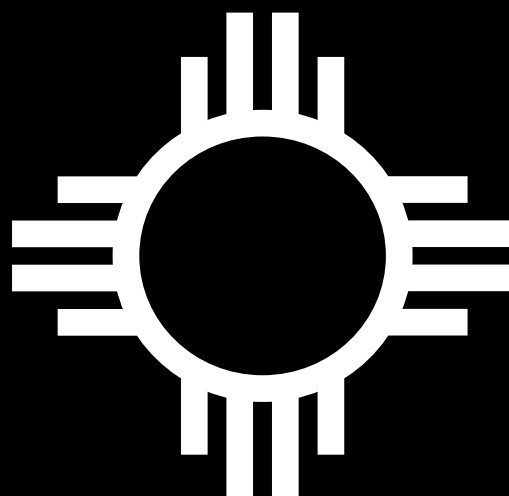


# **NEW MEXICO REGISTER**

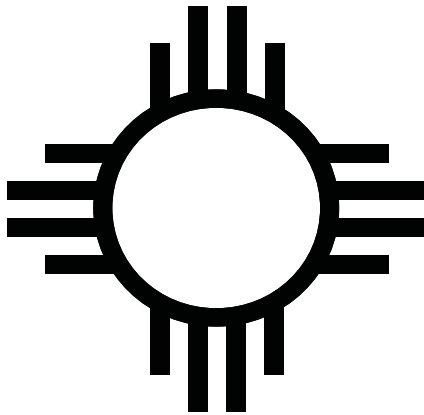


Volume XXI  
Issue Number 7  
April 15, 2010



# **New Mexico Register**

**Volume XXI, Issue Number 7**  
**April 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 7

April 15, 2010

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#### Effective Date and Validity of Rule Filings

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

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO DEPARTMENT OF AGRICULTURE

#### Notice of Hearing

New Mexico Department of Agriculture will hold public hearings under the New Mexico Pesticide Control Act, 76-4-1 through 39, NMSA 1978, in order to propose amendments to 21.17.50 NMAC - Pesticides.

NMDA is proposing revisions to Section 25- Fees, in order to change the current fees for product registration and commercial, non-commercial, operator, pest management consultant, and dealer licenses. The proposed fees are still among the lowest in the nation and surrounding states. It is imperative NMDA increases the fees to recover basic costs to process, issue, and maintain pesticide applicator certifications and licenses, and our regulatory responsibilities required by the NMPCA. With greater resources NMDA can continue further program improvements and additions including continued automation of the testing, licensing, and registration processes as the main priorities. The increase will also assist in the continued expansion and cost free availability of the pesticide disposal and recycling program to producers and businesses statewide. NMDA will also pursue further revision and updating of regulations, personnel additions where necessary, expanded utilization of the website, and increased educational opportunities. NMDA also anticipates a potential for cuts in pesticide program funding by EPA, so additional revenue would allow NMDA to continue to provide the appropriate level of service to producers, regulated industry, and general public.

The draft rule with the proposed fee amounts can be viewed on NMDA's website at: <http://www.nmda.nmsu.edu/DIVISIONS/AES/pest.html> and clicking on New Information. Copies of the proposed rule can be obtained by contacting NMDA at the number listed below.

The hearing will be held in Las Cruces in the conference room of the NMDA building, located at 3190 S. Espina, Las Cruces, NM, beginning at 9:00 am on Friday, May 14, 2010.

Written statements in support or opposition, signed by the submitting person, will be accepted and added to the record, if received prior to 5:00 p.m., May 14, 2010. Written statements, inquiries, or requests for copies of the rule should be directed to Bonnie Rabe,

New Mexico Department of Agriculture, Division of Agricultural and Environmental Services, PO Box 30005, MSC 3AQ, Las Cruces, NM 88003 or at (575) 646-2220.

### NEW MEXICO DEPARTMENT OF AGRICULTURE

#### Notice of Hearing

New Mexico Department of Agriculture will hold a public hearing on the following rules:

\* 19.15.104 NMAC, Standard Specification/Modifications for Petroleum Products: Petroleum Products Standards Act (Chapter 57, Article 19, Sections 25 through 37, New Mexico Statutes Annotated 1978)

\* 19.15.110 NMAC, Biodiesel Fuel Specification, Dispensers, and Dispenser Labeling Requirements: Petroleum Products Standards Act (Chapter 57, Article 19, Sections 25 through 37, New Mexico Statutes Annotated 1978)

\* 19.15.111 NMAC, E85 Fuel Specification, Dispensers, and Dispenser Labeling Requirements: Petroleum Products Standards Act (Chapter 57, Article 19, Sections 25 through 37, New Mexico Statutes Annotated 1978)

The New Mexico Department of Agriculture is proposing the adoption of the following rules for Biodiesel and E85 which will provide for the fuel specification, dispensers and dispenser labeling requirements and the striking of line G of 19 NMAC 15.104 due to current ASTM specifications that are lower than this exception.

A hearing in Las Cruces will be held at the New Mexico Department of Agriculture building, 3190 South Espina (northwest corner of Gregg and Espina), beginning at 9:00 a.m. on May 18, 2010.

Written statements in support or opposition, signed by the submitting person, will be accepted if received prior to 5:00 p.m., May 18, 2010. Written statements, inquiries, or requests for copies of the rule should be directed to David Turning or Joe Gomez, New Mexico Department of Agriculture, Standards and Consumer Services, PO Box 30005, MSC 3170, Las Cruces, NM 88003 or at (575) 646-1616.

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

#### New Mexico Environmental Improvement Board

#### Notice of Public Hearing to Consider the Proposed Adoption of New Regulations Within 20.2 NMAC, Statewide Air Quality Regulations, Requiring Greenhouse Gas Emissions Reductions

The New Mexico Environmental Improvement Board (Board) began a public hearing on March 1, 2010 to take public comment and technical testimony to consider the adoption of proposed new regulations within 20.2 NMAC, Statewide Air Quality Regulations, establishing greenhouse gas emissions reduction requirements. The original proposal to amend various sections in 20.2.1, 20.2.2, 20.2.70 and 20.2.72 NMAC has been revised by the proponent to collect the proposed regulations within a new section of Title 20, Chapter 2, Section 100. The hearing will continue on June 21 and 22, 2010, then again on July 12-16, July 19-23, July 26-30 and subsequent days as necessary to complete the hearing.

New Energy Economy (NEE) is the proponent of the proposed regulation changes to New Mexico Environmental Improvement Board's air quality regulations. NEE's Petition seeks to regulate greenhouse gas emissions statewide as an air pollutant and public nuisance through the imposition of emission reduction requirements. NEE's Petition is limited to entities that emit more than 25,000 metric tons of greenhouse gas emissions per year and are within the oil and gas and electricity generation sectors. The New Mexico Environment Department would monitor and oversee the implementation of the greenhouse gas emission reduction regulations. A penalty for non-compliance would be imposed for violation of the regulations.

Please note that formatting and minor technical changes in the regulations, other than those proposed by New Energy Economy may occur. In addition, the Board may make other changes as necessary to accomplish the purpose of providing public health and safety in response to public comments and evidence presented at the hearing.

The proposed changes may be reviewed during business hours at the Environmental Improvement Board office, located in the Harold Runnels Building, 1190 St. Francis Drive, Room N2153, Santa Fe, New Mexico

87505.

Written comments regarding the proposals may be addressed to the Board Administrator, Ms. Joyce Medina, at the above address, and should reference docket number EIB 08-19 (R).

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, NMSA 1978, Section 74-1-1 (Environmental Improvement Act), and other applicable procedures. Orders on Hearing Procedures entered by the Hearing Officer are available from the Board Administrator.

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

Persons wishing to present technical testimony must file with the Board a written notice of intent to do so by May 17, 2010. The notice of intent to present technical testimony shall:

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

Failure to comply with these requirements may result in the exclusion of evidence offered.

New Energy Economy's Notice of Intent to Present Technical Testimony for the hearing was received on March 2, 2010, and is available from the Board Administrator. All other parties' Notices of Intent to Present Technical Testimony must be received by the Board Administrator not later than 5:00 p.m. May 17, 2010. Rebuttal testimony must be received by the Board Administrator not later than 5:00 p.m. June 11, 2010. Notices of Intent to Present Technical Testimony

and all subsequent documentation should be submitted referencing the name of the regulation and the docket number EIB 08-19 (R) and should be submitted to:

Joyce Medina, Administrator  
Environmental Improvement Board  
Harold Runnels Bldg., Rm. N-2153  
1190 St. Francis Drive  
Santa Fe, New Mexico 87505  
(505) 827-2425  
(505) 827-0310 FAX

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g., sign or other language interpreter, to participate in any aspect of this process, please contact Judy Bentley by June 1, 2010 at the NMED Human Resources Bureau, P.O. Box 5469, Santa Fe, NM 87502, telephone 505-827-9872. TDD or TDY may access this number via the New Mexico Relay Network at 1-800-659-8331.

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

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

#### NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing on April 15, 2010, at 9:00 a.m., in the South Park conference room, 2055 S. Pacheco, Ste. 500-590, Santa Fe, New Mexico.

The subject of the hearing is Conversion Factors. The Human Services Department is proposing to change the income conversion factors for Medicaid categories that use AFDC methodology from 4.3 to 4.0 and 2.15 to 2.0 for individuals paid weekly and biweekly, respectively. The change is to comport with changes in income conversion factors for the Supplemental Nutritional Assistance Program and cash assistance. The change in conversion factors is applicable to all categories of Medicaid in which eligibility is determined by the Income Support Division. The proposed change in income conversion factors necessitates changes in Medicaid policy for categories that use AFDC methodology, but not changes in other Medicaid categories that do not reference conversion factors.

Interested persons may submit written comments no later than 5:00 p.m., April 15, 2010, to Kathryn Falls, Secretary, Human Services Department, PO Box 2348, Santa

Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

Copies of the Human Services Register and the attached corresponding emergency interim rules are available for review on our Website at [www.hsd.state.nm.us/mad/registers/2010](http://www.hsd.state.nm.us/mad/registers/2010) or by sending a self-addressed stamped envelope to Medical Assistance Division, Long -Term Services and Support Bureau, PO Box 2348, Santa Fe, NM. 87504-2348.

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

#### NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 9:00 a.m. on Thursday, May 13, 2010, in the ASD Conference Room of Plaza San Miguel, 729 St. Michael's Drive, Santa Fe, NM.

The subject of the hearing will be CoLTS (c) Home and Community Based-Services Waiver. The New Mexico Human Services Department, Medical Assistance Division (HSD/MAD) proposes to replace the Disabled and Elderly (D&E) Waiver rules (8.314.2 NMAC) with a new section to the Coordinated Long-Term Services Waiver rules (8.307.18 NMAC).

The CoLTS 1915 (c) Waiver serves individuals who are aged, blind or disabled. While case management services are not included in the CoLTS 1915 (c) Waiver, recipients receive service coordination services through their respective CoLTS Managed Care Organizations (MCOs). The New Mexico Aging and Long-Term Services Department (ALTSD) administers the CoLTS 1915 (c) Waiver.

Interested persons may submit written comments no later than 5:00 p.m., May 13, 2010, to Kathryn Falls, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written

and oral testimony will be considered prior to issuance of the final regulation.

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

The Human Services Register with the attached proposed rules are available for review on our Website at [www.hsd.state.nm.us/mad/registers/2010](http://www.hsd.state.nm.us/mad/registers/2010) or by sending a self-addressed stamped envelope to Medical Assistance Division, Program Oversight & Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

## NEW MEXICO MEDICAL BOARD

### NEW MEXICO MEDICAL BOARD

#### Notice

The New Mexico Medical Board will convene a regular Board Meeting on Thursday, May 20, 2010 at 8:30 a.m. and Friday, May 21, 2010 at 9:00 a.m. in the Conference Room, 2055 S. Pacheco, Building 400, Santa Fe, New Mexico. A Public Rule Hearing will be held on Friday, May 21, 2010 at 9:00 a.m. The Board will reconvene after the Hearing to take action on the proposed rules. The Board may enter into Executive Session during the meeting to discuss licensing or limited personnel issues.

The purpose of the Rule Hearing is to consider amending 16.10.4 NMAC (Continuing Medical Education) to add Paragraph I Expert Review, and 16.10.1 NMAC (General Provisions) to add Section 13 Business Entities.

Copies of the proposed rules will be available no later than April 6th on request from the Board office at the address listed above, by phone (505) 476-7220, or on the Internet at [www.nmmb@state.nm.us](mailto:www.nmmb@state.nm.us).

Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m., May 14, 2010, to the board office, 2055 S. Pacheco, Building 400, Santa Fe, NM, 87505.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service in order to attend or participate in the hearing, please

contact Lynnelle Tipton, Administrative Assistant at 2055 S. Pacheco, Building 400, Santa Fe, NM at least one week prior to the meeting. Public documents, including the agenda and minutes, can be provided in various accessible formats.

## NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

### New Mexico Department of Public Safety Notice of Public Hearing

The New Mexico Department of Public Safety (NMDPS) will be holding a public hearing for the sake of receiving comments on one Rule amendment to 10.8.2.16 NMAC regarding the Concealed Carry Act. The hearing will be held at the State Personnel Building Auditorium located at 2600 Cerrillos Road, Santa Fe, New Mexico, on April 23, 2010 from 1:00 p.m. until 5:00 p.m. The Rule amendment concerns the prohibition of the consumption of alcohol while carrying a concealed handgun as provided for by the Act.

Copies of the proposed Rule amendment shall be made available to the public ten (10) days prior to the Public Hearing and may be obtained by calling the Concealed Carry Unit at 505-841-8053. The proposed Rule will be posted on the NMDPS website <http://www.dps.nm.org> ten days prior to the hearing and may be accessed free of charge.

Comments on the amendment to Rule 10.8.2.16 NMAC are invited. Oral comments may be made at the hearing, or written comments may be submitted to the Concealed Carry Unit c/o Office of Legal Affairs at P.O. Box 1628, Santa Fe New Mexico 87504-1628 no later than April 30, 2010. Any individual with a disability who is in need of a reader, amplifier, or other form of auxiliary aid or service in order to attend or participate in the hearing should contact Suzanne Skasik, 505-841-8053 at least 10 days prior to the hearing.

## NEW MEXICO RACING COMMISSION

### NEW MEXICO RACING COMMISSION NOTICE OF RULEMAKING AND PUBLIC HEARING

**NOTICE IS HEREBY GIVEN** that the New Mexico Racing Commission will hold a Regular Meeting and Rule Hearing on May 19, 2010. The hearing will be held during the Commission's regular business meeting, beginning at 8:30 a.m.

with executive session. Public session will begin at 10:30 a.m. The meeting will be held at SunRay Park Racetrack, #39 Road 5568, Farmington, New Mexico.

The purpose of the Rule Hearing is to consider adoption of the proposed amendments and additions to the following Rules Governing Horse Racing in New Mexico No. 15.2.5 NMAC, 15.2.6 NMAC and 16.47.1 NMAC. The comments submitted and discussion heard during the Rule Hearing will be considered and discussed by the Commission during the open meeting following the Rule Hearing. The Commission will vote on the proposed rules during the meeting.

