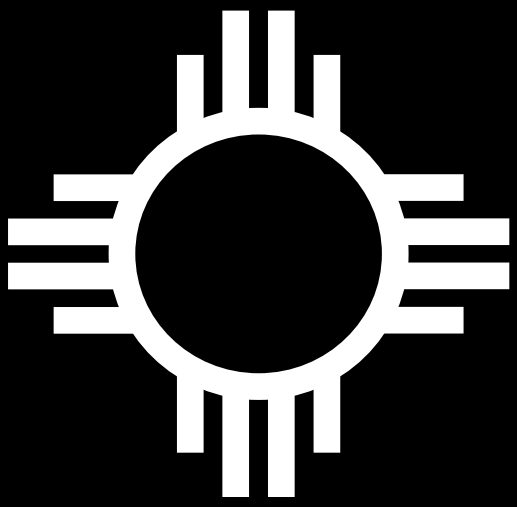
NEW MEXICO REGISTER



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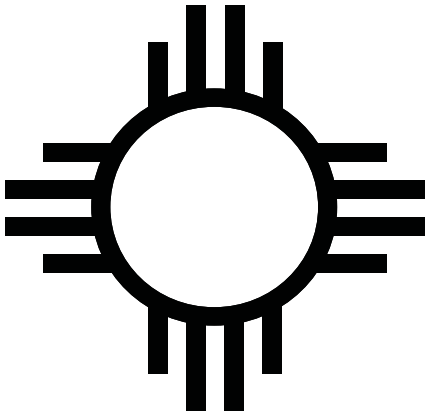

The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2010

New Mexico Register

Volume XXI, Number 8
April 30, 2010

Table of Contents

Notices of Rulemaking and Proposed Rules

Adopted Rules

Effective Date and Validity of Rule Filings

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

A=***Amended***, E=***Emergency***, N=***New***, R=***Repealed***, Rn=***Renumbered***

The ***New Mexico Register*** is available free at http://www.nmcpr.state.nm.us/nmregister

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Notices of Rulemaking and Proposed Rules

NEW MEXICO ANIMAL SHELTERING BOARD

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Animal Sheltering Board will hold a rule hearing on Wednesday, June 2, 2010. Following the rule hearing the Board will convene a regular meeting to take action on the proposed rules and take care of regular business. The rule hearing will begin at 10:00 a.m. and the regular meeting will convene following the rule hearing. The Board may enter into Executive Session pursuant to 10-15-1.H of the Open Meetings Act.

The meetings will be held at the Regulation and Licensing Department, 2550 Cerrillos Rd., Santa Fe, NM 87505, in the Rio Grande Conference Room.

The purpose of the rule hearing is to hear public testimony on adoption of proposed amendments and additions to the following Board Rules and Regulations in Title 16, Chapter 24 NMAC: Part 2 Licensure & Certification, Part 5 Fees, and a new part Title 16, Chapter 24 NMAC Part 6 Formulary for Euthanasia Technicians.

Copies of the proposed rule changes may be obtained by contacting the board office in writing at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico, 87505, call (505) 476-4795, or from the board's website: www.RLD.state.nm.us/animalsheltering after May 2, 2010. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board office in writing no later than May 24, 2010. Persons wishing to present their comments at the hearing will need fifteen (15) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4795 at least two weeks prior to the meeting or as soon as possible.

Vadra Baca, Administrator
PO Box 25101- Santa Fe, New Mexico 87504

NEW MEXICO CHILDREN YOUTH AND FAMILIES DEPARTMENT

FAMILY SERVICES DIVISION

NOTICE OF PUBLIC HEARING 8.15.2 NMAC and 8.16.2 NMAC

The Children, Youth and Families Department, Family Services, Child Care Services Bureau will hold a formal public hearing on Tuesday, June 1, 2010, from 1:00 p.m. to 3:00 p.m. in Apodaca Hall on the 2nd floor of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico to receive public comments regarding proposed changes to regulations 8.15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers and 8.16.2 NMAC Child Care Centers, Out of School Time Programs, Family Child Care Homes and Other Early Care and Education Programs.

The proposed regulation changes may be obtained at www.newmexicokids.org or by contacting Mohammed Hussien at 505-827-7499 or 1-800-832-1321. Interested persons may testify at the hearing or submit written comments no later than 5:00 p.m. on June 1, 2010. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Mohammed Hussien, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number: 505-827-9978.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact the Child Care Services Bureau at 505-827-7499. CCSB requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO CHILDREN YOUTH AND FAMILIES DEPARTMENT

JUVENILE JUSTICE DIVISION

Notice of Public Hearing

The Children, Youth and Families Department, Juvenile Justice Services, will hold a formal public hearing on May 12th from 11:00 to 2:00 p.m. in Room 565 on the 5th floor of the PERA building located at 1120 Paseo de Peralta, Santa Fe, New Mexico to receive public comments regarding proposed regulations: 8.14.1 NMAC, General Provisions; 8.14.5 NMAC Safety and Emergency Operations; 8.14.16 NMAC Human Resources and Training Plan; 8.14.17 NMAC, Information Management; 8.14.18 NMAC, Physical Plant Management; 8.14.19 NMAC, Fiscal Management and Inventory Control; 8.14.20 NMAC, Client Right and Services; 8.14.21 NMAC, Classification and Programs; 8.14.22 NMAC, Sealing Client Records; 8.14.23 NMAC, Confidentiality of Client Records, 22.510.100 NMAC, Public Safety Advisory Board.

The proposed regulations may be obtained by contacting Patricia Ruiz at 505-827-7632. Interested persons may testify at the hearing or submit written comments no later than 3:30 p.m. on May 10, 2010. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to Patricia Ruiz, Juvenile Justice Services, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number 505-827-8408.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact Patricia Ruiz at 505-827-7632. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Chiropractic will hold a Rule Hearing and Regular Board Meeting on June 14, 2010. Following the Rule Hearing the New Mexico Board of Chiropractic will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Chiropractic Rule Hearing will begin at 1:00 p.m. and the Regular Board Meeting will convene following the Rule Hearing. Portions of the regular meeting may be closed to the public while the Board is in Executive Session. *Pursuant to §10-15-1.H of the Open Meetings Act.*

The meetings will be held at the Toney Anaya Building, Hearing Rm. # 1, Second Floor, 2550 Cerrillos Road, Santa Fe, New

Mexico.87505

The purpose of the Rule Hearing is to consider adoption of proposed amendments, repeals and additions to the following Board Rules in 16.4 NMAC: Part 1 Administrative Fees, Part 15 Chiropractic Advanced Practice Certification Registry.

Copies of the proposed rule changes may be obtained by contacting the board office in writing at the Toney Anaya Building located at the West Capital Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87505, call (505) 476-4695, or from the board's website: www.RLD.state.nm.us/chiropractic after May 10, 2010. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board office in writing no later than June 1, 2010. Persons wishing to present their comments at the hearing will need (15) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4695 at least two weeks prior to the meeting or as soon as possible.

Pauline Varela, Administrator
PO Box 25101- Santa Fe, New Mexico 87504

CURRY AND ROOSEVELT COTTON BOLL WEEVIL CONTROL DISTRICT

Notice of Hearing

Curry and Roosevelt Cotton Boll Weevil Control District will hold a public hearing under the Cotton Boll Weevil Control Act, 76-6A-1 to 76-6A-16, NMSA 1978, to address changes in the "Curry and Roosevelt Cotton Boll Weevil Control District Assessment" rule (21.17.44 NMAC). The proposed change addresses bale assessments.

The hearing will be held at the County Extension office located at 705 East Lime Street, Portales, New Mexico, beginning at 10:00 a.m. on May 24, 2010. Written statements in support or opposition, signed by the submitting person, will be accepted, if received prior to 5:00 p.m. on May 24, 2010. Written statements, inquiries, or requests for copies of the rule should be directed to Mr. Kevin Breshears, P.O. Box 845, Portales, New Mexico 88130.

NEW MEXICO BOARD OF DENTAL HEALTH CARE

LEGAL NOTICE

Public Rule Hearing and Regular Board and Committee Meeting

The New Mexico Board of Dental Health Care will hold a Rule Hearing on Friday, June 04, 2010. Following the Rule Hearing the New Mexico Dental Hygienists Committee will convene a regular meeting; following the New Mexico Dental Hygienist Committee meeting the New Mexico Board of Dental Health Care will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Dental Health Care Rule Hearing will begin at 9:00 a.m. and the Regular Meetings will convene following the rule hearing. The meetings will be held at the Regulation and Licensing Dept, Toney Anaya Building, West Capitol Complex, 2550 Cerrillos Road, Santa Fe, NM in the Rio Grande Room, 2nd Floor.

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

You can contact the board office at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico 87504, call (505) 476-4680 or copies of the proposed rules are available on the Dental board's website: www.RLD.state.nm.us/Dental. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than May 14, 2010. Persons wishing to present their comments at the hearing will need fifteen (15) copies of any comments or proposed changes for distribution to the Board and staff.

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

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

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

Notice of Proposed Rulemaking

The Economic Development Department ("EDD or Department") hereby gives notice that the Department will conduct a public hearing as indicated to obtain input amending the following rules:

5.5.51 Development Employment Funding for Film and Multimedia Production Companies

A public hearing regarding the rules will be held on Thursday, June 3, 2010 in the lobby of the Jean Cocteau Theater, 418 Montezuma Ave., Santa Fe, NM 87501. The time for the hearing on the proposed rules is 9:00 AM MDT to 11:00 AM MDT.

Interested individuals may testify at the public hearing or submit written comments regarding the proposed rulemaking relating to the Job Training Incentive Program for Film & Multimedia to Tobi Ives, Workforce Development, New Mexico Economic Development Department, 418 Montezuma Ave, Santa Fe, NM 87501 or email tobi@nmfilm.com or fax 505.476.5601. Written comments must be received no later than 5:00 pm on June 1, 2010. The proposed rulemaking actions specific to the Job Training Incentive Program for Film & Multimedia may be accessed on the Department's website, www.gonm.biz, or www.nmfilm.com/workforce-advancement/fcap or obtained from Tobi Ives at the contact above.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this hearing are asked to contact Tobi Ives as soon as possible. The Department requests at least ten days advanced notice to provide requested special accommodations.

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

Notice of Proposed Rulemaking

The Economic Development Department ("EDD or Department") hereby gives notice that the Department will conduct a public hearing as indicated to obtain input on amending the following rule:

5.5.50 NMAC (Industrial Development Training Program).

The proposed rulemaking actions specific to the Job Training Incentive Program may be accessed on April 30, 2010 on the Department's website (www.gonm.biz) or obtained from Therese Varela at the contact below.

A public hearing regarding the rules will be held on Thursday, June 10, 2010 at CNM Workforce Training Center, 5600 Eagle Rock Avenue, NE, Albuquerque, NM. The time for the hearing on the proposed rules is 9:00 AM MDT.

Interested individuals may testify at the public hearing or submit written comments regarding the proposed rulemaking relating to the Job Training Incentive Program to Therese R. Varela, JTIP Program Manager, New Mexico Economic Development Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico 87504, or therese.varela@state.nm.us (505) 827-0323, fax (505) 827-0407. Written comments must be received no later than 5:00 pm on June 4, 2010.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this hearing are asked to contact Therese Varela as soon as possible. The Department requests at least ten days advanced notice to provide requested special accommodations.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

ENERGY CONSERVATION AND MANAGEMENT DIVISION

NOTICE OF PUBLIC HEARING OF THE NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
Geothermal Ground Coupled Heat Pump Tax Credit-Personal Income Tax

The New Mexico Energy, Minerals and Natural Resources Department ("Department") will hold a public hearing at 9:00 A.M. Tuesday, May 11, 2010 in Porter Hall, Wendell Chino Building, 1220 S. St. Francis Drive, Santa Fe, New Mexico.

The Department will conduct a public hearing on proposed rules 3.3.32 and 3.4.19 NMAC for administration of the Geothermal Ground Coupled Heat Pump Tax Credit, as authorized by Sections 7-2-18.24 and 7-2a-24 of NMSA 1978 and the 2009 House Bill 375 ("Act").

Copies of the proposed rules and the Act are available from the Department's Energy Conservation and Management Division ("ECMD"), 1220 South Saint Francis Drive, Santa Fe, NM 87505, on ECMD's website, http://www.cleanenergynm.org, or by contacting Steve Lucero at 505-476-3324 or Stephen.lucero@state.nm.us.

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

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

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Steve Lucero at least one week prior to the hearing or as soon as possible. Public documents can be provided in various accessible formats. Please contact Steve Lucero at 476-3324, through Relay New Mexico at 1-800-489-8536 Voice/ TTY, if a summary or other type of accessible format is needed.

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The 48th New Mexico Legislative Session of 2007 amended the New Mexico Works and Education Works Acts via House Bill 342 and House Bill 140; both signed into law on April 4, 2007. This amendment allowed HSD to increase the child support pass-through monies in the amount of up to $100.00 for one or more child(ren). This money will be excluded when determining NMW benefit allotment.

A public hearing to receive testimony on this regulation will be held at June 1, 2010 at 10:00am.

The hearing will be held at the Income Support Division Conference Room at Pollon Plaza, 2009 S. Pacheco St., Santa Fe, NM 87505. The Conference room is located in room 120 on the lower level. Individuals wishing to testify may contact the Income Support Division, P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling toll free 1-800-432-6217.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the New Mexico Human Services Department toll free at 1-800-432-6217, in Santa Fe at 827-9454, or through the New Mexico Relay system, toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

The proposed regulation is available on the Human Services Department website at http://www.hsd.state.nm.us/isd/ISDRegisters.html. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 P.M. on the date of the hearing. Please send comments to:

Kathryn Falls, Secretary
Human Services Department
P.O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

You may send comments electronically to: vida.tapia-sanchez@state.nm.us

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold two public hearings on May 27, 2010 in the South Park Conference Room, 2055 S. Pacheco, Ste. 500-590, Santa Fe, New Mexico.

The subject of the first hearing at 9:00 a.m. is Medicare Savings Programs. The Human Services Department (HSD) is proposing to update the Qualified Medicare Beneficiaries (QMB), the Specified Low Income Medicare Beneficiaries (SLIMB), the Qualified Individual (QI-1) and the Qualified Disabled Working Individuals (QD) Medicare Savings Programs (MSP) resource limits to match the Low Income Subsidy as required under The Medicare Improvements for Patients & Providers Act of 2008 (MIPPA). The changes include the increase of resource limits for an individual and couple from $4,000 for an individual and $6,000 for a couple to $8,100 and $12,910, respectively.

The MSP resource limit is required to change annually by the increase in the consumer price index. Since a change in the MSP resource limit occurs every January 1st, subsequent changes to the MSP resource limits will be incorporated into the annual COLA register.

While the proposed register is effective July 15, 2010, the increase in resource limits for MSP, per MIPPA, went into effect January 1, 2010. Income Support Division field offices have been instructed to use the higher resource limits for determining eligibility for MSP.

The subject of the second hearing at 10:00 a.m. is Dental Services. The Human Services Department, Medical Assistance Division, is proposing a change to the Medicaid dental benefits for eligible recipients 21 years of age or older. Along with these proposed changes in benefits, the entire rule, 8.310.7 NMAC, *Dental Services*, was reviewed for clarity resulting in additional changes in the wording but not otherwise affecting the benefits of the program. The reduction in payments for these services in the Medicaid fee-for-service program is estimated to be $192,000.

Interested persons may submit written comments no later than 5:00 p.m., May 27, 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 proposed rules are available for review on our Website at 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 PHYSICAL THERAPY BOARD

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Physical Therapy Board will hold a Rule Hearing on Thursday, June 10, 2010. Following the Rule Hearing the New Mexico Physical Therapy Board will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Physical Therapy Board Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held at the Regulation and Licensing Department, 2550 Cerrillos Road, 2nd Floor, Santa Fe, NM 87505.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations: 16.20.2 NMAC: Examinations, 16.20.3 NMAC: Issuance of Licenses, 16.20.4 NMAC: Temporary Licenses, 16.20.5 NMAC: Schedule of Fees, 16.20.6 NMAC: Physical Therapist Assistants, 16.20.7 NMAC: Supervision, 16.20.8 NMAC: Renewal Requirements and Continuing Education, 16.20.10 NMAC: Direct Care Requirements.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, or call (505) 476-4880 after May 10, 2010. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than May 27, 2010. Persons wishing to present their comments at the hearing will need (8) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4880 at least two weeks prior to the meeting or as soon as possible.

Velma Rodriguez, Board Administrator
PO Box 25101- Santa Fe, New Mexico 87504

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

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

Tax Administration Act
3.1.4.10 NMAC Section 7-1-9 NMSA 1978
(*Due Dates and Timeliness*)

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

Taxation and Revenue Department Act
3.1.4.18 NMAC Section 9-11-6.4 NMSA 1978
(Electronic Filing)

These proposals were placed on file in the Office of the Secretary on April 16, 2010. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of these proposals, if filed, will be filed as required by law on or about June 30, 2010.

A public hearing will be held on these

proposals on Wednesday, June 2, 2010, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before June 2, 2010.

3.1.4.10 **DUE DATES AND TIMELINESS**

A. **FILING RETURNS - DUE DATE:** A taxpayer becomes liable for tax as soon as the taxable event occurs; payment is not due, however, until on and after the date established by tax acts for the payment of tax. The statutory words "and after" used in the preceding sentence mean that taxes remain due until paid. A taxpayer becomes liable for interest if the tax is not paid when it becomes due. If the tax is not paid when it becomes due or if a report is not filed when due because of negligence of the taxpayer or taxpayer's representative, the taxpayer will also become liable for penalty. The fact that a taxpayer has not registered as a taxpayer is not material to the taxpayer's liability for payment of tax.

B. **TIMELINESS OF ELECTRONIC TRANSMISSIONS**:

(1) Notices, returns and applications authorized or required to be made or given by electronic transmission, are timely if the notice, return or application is electronically transmitted to the department and accepted on or before the last date prescribed for filing the notice, return or application. Accordingly, the sender who relies upon the applicability of Section 7-1-13 NMSA 1978 assumes the responsibility to provide the department proof that the electronic transmission to the department was initiated on or before the last date prescribed for filing the notice, return or application.

(2) Returns required by regulation or statute to be filed electronically shall not be considered filed if filed by any means other than as specified in that regulation or statute unless the taxpayer receives an exception or waiver to electronic filing in writing from the department.

C. **DETERMINATION OF TIMELINESS:**

(1) Notices, returns, applications and payments, other than payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by mail are timely if the postmark on the envelope made by the United States postal service bears the date on or before the last date prescribed for filing the notice, return or application or for making the payment. The date affixed on an envelope by a postage meter stamp will be considered the postmark date if it is not superseded by a postmark made by the United States postal service. If the postmark does not bear a date on or before the last date prescribed for filing the notice, return or application, or for making the payment, the notice, return, application or payment will be presumed to be late. Accordingly, the sender who relies upon the applicability of Section 7-1-9 NMSA 1978 assumes the responsibility that the postmark will bear a date on or before the last date prescribed for filing the notice, return or application, or for making the payment.

(2) If a mailing is not received by the department, the contents of the mailing are not timely. If an envelope is improperly addressed and is returned to the sender by the post office, there has been no timely mailing within the meaning of the statute. The postmark date on the improperly addressed envelope will not be deemed the date of receipt by the department.

(3) A facsimile transmittal of a notice, return or application will be considered a timely filing of the notice, return or application only if:

(a) the facsimile is received by the due date for filing the notice, return or application; and

(b) the original is delivered by the due date or, if mailed, postmarked on or before the due date.

D. **ILLEGIBLE POSTMARK:**

(1) If the postmark on the envelope is not legible and the contents are received by the department by the second business day following the due date, filing of the return, payment or other action will be deemed timely. If the contents are received by the department after the second business day following the due date, the person who is required to file notices, returns or applications, or make payments, has the burden of proving the time when the postmark was made.

(2) The provisions of Subsection D of 3.1.4.10 NMAC apply only to actions required or permitted to be performed by mail.

(3) If the notice, return, application or payment other than payments specified by Section 7-1-13.1 NMSA 1978 is sent or delivered to the department by any means other than by mailing with the United States postal service, it must be received by the department on or before the due date for filing the notice, return or application or making the payment.

E. **SATURDAY, SUNDAY OR HOLIDAY DUE DATE:**

(1) If the last date for filing notices, returns or applications or for making payment of taxes falls on Saturday, Sunday or a state of New Mexico or national holiday, the filing of notices, returns and applications or the making of the payment of taxes, other than payments specified by Section 7-1-13.1 NMSA 1978, shall be considered timely if postmarked on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

(2) Example: The due date for taxpayers to file gross receipts tax returns for April receipts is May 25. If May 25th is a Saturday and the following Monday is Memorial Day, a legal holiday designated in Section 12-5-2 NMSA 1978, the due date for filing the gross receipts tax returns is Tuesday, May 28th. The first banking day preceding Tuesday, May 28th is Friday, May 24th.

F. **STATE OBSERVANCE OF STATE HOLIDAY ON DAY OTHER THAN THAT DESIGNATED FOR PUBLIC OBSERVANCE:**

(1) Whenever the New Mexico state government and its employees are directed by competent authority to observe a state legal public holiday on a day other than that specified in Section 12-5-2 NMSA 1978 for that holiday, the day upon which the holiday is observed by the New Mexico state government is deemed to be a "legal state holiday" for the purposes of the Tax Administration Act.

