau shall communicate to the chair or designee its opinion as to whether or not an investigation of the complaint should be initiated.

(5) Upon knowledge of a complaint, the chair, or designee, after consultation with other members of the commission, as feasible, shall authorize that an investigation be conducted.

(6) The chair or designee shall direct the course of the investigation through periodic communication with the bureau as necessary.

(7) If an investigation indicates that the complaint may affect a person's license, the licensee shall be notified that the bureau is conducting an investigation, unless extenuating circumstances reasonably preclude notification.

(a) At the conclusion of the bureau's investigation, the bureau shall report its findings to the commission in a closed meeting at which a majority of commission members participate, either in person or by means of a conference telephone or other similar communications equipment.

(b) The commission, after consideration of the bureau's report, may authorize the initiation of an action by the bureau regarding contemplated refusal to grant initial licensure, or for disciplinary action against a licensee, by a majority vote of commission members participating in the closed meeting. The commission may immediately authorize a cease and desist order or immediate suspension of license, subject to expedited hearing rights as outlined in Paragraph (5) of Subsection G of 7.27.2.13 NMAC, if it determines that the health and safety of the public would be jeopardized unless the bureau takes action as soon as possible.

(c) The chair of the commission may immediately authorize the initiation of an action by the bureau regarding



contemplated refusal to grant initial licensure, or for disciplinary action against a licensee, without consulting the other members of the commission. This immediate action may be used if the chair makes a good faith judgment that the health and safety of the public would be jeopardized unless the bureau takes action as soon as possible. Actions may include cease and desist orders or immediate suspension, subject to expedited hearing rights pursuant to Paragraph (5) of Subsection G of 7.27.2.13 NMAC of these rules. If the chair authorizes the initiation of an action by the bureau, the bureau shall notify each commission member in writing of such action within ten (10) working days of the initiation of the action.

(d) Upon receipt of authorization from the commission to initiate an action, the bureau may deny, suspend or revoke licensure or take other disciplinary action, in accordance with the provisions of the act, Section 24-10B-5.B.(2), NMSA 1978 and the Uniform Licensing Act, Sections 61-1-1, et seq., NMSA 1978.

**C. Conduct of investigations:** Investigations shall normally be conducted by the bureau.

(1) **Preliminary investigations:** When the bureau receives information that might form the basis for disciplinary action against a person, it shall begin a preliminary investigation. This is a fact finding, information gathering investigation that will attempt to determine for the commission whether justification exists for the commission to authorize the bureau to initiate an action or to conduct a formal investigation. The results of the preliminary investigation will be presented to the commission.

(2) **Formal investigations:** Formal investigations are authorized by the commission for the purpose of obtaining additional information to allow the commission to determine if it will authorize the bureau to initiate an action. The results of the formal investigation will be presented to the commission. Notice will be given to the person who is the subject of the formal investigation unless extenuating circumstances exist which would reasonably preclude notification.

**D. Subpoena authority:** In accordance with Subsection C of Section 24-10B-5.1 NMSA 1978 of the EMS Act and Subsection A of Section 61-1-4 of the Uniform Licensing Act, the EMS licensing commission or the bureau, pursuant to the commissions authorization may, subject to the rules of privilege and confidentiality recognized by law, require the furnishing of information, the attendance of witnesses, and the production of books, records, papers or other objects necessary and proper for the purposes before it, and may take sworn statements of witnesses, including parties.

**E. Waivers:** The commission, upon good cause or for extenuating circumstances shown by a licensee, may grant a waiver of a specific regulation or regulations pertaining to licensure renewal for that licensee.

(1) A licensee shall demonstrate good cause to the commission by submitting written justification that identifies any extenuating circumstances, to the bureau. The licensee shall include any reasonable supporting documentation to relevant to the request.

(2) The bureau shall distribute the submitted written justification and supporting documentation to the members of the commission prior to their next meeting.

(3) The commission, as soon as practicable, shall determine if good cause exists to grant a waiver by a majority vote of commission members meeting in a closed meeting. To accomplish this, the commission shall evaluate the documentation and, if necessary, review other pertinent documentation requested from the licensee.

(4) The commission may also meet with the licensee at a closed meeting of the commission prior to rendering its decision as to whether good cause exists to grant a waiver.

(5) If the commission grants the waiver to the licensee, it shall direct the bureau to take appropriate action to implement the terms and conditions of the waiver.

(6) A licensee applying for a waiver shall be notified by the bureau of the commission's decision in writing within twenty (20) calendar days of receipt of the commission's decision.

(7) The chair or his designee, with a recommendation from the bureau, may authorize a temporary waiver for licensure renewal, where they feel it may be justified, i.e., loss of employment, pecuniary interests, etc., subject to subsequent commission review and approval.

**F. Impaired practitioner program:** An EMT who voluntarily self-identifies to the bureau or the impaired practitioner committee that he is experiencing a physical or mental impairment shall be considered for the impaired practitioner program ("diversion program"). Consideration may not result in participation in the diversion program. Also, any impaired-EMT who the bureau, with the advice of the commission, determines may benefit from the impaired practitioner program may be referred to the impaired practitioner committee.

(1) The bureau, with the advice of the commission, may appoint an impaired-EMT rehabilitation committee to organize and administer a program that will:

(a) serve as a diversion program to which the bureau may refer licensees in lieu

of, or in addition to, other disciplinary action taken by the bureau under these regulations; and

(b) be a source of referral for EMT's who, on a voluntary basis, desire to avail themselves of treatment for behavioral health based or chemical-dependence impairments.

(2) **The impaired practitioner committee shall be composed as a minimum of:**

- (a) one bureau staff member;
- (b) one regional director;
- (c) one commission member;
- (d) one mental health specialist;

and

(e) one physician.

(3) **The impaired practitioner committee shall:**

(a) arrange evaluations for EMT's who request participation in the diversion program;

(b) review and designate treatment facilities and services to which EMT's in the diversion program may be referred;

(c) receive and review information concerning the status and progress of participants in the diversion program;

(d) publicize the diversion program in coordination with EMS professional organizations and the bureau; and

(e) prepare and provide reports as needed to the bureau and the commission.

(4) **Each EMT entering the diversion program shall be informed of the procedures applicable to the diversion program, of the rights and responsibilities associated with participation in the diversion program and of the possible consequences of failure to participate in the diversion program:** Failure to comply with any treatment requirement of the diversion program may result in termination of the diversion program participation. The bureau shall report termination of diversion program participation to the commission. Participation in the diversion program shall not be a defense against, but may be considered in mitigating any disciplinary action authorized by the commission and taken by the bureau. The commission is not precluded from authorizing the bureau to commence a disciplinary action against an EMT who is participating in the diversion program or has been terminated from the diversion program.

**G. Denial, suspension, and revocation:** A license may be denied, suspended, or revoked, or may be subject to any lesser disciplinary action, in accordance with the following:

(1) upon authorization by the commission, the bureau may suspend, revoke, or refuse to issue any license, or take other disciplinary action, in accordance with the provisions of the EMS Act, Subsection B, Section 24-10B-5, NMSA 1978 and the

Uniform Licensing Act, Section 61-1-1, et seq., NMSA 1978, for any of the reasons outlined below;

(2) if final disciplinary action is taken against a licensed EMS provider by the bureau, upon authorization from the commission, the bureau may publish the action in a periodical or other medium that has statewide distribution;

(3) grounds for denial, suspension, [or] revocation or other disciplinary action are:

(a) misconduct in obtaining licensure;

(b) fraud, deceit, misrepresentation in obtaining licensure, including, but not limited to, cheating on an examination or attempting to subvert the initial or renewal licensing process;

(c) unprofessional conduct, to include but not limited to, the following:

(i) dissemination of a patient's health information to individuals not entitled to such information and where such information is protected by law from disclosure;

(ii) falsifying or altering patient records or personnel records;

(iii) misappropriation of money, drugs or property;

(iv) obtaining or attempting to obtain any fee for patient services for one's self or for another through fraud, misrepresentation, or deceit;

(v) aiding, abetting, assisting or hiring an individual to violate the EMS Act or these duly promulgated rules;

(vi) failure to follow established procedure and documentation regarding controlled substances;

(vii) failure to make or keep accurate, intelligible entries in records as required by law, policy and standards for the practice of pre-hospital emergency care;

(viii) failure to report an EMS provider who is suspected of violating the New Mexico Emergency Medical Services Act or these rules;

(ix) intentionally engaging in sexual contact with or toward a patient;

(d) conviction of a felony or misdemeanor~~[, or conviction of a misdemeanor involving abuse, neglect, exploitation, or moral turpitude,]~~ as shown by a ~~[certified copy of the]~~ record of the court conviction;

(e) negligence in the delivery of emergency medical services to include, but not limited to:

(i) practicing outside the standard of care, scope of licensure or without appropriate medical direction;

(ii) malpractice;

(iii) incompetence, in performing pre-hospital emergency medical

functions, whether direct patient care or the administration/management of that care, an EMS provider is under legal duty to possess and to apply the knowledge, skill and care that is ordinarily possessed and exercised by other EMS providers of the same licensure status and required by the generally accepted standards of the profession; the failure to possess or to apply to a substantial degree such knowledge, skill and care constitutes incompetence for purposes of disciplinary proceedings; it shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions, so long as the conduct is of such a character that harm could have resulted to the patient or to the public;

(i v) p a t i e n t abandonment: patient abandonment occurs when the EMS provider has accepted the patient assignment thus establishing a provider-patient relationship and then severs the relationship without giving reasonable notice to a qualified person who can make arrangements for the continuation of care;

(f) unauthorized disclosure of medical or other confidential information;

(g) physical or mental incapacity which could result or has resulted in performance of emergency medical service duties in a manner which endangers the health and safety of the patient or others;

(h) any demonstrated pattern of alcohol or other substance abuse; or any single instance of alcohol or substance abuse in the performance of emergency medical services duties;

(i) failure to successfully complete the impaired practitioner program; or failure to meet the terms and conditions of an impaired practitioner agreement;

(j) failure to meet licensure requirements;

(k) dispensing, administering, distributing or diversion of controlled substances, other than those authorized in the scope of practice, as defined in the New Mexico Controlled Substance Act, Section 30-31-1, et seq., NMSA 1978;

(l) failure to report revocation, suspension, denial, or other adverse actions taken in any other state or jurisdiction affecting the ability to practice emergency medical services;

(m) misrepresentation of the level of licensure or certification;

(n) performing duties as a licensed EMT without being licensed by the bureau to perform the authorized scope of practice for a level of licensure, including practicing after expiration of a license;

(o) any false, fraudulent, or deceptive statement in any document connected with the practice of emergency medical services, including, but not limited to, documents associated with:

(i) initial licensure;

(ii) renewal licensure;

(i i i) l i c e n s u r e

certificates, wallet cards; or

(i v) c o n t i n u i n g

education;

(p) failure to cooperate with an investigation, including but not limited to, failure to furnish the commission or bureau with information requested, or to appear for an interview as requested;

(q) inappropriate conduct or negligence by a licensed EMT who is also a registered instructor coordinator;

(r) failure to comply with a judgment and order for child support or a warrant relating to paternity or child support proceedings issued by a district or tribal court, as ~~[defined]~~ provided in the Parental Responsibility Act ~~[(Laws of 1995, Chapter 25)], NMSA 1978, Section 40-5A-1 et seq.;~~

(s) failure to notify the bureau in writing of:

(i) the filing of a criminal complaint against the licensee or applicant in any state or jurisdiction, within ten (10) calendar days of service of the complaint; or

(ii) the entry against the licensee or applicant, at any time in any state or jurisdiction, of either a felony conviction, or a misdemeanor conviction involving the use, dispensation, administration or distribution of a drug, the use of alcohol, sexual contact, or the possession or use of a weapon, within ten (10) calendar days of the conviction, or within thirty (30) calendar days of the promulgation of this rule, whichever is later;

(t) intimidating, threatening, or taking any adverse action against a person for providing information to the bureau or commission, either directly or through an agent; and

(u) impersonating an agent or employee of the bureau.

**(4) procedures for enforcement of the Parental Responsibility Act:**

(a) the New Mexico human services department (HSD) shall issue to the bureau a certified list of obligors (meaning persons who have been ordered to pay child support pursuant to a judgment and order for support issued by a district or tribal court) not in compliance with their judgment and order of support;

(b) upon determination by the bureau that the name and social security number of an applicant for licensure, a licensed person, or licensee, appears on the certified list, the bureau shall require that applicants for licensure:

(i) provide a statement of compliance from HSD to the bureau no later than forty eight (48) hours prior to scheduled attendance at a state EMS examination site; or

(ii) provide a statement of compliance from HSD to the bureau no

later than the close of business, sixty (60) days from the date of the letter of notification; or

(iii) if the applicant fails to provide a statement of compliance, the bureau shall be authorized by the commission to issue a notice of contemplated action to deny the application;

(iv) that persons currently licensed shall provide the bureau with a statement of compliance from HSD by the earlier of the application for licensure renewal or a specified date not to exceed sixty (60) days;

(v) if the licensed person fails to provide the statement of compliance, the bureau shall be authorized by the commission to issue a notice of contemplated action to take appropriate action;

(c) upon authorization by the commission to issue a notice of contemplated action concerning violation of the Parental Enforcement Act, the bureau shall serve upon an applicant for licensure or licensee a notice of contemplated action in accordance with the Uniform Licensing Act stating that

(i) the bureau has grounds to take such action, and that the bureau shall take such action unless the applicant or licensed person

(ii) mails a letter (certified mail, return receipt requested) within twenty (20) days after service of the notice requesting a hearing, or

(iii) provides the bureau, within thirty (30) days of receipt of the notice of contemplated action, a statement of compliance from HSD; ~~and~~

(iv) if the applicant or licensed person disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensed person ~~should~~ shall contact the HSD child support enforcement division;

**(d) in any hearing under this [section, relevant evidence is limited to the following] subparagraph, the following standards shall apply:**

(i) a statement of non-compliance is conclusive evidence that requires the bureau to take appropriate action, unless

(ii) the applicant or licensee provides the bureau with a subsequent statement of compliance, which shall preclude the bureau from taking any further action under this section;

(iii) (ii) when an action is taken against an applicant or licensee solely because the applicant or licensed person is not in compliance with a judgment and order for support, the order shall state that the application, license shall be reinstated upon presentation to the bureau of a subsequent statement of compliance;

(e) the ~~bureau~~ secretary may also include in the order any other conditions

necessary to comply with [its] requirements for reapplication and re-issuance of licensure, including, but not limited to requiring a surcharge fee of fifty dollars (\$50), in addition to any other applicable fees;

**(5) right to a hearing:** in accordance with the provisions of the Uniform Licensing Act, Sections 61-1-1, et seq., NMSA 1978, every applicant or person licensed, shall be afforded notice and opportunity for a hearing, before the department shall have authority to take action, the effect of which would be to deny permission to take an examination for licensure for which application has been duly made, or to deny, suspend, or revoke a certification or license, or take other disciplinary action; exception:

(a) right to expedited hearing for an immediate suspension of a persons license: the person whose license is immediately suspended may request a hearing before a hearing officer appointed by the secretary to contest the action, by mailing a certified return receipt letter addressed to the bureau within twenty (20) days after service of the notice;

(b) expedited hearing for a person whose license has been immediately suspended: upon receipt of a timely request for a hearing, the department shall appoint a hearing officer and schedule a hearing, ~~[to be held in Santa Fe, New Mexico, within twenty (20) working days of receipt of the timely request for a hearing]~~ in accordance with the hearings portion of this rule (see 7.27.2.19 NMAC);

**(6) records management:** a licensing record is maintained for every licensed EMT in New Mexico; any request for records maintained by the bureau will be processed in accordance with the Inspection of Public Records Act; if the bureau begins a preliminary or formal investigation, a separate confidential record will be created containing all investigatory material;

**(a) confidentiality:** the commission and the bureau will take every precaution to insure that preliminary and formal investigations are conducted in a confidential manner; if the commission authorizes the bureau to initiate an action, all records not exempt from disclosure under the Inspection of Public Records Act, Sections 14-2-1, et seq., NMSA 1978, will be placed in the licensee's licensing record, if one exists;

**(b) records confidentiality:** any files or records in the possession of the bureau, a regional office or a provider containing identifying information about individuals requesting or receiving treatment or other health services and any unsubstantiated complaints received by the bureau regarding any provider shall be confidential and not subject to public inspection; such files,

records and complaints may be subject to subpoena for use in any pending cause, in any administrative proceeding, or in any of the courts of this state, unless otherwise provided by state or federal law.

## **H. Enforcement of training standards.**

**(1) Process for non-compliance:** The bureau will make every attempt to resolve non-compliance of training standards at the lowest level possible. The following process shall be utilized:

(a) the bureau will notify the approved New Mexico training program, in writing, of any suspected or reported non-compliance of training standards received by complaint, report or course trends;

(b) the approved New Mexico training program will provide a plan to correct items of non-compliance and will submit the plan to the bureau in writing within thirty (30) days;

(c) the bureau will re-evaluate the plan and progress reports for compliance of the training standards in three (3) month increments until the problem is resolved; and

(d) if the bureau determines that non-compliance has not been adequately resolved, the bureau may initiate an enforcement action against the training program or the licensed EMT who is an instructor-coordinator.

**(2) Complaint/incident procedures:** Any person may communicate a complaint or knowledge of an incident to the bureau. Complaints shall be submitted in signed written form to the bureau. The bureau may begin an investigation if there is sufficient cause.

(a) When a complaint is received by the bureau, written acknowledgment shall be made within ten (10) working days and the bureau staff shall decide whether or not a preliminary or formal investigation of the complaint shall be initiated.

(b) Approved New Mexico EMS training programs being formally investigated shall receive written notification within ten (10) working days after a decision is made to begin a formal investigation.

(c) At the conclusion of the bureau's formal investigation, the bureau may report its findings to the investigated training program in written form. If the bureau investigation warrants an enforcement action, the training program will be given a notice of contemplated action.

(d) If no investigation is warranted, the training program or person filing a complaint will be notified, as determined by the bureau.

**(3) Investigations:** The bureau shall normally conduct preliminary and formal investigations.

**(a) Preliminary investigations:** When the bureau receives information that forms the basis for an enforcement action,



it shall begin a preliminary investigation. This is a fact finding, information gathering investigation that will attempt to determine for the bureau whether justification exists to initiate an action or to conduct a formal investigation.

**(b) Formal investigations:**

Formal investigations are for the purpose of obtaining additional information to allow the bureau to determine if it will initiate an action. Notice will be given of the formal investigation, unless extenuating circumstances exist which would reasonably preclude notification.

**(c) Confidentiality:** The bureau will take every precaution to insure that preliminary and formal investigations are conducted in a confidential manner.

**(d) Records:** An official record is maintained for every approved New Mexico EMS training program. If the bureau begins a preliminary or formal investigation, a separate confidential record will be created containing all investigation material. If the bureau initiates an action, all records not exempt from disclosure under the Inspection of Public Records Act, sections 14-2-1, et seq., NMSA 1978, will be placed in the training program's official record. Any request for records maintained by the bureau will be processed in accordance with the Inspection of Public Records Act.

**(4) Grounds for enforcement actions:** Enforcement actions may result in an action taken against an approved New Mexico EMS training program or an instructor-coordinator affiliated with the training program. These enforcement actions may result in the following actions:

**(a)** probation or suspension of the training program for a specified period of time;

**(b)** non-recognition of a training program course;

**(c)** withdrawal of approval status of a training program by the bureau;

**(d)** under 7.27.2.13 NMAC, a licensing action may be initiated against an instructor-coordinator when the bureau determines that there may be inappropriate conduct or negligence; grounds for enforcement actions include, but are not limited to the following:

**(i)** failure to comply with law or rules; failure to comply with the training standards or non-compliance with a training standard found in these rules;

**(ii)** falsifying documents to include use of any false, fraudulent, or deceptive statement in any document;

**(iii)** failure to cooperate with an investigation to include failure to furnish the bureau with requested information, as provided by law;

**(iv)** failure of students or instructors to function within the approved New Mexico scopes of practice,

New Mexico treatment guidelines and the training medicine formulary, as approved by the medical direction committee;

**(v)** failure to report required documentation including patient care data and annual training reports.

**(5) Right to appeal:** Any approved New Mexico EMS training program may appeal a decision by the bureau to take an enforcement action.