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

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

India Hatch  
Deputy Agency Director

Dated: April 1, 2010

## End of Notices and Proposed Rules Section

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## Adopted Rules

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an emergency amendment to 8.232.500 NMAC, Section 11, effective April 1, 2010.

#### **8.232.500.11 I N C O M E STANDARDS:**

A. AFDC income methodology is used in calculating income for category 032 except for income conversion factors which are 4.0 (paid weekly) and 2.0 (paid biweekly). The applicant/recipient must be a member of an assistance unit with income, after application of deductions and disregards specified in 8.232.500.12 NMAC, of less than 185 percent of the federal poverty guidelines for the size of the assistance unit. See 8.200.520.10 NMAC, *income standards*.

B. The income standard is determined by the number of members in the assistance unit, and includes the needs of unborn children, if applicable.

C. Income of parent(s) is considered available to the applicant child(ren) if the parent(s) and children live together.

D. No income from alien sponsor(s), stepparent(s), or grandparent(s) is considered available to the assistance unit. [8.232.500.11 NMAC - Rp, 8 NMAC 4.KID.520, 8/1/06; A/E, 4/1/10]

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an emergency amendment to 8.227.500 NMAC, Sections 5, 10 and 11, effective April 1, 2010. This rule was also renumbered and reformatted from 8 NMAC 4.CMS.000 and 8 NMAC 4.CMS.500 to comply with NMAC requirements.

**8.227.500.5 EFFECTIVE DATE:** February 1, 1995, unless a later date is cited at the end of a section.

[2/1/95; 8.227.500.5 - Rn, 8 NMAC 4.CSM.000.5 & A/E, 4/1/10]

**8.227.500.10 R E S O U R C E STANDARDS:** The recipient must have met the AFDC resource standards and received AFDC in at least three [(3)] of the six [(6)] months immediately preceding the month of ineligibility.

[2/1/95; 8.227.500.10 - Rn, 8 NMAC 4.CSM.510 & A/E, 4/1/10]

#### **8.227.500.11 I N C O M E**

**STANDARDS:** The recipient must have met the AFDC income standards and received AFDC in at least three [(3)] of the six [(6)] months immediately preceding the month of ineligibility. AFDC income methodology is used in calculating income for category 027 except for income conversion factors which are 4.0 (paid weekly) and 2.0 (paid biweekly).

[2/1/95; 8.227.500.11 - Rn, 8 NMAC 4.CSM.520 & A/E, 4/1/10]

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an emergency amendment to 8.230.500 NMAC, Sections 5, 12 and 13, effective April 1, 2010. This rule was also renumbered and reformatted from 8 NMAC 4.PWN.000 and 8 NMAC 4.PWN.500 to comply with NMAC requirements.

**8.230.500.5 EFFECTIVE DATE:** February 1, 1995, unless a later date is cited at the end of a section.

[2/1/95; 8.230.500.5 NMAC - Rn, 8 NMAC 4.PWN.000.5 & A/E, 4/1/10]

**8.230.500.12 I N C O M E STANDARDS:** The applicant/recipient's assistance unit must meet the income standards established for AFDC. AFDC income methodology is used in calculating income for category 030 except for income conversion factors which are 4.0 (paid weekly) and 2.0 (paid biweekly).

[2/1/95; 8.230.500.12 NMAC - Rn, 8 NMAC 4.PWN.520 & A/E, 4/1/10]

#### **8.230.500.13 EARNED INCOME:**

A. **Income exclusions:** The income of a stepparent of a minor pregnant woman and the income of a sponsor of [an] a pregnant alien are not considered available, unless the following apply:

(1) income is actually available to the pregnant woman; or

(2) pregnant woman is a sponsored alien and the sponsor is her spouse.

B. **Earned income deductions and disregards:** Countable earned income is determined by subtracting all earned income deductions allowable for AFDC, and for which the pregnant woman qualifies, from gross earnings. The following deductions are allowed:

(1) deductions for work-related expenses and day care; see financial assistance manual.

(2) earned income disregards (EIDs) of either \$30 and one third or \$30; EIDs are allowable only if the pregnant

woman received AFDC in one of the four [(4)] preceding months and has not exhausted the time period applicable to either of these specific disregards; EIDs are seldom applied since the assistance unit's income is usually too high qualify for an AFDC payment.

[2/1/95; 8.230.500.13 NMAC - Rn, 8 NMAC 4.PWN.521 & A/E, 4/1/10]

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an emergency amendment to 8.249.500 NMAC, Sections 5 and 11, effective April 1, 2010. This rule was also renumbered and reformatted from 8 NMAC 4.RMO.000 and 8 NMAC 4.RMO.500 to comply with NMAC requirements.

**8.249.500.5 EFFECTIVE DATE:** February 1, 1995, unless a later date is cited at the end of a section.

[2/1/95; 8.249.500.5 NMAC - Rn, 8 NMAC 4.RMO.000.5 & A/E, 4/1/10]

#### **8.249.500.11 I N C O M E STANDARDS:**

A. Funding for refugee medical assistance is authorized as specified under Title IV of the Immigration and Nationality Act of 1980. See Section 412(e) of the Immigration and Nationality Act; Section 45 CFR 400.2.

B. An applicant for/ recipient of refugee medical assistance is eligible in the following instances:

(1) the applicant's income is below the aid to families with dependent children (AFDC) standard of need after the earned income disregard (EID) is applied; see [FAP-521-I, Earned Income Disregard] 8.102.520.10 NMAC, *earned income definition*;

(2) with the refugee cash assistance program, the applicant must meet the AFDC standard of need, without deduction of the earned income disregard; AFDC income methodology is used in calculating income for category 049 except for income conversion factors which are 4.0 (paid weekly) and 2.0 (paid biweekly);

(3) the applicant meets all standards for refugee cash assistance, but wishes to receive only refugee medical assistance; or

(4) the applicant loses eligibility for refugee cash assistance due to earned income may receive up to four [(4)] months of refugee medical assistance; the total months of refugee assistance cannot exceed the eight [(8)] month limit.

[2/1/95; 8.249.500.11 NMAC - Rn, 8 NMAC 4.RMO.521 & A/E, 4/1/10]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an emergency amendment to 8.259.500 NMAC, Sections 5 and 11, effective April 1, 2010. This rule was also renumbered and reformatted from 8 NMAC 4.RSD.000 and 8 NMAC 4.RSD.500 to comply with NMAC requirements.

### 8.259.500.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section.

[2/1/95; 8.259.500.5 NMAC - Rn, 8 NMAC 4.RSD.000.5 & A/E, 4/1/10]

### 8.259.500.11 I N C O M E STANDARDS:

**A.** The refugee applicant's income must be below the AFDC standard of need after deduction of medical expenses incurred and paid in that month. AFDC income methodology is used in calculating income for category 059 except for income conversion factors which are 4.0 (paid weekly) and 2.0 (paid biweekly).

**B. Allowable medical expenses:** Allowable medical expenses include medical services that are covered by medicaid and payment of medical insurance premiums. Since medicaid does not cover expenses for acupuncture, massage therapy, and chiropractic services, these expenses are not allowed as medical expenses. The amount of medical expenses that must be incurred and paid in each month is the amount of countable income in excess of the standard of need. "Countable income" is the gross income minus the [ninety dollar (\$90)] \$90 work-related disregard and the [thirty dollar (\$30) and 1/3 or thirty dollars (\$30)] \$30 and one-third or \$30 earned income disregard as appropriate.

[2/1/95; 8.259.500.11 NMAC - Rn, 8 NMAC 4.RSD.520 & A/E, 4/1/10]

## NEW MEXICO COMMISSIONER OF PUBLIC LANDS

This is an amendment to 19.2.8 NMAC, Sections 7, 8, 9, 12, 14, 17, 21 and 22, effective April 15, 2010.

**19.2.8.7 DEFINITIONS:** The following terms as used in this rule shall have the meaning indicated unless otherwise clearly stated in the text:

**A.** Agricultural lease - The commissioner's conveyance, in writing, of the right to use and possess the surface of specified state land for the production of crops and other products of the soil, animal

husbandry or for other related uses. An agricultural lease may be subject to such other rights and uses on the same land as the commissioner may authorize in writing. The lease instrument shall be in a form and contain such provisions as may be prescribed by the commissioner, which provisions shall be deemed to include all pertinent statutes and state land office Rules in effect at lease issuance or as thereafter amended or promulgated.

**B.** Agricultural sublease - A transaction or arrangement whereby a lessee grants to another rights or interests conveyed to the lessee by an agricultural lease. A sublease is created when the lessee transfers to another either the possession of the leased premises, or a portion thereof, or the management and control of crops and other products of the soil, animals, or other permitted uses located on the leased premises. A sublease is not created when the lessee retains possession of the leased premises and manages and controls crops and other products of the soil or animals located on the leased premises but not owned by the lessee.

**C.** Authorized improvements - Improvements placed, made or developed on state lands by a lessee with the express written consent of the commissioner; improvements placed, made or developed on state lands by a lessee that are valued within the limitations prescribed by Section 19-7-51 NMSA 1978; improvements placed, made or developed on state lands prior to March 1, 1955; and, improvements placed, made or developed on state lands after March 1, 1955, but prior to March 1, 1975, provided such improvements are approved in writing by the commissioner on or before October 31, 1993.

**D.** Cultivated land - State trust land suitable for the production of crops or other products of the soil. Cultivated land may be dry cropland, irrigated cropland, orchards or regularly irrigated pasture.

**E.** Dry cropland - Cultivated land for which rainfall is the only source of water to produce crops.

**F.** Grazing land - State trust land suitable for the production and utilization of native forage and on which the ecological plant community is suitable for animal husbandry.

**G.** Irrigated cropland - Cultivated land for which the primary supply of water to produce crops is from a man-made diversion of ground water or surface water.

**H.** Lessee - The party of record at the state land office who leases state trust land from the commissioner under an agricultural lease.

**I.** Open acreage - State trust land which is not leased and has not been withdrawn from leasing by the

commissioner as shown on the state land office departmental tract books.

**J.** Replacement cost less physical deterioration or functional obsolescence - The cost of replacing the improvements, at current prices, with improvements having the same utility equivalent, less a deduction for the total loss in value arising from the physical deterioration or functional obsolescence of the improvement.

**K.** Simultaneous applications - Two or more valid agricultural lease applications [~~for open acreage~~] that apply to lease the same land and that are received at the state land office on the same regular work day.

**L.** State trust land - Land depicted as within the care, custody and control of the commissioner of public lands by the state land office master title tract books.

**M.** Unauthorized improvements - Improvements other than authorized improvements placed, made or developed on state trust lands.

[3/11/81, 1/20/84, 9/30/85, 12/1/92, 6/29/96; 19.2.8.7 NMAC - Rn, 19 NMAC 3 SLO 8.7, 09/30/02; A, 04/15/10]

### 19.2.8.8 AGRICULTURAL LEASES:

**A.** The commissioner may lease state trust land for agricultural purposes in such manner and upon such terms as the commissioner determines to be in the best interests of the trust for which the lands are held by the state.

**B.** Each agricultural lessee shall protect the leased state trust lands from waste and trespass.

**C.** One who leases state trust lands shall fence the lands leased, unless such lands shall be used and managed in conjunction with adjacent land, or are subject to an exchange of use agreement.

~~[C:]~~ **D.** Agricultural leases shall be issued for animal husbandry, cultivated land or both, or for other related uses.

~~[D:]~~ **E.** The commissioner may, at any time, withhold state trust land from agricultural leasing or reject applications to lease, whether such applications are to lease open acreage, to renew an existing lease, or to lease land already under lease to another, if the commissioner determines such action is in the best interests of the trust for which the land is held.

~~[E:]~~ **F.** All agricultural leases shall be upon forms prescribed by the commissioner and shall contain such terms and conditions as are required by law or as are deemed appropriate by the commissioner. Each lease shall have only one (1) mailing address of record at the state land office regardless of the number of lessees under the lease, and the commissioner shall mail all

lease notices to such address of record and no other.

**[F.] G.** Agricultural leases with terms of five (5) years or less may be issued by the commissioner without advertisement or public auction. All such leases shall commence on October 1st and expire on September 30th; provided, however, leases on open acreage issued after October 1st shall bear the actual date of execution and shall be issued for the balance of that lease year plus no more than four (4) additional years.

**[G.] H.** Outstanding agricultural leases and permits on lands acquired by the state of New Mexico from the United States shall be honored until their expiration. The lessees under such leases shall have the right as provided by law to match competitive lease bids and obtain new leases.

[12/1/92, 6/29/96; 19.2.8.8 NMAC - Rn, 19 NMAC 3 SLO 8.8, 09/30/02; A, 04/15/10]

### 19.2.8.9 APPLICATIONS TO LEASE:

**[A.]** Applications for agricultural leases may be filed for state trust lands shown on the state land office departmental tract books as either open acreage or land under lease at the time an application is submitted. A single application shall not, however, be accepted for lands held under more than one (1) existing lease or for both open acreage and lands held by an existing lease:

**B.** All agricultural lease applications, whether for open acreage or leased land, shall:

**(1)** be made under oath on forms prescribed by the commissioner; and

**(2)** include a sworn appraisal of the land applied for, and all improvements located thereon, made by a disinterested party who has personal knowledge and ability to provide a true and accurate assessment of the value of the land and the improvements; provided, however, that an existing lessee applying for a new lease on trust land which the lessee currently leases, in lieu of an appraisal of the improvements shall submit a listing of all improvements located on the land, in addition to the appraisal of the land:

**(3)** Applications that do not include an appraisal of the land and of the improvements, or a listing of improvements as described in Paragraph (2) of Subsection B of 19.2.8.9 NMAC above, and the required application filing fee and rental and improvement deposits set forth below shall be rejected:

**(4)** Appraisals and listings of all improvements shall reflect a good-faith effort on the part of the person submitting the appraisal or the listing to determine:

**(a)** whether the improvements are located on the state trust land for which an application to lease is being submitted; and

**(b)** in the case of an appraisal, the value of the improvements appraised:

**C.** In addition to the requirements set forth above, agricultural lease applications for open acreage shall be accompanied by:

**(1)** the lease application filing fee;

**(2)** deposit of a sum equal to the first year's offered rental, which shall in no case be less than the minimum rent in the schedule of fees, or if fewer than twelve (12) months remain in the period between the date of lease application and the following September 30th, the deposit of an amount equal to the first year's offered rental reduced on a pro rata basis by month; and,

**(3)** deposit of a sum equal to the appraised value of the authorized improvements on the land applied for or a bill of sale or waiver of payment signed by the holder of the right to compensation for such improvements. The value of the improvements, if in dispute, shall be determined by the commissioner's appraisal:

**D.** Upon receipt of simultaneous applications, the lease shall be awarded to the applicant offering the highest annual rental or, at the commissioner's discretion, the applications may be rejected; and

**(1)** the applicants permitted to submit confidential sealed lease bids on forms and pursuant to procedures prescribed by the commissioner with the lease awarded to the applicant who by the date and time specified by the commissioner submits the highest sealed bid, if to anyone; or

**(2)** the open acreage leased by advertised, competitive bid to the bidder offering the highest annual rental, if to anyone:

**E.** In addition to the requirements set forth above, agricultural lease applications for a new lease on lands held by the applicant under an existing lease shall be accompanied by:

**(1)** the lease application filing fee;

**(2)** the first year's offered rental, which shall in no case be less than the minimum rent in the schedule of fees; and

**(3)** shall be filed with the commissioner on or before August 1st of the year in which the existing lease is to expire. The failure to submit the application on or before August 1st shall result in the forfeiture of the lessee's right to obtain the lease by matching the highest annual rental offered by other applicants to lease the same land:

**F.** In addition to the requirements set forth above, agricultural lease applications to lease lands leased to another under an existing lease shall be made for the entire acreage under lease. Such applications shall be made on or before September 1st in the year in which the existing lease is to expire, and shall be

accompanied by:

**(1)** the lease application filing fee;

**(2)** deposit of a sum equal to the first year's offered rental which shall in no case be less than the minimum rent in the schedule of fees; and

**(3)** deposit by money order, cashier's check or certified check of a sum equal to the appraised value of the authorized improvements on the land applied for, or a bill of sale or waiver of payment signed by the holder of the right to compensation for such improvements. The value of the improvements, if in dispute, shall be determined by the commissioner's appraisal:

**G.** In the event more than one (1) application is filed to lease lands held by an existing agricultural lease, the lease shall be awarded to the applicant offering the highest annual rental; provided that award of such lease for the highest offer is in the best interest of the trust. If, however, the lease is not in default and one (1) of the applicants is the lessee under the existing lease who applied for the new lease prior to August 1st, the commissioner shall notify the lessee in writing of the amount of the highest annual rental offered by another applicant for the lease and the name and address of the applicant offering the highest annual rental. If the lessee matches such offer on or before September 30th, the new lease shall be awarded to the lessee, if to anyone. If the lessee does not apply to lease the land on or before August 1st, and more than one (1) lease application is made on the leased land on or before September 1st, the commissioner, in the commissioner's discretion, may award the lease to the applicant offering the highest annual rental; provided that such award is in the best interest of the trust. Alternatively, the commissioner may implement the procedures applicable in instances of simultaneous application and award the lease to the applicant or bidder offering the highest annual rental:

**H.** One who leases state trust lands shall fence the lands leased, unless such lands shall be used and managed in conjunction with adjacent land, or are subject to an exchange of use agreement:

**I.** The commissioner shall reject any application to lease state trust lands, whether held under an existing lease or not under lease at the time application is made, if the commissioner determines that the award of a lease to the applicant would not be in the best interests of the trust:

**J.** All appraisals of improvements made for the purposes of this Rule shall be made on the basis of replacement cost less a deduction for the total loss in value arising from the physical deterioration or functional obsolescence of the improvements, and a value shall be listed separately for each improvement:

**K.** The inclusion of

unauthorized improvements on any appraisal or listing of improvements submitted to the commissioner for any purpose shall not be interpreted as approval of those improvements by the commissioner. Improvements shall be approved only as provided under 19.2.8.17 NMAC "Agricultural Improvements" below:

**L.** A lessee or applicant submitting a sealed bid in response to the commissioner's request for sealed bids, shall not be permitted to change or supplement that bid after it has been submitted.]

**A.** Requirements for all applications. Applications for agricultural leases may be filed for state trust lands shown on the state land office departmental tract books as either open acreage or land under lease at the time an application is submitted. The commissioner shall reject any application to lease state trust lands, whether held under an existing lease or not under lease at the time application is made, if the commissioner determines that the award of a lease to the applicant would not be in the best interests of the trust.

(1) A single application shall not be accepted for lands held under more than one (1) existing lease or for both open acreage and lands held by an existing lease.

(2) All agricultural lease applications shall be made under oath on forms prescribed by the commissioner.

(3) All agricultural lease applications shall include a sworn appraisal of the land applied for, and all improvements located thereon, made by a disinterested party who has personal knowledge and ability to provide a true and accurate assessment of the value of the land and the improvements; provided, however, that an existing lessee applying for a new lease on trust land which the lessee currently leases, in lieu of an appraisal of the improvements shall submit a listing of all improvements located on the land, in addition to the appraisal of the land.

(a) All appraisals of improvements made for the purposes of this rule shall be made on the basis of replacement cost less a deduction for the total loss in value arising from the physical deterioration or functional obsolescence of the improvements, and a value shall be listed separately for each improvement.

(b) The inclusion of unauthorized improvements on any appraisal or listing of improvements submitted to the commissioner for any purpose shall not be interpreted as approval of those improvements by the commissioner. Improvements shall be approved only as provided under 19.2.8.17 NMAC "agricultural improvements" below.

**B.** Application requirements for open acreage. In addition to the requirements set forth in sub-part A above, agricultural lease applications for open acreage shall be accompanied by:

(1) the lease application filing fee;

(2) the deposit of a sum equal to the first year's offered rental, which shall in no case be less than the minimum rent in the schedule of fees, or if fewer than twelve (12) months remain in the period between the date of lease application and the following September 30th, the deposit of an amount equal to the first year's offered rental reduced on a pro rata basis by month; and,

(3) the deposit of a sum equal to the appraised value of the authorized improvements on the land applied for or a bill of sale or waiver of payment signed by the holder of the right to compensation for such improvements.

**C.** Simultaneous applications for open acreage. Upon receipt of simultaneous applications for open acreage, the lease shall be awarded to the applicant offering the highest annual rental or, at the commissioner's discretion, the applications may be rejected; and

(1) the applicants permitted to submit confidential sealed lease bids on forms and pursuant to procedures prescribed by the commissioner with the lease awarded to the applicant who by the date and time specified by the commissioner submits the highest sealed bid, if to anyone; or

(2) the open acreage leased by advertised, competitive bid to the bidder offering the highest annual rental, if to anyone.

**D.** Application requirements for renewal. In addition to the requirements set forth in sub-part A above, agricultural lease applications for a new lease on lands held by the applicant under an existing lease shall:

(1) be accompanied by the lease application filing fee;

(2) be accompanied by the first year's offered rental, which shall in no case be less than the minimum rent in the schedule of fees; and

(3) be filed with the commissioner on or before August 1st of the year in which the existing lease is to expire; the failure to submit the application on or before August 1st shall result in the forfeiture of the lessee's right to obtain the lease by matching the highest annual rental offered by other applicants to lease the same land.

**E.** Application requirements for competitive bids. In addition to the requirements set forth in Subsection A above, agricultural lease applications to lease lands leased to another under an existing lease shall be made for the entire acreage under lease. Such applications shall be made on or before September 1st in the year in which the existing lease is to expire, and shall be accompanied by:

(1) the lease application filing fee;

(2) the deposit of a sum equal to the first year's offered rental which shall in

no case be less than the minimum rent in the schedule of fees; and

(3) the deposit by money order, cashier's check or certified check of a sum equal to the appraised value of the authorized improvements on the land applied for, or a bill of sale or waiver of payment signed by the holder of the right to compensation for such improvements.

**F.** Determination of competitive bids. In the event more than one (1) application is filed to lease lands held by an existing agricultural lease, the lease shall be awarded to the applicant offering the highest annual rental, provided that such award is in the best interest of the trust. If, however, the lease is not in default and one of the applicants is the lessee under the existing lease who correctly applied for the new lease prior to August 1st, the commissioner shall notify the lessee in writing of the amount of the highest annual rental offered by another applicant for the lease and the name and address of the applicant offering the highest annual rental. If the lessee matches such offer on or before September 30th, the new lease shall be awarded to the lessee, if to anyone. If the lessee does not apply to lease the land on or before August 1st, and more than one (1) lease application is made on the leased land on or before September 1st, the commissioner, in the commissioner's discretion, may award the lease to the applicant offering the highest annual rental, provided that such award is in the best interest of the trust. Alternatively, the commissioner may implement the procedures applicable in instances of simultaneous application set out in Subsection C above.

**G.** Improvement value disputes. The value of the improvements, if in dispute, shall be determined by the commissioner's appraisal. If there is a dispute over the value of the improvements as determined by the commissioner, the disputing party must file a contest to determine such value. The parties to such a contest shall be the existing lessee and the competitive bidder.

**H.** Sealed bids. A lessee or applicant submitting a sealed bid in response to the commissioner's request for sealed bids, shall not be permitted to change or supplement that bid after it has been submitted.

**I.** Non-conforming applications. Any lease application which is non-conforming to the requirements of this subpart shall be subject to rejection.

(1) Applications that do not include an appraisal of the land and of the improvements, or a listing of improvements as described in Paragraph (2) of Subsection B of 19.2.8.9 NMAC above, and the required application filing fee and rental and improvement deposits set forth below shall be rejected.

(2) If the rejected application is to renew a lease, and such application is not corrected in time, the applicant shall fail to retain the right to match a competitive bid set out in Section 19-7-49 NMSA 1978.

(3) In his discretion, but only in cases where there is no competitive bid, the commissioner may, pursuant to Section 19-7-4 NMSA 1978, grant additional time to correct minor errors or omissions in an application.

[3/11/81, 1/20/84, 9/30/85, 12/1/92, 6/29/96; 19.2.8.9 NMAC - Rn, 19 NMAC 3 SLO 8.9, 09/30/02; A, 04/15/10]

#### **19.2.8.12 SUBLEASING:**

**A.** The sublease of an agricultural lease or any portion thereof may be made only with the prior written consent of the commissioner.

(1) A sublease [is not created through the use or occupancy of state trust land with the consent of the lessee, where such use or occupancy did not receive] without the written consent of the commissioner prior to such use or occupancy commencing shall be in violation of Sections 19-6-3 and 5 NMSA 1978.

(2) Sublease applications not submitted to the commissioner for approval within thirty (30) days of their actual execution shall be rejected.

**B.** Applications to sublease shall be made under oath, on forms prescribed by the commissioner and shall be accompanied by the first year's sublease payment.

**C.** The sublease payment shall be made by the lessee, in advance, in addition to the annual lease rental, in an amount equal to twenty percent (.20) of the current annual lease rental, but in no instance less than the minimum rent in the schedule of fees for each year or any portion of a year in the sublease term.

(1) Sublease payments shall be computed on an annual basis from October 1st of each year to the following September 30th, and shall be due on the date of sublease application and thereafter, following sublease approval, on the date the annual lease rental is due.

(2) Sublease payment for a portion of a year shall not be prorated but shall be in the same amount as the sublease payment for a full year.

**D.** No sublease term shall extend beyond the term of its base lease and lease assignment shall result in the automatic termination of any sublease.

[3/11/81, 1/20/84, 9/30/85, 4/8/87, 12/1/92, 6/29/96; 19.2.8.12 NMAC - Rn, 19 NMAC 3 SLO 8.12, 09/30/02; A, 04/15/10]

#### **19.2.8.14 ASSIGNMENTS:**

**A.** With the written consent of the commissioner and the payment to the

commissioner of the assignment filing fee, a lessee may assign the lease or the lease rights to any part of the land held thereunder for the remainder of the lease term, provided the lease is not in default and any outstanding collateral lease assignments have either been released or the prospective lease assignee has agreed in writing to assume or take the lease subject to the rights of the collateral assignees.

[(H)] Lease assignments shall be made under oath, upon forms prescribed by the commissioner and shall be accompanied by the lease assignment filing fee.

[(2) Lease assignments not submitted to the commissioner for approval within thirty (30) days of their actual execution shall be rejected.]

**B.** Upon the commissioner's approval in writing of the lease assignment, the assignment form shall become the leasing instrument.

**C.** An assignment without the written consent of the commissioner shall be null and void.

**D.** The assignment of an agricultural lease does not assign the appurtenant water rights. The transfer of water rights to an assignee requires the use of the transfer of ownership form provided by the office of the state engineer.

[3/11/81, 1/20/84, 9/30/85, 12/1/92, 6/29/96; 19.2.8.14 NMAC - Rn, 19 NMAC 3 SLO 8.14, 09/30/02; A, 04/15/10]

#### **19.2.8.17 AGRICULTURAL IMPROVEMENTS:**

**A.** Improvements shall not be placed, made or developed on state trust land without the express written consent of the commissioner unless the cost of the improvement and its placement is within the cost limitations prescribed by Section 19-7-51 NMSA 1978. Improvements shall be placed, made or developed on state trust land only by the lessee of the land on which the improvements are to be located.

**B.** Applications to place, make or develop improvements on state trust lands held by an agricultural lease shall be made by the lessee upon forms and in the manner prescribed by the commissioner prior to initiation of placement or construction. Each application to place improvements shall:

(1) set forth the type and kind of improvements to be placed, made or developed and their estimated cost;

(2) specify the legal subdivisions on which the improvements are to be located; and

(3) be accompanied by the filing fee specified in the schedule of fees.

**C.** Inclusion of unauthorized improvements on any appraisal or listing of improvements submitted to the commissioner for any purpose shall

not serve as an application to make, place or develop improvements on state trust lands or be construed as approval of those improvements by the commissioner.

**D.** Upon completion of an authorized improvement, the lessee shall, by sworn affidavit, notify the commissioner of the improvement's actual cost of acquisition, construction or placement.

#### **E. Removal:**

(1) All authorized improvements other than fences and growing crops shall be deemed permanent improvements and shall be removed only upon those terms and conditions to which the commissioner has agreed in writing prior to removal.

(2) All unauthorized improvements placed, made or developed on state trust lands by one acting in the capacity of the lessee of the land on which they are located shall be removed unless the lessee applies for, and the commissioner grants, approval of the improvements. The removal of such unauthorized improvements shall be pursuant to terms and conditions established by the commissioner and shall be solely at the expense of the lessee.

(3) Unauthorized improvements placed, made or developed on state trust land by one not acting in the capacity of the lessee of the lands on which the improvements are located shall be subject to removal, sale or other disposition at the commissioner's discretion.

**F. Compensation:** A purchaser or lessee of state trust lands on which authorized improvements are located shall provide to the commissioner:

(1) a bill of sale or waiver of payment signed by the holder of the right to improvement compensation; or

(2) payment of the value of such improvements as determined by the commissioner's appraisal. Payment of the value of authorized improvements received by the commissioner shall be remitted to the holder of the right to improvement compensation.

(3) Except as provided below, the commissioner shall recognize the compensability at one hundred (1.00) percent of value for authorized improvements.

(4) The commissioner shall recognize the compensability of all or any of the unauthorized improvements placed on state trust lands by one acting in the capacity of the lessee at any percentage of value, including zero (0.00) percent, but in no case more than seventy-five (.75) percent of value.

(5) The compensability of unauthorized improvements placed, made or developed on state trust lands by one not acting in the capacity of the lessee of the lands on which the improvements are located may be recognized at any percentage of value by the commissioner, including zero

percent of value.

**(6)** In any instance when a lessee's improvements have been cost-shared with a government entity or through a grant, the lessee's compensation shall be equal to the percent, if any, of the original cost paid by the lessee, which percent shall be applied to the value described in Subsection F of 19.2.8.17 NMAC above.

[3/11/81, 1/20/84, 9/30/85, 11/4/88, 8/8/89, 12/1/92, 6/29/96; 19.2.8.17 NMAC - Rn, 19 NMAC 3 SLO 8.17, 09/30/02; A, 04/15/10]

#### **19.2.8.21 S U R F A C E DAMAGES:**

**A.** If lessee is involved in litigation with any other persons or entities for damages connected with their leased trust land, lessee must notify the commissioner as soon as practicable. This notice requirement does not apply to any litigation involving only the lessee's personal or real property.