(2) Example: Section 12-5-2 NMSA 1978 designates the third Monday in February as a legal holiday, President's Day. Traditionally, state offices are open on the third Monday in February and the holiday is observed by state government on the Friday following Thanksgiving. Accordingly, when state government is closed on the Friday after Thanksgiving in a delayed observance of President's Day, the due date for any notices, returns, applications or payments to be made by taxpayers on the Friday after Thanksgiving is the following Monday. For purposes of making payment of tax in accordance with Section 7-1-13.1 NMSA 1978 in this situation, the first banking day preceding the due date is the Friday after Thanksgiving. Because the third Monday in February is observed by the United States postal service and by the national banks, any notices, returns, applications or payments to be made by taxpayers on that date are due the following day, even though state offices are open on President's Day.

G. **"RECEIVED BY THE DEPARTMENT" DEFINED:**

(1) Unless the secretary by instruction or other directive permits or requires otherwise, "received by the department" for the purposes of Section 7-1-13.1 NMSA 1978 and 3.1.4.18 NMAC means received at the Santa Fe headquarters of the department during the department's

normal business hours.

(2) The secretary through instruction or other directive may permit or require payment by check of taxes subject to the provisions of Section 7-1-13.1 NMSA 1978 and 3.1.4.18 NMAC at any other location of the department or at the location of the state fiscal agent or other agent of the department or during times other than normal business hours of the department. When the secretary has so permitted or required payment by check at such locations or times, "received by the department" for the purposes of Section 7-1-13.1 NMSA 1978 and 3.1.4.18 NMAC includes such locations or times.

H. **"BANKING DAY" DEFINED:**

(1) A banking day is a day which is not a Saturday, Sunday, national bank holiday or a day deemed by regulation of the secretary to be a state legal holiday for purposes of making payment under Subsection 7-1-13.1B NMSA 1978.

(2) Examples:

(a) When Memorial Day falls on Monday, May 27th, the preceding banking day is Friday, May 24th.

(b) The Wednesday immediately prior to Thanksgiving is the first banking day preceding Thanksgiving.

I. **TIMELINESS OF ELECTRONIC PAYMENTS:**

(1) Payments, other than payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by electronic payment, are timely if the payment is electronically transmitted to the department and accepted, on or before the last date prescribed for making the payment. Accordingly, the sender who relies upon the applicability of Section 7-1-13.4 NMSA 1978 assumes the responsibility to provide the department proof that the electronic transmission to the department was initiated on or before the last date prescribed for making the payment.

(2) Payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by electronic payment, are timely if the result of the electronic payment is that the funds are available to the state of New Mexico on or before the last date prescribed for making the payment. The date that an electronic payment was transmitted to the department is not an indicator of whether the payment was timely. The sender who relies upon the applicability of Section 7-1-13.4 NMSA 1978 assumes the responsibility that the funds were available to the department on or before the last date prescribed for making the payment.

[7/19/67, 9/9/71, 11/5/85, 8/15/90, 11/7/90, 12/13/91, 9/20/93, 10/31/96; 3.1.4.10 NMAC - Rn & A, 3 NMAC 1.4.10, 12/29/00; A, 10/31/07; A, XXX]

3.1.4.18 **ELECTRONIC FILING:**

A. This regulation is adopted pursuant to the secretary's authority in Subsection B of Section 7-1-13 NMSA 1978.

B. For returns due after August 1, 2010, the returns and reports for the following taxes must be filed electronically using approved electronic media on or before the due date of the return or report:

(1) taxes due under the Gross Receipts and Compensating Tax Act, local options gross receipts tax acts, Leased Vehicle Gross Receipts Tax Act, and Interstate Telecommunication Gross Receipts Tax Act and taxes due under the Withholding Tax Act which are due at the same time as gross receipts tax, if the taxpayer's average monthly tax payment for this group of taxes during the preceding calendar year equaled or exceeded twenty thousand dollars ($20,000); and

(2) weight distance tax if the taxpayer must pay taxes for two or more trucks.

C. For returns due after January 1, 2011, the returns for taxes due under the Gross Receipts and Compensating Tax Act, local options gross receipts tax acts, Leased Vehicle Gross Receipts Tax Act, and Interstate Telecommunication Gross Receipts Tax Act and taxes due under the Withholding Tax Act which are due at the same time as gross receipts tax, if the taxpayer's average monthly tax payment for this group of taxes during the preceding calendar year equaled or exceeded ten thousand dollars ($10,000) but less than twenty thousand dollars ($20,000) must be filed electronically on or before the due date of the return.

D. For returns due after July 1, 2011, the returns for taxes due under the Gross Receipts and Compensating Tax Act, local options gross receipts tax acts, Leased Vehicle Gross Receipts Tax Act, and Interstate Telecommunication Gross Receipts Tax Act and taxes due under the Withholding Tax Act which are due at the same time as gross receipts tax, if the taxpayer is required to file monthly under Section 7-1-15 NMSA 1978, must be filed electronically on or before the due date of the return.

E. Confirmation of electronic filing of a return must accompany payment of taxes by taxpayer. If taxpayer does not have confirmation of electronic filing when the taxpayer submits payment to the department, taxpayer must ensure that taxpayer's tax identification number is on the payment. Payments without confirmation or tax identification number may not be properly applied to the taxpayer's account and interest and penalty may be assessed.

F. Once a taxpayer is required to file returns electronically pursuant to this regulation, the taxpayer may not file future returns by mail or any method other than electronically.

G. For the purposes of this section, "average monthly tax payment" means the total amount of taxes paid with respect to a group of taxes under Paragraph (1) of Subsection B, Subsection C or Subsection D of this section during a calendar year divided by the number of months in that calendar year containing a due date on which the taxpayer was required to pay one or more taxes in the group.

H. A taxpayer may request an exception to the requirement of electronic filing. The request must be in writing, addressed to the secretary of the taxation and revenue department and must be received by the department at least 30 days before the taxpayer's electronic return is due. Exceptions will be granted in writing and only upon a showing of hardship including that there is no reasonable access to the internet in taxpayer's community. The taxpayer must also show a good faith effort to comply with the electronic filing requirements before an exception will be considered. The request for an exception must include the tax or tax return to which the exception if granted will apply; a clear statement of the reasons for the exception; and the signature of the taxpayer.

I. A taxpayer may be granted a waiver to the requirement of electronic filing for a single tax return. The request for a waiver must be in writing and received by the department on or before the date that the tax return is due and must include the tax or tax return to which the waiver if granted will apply, a clear statement of the reasons for the waiver, and the signature of the taxpayer. A waiver may be granted for the following reasons:

(1) if the taxpayer is temporarily disabled because of injury or prolonged illness and the taxpayer can show that the taxpayer is unable to procure the services of a person to complete the taxpayer's return and file it electronically;

(2) if the conduct of the taxpayer's business has been substantially impaired due to the disability of a principal officer of the taxpayer, physical damage to the taxpayer's business or other similar impairments to the conduct of the taxpayer's business causing the taxpayer an inability to electronically file; or

(3) if the taxpayer's accountant or other agent or employee who routinely electronically files for taxpayer has suddenly died or has become disabled and unable to perform services for the taxpayer and the taxpayer can show that the taxpayer is unable either to electronically file the return or to procure the services of a person to

electronically file the return before the due date.

J. If a taxpayer is granted an exception or waiver, the taxpayer must file a paper return in a timely fashion unless an extension pursuant to 3.1.4.12 NMAC has been granted. If a paper return is not timely filed, interest will be due even if an extension is granted.

[3.1.4.18 NMAC - N, XXX]

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO CHILDREN YOUTH AND FAMILIES DEPARTMENT

YOUTH AND FAMILY SERVICES DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 14 JUVENILE JUSTICE
PART 10 TRANSITION SERVICES

8.14.10.1 ISSUING AGENCY: Children, Youth and Families Department
[8.14.10.1 NMAC - N, 04/30/10]

8.14.10.2 SCOPE: This rule applies to clients, children, youth and families department staff, health care and other providers administering care to clients in the facilities of the juvenile justice services of children, youth and families department, clients on supervised release, and clients consenting to receive services following discharge from supervised release.
[8.14.10.2 NMAC - N, 04/30/10]

8.14.10.3 STATUTORY AUTHORITY: NMSA 1978 Section 9-2A-7(D) (2005) authorizes the secretary of the children, youth and families department (CYFD) to adopt regulations as necessary to carry out the duties of the department. NMSA 1978 Section 32A-2-19(B) provides that delinquent children may be committed to the legal custody of the department for placement, supervision and rehabilitation and more generally NMSA 1978, Section 32A-2-1 et seq., (2005) the Delinquency Act, contains various provisions relating to the commitment and custody of delinquent children. NMSA 1978 Section 32A-2-23.1 delineates the authority of the releasing authority.
[8.14.10.3 NMAC - N, 04/30/10]

8.14.10.4 DURATION: Permanent.
[8.14.10.4 NMAC - N, 04/30/10]

8.14.10.5 EFFECTIVE DATE: 04/30/10, unless a later date is cited at the end of a section.
[8.14.10.5 NMAC - N, 04/30/10]

8.14.10.6 OBJECTIVE: To establish standards for providing transition services to youth released or discharged from a facility for the care and rehabilitation of delinquent children while on supervised release and after discharge from supervised release if consented to by the youth.
[8.14.10.6 NMAC - N, 04/30/10]

8.14.10.7 DEFINITIONS:

A. Community services reviewer refers to persons designated to review, coordinate, track, and ensure the provision of emergency wraparound funds for youth in transition services.

B. Culturally competent services refers to a service delivery system that is responsive to diversity and cultural differences related to age, race, ethnicity, gender, and sexual preference.

C. CYFD refers to the New Mexico children, youth and families department.

D. Director of community based behavioral health services refers to the person designated to provide management oversight, guidance, and direction for community based behavioral health care and community based rehabilitative services operated or funded by CYFD for youth on probation or supervised release.

E. Emergency wraparound funds refers to funds of last resort that have been identified for use primarily with juvenile justice clients who are in need of service or goods that will assist in the successful reintegration back into a community after release from a juvenile justice facility and secondarily, with juvenile justice clients on probation to support the successful completion of probationary agreements or plans of care.

F. Facility release panel (panel) is the departmental secretary-designated releasing authority that considers juveniles for supervised release.

G. FACTS refers to the family automated client tracking system, CYFD's management information system.

H. Grievance system refers to systems and procedures available to youth to resolve grievances with transition services operations and staff.

I. Incident reporting refers to procedures in place to report events requiring JJS or CYFD response.

J. Facility refers to a facility operated by, or on behalf of, CYFD's juvenile justice services, for purposes of housing and providing care for clients committed to the custody of CYFD.

K. Juvenile justice services (JJS) refers to the organizational unit within CYFD that operates juvenile justice facilities, and provides other services under the Delinquency Act, NMSA 1978, Section 32A-2-1 et seq. (2005).

L. Multi-disciplinary team refers to the team that meets at central intake and at the facility to develop, monitor, and revise client plans for placement and services. The team includes the client and family member(s), and behavioral health, education, medical, a security representative, the juvenile probation officer and a transition services coordinator if assigned.

M. Single entity for behavioral health services refers to the managed care organization that contracts with the state to manage the delivery of all publicly funded behavioral health services.

N. Transition services coordinator (TSC) means a person whose duties may include coordination of community and aftercare services for a client.

O. Transition services manager refers to the person designated to manage transition services, and to train, supervise, and evaluate transition services coordinators.

P. Transition services refers to the services provided for youth exiting the care and custody of CYFD. Services are youth and family-driven, with individualized case planning and community-based transition services using wraparound models. CYFD provides transition services based on best practices that are culturally competent, gender responsive, and built on the unique strengths and resiliency of youth and their families.

Q. Transition team refers to the team that meets to develop, monitor, and revise transition plans. Transition team includes the transition services coordinator, the facility multi-disciplinary team members, juvenile probation officer, the youth, family, and service providers involved with the youth and the transition plan.

R. Wrap around services refers to a service delivery system that utilizes community resources, is designed to fit the specific needs of the youth, promotes full youth and family engagement in the service delivery, and enhances the client's ability to access resources after CYFD involvement.
[8.14.10.7 NMAC - N, 04/30/10]

8.14.10.8 TRANSITION SERVICES: Transition services are provided to maximize the youth's opportunity to successfully transition into the community after discharge/release from a facility. Transition services are provided through transition services coordinators who work on a regional basis throughout the state. The transition services coordinator works intensively with the youth and their families through their commitment and discharge from supervised release and up to age 21 if consented to by the youth. When appropriate, transition services shall include linking clients with education, vocational education, job training, job placement services, medical and behavioral health services.
[8.14.10.8 NMAC - N, 04/30/10]

8.14.10.9 TRANSITION PLANNING: Transition services involve individualized transition planning. The transition plan identifies the goals, activities/ services/ programs, timeframes, and outcomes related to successful transition. Transition services coordinators establish the necessary arrangements and linkages with the full range of public and private sector individuals, agencies and organizations in the community, and the single entity for behavioral health services that can provide the services and supports in the domains listed in 8.14.10.8 NMAC, as appropriate and necessary to achieve successful transition.
[8.14.10.9 NMAC - N, 04/30/10]

8.14.10.10 SPECIAL NEEDS/ SPECIAL CHARACTERISTICS: Transition services are tailored to address youth, both male and female, with special needs/special characteristics, including youth with serious mental health or substance abuse disorders, youth with other chronic illnesses, assessed with problem sexual behaviors, Native American youth, and youth jointly involved with protective services and juvenile justice services.
[8.14.10.10 NMAC - N, 04/30/10]

8.14.10.11 TRANSITION SERVICES COORDINATION: The transition services coordinator works with the youth, family, and transition team members to coordinate the transition plan. The transition services coordinator works with the juvenile probation officer to support the delivery of transition services in the community.
[8.14.10.11 NMAC - N, 04/30/10]

8.14.10.12 GRIEVANCE SYSTEM: Youth have a right to question transition plan decisions and services and a grievance system is in place. The grievance system for transition services is made available to all youth, families, and transition team members. The grievance system is in accordance with the children, youth and families department grievance system. Youth are not prevented or discouraged from filing a grievance.
[8.14.10.12 NMAC - N, 04/30/10]

8.14.10.13 CRITICAL INCIDENT REPORTING: In order to promote the well-being of participating youth, transition services coordinators and other staff of transition services report all critical incidents, including abuse, neglect, or exploitation of the youth, and dangerous behavior on the part of the youth, as required by state law, local law, or department policy. Critical incident reporting follows the procedures established by the department.
[8.14.10.13 NMAC - N, 04/30/10]

8.14.10.14 MONITORING, EVALUATION AND REPORTING: Transition services are monitored and evaluated through a quality assurance process, plan or procedure; transition services are thoroughly documented.
[8.14.10.14 NMAC - N, 04/30/10]

8.14.10.15 TRANSITION SERVICES MANAGEMENT: Transition services is managed by the transition services manager. Regular staff meetings are required as is training and supervision.
[8.14.10.15 NMAC - N, 04/30/10]

8.14.10.16 COORDINATION WITH OTHER PROGRAMS: Transition coordination involves a high frequency of interface and collaboration with the facility multi-disciplinary team members, juvenile probation officers, facility release panel and panel chairperson, juvenile community corrections providers, community based treatment providers, housing resources, the single entity for behavioral health, educational and vocational training providers, family members, natural community supports and others as needed to maximize opportunities for successful and sustained reintegration.
[8.14.10.16 NMAC - N, 04/30/10]

HISTORY OF 8.14.10 NMAC: [RESERVED]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.1 NMAC, Section 5 and the addition of a new section, Section 116 effective 06/1/10.

20.2.1.5 EFFECTIVE DATE: October 27, 1995, unless a later date is cited at the end of a section.
[09/05/95, 10-27-95; 20.2.1.5 NMAC - Rn, 20 NMAC 2.1.104 10/31/02; A, 06/01/10]
[The latest effective date of any section in this Part is 06/01/10.]

20.2.1.116 SIGNIFICANT FIGURES:

A. All emissions standards are deemed to have at least two significant figures, but not more than three significant figures.

B. At least five significant figures shall be retained in all intermediate calculations.

C. In calculating emissions to determine compliance with an emission standard, the following rounding off procedures shall be used:

(1) if the first digit to be discarded is less than the number five, the last digit retained shall not be changed;

(2) if the first digit discarded is greater than the number five, or if it is the number five followed by at least one digit other than the number zero, the last figure retained shall be increased by one unit; and

(3) if the first digit discarded is exactly the number five, followed only by zeros, the last digit retained shall be rounded upward if it is an odd number, but no adjustment shall be made if it is an even number;

(4) the final result of the calculation shall be expressed in the units of the standard.
[20.2.1.116 NMAC - N, 06/01/10]

NEW MEXICO DEPARTMENT OF HEALTH
SCIENTIFIC LABORATORY DIVISION

7.33.2 NMAC, Blood and Breath Testing under the New Mexico Implied Consent Act (filed 02-21-01) repealed 04-30-2010 and replaced by 7.33.2 NMAC, Blood and Breath Testing under the New Mexico Implied Consent Act, effective 04-30-2010.

NEW MEXICO DEPARTMENT OF HEALTH
SCIENTIFIC LABORATORY DIVISION

TITLE 7 HEALTH
CHAPTER 33 SCIENTIFIC, CHEMICAL AND BIOLOGIC LABORATORIES AND TESTING
PART 2 BLOOD AND BREATH TESTING UNDER THE NEW MEXICO IMPLIED CONSENT ACT

7.33.2.1 ISSUING AGENCY: New Mexico Department of Health - Scientific Laboratory Division (SLD).
[7.33.2.1 NMAC - Rp, 7.33.2.1 NMAC, 04-30-2010]

7.33.2.2 SCOPE: This rule governs the certification of laboratories, breath alcohol instruments, operators, key operators, and operator instructors of the breath alcohol instruments as well as establishes the methods of taking and analyzing samples of blood and breath testing for alcohol or other chemical substances under the New Mexico Implied Consent Act, Section 66-8-107 et.seq. NMSA 1978.
[7.33.2.2 NMAC - Rp, 7.33.2.2 NMAC, 04-30-2010]

7.33.2.3 STATUTORY AUTHORITY: This rule is promulgated by the secretary of the department of health

under the authority of Section 9-7-6(E), Section 24-1-22 and Section 66-8-107 et seq, NMSA 1978. Administration and enforcement of this rule is the responsibility of SLD of the department of health.
[7.33.2.3 NMAC - Rp, 7.33.2.3 NMAC, 04-30-2010]

7.33.2.4 DURATION: Permanent.
[7.33.2.4 NMAC - Rp, 7.33.2.4 NMAC, 04-30-2010]

7.33.2.5 EFFECTIVE DATE: 04-30-2010, unless a later date is cited at the end of a section.
[7.33.2.5 NMAC - Rp, 7.33.2.5 NMAC, 04-30-2010]

7.33.2.6 OBJECTIVE: The objective is to establish standards and procedures for the certification of laboratories, breath alcohol instruments, operators, key operators, and operator instructors as well as the methods of taking and analyzing samples for blood and breath testing for alcohol and other chemical substances under the New Mexico Implied Consent Act. The scientific laboratory division shall conduct blood/breath tests for alcohol and other chemical substances collected pursuant to the New Mexico Implied Consent Act and this administrative rule.
[7.33.2.6 NMAC - Rp, 7.33.2.6 NMAC, 04-30-2010]

7.33.2.7 DEFINITIONS:

A. "Adequate operational environment" - An area that has limited exposure to volatile organic compounds, has access restricted to authorized personnel and has been evaluated for radio frequency interference.

B. "Alcohol" - A hydrocarbon molecule that contains a hydroxyl group (oxygen, hydrogen) as its primary functional group.

C. "Blood" - Whole blood which contains the cellular components and the serum or plasma of blood or hemolyzed blood.

D. "Blood alcohol concentration (BAC)" - The concentration of alcohol in blood; the unit of measurement of alcohol in blood is the number of grams of alcohol per 100 milliliters of blood.

E. "Breath" - That portion of exhaled lung air that is collected for alcohol analysis.

F. "Breath alcohol concentration (BrAC)" - The concentration of alcohol in breath; the unit of measurement is the number of grams of alcohol per 210 liters of breath.

G. "Breath alcohol instrument" - Any evidential breath testing device that is capable of analyzing breath to establish the concentration of alcohol contained in a breath sample. Such instruments must be approved and individually certified by SLD for use in testing pursuant to the Implied Consent Act and this rule.

H. "Breath alcohol instrument modification" - Any alteration, variation or redesign of any part, device or electronic circuit that directly affects, alters, varies or changes the analytical or operational section of the equipment.

I. "Calibration check" - The analysis of an externally delivered, controlled, ethanol vapor specimen of known alcohol concentration. SLD shall determine the breath alcohol simulator solutions or gases to be used.

J. "Director" - The director of SLD.

K. "Drug" - Any chemical agent that affects living processes and has the potential to impair those processes.

L. "Equipment" - Devices which are not a component of the breath alcohol instrument but assist in meeting the requirements of an evidentiary breath test, including but not limited to simulators, gas tanks, gas brackets, and reference standards.

M. "Fixed location" - A location inside a building or breath testing mobile command center which is the primary or sole site for a breath alcohol instrument.

N. "Foreign substance" - Material not commonly found in the human mouth; it does not include dental appliances, dental adhesives, orthodontics or orthotics.