**(6) Notice of contemplated action:** When the bureau contemplates taking any action specified in this section, it shall serve upon the approved New Mexico EMS training program a written notice containing a statement of the grounds or subject upon which the proposed action is based and the rule(s) violated.

**(7) Right to hearing:** The approved New Mexico EMS training program may request a hearing before a hearing officer appointed by the secretary to contest the proposed enforcement action, by mailing a certified return receipt letter addressed to the bureau within twenty (20) days after service of the notice.

**(8) Hearing:** Upon receipt of a timely request for a hearing, the department of health shall appoint a hearing officer and schedule a hearing, to be held in Santa Fe, New Mexico, within forty-five (45) working days of receipt of the timely request for a hearing.

**(9) Notice of hearing:** The department shall notify the approved New Mexico EMS training program of the date, time, and place of the hearing, the identity of the hearing officer, and the subject matter of the hearing, not less than thirty (30) days prior to the date of the hearing.

**(10) Hearing officer duties:** The hearing officer shall preside over the hearing, administer oaths, take evidence and decide evidentiary objections and rule on any motions or other matters that arise prior to the hearing.

**(11) Discovery:** Upon written request to another party, any party is entitled to:

**(a)** obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

**(b)** inspect and copy any documents or items, which the other party will or may introduce in evidence at the hearing.

**(12) Conduct of hearing:** Hearings are open to the public unless either party makes a request for closed meeting.

**(13) Hearing officer written report and recommendation(s):** The hearing officer shall make a written report and recommendation(s) to the secretary containing a statement of the issues raised at the hearing proposed findings of fact, and conclusions of law, and a recommended determination. The hearing officer or

designee shall record the hearing by means of a mechanical sound recording device provided by the department for a record of the hearing. The hearing officer written report shall be submitted to the secretary no later than thirty (30) working days after the close of the hearing.

**(14) Secretary's determination:**

The secretary shall render a final determination within ~~[ten (10) working]~~ forty-five (45) calendar days of the submission of the hearing officer's written report. A copy of the final decision shall be mailed to the appealing party by certified mail, return receipt requested. A copy shall be provided to legal counsel for the bureau. [7.27.2.13 NMAC - Rp, 7.27.2.13 NMAC, 12/15/2008; A, 3/15/2010]

**7.27.2.14 APPENDIX A: SCOPES OF PRACTICE FOR FULLY LICENSED EMERGENCY MEDICAL SERVICES PERSONNEL:**

**A.** Medical director means a physician functioning as the service EMS medical director as defined and described in 7.27.3 NMAC, Medical Direction for Emergency Medical Services. Medical control means supervision provided by or under the direction of a physician.

**B.** Prior to accomplishing a new skill, technique, medication, or procedure, it shall be documented by the service director, medical director, or approved EMS training institution that the EMS provider has been appropriately trained to perform those new skills, techniques, medications, or procedures.

**C.** Service medical director approved: All service medical director approved skills, technique, medication, or procedure are considered advanced life support. Prior to utilizing any skill, technique, medication or procedure designated as service medical director approved, it shall be documented by the service director, medical director, or approved EMS training institution that the EMS provider has been appropriately trained to perform the skills, techniques, medications or procedures. Additionally, each EMS provider must have a signed authorization from the service's medical director on file at the EMS service's headquarters or administrative offices.

**D.** Any device designed and utilized to facilitate successful completion of a skill or other treatment modality, including but not limited to CPR devices, intraosseous placement devices, positive pressure ventilation devices, must be approved by the service medical director.

**E.** Only personnel with full, unrestricted licensure may utilize items designated as service medical director approved.

**F.** Utilization of pharmacological agents for the primary



purpose of sedation, induction, or muscle relaxation to facilitate placement of an advanced airway requires medical direction committee special skills approval.

**G. Licensed emergency medical dispatcher (EMD).**

(1) Medical direction is required for all items in the EMD scope of practice.

(2) The following allowable skills may be performed by EMDs who are licensed by the EMS bureau and functioning with a New Mexico emergency medical dispatch agency utilizing protocols and any EMD priority reference system approved by the EMS bureau and service medical director.

(a) Process calls for medical assistance in a standardized manner, eliciting required information for evaluating, advising, and treating sick or injured individuals, and dispatching an appropriate EMS response.

(b) Provide pre-arrival instructions to the patient through the caller when possible and appropriate to do so while functioning in compliance with an emergency medical dispatch priority reference system (EMDPRS).

**H. EMS first responders (EMSFR):**

(1) The following allowed skills, procedures, and drugs may be performed without medical direction:

(a) basic airway management;  
(b) use of basic adjunctive airway equipment;  
(c) suctioning;  
(d) cardiopulmonary resuscitation, according to current ECC guidelines;  
(e) obstructed airway management;  
(f) bleeding control via direct pressure;

(g) spine immobilization;  
(h) splinting (medical direction required for femoral traction splinting);  
(i) scene assessment, triage, scene safety;

(j) use of statewide EMS communications system;  
(k) emergency childbirth;  
(l) glucometry;  
(m) oxygen;  
(n) other non-invasive procedures as taught in first responder courses adhering to DOT curricula.

(2) The following require service medical director approval:

**(a) allowable skills:**

(i) mechanical positive pressure ventilation;  
(ii) femoral traction splinting;  
(iii) application and use of semi-automatic defibrillators;  
(iv) insertion of laryngeal and supraglottic airway devices;  
(v) acupressure;

**(b) allowable drugs:**

(i) oral glucose preparations;  
(ii) aspirin PO for adults with suspected cardiac chest pain;  
(iii) IM auto-injection of atropine and pralidoxime for treatment of chemical and nerve agent exposure;  
(iv) albuterol (including isomers) via inhaled administration;  
(v) ipratropium via inhaled administration, in combination with or after albuterol administration;  
(vi) epinephrine via auto-injection device;

**(c) patient's own medication that may be administered:** bronchodilators using pre-measured or metered dose inhalation device.

**(3) Wilderness protocols:** The following skills shall only be used by providers who have a current wilderness certification from a bureau approved wilderness first responder course, who are functioning in a wilderness environment as a wilderness provider (an environment in which time to a hospital is expected to exceed two (2) hours, except in the case of an anaphylactic reaction, in which no minimum transport time is required), and are authorized by their medical director to provide the treatment:

(a) minor wound cleaning and management;  
(b) cessation of CPR;  
(c) field clearance of the cervical-spine;  
(d) reduction of dislocations resulting from indirect force of the patella, digit, and anterior shoulder.

**I. EMT - B A S I C (EMT-B):**

(1) The following allowed skills, procedures, and drugs may be performed without medical direction:

(a) basic airway management;  
(b) use of basic adjunctive airway equipment;  
(c) suctioning;  
(d) cardiopulmonary resuscitation, according to current ECC guidelines;  
(e) obstructed airway management;  
(f) bleeding control;  
(g) spine immobilization;  
(h) splinting;  
(i) scene assessment, triage, scene safety;

(j) use of statewide EMS communications system;  
(k) childbirth (imminent delivery);  
(l) glucometry;  
(m) oxygen;  
(n) other non-invasive procedures as taught in EMT-B courses adhering to DOT curricula;

(o) wound management.

(2) The following require service

**medical director approval:**

**(a) allowable skills:**

(i) mechanical positive pressure ventilation;  
(ii) use of multi-lumen, supraglottic, and laryngeal airway devices (examples: PTLA, combi-tube, king airway, LMA);  
(iii) pneumatic anti-shock garment;  
(iv) application and use of semi-automatic defibrillators;  
(v) acupressure;  
(vi) transport of patients with nasogastric tubes, urinary catheters, heparin/saline locks, PEG tubes, or vascular access devices intended for outpatient use;

**(b) allowable drugs:**

(i) oral glucose preparations;  
(ii) aspirin PO for adults with suspected cardiac chest pain;  
(iii) activated charcoal PO;  
(iv) acetaminophen PO in pediatric patients with fever;  
(v) IM auto-injection of atropine and pralidoxime for treatment of chemical and nerve agent exposure;  
(vi) albuterol (including isomers), via inhaled administration;  
(vii) ipratropium, via inhaled administration, in combination with or after albuterol administration;  
(viii) epinephrine via auto-injection device;  
(ix) administration of naloxone by SQ, IM, or IN route;  
(x) administration of epinephrine, 1:1000, no single dose greater than 0.3 ml, subcutaneous or intramuscular injection with a pre-measured syringe or 0.3 ml TB syringe for anaphylaxis or status asthmaticus refractory to other treatments under on-line medical control; when on-line medical control is unavailable, administration is allowed under off-line medical control if the licensed provider is working under medical direction using approved written medical protocols;

**(c) patient's own medication that may be administered:**  
(i) bronchodilators using pre-measured or metered dose inhalation device;

(ii) sublingual nitroglycerine for unrelieved chest pain, with on line medical control only.

**(3) Wilderness protocols:** the following skills shall only be used by providers who have a current wilderness certification from a bureau-approved wilderness first responder course, who are functioning in a wilderness environment as a wilderness provider (an environment in which time to a hospital is expected to exceed two (2) hours, except in the case

of an anaphylactic reaction, in which no minimum transport time is required), and are authorized by their medical director to provide the treatment:

- (a) minor wound cleaning and management;
- (b) cessation of CPR;
- (c) field clearance of the cervical-spine;
- (d) reduction of dislocations resulting from indirect force of the patella, digit, and anterior shoulder.

**(4) Immunizations and biologicals:** administration of immunizations, vaccines, biologicals, and TB skin testing is authorized under the following circumstances: in the event of a disaster or emergency, the state EMS medical director or chief medical officer of the department of health may temporarily authorize the administration of pharmaceuticals or tests.

**J. E. M. T. - INTERMEDIATE (EMT-I):**

**(1) The following allowed skills, procedures, and drugs may be performed without medical direction:**

- (a) basic airway management;
- (b) use of basic adjunctive airway equipment;
- (c) suctioning;
- (d) cardiopulmonary resuscitation, according to ECC guidelines;
- (e) obstructed airway management;
- (f) bleeding control;
- (g) spine immobilization;
- (h) splinting;
- (i) scene assessment, triage, scene safety;
- (j) use of statewide EMS communications system;
- (k) childbirth (imminent delivery);
- (l) glucometry;
- (m) oxygen;
- (n) wound management.

**(2) The following require service medical director approval:**

- (a) allowable skills:**
  - (i) mechanical positive pressure ventilation;
  - (ii) use of multi-lumen, supraglottic, and laryngeal airway devices (examples: PTLA, combi-tube, king airway, LMA);
  - (iii) pneumatic anti-shock garment;
  - (iv) application and use of semi-automatic defibrillators;
  - (v) acupressure;
  - (vi) transport of patients with nasogastric tubes, urinary catheters, heparin/saline locks, PEG tubes, or vascular access devices intended for outpatient use;
  - (vii) peripheral venous puncture/access;
  - (viii) blood drawing;
  - ( i x ) p e d i a t r i c** intraosseous tibial access;

**(x) adult intraosseous** access;

**(b) administration of approved medications via the following routes:**

- (i) intravenous;
- (ii) intranasal;
- (iii) nebulized

inhalation;

- (iv) sublingual;
- (v) intradermal;
- (vi) intraosseous;
- (vii) endotracheal (for administration of epinephrine only, under the direct supervision of an EMT-paramedic, or if the EMS service has an approved special skill for endotracheal intubation);

- (viii) oral (PO);
- (ix) intramuscular;
- (x) subcutaneous;**

**(c) allowable drugs:**

- (i) oral glucose preparations;
- (ii) aspirin PO for adults with suspected cardiac chest pain;
- (iii) activated charcoal PO;

in pediatric patients with fever;

- (v) IM auto-injection of atropine and palidoxime for treatment of chemical and nerve agent exposure;

(vi) albuterol (including isomers) via inhaled administration;

(vii) ipratropium, via inhaled administration, in combination with or after albuterol administration;

- (viii) naloxone;
- (ix) I.V. fluid therapy (except blood or blood products);

(x) 50% dextrose – intravenous;

(xi) epinephrine via auto-injection device;

(xii) epinephrine (1:1000), SQ or IM for anaphylaxis and known asthmatics in severe respiratory distress (no single dose greater than 0.3 cc);

(xiii) epinephrine (1:10,000) in pulseless cardiac arrest for both adult and pediatric patients; epinephrine may be administered via the endotracheal tube in accordance with ACLS and PALS guidelines;

(xiv) nitroglycerin (sublingual) for chest pain associated with suspected acute coronary syndromes; must have intravenous access established prior to administration or approval of online medical control if IV access is unavailable;

(xv) morphine, fentanyl, or dilaudid for use in pain control with approval of on-line medical control;

(xvi) diphenhydramine for allergic reactions or dystonic reactions;

(xvii) glucagon, to treat hypoglycemia in diabetic patients when intravenous access is not obtainable;

**(xviii) promethazine and anti-emetic agents, for use as an anti-emetic;**

**( x i x )**  
[methyprednisolone] methylprednisolone  
for reactive airway disease/acute asthma exacerbation;

**( x x )**  
hydroxycobalamine;

**(d) patient's own medication that may be administered:**

(i) bronchodilators using pre-measured or metered dose inhalation device;

(ii) sublingual nitroglycerine for unrelieved chest pain; must have intravenous access established prior to administration or approval of online medical control if IV access is unavailable;

**(e) wilderness protocols:** the following skills shall only be used by providers who have a current wilderness certification from a bureau approved wilderness first responder course, who are functioning in a wilderness environment as a wilderness provider (an environment in which time to a hospital is expected to exceed two (2) hours, except in the case of an anaphylactic reaction, in which no minimum transport time is required), and are authorized by their medical director to provide the treatment:

(i) minor wound cleaning and management;

(ii) cessation of CPR;

(iii) field clearance of the cervical-spine;

(iv) reduction of dislocations resulting from indirect force of the patella, digit, and anterior shoulder;

**(f) drugs allowed for monitoring during transport:** monitoring IV solutions that contain potassium during transport (not to exceed 20 mEq/1000cc or more than 10 mEq/hour);

**(g) immunizations and biologicals:** administration of immunizations, vaccines, biologicals, and TB skin testing is authorized under the following circumstances:

(i) to the general public as part of a department of health initiative or emergency response, utilizing department of health protocols; the administration of immunizations is to be under the supervision of a public health physician, nurse, or other authorized public health provider;

(ii) administer vaccines to EMS and public safety personnel;

(iii) TB skin tests may be applied and interpreted if the licensed provider has successfully completed required department of health training;

(iv) in the event of a disaster or emergency, the state EMS medical director or chief medical officer of the department of health may temporarily authorize the administration of

pharmaceuticals or tests not listed above.

**K. EMT-PARAMEDIC (EMT-P):**

**(1) The following allowed skills, procedures, and drugs may be performed without medical direction:**

(a) basic airway management;  
(b) use of basic adjunctive airway equipment;

(c) suctioning;  
(d) cardiopulmonary resuscitation, according to current ECC guidelines;

(e) obstructed airway management;  
(f) bleeding control;  
(g) spine immobilization;

(h) splinting;  
(i) scene assessment, triage, scene safety;

(j) use of statewide EMS communications system;

(k) childbirth (imminent delivery);  
(l) glucometry;

(m) oxygen;  
(n) wound management.

**(2) The following require service medical director approval:**

**(a) allowable skills:**  
(i) mechanical positive pressure ventilation;

(ii) use of multi-lumen, supraglottic, and laryngeal airway devices (examples: PTLA, Combi-tube, King Airway, LMA);

(iii) pneumatic anti-shock garment;

(iv) transport of patients with nasogastric tubes, urinary catheters, heparin/saline locks, PEG tubes, or vascular access devices intended for outpatient use;

(v) application and use of semi-automatic defibrillators;

(vi) acupressure;  
(vii) peripheral venous puncture/access;

(viii) blood drawing;  
(ix) I.V. fluid therapy;

(x) direct laryngoscopy;  
(xi) endotracheal

intubation;

(xii) thoracic decompression (needle thoracostomy);

(xiii) surgical cricothyroidotomy;

(xiv) insertion of nasogastric tubes;

(xv) cardioversion and manual defibrillation;

(xvi) external cardiac pacing;

(xvii) cardiac monitoring;

(xviii) use of infusion pumps;

(xix) initiation of blood and blood products with on-line medical control;

(xx) intraosseous

access;

**(b) administration of approved medications via the following routes:**

(i) intravenous;  
(ii) intranasal;  
(iii) nebulized

inhalation;

(iv) sublingual;  
(v) intradermal;  
(vi) intraosseous;

(vii) endotracheal;  
(viii) oral (PO);  
(ix) intramuscular;

(x) topical;  
[(xi) endotracheal];  
[(xii) (xi) rectal];  
[(xiii) (xii) IV drip];

**(c) allowable drugs:**

(i) acetaminophen;  
(ii) activated charcoal;  
(iii) adenosine;

(iv) albuterol (including isomers);

(v) amiodarone;  
(vi) aspirin;  
(vii) atropine sulfate;

(viii) benzodiazepines;  
(ix) bretylium tosylate;  
(x) calcium

preparations;

(xi) corticosteroids;  
(xii) dextrose;  
(xiii) diphenhydramine;

(xiv) dopamine hydrochloride;

(xv) epinephrine;  
(xvi) furosemide;  
(xvii) glucagon;

(xviii) hydroxycobalamin;

(xix) ipratropium;  
(xx) lidocaine;

(xxi) magnesium sulfate;

(xxii) naloxone;  
(xxiii) narcotic

analgesics;

(xxiv) nitroglycerine;  
(xxv) oral glucose

preparations;

(xxvi) oxytocin;  
(xxvii) phenylephrine

nasal spray;

(xxviii) pralidoxime, IM auto-injection for treatment of chemical and nerve agent exposure;

(xxix) promethazine and anti-emetic agents, for use as an anti-emetic;

(xxx) sodium bicarbonate;

(xxxi) thiamine;  
(xxxii) topical anesthetic

ophthalmic solutions;  
(xxxiii) vasopressin.

**(3) Wilderness protocols:** The following skills shall only be used by providers who have a current wilderness

certification from a bureau approved wilderness first responder course, who are functioning in a wilderness environment as a wilderness provider (an environment in which time to a hospital is expected to exceed two (2) hours, except in the case of an anaphylactic reaction, in which no minimum transport time is required), and are authorized by their medical director to provide the treatment:

(a) minor wound cleaning and management;

(b) cessation of CPR;

(c) field clearance of the cervical-spine;

(d) reduction of dislocations resulting from indirect force of the patella, digit, and anterior shoulder.

**(4) Drugs allowed for monitoring in transport** (requires an infusion pump when given by continuous infusion unless otherwise specified):

(a) potassium (no infusion pump needed if concentration not greater than 20mEq/1000cc);

(b) anticoagulation type blood modifying agents (such as fibrolytic drugs, heparin, glycoprotein IIb-IIIa inhibitors/antagonists);

(c) procainamide;

(d) mannitol;

(e) blood and blood products (no pump required);

(f) aminophylline;

(g) antibiotics and other anti-infective agents;

(h) dobutamine;

(i) sodium nitroprusside;

(j) insulin;

(k) terbutaline;

(l) norepinephrine;

(m) octreotide;

(n) nutritional supplements;

(o) beta blockers;

(p) diltiazem;

(q) nesiritide;

(r) propofol in patients that are intubated prior to transport;

(s) proton pump inhibitors and H2 antagonists.

**(5) Immunizations and biologicals:** administration of immunizations, vaccines, biologicals, and TB skin testing is authorized under the following circumstances:

(a) to the general public as part of a department of health initiative or emergency response, utilizing department of health protocols; the administration of immunizations is to be under the supervision of a public health physician, nurse, or other authorized public health provider;

(b) administer vaccines to EMS and public safety personnel;

(c) TB skin tests may be applied and interpreted if the licensed provider has successfully completed required department

of health training;

(d) in the event of a disaster or emergency, the state EMS medical director or chief medical officer of the department of health may temporarily authorize the administration of other pharmaceuticals or tests not listed above.