**B.** The notice must be in writing, describe the litigation, and give the case name and court docket number; and the notice must be mailed by certified mail to the Commissioner of Public Lands, Office of General Counsel, P.O. Box 1148, Santa Fe, New Mexico 87504.

**C.** The commissioner will decide within thirty (30) days after receiving the notice whether to participate in the litigation. If the commissioner decides to participate, lessee will not oppose the commissioner's participation in the litigation; but lessee can choose to oppose or support the commissioner's claims in the litigation. No response from the commissioner within thirty (30) days shall be deemed a decision not to participate. The commissioner's non-participation shall not be a waiver of any claim regarding damages to the trust lands.

[3/11/81, 1/20/84, 9/30/85, 10/4/88, 12/1/92, 6/29/96; 19.2.8.21 NMAC - Rn, 19 NMAC 3 SLO 8.21, 09/30/02; 19.2.8.21 NMAC - N, 04/15/10]

#### **~~[19.2.8.21]~~ 19.2.8.22 SCHEDULE OF FEES FOR STATE LAND OFFICE RULE RELATING TO AGRICULTURAL LEASES:**

**A.** Each of the following documents shall be accompanied by the appropriate fee as indicated below in order to be accepted for filing. Filing fees are service charges to cover the costs associated with handling the documents and no refunds thereof shall be made. Upon the commissioner's determination that a fee amount set forth below does not cover the costs associated with providing the filing service, the commissioner may change the fee amount without notice of rule amendment or compliance with the rule making procedures established by state land office rule.

(1) Lease application: \$50.00  
(2) Relinquishment: \$50.00  
(3) Lease assignment: \$50.00  
(4) Collateral assignment: \$70.00  
(5) Release of collateral assignment: \$50.00

(6) Miscellaneous instruments, e.g., to effect lease transfer on death of lessee: \$10.00

(7) Application to make improvements: \$30.00

(8) Application to convert land from one permitted use to another: \$50.00

**B.** Copies of records, plats, maps and other public information on file with the state land office and their certification as true copies may be obtained at cost.

**C.** Minimum annual rental for any land leased under an agricultural lease: \$50.00

[19.2.8.22 NMAC - Rn, 19.2.8.21 NMAC, 04/15/10]

### **NEW MEXICO COMMISSION OF PUBLIC RECORDS**

#### **Notice of Repeal**

1.17.210 NMAC, Judicial Records Retention and Disposition Schedule for the New Mexico Judicial Standards Commission, is being repealed and replaced with the new 1.17.210 NMAC, Judicial Records Retention and Disposition Schedule for the Judicial Standards Commission, effective April 19, 2010. 1.18.469 NMAC, Executive Records Retention and Disposition Schedule for the New Mexico Racing Commission, is being repealed and replaced with the new 1.18.469 NMAC, Executive Records Retention and Disposition Schedule for the State Racing Commission, effective April 19, 2010. 1.18.624 NMAC, Executive Records Retention and Disposition Schedule for Aging and Long-Term Care Department, is being repealed and replaced with the new 1.18.624 NMAC, Executive Records Retention and Disposition Schedule for the Aging and Long-Term Services Department, effective April 19, 2010. 1.18.630 NMAC, Executive Records Retention and Disposition Schedule for Human Services Department, is being repealed and replaced with the new 1.18.630 NMAC, Executive Records Retention and Disposition Schedule for the Human Services Department, effective April 19, 2010. 1.18.632 NMAC, Executive Records Retention and Disposition Schedule for Workers Compensation Administration, is being repealed and replaced with the new 1.18.632 NMAC, Executive Records Retention and Disposition Schedule for the Workers Compensation Administration, effective April 19, 2010. The New Mexico

Commission of Public Records at their March 16, 2010 meeting repealed the current rules and approved the new rules.

### **NEW MEXICO COMMISSION OF PUBLIC RECORDS**

March 16, 2010

Leo R. Lucero, Agency Analysis Bureau Chief

NM Commission of Public Records

1205 Camino Carlos Rey

Santa Fe, New Mexico 87507

Mr. Lucero:

You recently requested to publish a synopsis in lieu of publishing the full content of the following rules:

- \* 1.17.210 NMAC JRRDS, Judicial Standards Commission,
- \* 1.18.469 NMAC ERRDS, State Racing Commission,
- \* 1.18.624 NMAC ERRDS, Aging and Long-Term Services Department,
- \* 1.18.630 NMAC ERRDS, Human Services Department; and
- \* 1.18.632 NMAC ERRDS, Workers' Compensation Administration.

A review of the rules shows that their impact is limited to the individual agency to which it pertain, and it is "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis for it is approved.

Sincerely,

Sandra Jaramillo

State Records Administrator

SJ/lrl

### **NEW MEXICO COMMISSION OF PUBLIC RECORDS**

#### **SYNOPSIS**

#### **1.17.210 NMAC JRRDS, Judicial Standards Commission**

**1. Subject matter:** 1.17.210 NMAC, Judicial Records Retention and Disposition Schedule for the Judicial Standards Commission. This rule is new and replaces 1.17.210 NMAC JRRDS, Judicial Standards Commission, an outdated version that was filed on 12/7/2001. This records retention and disposition schedule is a timetable for the management of specific records series created by the

Judicial Standards Commission. It describes each record series by record name, record function, record filing maintenance system, record content, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the Judicial Standards Commission as well as its final disposition. The retention and disposition requirements in this rule are based on the legal use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Judicial Standards Commission.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the Judicial Standards Commission. Persons and entities normally subject to the rules and regulations of the Judicial Standards Commission may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the Judicial Standards Commission.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the Judicial Standards Commission. Any person or entity outside the covered geographical area that conducts business with or through the Judicial Standards Commission may also be affected by this rule.

**5. Commercially published materials incorporated:** The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

**7. Effective date of this rule:** April 19, 2010.

#### Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.17.210 NMAC JRRDS, Judicial Standards Commission.

Tania Maestas Date  
Assistant Attorney General

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

### SYNOPSIS

#### 1.18.469 NMAC ERRDS, State Racing Commission

**1. Subject matter:** 1.18.469 NMAC, Executive Records Retention and Disposition Schedule for the State Racing Commission. This rule is new and replaces 1.18.469 NMAC ERRDS, State Racing Commission, an outdated version that was filed on 5/16/2001. This records retention and disposition schedule is a timetable for the management of specific records series created by the State Racing Commission. It describes each record series by record name, record function, record filing maintenance system, record content, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the State Racing Commission as well as its final disposition. The retention and disposition requirements in this rule are based on the legal use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the State Racing Commission.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the State Racing Commission. Persons and entities normally subject to the rules and regulations of the State Racing Commission may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the State Racing Commission.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the State Racing Commission. Any person or entity outside the covered geographical area that conducts business with or through the State Racing Commission may also be affected by this rule.

**5. Commercially published materials incorporated:** The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

**7. Effective date of this rule:** April 19, 2010.

#### Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.469 NMAC ERRDS, State Racing Commission.

Tania Meastes Date  
Assistant Attorney General

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

### SYNOPSIS

#### 1.18.624 NMAC ERRDS, Aging and Long Term Services Department

**1. Subject matter:** 1.18.624 NMAC, Executive Records Retention and Disposition Schedule for the Aging and Long Term Services Department. This rule is new and replaces 1.18.624 NMAC, ERRDS, Aging and Long Term Services Department, an outdated version that was filed on 12/05/2003. The records retention and disposition schedule is a timetable for the management of specific records series created by the Aging and Long Term Services Department. It describes each record series by record name, record function, record filing maintenance system, record content, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State

Records Administrator, the New Mexico Commission of Public Records and the Aging and Long Term Services Department.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the Aging and Long Term Services Department. Persons and entities normally subject to the rules and regulations of the Aging and Long Term Services Department may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the Aging and Long Term Services Department.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the Aging and Long Term Services Department. Any person or entity outside the covered geographical area that conducts business with or through the Aging and Long Term Services Department may also be affected by this rule.

**5. Commercially published materials incorporated:** The New Mexico Statutes Annotated 1978 is used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

**7. Effective date of this rule:** April 19, 2010.

#### Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.624 NMAC ERRDS, Aging and Long Term Services Department.

\_\_\_\_\_  
Tania Maestas                      Date  
Assistant Attorney General

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

### SYNOPSIS

#### 1.18.630 NMAC ERRDS, Human Services Department

**1. Subject matter:** 1.18.630 NMAC,

Executive Records Retention and Disposition Schedule for the Human Services Department. This rule is new and replaces 1.18.630 NMAC ERRDS, Human Services Department, an outdated version that was filed on 08/30/2002. The records retention and disposition schedule is a timetable for the management of specific records series created by the Human Services Department. It describes each record series by record name, record function, record filing maintenance system, record content, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Human Services Department.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the Human Services Department. Persons and entities normally subject to the rules and regulations of the Human Services Department may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the Human Services Department.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the Department of Transportation. Any person or entity outside the covered geographical area that conducts business with or through the Human Services Department may also be affected by this rule.

**5. Commercially published materials incorporated:** The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

**7. Effective date of this rule:** April 19, 2010.

#### Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.630 NMAC ERRDS, Human Service Department.

\_\_\_\_\_  
Tania Maestas                      Date  
Assistant Attorney General

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

### SYNOPSIS

#### 1.18.632 NMAC ERRDS, Workers Compensation Administration

**1. Subject matter:** 1.18.632 NMAC, Executive Records Retention and Disposition Schedule for the Workers Compensation Administration. This rule is new and replaces 1.18.632 NMAC ERRDS, Workers Compensation Administration, an outdated version that was filed on 11/15/2000. This records retention and disposition schedule is a timetable for the management of specific records series created by the Workers Compensation Administration. It describes each record series by record name, record function, record filing maintenance system, record content, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the Workers Compensation Administration as well as its final disposition. The retention and disposition requirements in this rule are based on the legal use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Workers Compensation Administration.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the Workers Compensation Administration. Persons and entities normally subject to the rules and regulations of the Workers Compensation Administration may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the Workers Compensation Administration.

**4. Geographical applicability:**

Geographical applicability is limited to areas within the State of New Mexico covered by the Workers Compensation Administration. Any person or entity outside the covered geographical area that conducts business with or through the Workers Compensation Administration may also be affected by this rule.

**5. Commercially published materials incorporated:** The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

**7. Effective date of this rule:** April 19, 2010.

**Certification**

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.632 NMAC ERRDS, Workers Compensation Administration.

Tania Maestas Date  
Assistant Attorney General

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.19.5 NMAC, LGRRDS, Office of the County Sheriff, adding Section 58 effective 04/19/2010.

**1.19.5.58 COURT PROCESSES OF SERVICE FILES:**

**A. Program:** court services

**B. Maintenance system:** local government preference

**C. Description:** records documenting civil or criminal processes served. File may include citations, subpoenas, notices, injunction, warrants, executions, etc.

**D. Retention:** three years after date of service

**E. Confidentiality:** Portions of record may be confidential pursuant, but not limited to 5 USC, Section 552a (i.e., social security number), Section 29-10-4 NMSA 1978 (i.e., arrest records)

and Section 14-2-1 NMSA 1978 (i.e., "law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime"). [1.19.5.58 NMAC - N, 04/19/2010]

## NEW MEXICO PUBLIC REGULATION COMMISSION

This is an emergency amendment to 12.3.1 NMAC, Sections 3, 5, 9, 10 and 14, effective March 25, 2010. The Commission finds that an emergency exists because immediate amendment of the rule to provide for electronic filing is necessary for the preservation of the general public welfare.

**12.3.1.3 STATUTORY AUTHORITY:** NMSA 1978 Sections 8-8-4, 14-15-1 to 14-15-6, 14-16-1 to 14-16-19, 39-3-1.1, 53-2-11, 53-18-1, and 53-19-66. [12.3.1.3 NMAC - N, 7-15-05; A/E, 3-25-10]

**12.3.1.5 EFFECTIVE DATE:** July 15, 2005, unless a later date is cited at the end of a section. [12.3.1.5 NMAC - N, 7-15-05; A/E, 3-25-10]

**12.3.1.9 REQUIREMENTS FOR FILED DOCUMENTS:** In addition to the requirements stated here, particular rules may include other filing requirements. All documents required by these rules to be filed with the commission shall be filed with the bureau as follows.

**A. Address for filing documents.**

(1) Documents filed by mail shall be sent to the New Mexico Public Regulation Commission Corporations Bureau, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

(2) Documents filed in person or by delivery service shall be delivered to the New Mexico Public Regulation Commission, Corporations Bureau Filing Desk, P.E.R.A. Building, Room 346, 1120 Paseo de Peralta, Santa Fe, New Mexico 87501.

(3) The commission's official website shall include a list of the types of documents that may be filed electronically and shall, when feasible, include forms for such documents.

**B. Required format.** All reports, articles, applications and other documents filed with the commission shall be typewritten, clearly legible, on good quality white paper 8 1/2 x 11 inches in size, have a 1 inch margin on each side and at least a one-inch margin at the top and bottom of each page, and be signed or executed in black or blue-black ink. The bureau will accept for filing documents or certificates

provided by foreign jurisdictions on paper that is of another size.

**C. Good standing required.** A corporation or other legal entity may not file, and the bureau will not accept, any document unless the corporation or entity is in good standing. For purposes of this subsection, good standing means the corporation or entity has timely filed all required reports and has paid all assessed fees, penalties, and interest.

**D. Electronic filing and requests by facsimile [or electronic mail].** Documents filed electronically will be accepted as long as the commission's web-posted list includes the type of document being filed electronically, the document being filed electronically originated as a form on the commission's official website, and the filing is made through the commission's official website, at [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us). Any person may obtain a current telephone number for facsimile filing, and may make requests, by calling the bureau at 505-827-4508. [Electronic filings and requests may be sent to the address on the commission's website at [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us).] The bureau will not accept documents filed by facsimile or electronic means [except for] in the following situations:

(1) when a certificate of good standing and compliance is received from the appropriate official of another state or country, for the purpose required by NMSA 1978 Sections 53-8-69, 53-17-6, and 53-19-48, provided that the certificate is sent directly to the bureau by the appropriate official;

(2) requests for certificates, certified copies, or other documents pursuant to 12.3.1.13 NMAC; and

(3) requests for forms pursuant to 12.3.1.10 NMAC.

**E. Date of filing.** The commission shall consider any document filed pursuant to this rule as filed on the date it was received and stamped by the bureau, unless the document is returned pursuant to 12.3.1.11 NMAC except that:

(1) if a report required by the Corporate Reports Act, NMSA 1978 Sections 53-5-1 through 53-5-9, is mailed to the commission, the commission shall add three days to the postmark date for purposes of NMSA 1978 Section 53-5-7; and

(2) if the commission receives a document after regular business hours, the commission shall stamp and consider it received on the next regular business day.

**F. Filing fees.** The commission shall not accept any document for filing unless it is accompanied by the appropriate filing fee, paid as required by 12.3.1.14 NMAC.