O. "Certified key operator" - An individual who has successfully completed the course for a certified operator and who has successfully completed a key operator class conducted by SLD.

P. "Certified operator" - A person who has successfully completed a breath alcohol operator class conducted by a representative of SLD or a SLD certified instructor and who qualifies to conduct implied consent breath alcohol tests.

Q. "Inspection" - A thorough examination and testing of a breath alcohol instrument by trained personnel to evaluate its accuracy and compliance with this SLD rule.

R. "Operator instructor" - Operator instructors train, test, and grade breath operators in the use of breath alcohol instruments.

S. "Portable instrument" - A breath alcohol instrument intended for use inside or outside buildings, including mobile applications (e.g. in vehicles).

T. "Preservative" - Any chemical that inhibits the development of microbial growth in a collected blood sample.

U. "Proficiency" - A solution of unknown alcohol concentration in blood or water used to evaluate the competency of an analyst or key operator conducting a chemical test and to assure the accuracy and precision of the instrument in reference to the target value(s).

V. "Sample" - A quantity of a subject's blood or exhaled breath to be analyzed for the presence of alcohol or other drugs or both pursuant to the New Mexico Implied Consent Act.

W. "Supplies" - Items that are used in the process of administering a breath or blood test but do not impact the test results, including but not limited to mouthpieces, and printer paper.

X. "Scientific laboratory division (SLD)" - A division of the department of health.

Y. "System blank" - A reference sample such as ambient air or distilled water containing no analyte of interest used to verify a negative test result for the purpose of testing blood or breath instruments.

Z. "Test" - In the case of blood, "test" means the analysis of a blood sample for alcohol or other chemical substances or both. In the case of breath, "test" means the analysis of breath samples for alcohol or other chemical substances or both.
[7.33.2.7 NMAC - Rp, 7.33.2.7 NMAC, 04-30-2010]

7.33.2.8 LABORATORIES:

A. Initial certification. Any laboratory seeking certified status for alcohol or drug testing in blood shall submit a request in writing to the director of SLD. Applicants shall furnish the materials listed below to the director of SLD for review and approval. SLD shall review the materials and inspect the location of the applicant laboratory within 60 days of receipt. SLD shall issue a certificate to any laboratory that meets the standards and successfully completes the required proficiency testing requirements.

(1) Laboratories seeking SLD certification for blood alcohol analysis shall submit:

(a) written documentation of the scientific training and experience in toxicology or clinical/analytical chemistry of its director and all personnel who will perform tests;

(b) written copies of the analytical methods, techniques and equipment it proposes to use;

(c) a proposed set of quality control/ assurance measures;

(d) results of all required proficiency tests;

(e) evidence that the lab has adequate space, equipment and materials to perform blood alcohol analysis.

(2) Laboratories seeking SLD certification for drug analysis in blood shall submit:

(a) written documentation of the scientific training and experience in toxicology or clinical/analytical chemistry of its director and all personnel who will perform tests;

(b) written copies of the analytical methods, techniques and equipment it proposes to use;

(c) a proposed set of quality control/ assurance measures;

(d) results of all required proficiency tests;

(e) evidence that the lab has adequate space, equipment and materials to perform drug testing on blood.

(f) proof of accreditation by the American board of forensic toxicology (ABFT) in forensic toxicology or by the American society of crime lab directors / laboratory accreditation board (ASCLD/ LAB) in the field of forensic science testing in the discipline of toxicology in the category of testing of blood/urine drug testing, or the current accrediting body.

B. Continuing responsibilities of laboratories.

(1) Each SLD-certified laboratory shall adhere to an SLD-approved written standard operating procedure and shall maintain evidence of its compliance.

(2) Each SLD-certified laboratory shall be subject to inspection by authorized personnel of SLD prior to certification and may be re-inspected at any time during the period for which certification was granted.

(3) SLD-certified laboratories are required to submit to the director of SLD any changes in their analytical personnel, analytical methodology or analytical equipment for approval a minimum of 20 days prior to commencing analysis with the new personnel, methodology or equipment.

(4) SLD-certified laboratories shall maintain records containing all pertinent facts relating to analyses performed for a minimum period of five years. All records shall be sufficiently complete as to allow verification by an independent chemist, unaffiliated with the SLD-certified laboratory. Such records shall be open to inspection by authorized personnel of SLD.

(5) SLD certified laboratories shall submit to SLD copies of all results of tests for alcohol or other drugs within 30 days of the completion of the blood analysis. The name of the scientist responsible for reviewing the test data and determining the final result shall be provided on the report.

(6) All SLD-certified laboratories shall establish and maintain adequate SLD-approved quality control measures and shall maintain complete records of their quality control programs. These records shall be available for inspection by SLD personnel upon demand and shall be maintained for a minimum period of five years.

(7) Those laboratories certified in drug testing shall maintain their ABFT or ASCLD/LAB accreditation or accreditation from the current accrediting body with required proficiencies.

(8) Proficiency testing.

(a) SLD shall require that each laboratory certified for blood alcohol testing complete the analysis of a minimum of eight samples each year. These tests include proficiencies issued by SLD as well as proficiencies issued by other certifying agencies. In the case of proficiency samples provided by SLD, certified laboratories must return test results within ten days of their receipt. Performance is considered satisfactory if the results of all analyses in a single year fall within acceptable limits based on considerations that include, but are not limited to, the subject analytes and the sample matrix. Acceptable limits for alcohol proficiencies for blood samples are:

(i) ± 10 percent of the alcohol content of the specimen if the known alcohol content is 0.10 grams per 100 milliliters or more;

(ii) ± 0.01 grams per 100 milliliters if the known alcohol content is less than 0.10 grams per 100 milliliters.

(b) Drug proficiency testing shall be in accordance with accrediting agency standards.

C. Recertification. SLD certified laboratories may be certified for a period not to exceed one year to conduct blood tests subject to the following standards, procedures, conditions and on-site inspections:

(1) all laboratory certifications shall expire annually on June 30;

(2) SLD certified laboratories must apply for renewal of certification annually; all applications must be received at least 60 days prior to the expiration date of the laboratory's certification;

(3) applications for renewal of certification shall include the following:

(a) the same information regarding personnel, techniques and equipment as described in Subsection A of this section;

(b) results of all proficiency tests performed in the previous year including SLD proficiencies as well as proficiencies issued by other certifying agencies;

(4) continued certification of a laboratory shall depend on compliance with approved methods, qualified staff and facilities, and satisfactory performance in the proficiency testing.

D. Denial, suspension, and revocation.

(1) SLD may refuse to certify or may suspend or revoke the certification of any SLD-certified laboratory for any one or more of the following causes:

(a) failure to comply with any of the previously stated requirements for certification in Subsection A of this section;

(b) fraud or deceit in applying for or obtaining the certification or renewal thereof;

(c) loss of professional certification or affiliation of staff;

(d) loss of required accreditation of lab;

(e) any serious or repeated violation of any rule of SLD;

(f) any major violation of the standards for laboratories, facilities, personnel or equipment relevant to the testing procedures that are the subject of this rule;

(g) for good cause, including but not limited to perjury, fraud or incompetence;

(h) failure to perform analyses and proficiency testing in a satisfactory manner as specified by SLD.

(2) SLD shall provide notice to the laboratory of any proposed adverse action.

(3) Any laboratory seeking review of unsatisfactory proficiency test results may request a stay of suspension or revocation for good cause. The request must be in writing to the director of SLD.

(4) Any laboratory that has had their SLD certification denied, revoked or suspended may request a hearing pursuant to Subsection F of 7.33.2.18 NMAC.

(5) Any laboratory that has had their SLD certification revoked may not re-apply for a minimum of one year after the notice of final action or after the completion of any requested hearing whichever is later.

(6) Any laboratory denied certification or renewal of certification may not re-apply for certification until 90 days after the completion of any requested hearing or 90 days after the notice of final action, whichever is later. Subsequent denials will require that six months, not 90 days, elapse prior to re-application.

[7.33.2.8 NMAC - Rp, 7.33.2.9 NMAC & 7.33.2.16 NMAC, 04-30-2010]

7.33.2.9 SELECTION AND EVALUATION OF BREATH ALCOHOL INSTRUMENTS AND ASSOCIATED EQUIPMENT: SLD shall select the primary breath alcohol instrument for use by law enforcement agencies in New Mexico. Selection shall be based on, but not be limited to, performance of the instrumentation in each section of SLD's evaluation process, the field history of the instrumentation, the manufacturer's support capability, and evaluations by other users of the instruments, including approval by the national highway traffic safety administration (NHTSA).

A. All manufacturers of breath alcohol instruments, wet-bath

simulators, and reference standards for breath alcohol instruments seeking to introduce their instruments and equipment to law enforcement agencies in New Mexico for the purpose of implied consent evidential testing shall first submit their instrumentation and equipment to SLD for approval.

B. SLD will evaluate these instruments per SLD policy.

C. Manufacturers must also designate at least one representative knowledgeable in the technology and electronic configurations of the breath alcohol instrument to provide training to SLD personnel.

D Manufacturers must provide all information concerning any modifications, changes or upgrades to SLD-approved breath alcohol instruments within two months of the modifications, changes or upgrades. SLD will evaluate the modifications, changes or upgrades and determine if they substantially affect the operation of the instruments and whether the instrument alterations require that the instruments be reevaluated.

E. All analytical results shall be reported as grams of alcohol per 210 liters of breath (g per 210L). These results shall be reported to two decimal places except in the case of standards and proficiency samples, which shall be reported to three decimal places.

F. Failure to comply with these or any subsequent manufacturer related rules may result in the withdrawal of approval for the manufacturers breath alcohol instruments to be utilized in testing under the New Mexico Implied Consent Act.

G. SLD reserves the right to withdraw the approval of any breath alcohol instrument and equipment if the manufacturer fails to comply with the provisions of the approval criteria or the terms of any contracts with SLD.

H. SLD reserves the right to make recommendations for equipment and supplies for breath alcohol instruments for use by law enforcement agencies in New Mexico based on, but not limited to, performance , manufacturer recommendations of the breath alcohol instrument, the field history, and evaluations by SLD and other users of the instruments.

[7.33.2.9 NMAC - Rp, 7.33.2.18 NMAC, 04-30-2010]

7.33.2.10 BREATH ALCOHOL INSTRUMENTS USED BY LAW ENFORCEMENT AGENCIES:

A. Initial certification. Any breath alcohol instrument to be used for implied consent evidential testing must be approved and certified by SLD. Certification for breath alcohol instruments shall be for a period of up to one year, expiring September 30. A certificate shall be issued for each instrument and shall be maintained by the responsible agency. Instruments requiring initial certification must meet all of the following criteria and such criteria must be met before placement and use of the instrument in the field.

(1) SLD shall inspect and perform a calibration check. This check may take place at SLD.

(2) At least one certified key operator shall be responsible for the maintenance of each breath alcohol instrument. The key operator is not required to be a member of the agency in which the instrument is placed.

B. Continuing responsibilities.

(1) Instruments.

(a) Copies of the logbook forms should be submitted to SLD no later than the 10th day of the following month. Electronic records pertaining to all tests administered on the instrument(s) will be transmitted as scheduled by SLD.

(b) Four proficiency samples should be analyzed yearly on each such certified instrument.

(c) A calibration check on the instrument(s) shall be conducted at least once every seven calendar days or a 0.08 calibration check shall be conducted with each subject test or both.

(d) All breath alcohol instruments shall be returned to SLD twice annually for inspection. Such inspection shall consist of, but not be limited to:

(i) establishing the current status of the breath alcohol instrument;

(ii) evaluating the breath alcohol instrument's electronic functions and settings;

(iii) analyzing a series of controlled ethyl alcohol solutions with an accuracy requirement of ± 5 percent or .005, whichever is greater, on all target values;

(iv) installing all updates, modifications, or changes that have been approved by SLD;

(v) reviewing the breath alcohol instrument's sensitivity for the detection of any interfering substances.

(2) Instrument location.

(a) All agencies maintaining a breath alcohol instrument in a fixed location shall furnish each instrument with an adequate operational environment.

(b) An adequate operational environment for the breath alcohol instrument shall:

(i) have adequate ventilation to minimize volatile organic compounds;

(ii) restrict access to the instrument to only authorized personnel;

(iii) be evaluated for radio frequency interference.

(c) A breath alcohol instrument assigned to a fixed location may be used as a portable breath alcohol instrument if the option is available. Transitions for instruments between portable and fixed shall be recorded in the logbook.

(d) Any portable, certified breath alcohol instrument is approved for use anywhere in the state of New Mexico.

C. Recertification of instruments.

(1) Certification is renewed annually based on compliance with this rule.

(2) A certificate shall be issued for each instrument and shall be maintained by the responsible agency.

D. Denial, suspension, and revocation.

(1) SLD may refuse to certify or may suspend or revoke the certification of any breath alcohol instrument for implied consent testing for any one or more of the following causes:

(a) the instrument in use is not on the list of SLD approved testing instruments;

(b) calibration results do not meet SLD established criteria;

(c) if an agency fails to identify and maintain a certified key operator for each breath alcohol instrument, certification of the instrument shall be suspended or revoked;

(d) other failures to abide by this rule may also result in suspension or revocation.

(2) SLD shall provide notice to an agency before taking an adverse action with regard to the certification of the agency's instrument.

(3) Agencies seeking review of a denial, suspension or revocation of the instrument's certification may request a stay of suspension or revocation for good cause. The request must be in writing and in accordance with Subsection B of 7.33.2.18 NMAC.

(4) Agencies seeking review of any denial, suspension or revocation of an instrument's certification may request a review in writing pursuant to Subsection B of 7.33.2.18 NMAC.

E. Repair of instruments. SLD is not required to support or service any breath alcohol instruments that are not owned by SLD. Law enforcement agencies shall be required to pay for any repairs or adjustments of an SLD owned instrument caused as a result of any negligence, incompetence or misconduct in the operation or handling of the instrument as determined by SLD review.

[7.33.2.10 NMAC - Rp, 7.33.2.8 NMAC, 7.33.2.11 NMAC, 7.33.2.16 NMAC and 7.33.2.17 NMAC, 04-30-2010]

7.33.2.11 OPERATORS OF BREATH ALCOHOL TESTING

EQUIPMENT:

A. Initial certification. Certification shall be granted for up to two years and shall expire on the last day of the month issued. SLD shall provide training for operator applicants at SLD or other facilities in Albuquerque. SLD may authorize training classes in other areas of the state.

(1) Qualified applicants for implied consent testing must:

(a) be a salaried peace officer commissioned in New Mexico or an employee of a detention facility in New Mexico; or

(b) be a reserve peace officer commissioned in New Mexico.

(2) Accepted applicants who are not commissioned peace officers or detention employees will be given a certificate of completion and are not authorized to conduct implied consent testing.

(3) SLD approved training shall meet the following requirements:

(a) the training shall be provided by representatives of SLD or SLD-certified operator instructors; the training formulated or approved by SLD must include:

(i) the value and purpose of blood and breath alcohol testing;

(ii) the effects of alcohol on the human body and its performance;

(iii) the methods of alcohol analysis and the theory of breath testing;

(iv) breath alcohol instruments and the procedures for breath testing;

(v) practical experience and demonstration of competency;

(vi) New Mexico Implied Consent Act, this rule and any amendments or revisions and court testimony;

(b) applicants must demonstrate competency by passing comprehensive practical and written examinations; these examinations will be formulated or approved by SLD and shall be graded by representatives of SLD or SLD-certified operator instructors.

(4) Certified operators of an SLD approved model of breath alcohol instrument may be certified to operate additional SLD-approved breath alcohol instruments by demonstrating competency with the successful completion of training conducted by representatives of SLD or SLD-certified operator instructors. This training shall follow a course of instruction outlined or approved by SLD as well as written and practical examinations formulated or approved by SLD.

B. Recertification.

(1) Applications for renewal shall show:

(a) the applicant has successfully completed an operator certification or recertification training formulated or approved by SLD within the previous 27 months;

(b) demonstration of competency by successful completion of recertification training formulated or approved by SLD and conducted by representatives of SLD or SLD-certified operator instructors; this training shall include a written as well as a practical, examinations formulated or approved by SLD.

(2) Candidates for renewal who do not satisfy the requirements must attend and successfully complete the initial certification class, as stated in Subsection A of 7.33.2.11 NMAC above.

(3) If the certification of an operator is due to expire before the certification is renewed, the operator may request an extension from SLD for good cause. This request must be received by SLD before certification is due to expire. Extension of certification shall be within the discretion of SLD based on good cause having been shown and shall be for a period of not more than 60 days. Certification shall be deemed to have expired at the end of the extension period if the renewal requirements have not been completed satisfactorily.

C. Denial, suspension, and revocation.

(1) Certification may be denied for inadequate scores or failure to complete any performance tests or examinations in the manner prescribed by SLD; or for any of the reasons set out in Paragraph (2) of this subsection below.

(2) SLD may suspend or revoke certification of any SLD-certified operator for one or more of the following causes:

(a) fraud or deceit in applying for or obtaining the certification or renewal thereof;

(b) loss of professional certification or affiliation;

(c) any serious or repeated violation of any rule or rules of SLD;

(d) any major violation of the standards for personnel or equipment relevant to the testing procedures that are the subject of this rule;

(e) for good cause, including but not limited to perjury, fraud or incompetence;

(f) as required by New Mexico Parental Responsibility Act (Section 40-5A-1-et. seq. NMSA 1978).

(3) SLD shall provide notice of any proposed adverse action to the officer and the agency chief.

(4) A written request to stay suspension or revocation for good cause may be made by any operator who is unable to carry out his/her specific duties. The request must be made in accordance with Subsection B of 7.33.2.18 NMAC.

(5) If any operator is denied certification or renewal of certification, they may re-apply for certification 90 days after the denial or final decision of the record review. Subsequent denials will require that six months elapse prior to re-application.

(6) If any operator has had their SLD certification revoked, they may not re-apply for a minimum of one year after the denial or final decision of the record review. [7.33.2.11 NMAC - Rp, 7.33.2.13 NMAC and 7.33.2.16 NMAC, 04-30-2010]

7.33.2.12 KEY OPERATORS OF BREATH ALCOHOL TESTING EQUIPMENT:

A. Initial certification. Certification shall be up to one year.

(1) Qualified applicants must have:

(a) status as a certified operator, or hold an operator certificate of completion for the instrument(s) on which they seek to be certified as a key operator; AND

(b) status as a salaried employee of a law enforcement agency or detention facility in New Mexico; OR

(c) SLD may certify as key operators, SLD-selected individuals of law enforcement agencies or corrections departments in New Mexico who successfully complete written and practical examinations formulated and administered by SLD.

(2) Required training.

(a) Training by SLD representatives shall consist of the following:

(i) the theory of breath testing;

(ii) the operational and theoretical principles of the selected breath testing instruments;

(iii) the preparation and use of a simulator;

(iv) calibration checks of selected breath alcohol instrument(s);

(v) quality control measures and proficiency testing;

(vi) minor maintenance and repair of breath alcohol testing equipment;

(vii) the New Mexico Implied Consent Act, this rule and any amendments or revisions and their application to court testimony on the operation and certification of the selected breath alcohol instruments;

(viii) laboratory practice and the demonstration of competency on the applicable equipment;

(ix) introduction to radio frequency interference (RFI) and how to prepare a RFI report.

(b) Demonstration of competency by successful completion of comprehensive practical and written examinations administered by SLD.

(3) Key operator certification

shall be limited to the model of instruments upon which the key operator has been trained and examined or models considered equivalent by SLD.

(4) Certified key operators of a SLD approved model of breath alcohol instrument may be certified to operate additional SLD-approved breath alcohol instrument(s) by demonstrating competency with the successful completion of training conducted by representatives of SLD. This training shall include written as well as and practical examinations formulated by SLD.

B. Continuing responsibilities. Certified key operators shall be responsible for:

(1) the calibration checks of the instruments they oversee, maintenance of those instruments and their supplies;

(2) successful completion of the proficiency testing specified in this rule:

(a) solutions for proficiency testing of each certified key operator shall be issued at least four times every year by SLD;

(b) a minimum of one solution must be analyzed by each certified key operator within 30 days of receipt of the solutions; results on the proficiency report form provided by SLD must be received by SLD within 10 working days thereafter;

(c) the average of the proficiency test results must be within ± 10% of target value; if the target value is less than 0.100 g/210L, then the results must be within ± 0.010 g/210L;

(3) insuring that the records and notifications specified in training are submitted as required by SLD rules;

(4) at least monthly submission to SLD of all logbook copies no later than the 10th day of the following month; electronic records pertaining to all tests administered on the instrument(s) will be transmitted as scheduled by SLD.

C. Recertification. Key operators shall be certified for a period of up to one year. All key operator certifications shall expire annually on March 31.

(1) Certifications may be renewed based on a demonstration of competency which may include successful completion of a refresher class as specified by SLD.

(2) If the certification of a key operator is due to expire before the certification is renewed, the key operator may request an extension of certification. This request must be received by SLD before certification is due to expire. Extension of certification shall be within the discretion of SLD based on good cause having been shown and shall be for a period of not more than 60 days. Extensions shall not be granted for more than a total of 60 consecutive days. Certification shall be deemed to have expired at the end of the extension period if the renewal requirements have not been completed satisfactorily. New certification may be obtained by successfully completing the initial certification process as set out in Subsection A of 7.33.2.12 NMAC above.