**(6) Skills approved for monitoring in transport:**

(a) internal cardiac pacing;

(b) chest tubes.

**(7) Medications for administration during patient transfer:**

(a) retavase (second dose only);

(b) protamine sulfate;

(c) non-depolarizing neuromuscular blocking agents in patients that are intubated prior to transport;

(d) acetylcysteine.

**(8) Patient's own medication that may be administered:**

(a) epoprostenol sodium;

(b) bronchodilators using pre-measured or metered dose inhalation device;

(c) sublingual nitroglycerine for unrelieved chest pain; must have intravenous access established prior to administration or approval of online medical control if IV access is unavailable.

[7.27.2.14 NMAC - Rp, 7.27.2.14 NMAC, 12/15/2008; A, 3/15/2010]

**7.27.2.15 APPENDIX B: APPROVED TRAINING PROGRAMS:**

"Approved emergency medical services training program" means a New Mexico emergency medical services training program that is sponsored by a post-secondary educational institution, is accredited by the national accrediting organization for emergency medical services or active in the accreditation process, and is approved by the joint organization on education (JOE) and participates in the joint organization on education. Currently, there are [three] five approved EMS training programs:

**A. Emergency medical services academy.** University of New Mexico, [2700 Yale SE., Albuquerque, New Mexico 87106, Tel: 505-272-5757]. The EMS academy is designated as the lead training agency for providers in New Mexico as stated in Section 24-10B-12 NMSA 1978. The EMS academy teaches formal EMS training courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic courses.

**B. Dona Ana branch community college.** New Mexico state university, [Box 30001, Las Cruces, NM 88003-0001, Tel: 505-527-7530]. Dona Ana branch community college teaches formal EMS training courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic courses.

**C. Eastern New Mexico university.** EMS program, [Box 6000,

Roswell, NM 88202-6000, Tel: 505-624-7000]. The eastern New Mexico university teaches formal EMS training courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic courses.

**D. Santa Fe community college.** EMS program, [6401 Richards Ave., Santa Fe, NM 87508-4887, Tel: 505-428-1000]. Santa Fe community college teaches formal EMS training courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic courses.

**E. Central New Mexico community college.** EMS program, [5600 Eagle Rock Ave. NE, Albuquerque, NM 87113, Tel: 505-224-5200]. Central New Mexico community college teaches formal EMS training courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic courses.

[7.27.2.15 NMAC - Rp, 7.27.2.15 NMAC, 12/15/2008; A, 3/15/2010]

**7.27.2.16 APPENDIX C: SPECIAL SKILLS APPLICATION AND REPORTING PROCEDURES:**

**A. Purpose:** Special skills are those skills, procedures, and medications that are requested by an EMS service to enhance emergency treatment capabilities beyond the normal scope of practice, as defined in the EMS Act. Use the enclosed procedures for application, reporting and renewal for special skills. Applications are reviewed and approved or disapproved by the medical direction committee, and once approved, become a legally recognized addition to the service capabilities.

**B. General:** All levels of EMS personnel, including licensed EMS first responders and all levels of licensed EMTs are eligible for special skills consideration for any procedure, skill or medication.

**C. Application procedure:** The EMS service medical director, or his designee, shall coordinate with the EMS service director, and shall apply for special skills to the EMS medical direction committee.

**D. Application document:** The application document for a special skill must be tailored to the level of the request. While the degree of detail in each section may vary to match the nature of the skill requested, all applications should include the following elements, in order:

(1) application cover page: titled to state the requested special skill, date of application, name of service, service director name and medical director name;

(2) contact information page: must include address and contact information for the service, service director and medical director;

(3) letters of support: must include individual letters of support from the service

director and medical director; additional letters of support from the local medical community or evidence of notification of the local medical community may be required; the need for letters of notification and support from the local medical community and who provides the letters must be adjusted to match the nature of the special skill requested;

(4) service description: provide a concise description of the EMS service; this includes such items as basic call demographics relevant to the applicant, level of licensure of providers and names and locations of the primary receiving medical facilities;

(5) description of the special skill: provide a description of the procedure, medication or requested skill. Include information on risks, benefits, indications and contraindications;

(6) justification and statement of need: provide a statement explaining why the special skill is needed; this should include a description of the current medical intervention or alternative practice to the special skill and a risk or benefit analysis that supports the special skill requested; the estimated number of potential interventions per year, other relevant statistical data and a statement indicating the level of current scientific information/studies to support the requested special skill; the level of scientific justification can be adjusted to match the level of the special skill requested;

(7) protocol: provide a copy of the treatment protocol; include other operational protocols relevant to the special skill, if applicable;

(8) training: provide a training syllabus; this must include learning objectives and the training hours for initial and continuing education; this section should also include a description of the instructors, how training will be completed, and a description of the method used to initially evaluate the skill;

(9) QA/QI program: provide a description of the QA/QI process for the special skill, including frequency of evaluation, names and qualifications of the personnel involved in the process; include a copy of the evaluation tool or forms that will be used, if applicable; and

(10) the application and all supporting documentation shall be submitted to the EMS bureau, attn: state EMS training coordinator.

**E.** Applicants may involve the EMS regional offices when preparing a special skill request and include a letter evidencing regional review. Applicants shall forward a copy of their application to their EMS regional office when completed.

**F.** Upon receipt, the state EMS medical director and state EMS training coordinator will review the



application. The service will be notified if the application is found to be incomplete or to contain significant errors.

**G.** Applications must be received at the bureau at least forty-five (45) days prior to the next regularly scheduled medical direction committee meeting to be placed on the agenda of that meeting for consideration by the medical direction committee.

**H.** The medical direction committee shall take action on all special skills applications on the agenda at their regularly scheduled meeting. The medical direction committee may take the following actions on the application: approved with limitations or restrictions, denied or tabled with a request for a formal presentation or additional information by the requesting service medical director or their designee.

**I.** The medical direction committee may give an approval subject to specific conditions, limitations or restrictions. This may include a written and practical examination.

**J.** Within ten (10) working days following the decision of the medical direction committee, the state EMS training coordinator shall provide a written response to the applicant regarding the action of the medical direction committee.

**K.** Special skills may not be utilized until receipt of these special skill approval letter from the bureau. Any specific conditions or limitations will be evidenced in the approval letter from the bureau.

**L. Monitoring:** It is expected that EMS services with approved special skills will continuously comply with the requirements of their application and approval letter. This includes, but is not limited to, such items as training curricula, approved instructors, quality assurance, protocols and data collection. Any changes to the approved application shall be sent to the state EMS training coordinator for concurrence/coordination with the medical direction committee.

**M.** The medical direction committee may immediately suspend or revoke special skill privileges for an individual or service that loses medical direction, or fails to comply with the stated requirements, or for any other reason to protect the health and welfare of the people of New Mexico.

**N.** If a new medical director assumes control of a service with an active special skill program, the bureau shall receive a letter of support from the new medical director within thirty (30) days or the special skill approval may be withdrawn.

**O.** The service shall maintain a current list of all providers trained and approved to utilize the special skill. This list must be provided to the bureau upon request.

**P. Reporting:** The service shall provide to the state EMS training coordinator periodic written special skill reports. During the first year, the report shall be due semi-annually, occurring on June 1 and December 1. Subsequent reports shall be due annually on June 1.

**Q. Report document:** The written special skill report shall include the following minimum elements:

(1) report cover page: titled to state the special skill reported, date, name of service, service director and medical director;

(2) contact information page: shall include address and contact information for the service, service director and medical director;

(3) letters of support: must include individual letters of continued support from the service director and service medical director;

(4) statistics and outcome data: provide data on the utilization and patient outcomes involving the special skill; do not include patient identifiers; all adverse outcomes related to the special skill must be reported;

(5) continuing education: provide evidence of the continuing education program and refresher program;

(6) personnel list: provide a list of all personnel authorized to perform the special skill;

(7) QA/QI program: provide evidence of the ongoing QA/QI program;

(8) renewal: during a regularly scheduled meeting, the medical direction committee shall review all ongoing individual special skills programs on their three (3) year anniversary and make a determination on renewal;

(9) if the medical direction committee determines not to provide automatic renewal on an ongoing special skill program, the state EMS training coordinator shall provide a written notification to the service director and the service medical director within ten (10) working days; and

(10) the special skills program will be placed on the agenda of the next, or subsequent, regularly scheduled meeting of the medical direction committee and final determination regarding renewal will be made.

**R.** Special skills programs will remain active until a final determination regarding renewal has been made.

**S. Special skills application:**

- (1) general section;
- (2) EMS service name;
- (3) address;
- (4) service chief/director;
- (5) contact phone number;
- (6) physician medical director;
- (7) physician/medical director

contact phone number;

(8) special skill proposed;

(9) level of licensure necessary for special skill;

(10) estimated number of personnel to be trained;

(11) estimated date of initial training;

(12) training/quality assurance;

(13) describe or identify the curriculum, including learning objectives, training hours, etc.;

(14) please identify the lead instructor and provide a brief summary of their qualifications or attach a resume;

(15) resumes required for new instructors;

(16) if training/experience is required, provide a letter of commitment from the supporting institution;

(17) describe or attach a proposed continuing education plan;

(18) attach a description of quality assurance plan, including periodic case reviews, ongoing problem;

(19) identification and steps for remedial action if necessary;

(20) signatures; person completing the application, service chief/service director and medical director;

(21) submit ten (10) copies of the application in its entirety to: EMS bureau, state EMS training coordinator, [[2500 Cerrillos Rd.] 1301 Siler Rd., Building F, Santa Fe, NM [87505] 87507];

(22) submit one copy to the regional office.

[7.27.2.16 NMAC - Rp, 7.27.2.16 NMAC, 12/15/2008; A, 3/15/2010]

## **7.27.2.17 APPENDIX D: LICENSING APPLICATION:**

### **A. Section I- initial application for licensure:**

(1) **General:** To apply for licensure as an emergency medical dispatcher (EMD), EMD-instructor, EMS first responder, EMT-basic, EMT-intermediate, or EMT-paramedic, the licensure application form shall be used. The instructions for this form are included in the application packet, which is available at the EMS bureau.

(2) The EMS levels currently authorized for licensure in New Mexico are emergency medical dispatcher (EMD), EMD-instructor, EMS first responder, EMT-basic, EMT-intermediate and EMT-paramedic. State examinations are not required for licensure of EMD or EMD-instructor.

### **B. Registration for training and licensure application:**

(1) **Purpose:** The form has been developed by the EMS bureau as part of the statewide EMS information management system. It serves three primary purposes towards applying for licensure. These are:

(a) to register in-state candidates for training with a New Mexico approved EMS training program and the EMS bureau, thus establishing an EMS candidate record at the beginning of EMS instruction; or,

(b) for use by former EMS personnel whose licensure has expired within the past ~~three (3)~~ two (2) years to re-enter the EMS field at the same level; or

(c) for use by out-of-state candidates to apply for testing or licensure.

(2) This form is used to establish a person's record in the EMS registry as a candidate for licensure. Normally, for in-state EMT courses, the form is completed during the course, with the assistance of the course instructor. It is used by the approved EMS training program and the EMS bureau to register persons for training and establish them as a licensure candidate, respectively.

(3) To request a complete licensure application package, including the licensure application form, call the EMS bureau at ~~[[505-476-7701]~~ 505-476-8200 or write the EMS bureau at: EMS bureau, attn: operations section, ~~[2500 Cerrillos Road]~~ 1301 Siler Rd., Building F, Santa Fe, New Mexico ~~[87505]~~ 87507].

(4) A package will be sent to applicant in the mail containing all forms required.

(5) Original forms will only be accepted at the EMS bureau, as an optical scanner scans these forms.

### **C. Test request application form:**

(1) **Purpose:** This form is used to apply for a state examination site. It is used by EMS course graduates who have already completed the registration for training and licensure application form and who are listed as a candidate in the New Mexico registry of EMS personnel. EMS course graduates will have already completed the registration for training or licensing application during their course. If, for some reason, the application was not filled out, call the bureau and an application will be mailed out.

(2) In all cases of licensure, the registration for training or licensure application is required to be scanned into the bureau's computer system prior to the test request application form.

(3) Only original forms will be accepted at the EMS bureau. To request a complete test request application package, please contact the EMS bureau. [7.27.2.17 NMAC - Rp, 7.27.2.17 NMAC, 12/15/2008; A, 3/15/2010]

## **7.27.2.19 HEARINGS:**

**A. Right to appeal:** A licensee or applicant may appeal a decision by the department to take a disciplinary action against the licensee or applicant under this rule.

**B. Right to hearing:** A

licensee or applicant may request a hearing before a hearing officer appointed by the secretary to contest a proposed action or immediate suspension under this rule, by mailing a certified letter, return receipt requested, to the bureau within twenty (20) days after service of the notice of the contemplated action or immediate suspension. If the licensee or applicant fails to request a hearing in the time and manner required by this section, the licensee or applicant shall forfeit the right to a hearing, and the proposed action shall become final and not subject to judicial review.

### **C. Scheduling the hearing:**

(1) **Appointment of hearing officer:** Upon the bureau's receipt of a timely request for a hearing, the department shall appoint a hearing officer and schedule a hearing.

(2) **Hearing date:** The hearing shall be held not more than sixty (60) days and not less than fifteen (15) days from the date of service of the notice of the hearing. **Exception for immediate suspensions; expedited hearing:** In the event that the bureau immediately suspends an individual's license, the department shall afford the individual an expedited hearing within twenty (20) days of the date of the bureau's timely receipt of the licensee's request for a hearing, unless the individual waives this provision.

(3) **Notice of hearing:** The department shall notify the licensee or applicant of the date, time, and place of the hearing and the identity of the hearing officer, and shall identify the statute(s) and regulation(s) authorizing the department to take the contemplated action (unless previously disclosed), within twenty (20) days of the bureau's timely receipt of the request for hearing. **Exception for immediate suspensions:** In the event that the bureau immediately suspends an individual's license, the department shall notify the individual of the expedited hearing not less than seven (7) days prior to the scheduled date of the expedited hearing.

(4) **Hearing venue:** The hearing shall be held in the county in which the person whose license is involved maintains his residence, or at the election of the hearing officer, in any county in which the acts complained of occurred. In any case, the hearing officer may, with the agreement of the parties, hold the hearing in some other county. **Exceptions; expedited hearings and cases involving initial licensure:** Expedited hearings shall be held in Santa Fe, NM. Hearings in cases involving initial licensure shall also be held in Santa Fe, New Mexico.

**D. Method of service:** Any notice or decision required to be served under this section may be served

either personally or by certified mail, return receipt requested, directed to the licensee or applicant at the last known mailing address (or, if service is made personally, by the last known physical address) shown by the records of the bureau. If the notice or decision is served personally, service shall be made in the same manner allowed by the rules of civil procedure for the state district courts of New Mexico. Where the notice or decision is served by certified mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery, or the date of the last attempted delivery of the notice or decision, or the date of the addressee's refusal to accept delivery.

### **E. Excusal of the hearing officer:**

(1) **Peremptory excusal:** A party shall have the ability to excuse one hearing officer. The party may request the peremptory excusal by submitting to the secretary a motion for peremptory excusal at least twenty (20) days prior to the date of the hearing, or at least five (5) days prior to the date of an expedited hearing concerning the immediate suspension of an individual's license.

(2) **Excusal for good cause shown:** A party may request that a hearing officer be excused for good cause shown by submitting to the secretary a motion of excusal for good cause at least twenty (20) days prior to the date of the hearing, or at least five (5) days prior to an expedited hearing concerning the immediate suspension of an individual's license.

**F. Hearing officer duties:** The hearing officer shall conduct the hearing, rule on any motions or other matters that arise prior to the hearing, and issue a written report and recommendation(s) to the secretary following the close of the hearing.

**G. Official file:** Upon appointment, the hearing officer shall establish an official file which shall contain all notices, hearing requests, pleadings, motions, written stipulations, evidence, briefs, and correspondence received in the case. The official file shall also contain proffered items not admitted into evidence, which shall be so identified and shall be separately maintained. Upon conclusion of the proceeding and following issuance of the final decision, the hearing officer shall tender the complete official file to the department for its retention as an official record of the proceedings.

**H. Powers of hearing officer:** The hearing officer shall have all the powers necessary to conduct a hearing and to take all necessary action to avoid delay, maintain order, and assure development of a clear and complete record, including but not limited to the power to: administer oaths or affirmations; schedule continuances; direct discovery; examine witnesses and direct

witnesses to testify; subpoena witnesses and relevant books, papers, documents, and other evidence; limit repetitious and cumulative testimony; set reasonable limits on the amount of time a witness may testify; decide objections to the admissibility of evidence or receive the evidence subject to later ruling; receive offers of proof for the record; take notice of judicially cognizable facts or take notice of general, technical, or scientific facts within the hearing officer's specialized knowledge (provided that the hearing officer notifies the parties beforehand and offers the parties an opportunity to contest the fact so noticed); direct parties to appear and confer for the settlement or simplification of issues, and otherwise conduct pre-hearing conferences; impose appropriate evidentiary sanctions against a party who fails to provide discovery or who fails to comply with a subpoena; dispose of procedural requests or similar matters; and enter proposed findings of fact and conclusions of law, orders, reports and recommendations. The hearing officer may utilize his or her experience, technical competence or specialized knowledge in the evaluation of evidence presented.

**I. Minimum discovery; inspection and copying of documents:** Upon written request to another party, any party shall have access to documents in the possession of the other party that are relevant to the subject matter of the appeal, except confidential or privileged documents.

**J. Minimum discovery; witnesses:** The parties shall each disclose to each other and to the hearing officer, either orally or in writing, the names of witnesses to be called, together with a brief summary of the testimony of each witness. In situations where written statements will be offered into evidence in lieu of a witness's oral testimony, the names of the persons making the statements and a brief summary of the statements shall be disclosed.

**K. Additional discovery:** At the hearing officer's discretion, upon a written request by a party that explains why additional discovery is needed, further discovery in the form of production and review of documents and other tangible things, interviews, depositions or written interrogatories may be ordered. In exercising his authority to determine whether further discovery is necessary or desirable, the hearing officer should consider whether the complexity of fact or law reasonably requires further discovery to ensure a fair opportunity to prepare for the hearing, and whether such request will result in unnecessary hardship, cost, or delay in holding the hearing. Depositions shall not be allowed, except by order of the hearing officer upon a showing that the deposition is necessary to preserve the testimony of persons who are sick or elderly, or who will not be able to attend the hearing.

**L. Subpoena limits; service:** Geographical limits upon the subpoena power shall be the same as if the hearing officer were a district court sitting at the location at which the hearing or discovery proceeding is to take place. The method of service shall be the same as that under the Rules of Civil Procedure for the district courts, except that rules requiring the tendering of fees shall not apply to the department.

**M. Pre-hearing disposition:** The subject matter of any hearing may be disposed of by stipulation, settlement or consent order, unless otherwise precluded by law. Any stipulation, settlement or consent order reached between the parties shall be written and shall be signed by the hearing officer and the parties or their attorneys.

**N. Postponement or continuance:** The hearing officer, at his or her discretion, may postpone or continue a hearing upon his or her own motion, or upon the motion of a party, for good cause shown. Notice of any postponement or continuance shall be given in person, by telephone, or by mail to all parties within a reasonable time in advance of the previously scheduled hearing date.

**O. Conduct of hearing:** Pursuant to the NM Open Meetings Act, NMSA 1978, Section 10-15-1 *et seq.*, hearings shall be open to the public; provided, however, that hearings may be closed in part to prevent the disclosure of confidential information, including but not limited to health information protected by state and federal laws.

**P. Telephonic testimony:** Upon timely notice to the opposing party and the hearing officer, and with the approval of the hearing officer, the parties may present witnesses by telephone or live video (if available).

**Q. Legal representation:** The department and EMS agencies or applicants may appear by an officer or employee, or may be represented by an attorney licensed to practice in New Mexico.