**G. Expedited filing fees.**

(1) **Expedited request form required.** Each application for expedited

filing shall be accompanied by an expedited request form provided by the bureau.

(2) **Nonrefundable separate payment required.** All expedited filing fees are nonrefundable. Each nonrefundable expedited filing fee shall be paid by separate payment in addition to all other filing fees required by law.

(3) **Expedited filing fee schedule.** The commission shall accept applications for expedited filing according to the following fee schedule.

(a) **Same business day filing.** For a \$300.00 expedited filing fee, the commission shall process an application for an expedited filing on the same business day the application is received by the bureau if the application is received by the bureau before 2:00 p.m. If an application for an expedited filing fee is received by the bureau after 2:00 p.m., the commission shall process the application for expedited filing by the end of the next business day for the same \$300.00 expedited filing fee.

(b) **Two business days filing.** For a \$200.00 expedited filing fee, the commission shall process an application for an expedited filing within two business days of the date on which the application for expedited filing is received by the bureau.

(4) **Refund for failure to timely process.** If the bureau is unable to provide the requested expedited filing service, the bureau shall return the expedited filing fee to the applicant for expedited filing services.

**H. Required addresses.** All reports filed by corporations and other regulated entities shall include the street address of the registered office and addresses for each of the entity's directors and officers. The report shall clearly indicate the titles of all officers and directors.

**I. Electronic signature.** A person submitting an electronic filing shall verify at the time of submission the complete name and title of the person filling out the form, a statement that such person has lawful authority to submit the report, a statement that the report is true and correct under penalty of perjury, and the date the report is submitted.

[12.3.1.9 NMAC - N, 7-15-05; A, 12-15-09; A/E, 3-25-10]

#### 12.3.1.10 COMMISSION - PRESCRIBED FORMS:

**A. Use required.** The commission has prescribed forms required by law to carry out certain requirements of these rules. The most current version of a commission-prescribed form must be used when a form exists for that purpose, unless these rules state otherwise or the commission waives this requirement. When a document is filed electronically, the form provided by the commission on its website must be used.

**B. Use optional.** The

commission has available for use optional forms that may be used to comply with the requirements of these rules and strongly prefers the use of such forms for ease and consistency of data entry. However, except when electronic filing is used, a corporation or other entity may instead file the information and documents required by these rules in the order in which they are listed in the applicable statute or these rules.

**C. How to obtain.** Interested parties may obtain copies of commission-prescribed forms and other optional forms:

(1) on the commission's website at [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us);

(2) by electronic request to the bureau on the commission's website, by clicking on "corporations" and then "corporations inquiry;"

(3) by calling the bureau at 505-827-4508; or

(4) by writing to the New Mexico public regulation commission, corporations bureau, P.O. Box 1269, Santa Fe, New Mexico 87504-1269

[12.3.1.10 NMAC - N, 7-15-05; A/E, 3-25-10]

#### 12.3.1.14 PAYMENT OF FEES:

A person shall pay fees charged by the commission by [check] paper instrument or money order, or electronic check, from funds on deposit with a United States financial institution, made payable to the New Mexico public regulation commission. The commission may permit, subject to appropriate approvals from the New Mexico state treasurer or the New Mexico board of finance as appropriate, payments by debit card or credit card, plus a convenience fee as may be required by law. Any convenience fee to be charged to the commission by the commission's designated fiscal agent shall be passed through to the person submitting the filing.

[12.3.1.14 NMAC - N, 7-15-05; A/E, 3-25-10]

### NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 18.60.3 NMAC, Section 11, effective April 15, 2010.

#### 18.60.3.11 COLLECTION PROCEDURE:

**A.** By [September] May 1 of each year, the pipeline safety bureau shall present to the commission a review of the fees collected and the payments made from the pipeline safety fund for the previous fiscal year.

**B.** By May 1 of each year,

the pipeline safety bureau shall, in accordance with Subsection E of NMSA 1978 Section 70-3-21, present to the commission proposed rates for pipeline safety fees for the next fiscal year. The fees shall be based on the pipeline safety bureau's estimate of funding required for the next fiscal year, taking into consideration the estimated fund balance as of the end of the current fiscal year, the legislative appropriation provided to the commission for pipeline safety programs, the estimated federal grant-in-aid, the information provided pursuant to 18.60.3.8 and 18.60.3.10 NMAC, and any other factors deemed appropriate by the bureau.

**C.** Upon commission approval of the rates for pipeline safety fees, the pipeline safety bureau shall prepare a form for operators to use to calculate the total pipeline safety fee due. The pipeline safety bureau shall post the form on the commission's website and shall mail, email, or personally deliver the form to each operator. An operator shall be responsible for paying the fee due even if the operator does not receive a form from the bureau.

**D.** An operator shall pay the calculated fee by check made payable to the public regulation commission. An operator must send the fee by registered mail postmarked no later than June 1 or 15 days from the date of the commission order approving the rates for pipeline safety fees, whichever is later, of each year to the Public Regulation Commission, Pipeline Safety Bureau, P.O. Box 1269, Santa Fe New Mexico 87504-1269.

[18.60.3.11 NMAC - N, 10-15-04; A, 04-15-10]

### NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

This is an amendment to 14.5.5 NMAC Sections 12 and 14, effective 05-01-10.

**14.5.5.12 ELECTRICAL PERMIT FEES:** The fees in this section are used as a base for determining the total fee. The permit fee will be the sum of the individual items multiplied by 1.8 or \$48.00/hr.

#### **A. Residential.**

(1) 100 amp service or less, \$25.00  
(2) Over 100 amp through 200 amp, \$ 40.00

(3) Over 200 amp through 320 amp, \$ 55.00

(4) Over 320 amp through 400 amp, \$125.00

(5) Over 400 amp, \$200.00

(6) Plan review, \$40.00/hr. or fraction thereof

**B. Commercial.**

- (1) 100 amp service or less, \$ 25.00
- (2) Over 100 amp through 200 amp, \$ 40.00
- (3) Over 200 amp through 400 amp, \$125.00
- (4) Over 400 amp through 600 amp, \$150.00
- (5) Over 600 amp through 800 amp, \$200.00
- (6) Over 800 amp through 1,000 amp, \$250.00
- (7) Over 1,000 amp through 2,000 amp, \$350.00

**C. Other.**

- (1) Temporary power pole, \$15.00
- (2) Mobile home service, \$15.00
- (3) Customer-owned distribution (not including wiring of a structure)
- (a) Minimum fee, \$25.00
- (b) Plus \$3.33 x number of poles or \$3.33 x per 100 feet of underground
- (4) Service change only, no outlets, \$15.00
- ~~(5) Re-inspection fee, \$25.00~~
- ~~(6) (5) Minimum inspection fee for any item not listed, \$15.00~~
- [14.5.5.12 NMAC - Rp, 14.5.5.8 NMAC, 7-1-04; A, 05-01-10]

**14.5.5.14 MISCELLANEOUS FEES:**

**A. Certificate of qualification.** The fee for the issuance of a certificate of qualification shall be \$6.00, inclusive of gross receipts tax.

**B. Replacement Fees.**

- (1) The fee for the replacement of a certificate of qualification shall be \$6.00, inclusive of gross receipts tax.
- (2) The fee for the replacement of a contractor's license shall be \$6.00, inclusive of gross receipts tax.
- (3) The fee for the replacement of a certificate of competence shall be \$6.00, inclusive of gross receipts tax.
- (4) The fee for additional contractor's wallet cards (beyond the two initially issued) shall be \$6.00 for each such card, inclusive of gross receipts tax.

**C. Photocopies.** The fee for photocopies of documents shall be \$.25 per page.

**D. Certified Photocopies.** The fee for certified copies of documents shall be \$.50 per page.

**E. Modular Approval.** The fee for modular approval shall be \$5.00 per floor plan, or \$25.00, whichever is higher.

**F. Manufactured Commercial Plan Review.** The fee for review of plans for manufactured commercial units shall be \$50.00 for each unit.

**G. Reinspections.** A fee of [\$37.50] \$80.00 for the first re-inspection shall be paid when an inspection is requested and the structure either fails the inspection, the structure is not ready for the inspection and/or the inspector is required to return for an inspection for any other reason. A fee of \$120.00 for the second or subsequent re-inspection.

**H. Annual permit fees.**

The fee for an annual permit is \$100.00.

**I. Homeowner permit fees.** The following fees are in addition to the regular permit fees:

(1) The fee for a homeowner's permit for the construction of a new residence or for a major addition or remodel of an existing residence is \$200.00.

(2) The fee for a homeowner's permit for construction of a lesser nature shall be calculated pursuant to 14.5.4.11 NMAC, with a minimum fee of \$25.00.

(3) A fee of \$25.00 for either an electrical or mechanical examination required in connection with electrical or mechanical work performed by a homeowner under a homeowner's permit issued pursuant to 14.5.3 NMAC, Permits.

**J. Reactivation of permit.**

CID may assess a fee for the reactivation of a suspended permit in an amount equal to one half (1/2) the amount of the original permit fee.

[14.5.5.14 NMAC - Rp, 14.5.5.8 NMAC, 14.7.2.10 NMAC, 14 NMAC 9.2.I 100, 14 NMAC 9.2.II 100, 7-1-04; A, 1-1-08; A, 09-02-09; A, 05-01-10]

## NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

**This is an amendment to 14.6.6 NMAC Sections 7, 10, 11, effective 05-01-10.**

**14.6.6.7 DEFINITIONS:**

**A. Electrical wiring** means installation; alteration; connection; maintenance; demolition; or repair of raceways; conduits; conductors; cables; boxes; fittings; wiring devices; luminaires; overcurrent devices; distribution equipment; or other equipment or apparatus that is used as part of, or in connection with, an electrical installation.

**B. Mechanical and or plumbing work** means installation; alteration; connection; maintenance; demolition; or repair or piping; fixture; equipment; ducts or appurtenances other equipment that is used as part of, or in connection with a mechanical or plumbing system installation.

**C. Commercial or industrial work** means all electrical,

mechanical or plumbing work not defined as residential work in this rule.

**D. Residential work** means work on one and two family dwelling units, as defined in the 14.7.3 NMAC, 2006 New Mexico Residential Building Code. Residential work does not include work on apartment buildings or wiring for commercial use such as motels, hotels and similar occupancies.

**E. Unregistered apprentice** means a person who, for the purpose of learning a trade of journeyman and is not registered in an apprenticeship program recognized by the New Mexico state apprenticeship council.

**F. Direct supervision** means reasonable oversight, inspection and evaluation of the work of a person by constant on the jobsite supervision by a certified journeyman.

[14.6.6.7 NMAC - Rp, 14.6.6.7 NMAC, 2-1-06; A, 05-01-10]

[See Sections 60-13-2 and 3 of the act.]

**14.6.6.10 ELECTRICAL CLASSIFICATIONS.****A. General information.**

(1) A journeyman certificate of competence in the appropriate trade classification for the work to be performed is required of all individuals performing electrical wiring; provided however, that an apprentice, as defined in Section 60-13-2 of the act, may work under the direct supervision of a validly certified journeyman, as defined in Section 60-13-2 of the act, who is employed by a validly licensed person, as defined in Section 60-13-2 of the act, or a holder of a valid annual permit. Journeyman certifications shall be issued such that the certificates parallel the electrical license classification numbers and scopes. Ratio of unregistered apprentices. The ratio of certified journeyman to unregistered apprentices must not exceed:

(a) one journeyman to two unregistered apprentices on commercial or industrial work;

(b) one journeyman to two unregistered apprentices on commercial or industrial special systems low-voltage work;

(c) one journeyman to three unregistered apprentices on residential work.

(2) Conduit installation: All conduit installations within, or on, buildings shall be performed by a contractor holding a EE-98 license, except where ER-1 licensees and journeymen are installing conduit that is incidental to residential wiring. Specialty electrical license holders (ES-1, 2, 3, and 7) shall not install conduit within, or on, buildings.

(3) Electrical contracting defined: The definition of contracting is set forth in Section 60-13-3 of the act, and nothing in this rule shall be construed to conflict with

that definition. However, for the purposes of clarity in this rule, contracting is understood to include installations, alterations, repairs, servicing and maintenance involving electrical work.

(4) Electrical customer-owned distribution systems are subject to all adopted codes, standards, and regulations. Customer-owned distribution systems include all (non-utility owned or operated) overhead or underground primary or secondary voltage electrical power line construction, installation, alteration, repairs, and maintenance.

#### **B. License classifications.**

##### **(1) Residential and commercial.**

(a) **EE-98. Residential and commercial electrical.** Requires four years experience. Covers all electrical work, including work identified in less comprehensive electrical classifications, premises wiring systems 600 volts, nominal, or less, underground distribution raceway systems regardless of voltage, and wiring systems and terminations 600 volts, nominal, or less, with the exception of additional work identified under the EL-1 classification. May bid and contract as the prime contractor of an entire project provided the electrical contractor's portion of the contract, based on dollar amount, is the major portion of the contract.

(b) **ER-1. Residential electrical wiring.** Requires two years experience. One- and two-family dwelling units and multi-family dwellings when all such units are all on the ground floor with no occupancies above or below, as set forth in 14.10.4 NMAC. May not install wiring for commercial use, such as motels, hotels and similar occupancies. May not contract for more than four (4) dwelling units in any single building or structure.

(c) **EL-1. Electrical distribution systems, including transmission lines.** Requires four years experience. Overhead or underground electrical distribution and transmission lines and associated towers, tower foundations and other supporting structures, trenching and ductwork and sub-stations and terminal facilities. Interior wiring of buildings housing any of the above equipment requires an EE-98 license.

##### **(2) Specialty licenses.**

(a) **ES-1. Electrical signs and outline lighting.** Requires two years experience. Electrical signs and outline lighting, including electrical wiring to connect signs installed where a "sign circuit" has been provided within ten (10) feet, and concrete for the foundation of poles, and build structures for the support of such signs. Outline lighting is an arrangement of incandescent lamps or gaseous tubes to outline and call attention to certain features such as the shape of a building or the decoration of a window and may or may not

contribute to the general illumination of an area.

(b) **ES-2. Cathodic protection and lightening protection systems.** Requires two years experience. Electrically activated systems to prevent galvanic damage to metallic pipelines or structures, usually underground and electrical work involved in the equipment for connection rectifier systems. Also includes lightning protection systems. May not install the service riser, main service or service grounding.

(c) **ES-3. Low voltage special systems (under 50 volts).** Requires two years experience. Public address or other sound, voice communication systems normally involving low energy signal circuits. Also, electrical burglar and fire alarm systems, computer data systems, one and two family and multifamily dwelling telephone systems and cable TV systems normally involving coaxial cable for the purpose of transmitting R.F. signals and other intelligence by wire and cable. Includes other low voltage specialty systems such as, but not limited to, door and gate operated control circuits, and temperature control circuits. An installer of TVROs (dishes) is not required to have a contractor's license when the installation is in a single-family dwelling and does not require the use of 120 volts for tracking.

(d) **ES-7. Telephone communication systems.** Requires two years experience. In-plant and out-plant telephone systems, telephone interconnections in public or privately owned buildings, computer data systems and underground cables or aerial supporting structures, trenching, duct work, terminal facilities, repeaters, including the installation of instruments at their terminating locations. Interior wiring of a building housing any of the above equipment requires an EE-98 classification. **Note:** Refer to GF-9 classification for additional underground telephone cable installations. The GF-9 classification does not include electrical raceway installation.