D. Denial, suspension, or revocation.

(1) Certification may be denied for inadequate scores; or failure to complete any performance tests; or examinations in the manner prescribed by SLD; or for any of the reasons set out in Paragraph (2) of this subsection.

(2) SLD may refuse to certify or may suspend or revoke certification of any SLD-certified key operator for one or more of the following causes:

(a) fraud or deceit in applying for or obtaining the certification or renewal thereof;

(b) loss of professional certification or affiliation;

(c) any serious or repeated violation of this rule;

(d) any major violation of the standards for personnel or equipment relevant to the testing procedures that are the subject of this rule;

(e) for good cause, including but not limited to perjury, fraud or incompetence;

(f) failure to perform analyses and proficiency testing in a satisfactory manner as specified by SLD;

(g) as required by New Mexico Parental Responsibility Act (Section 40-5A-1-et. seq. NMSA 1978).

(3) SLD shall provide notice of a proposed adverse action to the key operator and the head of the agency maintaining the instrument for which the key operator is responsible.

(4) A written request to stay suspension or revocation for good cause may be made by any key operator who is unable to carry out his/her specific duties. The request must be made in accordance with Subsection B of 7.33.2.18 NMAC.

(5) If any key operator is denied certification or renewal of certification, they may re-apply for certification 90 days after the denial or final decision of the record review. Subsequent denials will require that six months elapse prior to re-application.

(6) If any key operator has had their SLD certification revoked, they may not re-apply for a minimum of one year after the denial or final decision of the record review.

[7.33.2.12 NMAC - Rp, 7.33.2.14 NMAC and 7.33.2.16 NMAC, 04-30-2010]

7.33.2.13 OPERATOR INSTRUCTORS OF BREATH ALCOHOL TESTING EQUIPMENT:

A. Designation as operator instructors. Qualified employees of SLD shall be designated as operator instructors, as determined by the director.

B. Initial certification. Persons not employed by SLD shall be certified for up to one year and certification shall expire on December 31.

(1) Applicants shall demonstrate the following qualifications:

(a) current certification as an operator and key operator of the applicable breath testing equipment;

(b) at least 12 semester hours in which the applicant received a grade of C (or satisfactory) or higher in any combination of the following disciplines: chemistry, biology, physics, or mathematics from an accredited university or college; at least four of those 12 semester hours must be in chemistry;

(c) a minimum of 32 hours of instruction in areas relating to blood/breath collection and analysis, to include the following:

(i) the value and purpose of blood and breath alcohol analysis;

(ii) the effects of alcohol on the human body;

(iii) the instruments and procedures for alcohol analysis;

(iv) the interpretation of the results of alcohol analysis;

(v) the New Mexico Implied Consent Act, this rule and any amendments or revisions and court testimony;

(vi) the methods of alcohol analysis;

(vii) the operational principles of the selected breath alcohol instruments;

(viii) practical experience and demonstration of competency in use of blood/breath collection and analyses;

(d) as an alternative to completing the above course of instruction as listed in Subparagraph (c) of Paragraph (1) of Subsection B of this section, an operator instructor may be certified if he/she has earned a bachelor's degree in chemistry, biology or a related science from an accredited university or college and he/she demonstrates equivalent knowledge by successfully completing written and practical examinations formulated or approved by SLD.

(2) Comprehensive practical and written examinations shall be successfully completed by all applicants prior to certification. These examinations shall be administered by SLD.

C. Continuing responsibilities.

(1) Operator instructors not employed by SLD must maintain their certification as operators and key operators.

(2) Requirements for conducting an operator class:

(a) a certified operator instructor should notify SLD in writing at least 10

working days in advance of the date, time and location of all training and examinations to be conducted; in case of emergency or unforeseen circumstances, the date, time, or location of such training or examinations may be changed if SLD is notified at least 24 hours before such a change is made;

(b) all operator training classes conducted by a certified operator instructor shall follow a course of instruction outlined or approved by SLD;

(c) tests must be outlined or approved by SLD for each type of breath alcohol instrument covered in the training;

(d) all students of the operator instructor must take and pass examinations designed or approved by SLD prior to certification;

(e) maintain records of the classes he or she has conducted for at least the previous three years; these records shall include but not be limited to the dates, times, locations and attendees of such classes; SLD may inspect the operator instructor's records concerning the courses taught by the instructor;

(f) allow representatives of SLD to observe any training sessions and examinations;

(g) forward all copies of the graded examinations to SLD within one month of class date with a written statement by the instructor that he or she has conducted the class in compliance with the requirements of this rule;

(h) notify an applicant's supervisor in writing if the candidate did not successfully complete the course; a copy of the letter shall be submitted to SLD.

(3) SLD instructors shall not release copies of any examinations to anyone other than applicants and approved certified instructors in order to protect the integrity of the training process and to insure that applicants for certification are tested on their knowledge of the materials presented. Applicants shall be required to return all copies of the tests they may have received at the end of the testing session.

(4) Operator instructors must conduct at least one operator class per certification year.

D. Recertification: operator instructors are certified for a period of up to one year.

(1) Certifications may be renewed based upon adequate performance of continuing responsibility requirements, a demonstration of competency, or successful completion of a refresher class as specified by SLD.

(2) If the certification of an operator instructor is due to expire before the certification is renewed, the operator instructor may request an extension of certification from SLD. This request must be received by SLD no later than five working days before certification is due to expire. Extension of certification shall be within the discretion of SLD based on good cause having been shown and shall be for a period of not more than 60 days. Certification shall be deemed to have expired at the end of the extension period if the renewal requirements have not been completed satisfactorily.

E. Suspension, revocation or denial.

(1) Certification may be denied for inadequate scores or failure to complete any performance tests or examinations in the manner prescribed by SLD or for any of the reasons set out in Paragraph (2) of Subsection E of 7.33.2.13 NMAC below.

(2) SLD may refuse to certify or may suspend or revoke the certification of any operator instructor for any one or more of the following causes:

(a) fraud or deceit in applying for or obtaining the certification or renewal thereof;

(b) loss of professional certification or affiliation;

(c) any serious or repeated violation of any rule or rule of SLD;

(d) failure to conduct classes in accordance with the rules and standards of SLD;

(e) for good cause, including but not limited to perjury, fraud or incompetence;

(f) as required by New Mexico Parental Responsibility Act (Section 40-5A-1-et. seq. NMSA 1978);

(g) failure to maintain certification as an operator and key operator;

(h) failure to demonstrate knowledge as established by SLD to be an operator instructor.

(3) SLD shall provide notice of any proposed adverse action to the instructor and the agency chief.

(4) An operator instructor may request a stay of suspension or revocation for good cause. The request must be in writing and in accordance with Subsection of B of 7.33.2.18 NMAC.

(5) If any operator instructor is denied certification or renewal of certification, they may re-apply for certification 90 days after the denial or final decision of the record review. Subsequent denials will require that six months elapse prior to re-application.

(6) If any operator instructor has had their SLD certification revoked, they may not re-apply for a minimum of one year after the denial or final decision of the record review.

[7.33.2.13 NMAC - Rp, 7.33.2.15 NMAC and 7.33.2.16 NMAC, 04-30-2010]

7.33.2.14 METHODS OF ANALYSIS:

A. Alcohol in blood.

(1) All analytical methods and any modifications of approved analytical methods must be approved in advance by SLD.

(2) The method used shall be capable of analyzing reference samples of known alcohol concentration with accuracy limits of ± 10% of the actual blood alcohol concentration if the known alcohol concentration is 0.10 grams per 100 milliliters or more and ± 0.01 grams per 100 milliliters if the known concentration is less than 0.10 grams per 100 milliliters. The method shall also be capable of analyzing reference samples of known alcohol concentration within specificity and precision limits that will be established and reviewed by SLD.

(3) All analytical results shall be expressed in terms of the alcohol concentration in blood, based on the number of grams of alcohol per 100 milliliters of blood. These results shall be reported to two decimal places except for analyses of standards, controls and proficiency samples, which shall be reported to three decimal places.

B. Drugs in blood.

(1) All analytical methods and any modifications of approved analytical methods must be approved in advance by SLD.

(2) The results of positive tests for drugs other than alcohol shall not be reported until they are confirmed. Confirmation tests must employ an approved method that is different than the one utilized to achieve the initial result unless the confirmation test method has been approved for that use by SLD.

(3) Accuracy limits for the reference samples and proficiencies shall be in accordance with the approved methods for the particular analysis as determined by the accrediting agency.

C. Alcohol in breath samples.

(1) Breath samples shall be collected by certified operators or certified key operators on instruments certified by SLD.

(2) The minimum requirements for an evidential breath sample for implied consent testing are:

(a) a system blank analysis shall be used preceding each breath sample;

(b) a calibration check using SLD approved solutions and/or gases shall be performed in accordance with the following:

(i) the instrument shall be maintained and calibration checked by the key operator; calibration checks shall be made a minimum of once every seven days; these calibration checks shall consist of checking the instrument with two breath alcohol solutions or gases, one of which shall simulate 0.08 grams per 210 liters

BrAC and the other shall simulate a BrAC of greater than 0.15 grams per 210 liters BrAC; satisfactory calibration results must be within ± 10 percent of the listed values for a BrAC of 0.10 grams per 210 liters and above or ±0.01 for a BrAC below 0.10 grams per 210 liters; or

(ii) a single calibration check using solutions or gases which simulate 0.08 grams per 210 liters shall be performed with each subject test; satisfactory calibration check results must be within ± 0.01; these test results shall be valid for the purpose of determining if the subject test is 0.08 grams per 210 liters or more; or

(iii) both Items (i) and (ii) of this subparagraph.

(3) The minimum requirements for a non-implied consent test are:

(a) a system blank preceding each breath sample;

(b) a system blank after each breath sample.

(4) All analytical results shall be reported as grams of alcohol per 210 liters of breath (g /210L). These results shall be reported to two decimal places except in the case of standards and proficiency samples, which shall be reported to three decimal places.

(5) A chronological log book shall be kept for each instrument to show calibration checks, maintenance, analyses performed, results and identities of the subjects tested, as well as the identities of the persons performing analyses. These records shall be kept on forms provided by SLD. Copies of these records shall be submitted to SLD each month as per Paragraph (4) of Subsection B of 7.33.2.12 NMAC above.

[7.33.2.14 NMAC - Rp, 7.33.2.10 NMAC, 04-30-2010]

7.33.2.15 APPROVED METHODS FOR SAMPLE COLLECTION, ANALYSIS, AND RETENTION:

A Blood sample collection.

(1) Blood samples shall be collected in the presence of the arresting officer or other responsible person who can authenticate the samples. Blood samples shall be collected by veni-puncture as authorized by the New Mexico Implied Consent Act NMSA 1978, Sections 66-8-105 et. seq. The term laboratory technician shall include phlebotomists.

(2) The initial blood samples should be collected within three hours of arrest. Any blood samples collected subsequent to the initial blood or breath sample collection should be collected within 60 minutes of the initial sample collection.

(3) Ethyl alcohol shall not be used as a skin antiseptic in the course of collecting blood samples. The samples shall be dispensed or collected using an SLD-approved blood collection kit. SLD-approved blood collection kit will contain two or more sterile tubes with sufficient sodium fluoride so that the final concentration shall contain not less than 1.0 percent sodium fluoride. In the case of an insufficient sample, it shall be permissible to collect the sample in one tube only.

(4) The blood samples shall be delivered to SLD or a laboratory certified by SLD to conduct tests for alcohol or other drug content. At the laboratory, the seal shall be broken on one tube and the blood shall be analyzed. If necessary it shall be permissible to open more than one sample tube.

(5) The samples of blood shall be retained by the laboratory which performed the initial alcohol or drug testing for a period of not less than six months. Any interested party may request the laboratory retain the samples longer than 6 months. The request must be made in writing and include: the name of the donor of the sample; the date of arrest; the arresting agency; the county of arrest and; if available, any laboratory identification numbers.

(6) Retained samples shall be made available upon receipt of a court order directing the laboratory to release a portion of the remaining sample to a testing facility specified by the requesting party. The laboratory which performed the initial alcohol or drug testing is not responsible for the transport of the retained samples.

B. Breath sample collection.

(1) Samples of the subject's breath shall be collected and analyzed pursuant to the procedures prescribed by SLD and employing only SLD approved equipment and certified instruments.

(2) Breath samples shall be collected and analyzed by certified operators or certified key operators and shall be end expiratory in composition. The breath test operator should make a good faith attempt to collect and analyze at least two samples of breath. Breath shall be collected only after the certified operator or certified key operator has ascertained that the subject has not had anything to eat, drink or smoke for at least 20 minutes prior to collection of the first breath sample. If during this time the subject eats, drinks or smokes anything, another 20 minute deprivation period must be initiated. The two breath samples shall be taken not more than 15 minutes apart. If the difference in the results of the two samples exceeds 0.02 grams per 210 liters (BrAC), a third sample of breath or blood shall be collected and analyzed. If the subject declines or is physically incapable of consent for the second or third samples, it shall be permissible to analyze fewer samples.

[7.33.2.15 NMAC - Rp, 7.33.2.12 NMAC, 04-30-2010]

7.33.2.16 SLD LISTS: SLD will maintain lists of the following:

A. all certified laboratories;

B. breath alcohol instruments and equipment that have been approved by SLD for use under the New Mexico Implied Consent Act;

C. approved evidential blood collection devices to ensure the quality of test results.

[7.33.2.16 NMAC - Rp, 7.33.2.19 NMAC and 7.33.2.11 NMAC, 04-30-2010]

7.33.2.17 FEES: For the most current fee list visit the SLD website. SLD reserves the right to charge reasonable fees for the following:

A. replacement or duplicate operator certification credentials;

B. replacement or duplicate key operator certification credentials;

C. replacement or duplicate operator instructor certification credentials.

[7.33.2.17 NMAC - Rp, 7.33.2.13 NMAC and 7.33.2.14 NMAC, 04-30-2010]

7.33.2.18 DENIAL OF CERTIFICATION FOR LABORATORIES, OPERATORS, KEY OPERATORS, OPERATOR INSTRUCTORS AND BREATH ALCOHOL TESTING EQUIPMENT:

A. Record review. All applicants whose certification has been denied, revoked or suspended may request a record review from SLD.

B. Procedure for requesting informal administrative review.

(1) An applicant or certified operator, key operator or operator instructor given notice of a denial, suspension or revocation of their certification or that of their instrument may submit a written request for a record review. To be effective, the written request shall:

(a) be made within 30 calendar days, as determined by the postmark, from the date of the notice of action issued by SLD;

(b) be properly addressed to SLD;

(c) state the applicant's name, address, and telephone numbers;

(d) state the status of the certification as denied, suspended, or revoked;

(e) identify the instrument in question and the agency holding the instrument, if applicable; and

(f) provide a brief narrative rebutting the circumstances of the denial, revocation or suspension.

(2) If the applicant or operator, key operator or operator instructor wishes to submit additional documentation for consideration, such additional documentation must be included with the

request for a record review.

C. Record review proceeding. The review proceeding is intended to be an informal non-adversarial administrative review of written documentation. It shall be conducted by an administrative review committee designated for that purpose by SLD. In cases where the administrative review committee finds the need for additional or clarifying information, the review committee shall request that the applicant supply such additional information within the time set forth in the committees' request.

D. Final determination.

(1) Content: the administrative review committee shall render, sign and enter a written decision setting forth the reasons for the decision and the evidence upon which the decision is based.

(2) Effect: the decision of the administrative review committee is the final decision of the informal administrative review proceeding.

(3) Notice: a copy of the decision shall be mailed by registered or certified mail to the applicant/ agency.

E. Judicial review. Judicial review of the administrative review committee's final decision is permitted to the extent provided by law. The party requesting the appeal shall bear the cost of such appeal.

F. Request for hearing and hearing processes and procedure for laboratories.

(1) Any laboratory seeking to contest the denial of certification, denial of recertification, revocation or suspension of certification must request a hearing in writing. The request must be:

(a) addressed to the director of SLD;

(b) signed by the laboratory director;

(c) delivered by hand or mail, return receipt requested; and

(d) received within ten business days after being served with a notice of proposed action by SLD.

(2) SLD will follow the hearing processes and other provisions of 7.1.2.16 NMAC through 7.1.2.43 NMAC as applicable. All references to the "licensing authority" or the "department" in that rule shall be understood and interpreted as references to the department of health and the SLD for purposes of this rule and any hearing relating to the certification of a laboratory by SLD.

[7.33.2.18 NMAC - N, 04-30-2010]

History of 7.33.2 NMAC:

Pre-NMAC History: Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

HED 81-3 (SLD), Emergency Regulations Regarding Certification of Operators for Blood-and-Breath Testing Apparatus, filed 06-30-81.

HED 82-5 (SLD), Regulations Governing Blood and Breath Testing under the Implied Consent Act, filed 12-08-82 HED 87-5 (SLD), Regulations Governing Blood and Breath Testing under the Implied Consent Act, filed 08-25-87

HED 94-12 (SLD), Regulations Governing Blood and Breath Testing under the New Mexico Implied Consent Act, filed 01-23-95.

History of Repealed Material:

7 NMAC 33.2, Blood and Breath Testing under the New Mexico Implied Consent Act (filed 10-18-96) repealed 03-14-01.

7.33.2 NMAC, Blood and Breath Testing under the New Mexico Implied Consent Act (filed 02-21-01) repealed 04-30-2010.

Other History:

HED 94-12 (SLD), Regulations Governing Blood and Breath Testing under the New Mexico Implied Consent Act, (filed 01-23-95) was renumbered, reformatted, amended and replaced by 7 NMAC 33.2, Blood and Breath Testing under the New Mexico Implied Consent Act, effective 10-31-96.

7 NMAC 33.2, Blood and Breath Testing under the New Mexico Implied Consent Act (filed 10-18-96) was replaced by 7.33.2 NMAC, Blood and Breath Testing under the New Mexico Implied Consent Act, effective 03-14-01.

7.33.2 NMAC, Blood and Breath Testing under the New Mexico Implied Consent Act (filed 02-21-01) was replaced by 7.33.2 NMAC, Blood and Breath Testing under the New Mexico Implied Consent Act, effective 04-30-2010.

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.302.2 NMAC, Sections 1, 3, 6 and 8 - 15, effective May 1, 2010.

8.302.2.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).

[2/1/95; 8.302.2.1 NMAC - Rn, 8 NMAC 4.MAD.000.1, 5/1/04; A, 5/1/10]

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

[2/1/95; 8.302.2.3 NMAC - Rn, 8 NMAC 4.MAD.000.3, 5/1/04; A, 5/1/10]

8.302.2.6 OBJECTIVE: [~~The objective of these regulations is to provide policies for the service portion of the New Mexico medicaid program. These policies describe eligible providers, covered services, noncovered services, utilization review, and provider reimbursement.~~] The objective of this rule is to provide instruction for the service portion of the New Mexico medical assistance programs.

[2/1/95; 8.302.2.6 NMAC - Rn, 8 NMAC 4.MAD.000.6, 5/1/04; A, 5/1/10]

8.302.2.8 MISSION STATEMENT: [~~The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of medicaid-eligible individuals by furnishing payment for quality health services at levels comparable to private health plans.~~] To reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities.