**R. Recording:** The hearing officer or a designee shall record the hearing by means of a mechanical sound recording device provided by the department for a record of the hearing. Such recording need not be transcribed, unless requested by a party who shall arrange and pay for the transcription.

**S. Burden of proof:** Except as otherwise provided in this rule, the department has the burden of proving by a preponderance of the evidence the basis for the proposed action. **Exception in denied application cases:** In cases arising from the denial of permission to take a licensing examination for which application has been properly made, denial of a license

for any cause other than failure to pass an examination, or denial of a license for which application has been properly made on the basis of reciprocity or endorsement or acceptance of a national certificate of qualification, the applicant shall bear the initial burden of proving by a preponderance of the evidence the applicant's qualifications.

**T. Order of presentation; general rule:** Except as provided in this rule, the order of presentation for hearings in all cases shall be:

(1) **appearances:** opening of proceeding and taking of appearances by the hearing officer;

(2) **pending matters:** disposition by the hearing officer of preliminary and pending matters;

(3) **opening statements:** the opening statement of the department; and then the opening statement of the party challenging the department's action or proposed action;

(4) **cases:** the department's case-in-chief, and then the case-in-chief of the party challenging the department's action;

(5) **rebuttal:** the department's case-in-rebuttal;

(6) **closing argument:** the department's closing statement, which may include legal argument; and then the closing statement of the party opposing the department's action or proposed action, which may include legal argument; and

(7) **close:** close of proceedings by the hearing officer.

**U. Order of presentation in denied application cases:** The order of presentation in cases arising from the denial of permission to take a licensing examination for which application has been properly made, denial of a license for any cause other than failure to pass an examination, or denial of a license for which application has been properly made on the basis of reciprocity or endorsement or acceptance of a national certificate of qualification shall be:

(1) **appearances:** opening of proceeding and taking of appearances by the hearing officer;

(2) **pending matters:** disposition by the hearing officer of preliminary and pending matters;

(3) **opening statements:** applicant's opening statement; and then the opening statement of the department;

(4) **cases:** the applicant's case-in-chief, and then the department's case-in-chief;

(5) **rebuttal:** the applicant's case-in-rebuttal;

(6) **closing argument:** the applicant's closing statement, which may include legal argument; and then the department's closing statement, which may include legal argument; and

(7) **close:** close of proceedings by



the hearing officer.

**V. Admissible evidence:** **rules of evidence not applicable:** The hearing officer may admit evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs. Rules of evidence, such as the New Mexico Rules of Evidence for the district courts, shall not apply but may be considered in determining the weight to be given any item of evidence. The hearing officer may at his or her discretion, upon his or her motion or the motion of a party or a party's representative, exclude incompetent, irrelevant, immaterial or unduly repetitious evidence, including testimony, and may exclude confidential or privileged evidence.

**W. Objections:** A party may timely object to evidentiary offers by stating the objection together with a succinct statement of the grounds for the objection. The hearing officer may rule on the admissibility of evidence at the time an objection is made or may receive the evidence subject to later ruling.

**X. Official notice:** The hearing officer may take notice of any facts of which judicial notice may be taken, and may take notice of general, technical or scientific facts within his or her specialized knowledge. When the hearing officer takes notice of a fact, the parties shall be notified either before or during the hearing of the fact so noticed and its source, and the parties shall be afforded an opportunity to contest the fact so noticed.

**Y. Record content:** The record of a hearing shall include all documents contained in the official file maintained by the hearing officer, including all evidence received during the course of the hearing, proposed findings of fact and conclusions of law, the recommendations of the hearing officer, and the final decision of the secretary.

**Z. Written evidence from witnesses:** The hearing officer may admit evidence in the form of a written statement made by a witness, when doing so will serve to expedite the hearing and will not substantially prejudice the interests of the parties.

**AA. Failure to appear:** If a party who has requested a hearing or a party's representative fails to appear on the date, time or location announced for a hearing, and if no continuance was previously granted, the hearing officer may proceed to hear the evidence of such witnesses as may have appeared or may accept offers of proof regarding anticipated testimony and other evidence, and the hearing officer may further proceed to consider the matter and issue his report and recommendation(s) based on the evidence presented; and the secretary may subsequently render a final decision. Where

a person fails to appear at a hearing because of accident, sickness or other cause, the person may within a reasonable time apply to the hearing officer to reopen the proceeding, and the hearing officer may, upon finding sufficient cause, fix a time and place for a hearing and give notice to the parties.

**BB. Hearing officer written report and recommendation(s):** The hearing officer shall submit a written report and recommendation(s) to the secretary that contains a statement of the issues raised at the hearing, proposed findings of fact and conclusions of law, and a recommended determination. Proposed findings of fact shall be based upon the evidence presented at the hearing or known to all parties, including matters officially noticed by the hearing officer. The hearing officer's recommended decision is a recommendation to the secretary of the New Mexico department of health and is not a final order.

**CC. Submission for final decision:** The hearing officer's report and recommendation(s) shall be submitted together with the complete official file to the secretary of the New Mexico department of health for a final decision no later than thirty (30) days after the hearing.

**DD. Secretary's final decision:** The secretary shall render a final decision within forty-five (45) calendar days of the submission of the hearing officer's written report. The final decision shall contain a statement informing the applicant or licensee of their right to judicial review and the time within which such review must be brought (see below). A copy of the final decision shall be mailed to the appealing party by certified mail, return receipt requested, within fifteen (15) days after the final decision is rendered and signed. A copy shall be provided to legal counsel for the bureau.

**EE. Right to judicial review:** Pursuant to NMSA 1978, Section 39-3-1.1, a licensee or applicant that is entitled to a hearing under this rule and that is aggrieved by an adverse final decision may obtain a judicial review of the decision by filing in state district court a notice of appeal within thirty (30) days of the entry of the final decision by the secretary.

**FF. Court-ordered stay:** Filing for judicial review shall not itself stay enforcement of the final decision. Any party may petition the court whose jurisdiction has been properly invoked for an order staying enforcement.

[7.27.2.19 NMAC - N, 3/15/2010]

## NEW MEXICO RACING COMMISSION

Explanatory paragraph: This is an amendment to Subsection C of 15.2.6.9 NMAC adding requirements to the Salix administration and setting forth the limited use of clenbuterol. Effective 03/16/10.

### 15.2.6.9 MEDICATIONS AND PROHIBITED SUBSTANCES:

The "uniform classification guidelines for foreign substances and recommended penalties and model rule", revised February 2009, as issued by the association of racing commissioners international, is incorporated by reference. Upon a finding of a violation of these medication and prohibited substances rules, the stewards shall consider the classification level of the violation as listed at the time of the violation by the uniform classification guidelines of foreign substances as promulgated by the association of racing commissioners international and impose penalties and disciplinary measures as determined by the New Mexico racing commission. The commission only adopts the recommended penalties listed in this reference material should a violation occur in a thoroughbred [grade] graded stake race. The guidelines and recommended penalties shall be provided to all license holders by attachment to this section. Provided, however, that in the event a majority of the stewards determine that mitigating circumstances require imposition of a lesser penalty they may impose the lesser penalty.

...

### C. MEDICATION RESTRICTIONS:

...

(b) **Furosemide (Salix):** furosemide (Salix) may be administered intravenously to a horse, which is entered to compete in a race. Except under the instructions of the official veterinarian for the purpose of removing a horse from the veterinarian's list or to facilitate the collection of a post-race urine sample, furosemide (Salix) shall be permitted only after the trainer enters the horse on the bleeder list by so declaring it as a bleeder on the entry card.

(i) The use of furosemide (Salix) shall be permitted under the following circumstances on association grounds where a detention barn is utilized: furosemide (Salix) shall be administered no less than three hours prior to post time for the race for which the horse is entered. A horse qualified for a furosemide (Salix) administration must be brought to the detention barn [within time



to comply with] one hour prior to the three-hour administration requirement specified above. After treatment, the horse shall be required by the commission to remain in the detention barn in the care, custody and control of its trainer or the trainer's designated representative under association and/or commission security supervision until called to the saddling paddock.

(ii) The use of furosemide (**Salix**) shall be permitted under the following circumstances on association grounds where a detention barn is not utilized: furosemide (**Salix**) shall be administered no less than three hours prior to post time for the race for which the horse is entered; the horse must be logged in at the stable gate with time and location no less than one hour prior to administration; the furosemide (**Salix**) dosage administered shall not exceed 250 milligrams nor be less than 100 milligrams; the trainer of the treated horse shall cause to be delivered to the official veterinarian or his/her designee no later than one hour prior to post time for the race for which the horse is entered the following information under oath on a form provided by the commission: the racetrack name, the date and time the furosemide (**Salix**) was administered to the entered horse; the dosage amount of furosemide (**Salix**) administered to the entered horse; the printed name and signature of the attending licensed veterinarian who administered the furosemide (**Salix**).

(iii) Quantitation of furosemide in serum or plasma shall be performed when specific gravity of the corresponding urine sample is not measured or if measured below 1.010. Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

(iv) **Bleeder List.** The official veterinarian shall maintain a bleeder list of all horses, which have been certified as bleeder horses. Such certified horses must have been entered by the trainer as a bleeder to obtain certification.

(v) The confirmation of a bleeder horse must be certified in writing by the official veterinarian or the racing veterinarian and entered on the bleeder list. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's certificate of registration.

(vi) Every confirmed bleeder, regardless of age, shall be placed on the bleeder list.

(vii) A horse may be removed from the bleeder list only upon the direction of the official veterinarian, who shall certify in writing to the stewards the recommendation for removal and only after remaining on the bleeder list for a minimum of sixty (60) days.

(viii) A horse, which has been placed on a bleeder list in another jurisdiction, may be placed on a bleeder list in this jurisdiction by entering the horse into a race by so declaring it on the entry card as a bleeder in another jurisdiction.

(c) **Flunixin:** In addition to phenylbutazone and furosemide, flunixin may be administered in such dosage amount that the official test sample shall not exceed 1.0 microgram per milliliter of the drug substance, its metabolites, or analogs, per milliliter of blood plasma.

(d) **Meclofenamic acid:** In addition to phenylbutazone and furosemide, meclofenamic acid may be administered in such dosage amount that the official test sample shall not exceed 1.0 microgram per milliliter of the drug substance, its metabolites, or analogs, per milliliter of blood plasma.

(e) **Ketoprofen:** In addition to phenylbutazone and furosemide, ketoprofen may be administered in such dosage amount that the official test sample shall not exceed 50 nanograms per milliliter of the drug substance, its metabolites, or analogs, per milliliter of plasma.

(4) The official urine test sample may contain one of the following drug substances, their metabolites or analogs, in any amount that does not exceed the specified levels:

(a) **Acepromazine:** The use of acepromazine shall be permitted under the following conditions: Any horse to which acepromazine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of acepromazine shall not exceed 25 nanograms per milliliter of urine, or its blood equivalent.

(b) **Albuterol:** The use of albuterol shall be permitted under the following conditions: Any horse to which albuterol has been administered shall be subject to having a blood and urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of albuterol shall not exceed 1 nanogram per milliliter of urine, or its blood equivalent. If albuterol is detected in the urine, it must be confirmed in the blood to be a violation.

(c) **Atropine:** The use of atropine shall be permitted under the following conditions: Any horse to which atropine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or

the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of atropine shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

(d) **Benzocaine:** The use of benzocaine shall be permitted under the following conditions: Any horse to which benzocaine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of benzocaine shall not exceed 50 nanograms per milliliter of urine, or its blood equivalent.

(e) **Mepivacaine:** The use of mepivacaine shall be permitted under the following conditions: Any horse to which mepivacaine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of mepivacaine shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

(f) **Procaine:** The use of procaine shall be permitted under the following conditions: Any horse to which procaine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of procaine shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

(g) **Promazine:** The use of promazine shall be permitted under the following conditions: Any horse to which promazine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of promazine shall not exceed 25 nanograms per milliliter of urine, or its blood equivalent.

(h) **Salicylates:** The use of salicylates shall be permitted under the following conditions: Any horse to which salicylates have been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of salicylates shall not exceed 750 micrograms per milliliter of urine, or its

blood equivalent.

**(i) Androgenic-anabolic steroids.**

(i) No AAS shall be permitted in test sample collected from racing horses except for residues of the major metabolite of **stanozolol**, **nandrolone**, and the naturally occurring substances **boldenone** and testosterone at concentrations less than the indicated thresholds.

(ii) Concentrations of these AAS shall not exceed the following urine threshold concentrations for total (i.e., free drug or metabolite and drug or metabolite liberated from its conjugates): a) 16B-hydroxystanozolol (metabolite of stanozolol (Winstrol) - 1 ng/ml in urine for all horses regardless of sex; b) boldenone (Equipose ® is the undecylenate ester of boldenone) in male horses other than geldings - 15 ng/ml in urine; no boldenone shall be permitted in geldings or female horses; c) nandrolone (Durabolin ® is the phenylpropionate ester and Deca-Durabolin ® is the decanoate ester) (in geldings - 1 ng/ml in urine, in fillies and mares - 1 ng/ml in urine); in male horses other than geldings-45 ng/ml of metabolite, 5 alpha oestrane-3 beta, 17 alpha - diol in urine; d) testosterone (in geldings - 20 ng/ml in urine, in fillies and mares - 55 ng/ml in urine).

(iii) Any other anabolic steroids are prohibited in racing horses.

(iv) The presence of more than one of the four AAS identified in Item (ii) of this subparagraph at concentrations greater than the individual thresholds indicated above shall not be permitted.

(v) Post-race urine samples collected from intact males must be identified to the laboratory.

(vi) Any horse to which an anabolic steroid has been administered in order to assist in the recovery from illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug or metabolite in urine. After the concentration has fallen below the designated threshold for the administered AAS, the horse is eligible to be removed from the list.

(j) **Butorphanol:** The use of butorphanol shall be permitted under the following conditions: Any horse to which butorphanol has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of butorphanol shall be administered in such dosage amount that the official test sample shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

(k) **Detomidine:** The use of

detomidine shall be permitted under the following conditions: Any horse to which detomidine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of detomidine shall be administered in such dosage amount that the official test sample shall not exceed 100 nanograms per milliliter of urine, or its blood equivalent.

(l) **Dexamethasone:** The use of dexamethasone shall be permitted under the following conditions: Any horse to which dexamethasone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of dexamethasone shall be administered in such dosage amount that the official test sample shall not exceed 100 nanograms per milliliter of urine, or its blood equivalent.

(m) **Diclofenac:** The use of diclofenac shall be permitted under the following conditions: Any horse to which diclofenac has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of diclofenac shall be administered in such dosage amount that the official test sample shall not exceed 500 nanograms per milliliter of urine, or its blood equivalent.

(n) **Dipyrone:** The use of dipyrone shall be permitted under the following conditions: Any horse to which dipyrone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of dipyrone shall be administered in such dosage amount that the official test sample shall not exceed 1000 nanograms per milliliter of urine, or its blood equivalent.

(o) **DMSO:** The use of DMSO shall be permitted under the following conditions: Any horse to which DMSO has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of DMSO shall be administered in such dosage amount that the official test sample shall not exceed

10,000 nanograms per milliliter of urine, or its blood equivalent.

(p) **Flucort:** The use of flumethasone shall be permitted under the following conditions: Any horse to which flucort has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of flumethasone shall be administered in such dosage amount that the official test sample shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

(q) **Isoxsuprine:** The use of isoxsuprine shall be permitted under the following conditions: Any horse to which isoxsuprine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of isoxsuprine shall be administered in such dosage amount that the official test sample shall not exceed 1000 nanograms per milliliter of urine, or its blood equivalent.

(r) **Methocarbamol:** The use of methocarbamol shall be permitted under the following conditions: Any horse to which methocarbamol has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of methocarbamol shall be administered in such dosage amount that the official test sample shall not exceed 1000 nanograms per milliliter of urine, or its blood equivalent.

(s) **Naproxen:** The use of naproxen shall be permitted under the following conditions: Any horse to which naproxen has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of naproxen shall be administered in such dosage amount that the official test sample shall not exceed 5000 nanograms per milliliter of urine, or its blood equivalent.

(t) **Pentoxifylline:** The use of pentoxifylline shall be permitted under the following conditions: Any horse to which pentoxifylline has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine

sample. The permitted quantitative test level of pentoxifylline shall be administered in such dosage amount that the official test sample shall not exceed 50 nanograms per milliliter of urine, or its blood equivalent.

(u) **Pyrilamine:** The use of pyrilamine shall be permitted under the following conditions: Any horse to which pyrilamine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of pyrilamine shall be administered in such dosage amount that the official test sample shall not exceed 50 nanograms per milliliter of urine, or its blood equivalent.

(v) **Triamcinalone:** The use of triamcinalone shall be permitted under the following conditions: Any horse to which triamcinalone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of triamcinalone shall be administered in such dosage amount that the official test sample shall not exceed 2 nanograms per milliliter of urine, or its blood equivalent.

(w) **Ulcer medications, i.e., cimetidine, sucralfate, rantidine:** The use of ulcer medications shall be permitted until further notice.

(x) **Clenbuterol:** The use of clenbuterol shall be permitted under the following conditions: Any horse to which clenbuterol has been administered shall be subject to having blood and urine samples taken at the direction of the official veterinarian to determine the quantitative level (s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of clenbuterol shall be administered in such dosage amount that the official test sample shall not exceed 5 nanograms per milliliter in urine or 25 picograms per milliliter of serum or plasma.

[15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 04/13/2001; A, 08/30/2001; A, 07/15/2002; A, 08/15/2002; A, 09/29/2006; A, 10/31/2006; A, 08/30/2007; A, 01/31/2008; A, 03/01/2009; A, 06/15/09; A, 06/30/09; A, 09/15/09; A, 12/15/09; A, 03/16/10]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

### TITLE 3: TAXATION CHAPTER 12: HIGHWAY USE TAXES AND FEES

#### PART 13: CIVIL PENALTIES - FAILURE TO CORRECTLY REPORT

3.12.13.1 **ISSUING AGENCY:**  
Taxation and Revenue Department, Joseph  
M. Montoya Building, 1100 South St.  
Francis Drive, P.O. Box 630, Santa Fe NM  
87504-0630  
[3.12.13.1 NMAC - N, 3/15/10]

3.12.13.2 **SCOPE:** This part  
applies to all registrants, owners and  
operators of motor vehicles with a declared  
gross weight of 26,001 pounds or more if  
the motor vehicles are used or intended to  
be used on New Mexico highways, when  
the motor vehicle is registered with New  
Mexico.  
[3.12.13.2 NMAC - N, 3/15/10]

3.12.13.3 **STATUTORY  
AUTHORITY:** Section 9-11-6.2 NMSA  
1978.  
[3.12.13.3 NMAC - N, 3/15/10]

3.12.13.4 **DURATION:**  
Permanent.  
[3.12.13.4 NMAC - N, 3/15/10]

3.12.13.5 **EFFECTIVE DATE:**  
3/15/10, unless a later date is cited at the end  
of a section, in which case the later date is  
the effective date.  
[3.12.13.5 NMAC - N, 3/15/10]

3.12.13.6 **OBJECTIVE:**  
The objective of this part is to interpret,  
exemplify, implement and enforce the  
provisions of the Weight Distance Tax Act.  
[3.12.13.6 NMAC - N, 3/15/10]

3.12.13.7 **DEFINITIONS:**  
[Reserved.]

3.12.13.8 **WHEN CIVIL  
PENALTIES ARE IMPOSED:** The civil  
penalties under Section 7-15A-16 NMSA  
1978 will be imposed only in connection  
with audits conducted by the New Mexico  
taxation and revenue department showing  
that a commercial motor carrier has  
underreported declared gross vehicle weight  
or miles driven in New Mexico. The types  
of audits include, but are not limited to, field  
audits and limited scope audits. Reporting  
of additional gross vehicle weight or miles  
driven in New Mexico on amended returns  
prepared by the taxpayer or taxpayer's

representative and managed audits will not  
be subject to the civil penalties under Section  
7-15A-16 NMSA 1978.

[3.12.13.8 NMAC - N, 3/15/10]

HISTORY OF 3.12.13 NMAC:  
[RESERVED]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.1 NMAC,  
Section 18 effective 3/15/2010.