#### **C. Journeyman classifications.**

(1) **EE-98J. Journeyman residential and commercial electrical.** Requires four years experience.

(2) **ER-1J. Journeyman residential wiring.** Requires two years experience.

(3) **EL-1J. Journeyman electrical distribution systems, including transmission lines.** Requires four years experience.

(4) **ES-1J. Journeyman electrical signs and outline lighting.** Requires two years experience.

(5) **ES-2J. Journeyman cathodic protection and lightening protection systems.** Requires two years experience.

(6) **ES-3J. Journeyman sound,**

**intercommunication, electrical alarm systems, and systems 50 volts and under.** Requires two years experience.

(7) **ES-7J. Journeyman telephone communication systems and telephone interconnect systems.** Requires two years experience.

[14.6.6.10 NMAC - Rp, 14.6.6.12 NMAC, 2-1-06; A, 05-01-10]

#### **14.6.6.11 MECHANICAL AND PLUMBING CLASSIFICATIONS.**

##### **A. General information.**

(1) A journeyman certificate of competence in the appropriate trade classification for the work to be performed is required of all individuals performing mechanical and plumbing work; provided however, that an apprentice, as that term is defined in Section 60-13-2 of the act, may work under the direct supervision of a validly certified journeyman, as that term is defined in Section 60-13-2 of the act, who is employed by a validly licensed person, as that term is defined in Section 60-13-2 of the act, or a holder of a valid annual permit. Journeyman certifications shall be issued such that the certificates parallel the mechanical and plumbing license classification numbers and scopes. Ratio of unregistered apprentices. The ratio of certified journeyman to unregistered apprentices must not exceed:

(a) one journeyman to two unregistered apprentices on commercial or industrial work;

(b) one journeyman to three unregistered apprentices on residential work.

(2) The definition of contracting is set forth in Section 60-13-3 of the act and nothing in this rule shall be construed to conflict with that definition. However, for the purpose of clarity in this rule, contracting is understood to include installations, alterations, repairs, servicing and maintenance involving plumbing and/or mechanical work.

(3) The definitions of plumbing, fixtures and gas fitting as set forth in Section 60-13-32 of the act should be referenced when reading these classifications.

##### **B. License classifications.**

##### **(1) Residential and commercial.**

(a) **MM-1. Plumbing.** Requires four years experience. Install, alter, repair and service plumbing fixtures, and piping, including pneumatic or electric controls and control wiring not greater than 24 volts, concrete supports, and excavating, trenching and backfilling. Includes hot water heating systems not exceeding 30 p.s.i. or 400,00 b.t.u./hour input; piping for fuel, oil and gasoline and for solar energy systems; septic tanks, manholes and sewer lines; irrigation sprinkler systems; swimming pools and spas. Does not include installation of natural gas fired appliances or natural gas piping.

**(b) MM-2. Natural gas fitting.** Requires four years experience. Install, alter, repair and service natural gas piping and fittings and incidental controls and control wiring, pneumatic control systems, excavating, trenching and backfilling. Includes installation of hot water systems exceeding 30 p.s.i. or 400,000 b.t.u./hour input; steam and hot water boilers; and warm air heating systems such as chimney connections, flues, refractories, burners, fittings valves, thermal insulation, accessories and incidental piping; warm air appliances and other listed gas appliances. May not install LP Gas systems.

**(c) MM-3. Heating, ventilation & air conditioning (HVAC).** Requires four years experience. Install, alter, repair and service HVAC air handling and refrigeration equipment and piping, including fans, coils, condensing units, self-contained packaged air conditioning and/or heating units, evaporative cooling units, solar energy systems, ductwork and pneumatic tube systems. May connect water to existing valved outlets, and install controls, and control wiring not to exceed 24 volts. May bid and contract for structural alterations, painting, electrical wiring and other work incidental to this scope of work, provided such work is performed by a properly licensed contractor.

**(d) MM-4. Heating, cooling and process piping.** Requires four years experience. Install, alter, repair and service hydronic heating, cooling and process piping for steam hot water systems of any temperature pressure range, chilled water systems, condensing water systems and process piping systems. Includes pressure vessels, heat exchangers, boilers, refrigeration water chillers, cooling towers, fuel oil tanks and fuel oil piping, and pneumatic or electric controls and control wiring not to exceed 24 volts. Install high pressure and process piping solar energy systems of any temperature or any pressure conveying gas or fluids other than potable water, and pneumatic tube systems.

**(e) MM-98 Mechanical.** Requires four years experience. Requires licensure in classifications MM-1 through MM-4 and covers all work described in these classifications, as well as work described in the MS-3, MS-6, MS-12 and MS-14.

**(2) Specialty classifications:**

**(a) MS-3 Septic tanks & sewer.** Requires two years experience. Install, alter, repair or service septic tanks and systems, manholes and sewer lines, starting at a point five (5) feet beyond the outside wall of a building and ending at a connection to a public or private utility. May excavate, trench, backfill and grade as necessary, and install or repair plug-in type electrical control panels, controls and control wiring not to exceed 24 volts.

**(b) MS-6. Lawn sprinklers.** Requires two years experience. Install, alter, repair or service sprinkler systems which are connected to a potable water supply. May excavate and backfill as necessary and install or repair plug-in type electrical control panels, controls and control wiring not to exceed 24 volts.

**(c) MS-12. Fire protection sprinkler systems.** Requires four years experience. Install alter, repair or service fire protection systems using water, including any pressure or storage tanks required, controls and control wiring up to 24 volts. May excavate and backfill and install piping from structure to off-premise water supply adjacent to property involving a fire protection system. May bid or contract for structural alterations, painting, electrical wiring, etc., incidental to the system installation, provided such work is performed by a properly licensed contractor.

**(d) MS-14. Dry chemical fire protection.** Requires four years experience. Install, alter, repair or service fire protection systems using gas or chemical, including CO, clean agent. Includes pressurized storage tanks, valves, temperature sensing devices and other incidental control wiring up to 24 volts. May install solenoid or shut-off valve devices in these systems. May bid or contract for structural alterations, painting, electrical wiring, etc., incidental to the system installation, provided such work is performed by a properly licensed contractor.

**C. Journeyman classifications.** Requires two years experience.

**(1) JP. Journeyman plumber.**  
**(2) JPF. Journeyman pipe fitter.**  
**(3) JG. Journeyman natural gas fitter.**

**(4) JPG. Journeyman plumber and natural gas fitter.**

**(5) JR. Journeyman refrigeration.** Must demonstrate compliance with EPA Recovery requirements before certificate may be issued.

**(6) JS. Journeyman sprinkler.**  
**(7) JSM. Journeyman sheet metal.**

**(8) JW. Journeyman welder.** Must obtain either a JP or JG or JPG or JSM certification and show ASME Section 9 certification. Is not required to test separately for this certificate of competence.

**(9) JMG Journeyman Medical Gas Installer.** Must obtain either JP, JG, JPG or JPF certification and show approved medical gas certification as referenced in Title 14, Chapter 9, Part 5.

**(10) BO1. Journeyman boiler operator. Low pressure only.**

**(11) BO2. Journeyman boiler operator. Low and high pressure.**

**(12) MS-12J. Journeyman fire**

**protection sprinkler systems.** Requires four years experience.

**(13) MS-14J. Journeyman dry chemical fire protection.** Requires four years experience.

[14.6.6.11 NMAC - Rp, 14.6.6.14 NMAC, 2-1-06; A, 12-31-09; A, 05-01-10]

## NEW MEXICO REGULATION AND LICENSING DEPARTMENT FINANCIAL INSTITUTIONS DIVISION

### TITLE 12 T R A D E , COMMERCE AND BANKING CHAPTER 15 F I N A N C I A L INSTITUTIONS GENERAL PART 16 CERTIFICATION OF QUALIFIED ENTITIES AS SOLAR ENERGY IMPROVEMENT FINANCING INSTITUTIONS

**12.15.16.1 ISSUING AGENCY:** Financial Institutions Division of the Regulation and Licensing Department.  
[12.15.16.1 NMAC - N, 04/15/10]

**12.15.16.2 SCOPE:** Solar energy improvement financing institutions participating in and desiring to be certified as qualified entities.  
[12.15.16.2 NMAC - N, 04/15/10]

**12.15.16.3 STATUTORY AUTHORITY:** Section 4-55C-7 NMSA 1978.  
[12.15.19.3 NMAC - N, 04/15/10]

**12.15.16.4 DURATION:** Permanent.  
[12.15.16.4 NMAC - N, 04/15/10]

**12.15.16.5 EFFECTIVE DATE:** April 15, 2010, unless a later date is cited at the end of a section.  
[12.15.16.5 NMAC - N, 04/15/10]

**12.15.16.6 OBJECTIVE:** The objective of this part is to establish a rule governing the certification of financial institutions or other entities as solar energy improvement financing institutions.  
[12.15.16.6 NMAC - N, 04/15/10]

**12.15.16.7 DEFINITIONS:** [RESERVED]

### 12.15.16.8 CERTIFICATION OF QUALIFIED ENTITIES:

**A.** The financial institutions division finds that the following financial institutions meet the criteria for financial stability and soundness and are certified as qualified solar energy improvement financing institutions:

(1) member institutions of the federal deposit insurance corporation; and  
 (2) member institutions of the national credit union administration (credit union share insurance fund).

**B.** The financial institutions division finds that the following entities meet the criteria for financial stability and soundness and are certified as qualified solar energy improvement financing institutions:

(1) the state of New Mexico; and  
 (2) a county or municipality certified as to financial stability and soundness by the New Mexico finance authority.

**C.** The financial institutions division requirements for other entities participating in and desiring to be certified as qualified solar energy financing institution entities are as follows:

(1) a certified audit report of the condition of the entity, conducted by a certified public accountant;

(2) minimum unimpaired capital or net worth of \$100,000; and

(3) minimum cash or its equivalent of \$30,000 available for operation of the entity.

**D.** If the financial institutions division finds that all qualifying requirements are met for financial stability and soundness, the division shall certify the entity as a solar energy financing institution. [12.15.16.8 NMAC - N, 04/15/10]

**HISTORY OF 12.15.16 NMAC:**  
 [RESERVED]

## NEW MEXICO REGULATION AND LICENSING DEPARTMENT PRIVATE INVESTIGATIONS ADVISORY BOARD

This is an amendment to 16.48.2 NMAC Sections 9 through 19 and 23 effective 05-01-10.

### 16.48.2.9 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATOR LICENSE:

**A.** ~~[The department shall issue a license as a private investigator to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:]~~ Applicants for licensure as a private investigator must submit the following:

(1) completed application;

~~[(4)]~~ (2) proof of age indicating applicant is at least twenty one (21) years of age (copy of birth certificate, driver's license, state issued identification card, or

baptismal certificate);

~~[(2) two (2) completed fingerprint cards, a completed verification of fingerprints form, a notarized authorization for release of information form and the prescribed fee for a state and federal criminal history background check;]~~

(3) proof of successfully passing a jurisprudence examination to be administered by the department;

(4) a surety bond in the amount of ten thousand dollars (\$10,000) executed by a surety company authorized to do business in this state on a form prescribed by the department; however, private investigators who provide personal protection or bodyguard services shall maintain general liability insurance in the amount not less than one million dollars (\$1,000,000) in lieu of the surety bond required by the provisions of this paragraph; [and]

(5) proof of experience that has been acquired within the five (5) years preceding the filing of the application with the department which shall consist of not less than 6,000 hours of actual work performed in:

(a) investigation for the purpose of obtaining information with reference to a crime or wrongs done or threatened against the United States;

(b) investigation of persons;

(c) the location, disposition or recovery of lost or stolen property;

(d) the cause or responsibility for fire, losses, motor vehicle or other accidents or damage or injury to persons or property; or

(e) securing evidence to be used before a court, administrative tribunal, board or investigating committee or for a law enforcement officer;

(6) non-refundable license fee as set forth in Part 5; and

(7) criminal history background check as set forth in Subsection C of 16.48.2.9 NMAC.

**B.** Years of qualifying experience and the precise nature of that experience shall be substantiated by written certification from employers on a form provided by the department and shall be subject to independent verification by the department as it deems warranted. In the event of inability of applicants to supply such written certifications from employers in whole or in part, applicants may offer other written certifications from others than employers covering the same subject matter for consideration by the department. The burden of proving necessary experience is on the applicant.

**C.** Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance, reinstatement or renewal of a private investigator license in New Mexico shall be required to be fingerprinted to

establish positive identification for a state and federal criminal history background check.

(1) Blank fingerprint cards shall be obtained from the department.

(2) Fingerprints shall be taken:

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

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

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

(3) Completed fingerprint cards shall be submitted to the department or department designee with a check, money order, or cashiers check [or credit card] for the prescribed fee [and made out to the private investigations advisory board].

~~[(4) The department may issue a provisional license until an applicant's background check has been successfully completed.]~~

**D.** Proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC.

[16.48.2.9 NMAC - Re-pr & A, 16.48.2.9 NMAC, 09/24/08; A, 05/01/10]

### 16.48.2.10 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATION COMPANY LICENSE:

**A.** ~~[The department shall issue a license for a private investigation company to a person that files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:]~~ Applicants for licensure as a private investigation company must submit the following:

(1) [completed fingerprint cards, a completed verification of fingerprints form, a notarized authorization for release of information form and the prescribed fee for a state and federal criminal history background check;] completed application;

(2) a surety bond in the amount of ten thousand dollars (\$10,000); however, private investigators who provide personal protection or bodyguard services shall maintain general liability insurance as specified in the Private Investigations Act in lieu of the surety bond required by the provisions of this paragraph; a private investigator or private patrol operator holding a certificate of deposit or surety bond prior to July 1, 2007 in the sum of two

thousand dollars (\$2,000) shall be exempt from the bond provisions of the Private Investigations Act, provided that the private investigator's or private patrol operator's license remains current and the holder remains in good standing with the regulation and licensing department;

(3) proof of an owner or a licensed private investigations manager who is licensed as a private investigator and who certifies that they will manage the daily operations of the private investigation company;

(4) proof of a physical location in New Mexico where records are maintained and made available for department inspection; ~~and~~

(5) proof of a New Mexico registered agent if the applicant is a private investigation company located outside of New Mexico;

(6) non-refundable license fee as set forth in Part 5; and

(7) criminal history background check as set forth in Subsection C of 16.48.2.10 NMAC.

**B.** The owner or the chief executive officer of a private investigation company that provides personal protection or bodyguard services shall provide proof of an active and current general liability certificate of insurance in the amount of no less than one million dollars (\$1,000,000).

**C.** Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance, reinstatement or renewal of a private investigation company license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check. A legal business entity must submit a fingerprint packet for each owner, and officers or directors.

(1) Blank fingerprint cards shall be obtained from the department.

(2) Fingerprints shall be taken:

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

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

(c) at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) above.

(3) Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashiers check ~~[or credit card]~~ for the prescribed fee ~~[and made out to the private investigations advisory board]~~.