[2/1/95; 8.302.2.8 NMAC - Rn, 8 NMAC 4.MAD.002, 5/1/04; A, 5/1/10]

8.302.2.9 BILLING FOR MEDICAID SERVICES: [~~Direct health care to New Mexico medicaid program (medicaid) eligible recipients is furnished by a variety of provider groups. The reimbursement and billing for these services is administered by the New Mexico medical assistance division (MAD) [NMSA 1978 Section 27-1-3(G)(Repl. Pamp. 1991)]. Once enrolled, providers receive and are responsible for the maintenance of a packet of information from MAD which includes program policies, billing instructions, utilization review instructions, and information on purchasing billing forms. This part describes general provider billing information, interest rate computation, and reimbursement methodologies. Specific reimbursement methodologies for a particular type of provider or service are listed in subsequent sections of this manual.~~] Health care for New Mexico MAD eligible recipients is furnished by a variety of providers and provider groups. The reimbursement and billing for these services is administered by MAD. Upon approval of a New Mexico MAD provider participation agreement by MAD or its designee, licensed practitioners, facilities and other providers of services that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD/MAD website, on other

program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instruction, utilization review instructions, and other pertinent materials. When enrolled, a provider receives instruction on how to access these documents. It is the provider's responsibility to access these instructions, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to obtain answers to questions related to the material or not covered by the material. To be eligible for reimbursement, a provider must adhere to the provisions of the MAD provider participation agreement and all applicable statutes, regulations, billing instructions and executive orders. MAD or its selected claims processing contractor issues payments to a provider using electronic funds transfer (EFT) only. Providers must supply necessary information in order for payment to be made. [2/1/95; 8.302.2.9 NMAC - Rn, 8 NMAC 4.MAD.702, 5/1/04; A, 5/1/10]

8.302.2.10 B I L L I N G INFORMATION:

~~[A. Some services in the medicaid program are managed by coordinated service contractors. Contracted services may include behavioral health services, dental services, transportation, pharmacy or other benefits as designated by the medical assistance division. The coordinated service contractor may be responsible for any or all aspects of program management, prior authorization, utilization review, claims processing, and issuance of remittance advices and payments. Providers must submit claims to the appropriate coordinated service contractors as directed by the medical assistance division.~~

~~B. The most currently approved HCFA-1500 form is used by professional service providers, such as physicians, independent laboratories, imaging providers or certified nurse practitioners to bill medicaid for services.~~

~~C. The HCFA-UB 92 form is used by hospitals, home health agencies, and other institutional providers for billing. The New Mexico turn around document (TAD) is used by nursing facilities, intermediate care facilities for the mentally retarded, and other residential providers to bill medicaid.~~

~~(1) **Billing for referral services:** Servicing providers must submit all information necessary to bill medicaid within specified time limits, if their performance of direct health care services for a recipient is furnished at the request of another practitioner. Recipients and medicaid are not responsible for payment if servicing providers fail to get this information.~~

~~(2) **Billing for other services:** Medicaid pays only providers or the following individuals or organizations for services:~~

~~(a) government agencies or third parties with court orders, based on a valid provider payment assignment. See 42 CFR Section 447.10(d)(e); or~~

~~(b) business agents, such as billing services or accounting firms, that furnish statements and receive payment in the name of the provider; the agent's compensation must be related to the cost of processing the claims and not related on a percentage or other basis to the amount that is billed or collected or dependent upon collection of the payment.~~

~~(3) **Billing for individual practitioner services:** MAD may make payments to employers of individual practitioners, if the practitioners are required to turn over their fees to the employer as a condition of employment. See 42 CFR 447.10(g) (2)(3). MAD may make payments to a facility where services are furnished or to a foundation, plan, or similar organization operating as an organized health care delivery system, if the facility, foundation, plan, or organization is required by contract to submit claims for individual practitioners.~~

~~(a) **Payment not allowed:** MAD does not pay for services furnished to recipients by providers which are made to or through factors, either directly or by power of attorney [42 CFR Section 447.10(h)]. A factor is an individual or an organization, such as a collection agency or service bureau.~~

~~(b) **No reimbursement for the discharge day:** Institutional providers, such as nursing facilities, hospitals, and intermediate care facilities for the mentally retarded and providers of treatment foster care services are reimbursed for services furnished to eligible recipients on the day of admission but are not reimbursed for services furnished on day of discharge.]~~

A. **Billing for services:** MAD only makes payment to a provider or to the following individuals or organizations for services:

(1) a government agency or third party with a court order, based on a valid provider payment assignment. See 42 CFR Section 447.10(d)(e); or

(2) a business agent, such as billing service or accounting firm that provides statements and receives payment in the name of the provider; the agent's compensation must be related to the cost of processing the claims and not based on a percentage of the amount that is billed or collected or dependent upon collection of the payment.

B. **Billing for services from group practitioners or employers of practitioners:** MAD may make payments to a group practice and to an employer of an individual practitioner if the practitioner is required to turn over his fees to the employer as a condition of employment. See 42 CFR 447.10(g) (2)(3). MAD may make payments to a facility where the services are furnished or to a foundation, plan, or similar organization operating as an organized health care delivery system if the facility, foundation, plan, or organization is required by contract to submit claims for an individual practitioner.

C. **Billing for referral services:** A referring provider must submit to the provider receiving the referral, specimen, image, or other record, all information necessary for the provider rendering the service to bill MAD within specified time limits. An eligible recipient or their personal representative or MAD is not responsible for payment if the provider rendering the service fails to obtain this information from the referring provider.

D. **H o s p i t a l - b a s e d services:** For services that are hospital based, the hospital must provide MAD recipient eligibility and billing information to providers of services within the hospital, including professional components, hospital emergency room physicians, hospital anesthesiologists, and other practitioners for whom the hospital performs admission, patient registration, or the patient intake process. An eligible recipient, their personal representative, or MAD is not responsible for payment if the hospital-based provider does not obtain this information from the hospital as necessary to bill MAD within the specified time limits.

E. **Coordinated service contractors:** Some MAD services are managed by a coordinated service contractor. Contracted services may include behavioral health services, dental services, physical health services, transportation, pharmacy or other benefits as designated by the medical assistance division. The coordinated service contractor may be responsible for any or all aspects of program management, prior authorization, utilization review, claims processing, and issuance of remittance advices and payments. A provider must submit claims to the appropriate coordinated service contractor as directed by MAD.

[2/1/95; 8.302.2.10 NMAC - Rn, 8 NMAC 4.MAD.702.1, 5/1/04; A, 7/1/05; A, 5/1/10]

8.302.2.11 [~~CLAIM FILING LIMITATIONS:~~ ~~Claims for services must be submitted to the MAD claims processing contractor within 120 days of the date the service was furnished. Requests for adjustments to rejected or denied claims must be submitted to the MAD claims processing contractor within six (6) months of the date on the "remittance advice" form which accompanied the payment or denial~~

~~of the claim. All claims must be finalized within two (2) years of the date of service. For purposes of claims filing limits, the date of submission is the date the original claim was submitted to the MAD claims processing contractor, as identified by the assigned "internal control number".~~

~~A. **Exceptions to general time limitations**: If a claim is submitted to medicare within the applicable medicare time limits, MAD pays a claim for the co-insurance and deductible for the service up to six (6) months of the medicare payment or denial, subject to medicaid reimbursement limitations. If a recipient has insurance or a third party is liable for the payment, the claim must be submitted within 365 days of the date of service.~~

~~(1) If claims are submitted more than 120 days after the date of service, the statement of benefits from the other insurance or the denial of benefits from the other insurance must be attached to the claim to verify that the other payment source has been pursued.~~

~~(2) If a provider receives payment from the other insurance or liable third party after receiving payment from MAD, an amount equal to the lower of either the insurance payment or the amount paid by MAD must be immediately remitted to the MAD third party liability unit (MAD-TPLU).~~

~~(3) Claims for services furnished by out-of-state providers must be submitted within 120 days of the date of service. In the event the out-of-state provider does not have a New Mexico medicaid provider number, the request for the provider number must also be submitted within the 120 day limit.~~

~~(4) Claims for services provided during a period for which retroactive eligibility has been established must be submitted within 120 days of the date the MAD claims processing contractor was notified of the retroactive eligibility.~~

~~(a) Recipients must notify providers of pending eligibility and the date eligibility is received. Recipients are financially responsible for payment if the provider's claims are denied because of the recipient's representative's failure to notify the provider of the retroactive coverage within the 120 day filing limit.~~

~~(b) Documents certifying the retroactive eligibility must be attached to the claim or on any correspondence concerning the claim. Documents include printed copy of the eligibility computer screen, copy of the court ordered retroactive eligibility, or a signed statement from an income support specialist from a local county income support division office.~~

~~B. **Corrected claims:** Corrected claims which are originally submitted within the 120 day filing limit and need corrections or additions must be completed and submitted to MAD or its claims processing contractor within 365 days of the date of service.~~

~~C. **Duplicate claims:** Duplicate claims which are used to replace lost or unprocessed claims must be submitted within 120 days of the date of service. Providers are responsible for submitting duplicate claims within the applicable time periods.]~~ **BILLING AND CLAIMS FILING LIMITATIONS:**

A. Claims must be received within the MAD filing limits as determined by the date of receipt by MAD or its selected claims processing contractor.

(1) Claims for services must be received within 90 calendar days of the date of service unless an alternative filing limit is stated within this section.

(2) Inpatient hospital and other inpatient facility claims must be received within 90 calendar days of the date of the eligible recipient's discharge, transfer, or otherwise leaving the facility.

(3) When the provider can document that a claim was filed with another primary payer including medicare, medicaid managed care organizations, medicare replacement plans, or another insurer, the claim must be received within 90 calendar days of the date the other payer paid or denied the claim as reported on the explanation of benefits or remittance advice of the other payer, not to exceed 210 calendar days from the date of service. It is the provider's responsibility to submit the claim to another primary payer within a sufficient timeframe to reasonably allow the primary payer to complete the processing of the claim and also meet the MAD timely filing limit. Denials by the primary payer due to the provider not meeting administrative requirements in filing the claim must be appealed by the provider to the primary payer. The MAD program only considers payment for a claim denied by the other primary payer when under the primary payer's plan the MAD recipient is not eligible, the diagnosis, service or item is not within the scope of the benefits, benefits are exhausted, pre-existing conditions are not covered, or out-of-pocket expenses or the deductibles have not been met. MAD will evaluate a claim for further payment including payment toward a deductible, co-insurance, co-payment or other patient responsibility. Claims for payment towards a deductible, co-insurance, co-payment or other patient responsibility must also be received within 90 calendar days of the date of the other payer's payment, not to exceed 210 calendar days from the date of service.

(4) For an eligible recipient for whom MAD benefits were not established at the time of service but retroactive eligibility has subsequently been established, claims must be received within 120 calendar days of the date the eligibility was added to the eligibility record of MAD or its selected claims processing contractor.

(5) For a provider of services not enrolled as a MAD provider at the time the services were rendered, including a provider that is in the process of purchasing an enrolled MAD provider entity such as a practice or facility, claims must be received within 90 calendar days of the date the provider is notified of the MAD approval of the provider participation agreement, not to exceed 210 calendar days from the date of service. It is the provider's responsibility to submit a provider participation agreement within a sufficient timeframe to allow completion of the provider enrollment process and submission of the claim within the MAD timely filing limit.

(6) For claims that were originally paid by a medicaid managed care organization from which the capitation payment is recouped resulting in recoupment of a provider's claim by the managed care organization, the claim must be received within 90 calendar days of the recoupment from the provider.

(7) For claims that were originally paid by MAD or its selected claims processing contractor and subsequently recouped by MAD or its selected claims processing contractor due to certain claims conflicts such as overlapping duplicate claims, a corrected claim subsequently submitted by the provider must be received within 90 calendar days of the recoupment.

B. The provider is responsible for submitting the claim timely, for tracking the status of the claim and determining the need to resubmit the claim.

(1) Filing limits are not waived by MAD due to the providers inadequate understanding of the filing limit requirements or insufficient staff to file the claim timely or failure to track pending claims, returns, denials, and payments in order to resubmit the claim or request an adjustment within the specified timely filing limitation.

(2) A provider must follow up on claims that have been transmitted electronically or on paper in sufficient time to resubmit a claim within the filing limit in the event that a claim is not received by MAD or its selected claims processing contractor. It is the provider's responsibility to re-file an apparently missing claim within the applicable filing limit.

(3) In the event the provider's claim or part of the claim is returned, denied, or paid at an incorrect amount the provider must resubmit the claim or an adjustment request within 90 calendar days of the date of the return, denial or payment of an incorrect amount, that was submitted in the initial timely filing period. This additional 60 calendar day period is a one-time grace period following the return, denial or mis-payment for a claim that was filed in the

initial timely filing period and is based on the remittance advice date or return notice. Additional 60 calendar day grace periods are not allowed. However, within the 90 calendar day grace period the provider may continue to resubmit the claim or adjustment requests until the 90 calendar day grace period has expired.

(4) Adjustments to claims for which the provider feels additional payment is due, or for which the provider desires to change information previously submitted on the claim, the claim or adjustment request with any necessary explanations must be received by MAD or its selected claims processing contractor with the provider using a MAD-approved adjustment format and supplying all necessary information to process the claim within the one-time 60 calendar day allowed grace period.

C. The eligible recipient or their personal representative is responsible for notifying the provider of MAD eligibility or pending eligibility and when retroactive MAD eligibility is received. When any provider including an enrolled provider, a non-enrolled provider, a managed care organization provider, and an out-of-network provider is informed of a recipient's MAD eligibility, the circumstances under which an eligible recipient or their personal representative can be billed by the provider are limited.

(1) When the provider is unwilling to accept the eligible recipient as a MAD fee-for-service (FFS) or managed care recipient, the provider must provide the eligible recipient or their personal representative written notification that they have the right to seek treatment with another provider that does accept a MAD fee-for-service or managed care eligible recipient. It is the provider's responsibility to have the eligible recipient or their personal representative receive and sign a statement that they are aware that the proposed service may be covered by MAD if rendered by an approved MAD or MAD managed care organization provider and that by authorizing a non-approved provider to render the service, that they agree be held financially responsible for any payment to that provider. A provider may only bill or accept payment for services from an eligible recipient or their personal representative if all the following requirements are satisfied.

(a) The eligible recipient or their personal representative is advised by the provider before services are furnished that the particular provider does not accept patients whose medical services are paid for by MAD.

(b) The eligible recipient or their personal representative is advised by the provider regarding the necessity, options, and the estimated charges for the service, of the option of going to a provider who accepts MAD payment.

(2) The eligible recipient is financially responsible for payment if a provider's claims are denied because of the eligible recipient's or their personal representative's failure to notify the provider of established eligibility or retroactive eligibility in a timely manner sufficient to allow the provider to meet the filing limit for the claim.

(3) When a provider is informed of MAD eligibility or pending MAD eligibility prior to rendering a service, the provider cannot bill the eligible recipient or their personal representative for the service even if the claim is denied by MAD or its selected claims processing contractor unless the denial is due to the recipient not being eligible for the MAD program or the service or item is not a benefit of the MAD program. In order to bill the eligible recipient for an item or service that is not a benefit of the program, prior to rendering the service or providing the item the provider must inform the eligible recipient or their personal representative that the service is not covered by the MAD program and obtain a signed statement from the eligible recipient or their personal representative acknowledging such notice. It is the provider's responsibility to understand or confirm the benefits of the MAD program and to inform the eligible recipient or their personal representative when the service is not a benefit of the program and to inform the eligible recipient or their personal representative.

(4) The provider must accept medicaid payment as payment in full and cannot bill a remaining balance to the eligible recipient or their personal representative other than a MAD allowed copayment, coinsurance or deductible.

(5) The provider cannot use a statement signed by the eligible recipient or their personal representative to accept responsibility for payment if the claim is denied as the basis to bill an eligible recipient or their personal representative unless such billing is allowed by MAD rules. It is the responsibility of the provider to meet the MAD program requirements for timely filing and other administrative requirements, to provide information to MAD or its selected claims processing contractor regarding payment issues on a claim, and to accept the decision of MAD or its selected claims processing contractor for a claim. The eligible recipient or their personal representative does not become financially responsible when the provider has failed to met the timely filing and other administrative requirements in filing a claim. The eligible recipient or their personal representative does not become financially responsible for payment for services or items solely because MAD or its selected claims processing contractor denies payment for a claim.

(6) The provider cannot bill the eligible recipient or their personal representative for charges that are denied for lack of medical necessity or not being an emergency unless the provider determined prior to rendering the service that medical necessity requirements or emergency requirements were not met and informed the eligible recipient that MAD will not pay for the services and the eligible recipient or their personal representative has signed a statement of the choice to proceed with the service or item.

(7) When a provider has been informed of MAD eligibility or pending MAD eligibility of a recipient, the provider cannot turn an account over to collections or to any other entity intending to collect from the eligible recipient or their personal representative. If a provider has turned an account over for collection, it is the provider's responsibility to retrieve that account from the collection agency and to accept the decision on payment of the claim by MAD or its selected claims processing contractor.

D. The filing limit does not apply to overpayments or money being returned to MAD or its selected claims processing contractor.

(1) If a provider receives payment from another source, such as an indemnity insurance plan, HMO, or responsible third party, after receiving payment from MAD, an amount equal to the lower of either the insurance payment or the amount paid through the medicaid program must be remitted to MAD or its selected claims processing contractor third party liability unit, properly identifying the claim to which the refund applies.

(2) For claims for which an over-payment was made to the provider, the provider must return the overpayment to MAD or its selected claims processing contractor. The timely filing provisions for payments and adjustments to claims do not apply when the provider is attempting to return an overpayment.

E. MAD or its selected claims processing contractor may waive the filing limit requirement in the following situations:

(1) An error or delay on the part of MAD or its selected claims processing contractor prevented the claim from being filed correctly within the filing limit period. In considering waiver of a filing limit for a claim for this situation, MAD or its selected claims processing contractor will consider the efforts made by the provider to initially file the claim in a timely manner and the follow up efforts made to secure payment in a timely manner from the other payer.

(2) The claim was filed within the filing limit period but the claim is being

reprocessed or adjusted for issues not related to the filing limit.

(3) The claim could not be filed timely by the provider because another payer or responsible party could not or did not process the claim timely or provide other information necessary to file the claim timely. In considering a waiver of the filing limit for a claim for this situation, MAD or its selected claims processing contractor will consider the efforts made by the provider to initially file the claim and to follow up on the payment from another payer or responsible party in order to attempt to meet the MAD filing limit.

(4) A recipient for which MAD or medicare eligibility was established by hearing, appeal, or court order. In considering a waiver of the filing limit for a claim for this situation, MAD or its selected claims processing contractor will consider the efforts made by the provider to file the claim timely after the hearing or court decision.

(5) The claim is being reprocessed by MAD or its selected claims processing contractor for issues not related to the provider's submission of the claim. These circumstances may include when MAD is implementing retroactive price changes, or reprocessing the claim for accounting purposes.

(6) The claim was originally paid but recouped by another primary payer. In considering a waiver of the filing limit for a claim for this situation, MAD or its selected claims processing contractor will consider the efforts made by the provider to file the claim timely after the recoupment.

(7) The claim is from a federal Indian health services facility operating within the federal department of health and human services which is responsible for Native American health care or is a PL 93-638 tribally operated hospital and clinic which must be finalized within two years of the date of service.

(8) The claim is from a medicaid school-based service program when providing services to a MAD eligible recipient through an individualized education plan or an individualized family service plan to which an initial filing limit of 120 calendar days is applied.

F. The medicaid program is jointly funded through state and federal sources. Claims will not be processed when the federal standards are not met, thereby precluding federal financial participation in payment of the claim.

G. A provider may not bill an eligible recipient or their personal representative for a service or item when a claim is denied due to provider error in filing the claim or failing to meet the timely filing requirements. It is the provider's responsibility to understand or verify the specific MAD program in which an eligible recipient is enrolled, the covered or non-covered status of a service or item, the need for prior authorization for a service or item, and to bill the claim correctly and supply required documentation. The eligible recipient or their personal representative cannot be billed by the provider when a claim is denied because these administrative requirements have not been met.

(1) The provider cannot bill the eligible recipient or their personal representative for a service or item in the event of a denial of the claim unless the denial is due to the recipient not being eligible for the MAD program; or if the service is not a benefit of the MAD program, prior to rendering the service the provider informed the eligible recipient or their personal representative that the specific service is not covered by the MAD program and obtained a signed statement from the eligible recipient or their personal representative acknowledging such.

(2) The provider cannot bill the eligible recipient or their personal representative for the service in the event that a payment is recouped by another primary payer and MAD or its selected claims processing contractor determines that the claim will not be reimbursed by MAD or its selected claims processing contractor.

(3) The provider cannot turn an account over to collections or to any other factor intending to collect from the eligible recipient or their personal representative. If a provider has turned an account over to a collection agency, it is the provider's responsibility to retrieve that account back from the collection agency and to accept the decision on payment of the claim by MAD or its selected claims processing contractor.

H. When documentation is required to show the provider met applicable filing limits, the date a claim is received by MAD or its selected claims processing contractor will be documented by the date on the claim control number (TCN) as assigned by MAD or its selected claims processing contractor. Documentation of timely filing when another third party payer, including medicare, is involved will be accepted as documented on explanation of benefits payment dates and reason codes from the third party. Documentation may be required to be submitted with the claim.

[2/1/95; 8.302.2.11 NMAC - Rn, 8 NMAC 4.MAD.702.2 & A, 5/1/04; A, 5/1/10]

8.302.2.12 BILLING FOR DUAL-ELIGIBLE MEDICAID RECIPIENTS: [~~To receive payment for services furnished to medicaid recipients who are also entitled to medicare, providers must first bill the appropriate medicare intermediary or carrier. The medicare intermediary or carrier pays the medicare covered portion of the bill. After medicare payment, the medicaid program pays the amount medicare determines is owed for copayments and deductibles, subject to medicaid reimbursement limitations. Providers must accept assignment on medicare claims before MAD will process payments.~~

A. **~~Claim crossover:~~** ~~If there is sufficient information to identify individuals as medicaid recipients, medicare may send payment information directly to the MAD claims processing contractor. In all cases where claims fail to crossover automatically to MAD, providers must forward a copy of the medicare claim and medicare "explanation of benefits" (EOB) forms to the MAD claims processing contractor. This information must also be included when filing claims, if payments have not been made by MAD within six (6) weeks of the medicare payment.~~

B. **~~Health maintenance organization plan coverage:~~** ~~When a medicaid eligible recipient belongs to a medicare HMO plan , the medicaid program limits payment for the claim to the medicaid allowed amount less the third party payment amount, not to exceed the copayment amount calculated by the HMO plan. If the third party payment amount exceeds the medicaid allowed amount, the medicaid program makes no further payment and the claim is considered paid in full. The provider may not collect any portion of the unpaid co-payment, co-insurance, or deductible from the client. All other HMO requirements, including servicing provider restrictions, apply to the provision of services.~~] To receive payment for services furnished to a MAD eligible recipient who is also entitled to medicare, a provider must first bill the appropriate medicare payer. The medicare payer pays the medicare covered portion of the bill. After medicare payment, MAD pays the amount the medicare payer determines is owed for copayments, co insurance and deductibles, subject to medicaid reimbursement limitations. When the medicare payment amount exceeds the amount that MAD would have allowed for the service, no further payment is made for the coinsurance, deductible, or copayment. The claim is considered paid in full. The provider may not collect any remaining portion of the medicare coinsurance, deductible, or copayment from the eligible recipient or their personal representative. For professional services for which medicare part B applies to a 50 percent coinsurance rate, medicare coinsurance and deductible amounts are paid at an amount that allows the provider to receive 80 percent of the medicare allowed amount even if such amount exceeds the MAD allowed amount for the service. A provider must accept assignment on medicare claims for MAD

eligible recipients. A provider who chooses not to participate in medicare or accept assignment on a medicare claim must inform the MAD eligible recipient or their personal representative that the provider is not a medicare provider or will not accept assignment; and that because of those provider choices, MAD cannot pay for the service. Additionally, the provider must inform the MAD eligible recipient or their personal representative of the estimated amount for which the eligible recipient will be responsible, that the service is available from other providers who will accept assignment on a medicare claim, and identify an alternative provider to whom the eligible recipient may seek services. The provider cannot bill a dually eligible MAD recipient for a service that medicare cannot pay because the provider chooses not to participate in medicare, or which MAD cannot pay because the provider chooses not to accept assignment on a claim, without the expressed consent of the MAD eligible recipient or their personal representative.