### 3.2.1.18 **GROSS RECEIPTS; SERVICES.**

A. **Receipts from  
performing a service in New Mexico.**  
Receipts derived from performing a service  
in New Mexico are subject to the gross  
receipts tax.

B. **Services performed  
both within and without New Mexico.**  
Receipts from services, other than research  
and development services and services  
subject to the Interstate Telecommunications  
Gross Receipts Tax Act, performed both  
within and without New Mexico are subject  
to the gross receipts tax on the portion of  
the services performed within New Mexico.

C. **Allocating receipts  
from selling services performed within  
and without New Mexico.**

(1) When a prime contractor  
performs services both within and without  
New Mexico, cost accounting records which  
reasonably allocate all costs to the location  
of the performance of the service shall be  
used to determine the amount of services  
performed in New Mexico. If adequate  
cost accounting records are not kept for  
the allocation of costs to specific locations,  
the receipts from performing such services  
shall be prorated based on the percentage  
of service actually performed within New  
Mexico. The percentage shall be calculated  
by dividing the time spent by the prime  
contractor in performing such services in  
New Mexico by the total contract time  
spent performing services everywhere.  
Other reasonable methods of prorating such  
services may be acceptable if approved by  
the department in advance of performing the  
services.

(2) Services subcontracted to  
third parties under a single contract by a  
prime contractor and used or consumed by  
the prime contractor in the performance  
of the contract shall be prorated by the  
prime contractor on the same basis, i.e.,  
based either on allocated costs using cost  
accounting records or on the percentage of  
the total service actually performed within  
New Mexico by the prime contractor or



other reasonable method approved by the department.

(3) If a subcontract service is actually a service purchased for resale, and all conditions of Section 7-9-48 NMSA 1978 are met and the subcontracted service is actually sold intact to the prime contractor's customer, the prime contractor may issue a Type 5 nontaxable transaction certificate to the subcontractor and the receipts from such subcontracted service will be deductible from the subcontractor's gross receipts.

(4) The subcontractor must use the same method of prorating the performance of services within and without New Mexico as used by the prime contractor.

(5) This subsection shall not apply to a contractor who is performing construction services.

#### **D. Expenses incurred outside New Mexico and allocated to operations in New Mexico.**

(1) General administrative and overhead expenses incurred outside New Mexico and allocated to operations in this state for bookkeeping purposes, costs of travel outside New Mexico, which travel was an incidental expense of performing services in New Mexico, employee benefits, such as retirement, hospitalization insurance, life insurance and the like, paid to insurers or others doing business outside New Mexico for employees working in New Mexico and other expenses incurred outside New Mexico which are incidental to performing services in New Mexico, all constitute the taxpayer's expenses of performing services in New Mexico.

(2) No provision of the Gross Receipts and Compensating Tax Act allows a deduction for expenses incurred in performing services to determine gross receipts subject to tax. Therefore, the total amount of money or reasonable value of other consideration derived from performing services in New Mexico is subject to the gross receipts tax.

#### **E. Receipts from performing services outside New Mexico.**

(1) Receipts from performing services, except research and development services, outside New Mexico are not subject to the gross receipts tax under the provisions of Section 7-9-13.1 NMSA 1978.

(2) *Example 1:* P, a resident of New Mexico, is an expert forest fire fighter. P's receipts from fighting forest fires outside New Mexico are not includable in P's gross receipts.

(3) *Example 2:* D is a data processing bureau located in Lone Tree, Iowa. X, a New Mexico accounting and bookkeeping firm, mails accounting data to D. D then processes this material into general ledgers, payroll journals and other journals and then returns this material by mail to X. The receipts of D are receipts

from performing services entirely outside New Mexico and therefore are not subject to the gross receipts tax.

(4) *Example 3:* L, an Albuquerque attorney, is retained by a Colorado firm to negotiate and draw up oil and gas leases for lands in southern Colorado. To accomplish this objective, L goes to Pueblo, Colorado, and there negotiates and draws the leases. Receipts from the fee are not includable in L's gross receipts because the service was performed entirely outside the state of New Mexico.

#### **F. Sales of state licenses by nongovernmental entities.**

(1) Amounts retained by nongovernmental entities as compensation for services performed in selling state licenses are gross receipts.

(2) *Example:* G owns and operates a small grocery store in rural New Mexico which is located near a popular fishing area. As a convenience to the public, G sells New Mexico Game and Fish licenses. For its services in selling these licenses, G retains a small percentage of the total license fee. The amounts retained are gross receipts because they are receipts derived from services performed in New Mexico. G may not deduct the amounts retained pursuant to Section 7-9-66 NMSA 1978 which deals with commissions derived from the sale of tangible personal property not subject to the gross receipts tax. A New Mexico game and fish license is not tangible personal property pursuant to Subsection J of Section 7-9-3 NMSA 1978.

**G. Stockbrokers' commissions.** Gross receipts include commissions received by stockbrokers, located in New Mexico, for handling transactions for out-of-state as well as in-state residents.

**H. Attorneys' fees.** Regardless of the source of payment or the fact of court appointment, the fees of attorneys are subject to the gross receipts tax to the extent that their services are performed in this state.

**I. Directors' or trustees' fees.**

(1) The receipts of a member of a board of directors or board of trustees from attending a directors' or trustees' meeting in New Mexico are receipts derived from performing a service in New Mexico and are subject to the gross receipts tax.

(2) *Example:* X is on the board of directors of a New Mexico corporation and a Texas corporation. X attends directors' meetings in Texas and New Mexico. For each directors' meeting that X attends, X is paid a fee of \$50.00. X is performing a service. The fee which X receives from performing this service in New Mexico is subject to the gross receipts tax. The fee which X receives from performing the service in Texas is not

subject to the gross receipts tax. However, the burden is on X to segregate receipts which are not taxable from those which are taxable.

(3) *Example:* Y is on the board of trustees of Z, a New Mexico electric cooperative organized under the provisions of the Rural Electric Cooperative Act. Y receives \$85 a day for Y to attend Z's regular meetings in New Mexico, plus reimbursement for mileage to and from the meeting at the standard IRS rate. Y also receives \$85 a day for Y to attend no more than one other meeting, conference or training inside or outside New Mexico within any one month, plus reimbursement of actual expenses, including hotel, transportation, tips and reasonable expenses for meals and entertainment. Y is performing a service. The fees and reimbursements Y receives for attending meetings, conferences and trainings in New Mexico are subject to gross receipts tax. The fees and reimbursements Y receives for attending meetings, conferences and trainings outside New Mexico are not subject to gross receipts tax.

(a) See Paragraph (1) of Subsection C of 3.2.1.19 NMAC regarding reimbursed expenditures.

(b) Y is not a volunteer as defined in Paragraph (2) of Subsection D of 3.2.1.19 NMAC because Y receives compensation for Y's services in addition to reimbursement of Y's out-of-pocket expenses incurred in the performance of Y's services.

#### **J. Anesthetists' fees.**

(1) The receipts of a nonemployee anesthetist from anesthetic services performed for a surgeon are subject to the gross receipts tax.

(2) The receipts of an anesthetist from the performance of this service for a surgeon may be deducted from gross receipts if the surgeon resells the service to the patient and delivers a nontaxable transaction certificate to the anesthetist. The surgeon delivering the nontaxable transaction certificate must separately state the value of the service purchased in the charge for the service on its subsequent sale. The subsequent sale must be in the ordinary course of business and subject to the gross receipts tax.

(3) *Example:* A is an anesthetist who is employed by a hospital and also performs services for and receives compensation from a surgeon who is not associated with the hospital. The surgeon does not consider the anesthetist to be an employee and does not withhold income or other taxes from the anesthetist's compensation. Although the surgeon may exercise some control over the services performed by the anesthetist, the surgeon relies on the anesthetist's training and experience to accomplish the result desired. The receipts of the anesthetist from this service performed are subject to the



gross receipts tax.

**K. Athletic officials.** Receipts of a referee, umpire, scorer or other similar athletic official from umpiring, refereeing, scoring or officiating at a sporting event located in New Mexico, are receipts derived from performance of a service and are subject to the gross receipts tax. Such receipts will not be exempted from the gross receipts tax as "wages" unless the umpires, referees, scorers and other athletic officials demonstrate to the department that such receipts are derived from an employment relationship whereby they are employees within the meaning of Section 3.2.105.7 NMAC.

**L. Racing receipts.** (1) Unless the receipts are exempt under Section 7-9-40 NMSA 1978:

(a) the receipts of vehicle or animal owners from winning purse money at races held in New Mexico are receipts from performing services in New Mexico and are subject to the gross receipts tax if any charge is made for attending, observing or broadcasting the race.

(b) receipts of vehicle drivers, animal riders and drivers and other persons from receiving a percentage of the owner's purse are receipts from performing services in New Mexico and are subject to the gross receipts tax, unless the person receiving the percentage of purse money is an employee, as that term is defined in Section 3.2.105.7 NMAC, of the owner.

(2) Where there is an agreement between the driver, rider or other person and the owner for distribution of the winning purse, then only the amount received pursuant to the agreement is gross receipts of the driver, rider or other person receiving the distribution.

**M. Advertising receipts of a newspaper or broadcaster.**

(1) The receipts of a New Mexico newspaper or a person engaged in the business of radio or television broadcasting from performing advertising services in New Mexico do not include the customary commission paid to or received by a nonemployee advertising agency or a nonemployee solicitation representative, when said advertising services are performed pursuant to an allocation or apportionment agreement entered into between them prior to the date of payment.

(2) Receipts of a New Mexico newspaper or a person engaged in the business of radio or television broadcasting from the sale of advertising services to an advertising agency for resale may be deducted from gross receipts if the advertising agency delivers a nontaxable transaction certificate to the newspaper or the person engaged in the business of radio or television broadcasting. The subsequent sale must be in the ordinary course of business and subject to the gross

receipts tax, or the advertising agency will be subject to the compensating tax on the value of the advertising service at the time it was rendered. This version of Paragraph (2) of Subsection M of Section 3.2.1.18 NMAC applies to transactions occurring on or after July 1, 2000.

**N. Advertising space in pamphlets.** Receipts from selling advertising service to New Mexico merchants in a pamphlet printed outside New Mexico and distributed wholly inside New Mexico are receipts from performing an advertising service in New Mexico. Such receipts are subject to the gross receipts tax.

**O. Billboard advertising.** Receipts derived from contracts to place advertising on outdoor billboards located within the state of New Mexico are receipts from performing an advertising service in New Mexico. Such receipts are subject to the gross receipts tax, regardless of the location of the advertiser.

**P. Day care centers.**

(1) Receipts from providing day care are receipts from performing a service and are subject to the gross receipts tax.

(2) Receipts from providing day care for children in a situation where a commercial day care center provides day care for the children and the expenses of the care for some of these children is paid for by the state of New Mexico are subject to the gross receipts tax.

(3) Receipts from providing day care for children in a situation where a person provides day care for children in a residence and the care for all these children is paid for by the state of New Mexico are subject to the gross receipts tax.

(4) Receipts from providing day care for children in a situation where a person provides day care for children in the children's home and the care for all of these children is paid for by the state of New Mexico are subject to the gross receipts tax.

**Q. Child care.**

(1) Receipts derived by a corporation for providing child care facilities for its employees are subject to the gross receipts tax on the amount received from its employees.

(2) *Example:* The X corporation operates a licensed child care facility to accommodate dependent children of its employees. In order to defray a portion of the cost of the facility, the corporation charges each employee two dollars (\$2.00) per child per week for the use of the facility. All receipts from the two-dollar charge per child per week are subject to the gross receipts tax.

**R. Service charges; tips.**

(1) Except for tips, receipts of hotels, motels, guest lodges, restaurants and other similar establishments from amounts determined by and added to the customer's

bill by the establishment for employee services, whether or not such amounts are separately stated on the customer's bill, are gross receipts of the establishment.

(2) A tip is a gratuity offered to service personnel to acknowledge service given. An amount added to a bill by the customer as a tip is a tip. Because the tip is a gratuity, it is not gross receipts.

(3) Amounts denominated as a "tip" but determined by and added to the customer's bill by the establishment may or may not be gross receipts. If the customer is required to pay the added amount and the establishment retains the amount for general business purposes, clearly it is not a gratuity. Amounts retained by the establishment are gross receipts, even if labeled as "tips". If the customer is not required to pay the added amount and any such amounts are distributed entirely to the service personnel, the amounts are tips and not gross receipts of the establishment.

(4) *Examples:*

(a) Restaurant R has a policy of charging parties of six or more a set percentage of the bill for food and drink served as a tip. If a customer insists on another arrangement, however, the set amount will be removed. R places all amounts collected from the set tip percentage into a pool which is distributed to the service staff at the end of each shift. The amounts designated as tips and collected and distributed by R to the service staff, are tips and not gross receipts. If R retains any amounts derived from the set tip percentage, the amounts retained are gross receipts.

(b) Hotel H rents rooms for banquets and other functions. In addition to the rental fee for the room, H also charges amounts for set-up and post-function cleaning. H retains these amounts for use in its business. These amounts are gross receipts. They are gross receipts even if H denominates them as "tips".

**S. Real estate brokers.**

(1) Receipts of a person engaged in the construction business from the sale of the completed construction project include amounts which the person has received and then paid to a real estate broker. The total receipts from the sale of the construction project are subject to the gross receipts tax.

(2) Receipts of a real estate broker from the performance of services for a person engaged in the construction business may not be deducted from gross receipts pursuant to Section 7-9-52 NMSA 1978.

**T. Entertainers.** The receipts of entertainers or performers of musical, theatrical or similar services are subject to the gross receipts tax when these services are performed in New Mexico.

**U. Managers or agents of entertainers.** Commissions received by managers or agents of entertainers for the managers' or agents' services in New

Mexico are subject to the gross receipts tax.

**V. Water utilities; installation of water taps and pipes.** The receipts of a water utility from providing a "tap" to a water main and installing a pipe from the water main to a meter which it provides are subject to the gross receipts tax. However, if the utility is owned or operated by a county, municipality or other political subdivision of the state of New Mexico, its receipts from providing a "tap" to a water main and installing a pipe from a water main to a meter which it also provides are exempted from the gross receipts tax.

**W. Utilities; installation charges.**

(1) The receipts of a utility from installation charges are subject to the gross receipts tax. However, if the utility is owned or operated by a county, municipality or other political subdivision of the state of New Mexico, its receipts from installation charges are exempt from the gross receipts tax.

(2) The receipts of a private water utility from providing a "tap" to a water main and installing a pipe from the water main to a meter which it provides are subject to the gross receipts tax.

(3) Receipts of a private electric utility from fees for changing, connecting or disconnecting electricity of customers, whether or not these services are required because of nonpayment of bills by a customer, are subject to the gross receipts tax.

**X. Construction on Indian reservations or pueblos.** The receipts of a non-Indian from construction services, as defined in Section 7-9-3.4 NMSA 1978 and regulations thereunder, performed on an Indian reservation or pueblo are subject to the gross receipts tax unless the imposition of the gross receipts tax is preempted by federal law.

**Y. Star route contractors.** Receipts of a person holding a contract for transportation of United States mail, as a "Star Route Contractor", from points within New Mexico to other points within New Mexico and to points outside of New Mexico, are subject to the gross receipts tax on that portion of the receipts from transportation from a point within New Mexico to a point within New Mexico. See Paragraph (2) of Subsection B of Section 3.2.55.10 NMAC for deducting receipts from the portion in interstate commerce.

**Z. Racetrack operators.** Receipts of operators of racetracks other than horse racetracks, from gate admission fees and entrance fees paid by drivers are subject to the gross receipts tax. Any portion of these fees paid out by the operator as prizes are not exempt or deductible since the payments are part of the operator's cost of doing business.

**AA. Data access charges.** Receipts from fees or charges made in connection with property owned, leased or provided by the person providing the service are subject to the gross receipts tax when the information or data accessed is utilized in this state.

**BB. Specialty software package.** [Repealed]

**CC. Receipts from telephone or telegraph services.** Receipts derived from telephone or telegraph services originating or terminating in New Mexico and billed to an account or number in this state are receipts from performing services in New Mexico and are subject to the gross receipts tax unless exempt under Section 7-9-38.1 NMSA 1978.

**DD. Allied company underwriting automotive service contracts.** When a New Mexico automotive dealer pays an entity which is allied or affiliated with that dealer (allied company) to undertake all of the dealer's obligations under automotive service contracts as that term is defined in Subsection C of Section 3.2.1.16 NMAC on which the dealer is promisor, the undertaking of the allied company does not involve the sale of property in New Mexico or the lease of property employed in New Mexico. The undertaking principally involves an obligation of the allied company to indemnify the dealer by paying the dealer for furnishing parts and labor to fulfill the dealer's obligation to furnish the parts and labor. However, the undertaking also involves the performance of services by the allied company for the dealer since the allied company undertakes to handle the claims of automotive service contract purchasers and otherwise perform the dealer's task under the contract. Absent a showing of a different value by the allied company or the department, 7.5 percent of the contract amount paid by the dealer to the allied company will be treated as consideration received for services performed in New Mexico.

**EE. Custom software.** (1) Except as otherwise provided in Subsection EE of Section 3.2.1.18 NMAC, receipts derived by a person from developing custom software are receipts from performing a service.

(2) When custom software is developed by a seller for a customer but the terms of the transaction restrict the customer's ability without the seller's consent to sell the software to another or to authorize another to use the software, the seller's receipts from the customer are receipts from the performance of a service. The seller's receipts from authorizing the customer's sublicensing of the software to another person are receipts from granting a license. The seller's receipts from authorizing the use by another person of the

same software are receipts from granting a license to use the software.

**FF. Check cashing is a service.** Receipts from charges made for cashing checks, money orders and similar instruments by a person other than the person upon whom the check, money order or similar instrument is drawn are receipts from providing a service, not from originating, making or assuming a loan. Such charges are not interest.

**GG. Receipts of collection agencies.**

(1) The fee charged by a collection agency for collecting the accounts of others is gross receipts subject to the gross receipts tax, regardless of whether the receipts of the client are subject to gross receipts tax and regardless of whether the agency is prohibited by law from adding its gross receipts tax amount to the amount collected from the debtor.

(2) *Example 1:* X is a cash basis taxpayer utilizing the services of Z collection agency for the collection of delinquent accounts receivable. From its New Mexico offices, Z collects from X's New Mexico debtors in the name of X, retains a percentage for its services and turns over the balance to X. The percentage retained by Z is its fee for performing services in New Mexico. The fee is subject to the gross receipts tax. It makes no difference that federal law prohibits Z from passing the cost of the tax to the debtor by adding it to the amount to be collected. X's gross receipts include the full amount collected by Z.

(3) Amounts received by collection agencies from collecting accounts sold to the collection agency are not gross receipts.

(4) *Example 2:* X, a cash basis taxpayer, sells its delinquent accounts receivable to Z, a collection agency, for a percentage of the face amount of the accounts. X's gross receipts include the full amount of the receivables, excluding any time-price differential. The amount subsequently collected by Z from those accounts, however, is not subject to gross receipts tax because the amount is not included within the definition of gross receipts. In this situation Z is buying and selling intangible property of a type not included within the definition of property in Subsection J of Section 7-9-3 NMSA 1978.

**HH. Commissions of independent contractors when another pays gross receipts tax on the receipts from the underlying transaction.**

(1) Commissions and other consideration received by an independent contractor from performing a sales service in New Mexico with respect to the tangible or intangible personal property of other persons are gross receipts whether or not the other person reports and pays gross receipts tax with respect to the receipts from the sale of

the property. This situation involves two separate transactions. The first is the sale of the property by its owner to the customer and the second is the performance of a sales service by the independent contractor for the owner of the property. The receipts from the sale of the property are gross receipts of the person whose property was sold. Receipts, whether in the form of commissions or other remuneration, of the person performing a sales service in New Mexico are gross receipts of the person performing the sales service.