~~(4) The department may issue~~

~~a provisional license until an applicant's background check has been successfully completed.]~~

[16.48.2.10 NMAC - Re-pr & A, 16.48.2.10 NMAC, 09/24/08; A, 05/01/10]

#### **16.48.2.11 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATIONS MANAGER LICENSE:**

~~[The department shall issue a license for a private investigations manager to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:] Applicants for licensure as a private investigations manager license must submit the following:~~

**A.** proof of a current license in good standing as a private investigator;

**B.** proof of successfully passing a jurisprudence examination to be administered by the department; ~~and~~

**C.** proof of employment with the private investigation company that the applicant is being licensed to manage;

**D.** completed application;

**E.** non-refundable license fee as set forth in Part 5;

**F.** pursuant to Section 61-27B-34 of the act, all applicants for initial issuance or reinstatement of a private investigations manager license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check;

(1) blank fingerprint cards shall be obtained from the department;

(2) fingerprints shall be taken:

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

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

(c) at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) above;

(3) completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashiers check for the prescribed fee.

[16.48.2.11 NMAC - Re-pr & A, 16.48.2.11 NMAC, 09/24/08; A, 05/01/10]

#### **16.48.2.12 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATIONS EMPLOYEE [LICENSE] REGISTRATION:**

**A.** On or after July 1, 2007, every individual who seeks employment or is currently employed as a private investigations employee or who provides services on a contract basis to a private investigation company shall file an application for registration as a private investigations employee with the department.

**B.** ~~[The department shall issue a registration for a private investigations employee to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:] Applicants for registration as a private investigations employee must submit the following:~~

~~(1) completed application;~~

~~(2) non-refundable registration fee as set forth in Part 5;~~

~~[(3)] (3) proof of age indicating applicant is at least twenty one (21) years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);~~

~~[(2) two (2) completed fingerprint cards, a completed verification of fingerprints form, a notarized authorization for release of information form and the prescribed fee for a state and federal criminal history background check;]~~

~~[(3)] (4) proof of a high school diploma or its equivalent;~~

~~[(4)] (5) proof of successfully passing a jurisprudence examination to be administered by the board;~~

~~[(5) two (2) completed fingerprint cards, a completed verification of fingerprints form, a notarized authorization for release of information form and the prescribed fee for a state and federal criminal history background check; and]~~

(6) proof of employment or contract with a private investigation company to provide investigation services for, a private investigation company, under the direct control and supervision of a private investigator; ~~and~~

(7) criminal history background check as set forth in Subsection C of 16.48.2.12 NMAC.

**C.** Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance or reinstatement of a [license] private investigations employee registration in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) Blank fingerprint cards shall be obtained from the department.

(2) Fingerprints shall be taken:

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

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

(c) at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) above.

(3) Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashiers check ~~[or credit card]~~ for the prescribed fee ~~[and made out to the private investigations advisory board]~~.

~~[(4) The department may issue a provisional license until an applicant's background check has been successfully completed.]~~

D. Proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC.

[16.48.2.12 NMAC - Re-pr & A, 16.48.2.12 NMAC, 09/24/08; A, 05/01/10]

#### **16.48.2.13 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE PATROL OPERATOR LICENSE:**

A. ~~[The department shall issue a license for a private patrol operator to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:]~~ Applicants for licensure as a private patrol operator must submit the following:

(1) proof of age indicating applicant is at least twenty one (21) years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);

(2) ~~[two (2) completed fingerprint cards, a completed verification of fingerprints form, a notarized authorization for release of information form and the prescribed fee for a state and federal criminal history background check;]~~ completed application;

(3) proof of successfully passing a jurisprudence examination to be administered by the department;

(4) proof of experience of actual work performed as a security guard consisting of not less than 4,000 hours of actual work performed as a guard, watchman, or patrolman or an equivalent position, one year of which shall have been in a supervisory capacity; the experience shall have been acquired within five (5) years preceding the filing of the application with the department; years of qualifying experience and the precise nature of that experience shall be substantiated by written certification from the applicant's employers and shall be subject to independent verification by the department as it determines is warranted; the

burden of proving necessary experience is on the applicant; ~~[and]~~

(6) proof of being firearm certified as required by 16.48.4.8 NMAC, if the position will require being armed with a firearm;

(7) non-refundable application fee as set forth in Part 5; and

(8) criminal history background check as set forth in Subsection C of 16.48.2.13 NMAC.

B. Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance, reinstatement or renewal of a private patrol operator license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) Blank fingerprint cards shall be obtained from the department.

(2) Fingerprints shall be taken:

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

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

(c) at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) above.

(3) Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashiers check ~~[or credit card]~~ for the prescribed fee ~~[and made out to the private investigations advisory board]~~.

~~[(4) The department may issue a provisional license until an applicant's background check has been successfully completed.]~~

C. ~~Proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC:]~~

[16.48.2.13 NMAC - Re-pr & A, 16.48.2.13 NMAC, 09/24/08; A, 05/01/10]

#### **16.48.2.14 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE PATROL COMPANY LICENSE:**

A. ~~[The department shall issue a license for a private patrol company to a person who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:]~~ Applicants for licensure as a private patrol company must submit the following:

(1) ~~[completed fingerprint cards; a completed verification of fingerprints form, a notarized authorization for release~~

~~of information form and the prescribed fee for a state and federal criminal history background check;]~~ completed application;

(2) proof of an owner or a licensed private patrol operations manager who certifies they will manage the daily operations of the private patrol company;

(3) proof of a physical location in New Mexico where records are maintained and made available for department inspection; ~~[and]~~

(4) proof of a New Mexico registered agent if the applicant is a private patrol company located outside of New Mexico; and

(5) criminal history background check as set forth in Subsection C of 16.48.2.14 NMAC.

B. The owner or the chief executive officer of a private patrol company shall provide proof of a current and active general liability certificate of insurance in an amount not less than one million dollars (\$1,000,000).

C. Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance, reinstatement or renewal of a private patrol company license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check. A legal business entity must submit a fingerprint packet for each owner, and officers or directors.

(1) Blank fingerprint cards shall be obtained from the department.

(2) Fingerprints shall be taken:

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

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

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

(3) Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashiers check ~~[or credit card]~~ for the prescribed fee ~~[and made out to the private investigations advisory board]~~.

~~[(4) The department may issue a provisional license until an applicant's background check has been successfully completed.]~~

[16.48.2.14 NMAC - Re-pr & A, 16.48.2.14 NMAC, 09/24/08; A, 05/01/10]

#### **16.48.2.15 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE**

**PATROL OPERATIONS MANAGER LICENSE:** ~~[The department shall issue a license for a private patrol operations manager to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:] Applicants for licensure as a private patrol operations manager must submit the following:~~

**A.** proof of a current license in good standing as a private patrol operator or a registration as a level three security guard;

**B.** proof of successfully passing a jurisprudence examination to be administered by the department; ~~[and]~~

**C.** proof of employment with the private patrol company that the applicant is being licensed to manage;

**D.** completed application; and

**E.** non-refundable application fee as set forth in Part 5.

[16.48.2.15 NMAC - Re-pr & A, 16.48.2.15 NMAC, 09/24/08; A, 05/01/10]

#### **16.48.2.16 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A POLYGRAPH EXAMINER LICENSE:**

**A.** ~~[The department shall issue a license as a polygraph examiner to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:] Applicants for licensure as a polygraph examiner must submit the following:~~

(1) proof of age indicating applicant is at least 18 years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);

(2) ~~[two (2) completed fingerprint cards, a completed verification of fingerprints form, a notarized authorization for release of information form and the prescribed fee for a state and federal criminal history background check;]~~ completed application;

(3) proof of a high school diploma or its equivalent;

(4) proof of graduation from an accredited polygraph examiners course approved by the department; ~~[and]~~

(5) proof of:

(a) completing a probationary operational competency period and passing an examination of ability approved by the department to practice polygraphy; or

(b) ~~[proof of]~~ holding, for a minimum of two (2) years immediately preceding the date of application, a current active license to practice polygraphy in another jurisdiction whose standards are equal to or greater than those in New Mexico; the applicant must have no pending disciplinary actions and no formal

disciplinary actions issued against the license in the last five (5) years;

(6) non-refundable application fee as set forth in Part 5; and

(7) criminal history background check as set forth in Subsection C of 16.48.2.16 NMAC.

**B.** Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance, reinstatement or renewal of a polygraph examiner license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) Blank fingerprint cards shall be obtained from the department.

(2) Fingerprints shall be taken:

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

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

(c) at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) of Paragraph (2) of this subsection.

(3) Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashiers check ~~[or credit card]~~ for the prescribed fee ~~[and made out to the private investigations advisory board].~~

~~[(4) The department may issue a provisional license until an applicant's background check has been successfully completed.]~~

**C.** P r o b a t i o n a r y operational competency period.

(1) Under successful completion of a written examination, a provisional license may be issued.

(2) During the probationary period, consisting of at least six (6) months, the polygraph examinations administered by the provisional licensee shall be reviewed for operational competency by a licensed polygraph examiner appointed by a board member or the superintendent to serve as a sponsor for the provisional licensee. During the probationary period, the provisional licensee must conduct a minimum of thirty (30) polygraph examinations, a minimum of five (5) of which must be examinations, two (2) of the "specific" examinations, and three (3) of the "screening type" examinations must be performed in the presence of his or her sponsor, or recorded in their entirety for review by the sponsor or the board member. In the case of an applicant who conducts only "specific" examinations, a minimum of (5)

"specific" examinations must be conducted in the presence of his or her sponsor, or recorded in their entirety for review by the sponsor or the board member.

(3) The sponsor appointed shall submit a progress report regarding the progress of the provisional licensee every sixty days on forms provided by the board.

(4) If an unsatisfactory report is submitted, the board member shall review the polygraph examinations administered by the provisional licensee for operational competency. Upon such review, the board member at his or her discretion may revoke the provisional license or take such action as it deems necessary to assure operational competency. Any revocations under this subsection shall be subject to the Uniform Licensing Act, Section 61-1-1 et. seq., NMSA 1978 Comp.

(5) The board member may at any time review the polygraph examinations administered by the provisional licensee for operational competency for any reason.

[16.48.2.16 NMAC - Re-pr & A, 16.48.2.16 NMAC, 09/24/08; A, 08/30/09; A, 05/01/10]

#### **16.48.2.17 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A SECURITY GUARD REGISTRATION: LEVEL ONE:**

**A.** On or after July 1, 2007, every individual seeking employment or employed as a level one security guard shall file an application for registration with the department. The application shall include two (2) passport type photos taken within the prior six months.

**B.** ~~[The department shall issue a registration for a level one security guard to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:] Applicants for registration as a level one security guard must submit the following:~~

(1) proof of age indicating applicant is at least eighteen (18) years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);

(2) ~~[two (2) completed fingerprint cards, a completed verification of fingerprints form, a notarized authorization for release of information form and the prescribed fee for a state and federal criminal history background check;]~~ completed application;

(3) proof of successfully passing a jurisprudence examination to be administered by the department; ~~[and]~~

(4) proof of completing a department approved training program as defined in Subsection D of 16.48.2.17 NMAC prior to being placed on a guard post for the first time as a level one security guard; that training may be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act (21-23-1 NMSA 1978);

(b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent; or

(c) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(5) non-refundable registration fee; and

(6) criminal history background check as set forth in Subsection C of 16.48.2.17 NMAC.

C. Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance, reinstatement or renewal of a level one security guard registration in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) Blank fingerprint cards shall be obtained from the department.

(2) Fingerprints shall be taken:

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

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

(c) at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) above.

(3) Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashiers check ~~[or credit card]~~ for the prescribed fee ~~[and made out to the private investigations advisory board]~~.

~~[(4) The department may issue a provisional registration until an applicant's background check has been successfully completed.]~~

D. The following eight hour curriculum is the minimum training required and must be completed within twelve months prior to application for security guard level one registration:

(1) legal training for security guards - four (4) hours;

(a) legal responsibilities, qualifications, restrictions and liability of

level 1 security guard;

(b) introduction to use of force continuum, appropriate use of force and de-escalation techniques;

~~[(b)]~~ ~~(c)~~ powers of detention and New Mexico laws of citizen arrest;

~~[(c)]~~ ~~(d)~~ appropriate search and seizure, legal restrictions and civil liability;

~~[(d)]~~ ~~(e)~~ New Mexico laws on trespass;

(2) authority and responsibility of the security guard - two (2) hours;

(a) communication with local law enforcement, jurisdiction and limitations of authority;

(b) radio dispatch protocol and other communication tools;

(c) image, professional communication, note-taking and report writing;

(3) incident scene management and preservation - two (2) hours;

(a) identifying evidence;

(b) care and handling of evidence;

(c) securing the immediate area;

(d) evidence tampering and/or removal;

(e) witness/participant identification.

E. Training may consist of an in-person instructor and prerecorded material.

[16.48.2.17 NMAC - Re-pr & A, 16.48.2.17 NMAC, 09/24/08; A, 05/01/10]

#### **16.48.2.18 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A SECURITY GUARD REGISTRATION: LEVEL TWO:**

A. On or after July 1, 2007, every individual seeking employment or employed as a level two security guard shall file an application for registration with the department. The application shall include two (2) passport type photos taken within the prior six months. Endorsements to carry a specific weapon, not including a firearm, will require successful completion of the specific weapon curriculum as defined in Subsection E of 16.48.2.18 NMAC.

B. ~~[The department shall issue a registration for a level two security guard to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:]~~ Applicants for registration as a level two security guard must submit the following:

(1) proof of a current registration in good standing as a level one security guard or proof of completing department approved level one security guard training;

(2) proof of successfully passing a jurisprudence examination to be administered by the department;

(3) proof of a high school diploma

or its equivalent; and

(4) proof of completing a department approved training program as defined in Subsection D of 16.48.2.18 NMAC for level two security guard training prior to being placed on a guard post for the first time as a level two security guard; that training may be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act (21-23-1 NMSA 1978);

(b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(c) the New Mexico law enforcement academy; or

(d) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent; ~~[and:]~~

(5) proof of completing department approved weapon training as defined in Subsection E of 16.48.2.18 NMAC;

(6) completed application;

(7) non-refundable registration fee; and

(8) criminal history background check as set forth in Subsection C of 16.48.2.18 NMAC.

C. Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance or reinstatement of a ~~[license]~~ level two security guard registration in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) Blank fingerprint cards shall be obtained from the department.

(2) Fingerprints shall be taken:

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

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

(c) at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) above.

(3) Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashiers check ~~[or credit card]~~ for the prescribed fee ~~[and made out to the private investigations advisory board]~~.

~~[(4) The department may issue a provisional registration until an applicant's background check has been successfully completed.]~~

**D.** The following sixteen (16) hour curriculum is the minimum training required and must be completed within twelve months prior to application for security guard level two registration:

(1) legal and practical aspects of use of force and personal/employer liability - eight (8) hours;

(2) verbal and written communication and conflict management - six (6) hours;

(3) first responder basic first aid - two (2) hours.