A. **Claim crossover:** If there is sufficient information for medicare to identify an individual as a MAD eligible recipient, medicare may send payment information directly to the MAD claims processing contractor in a form known as a "cross-over claim". In all cases where claims fail to crossover automatically to MAD, a provider must bill the appropriate MAD claims processing contractor directly, supplying the medicare payment and medicare "explanation of benefits" (EOB) information and meet the MAD filing limit.

B. **Medicare replacement plan or other health maintenance organization (HMO) plan:** When a MAD eligible recipient belongs to a medicare replacement plan or HMO, MAD pays the amount the payer determines is owed for copayments, coinsurance or deductible, subject to medicaid reimbursement limitations. When the payer payment amount exceeds the amount that MAD would have allowed for the service, no further payment is made for the copayment, coinsurance or deductible. The claim is considered paid in full. The provider may not collect any remaining portion of the payer copayment, coinsurance or deductible from the eligible recipient or their personal representative. For services for which medicare part B applies a 50 percent coinsurance rate, medicare coinsurance and deductible amounts are paid at the amount that allows the provider to receive up to 80 percent of the payer amount allowed even if the amount exceeds the MAD allowed amount for the services.

C. All other HMO and medicare replacement plan requirements, including provider network restrictions must be met for medicaid to make payment on a claim.

[2/1/95; 8.302.2.12 NMAC - Rn, 8 NMAC 4.MAD.702.3 & A, 5/1/04; A, 5/1/10]

8.302.2.13 BILLING FOR CONTRACTED SERVICES: [~~Medicaid reimburses only providers who actually furnish services. However, in the following instances medicaid providers can bill for contractor services:~~

~~A. Hospitals, nursing homes, intermediate care facilities for the mentally retarded, home health agencies, residential treatment centers, group homes, hospice agencies, federally qualified health centers, and rural health clinics can bill for contracted services if these costs appear in their cost reports.~~

~~B. Physician groups, clinics, individual physicians, hospital professional components, nursing home professional components, fee-for-service providers, and other professional service providers can bill for services furnished by physicians under contract if the following apply:~~

~~(1) the New Mexico medical assistance program provider participation application is completed by the contractor and approved by MAD; and~~

~~(2) the physician contractor is listed as the servicing provider on the claim form.~~

~~C. Transportation providers may bill for contracted personnel, equipment or vehicles if the services are covered medicaid benefits.~~

~~D. Providers may bill MAD directly for contracted services, such as the construction or assembly of prosthetic devices, dental, hearing and vision prosthesis, orthotics, equipment and repairs, when:~~] MAD only makes payment to a provider who actually rendered the services. However, in the following instances a MAD provider can bill and be paid for covered contracted services.

A. A provider is reimbursed at encounter rates or other all-inclusive rates that may have some contracted services built into those rates. These providers include nursing facilities, intermediate care facilities for the mentally retarded, residential treatment centers, a group home, a hospice agency, a federally qualified health center, a rural health clinic, and an Indian health service or 638 facility.

B. A practitioner group, a clinic, an institutional professional component, and providers of professional services may bill for services furnished by practitioners under contract when the provider applications are approved by MAD, and the following apply:

(1) the MAD provider participation applications are completed by the billing entity and the practitioner rendering the service or in their employ; and

(2) the practitioner is listed as the rendering provider on the claim form.

C. Transportation providers may bill for contracted personnel, equipment or vehicles.

D. A provider may bill MAD directly for contracted services for the construction or assembly of equipment or prosthetic devices, construction of dental devices and prosthetics, hearing and vision prosthesis, orthotics, and repairs, when:

(1) the provider customarily uses the dental laboratory, optical supplier, hearing aid supplier, [~~prosthetic, orthotic, equipment dealer~~] prosthetic or orthotic supplier equipment dealer, or manufacturer to do [~~the~~] work; and

(2) the contractor doing the work does not qualify as an eligible provider in his/her own right.

E. For all other contracted services not specified above, written prior approval must be obtained from MAD or its designee before the provision of services.

F. **Billing rates for contracted services:** All services provided by a contractor and billed through a participating [~~medicaid~~] MAD provider must be billed at a rate based on direct and indirect costs, plus a reasonable administrative charge. The billing provider [~~ensures that all medicaid~~] must ensure all MAD requirements are met by the contractor furnishing the service, including prior approval requirements, if applicable. Reimbursement for contracted services is included in the fee paid to the provider. For example, the amount paid to a dentist for a crown includes the dentist's work fitting the crown and the dental lab fees for making the crown.

G. **Recipient freedom of choice:** [~~Providers~~] A provider cannot enter into contracts that are used to restrict [~~a~~] an eligible recipient's freedom of choice. Some restrictions to this freedom of choice may apply to the purchases of medical devices and laboratory and radiology tests, and transportation [42 CFR Section 431.54(e)].

[2/1/95; 8.302.2.13 NMAC - Rn, 8 NMAC 4.MAD.702.4, 5/1/04; A, 5/1/10]

8.302.2.14 BILLING AND PAYMENT LIMITATIONS:

A. **Payment not allowed:** MAD does not pay factors either directly or by power of attorney (42 CFR Section 447.10(h)). A factor is an individual or an organization, such as a collection agency or service bureau.

B. **No reimbursement for the discharge day:** An institutional or other residential provider, such as a nursing facility, a hospital, an intermediate care facility for the mentally retarded, and a provider of treatment foster care services

are reimbursed for services furnished to an eligible recipient on the day of admission but are not reimbursed for services furnished on day of discharge.

C. **No payment made for wrong services:** A provider shall not bill MAD for:

(1) services provided to the wrong patient;

(2) a service performed on the wrong body part of an eligible recipient; and

(3) an incorrect procedure performed on an eligible recipient.

D. **Payments for acquired conditions:** MAD may deny or limit payment on claims for services to treat a MAD eligible recipient for a condition acquired during the course of a facility stay or in the rendering of other services.

[2/1/95; 8.302.2.14 NMAC - Rn, 8 NMAC 4.MAD.702.5, 5/1/04; 8.302.2.14 NMAC - N, 5/1/10]

[~~8.302.2.14~~] 8.302.2.15 INTERESTRATES ON COST SETTLEMENTS: [~~Medicaid~~] MAD charges interest on overpayments and pays interest on underpayments as a result of year-end cost settlements, unless waived.

A. **Interest periods:** Interest accrues from the date of the final determination of costs or from a date required by a subsequent administrative reversal. Interest is charged on the overpayment balance or paid on the underpayment balance for each [~~thirty (30)~~] 30 calendar day period that payment is delayed.

(1) For purposes of this provision, a final determination is considered to occur when:

(a) MAD, the MAD selected claims processing contractor, or the MAD audit contractor makes a written demand for payment or a written determination of underpayment; or

(b) a cost report which was filed in a timely manner indicates that an amount is due MAD and the amount due is not included with the report.

(2) The date of final determination for an additional overpayment or underpayment, as determined by the MAD audit contractor, is considered to occur if any of the previously mentioned events occur.

(3) The date of final determination for an unfiled cost report occurs the day after the date the cost report was due. A single extension of time not to exceed [~~thirty (30)~~] 30 calendar days is granted for good cause. A written request for the time extension must be received and approved by MAD before the cost report due date. When the cost report is filed, a second final determination date is calculated based on the occurrence of either of the aforementioned events.

B. **Interest rates:** The interest rate on overpayments and underpayments is based on the prevailing rate specified in bulletins issued under article 8020.20 of the treasury fiscal requirement manual. When [~~providers sign~~] a provider signs a repayment agreement with MAD for an overpayment, the following provisions apply:

(1) the rate of interest specified in the agreement is binding unless a default in the agreement occurs; or

(2) the rate of interest on the balance may change to the prevailing rate if the provider or supplier defaults on an installment and the prevailing rate in effect on the date the installment becomes overdue is higher than the rate specified in the agreement.

C. **Accrual of interest:** Even though a filed cost report does not show an overpayment, interest begins to accrue on the date of final determination, if MAD, the MAD audit contractor, or the MAD selected claims processing contractor determines that providers have been overpaid.

(1) Interest continues to accrue during administrative [~~and/or~~] or judicial appeals and until final disposition of claims.

(2) If a cost report is filed which indicates that an amount is due MAD, interest on the amount due accrues from the date the cost report is filed unless:

(a) the full payment on the amount due accompanies the cost report; or

(b) the provider and the MAD audit contractor agree in advance to liquidate the overpayment through a reduction in interim payments over the next [~~thirty (30)~~] 30 calendar day period.

(3) If the MAD audit contractor determines that a further overpayment exists, interest accrues from the date of final determination.

(4) If the cost report is not filed, interest accrues from the day following the date the report was due, plus a single extension of time not to exceed [~~thirty (30)~~] 30 calendar days if granted for good cause, until the time the cost report is filed. Written requests for time extensions must be received [~~and approved~~] for approval by MAD before cost reports due dates.

(5) Interest accrues on an underpayment owed by MAD to [~~providers beginning thirty (30)~~] a provider beginning 30 calendar days from the date of MAD's notification of the underpayment by the MAD audit contractor.

D. **Interest charge waivers:** MAD may waive the interest charges when:

(1) the overpayment is liquidated within [~~thirty (30)~~] 30 calendar days from the date of the final determination; or

(2) MAD determines that the administrative cost of collection exceeds the interest charges; interest is not waived for the period of time during which cost reports are due but remain unfiled for more than [~~thirty (30)~~] 30 calendar days.

E. **Interest charges with installment or partial payments:** If an overpayment is repaid in installments or recouped by withholding from several payments due to [~~billing providers~~] a billing provider, the amounts are applied in the following manner:

(1) each payment or recoupment is applied first to accrued interest and then to the principle; and

(2) after each payment or recoupment, interest accrues on the remaining unpaid balance; if an overpayment or an underpayment determination is reversed following an administrative hearing, appropriate adjustments are made on the overpayment or underpayment and the amount of interest charged.

F. **Allowable interest cost:** Allowable interest cost is the necessary and proper interest on both current and capital indebtedness. An interest cost is not allowable if it is one of the following:

(1) an interest assessment on a determined overpayment; or

(2) interest on funds borrowed to repay an overpayment; following an administrative review and favorable provider decision, interest paid on funds borrowed to repay an overpayment or the interest assessed on an overpayment becomes an allowable cost.

[8.302.2.15 NMAC - Rn & A, 8.302.2.14 NMAC, 5/1/10]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

Explanatory paragraph: This is an amendment to 8.307.7 NMAC, Section 11, which will be effective May 1, 2010. The Medical Assistance Division amended Paragraph (4) of Subsection GG, striking language that would include coverage for the installation/disconnection of emergency response devices for individuals receiving services through the CoLTS waiver.

8.307.7.11 SERVICES INCLUDED IN THE COORDINATION LONG TERM SERVICES PROGRAM BENEFIT PACKAGE:

GG. The following are services provided under the 1915 (c) waiver to CoLTS members who meet specific criteria.

(4) **Emergency response services (CoLTS MCO):** The benefit package includes emergency response services, including the provision of an electronic device that enables members to secure help in an emergency. The member may also wear a portable "help"

button to allow for mobility. The system is connected to the member's telephone and programmed to signal a response center when the "help" button is activated. The response center must be staffed by trained professionals. Emergency response services include [~~installing,~~] testing and maintaining equipment; training members, caregivers and first responders on the use of the equipment; 24-hour monitoring for alarms; checking systems monthly, or more frequently, if warranted by electrical outages, severe weather or other conditions; and reporting member emergencies and changes in the member's condition that may affect service delivery. Emergency categories consist of emergency response[~~,~~] and emergency response high need[~~, and emergency response installation/disconnect~~].

[8.307.7.11 NMAC - N, 8-1-08; A, 9-1-09; A, 5-1-10]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

Explanatory paragraph: This is an amendment to 8.314.2 NMAC, Sections 13, which will be effective May 1, 2010. The Medical Assistance Division (MAD) is amending Paragraph (4) of Subsection D, reducing the maximum number of respite hours annually per Individual Service Plan (ISP) year; Paragraph (3) of Subsection H , reducing the dollar limit for environmental modifications for every five year period; and Subparagraph (a) of Paragraph (1) and Paragraph (3) of Subsection I, striking language that would include coverage for the installation of emergency response devices for individuals receiving services through the Disabled and Elderly Home and Community Based Services Waiver.

8.314.2.13 COVERED WAIVER SERVICES: The D&E waiver covers the following services for a specified and limited number of waiver recipients as a cost effective alternative to institutionalization in a nursing facility.

D. **Respite services:** Respite services are provided to participants unable to care for themselves and are furnished on a short-term basis because of the absence or need for relief of the unpaid primary caregiver normally providing the care.

(4) Respite services are limited to a maximum of [~~336~~] 100 hours annually per ISP year.

H. **Environmental modification services:** Environmental modifications services include the purchase and installation of equipment and making physical adaptations to an individual's residence that are necessary to ensure the health, welfare and safety of the individual or enhance the individual's level of independence.

(3) Environmental modifications have a limit of [~~$7,000~~] $5,000 every five [~~(5)~~] years.

I. **Emergency response services:** Emergency response services provide an electronic device that enables a participant to secure help in an emergency. The participant may also wear a portable "help" button to allow for mobility. The system is connected to the participant's phone and programmed to signal a response center when a "help" button is activated. The response center reacts to the signal to ensure the recipient's health and safety.

(1) Emergency response services include:

(a) [~~installing,~~] testing and maintaining equipment;

(3) Emergency response service categories consist of emergency response[~~,~~] and emergency response high need [~~and emergency response installation/disconnect~~].

[8.314.2.13 NMAC - Rp, 8 NMAC 4.MAD.733.4, 8-1-06; A, 5-1-10]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

Explanatory paragraph: This is an amendment to 8.314.6 NMAC, Section 15, which will be effective May 1, 2010. The Medical Assistance Division is amending Paragraph (1) of Subsection K, striking language that would include coverage for the installation of emergency response devices for individuals receiving services through the Mi Via waiver.

8.314.6.15 COVERED WAIVER GOODS AND SERVICES: MVW covers goods and services for a specified and limited number of waiver recipients as a cost-effective alternative to institutionalization. The program is limited to the number of federally authorized unduplicated recipient positions and program funding.

K. **Emergency response services:** Emergency response services provide an electronic device that enables a participant to secure help in an emergency at home and avoid institutionalization. The participant may also wear a portable "help" button. The system is connected to the participant's phone and programmed to signal a response center when a "help" button is activated. The response center is staffed by trained professionals. Emergency response services include:

(1) [~~installing,~~] testing and maintaining equipment;

(2) training participants, caregivers and first responders on use of the equipment;

(3) [~~twenty-four (24)~~] 24-hour monitoring for alarms;

(4) checking systems monthly or more frequently, if warranted by electrical outages, severe weather, etc.; and

(5) reporting participant emergencies and changes in the participant's condition that may affect service delivery.

[8.314.6.15 NMAC - N, 12-1-06; A, 5-1-10]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.353.2 NMAC, Sections 1, 3, 6, 8 - 14, effective May 1, 2010.

8.353.2.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).

[1-1-95; 8.353.2.1 NMAC - Rn, 8 NMAC 4.MAD.000.1, 7-1-01; A, 5-1-10]

8.353.2.3 STATUTORY AUTHORITY: The New Mexico medicaid program [~~is~~] and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act[~~, as amended and by the state Human Services Department pursuant to state statute~~] as amended or by state statute. See NMSA 1978 27-2-12 et. seq. (Repl. Pamp. 1991).

[1-1-95; 8.353.2.3 NMAC - Rn, 8 NMAC 4.MAD.000.3, 7-1-01; A, 5-1-10]

8.353.2.6 OBJECTIVE: [~~The objective of these regulations is to provide policies for the service portion of the New Mexico medicaid program. These policies describe eligible providers, covered services, noncovered services, utilization review, and provider reimbursement.~~] The objective of this rule is to provide instruction for the service portion of the New Mexico medical assistance programs.

[1-1-95, 2-1-95; 8.353.2.6 NMAC - Rn, 8 NMAC 4.MAD.000.6, 7-1-01; A, 5-1-10]

8.353.2.8 MISSION STATEMENT: [~~The mission of the New Mexico Medical Assistance Division (MAD) is to maximize the health status of Medicaid-eligible individuals by furnishing payment for quality health services at levels comparable to private health plans.~~] To reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the lives of their communities.

[2-1-95; 8.353.2.8 NMAC - Rn, 8 NMAC 4.MAD.002, 7-1-01; A, 5-1-10]

8.353.2.9 PROVIDER HEARINGS: [~~The Human Services Department (HSD)~~] HSD has established a hearing process for medicaid fee-for-service (FFS) providers who disagree with HSD decisions concerning their participation in the New Mexico medicaid program, recoupment of overpayments due to provider billing error, and imposition of sanctions. For the hearing process [~~for~~] concerning decisions on noncompliance with nursing facility (NF) or intermediate care facility (ICF-MR) provider certification requirements, see hearing regulations promulgated by the department of health (DOH). This section describes the hearing process for [~~Medicaid fee-for-service~~] MAD FFS providers. See 8.311.3 NMAC, *Methods and Standards for Establishing Payment Rates Inpatient Hospital Services*, 8.312.2 NMAC, *Cost Related Reimbursement for Nursing Facilities*, and [~~8.313.2~~] 8.313.3 NMAC, *Cost Related Reimbursement for Intermediate Care Facilities for the Mentally Retarded* for a description of the appeals process for audit settlements. [~~See 8.305.12 NMAC, MCO Member Grievance Resolution~~] See 8.305.12.16 NMAC, *MCO/se provider appeal process*, 8.306.12.16 NMAC, *MCO provider grievance process*, and 8.307.12.15 NMAC, *provider grievance appeal process*, for a description of the grievance process for resolving provider disputes between a New Mexico medicaid [~~MCO and its~~] managed care organizations (MCO) and their contractors or subcontractors.

A. **Hearing rights:** The right to a hearing includes the right to:

(1) be advised of the nature and availability of a hearing;

(2) be represented by counsel or [~~other~~] its representative of the provider's choice;

(3) have a hearing which safeguards the provider's opportunity to present a case;

(4) have prompt notice and implementation of the hearing decision; and

(5) be advised that judicial review may be invoked to the extent such review is available under state law.

B. **Notice of rights:** Upon enrollment, [~~Medicaid~~] MAD providers receive written notice of hearing rights along with any HSD action notice concerning provider agreement termination, recoupment of overpayment due to provider billing error, or notice of sanction. This information includes a description of the method by which a hearing may be requested and a statement that the provider's presentation may be made by the provider or by [~~a~~] its representative.

[11-1-96; 8.353.2.9 NMAC - Rn, 8 NMAC 4.MAD.980 & A, 7-1-01; A, 5-1-10]

8.353.2.10 INITIATION OF HEARING PROCESS:

A. **Notice:** The hearing process is initiated by a provider's request for hearing made in response to an HSD action notice. See Section 8.351.2 NMAC, *Sanctions and Remedies*, for information concerning notice requirements.

B. **Time limits:** [~~General Medicaid fee-for-service provider have~~] A MAD FFS provider has 30 calendar days from the date of the HSD action notice to request a hearing. To be considered timely, the request must be received by HSD no later than the close of business of the specified day. Hearings are conducted and a written decision is issued to the provider within 120 calendar days from the date HSD receives the hearing request, unless the parties otherwise agree to an extension. If HSD seeks to impose a sanction or remedy or take another action against a provider, the provider may submit a written request for a stay of the effective date of imposition of the sanction, remedy, or action to [~~the Medical Assistance Division (MAD)~~] MAD. Granting of a stay is at the discretion of the MAD director.

C. [~~**Eligibility**~~] **Scope and limits on provider hearings:**

(1) A hearing is available to all [~~Medicaid fee-for-service~~] MAD FFS providers who submit a request in accordance with this section in a timely manner. A provider can request a hearing if:

(a) a provider application or renewal of an application is denied;

(b) the provider's participation is suspended or terminated; or

(c) the provider disagrees with a decision of MAD or its designee with respect to [~~utilization review, overpayment, recoupment, claims adjustment,~~] recovery of overpayments due to provider billing error including incorrect billing, or lack of documentation to support the medical necessity of a service, or that the service was provided, or imposition of a sanction or other remedy.