(2) *Example 1:* S is a national purveyor of tangible personal property. S has stores and employees in New Mexico. S also has catalogue stores in less populated parts of New Mexico. Catalogue stores maintain minimal inventories; their primary purpose is to make S's catalogues available to customers, to take orders of merchandise selected from the catalogues, to place the orders with S and to provide general customer service. The catalogue stores are operated by independent contractors and not by S. S pays the contractors commissions based on the orders placed. In charging its customers, S charges the amount shown in the catalogue and does not add any separate amount to cover the cost of the contractors' commissions. S pays gross receipts tax on its receipts from the sale of catalogue merchandise. The contractors contend that the cost of their selling services is included in the amount S charges for its merchandise and so their commissions are not gross receipts. The contention is erroneous. The contractors have receipts from performing a service in New Mexico; it is immaterial that S paid the amount of gross receipts tax S owed on S's receipts. See, however, the deduction at Subsection B of Section 7-9-66 NMSA 1978.

(3) *Example 2:* M is a nationwide, multi-level sales company with presence in New Mexico. M sells products to households mainly through a network of individual, independent contractors. The network of sellers is controlled by one or more sets of individuals, also independent contractors, who train and supervise the individuals selling the merchandise; these supervisory contractors may also sell merchandise. The sellers display, promote and take orders for M's products. Payment for orders are sent to M along with the orders. M ships the merchandise directly to the final customers. M has agreed to, and does, pay the gross receipts tax on the retail value of the merchandise sold, whether sold by M or one of the independent contractors. Based on the volume and value of merchandise sold, M pays both the selling and supervisory independent contractors a commission. The commissions received by the independent contractors engaging in business in New Mexico with respect to merchandise sold

in New Mexico are gross receipts subject to the gross receipts tax. The commissions are receipts from performing a service in New Mexico. The fact that M pays gross receipts tax on M's receipts from the sale of the property is immaterial in determining the liability of the independent contractors.

(4) Commissions and other consideration received by an independent contractor from performing a sales service in New Mexico with respect to a service to be performed by other persons are gross receipts whether or not the other person reports and pays gross receipts tax with respect to the receipts from the performance of the underlying service. This situation involves two transactions. The first is the performance of the underlying service by the other person for the customer and the second is the performance of the sales service by the independent contractor for the performer of the underlying service. The receipts from the performance of the underlying service for the customer are gross receipts of the person performing that service. Receipts, whether in the form of commissions or other remuneration, of the person performing the sales service are gross receipts of the person performing the sales service.

(5) *Example 3:* P is the publisher of a magazine published in New Mexico. P enters into arrangements with independent contractors to solicit ads to be placed in P's publication. P pays each contractor a percentage of the billings for the ads placed by the contractor as a commission. The independent contractors claim that they owe no gross receipts tax with respect to ads solicited in New Mexico because P has paid gross receipts tax on P's advertising revenues. The contractors are incorrect. There are two transactions in this situation, P's service of publishing advertisements and the contractors' service of soliciting ads for P. The fact that P paid the amount of gross receipts tax due on P's advertising revenues is immaterial regarding the contractors' gross receipts tax obligations on their receipts.

(6) If the receipts from the underlying sale of the tangible property are exempt or deductible, the commission received by an independent contractor from selling the tangible property of another may be subject to the deduction provided by Section 7-9-66 NMSA 1978.

## II. Receipts from winning contest.

(1) Receipts of a contestant from winning purse money in a rodeo or an athletic game, match or tournament held in New Mexico are gross receipts from performing services if any charge is made for attending, observing or broadcasting the event. Such receipts are subject to the gross receipts tax unless an exemption or deduction applies. Where the contestant is a team and there is an agreement among the team members

governing distribution of the purse money, then only the amount received by each team member pursuant to the agreement is gross receipts of the team member.

(2) Subsection II of 3.2.1.18 NMAC does not apply to receipts exempt under Section 7-9-40 NMSA 1978 nor does it apply to activities that are primarily or solely gambling.

[9/29/67, 12/5/69, 3/3/71, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 3/16/79, 6/18/79, 11/20/79, 4/7/82, 1/6/84, 5/4/84, 10/16/84, 4/2/86, 10/21/86, 6/28/89, 11/26/90, 11/15/96, 1/31/97, 4/30/97; R, 3 NMAC 2.1.18.28, 4/30/97; 3 NMAC 2.1.18.31, 4/30/97; 10/31/97, 7/31/98; R, 4/30/99, 11/15/99, 3.2.1.18 NMAC - Rn & A, 3 NMAC 2.1.18, 10/31/2000; A, 5/31/02; A, 12/30/03; A, 3/15/10]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.201 NMAC, Sections 13 and 19 effective 3/15/2010.

### 3.2.201.13

#### MULTIJURISDICTIONAL UNIFORM SALES AND USE TAX CERTIFICATES:

A. The department deems the uniform sales and use tax certificate issued by the multistate tax commission or by any member state other than New Mexico to a taxpayer not required to be registered in New Mexico to be a nontaxable transaction certificate (nttc) equivalent to ~~[a type 1 or a type 2 nttc, as appropriate, issued by the department]~~ those nttc types issued by the department to support the deductions under Sections 7-9-46, 7-9-47 and 7-9-75 NMSA 1978. ~~[The department will accept]~~ As evidence of the deductibility of a specific transaction authorized under Sections 7-9-46, 7-9-47 and 7-9-75 NMSA 1978 the department will accept the multistate tax commission uniform sales and use tax certificate;

(1) only in those situations in which possession of a properly executed ~~[type 1 or type 2]~~ nttc is acceptable evidence of the deductibility of the transaction; and

(2) ~~if~~ the uniform sales and use tax certificate is issued by the multistate tax commission or a member state other than New Mexico to a taxpayer not required to be registered in New Mexico.

B. No certificate or other document from any other state or taxing jurisdiction is acceptable evidence under 3.2.201.13 NMAC.

~~[C. This version of Section 3.2.201.13 NMAC applies to transactions occurring on or after July 1, 1998.]~~

[3/10/87, 11/26/90, 3/15/96, 9/30/98,



4/30/99; 3.2.201.13 NMAC - Rn, 3 NMAC 2.43.1.13 & A, 5/31/01; A, 3/15/10]

### 3.2.201.19 **BORDER STATES UNIFORM SALE FOR RESALE CERTIFICATE:**

A. For transactions specified below, the department deems a border states uniform sale for resale certificate issued by a border state other than New Mexico to a taxpayer not required to be registered in New Mexico to be a nontaxable transaction certificate (nttc) equivalent to [a type 1 or type 2 nttc, as appropriate, issued by the department] those nttc types issued by the department that support the deductions under Sections 7-9-46, 7-9-47 and 7-9-75 NMSA 1978. The department will accept the border states uniform sale for resale certificate as evidence of the deductibility of a specific transaction [; the border states uniform sale for resale certificate] authorized under Sections 7-9-46, 7-9-47 and 7-9-75 NMSA 1978, only when the following conditions exist:

(1) the buyer is purchasing tangible personal property for resale or incorporation as an ingredient or component part into a manufactured product in the ordinary course of the buyer's business or the buyer is purchasing a manufacturing service on a manufactured product or ingredient or component part thereof;

(2) the tangible personal property purchased or the product, or ingredient or component part thereof, upon which the manufacturing service is performed is to be transported across state or national boundaries; and

(3) the buyer is located in the northern border region or in a border state other than New Mexico.

B. No other certificate or document from any other state or taxing jurisdiction is acceptable evidence under [Section] 3.2.201.19 NMAC.

C. For the purposes of [Section] 3.2.201.19 NMAC:

(1) "border state" means Arizona, California, New Mexico and Texas and any other state joining the border states caucus subsequent to January 1, 1996; and

(2) "northern border region" means:

(a) the border strip of 20 kilometers parallel, north and south, to the international dividing line between the United Mexican States and the United States of America;

(b) all territory of the lower California states, south lower California and Quintana Roo, the municipality of Cananea, Sonora and part of the state of Sonora as delimited by the border states caucus; and

(c) any additional territory of the United Mexican States incorporated into the definition by the border states caucus subsequent to January 1, 1996.

[~~D. Section 3.2.201.19 NMAC is retroactively applicable to taxable events occurring on or after January 1, 1996.~~]

[3/15/96, 9/30/98, 12/15/99; 3.2.201.19 NMAC - Rn, 3 NMAC 2.43.1.19 & A, 5/31/01; A, 3/15/10]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.212 NMAC, Section 27 effective 3/15/2010.

3.2.212.27 **SALE OF GASES:** Gases, such as natural gas, nitrogen, carbon dioxide, helium, propane, oxygen, acetylene and nitrous oxide, are tangible personal property. Therefore receipts from selling gases to a governmental agency may be deducted from gross receipts under Section 7-9-54 NMSA 1978.

[3.2.212.27 - N, 3/15/10]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.218 NMAC, Section 13 effective 3/15/2010.

3.2.218.13 **SALE OF GASES:** Gases, such as natural gas, nitrogen, carbon dioxide, helium, oxygen, propane, acetylene and nitrous oxide, are tangible personal property. Therefore receipts from selling gases to a 501(c)(3) organization may be deducted from gross receipts under Section 7-9-60 NMSA 1978 if the organization delivers a properly executed nttc to the seller.

[3.2.218.13 NMAC - N, 3/15/10]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.13.8 NMAC, Sections 2, 3, 6, 7, 8, 9, 10, 11, 12 and 13 effective 3/15/2010.

3.13.8.2 **SCOPE:** This part applies to all persons who own an interest in a qualified generating facility in New Mexico who may be eligible to obtain the advanced energy income tax credit, the advanced energy corporate income tax credit or the advanced energy combined reporting tax credit.

[3.13.8.2 NMAC - N, 12/31/08; A, 3/15/10]

3.13.8.3 **STATUTORY AUTHORITY:** Sections 7-9G-2, 7-2-18.25,

7-2A-25 and 9-11-6.2 NMSA 1978.

[3.13.8.3 NMAC - N, 12/31/08; A, 3/15/10]

3.13.8.6 **OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the, advanced energy combined reporting tax credit, per the Other Tax Credits Act; the advanced energy income tax credit, per the Income Tax Act; and the advanced energy corporate income tax credit, per the Corporate Income and Franchise Tax Act.

[3.13.8.6 NMAC - N, 12/31/08; A, 3/15/10]

3.13.8.7 **DEFINITIONS:** **ADVANCED ENERGY TAX CREDIT DEFINED:** For purposes of 3.13.8.1 through 3.13.8.13 NMAC, advanced energy tax credit means the advanced energy combined reporting tax credit, per the Other Tax Credits Act (Section 7-9G-2 NMSA 1978); the advanced energy income tax credit, per the Income Tax Act (Section 7-2-18.25 NMSA 1978); and the advanced energy corporate income tax credit, per the Corporate Income and Franchise Tax Act (Section 7-2A-25 NMSA 1978).

[3.13.8.7 NMAC - N, 3/15/10]

3.13.8.8 **VALUE OF ELIGIBLE GENERATION PLANT COSTS:** The value of eligible generation plant costs pursuant to [~~Section 7-9G-2 NMSA 1978~~] the advanced energy tax credit shall be the adjusted basis established for the qualified generating facility under the applicable provisions of the Internal Revenue Code of 1986.

[3.13.8.8 NMAC - N, 12/31/08; A, 3/15/10]

3.13.8.9 **ELIGIBLE GENERATION PLANT COST MUST BE "SUBJECT TO DEPRECIATION":** For purposes of [~~Section 7-9G-2 NMSA 1978;~~] the advanced energy tax credit, eligible generation plant costs must be subject to depreciation. "Subject to depreciation" means the taxpayer's federal income tax return must include a depreciation expense with respect to the eligible generation plant costs for which an advanced energy tax credit is sought or claimed. Equipment depreciated under the accelerated cost recovery system, Internal Revenue Code Section 168, and property for which the taxpayer makes an election under Internal Revenue Code Section 179 is "subject to depreciation".

[3.13.8.9 NMAC - N, 12/31/08; A, 3/15/10]

3.13.8.10 **APPLICATION OF THE CREDIT:**

A. The credit allowed by Section 7-9G-2 NMSA 1978 may not be applied against any local option gross receipts tax imposed by a county or municipality.

B. [~~The credit may not~~]



be applied to a report period prior to the report period that includes the first day on which eligible generation plant costs were incurred and included on the application for which the credit was approved by the department] The credit may be applied to report periods beginning with the report period that includes the first day on which eligible generation plant costs were incurred and included on the application for which the credit was approved by the department, including amended returns for such report periods.

[3.13.8.10 NMAC - N, 12/31/08; A, 3/15/10]

**3.13.8.11 CARRY FORWARD OF UNUSED CREDITS:** Unused advanced energy tax credit ~~[allowed by Section 7-9G-2 NMSA 1978]~~ may be carried forward for ~~[five]~~ ten years from the end of the calendar year in which the credit was approved by the department.

[3.13.8.11 NMAC - N, 12/31/08; A, 3/15/10]

**3.13.8.12 USING THE CREDIT:**

A. Any amount of advanced energy tax credit claimed and approved may be applied by the ~~[claimant only against the]~~ approved claimant against any combination of the personal or corporate income tax, or the gross receipts, compensating and withholding [taxes] tax owed by the claimant.

B. Once the qualified generating facility or the interest owner in the qualified generating facility is approved, the credit amount may not be subsequently transferred to any other person, including an affiliate.

~~[B:]~~ C. Examples:

(1) Corporation T sets up a qualified generating facility in New Mexico. T subsequently qualifies for \$50,000 in advanced energy tax credit. After applying \$13,000 to its own gross receipts, compensating and withholding tax liabilities, T creates a subsidiary corporation, S, to own and operate all of T's New Mexico business, including the qualified generating facility. T may not transfer the \$37,000 remaining authorized advanced energy tax credit to S nor may S apply any of the remaining tax credit to S's corporate income tax liability, or gross receipts, compensating and withholding tax liability. T, to the extent T still has corporate income tax, or gross receipts, compensating and withholding tax obligations, may apply the \$37,000 balance against those obligations.

(2) When two or more corporations merge, the resultant corporation is a continuation of any predecessor corporation. When a business organization changes its form, as for example from a sole proprietorship to a corporation or from a corporation to a limited liability company, so that the resultant entity is a successor in

business to the predecessor, the resultant entity shall be deemed a continuation of the predecessor for advanced energy tax credit purposes. In both cases, since there is no transfer, the resultant entity may claim any amount of approved but unclaimed advanced energy tax credit held by a predecessor.

[3.13.8.12 NMAC - N, 12/31/08; A, 3/15/10]

**3.13.8.13 LIMITATION ON OTHER CREDITS:** Expenditures for which a taxpayer claims the advanced energy tax credit ~~[pursuant to Section 7-9G-2 NMSA 1978]~~ may not be used to qualify for or claim any other credit that may be applied against personal or corporate income tax, or gross receipts tax, compensating tax or withholding tax pursuant to any other state law.

[3.13.8.13 NMAC - N, 12/31/08; A, 3/15/10]

## NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an emergency amendment to 11.4.3 NMAC, Section 11, effective date 2/19/10.

**11.4.3.11 MILEAGE BENEFITS:** Employer shall pay worker's mileage, transportation and meal expenses for travel to HCPs of fifteen (15) miles or more, one (1) way, from the worker's residence or place of employment, depending upon the point of origin of the travel, based on the following rates:

A. ~~[thirty-two cents (.32)]~~ forty cents (.40) per mile for travel in a privately owned vehicle;

B. actual reimbursement for the cost of a ticket on a common carrier, if applicable;

C. actual reimbursement, not to exceed thirty dollars (\$30.00) for meals in a 24-hour period; and

D. actual reimbursement, not to exceed eighty five dollars (\$85.00) for the cost of overnight lodging in the event travel of at least two hours one way is required, provided however that the maximum actual expense reimbursement for an overnight stay in the city of Santa Fe shall not exceed one hundred and thirty five dollars (\$135.00).

[5/26/87...6/1/96; 11.4.3.11 NMAC - A/E, 11/15/04; 11.4.3.11 NMAC - Rn, 11 NMAC 4.3.11, 11/30/04; A/E, 2/19/10]

## NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an emergency amendment to 11.4.4 NMAC, Section 12, and to forms attached to Part 4, effective 2-19-10. The Application to Judge and the Petition for Lump Sum Settlement are the only WCA forms being amended at this time.

### 11.4.4.12 T H E ADJUDICATION PROCESS:

A. Application to judge:

(1) All disputes under the act shall be plead on a complaint form, which shall be scheduled for mediation under 11.4.4.10 NMAC. A party may file an application to judge only for the following limited forms of relief:

(a) physical examination pursuant to Section 52-1-51 NMSA 1978 (Repl. Pamp. 1991);

(b) independent medical examination pursuant to Section 52-1-51 NMSA 1978 (Repl. Pamp. 1991);

(c) determination of bad faith, unfair claims processing, fraud or retaliation;

(d) supplemental compensation order;

(e) award of attorney fees; ~~[or]~~

(f) ~~[approval of lump sum settlement or]~~ stipulated reimbursement agreement pursuant to Section 52-5-17 NMSA 1978; or

(g) consolidation of payments into quarterly payments (not a lump sum under Section 52-5-12 NMSA 1978.)

(2) If any claim not enumerated in (1) (a) - ~~[(f)]~~ (g) above is raised on an application to judge, the application shall be deemed a complaint and processed by the clerk under 11.4.4.9 NMAC and 11.4.4.10 NMAC.

(3) Except for an application seeking relief under Subparagraphs (e), ~~[or (f)]~~ (f) or (g) of Paragraph (1) of Subsection A of 11.4.4.12 NMAC above, an application to judge may not be filed if a complaint has previously been filed in the same cause, and the time period for acceptance or rejection of the recommended resolution has not yet expired. Any claim for relief arising under Subparagraphs (a) through (d) of Paragraph (1) of Subsection A of 11.4.4.12 NMAC above during that time period shall be raised in the mediation process in accordance with 11.4.4.10 NMAC.

(4) The responding party shall file a response to application to judge within ten days of receipt of an application. A response to application to judge may not raise new claims or issues unless enumerated in Subparagraphs (a) through (f) of Paragraph (1) of Subsection A of 11.4.4.12 NMAC above.

(5) All applications to a judge shall be accompanied by a proposed order or a request for setting, as appropriate, and by self-addressed stamped envelopes for all parties entitled to notice. Such hearings as necessary may be scheduled by the assigned judge.

**B. Approval of petition for lump sum:**

(1) All requests for approval of a lump sum shall be plead on the WCA mandatory petition form, which shall be signed and verified by the worker or his dependents pursuant to NMRA 1-011(B) or signed by the worker or his dependents before a notary public.

(2) Petitions under Section 52-5-12 (D) shall also be signed by the employer/insurer or their representative or, where applicable, the UEF.

(3) Hearing. The lump sum hearing shall be for the purpose of determining that the agreement is voluntary, that the worker understands the terms, conditions and consequences of the settlement agreement or any release under Section 52-5-12(D), and that the settlement is fair, equitable and provides substantial justice to the parties.

(4) Any lump sum petition filed pursuant to this rule shall comply with Section 52-1-54 and counsel for the parties may concurrently file a petition for approval or award of attorney fees, if appropriate, to be heard in the context of the lump sum hearing.

(5) All petitions shall be accompanied by a request for setting and self-addressed, stamped envelopes for all parties entitled to notice. Such hearings will be promptly scheduled by the assigned judge.

**[B-] C. Assignment of judge:**

(1) Upon receipt of a timely rejection of a recommended resolution or application to judge, the clerk shall assign a judge to the cause and shall notify all parties of the judge assignment by certified mail, domestic return receipt requested. This notice shall be considered the initial notice of judge assignment.

(2) Each party shall have the right to disqualify a judge. To exercise the peremptory right to disqualify a judge, a party must file a notice of disqualification of judge no later than ten (10) calendar days from the date of filing of the notice of assignment of judge. The clerk shall assign a new judge to the cause and notify all parties by certified mail, domestic return receipt requested. A party who has not exercised the right of disqualification may do so no later than ten (10) calendar days from the filing of the notice of reassignment of judge.

(3) No action may be taken by any judge on a cause until the expiration of the time for all parties to exercise the peremptory right to disqualify a judge. To expedite the

adjudication process, the parties may file a stipulated waiver of the right to disqualify a judge, or a waiver of the ten (10) day period in which to disqualify a judge.