**E.** An applicant for weapon endorsement must successfully complete training for each specific weapon endorsement. The training must be taught by a department approved instructor that has been recommended by the board and approved by the superintendent. The following are the available endorsements for level two applicants:

(1) four (4) hour chemical agents training shall include, but not be limited to the following subjects:

- (a) effects of chemical agents;
- (b) avoiding bad positions;
- (c) disengagement;
- (d) proper defensive positions;
- (e) shielding;
- (f) drawing techniques;
- (g) defense against moving attacks;

(h) spraying techniques;

(i) using OC spray with light;

(j) multiple opponent defense;

(k) proper weapon retention and disarming;

(l) cautions and hazards;

(m) recovery and decontamination;

(n) functioning when contaminated;

(o) storage and maintenance;

(2) eight (8) hour defensive impact tools training shall include, but not be limited to, the following subjects:

- (a) moral and legal aspects of baton usage;
- (b) use of force;
- (c) baton familiarization and uses;
- (d) first aid for baton injuries;
- (e) fundamentals of baton injuries;
- (f) stances and grips;
- (g) target areas;
- (h) defensive techniques;
- (i) control techniques;
- (j) arrest and control techniques;
- (k) skill practice;

(3) eight (8) hour electronic non-lethal device training shall include, but is not limited to, the following subjects;

- (a) technology overview ;
- (b) electrical and medical

background;

(c) specifications how electronic non-lethal devices work;

(d) practical hands-on training;

(e) changing batteries and air cartridges;

(f) firing drills;

(g) drive stun;

(h) tactical considerations;

(i) field applications

(j) safety considerations and associated risks; and

(k) how an electronic non-lethal device overrides the central nervous system;

(4) eight (8) hour restraint and control devices training shall include, but not be limited to, the following subjects:

(a) handcuffing nomenclature;

(b) daily maintenance and safety checks;

(c) applying and removing handcuffs;

(d) potentially uncooperative and uncooperative handcuffing;

(e) cuffing from control holds;

(f) handcuffing from standing and prone;

(g) dangers of positional asphyxia and excited delirium;

(h) standing a prone handcuffed subject;

(i) conflict resolution;

(j) handcuffing guidelines and best practice; and

(k) use of force and justification for handcuffing

**F.** To be an approved instructor to offer chemical agents, defensive impact tools, electronic non-lethal device or restraint and control devices weapon training an individual shall complete an application for approval on a form provided by the department. The application shall include, but not be limited to, all of the following information:

(1) the name, business address, and telephone number of the individual;

(2) proof of an associate of arts degree in the administration of justice or the equivalent thereof;

(3) proof of the specific weapon instructor certification issued by a federal, state, or local agency or one year of verifiable weapons training or training experience or the equivalent thereof to be reviewed and recommended by the board and approved by the superintendent;

(4) proof of a minimum of three (3) years experience as a private patrol operator, security guard or equivalent; and

(5) the applicable fee as prescribed by the superintendent.

[16.48.2.18 NMAC - Re-pr & A, 16.48.2.18 NMAC, 09/24/08; A, 05/01/10]

#### **16.48.2.19 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS**

#### **FOR APPLICANTS FOR A SECURITY GUARD REGISTRATION: LEVEL THREE:**

**A.** On or after July 1, 2007, every individual seeking employment or employed as a level three security guard or level three armored vehicle security guard shall file an application for registration with the department. The application shall include two (2) passport type photos taken within the prior six (6) months. Endorsement to carry a weapon, not including a firearm, will be granted upon successful completion of relevant and specific weapon curriculum as defined in Subsection E of 16.48.2.18 NMAC.

**B.** ~~[The department shall issue a registration for a level three security guard to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:]~~  
Applicants for registration as a level three security guard must submit the following:

(1) proof of age indicating applicant is at least twenty one (21) years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);

(2) proof of a current registration in good standing as a level two security guard or proof of completing department approved level one and level two security guard training;

(3) proof of successfully passing a jurisprudence examination to be administered by the department;

(4) proof of a high school diploma or its equivalent;

(5) proof of completing a department approved training program as defined in Subsection C of 16.48.2.19 NMAC prior to being placed on a guard post for the first time as a level three security guard; that training must be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act;

(b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(c) the New Mexico law enforcement academy; or

(d) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(6) proof of being firearm certified by an instructor recognized and certified by the New Mexico law enforcement

academy or the national rifle association law enforcement activities division;

(7) proof of level two weapon endorsement or proof of completing department approved weapon training as defined in Subsection E of 16.48.2.18 NMAC; [and]

(8) beginning on July 1, 2009, proof of successful completion of a psychological evaluation as prescribed by the department to determine suitability for carrying firearms;

(9) completed application;

(10) non-refundable registration fee as set forth in Part 5; and

(11) criminal history background check as set forth in Subsection E of 16.48.2.19 NMAC.

### C. Psychological evaluation.

#### (1) Requirements.

(a) Prior to certification as a level three security guard in the state of New Mexico, upon initial licensure only, it shall be necessary for each applicant to be examined by a licensed psychologist regarding the individual's mental suitability to carry a firearm within the individual's scope of duty as a licensed level three security guard.

(b) Evaluations cannot be more than one year old for certification purposes.

(c) A psychological evaluation shall be original, signed, and transmitted by the psychologist who performs the psychological evaluation directly to the board.

(d) The willful providing of false information or willful failure to disclose information that the applicant knows or should have known is necessary to a complete and accurate evaluation shall be grounds for denial of licensure.

#### (2) Evaluation standards.

(a) The purpose of these guidelines is to set minimally acceptable standards for psychological evaluation of persons seeking licensure as level three security guards in New Mexico.

(b) The psychological evaluation shall consist of the Minnesota multi-phasic inventory-2 restructured form or MMPI-2RF.

(c) The report shall incorporate all information gathered in the interview and testing, and shall contain a specific recommendation as to the applicant's suitability to carry a fire arm as a level three security guard. All psychologists performing evaluations must be licenses and conform to the guidelines of the American psychological association regarding storage of records.

#### (3) Records.

(a) A list of licensed psychologists who are able to administer the exam will be available on the website or from the board office.

(b) A psychological evaluation shall not be maintained in applicant's file. A psychological evaluation shall be maintained by the board administrator in secure storage separate from applicant files.

(c) The psychological evaluation is a confidential record that shall not be subject to disclosure pursuant to the Inspection of Public Records Act Section 14-2-1, et seq. NMSA 1978.

D. The following sixteen (16) hour curriculum, with a minimum of four (4) hours dedicated to the laws pertaining to firearms and deadly physical force, is the minimum training required and must be completed within twelve months prior to application for security guard level three registration:

(1) the five (5) firearms safety rules;

(2) weapon manipulation;

(3) types of sidearms;

(4) firearm retention and equipment;

(5) firearm storage devices;

(6) locking devices;

(7) ammunition and storage;

(8) training household members;

(9) hazards of loaded firearms in the home;

(10) mental conditioning and tactics;

(11) weapon manipulation and marksmanship;

(12) threat recognition and judgmental shooting;

(13) laws pertaining to firearms, deadly physical force and the exercise of the powers of arrest - mandatory four (4) hours minimum.

E. Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance or reinstatement of a level three security guard registration in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) Blank fingerprint cards shall be obtained from the department.

(2) Fingerprints shall be taken:

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

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

(c) at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) above.

(3) Completed fingerprint cards shall be submitted to the department or

designee with a check, money order, or cashiers check for the prescribed fee.

[16.48.2.19 NMAC - Re-pr & A, 16.48.2.19 NMAC, 09/24/08; A, 11/28/09; A, 05/01/10]

### 16.48.2.23 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR AN ARMORED VEHICLE SECURITY GUARD REGISTRATION: LEVEL THREE:

A. On or after July 1, 2007, every individual seeking employment or employed as a level three armored vehicle security guard shall file an application for registration with the department. The application shall include two (2) passport type photos taken within the prior six months.

B. ~~[The department shall issue a registration for a level three armored vehicle security guard to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:]~~ Applicants for registration as a level three armored vehicle security guard must submit the following:

(1) proof of age indicating applicant is at least twenty one (21) years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);

(2) proof of successfully passing a jurisprudence examination to be administered by the department;

(3) proof of a high school diploma or its equivalent;

(4) proof of completing a department approved training program as defined in Subsection C of 16.48.2.20 NMAC prior to being placed on a guard post for the first time as a level three armored vehicle security guard; that training must be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act;

(b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(c) the New Mexico law enforcement academy; or

(d) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(5) proof of being firearm certified by an instructor recognized and certified by the New Mexico law enforcement

academy or the national rifle association law enforcement activities division;

(6) beginning on July 1, 2009, proof of successful completion of a psychological evaluation as prescribed by the department to determine suitability for carrying firearms;

(7) completed application;

(8) non-refundable registration fee as set forth in Part 5; and

(9) criminal history background check as set forth in Subsection D of 16.48.2.23 NMAC.

C. The following forty (40) hour curriculum is the minimum training required and must be completed within twelve (12) months prior to application for armored vehicle security guard level three registration:

(1) the armored vehicle security guard in New Mexico;

(2) legal issues for the armored vehicle security guard in New Mexico;

(3) armored security operations;

(4) emergency situations;

(5) safe driver training.

D. Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance or reinstatement of a level three armored vehicle security guard registration in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) Blank fingerprint cards shall be obtained from the department.

(2) Fingerprints shall be taken:

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

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

(c) at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) above.

(3) Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashiers check for the prescribed fee.

[16.48.2.23 NMAC - N, 09/24/08; A, 05/01/10]

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
PRIVATE INVESTIGATIONS  
ADVISORY BOARD**

This is an amendment to 16.48.4 NMAC

Section 8, effective 05-01-10.

**16.48.4.8 MANDATORY  
FIREARMS TRAINING:**

A. After July 1, 2007, any private investigator, a private patrol operator, a private investigations employee, a level three security guard or a private patrol operations employee may carry a firearm upon successful completion of the mandatory firearm training required by the department. Any licensee who carries a firearm on duty shall be required to provide proof of being firearm certified by an instructor recognized and certified by the New Mexico law enforcement academy or the national rifle association law enforcement activities division prior to carrying a weapon on duty, and annually thereafter.

B. The licensee will be required to qualify with the same type of weapon and caliber he will be carrying while on duty.

C. Specific course requirements and verification of completion forms will be posted on the board website and available on request from the board office.

D. The firearms qualification form issued by an instructor recognized and certified by the New Mexico law enforcement academy or the national rifle association law enforcement activities division shall at all times be in the possession of and located on the person of a registrant when working.

[16.48.4.8 NMAC - Re-pr & A, 16.48.4.8 NMAC, 09/24/08; A, 05/01/10]

[Continued on page 318]

## NEW MEXICO REGULATION AND LICENSING DEPARTMENT

### PRIVATE INVESTIGATIONS ADVISORY BOARD

This is an amendment to 16.48.5 NMAC Section 8, effective 05-01-10.

#### 16.48.5.8 FEE SCHEDULE:

**A.** All fees payable to the board are non-refundable.

**B.** Application fees:

(1) private investigator [license]

~~[\$200.00]~~ \$100.00

(2) private investigation company [license]

~~[\$200.00]~~ \$100.00

(3) private investigations manager [license]

~~[\$75.00]~~ \$100.00

(4) private investigations employee [registration]

~~[\$35.00]~~

\$100.00

(5) private patrol operator [license]

~~[\$200.00]~~ \$100.00

(6) private patrol company [license]

~~[\$200.00]~~ \$100.00

(7) private patrol operations manager [license]

~~[\$75.00]~~ \$100.00

(8) polygraph examiner [license]

~~[\$200.00]~~ \$100.00

**C.** Registration or registration renewal fees:

~~[(9)]~~ (1) security guard level one

~~[\$15.00]~~ \$50.00

~~[(10)]~~ (2) security guard level two

~~[\$15.00]~~ \$50.00

~~[(11)]~~ (3) security guard level three

~~[\$15.00]~~ \$75.00

(4) late fee on registration renewals

\$100.00

**D.** Initial license or license renewal fees:

(1) private investigator

\$300.00

(2) private investigations manager

\$200.00

(3) private investigations employee

\$200.00

(4) private patrol operator

\$300.00

(5) private patrol operations manager

\$200.00

(6) polygraph examiner

\$400.00

(7) late fee on license renewals

\$100.00

**E.** Other fees applying to private investigators, private patrol operators and polygraph examiners:

~~[(12)]~~ (1) special event permit

~~[\$200.00]~~ \$100.00

~~[(13)]~~ (2) private patrol branch office certificate

~~[\$50.00]~~ \$100.00

~~[(14)]~~ (3) inspection of public records request: regulation and licensing department standard rate

~~[(15)]~~ (4) examination

\$100.00

~~[(16)]~~ background fee

\$29.25]

**F.** Background fees shall be the amount established by the department of public safety for the processing of criminal history background checks.

[16.48.5.8 NMAC - Re-pr & A, 16.48.5.8 NMAC, 09/24/08; A, 05/01/10]

## NEW MEXICO REGULATION AND LICENSING DEPARTMENT

### PRIVATE INVESTIGATIONS ADVISORY BOARD

This is an amendment to 16.48.7 NMAC Sections 9 and 14, effective 05-01-10.

**16.48.7.9 LICENSE RENEWAL DEADLINE:** ~~[Licenses shall be renewed before July 1.]~~ Licensees or registrants failing to submit a renewal application and the required documentation on or before the expiration date shall be considered expired and must refrain from practicing.

[16.48.7.9 NMAC - N, 09/24/08; A, 05/01/10]

#### 16.48.7.14 REINSTATEMENT OF LICENSURE:

**A.** Reinstatement of a license or registration that has expired for more than ~~[five (5) years]~~ one (1) year, but less than ten (10) requires the following:

(1) completion of a new license application relevant to the license or registration in expired status;

(2) payment of late fee;

(3) payment of the application fee;

(4) submission of a completed fingerprint package; and

(5) passage of the jurisprudence examination.

**B.** A license or registration that has been expired for more than ten (10) years must apply as a new licensee or registrant and meet all the current requirements for licensure or registration.

[16.48.7.14 NMAC N, 09/24/08; A, 05/01/10]

## End of Adopted Rules Section

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## Other Material Related to Administrative Law

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### **NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS**

#### **New Mexico Board of Examiners for Architects**

PO Box 509  
Santa Fe, NM  
505-982-2869

#### **Regular Meeting**

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, May 7, 2010. The meeting will be held in the Conference Room of the Board office, #5 Calle Medico, Ste. C in Santa Fe beginning at 9:00 a.m. Disciplinary matters may also be discussed.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 982-2869 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

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### **End of Other Related Material Section**

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### **NEW MEXICO COMMISSION OF PUBLIC RECORDS HISTORICAL RECORDS ADVISORY BOARD**

#### **NOTICE OF REGULAR MEETING**

The New Mexico Historical Records Advisory Board has scheduled a regular meeting for Friday, May 7, 2010 from 9:00 a.m. to 12:00 noon. The meeting will be held at the State Records Center & Archives, 1209 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Randy Forrester at 505-476-7936 of the State Records Center & Archives at least one week prior to the meeting. Public documents, including the agenda and minutes will be available 24 hours before the meeting.

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## Submittal Deadlines and Publication Dates 2010

<b>Volume XXI</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
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

The New Mexico Register is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the New Mexico Register twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.