(2) **Denial or dismissal of request for hearing:** HSD may deny or dismiss a request for a provider hearing when:

(a) the request is not received in a timely manner or within the time period stated in the notice;

(b) the request is withdrawn[~~,~~] or canceled in writing[~~,~~] by the provider or the provider's authorized representative;

(c) the sole issue presented concerns a federal or state law which requires an adjustment of compensation for all or certain classes of providers or services[~~,~~] unless the reason for the hearing request involves an alleged error in the computation of provider compensation;

(d) the provider fails to appear at a scheduled hearing without good cause; or

(e) the same issue has already been appealed or decided upon as to this provider and fact situation;

(f) the matter presented for hearing is outside the scope of issues which are subject to the provider hearing process; see Subsection C of 8.353.2.10 NMAC, *scope and limits on provider hearings*; and

[~~(f)~~] (g) the sole issue presented concerns [~~Medicaid~~] MAD MCO utilization management decisions, such as a decision to terminate, suspend, reduce, or deny services to members, untimely utilization reviews, [~~and/or~~] and provider payment issues, raised by a contracted or subcontracted MCO provider.

(3) A request for a hearing may be considered abandoned and therefore dismissed if neither the provider nor representative appears at the time and place of the hearing, unless, within [~~ten~~] 10 calendar days after the date of the scheduled hearing, the provider presents good cause for failure to appear. "Good cause" includes death in the family, disabling personal illness, or other significant emergencies.

(4) At the discretion of the hearing officer, other exceptional circumstances may be considered good cause.

D. **Method:** A request for hearing must be made in writing and must identify the provider and the underlying action.

E. **Acknowledgment of request:** The HSD hearing bureau sends acknowledgment of its receipt of a hearing request to the provider.

[~~F. **Scope of Appeal:** Medicaid providers may appeal the denial of their application to participate in the Medicaid program and all other matters which may be relevant to the action or imposition of sanctions or remedies by HSD.~~]

[11-1-96; 8.353.2.10 NMAC - Rn, 8 NMAC 4.MAD.981 & A, 7-1-01; A, 5-1-10]

8.353.2.11 PRE-HEARING PROCEDURE:

A. **Notice of hearing:** Not less than 30 calendar days before the hearing, written notice is given to all parties involved of the time, date, and place of the hearing. If an accommodation is necessary, the party must notify the hearing officer at least [~~ten~~] 10 calendar days prior to the hearing. The provider is also given an explanation of the hearing process and procedures and informed that HSD does not pay fees or costs incurred by the provider as a result of the hearing or appeal of the hearing decision.

B. **Postponement:** A provider may request, and is entitled to receive, one postponement of the scheduled hearing, as long as it does not interfere with the decision time frames. Requests for more

than one postponement are considered, at the hearing officer's discretion, on a case-by-case basis.

C. **Expedited hearing:** The parties may request an expedited hearing in cases involving eligible recipient health, safety, or service availability issues. The request must be made in writing and state in detail the reasons why an expedited hearing is necessary. Granting an expedited hearing is at the discretion of the hearing officer.

D. **Group hearing:** A hearing officer may respond to a series of individual requests for hearings by conducting a single group hearing. Group hearing procedures apply only to cases where individual issues of fact are not disputed and where related issues of [~~state and/or federal law, regulation or policy~~] federal and state law, rules and policies or any combination of these are the sole issues being raised. In all group hearings, the regulations governing individual hearings are followed. Each provider is permitted to present his own case or to be represented by his own attorney or other person. If a group hearing is arranged, any provider has the right to withdraw from the group hearing in favor of an individual hearing.

[~~E. **Pre-Hearing Conference:** Upon receipt of a request for hearing, the hearing officer assigned to a case schedules a pre-hearing conference to be held within 30 calendar days of the receipt of the request.~~

~~(1) **Purpose of Conference:** The purposes of the pre-hearing conference include, but are not limited to:~~

~~(a) clarification, formulation and simplification of issues;~~

~~(b) resolution of some or all issues;~~

~~(c) exchange of documents and information;~~

~~(d) review of audit findings;~~

~~(e) reconsideration of a suspension or withholding of payments;~~

~~(f) establishing stipulations of fact to avoid unnecessary introduction of evidence at the hearing;~~

~~(g) identification of witnesses; and~~

~~(h) discussion of other matters that might help dispose of any of the issues.~~

~~(2) **Continuing and/or Rescheduling the Conference:** A pre-hearing conference may be continued or rescheduled with the consent of all parties, after the 30 calendar day time limit.~~

~~(3) **Matters Resolved at Conference:** The hearing officer may request the parties to submit a written summary of all issues resolved at the pre-hearing conference.~~

~~(4) **Matters Left Unresolved:** If all matters in controversy are not resolved at the pre-hearing conference, the hearing officer sets a hearing date within 30 calendar days of the last conference date, or at a later time agreed to by the parties, recognizing the 120 calendar day time constraints.~~

~~(5) **Pre-Hearing Order:** The hearing officer may, at his sole discretion, prepare or ask the parties to prepare a pre-hearing order. The pre-hearing order may contain:~~

~~(a) statements of any contested facts and issues;~~

~~(b) stipulation of matters not in dispute;~~

~~(c) list of witnesses to be called and the subject of their testimony;~~

~~(d) list of exhibits;~~

~~(e) discovery directives; or~~

~~(f) other matters relevant to the issues.~~

~~(6) **Pre-Hearing Memoranda:** The hearing officer or either of the parties may request submission of memoranda on points of law. The hearing officer may approve submission and set any limitations, in his discretion, and decide such points of law in summary judgment.~~

~~F. **Summary of Evidence:** A summary of evidence is a document prepared by HSD staff involved in the action or proposed action, or HSD counsel, that provides preliminary information to the hearing officer concerning the basis of an HSD action. The summary of evidence must be forwarded to the HSD Hearings Bureau within seven calendar days of the receipt of the notice of a hearing request and must contain at least the following information:~~

~~(1) identifying information, including but not limited to the provider's name, telephone and address;~~

~~(2) the action or proposed action being appealed;~~

~~(3) the question or issue that must be decided at the hearing;~~

~~(4) information on which the action or proposed action is based with copies of any determination letters or notices concerning the action; and~~

~~(5) applicable state and federal regulations.~~

~~G. **Availability of Information:** The provider must be provided the information upon which the underlying action was based, HSD must:~~

~~(1) provide, on request, in a timely manner and without charge, any documents in its possession concerning the underlying action, that are not already in the provider's possession, and that are necessary for a provider or his representative to decide whether to request a hearing or to prepare for a hearing;~~

~~(2) allow the provider or his representative to examine all documents to be used at the hearing at a reasonable time before the date of the hearing and during the hearing. Confidential information protected from release, and other documents or records which the provider would not otherwise have an opportunity to challenge or contest, may not be introduced at the hearing or affect the hearing officer's decision; and~~

~~(3) present the provider with a copy of the summary of evidence.~~]

E. **Informal resolution conference:** The parties are encouraged to hold an informal resolution conference before the hearing to discuss the issues involved in the hearing. The informal resolution conference is optional and does not delay or replace the hearing process. Conference participants may include the provider or their personal representative, HSD or other responsible agency representatives, and the selected claims processing contractor. The purpose of the informal resolution conference is to informally review HSD's action and to determine whether the issues can be resolved by mutual agreement. The issues to be decided at the hearing may also be clarified or further defined. Regardless of the outcome of the informal resolution conference, a hearing is still held, unless the provider makes a written withdrawal of the request of the hearing.

F. **Pre-hearing conference:** Upon receipt of a request for hearing, the hearing officer assigned to a case schedules a pre-hearing conference to be held within 30 calendar days of the receipt of the request. A pre-hearing conference is an informal proceeding and may occur telephonically.

(1) **Purpose of conference:** The purposes of the pre-hearing conference include, but are not limited to:

(a) expediting the disposition of the action;

(b) identification, clarification, formulation and simplification of issues;

(c) resolution of some or all issues;

(d) exchange of documents and information;

(e) preparing stipulations of fact to avoid unnecessary introduction of evidence at the hearing;

(f) review of audit findings;

(g) reconsideration of a suspension or withholding of payments;

(h) identifying the number of witnesses; and

(i) facilitating the settlement of the case.

(2) **Scheduling:** A scheduling order shall be entered into, which shall set the due date for the summary of evidence, due date for exhibits, and sets the date for the hearing. The order shall issue as soon as practicable but in any event within 30 days of the request for hearing.

(3) **Continuations and rescheduling:** A pre-hearing conference may be continued or rescheduled with the

consent of all parties, after the 30 calendar days time limit.

(4) **Settlements, stipulations and admissions:** No offer of settlement made in a pre-hearing conference is admissible as evidence at a later hearing. Stipulations and admissions are binding and may be used as evidence at the hearing. Any stipulation, settlement or consent order reached between the parties is written and signed by the hearing officer and the parties or their representatives.

(5) **Timeliness:** The pre-hearing conference will not delay or replace the hearing itself. Pre-hearing conferences may include the provider or their personal representative, HSD or other responsible agency representatives, and the selected claims processing contractor. Subsequent to the conference or in the event that any of the parties to the hearing fail to participate, the scheduled hearing is still held, unless the provider submits a written request for withdrawal.

(6) **Unresolved issues:** If all matters in controversy are not resolved at the pre-hearing conference, the hearing officer sets a hearing date within 30 calendar days of the last conference date, or at a later time agreed to by parties, recognizing the 120 calendar day time constraints.

(7) **Written summaries:** The hearing office may request the parties to submit a written summary of all issues resolved at the pre-hearing conference.

(8) **Pre-hearing order:** The hearing officer may, at his sole discretion, prepare or ask the parties to prepare a pre-hearing order. The pre-hearing order may contain:

(a) statements of any contested facts and issues;

(b) stipulation of matters not in dispute;

(c) list of witnesses to be called and the subject of their testimony;

(d) list of exhibits;

(e) discovery directives; or

(f) other matters relevant to the issues.

(9) **Points of law:** The hearing officer may direct the parties to submit memoranda on points of law to inform the final decision, and may dictate the length and scope of the submissions.

G. **Summary of evidence:** A summary of evidence is a document prepared by HSD staff involved in the action or proposed action or HSD counsel that provides preliminary information to the hearing officer concerning the basis of an HSD action.

(1) The summary will be completed as soon as practicable but in any event within five working days of the hearing and will be forwarded to the HSD hearing officer and all parties involved.

(2) The summary must be prepared and submitted within the time frame even if the informal resolution conference has not been completed.

(3) Failure to provide the summary of evidence may result in its exclusion or a continuance of the hearing at the discretion of the hearing officer pursuant to Subsection D of 8.353.2.13 NMAC, *conducting the hearing.*

(4) MAD staff or other responsible agency representative is responsible for preparation of the summary of evidence and coordination of parties and witnesses when the MAD selected claims processing contractor is party to the fair hearing.

(5) The summary of evidence will contain:

(a) identifying information, including but not limited to the provider's name, telephone and address and the status of any previous or concurrent grievance through the MAD selected claims processing contractor;

(b) the action, proposed action or inaction being appealed;

(c) the issue or issues to be decided at the hearing;

(d) information on which the action or proposed action is based, and facts and findings related to the hearing issues, along with supporting documentation and correspondence; some or all of the involved documentation may be provided by the MAD selected claims processing contractor; and

(e) applicable federal and state law, rules and policies or any combination of these.

H. **Availability of provider evidence:**

(1) The provider or his personal representative shall make any evidence that is planned to be introduced at the hearing available to HSD/hearings bureau at least three days prior to the hearing. The hearings bureau will forward to MAD copies of any evidence. MAD will then make these available to its selected claims processing, contractor if appropriate.

(2) All measures should be taken to ensure that this evidence is received with sufficient time to review before the hearing.

(3) Failure to provide the documentary evidence may result in its exclusion or a continuance of the hearing at the discretion of the hearing officer pursuant to Subsection D of 8.353.2.13 NMAC, *conducting the hearing.*

I. **Availability of information:** HSD must:

(1) provide, on request, in a timely manner and without charge, any documents in its procession concerning the underlying action, that are not already in the provider's possession, and that are necessary for a provider or his personal representative to decide whether to request a hearing or to prepare for a hearing;

(2) allow the provider or his personal representative to examine all documents to be used at the hearing at a reasonable time before the date of the hearing and during the hearing; confidential information protected from release, and other documents or records which the provider would not otherwise have an opportunity to challenge or contest, may not be introduced at the hearing or affect the hearing officer's decision or become part of the hearing record; and

(3) present the provider with a copy of the summary of evidence.

[11-1-96; 8.353.2.11 NMAC - Rn, 8 NMAC 4.MAD.982 & A, 7-1-01; A, 5-1-10]

8.353.2.12 HEARING STANDARDS:

A. **Rights at hearing:** The parties are given an opportunity to:

(1) present their case or have it presented by a representative; bring witnesses to present information relevant to the case; and submit evidence to establish all pertinent facts and circumstances in the case;

(2) advance arguments without undue interference; and

(3) question or contradict any testimony or evidence, including an opportunity to confront and cross-examine opposing witnesses.

B. **Hearing officer:** Hearings are conducted by an impartial official who: 1) does not have any personal stake or involvement in the case; and 2) was not involved in the determination or the action which is being contested; if the hearing officer had any involvement with the action in question, including giving advice or consultation on the points at issue, or is personally related in any relevant degree to the parties, he must disqualify himself as the hearing officer for that case.

(1) **Authority and duties of the hearing officer:** The hearing officer must:

(a) explain how the hearing will be conducted to participants at the start of the hearing, before administering oaths;

(b) administer oaths and affirmations;

(c) request, receive, and make part of the record all evidence considered necessary to decide the issues raised;

(d) regulate the conduct and the course of the hearing and any pre-hearing conference to ensure an orderly hearing;

(e) request, if appropriate, an independent medical assessment or professional evaluation from a source mutually satisfactory to the parties; and

(f) [~~provide~~] produce the hearing report and recommendation for review and final decision.

(2) **Appointment of hearing officer:** The hearing officer is appointed by the HSD hearings bureau chief upon receipt of the request for hearing. All communications are to be addressed to the assigned officer.

C. **Evidence:** Formal rules of evidence and civil procedure do not apply. A free, orderly exchange of relevant information is necessary for the decision-making process. The hearing officer may question any witness in order to clarify testimony. All relevant evidence is admissible subject to the hearing officer's authority to limit repetitive or unduly cumulative evidence and his ability to conduct an orderly hearing. The hearing officer must admit evidence: 1) relevant to those allegations against the provider included in the notice of recovery of overpayment, sanction or other remedy, application denial, or application termination; and 2) which pertains to contested issues set forth in the pre-hearing order[~~; or 3) Which the hearing officer believes, in his opinion, is the sort of evidence upon which responsible persons may reasonably rely in the course of serious affairs~~].

(1) **Confidentiality:** The confidentiality of records is to be maintained. Information which is not [~~available to the provider may not be presented to the hearing officer nor used~~] presented during the hearing in the presence of the provider or provider's representative and HSD representative may not be used by the hearing officer in making the hearing recommendation except as allowed by Subsection E of 8.353.2.13 NMAC, *conducting the hearing*.

(2) **Administrative notice:** The hearing officer may take administrative notice of any matter in which courts of this state may take judicial notice.

(3) **Privilege:** The rules of privilege apply to the extent that they are required to be recognized in civil actions in the district courts of New Mexico.

(4) **Medical issues:** In a case involving medical issues, the parties may submit expert testimony, reports, affidavits or medical records into record as necessary. Admission of this evidence is at the discretion of the hearing officer. All parties to the hearing have the right to examine any documents which may influence the decision.

D. **Burden of proof:** HSD has the burden of proving the basis to support its proposed action by a preponderance of the evidence. HSD must prove allegations of fraud by clear and convincing evidence. In cases involving the imposition of civil money penalties against a nursing facility provider, HSD's conclusion about the nursing facility's level of noncompliance must be upheld unless clearly erroneous.

E. **Record of the hearing:** A hearing is electronically recorded. The recording is placed on file at the hearings bureau and is available to the parties for 60 calendar days following the decision. In addition to the recorded proceedings, the record of the hearing includes any pleadings, documents, or other exhibits admitted into evidence. If a hearing decision is appealed, a written transcript of the hearing is prepared by HSD and a copy of the transcript is supplied to the provider. Either party may request copies of the recording in addition to the transcript.

[11-1-96; 8.353.2.12 NMAC - Rn, 8 NMAC 4.MAD.983 & A, 7-1-01; A, 5-1-10]

8.353.2.13 CONDUCTING THE HEARING: A hearing is conducted in an orderly manner and in an informal atmosphere. The hearing is conducted in person and is not open to the public. The hearing officer has the authority to limit the number of persons in attendance if space or other considerations dictate.

A. **Opening the hearing:** The hearing is opened by the hearing officer. Individuals present must identify themselves for the record. The hearing officer explains his role in the proceedings, and that the final decision on the appeal will be made by the MAD director after review of the proceedings and the hearing officer's recommendation. The order of testimony is described, and the oath is administered to all who will testify at the hearing.

B. **Order of testimony:** The order of testimony at the hearing is as follows:

(1) opening statements of parties or representatives;

(2) presentation of HSD's case; if witnesses are called, the order of examination of each witness is:

(a) examination by HSD representative;

(b) cross examination by the provider or representative; and

(c) further questions or clarification by the hearing officer or, if requested, the HSD representative or the provider or provider representative;

(3) presentation of the provider's case; if witnesses are called, the order of examination of each witness is:

(a) examination by provider or representative;

(b) cross examination by HSD or its representative; and

(c) further questions or clarification by the hearing officer or, if requested, provider or its representative, or HSD;

(4) presentation of rebuttal evidence by HSD and provider, respectively;

(5) the hearing officer may direct further questions to HSD representative, the provider, or any witnesses to clarify inconsistencies or obtain an adequate evidentiary record; and

(6) the hearing officer may ask both parties to summarize and present closing arguments.

C. **Written closing argument:** At the discretion of the hearing officer, the parties may be directed to make closing arguments, or submit written memoranda on points of law.

D. **Continuance:** The hearing officer may continue the hearing upon the request of either party or on his own motion, for admission of additional testimony or evidence. The granting of a continuance is at the discretion of the hearing officer and can only be allowed when the timeliness of a decision is not jeopardized by the continuance or the parties have agreed to an extension of the decision time frame. The reasons for the continuance must be stated for the record. Written notice of the date, time, and place of the continued hearing is sent to the parties if these are not set at the time of the continuance.

E. **Additional evidence:** [~~If the hearing officer needs further documentary evidence, he may close the hearing but keep the record open and direct the parties to submit such further evidence. Each party receives a copy of the documentary evidence being submitted and is allowed an opportunity to respond to the submission, in writing, within ten calendar days of its receipt.~~] If the hearing officer needs additional evidence to further clarify documentary evidence presented during the hearing, he may close the hearing but keep the record open and direct the parties to submit such clarifying evidence. Each party receives a copy of the direction for further evidence and the documentary evidence being submitted and is allowed an opportunity to respond to the submission, in writing, within 10 calendar days of its receipt. The additional evidence and responses become part of the hearing record.

F. **Re-opening a hearing:** The hearing officer, at his discretion, may re-open a hearing when the evidentiary record fails to address an issue that is relevant to resolution of a hearing request. The hearing can only be re-opened if the timeliness of the decision is not jeopardized or the parties have agreed to an extension of the decision time frames. Written notice of the date, time and place of the re-opened hearing is sent to the parties not less than 10 calendar days before the re-opened hearing.

[11-1-96; 8.353.2.13 NMAC - Rn, 8 NMAC 4.MAD.984 & A, 7-1-01; A, 5-1-10]

8.353.2.14 HEARING DECISION: The final decision concerning the hearing is made by the MAD director after review of the record and the hearing officer's report and recommendation.

A. **Decision based on the record:** [~~The MAD Director's decision and the~~] The hearing officer's recommendation must be based on the record created by the hearing. This includes the record of the testimony, all reports, documents, forms, and other appropriate materials[~~,~~] made available at the hearing, provided that both parties were given an opportunity to examine them as part of the hearing [~~process~~] and the additional evidence allowed. See Subsection E of 8.353.2.13 NMAC, *conducting the hearing*.

B. **Hearing officer recommendation:** The hearing officer reviews the record of the hearing and all appropriate regulations, and evaluates the evidence submitted. The hearing officer submits the complete record of the hearing, along with his written recommendation to the MAD director.

(1) Content of recommendation. The hearing officer specifies the reasons for his conclusions, identifies the supporting evidence, references the pertinent [~~Medicaid regulation(s)~~] MAD rules, and responds to the arguments of the parties in a written report and recommendation.

(2) The hearing officer recommends:

(a) in favor of the provider if HSD's action or proposed action is not supported by a preponderance of the evidence available as a result of the hearing; with respect to allegations of fraud, the hearing officer recommends in favor of the provider if the allegation is not supported by clear and convincing evidence;

(b) in favor of HSD, if the preponderance of the evidence available supports the action or proposed action; allegations of fraud must be supported by clear and convincing evidence; or

(c) any other result supported by the record.

C. **Review of recommendation:** The hearing file and recommendation are reviewed by the MAD director or designee to ensure conformity with applicable federal and state law, regulations, and policy.

D. **Final decision:** The hearing officer's recommendation may be adopted or rejected in a final written decision by the MAD director on issues that were the subject of the hearing. The MAD director specifies the reasons for the decision and identifies the regulatory authority and the evidence supporting the decision, including the record created by the hearing, applicable federal and state law, rules and policies or any combination of these. No person who participated in the original action under appeal or in the hearing may participate in arriving at a final decision.