(4) The judge may assist a party to an application to judge by:

(a) providing information to the party about the requirements of the rules of evidence and civil procedure applicable to any hearings arising from the application;

(b) referring the matter to the administrative investigations bureau for independent fact-finding, directing that the final investigative report be provided to the judge and parties; or

(c) remanding the matter to the mediation bureau for informal resolution.

**[C-] D. Commencement** of adjudication process and answer to complaint: The adjudication process for complaints shall commence upon the clerk's receipt of a timely rejection of a recommended resolution. An answer to complaint shall be filed within twenty (20) days of date of filing of the initial notice of assignment of judge. The answer shall admit or deny each claim asserted in the complaint. Any affirmative defenses to the complaint shall be stated in the answer. The answer shall comply with the general rules of pleading set forth in the rules of civil procedure for the district courts of New Mexico.

**[D-] E. Mandatory exchange of evidence:**

(1) The parties shall exchange the following evidence, within thirty (30) days of date of filing of the initial notice of assignment of judge, or promptly after receipt of such evidence:

(a) payroll records for at least twenty-six (26) weeks prior to date of accident ~~and/or~~ or disability;

(b) payroll records since date of accident ~~and/or~~ or disability;

(c) all medical records relating to the work injury or disability claim, or an executed authorization to release medical records;

(d) any documents relating to selection of HCPs;

(e) a record of all indemnity and medical benefits relating to the work injury;

(f) all statements, written or otherwise recorded, unless privileged;

(g) all photographs, videotapes and private investigation reports concerning the worker;

(h) all descriptions/analyses of jobs performed by worker prior to accident ~~and/or~~ or offered to worker post-injury;

(i) any documents evidencing employer's communications with worker about returning to work; and

(j) any exhibits to be offered into evidence during the adjudication process.

(2) Failure to comply with this rule or with the mandatory production rule

governing the mediation process may result in exclusion of such evidence at any hearing or other sanctions deemed appropriate by the judge. Mandatory exchange of evidence is required, unless a stipulation is entered in the pre-trial report that such evidence is not material to any disputed issue, or if ordered by the judge.

(3) All documentary evidence to be presented at the adjudication hearing shall be provided to all other parties at least twenty (20) days prior to the adjudication hearing.

(4) The judge shall have discretion to modify the time limits established by Subsection D of 11.4.4.12 NMAC for good cause.

**[E-] F. Pre-trial report and discovery order:**

(1) Within forty-five (45) days of date of filing of the initial notice of assignment of judge, the parties shall jointly present a pre-trial report to the judge for approval. The report shall contain:

(a) stipulations ~~and/or~~ or admissions of the parties;

(b) a statement of all contested issues;

(c) names, addresses, and telephone numbers of authorized HCPs;

(d) worker's and employer's potential witnesses, including addresses and phone numbers;

(e) worker's and employer's list of potential exhibits;

(f) objections to any medical records and exhibits;

(g) stipulated discovery procedures and deadlines for completion, including a finding that good cause exists for discovery;

(h) disputed discovery procedures or issues, if any; and

(i) any other matters that will assist the judge with expediting adjudication of the claim.

(2) If there are disputed discovery issues, the parties shall request a pre-trial hearing within ten (10) days of completion of the pre-trial report.

(3) The judge shall review the report, and if good cause exists, approve the report or issue an order. The order or approved report issued shall be binding on the parties, unless modified in writing or stipulated to by the parties. Failure to participate in the preparation of the pre-trial report may subject that party to sanctions or attorney fee penalties.

**[F-] G. Medical evidence:**

(1) Live medical testimony shall not be permitted, except by an order of the judge.

(2) A form letter to HCP, completed by an authorized HCP, may be admitted into evidence. The employer shall pay the costs for completion of the form letter.

(3) Medical records identified in

the pre-trial report and exchanged shall be admitted into evidence, unless an objection is preserved.

(4) To preserve an objection to the admissibility of medical records, the objecting party must state the objection in the pre-trial report or file a notice of objection within thirty (30) days of entry of the pre-trial report. A specific basis for the objection must be stated. Objections may be raised subsequently upon a showing of good cause.

**[G:] H.** Depositions:

(1) The parties shall make a good faith effort to obtain a completed and signed form letter to HCP prior to setting the deposition of the HCP

(2) Depositions shall be taken pursuant to Supreme Court Rules Annotated 1986, 1-030. Reasonable notice shall be deemed to be not less than five (5) business days prior to the date set for the deposition.

(3) The original deposition shall be kept by the party who noticed the deposition.

(4) Deposition testimony of authorized HCPs shall be admissible, in lieu of live testimony.

(5) The use of depositions shall otherwise be governed by Supreme Court Rules Annotated 1986, 1-032. A party intending to use a deposition shall notify the other party of the intended use at least ten (10) days prior to trial. Any objection to the use of the deposition shall be determined at the adjudication hearing.

**[H:] I.** Written discovery procedures: If authorized, interrogatories, request for production or inspection, and requests for admissions shall be governed by supreme court rules annotated 1986, 1-033, 1-034 and 1-036, except:

(1) answers to interrogatories, responses to requests for production or inspection, and responses to requests for admissions shall be due twenty-one (21) calendar days from the date of service;

(2) no party shall serve more than twenty-five (25) interrogatories or twenty-five (25) requests for admissions without approval of the judge; sub-parts must relate to the subject matter of the interrogatory or request;

(3) the party submitting written discovery shall serve at least two copies upon each party to be served; interrogatories shall be numbered consecutively, and limited to one interrogatory per page; and

(4) answers to interrogatories and responses to requests for production shall not be filed; a certificate of service shall be filed with the clerk of the WCA.

**[I:] J.** Motions: All motions, except in open court, shall be written and comply with Supreme Court Rules Annotated 1986, 1-007.1. Motions for summary judgment shall comply with Supreme Court Rules Annotated 1986, 1-056.

**[J:] K.** Settlement/pre-trial conferences: The judge shall have discretion to schedule settlement conferences or pre-trial conferences to expedite adjudication. A settlement conference with the assigned judge shall require the consent of all parties either on the record or in writing.

**[K:] L.** Pre-trial order: At least five (5) days prior to the adjudication hearing, the parties shall present a pre-trial order to the judge for approval. The pre-trial order shall contain:

(1) the date, place and time set for commencement of the adjudication hearing and the estimated time required for completion of the adjudication hearing;

(2) stipulations ~~[and/or]~~ or admissions of the parties, if any;

(3) contested issues;

(4) names, addresses, and telephone numbers of the authorized HCPs;

(5) a list of worker's and employer's witnesses, including anticipated rebuttal witnesses, with current addresses and telephone numbers;

(6) a list of admissible medical records;

(7) worker's and employer's list of potential exhibits;

(8) objections to any exhibits and a statement of how the objection was timely preserved;

(9) any other issues or special considerations; and

(10) a binding effect of order statement: "The parties have reviewed this order and are bound by its terms and conditions. The judge may modify this order only as provided by law."

**[L:] M.** Subpoenas: The issuance of subpoenas is governed by Supreme Court Rules Annotated 1986, 1-045.

**[M:] N.** Continuance of hearing:

(1) The continuance of an adjudication hearing shall be at the discretion of the judge. If granted, the moving party shall present an order to reset the adjudication hearing to the judge within five (5) days from the granting of the continuance. The order shall designate the moving party, and the date of the vacated setting, with space provided for entry of a new date and time.

(2) All discovery, disclosure and exchange deadlines shall be extended by the granting of a continuance unless otherwise ordered.

**[N:] O.** Hearings:

(1) Failure to appear at a hearing after proper notice and without good cause may result in the imposition of sanctions.

(2) The parties shall appear personally at the adjudication hearing, without the necessity of a subpoena. Unless excused by a judge, the parties shall appear personally or through their legal representatives at all other hearings properly noticed.

(3) All hearings shall be recorded by audio tape recording or by any other method approved by the director.

(4) Prior to commencement of the adjudication hearing, the parties shall confer with the court monitor to ensure that all exhibits are properly marked. Any exhibit to be jointly tendered shall be marked and offered as a joint exhibit. All other exhibits shall be marked by party and exhibit number or letter. Depositions shall be marked as exhibits.

(5) Under exceptional circumstances and in the interest of justice, within ten (10) days of the close of the adjudication hearing, the judge has discretion to direct or allow supplementation of evidence.

**[O:] P.** Additional rules: Unless otherwise stated or necessarily implied in the preceding rules, the rules of evidence and the rules of civil procedure for the district courts of New Mexico shall apply to and govern proceedings within the adjudication process.

[5/26/87, 6/20/89, 6/1/96, 9/25/96, 2/15/97; 11.4.4.12 NMAC - Rn, 11 NMAC 4.4.12, 6/13/03; A/E, 2/19/10]

\_\_\_\_\_, WCA No.: \_\_\_\_\_

Worker;

v.

\_\_\_\_\_ and

\_\_\_\_\_,

Employer/Insurer.

### APPLICATION TO WORKERS' COMPENSATION JUDGE

1. Type of injury: \_\_\_\_\_ Occupational Injury \_\_\_\_\_ Occupational Disease
2. Worker's Full Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone No.: ( ) \_\_\_\_\_
3. Worker's date of birth: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ Age: \_\_\_\_\_ Sex: \_\_\_\_\_ M \_\_\_\_\_ F \_\_\_\_\_
4. Worker's Social Security No.: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_
5. Full Name of Employer: \_\_\_\_\_  
Employer's Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone No.: ( ) \_\_\_\_\_
6. Insurance Carrier: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone No.: ( ) \_\_\_\_\_
7. Date of Accident: \_\_\_\_\_
  - a. City and County of accident: \_\_\_\_\_
  - b. Worker's job at time of accident: \_\_\_\_\_
  - c. Worker's wages at time of accident: \$ \_\_\_\_\_ /hour \$ \_\_\_\_\_ /bi-weekly \$ \_\_\_\_\_ /month \$ \_\_\_\_\_ /year
  - d. How did the accident occur: \_\_\_\_\_
  - e. Type of injury/diagnosis: \_\_\_\_\_
  - f. Part(s) of the body injured: \_\_\_\_\_
  - g. Name and address of treating Doctor: \_\_\_\_\_
  - h. First date Worker was unable to perform job duties: \_\_\_\_\_
  - i. Date of maximum medical improvement: \_\_\_\_\_
  - j. Impairment rating: \_\_\_\_\_ Doctor's Name: \_\_\_\_\_
  - k. Has Worker been released to work by a Doctor? \_\_\_\_\_ Yes \_\_\_\_\_ No  
If yes, please indicate the date Worker was released to work: \_\_\_\_\_
  - l. Has Worker returned to work since the accident? \_\_\_\_\_ Yes \_\_\_\_\_ No  
If yes, please indicate the date Worker returned to work: \_\_\_\_\_
  - m. Name and address of current Employer: \_\_\_\_\_
  - n. Highest level of school completed by Worker: \_\_\_\_\_
8. a. This application seeks the following relief:
  - \_\_\_\_\_ Physical Examination of Worker
  - \_\_\_\_\_ Independent Medical Examination
  - \_\_\_\_\_ Approval of Stipulated Reimbursement Agreement under Section 52-5-17
  - \_\_\_\_\_ Supplemental Compensation Order
  - \_\_\_\_\_ Determination of: \_\_\_\_\_ Bad Faith/Unfair Claims Processing \_\_\_\_\_ Fraud or \_\_\_\_\_ Retaliation
  - \_\_\_\_\_ Attorney Fees, Amount: \$ \_\_\_\_\_
- b. Why is this application being filed? (Be specific, use additional pages, if necessary.) \_\_\_\_\_
9. Is an interpreter needed for the hearings on this application? \_\_\_\_\_ Yes \_\_\_\_\_ No.  
If yes, what language? \_\_\_\_\_ If yes, Employer must furnish.

If you have questions, call 1-800-255-7965, Adjudication Bureau.

\_\_\_\_\_  
Worker's Signature Attorney's Signature

\_\_\_\_\_  
Date \_\_\_\_\_ Worker/Attorney's Name

\_\_\_\_\_  
Worker/Attorney's Address

\_\_\_\_\_  
Worker/Attorney's City, State, Zip

\_\_\_\_\_  
Worker/Attorney's Telephone & Fax Number

A Summons for each adverse party shall be filed with the application if one has not been previously filed. If Worker is filing this application, an Authorization to Release Medical Information form shall be filed with the application for Physical Examination of Worker or Independent Medical Examination only.]



**STATE OF NEW MEXICO**  
**WORKERS' COMPENSATION ADMINISTRATION**

\_\_\_\_\_, WCA No.: \_\_\_\_\_  
 \_\_\_\_\_ Worker,  
 v.  
 \_\_\_\_\_, and  
 \_\_\_\_\_,  
 \_\_\_\_\_ Employer/Insurer.

**APPLICATION TO WORKERS' COMPENSATION JUDGE**

1. Type of injury: \_\_\_\_\_ Occupational Injury \_\_\_\_\_ Occupational Disease
2. Worker's Full Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_  
 Telephone No.: ( ) \_\_\_\_\_
3. Worker's date of birth: \_\_\_\_\_ / / Age: \_\_\_\_\_ Sex: \_\_\_\_\_ M \_\_\_\_\_ F \_\_\_\_\_
4. Worker's Social Security No.: \_\_\_\_\_ - - \_\_\_\_\_
5. Full Name of Employer: \_\_\_\_\_  
 Employer's Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_  
 Telephone No.: ( ) \_\_\_\_\_
6. Insurance Carrier: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_  
 Telephone No.: ( ) \_\_\_\_\_
7. Date of Accident: \_\_\_\_\_
  - a. City and County of accident: \_\_\_\_\_
  - b. Worker's job at time of accident: \_\_\_\_\_
  - c. Worker's wages at time of accident: \$ \_\_\_\_\_ hour \$ \_\_\_\_\_ bi-weekly \$ \_\_\_\_\_ month \$ \_\_\_\_\_ year
  - d. How did the accident occur: \_\_\_\_\_
  - e. Part(s) of the body injured: \_\_\_\_\_
  - f. Type of injury/diagnosis: \_\_\_\_\_
  - g. Name and address of treating Doctor(s): \_\_\_\_\_
  - h. First date Worker was unable to perform job duties: \_\_\_\_\_
  - i. Date of maximum medical improvement: \_\_\_\_\_
  - j. Impairment rating: \_\_\_\_\_ Doctor's Name: \_\_\_\_\_
  - k. Has Worker been released to work by a Doctor? Yes No  
 If yes, indicate the date Worker was released to work: \_\_\_\_\_
  - l. Has Worker returned to work since the accident? Yes No  
 If yes, indicate the date Worker returned to work: \_\_\_\_\_
  - m. Name and address of current Employer: \_\_\_\_\_
  - n. Highest level of school completed by Worker: \_\_\_\_\_
8. a. This application seeks the following relief:
 

\_\_\_\_\_ Physical Examination of Worker

\_\_\_\_\_ Independent Medical Examination

\_\_\_\_\_ Approval of Stipulated Reimbursement Agreement under Section 52-5-17

\_\_\_\_\_ Supplemental Compensation Order

\_\_\_\_\_ Consolidate payments into quarterly payments (not a lump sum under Section 52-5-12)

\_\_\_\_\_ Determination of: \_\_\_\_\_ Bad Faith/Unfair Claims Processing \_\_\_\_\_ Fraud or \_\_\_\_\_ Retaliation

\_\_\_\_\_ Attorney Fees, Amount: \$ \_\_\_\_\_

b. Why is this application being filed? (Be specific, use additional pages, if necessary.) \_\_\_\_\_
9. Is an interpreter needed for the hearings on this application? Yes No.  
 If yes, what language? \_\_\_\_\_ Worker will not be responsible for cost.

\_\_\_\_\_  
 Date \_\_\_\_\_ Signature \_\_\_\_\_

\_\_\_\_\_  
 Worker/ Employer/Insurer/Attorney/Representative

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 City/State/Zip

\_\_\_\_\_  
 Telephone & Fax Number

\_\_\_\_\_  
 E-mail address (optional)

A Summons for each adverse party shall be filed with the application if one has not been previously filed. If Worker is filing this application, an Authorization to Release Medical Information form shall be filed with the application for Physical Examination of Worker or Independent Medical Examination only. A Request for Setting and self-addressed stamped envelopes for all parties entitled to notice must be submitted with this Application or it will not be accepted for filing by the WCA Clerk of the Court.

If you have questions, please call the Ombudsman Hotline at 505-841-6894 or 1-866-967-5667.

[STATE OF NEW MEXICO  
WORKERS' COMPENSATION ADMINISTRATION

\_\_\_\_\_, WCA No.: \_\_\_\_\_

Worker;

v:

\_\_\_\_\_, and

\_\_\_\_\_;

Employer/Insurer.

**PETITION FOR LUMP SUM PAYMENT**

**A. GENERAL INFORMATION**

1. \_\_\_\_\_ The lump sum being requested is by agreement and undisputed: ☐ Yes ☐ No
2. \_\_\_\_\_ Lump sum after return to work for 6 months, earning at least 80% of the pre-injury wage pursuant to Section 52-5-12(B)  
\_\_\_\_\_ Partial lump sum for payment of debts accumulated during the course of the disability pursuant to Section 52-5-12 (C)  
\_\_\_\_\_ Request to consolidate weekly payments into quarterly payments.  
\_\_\_\_\_ Request to approve lump sum pursuant to Section 52-5-12 (D) (must be filed by joint petition and agreed by the parties and uncontested)
3. \_\_\_\_\_ Type of injury: ☐ Occupational Injury ☐ Occupational Disease
4. \_\_\_\_\_ Worker's Full Name: \_\_\_\_\_  
\_\_\_\_\_ Mailing Address: \_\_\_\_\_  
\_\_\_\_\_ City/State/Zip: \_\_\_\_\_  
\_\_\_\_\_ Telephone No.: (\_\_\_\_) \_\_\_\_\_
5. \_\_\_\_\_ Worker's date of birth: \_\_\_\_/\_\_\_\_/\_\_\_\_ Age: \_\_\_\_ Sex: ☐ M ☐ F
6. \_\_\_\_\_ Worker's Social Security Number: \_\_\_\_\_
7. \_\_\_\_\_ Full Name of Employer: \_\_\_\_\_  
\_\_\_\_\_ Employer's Address: \_\_\_\_\_  
\_\_\_\_\_ City/State/Zip: \_\_\_\_\_  
\_\_\_\_\_ Telephone No.: (\_\_\_\_) \_\_\_\_\_
8. \_\_\_\_\_ Insurance Carrier: \_\_\_\_\_  
\_\_\_\_\_ Address: \_\_\_\_\_  
\_\_\_\_\_ City/State/Zip: \_\_\_\_\_  
\_\_\_\_\_ Telephone No.: (\_\_\_\_) \_\_\_\_\_
9. \_\_\_\_\_ Date of Accident: \_\_\_\_\_
  - a. \_\_\_\_\_ City and County of accident: \_\_\_\_\_
  - b. \_\_\_\_\_ Worker's job at time of accident: \_\_\_\_\_
  - c. \_\_\_\_\_ Average weekly wage: \_\_\_\_\_
  - d. \_\_\_\_\_ Weekly compensation rate: \_\_\_\_\_
  - e. \_\_\_\_\_ How did the accident occur: \_\_\_\_\_
  - f. \_\_\_\_\_ Nature of the injury: \_\_\_\_\_
  - g. \_\_\_\_\_ Part(s) of the body injured: \_\_\_\_\_
  - h. \_\_\_\_\_ Name and address of treating Doctor: \_\_\_\_\_
  - i. \_\_\_\_\_ First date Worker was unable to perform job duties: \_\_\_\_\_
  - j. \_\_\_\_\_ Date of maximum medical improvement: \_\_\_\_\_
  - k. \_\_\_\_\_ Impairment rating: \_\_\_\_\_ Date assessed: \_\_\_\_\_  
\_\_\_\_\_ Doctor's Name: \_\_\_\_\_
  - l. \_\_\_\_\_ Has Worker been released to work by a Doctor? ☐ Yes ☐ No  
\_\_\_\_\_ If yes, please indicate the date Worker was released to work: \_\_\_\_\_
  - m. \_\_\_\_\_ Has Worker returned to work since the accident? ☐ Yes ☐ No  
\_\_\_\_\_ If yes, please indicate the date Worker returned to work: \_\_\_\_\_
  - n. \_\_\_\_\_ Name and address of current Employer: \_\_\_\_\_
  - o. \_\_\_\_\_ Highest level of school completed by Worker: \_\_\_\_\_

**B. RETURN TO WORK LUMP SUM: Section 52-5-12 (B)**

10. \_\_\_\_\_ Return to work lump sum:

- a. \_\_\_\_\_ The Worker returned to work on \_\_\_\_\_, 20\_\_\_\_, and during the last six months Worker has been earning an average weekly wage of \_\_\_\_\_. (Attach relevant wage records)
- b. \_\_\_\_\_ The Worker returned to \_\_\_\_\_ the same job; \_\_\_\_\_ modified job duties; or \_\_\_\_\_ other job duties.
- c. \_\_\_\_\_ Worker's income \_\_\_\_\_ is; \_\_\_\_\_ is not at least 80% of the pre-injury average weekly wage.
- d. \_\_\_\_\_ Worker has been advised of his right to other types of lump sum? ☐ Yes ☐ No.

**C. ACCUMULATED DEBTS OF WORKER: Section 52-5-12(C)**

11. \_\_\_ Debt based partial lump sum advance: Debts have accumulated during the Workers' disability. (Attach documentation indicating the date debt incurred during period of disability, name, address and phone number of the creditor, payment amount currently due and total balance):

**D. UNDISPUTED TOTAL/PARTIAL LUMP SUM: Section 52-5-12(D)**

12. \_\_\_ Undisputed total/partial lump sum settlement:

\_\_\_ a. The proposed settlement is (\_\_\_) Total (\_\_\_) Partial:

\_\_\_ b. The proposed settlement is by agreement and is undisputed by the parties? \_\_\_ Yes \_\_\_ No

\_\_\_ c. Describe nature of the proposed settlement, why there is a need to settle the proceeding per the agreed terms, and how the settlement provides substantial justice: \_\_\_\_\_

**E. REQUEST FOR RELIEF:**

13. \_\_\_ A request is made for approval of a lump-sum settlement as follows (applicable to §52-5-12 (B), (C) & (D)):

\_\_\_ a. A lump sum payment of weekly compensation benefits in the amount of: \_\_\_\_\_.

\_\_\_ b. The lump sum payment of weekly compensation benefits is a lump sum of (\_\_\_) all remaining weekly payments; or (\_\_\_) a portion of remaining weekly payments. If a partial lump sum is approved, as of the \_\_\_ day of \_\_\_, 20\_\_\_, the Worker will have \_\_\_\_\_ of weekly compensation benefits remaining. [# of weeks]

\_\_\_ c. Future medical benefits will remain (\_\_\_) open indefinitely or for a term of years; (\_\_\_) closed. If closed, Worker shall receive \$\_\_\_ in lieu of future medical benefits. If future medical benefits will remain open for a term of years, the term will be \_\_\_ years from date of final approval of the settlement. Copies of records shall be attached to petition/application relevant to the need for future medical care, impairment, and other issues, as may be appropriate:

\_\_\_ d. The payment request (\_\_\_) does; (\_\_\_) does not include a lump sum for a mental impairment. Copies of medical records should be attached to petition relevant to mental condition, need for future medical care, as appropriate:

\_\_\_ e. The parties are seeking an award or approval of attorney fees in the amount of \$\_\_\_, including gross receipts tax.

\_\_\_ f. Other: \_\_\_\_\_

**IF THE VERIFICATION IS NOT SIGNED BY THE WORKER, THE PETITION WILL NOT BE ACCEPTED FOR FILING BY THE WCA CLERK OF THE COURT.**

**VERIFICATION OF THE WORKER**

COUNTY OF \_\_\_\_\_)

\_\_\_\_\_ SS. \_\_\_\_\_)

STATE OF NEW MEXICO \_\_\_\_\_)

I, \_\_\_\_\_, Worker, verify I have read this petition for lump-sum settlement approval and I swear and affirm that I understand the terms and conditions of the lump-sum settlement agreement. I understand approval of this agreement will affect my future entitlement to workers' compensation benefits:

\_\_\_\_\_  
Date \_\_\_\_\_ Worker's signature

SUBSCRIBED AND SWORN to before me by Worker, \_\_\_\_\_, on this \_\_\_ day of \_\_\_, 20\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Signature of Worker's Attorney (if any)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone & Fax Number

**APPROVAL OF THE EMPLOYER/INSURER/OTHER (UNDISPUTED PETITIONS)**

I, \_\_\_\_\_, Employer/Insurer/Attorney, state that I have read this petition for lump-sum settlement approval, that I sign this Joint Petition with full authority to do so, and I confirm that I understand the terms and conditions of the lump-sum settlement agreement. I understand approval of this agreement will affect my company's/client's obligation to pay under this settlement, and its future obligation to pay workers' compensation-

\_\_\_\_\_  
Date \_\_\_\_\_ Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone & Fax Number

**STATE OF NEW MEXICO**  
**WORKERS' COMPENSATION ADMINISTRATION**

\_\_\_\_\_, WCA No.: \_\_\_\_\_

\_\_\_\_\_, Worker,

v.

\_\_\_\_\_, and

\_\_\_\_\_,  
Employer/Insurer.

**JOINT PETITION FOR LUMP SUM SETTLEMENT**

This form should be used to request a lump sum settlement pursuant to §52-5-12 (D). In order to use this form, the parties must agree to the settlement and sign this joint petition. By filing this joint petition the parties are submitting to the jurisdiction of the Workers' Compensation Administration. This form should not be used for return to work or partial lump sum for debt. Please note: This settlement may be affected by federal Medicare regulations if benefits for future medical care are affected.

1. Type of injury: \_\_\_\_\_ Occupational Injury \_\_\_\_\_ Occupational Disease
2. Worker's Full Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone No.: ( ) \_\_\_\_\_
3. Worker's date of birth: / / Age: Sex: M F
4. Worker's Social Security Number: - -
5. Full Name of Employer: \_\_\_\_\_  
Employer's Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone No.: ( ) \_\_\_\_\_
6. Insurance Carrier: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone No.: ( ) \_\_\_\_\_
7. Date of Accident: \_\_\_\_\_
  - a. City and County of accident: \_\_\_\_\_
  - b. Worker's job at time of accident: \_\_\_\_\_
  - c. Worker's wages at time of accident: \$ \_\_\_\_\_ hour \$ \_\_\_\_\_ bi-weekly \$ \_\_\_\_\_ month \$ \_\_\_\_\_ year
  - d. How did the accident occur: \_\_\_\_\_
  - e. Part(s) of the body injured: \_\_\_\_\_
  - f. Type of injury/diagnosis: \_\_\_\_\_
  - g. Name and address of treating Doctor(s): \_\_\_\_\_
  - h. First date Worker was unable to perform job duties: \_\_\_\_\_
  - i. Date of maximum medical improvement: \_\_\_\_\_
  - j. Impairment rating: \_\_\_\_\_ Doctor's Name: \_\_\_\_\_
  - k. Has Worker been released to work by a Doctor? Yes No  
If yes, indicate the date Worker was released to work: \_\_\_\_\_
  - l. Has Worker returned to work since the accident? Yes No  
If yes, indicate the date Worker returned to work: \_\_\_\_\_
  - m. Name and address of current Employer: \_\_\_\_\_
  - n. Highest level of school completed by Worker: \_\_\_\_\_
8.
  - a. Average weekly wage: \_\_\_\_\_
  - b. Weekly compensation rate: \_\_\_\_\_
  - c. Disability rating, if known: \_\_\_\_\_
9.
  - a. The proposed settlement is ( ) Total ( ) Partial.
  - b. The proposed settlement is by agreement and is undisputed by the parties? Yes No
10. Is an interpreter needed for the hearings on this petition? Yes No.  
If yes, what language? \_\_\_\_\_ Worker will not be responsible for cost.

**IF THE VERIFICATION IS NOT SIGNED BY THE WORKER, THE PETITION WILL NOT BE ACCEPTED FOR FILING BY THE WCA CLERK OF THE COURT.**

If you have questions, please call the Ombudsman Hotline at 505-841-6894 or 1-866-967-5667.



**VERIFICATION OF THE WORKER**

I, \_\_\_\_\_, Worker, verify I have read this petition for lump sum settlement approval. In accordance with NMRA 1-011(B), I swear and affirm under penalty of perjury under the laws of the State of New Mexico that this petition is true and correct and that I understand the terms and conditions of the lump sum settlement agreement. I understand approval of this agreement will affect my future entitlement to workers' compensation benefits.

\_\_\_\_\_  
Date Worker's signature

\_\_\_\_\_  
Signature of Worker's Attorney (if any)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone & Fax Number

\_\_\_\_\_  
E-mail address (optional)

**APPROVAL OF THE EMPLOYER/INSURER/OTHER (UNDISPUTED PETITIONS)**

I, \_\_\_\_\_, Employer/Insurer/Attorney, state that I have read this petition for lump sum settlement approval, that I sign this Joint Petition with full authority to do so, and I confirm that I understand the terms and conditions of the lump sum settlement agreement. I understand approval of this agreement will affect my company's/client's obligation to pay under this settlement and its future obligation to pay workers' compensation benefits.

\_\_\_\_\_  
Date Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone & Fax Number

\_\_\_\_\_  
E-mail address (optional)

**A HEARING BEFORE AND APPROVAL BY A WORKERS' COMPENSATION JUDGE IS REQUIRED BEFORE THE LUMP SUM AGREEMENT CAN BECOME EFFECTIVE. A REQUEST FOR SETTING, PROPOSED ORDER AND SELF-ADDRESSED STAMPED ENVELOPES FOR ALL PARTIES ENTITLED TO NOTICE MUST BE SUBMITTED WITH THIS PETITION OR IT WILL NOT BE ACCEPTED FOR FILING BY THE WCA CLERK OF THE COURT.**

**STATE OF NEW MEXICO**  
**WORKERS' COMPENSATION ADMINISTRATION**

\_\_\_\_\_, WCA No.: \_\_\_\_\_

\_\_\_\_\_, Worker,

v.

\_\_\_\_\_, and

\_\_\_\_\_,  
Employer/Insurer.

**PETITION FOR LUMP SUM PAYMENT**  
**RETURN TO WORK**

This form should be used for lump sums after return to work for 6 months, earning at least 80% of the pre-injury wage pursuant to §52-5-12(B).

1. Type of injury: \_\_\_\_\_ Occupational Injury \_\_\_\_\_ Occupational Disease

2. Worker's Full Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ ( ) \_\_\_\_\_

3. Worker's date of birth: \_\_\_\_\_ / / Age: \_\_\_\_\_ Sex: M F

4. Worker's Social Security Number: - -
5. Full Name of Employer: \_\_\_\_\_  
 Employer's Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_  
 Telephone No.: ( ) \_\_\_\_\_
6. Insurance Carrier: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_  
 Telephone No.: ( ) \_\_\_\_\_
7. Date of Accident: \_\_\_\_\_  
 a. City and County of accident: \_\_\_\_\_  
 b. Worker's job at time of accident: \_\_\_\_\_  
 c. Worker's wages at time of accident: \$ hour \$ bi-weekly \$ month \$ year  
 d. How did the accident occur: \_\_\_\_\_  
 e. Part(s) of the body injured: \_\_\_\_\_  
 f. Type of injury/diagnosis: \_\_\_\_\_  
 g. Name and address of treating Doctor(s): \_\_\_\_\_  
 h. First date Worker was unable to perform job duties: \_\_\_\_\_  
 i. Date of maximum medical improvement: \_\_\_\_\_  
 j. Impairment rating: \_\_\_\_\_ Doctor's Name: \_\_\_\_\_  
 k. Has Worker been released to work by a Doctor? Yes No  
 If yes, indicate the date Worker was released to work: \_\_\_\_\_  
 l. Has Worker returned to work since the accident? Yes No  
 If yes, indicate the date Worker returned to work: \_\_\_\_\_  
 m. Name and address of current Employer: \_\_\_\_\_  
 n. Highest level of school completed by Worker: \_\_\_\_\_
8. a. Average weekly wage: \_\_\_\_\_  
 b. Weekly compensation rate: \_\_\_\_\_  
 c. Disability rating, if known: \_\_\_\_\_
9. a. The Worker returned to work on , 20 . (Relevant wage records should be attached and must be provided at hearing.)  
 b. The Worker returned to the same job; modified job duties; or other job duties; or other situation  
 applies. Please explain: \_\_\_\_\_  
 c. Worker's income is; is not at least 80% of the pre-injury average weekly wage. If not, explain: \_\_\_\_\_
10. A request is made for approval of a lump sum payment as follows:  
 a. A lump sum payment of weekly compensation benefits in the amount of: \_\_\_\_\_  
 b. The lump sum payment of weekly compensation benefits is a lump sum of all remaining weekly payments. Medical  
 benefits shall not be affected under the terms of this lump sum payment.  
 c. Is a discount being taken? If yes, state the percentage and amount: \_\_\_\_\_  
 d. Attorney fees in the amount of \$ , including gross receipts tax.  
 e. Other: \_\_\_\_\_
11. Is an interpreter needed for the hearings on this petition? Yes No. If yes, what language? \_\_\_\_\_ Worker will not be  
 responsible for cost.

**IF THE VERIFICATION IS NOT SIGNED BY THE WORKER, THE PETITION WILL NOT BE ACCEPTED FOR FILING BY THE WCA CLERK OF THE COURT.**

#### **VERIFICATION OF THE WORKER**

I, \_\_\_\_\_, Worker, verify I have read this petition for lump sum payment return to work. In accordance with NMRA 1-011(B), I swear and affirm under penalty of perjury under the laws of the State of New Mexico that this petition is true and correct and that I understand the terms and conditions of the lump sum settlement payment. I understand approval of this petition will affect my future entitlement to workers' compensation benefits.

\_\_\_\_\_  
 Date Worker's signature

\_\_\_\_\_  
 Signature of Worker's Attorney (if any)

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 City, State, Zip

\_\_\_\_\_  
 Telephone & Fax Number

\_\_\_\_\_  
 E-mail address (optional)

A Summons for each adverse party shall be filed with the petition if one has not been previously filed. If you have questions, please call the Ombudsman Hotline at 505-841-6894 or 1-866-967-5667.

**A HEARING BEFORE AND APPROVAL BY A WORKERS' COMPENSATION JUDGE IS REQUIRED BEFORE THE LUMP SUM AGREEMENT CAN BECOME EFFECTIVE. A REQUEST FOR SETTING, PROPOSED ORDER AND SELF-ADDRESSED STAMPED ENVELOPES FOR ALL PARTIES ENTITLED TO NOTICE MUST BE SUBMITTED WITH THIS PETITION OR IT WILL NOT BE ACCEPTED FOR FILING BY THE WCA CLERK OF THE COURT.**

**STATE OF NEW MEXICO**  
**WORKERS' COMPENSATION ADMINISTRATION**

\_\_\_\_\_, WCA No.: \_\_\_\_\_  
\_\_\_\_\_, Worker,  
v. \_\_\_\_\_, and  
\_\_\_\_\_,  
\_\_\_\_\_, Employer/Insurer.

**PETITION FOR PARTIAL LUMP SUM PAYMENT FOR DEBTS**

This form should be used for a partial lump sum advance for payment of debts accumulated during the course of the disability pursuant to §52-5-12 (C). Attach documentation indicating the date debt was incurred, name, address and phone number of the creditor, payment amount currently due and total balance.

1. Type of injury: \_\_\_\_\_ Occupational Injury \_\_\_\_\_ Occupational Disease
2. Worker's Full Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_ ( )
3. Worker's date of birth: \_\_\_\_\_ / / Age: \_\_\_\_\_ Sex: M F
4. Worker's Social Security Number: \_\_\_\_\_ - -
5. Full Name of Employer: \_\_\_\_\_  
Employer's Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_ ( )
6. Insurance Carrier: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_ ( )
7. Date of Accident: \_\_\_\_\_
  - a. City and County of accident: \_\_\_\_\_
  - b. Worker's job at time of accident: \_\_\_\_\_
  - c. Worker's wages at time of accident: \$ \_\_\_\_\_ hour \$ \_\_\_\_\_ bi-weekly \$ \_\_\_\_\_ month \$ \_\_\_\_\_ year
  - d. How did the accident occur: \_\_\_\_\_
  - e. Part(s) of the body injured: \_\_\_\_\_
  - f. Type of injury/diagnosis: \_\_\_\_\_
  - g. Name and address of treating Doctor(s): \_\_\_\_\_
  - h. First date Worker was unable to perform job duties: \_\_\_\_\_
  - i. Date of maximum medical improvement: \_\_\_\_\_
  - j. Impairment rating: \_\_\_\_\_ Doctor's Name: \_\_\_\_\_
  - k. Has Worker been released to work by a Doctor? Yes No  
If yes, indicate the date Worker was released to work: \_\_\_\_\_
  - l. Has Worker returned to work since the accident? Yes No  
If yes, indicate the date Worker returned to work: \_\_\_\_\_
  - m. Name and address of current Employer: \_\_\_\_\_
  - n. Highest level of school completed by Worker: \_\_\_\_\_
8.
  - a. Average weekly wage: \_\_\_\_\_
  - b. Weekly compensation rate: \_\_\_\_\_
  - c. Disability rating, if known: \_\_\_\_\_
9. This form should be used for approval of a partial lump sum advance for debts as follows:
  - a. A lump sum advance of weekly compensation benefits in the amount of: \_\_\_\_\_
  - b. The lump sum advance of weekly compensation benefits is a portion of remaining weekly payments. If a partial lump sum is approved, as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Worker will have \_\_\_\_\_ weeks of weekly compensation benefits remaining.
  - c. Medical benefits shall not be affected by the terms of this lump sum advance for debts.
  - d. The parties are seeking an award or approval of attorney fees in the amount of \$ \_\_\_\_\_, including gross receipts tax.
  - e. Other: \_\_\_\_\_
10. Is an interpreter needed for the hearings on this petition? Yes No.

If yes, what language? \_\_\_\_\_ Worker will not be responsible for cost.

**IF THE VERIFICATION IS NOT SIGNED BY THE WORKER, THE PETITION WILL NOT BE ACCEPTED FOR FILING BY THE WCA CLERK OF THE COURT.**

**VERIFICATION OF THE WORKER**

I, \_\_\_\_\_, Worker, verify I have read this petition for partial lump sum payment for debts. In accordance with NMRA 1-011(B) I swear and affirm under penalty of perjury under the laws of the State of New Mexico that this petition is true and correct and that I understand the terms and conditions of the lump sum settlement payment. I understand approval of this petition will affect my future entitlement to workers' compensation benefits. I hereby certify that I have incurred debts in the amount of \$ \_\_\_\_\_ during the period of disability.

\_\_\_\_\_  
Date Worker's signature

\_\_\_\_\_  
Signature of Worker's Attorney (if any)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone & Fax Number

\_\_\_\_\_  
E-mail address (optional)

A Summons for each adverse party shall be filed with the petition if one has not been previously filed. If you have questions, please call the Ombudsman Hotline at 505-841-6894 or 1-866-967-5667.

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[5/26/87, 6/20/89, 10/28/93, 3/3/94, 6/1/96, 9/25/96; 10/1/98; 11.4.4 NMAC, Appendix A - Rn, 11 NMAC 4.4 Appendix A, 06/13/03; A, 08/31/05; A, 12/31/07; A/E, 07/1/09; A/E, 2/19/10]

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**End of Adopted Rules Section**

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## Submittal Deadlines and Publication Dates 2010

Volume XXI	Submittal Deadline	Publication Date
Issue Number 1	January 4	January 15
Issue Number 2	January 19	January 29
Issue Number 3	February 1	February 12
Issue Number 4	February 15	February 26
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 3	May 14
Issue Number 10	May 17	May 28
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 30
Issue Number 15	August 2	August 16
Issue Number 16	August 17	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 18	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 30

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