E. **Notice to parties:** The parties receive the written decision, including the effective date of sanctions, terms of sanctions, and amounts of overpayment to be recovered by HSD. When the provider is represented by legal counsel, counsel must receive the decision. The notice of the decision includes an explanation that the parties have exhausted all administrative remedies and may pursue judicial review of the decision. This explanation includes information on time limits, and where and how to pursue judicial review.

[11-1-96; 8.353.2.14 NMAC - Rn, 8 NMAC 4.MAD.985 & A, 7-1-01; A, 5-1-10]

NEW MEXICO DEPARTMENT OF INFORMATION TECHNOLOGY

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 12 INFORMATION TECHNOLOGY
PART 20 INFORMATION SECURITY OPERATION MANAGEMENT

1.12.20.1 ISSUING AGENCY. Department of Information Technology.
[1.12.20.1 NMAC - N/E, 04/14/2010]

1.12.20.2 SCOPE. This rule applies to all executive branch agencies, and any other state entity which utilizes the state information technology (IT) infrastructure, contractors and subcontractors and any other non-state government staff members, and outsourced third parties, who have access to, store, or manage state government information on site at a state agency or off-site, as approved by a state agency.
[1.12.20.2 NMAC - N/E, 04/14/2010]

1.12.20.3 STATUTORY AUTHORITY. NMSA 1978 Section 9-27-6 F (3) and 9-27-6 I (1).
[1.12.20.3 NMAC - N/E, 04/14/2010]

1.12.20.4 DURATION. Permanent.
[1.12.20.4 NMAC - N/E, 04/14/2010]

1.12.20.5 EFFECTIVE DATE. April 14, 2010, unless a later date is cited at the end of a section.
[1.12.20.5 NMAC - N/E, 04/14/2010]

1.12.20.6 OBJECTIVE. The purpose of this rule is to establish security operation management practices for executive branch agencies and any other state entity which utilizes the state information technology (IT) infrastructure in the operation of their information technology (IT) systems and infrastructure/networks. This rule encompasses all systems, automated and manual, for which the state has administrative responsibility, including systems managed or hosted by third parties on behalf of a state agency.
[1.12.20.6 NMAC - N/E, 04/14/2010]

1.12.20.7 DEFINITIONS. Defined terms apply to this rule and all other rules promulgated by the secretary and adopted by the information technology commission.

A. "Act" means the Department of Information Technology Act, NMSA 1978 9-27-1 et seq.

B. "Agency" means an executive branch agency of the state or any other state entity which uses the state IT infrastructure.

C. "Architectural configuration requirement (ACR)" means the technical specifications for information architecture and information technology system purchases for agencies.

D. "CIO" means chief information officer and refers to the secretary of the department as chief information officer of the state or any agency CIO.

E. "Commission" means the information technology commission.

F. "**Department or DoIT**" means the department of information technology.

G. "Exception" means a request, limited in scope and duration, granted by the department allowing an agency an exclusion from compliance with a rule, ACR or guideline.

H. "**Firewall"** means a part of a computer system or network designed to block unauthorized access while permitting authorized communications. It is a device or set of devices which is configured to permit or deny computer based applications based upon a set of rules and other criteria.

I. "Individual" means a natural person, a human being.

J. "**Information owner**" means the individual or individuals held managerially and financially accountable for a dataset and who have legal ownership rights to a dataset even though the dataset may have been collected/collated/disseminated by another party.

K. "Information security officer ("ISO") means a senior-level executive within an organization responsible for establishing and maintaining the enterprise vision, strategy and program to ensure information assets are adequately protected

L. "Information technology ("IT") means computer hardware, software and ancillary products and services including: systems design and analysis, acquisition, storage and conversion of data; computer programming, information storage and retrieval, voice, radio, video and data communications, requisite

systems, simulation and testing, and related interactions between users and information systems.

M. "Information technology project" means the purchase, replacement, development or modification of an IT component or system.

N. "IT asset" means all elements of software and hardware found in an IT environment.

O. "**Malicious code**" is the term used to describe any code in any part of a software system or script intended to cause undesired effects, security breaches or damage to a system. Malicious code describes a broad category of system security terms that includes attack scripts, viruses, worms, Trojan horses, backdoors, and malicious active content.

P. "Network segregation" means controlling the security of networks by dividing them into separate secure networks. Security measures can then be applied to further segregate the network environments.

Q. "**Password**" means a secret series of characters that enables a user to access a file, computer, or program. On multi-user systems, each user must enter his or her password before the computer will respond to commands. The password helps ensure that unauthorized users do not access the computer. In addition, data files and programs may require a password.

R. "Person" means an individual, association, organization, partnership, firm, syndicate, trust, corporation, and every legal entity.

S. "**Portable computing devices or removable media devices**" means, but is not limited to, removable media such as thumb or USB drives, external hard drives, laptop or desktop computers, mobile/cellular phones, smartphones or personal digital assistants (PDA's) owned by or purchased by agency employees, contract personnel, or other non-state user(s).

T. "Privileged accounts" means accounts required for systems to function; they are frequently used by system administrators in their performance of their job duties. These special system privileges are primarily used when major changes to the system are necessary by administrators.

U. "Rule" means any rule promulgated by the department for review and approval by the commission which requires compliance by executive agencies and any other state user of the state IT infrastructure.

V. "Secretary" means the secretary of the department of information technology.

W. "Segregation of security duties" means disseminating the tasks and associated privileges for a specific business process among multiple users to reduce the potential for damage from the actions of one person. IT staff should be organized in a manner that achieves adequate separation of duties in the agency.

X. "State" means New Mexico, or, when the context indicates a jurisdiction other than New Mexico, any state, district, commonwealth, territory, or possession of the United States.

Y. "**State CIO**" means the cabinet secretary of the department of information technology.

Z. "State information architecture" means a logically consistent set of principles, policies and standards that guides the engineering of state government's information technology systems and infrastructure in a way that ensures alignment with state government's business needs.

AA. "State information technology strategic plan" means the information technology planning document for the state that spans a three-year period.

BB. "Virtual private network ("VPN") means a network that uses a public telecommunication infrastructure, such as the internet, to provide remote offices or individual users with secure access to their organization's network. These systems use encryption and other security mechanisms to ensure that only authorized users can access the network and that the data cannot be intercepted.

[1.12.20.7 NMAC - N/E, 04/14/2010]

1.12.20.8 DOCUMENTATION OF SECURITY OPERATIONS:

A. All agency IT technical operations shall have documented security operating instructions, management processes, and formal incident management procedures in place that define roles and responsibilities of individuals who operate or use agency IT technical operations and facilities.

B. Where one agency provides a server, application, or network services to another agency, operational and management responsibilities shall be coordinated by the CIOs of both agencies.

C. All agencies shall develop procedures for conducting background investigations on IT employees or contractors as required by state law, NMSA 1978 9-27-6 C (15) and D.

[1.12.20.8 NMAC - N/E, 04/14/2010]

1.12.20.9 SEGREGATION OF SECURITY DUTIES: Segregation of duties is required to reduce the risk of accidental or deliberate damage to the state or agency IT system through misuse by a person or persons. In small agencies in which separation of duties is difficult to achieve, with the approval of DoIT, the agency shall implement compensatory controls including, but not limited to, actively monitoring its IT operations, audit trails, and by regularly documented management supervision.

[1.12.20.9 NMAC - N/E, 04/14/2010]

1.12.20.10 NETWORK MANAGEMENT: All agencies shall implement a range of network controls to maintain security in its trusted, internal network, and to ensure the protection of connected services and networks. Such controls help prevent unauthorized access and use of the agencies' private networks. The following controls, at minimum, shall be implemented:

A. individuals with operational responsibility for networks shall be separate from those with computer operations responsibility; responsibilities and procedures for remote access shall be established;

B. controls, such as data encryption, shall be implemented to safeguard data integrity and the confidentiality of data passing over public networks (internet);

C. all client-based VPN connections shall have split tunneling disabled; VPN connections to the agency are only permitted from agency managed VPN devices;

D. agencies' networks shall implement private address routing to public addresses when sending over the internet to minimize the exposure of public routable addresses;

E. firewall policies shall be configured to accept only inbound and outbound data traffic which is required based on business needs; all other data traffic should be denied;

F. firewall policies shall take into account the source and destination of the traffic in addition to the content;

G. data traffic with invalid or private addresses shall be default blocked from delivery;

H. proposed modifications to network and security equipment must be requested and approved for implementation through the agency change management procedure;

I. to prevent unauthorized modifications of the firewall configuration, the firewall administrator must review the firewall configuration quarterly;

J. any form of cross-connection, which bypasses the firewall, is strictly prohibited;

K. remote firewall administration must be performed over secure channels (e.g., encrypted network connections using SSH or IPSEC) or console access;

L. details of firewall, and security devices type, software versions, and configuration data will not be disclosed without the permission of the agency CIO;

M. agencies shall define security zones and create logical entities and rules for what comprises permissible data and network traffic between different agency business units; and

N. agencies shall perform network segmentation to control the flow of data between hosts on different segments of the network to provide enhanced security, network performance, and connectivity.
[1.12.20.10 NMAC - N/E, 04/14/2010]

1.12.20.11 PRIVILEGED ACCOUNTS MANAGEMENT: The issuance and use of privileged accounts in agencies shall be restricted and controlled by system administrator management in the agency.

A. Agencies shall develop processes to ensure that if a privilege account is issued, the use of such privileged accounts is monitored by the manager of system administration, or the CIO.

B. Agencies shall promptly investigate any suspected misuse of these accounts by the manager of system administration or DoIT or an agency approved independent contractor.

C. Agencies shall change passwords of system privileged accounts no less than every 60 days.
[1.12.20.11 NMAC - N/E, 04/14/2010]

1.12.20.12 ACCESS CONTROL POLICY: To preserve the integrity, confidentiality, and availability of the system and the data, the agency's information assets shall be protected by logical as well as physical access control mechanisms commensurate with the value and sensitivity of the system, the ease of recovery of the assets and the direness of consequences, legal or otherwise, if the loss or compromise were to occur.

A. Agencies' CIOs are responsible for determining who shall have access to sensitive and protected information resources within the agency. Access privileges shall be granted by the CIO in accordance with the particular user's role and job responsibilities in the agency.

B. Agency enforcement of its access control policy shall be verified during an independent annual risk assessment which shall be performed by DoIT or a DoIT approved contractor.
[1.12.20.12 NMAC - N/E, 04/14/2010]

1.12.20.13 OPERATING SYSTEM ACCESS CONTROL:

A. Access to agency operating system code, commands and services shall be restricted to individuals with specialized skills such as systems programmers, database administrators, network, and security administrators who require access to perform their daily job responsibilities.

(1) Each of these individuals who are given access shall have assigned to them a unique privileged account (user ID).

(2) User IDs shall not disclose nor provide any indication of the user's supervisor, manager, administrator, or privilege level.

B. To allow administrator activities to be tracked to the individual responsible for the work or changes to the system, such as system programmers, database administrators, network administrators and security administrators, a second user ID shall be provided for use when the particular individual performs necessary business transactions unrelated to his or her regular job functions (operating system, database, network and security functions), such as accessing an employee's electronic records.

C. Under some agency specific circumstances, where there is a clear business requirement or system limitation, the use of a shared user ID/password for a group of users or a specific job can be used by obtaining written approval by the agency ISO and agency CIO. In such situations, additional controls shall be implemented by the agency to ensure accountability of the device operating system is maintained.

D. Where technically feasible, default administrator accounts shall be renamed, removed, or disabled. The default passwords for these accounts shall be changed if the account is retained, even if the account is renamed or disabled.
[1.12.20.13 NMAC - N/E, 04/14/2010]

1.12.20.14 APPLICATION ACCESS CONTROL:

A. Access to agency business and systems applications shall be restricted to those individuals who have an identified business need to access those applications or systems in the performance of their job responsibilities.

B. Access to source code for applications and systems shall be restricted; any such access shall be further restricted so that only authorized agency staff and agency supervised contractors can access those applications and systems for which they directly provide support.
[1.12.20.14 NMAC - N/E, 04/14/2010]

1.12.20.15 NETWORK ACCESS CONTROL: Access to an agency's trusted internal network shall require all agency authorized users to authenticate themselves through use of an individually assigned user ID or other agency approved authentication mechanism (e.g., password, token, smart card). Network controls shall be developed and implemented by the agency to ensure that an authorized user can access only those network resources and services necessary to perform their assigned job responsibilities.
[1.12.20.15 NMAC - N/E, 04/14/2010]

1.12.20.16 USER AUTHENTICATION FOR EXTERNAL CONNECTIONS (REMOTE ACCESS CONTROL):

A. To maintain information security, agency must require through published policies and procedures consistent with these rules, that individual accountability shall be maintained at all times, including during remote access.

B. Connection to the agency's networks shall be provided in a secure manner to preserve the integrity of the network, to preserve the data transmitted over that network, and to maintain the availability of the network. Security mechanisms shall be in place to control remote access to agency systems and networks from fixed or mobile locations.

C. Approval for any such remote connection shall first be obtained from the agency management and the agency CIO or ISO. Prior to approval being granted, the CIO shall review the request to determine what needs to be accessed and what method of access is desired and document the risks involved and technical controls required for such connection to take place.

D. Because of the level of risk inherent with remote access, the agency shall require use of a stronger password or another comparable method of protection prior to allowing connection to any agency network. Users shall be informed that all sessions performed remotely are subject to periodic and random monitoring by the agency.

E. When accessing an agency network remotely, identification and authentication of the user shall be performed by the remote access system (VPN) in such a manner as to not disclose the password or other authentication information that could be intercepted and used by a third-party.

F. All remote connections to an agency computer shall be made through managed central points-of-entry or "common access point." Using this type of entry system to access an agency computer provides simplified and cost effective security, maintenance, and support.

G. Vendors which may be provided access to agency computers or software, will be required to have individual accountability. For any agency system (hardware or software) for which there is a default user ID or password that came with the system for use in set up or periodic maintenance of the system , that account shall be disabled until the user ID is needed and requested. Any activity performed while a vendor user ID is in use shall be logged on the remote access system by an external logger. Since such maintenance accounts are

not regularly used, the vendor user ID shall be disabled, the password changed, and other controls shall be implemented by the agency to prevent or monitor unauthorized use of these privileged accounts during periods of inactivity.

H. In special cases wherein servers, storage devices, or other computer equipment has the capability to automatically connect to a vendor in order to report problems or suspected problems, the agency ISO shall review any such connection and process to report certain events back to the system's manufacturer for performance "tuning" to ensure that such connectivity does not compromise the agency or other third-party connections.

I. Agency personnel will only be allowed to work from a remote location upon authorization by the CIO and agency management. Once approved, appropriate arrangements shall be made pursuant to agency written policy and procedures, consistent with this rule, to ensure the work environment at the remote location provides adequate security for transmission of agency data and protection of computing resources. The agency shall identify to the user the appropriate protection mechanisms necessary to protect against theft of agency equipment, unauthorized disclosure of agency information, misuse of agency equipment, unauthorized access to the agency internal network, or facilities by anyone besides the specifically identified and approved user, including family and friends. To ensure the proper security controls are in place and all state security standards are followed, the agency will approve remote access after consideration and documentation of their review following:

(1) the physical security of the remote location, including the use of any portable devices at any location other than an employee's approved work station;

(2) the method of transmitting information given the sensitivity of agency's internal system; and

(3) clearly defined business continuity procedures, including the capability of backing up critical information.

J. The following access system controls shall be implemented. Agency ISO or CIO shall monitor and audit their use:

(1) a definition of the type of information accessed (such as sensitive or confidential information under HIPAA) and the systems and services that the remote user is authorized to access;

(2) procedures and end user system requirements for secure remote access, such as authentication tokens or passwords, shall be documented by the agency including provisions for revocation of authorization and return of equipment to the agency;

(3) access system support and usage procedures provided to the users;

(4) implementation of suitable network boundary controls to prevent unauthorized information exchange between agency networks connected to remote computers and externally connected networks, such as the internet; such measures shall include firewalls and intrusion detection techniques at the remote location; and

(5) physical security of the equipment used for remote access (e.g. such as cable locking device, or locking computer cabinet/secure storage area).

[1.12.20.16 NMAC - N/E, 04/14/2010]

1.12.20.17 DEDICATED NETWORK CONNECTIONS:

A. The internet is inherently insecure, access to the internet is prohibited from any device that is connected (wired or wireless) to any part of the state network unless such access is authorized via exception signed by the state CIO. Such access includes accounts with third-party internet service providers.

B. Any dedicated network connection from the agency network to any external network (either within or outside state government) shall be first approved in writing by the DoIT.

C. Dedicated network connections shall be allowed after the requesting agency has presented its proposed network architecture for approval by the DoIT; DoIT will approve if the proposal has acceptable security controls and procedures in place, and appropriate security measures have been implemented by the agency to protect state network resources. The agency shall perform a risk analysis of the connection to ensure that the connection to the external network shall not compromise the agency's private network. The agency may require that additional controls, such as the establishment of firewalls and a DMZ (demilitarized zone) be implemented between the third-party connection and the agency.

(1) The business case for the dedicated connection is still valid and the dedicated connection is still required.

(2) The security controls are in place (e.g., filters, rules, access control lists) are current and are functioning correctly.

D. The dedicated connection to the agency network shall be accomplished by the agency in a secure manner to preserve the integrity of the agency network, preserve the integrity of the data transmitted over that network, and the availability of the network to the agency. Security requirements for each connection shall be assessed individually and permission to use such connection shall be driven by the specific business needs of the agency. Only agency CIO-approved and qualified staff or agency CIO-approved and qualified third-party shall be permitted to use sniffers or similar technology on the network to monitor operational data and security events.

E. The agency ISO or designee shall every six (6) months review external network connections, audit trails and system logs for abuses and anomalies.

F. Any agency-approved third-party network or workstation connection to an agency network shall:

(1) have written justification in the form of a clear business case provided to the agency CIO for any such network connection;

(2) sign an agency non-disclosure agreement ("NDA"); the non-disclosure agreement shall be signed by a duly appointed representative from the third-party organization who is legally authorized to sign such an agreement;

(3) have equipment in place that conforms to this rule and any other applicable state security standards, complies with the agency's technical architecture, and be approved in writing by the agency CIO; and

(4) use encryption to ensure the confidentiality and integrity of any sensitive or confidential data passing over the external network connection.

[1.12.20.17 NMAC - N/E, 04/14/2010]

1.12.20.18 NETWORK SEGREGATION: When an agency desires to connect its network to any other third party network or its network becomes a segment on a larger network, controls shall be in place to prevent access by users from other connected networks to sensitive areas of the agency's private network. Such connection must first be approved by the agency CIO. Firewalls or other agency approved technologies shall be implemented to control access to secured resources on the trusted agency network. If any such third party network connections are contemplated, the agency CIO must first approve and receive approval from the state CIO.

[1.12.20.18 NMAC - N/E, 04/14/2010]

1.12.20.19 WIRELESS NETWORKS, BLUETOOTH, AND RADIO FREQUENCY IDENTIFICATION:

A. No wireless network or wireless access point shall be installed prior to an agency performed risk assessment and the written approval of the agency CIO.

B. Suitable controls, such as media access control (MAC), address restriction, authentication, and encryption, shall be implemented by the agency to ensure that a wireless network or access point cannot be exploited to disrupt agency information services or to gain unauthorized

access to agency information. When selecting wireless technologies, such as 802.11x or its predecessors or its successor, wireless network security features on the equipment shall be available and implemented at the time of deployment.

C. Access to systems that hold sensitive information or the transmission of protected or sensitive information via a wireless network is not permitted unless and until appropriate and adequate measures have been implemented and approved by the state CIO. Such measures shall include authentication, authorization, encryption, access controls, and logging.

[1.12.20.19 NMAC - N/E, 04/14/2010]

1.12.20.20 USER REGISTRATION AND MANAGEMENT:

A. A user management process shall be established, documented and provided to all IT staff of the agency which outlines and identifies all aspects of user management including the generation, distribution, modification, and deletion of user accounts. This process shall ensure that only authorized individuals have access to agency applications and information and that such users only have access to the resources required to perform authorized services.

B. The user management process shall include the following sub-processes:

(1) how to enroll new users;

(2) how to remove user IDs;

(3) how to grant a "privileged account" to a user;

(4) how to remove "privileged accounts" from a user;

(5) how the agency defines "periodic review" of "privileged accounts";

(6) how the agency defines "periodic review" of users enrolled in any state IT system;

(7) how to assign a new authentication token (e.g. password reset processing); and

(8) how proper enforcement of user management shall be verified during an independent annual risk assessment.

C. The appropriate information owner or other authorized officer shall make requests for the registration and granting of any data access rights.

D. For applications that interact with individuals who are not employees of the agency, including but not limited to employees of other state agencies, approved contractors or approved vendors, the information owner is responsible for ensuring an appropriate user management process is implemented. Standards for the registration of such external users shall be defined by the agency CIO, to include what credentials shall be provided to prove the identity of the user requesting registration, validation of the request, and the scope of access that may be provided.

[1.12.20.20 NMAC - N/E, 04/14/2010]

1.12.20.21 USER PASSWORD MANAGEMENT: Password protocols shall be developed consistent with state standards and implemented to ensure all authorized individuals accessing agency resources follow 1.12.11 NMAC Enterprise Architecture. Such password protocols shall be mandated by automated system controls whenever possible. Password protocols should include, but not be limited to:

A. compliance with 1.12.11.16 NMAC (Security Password rule);

B. prohibiting the storage of passwords in clear text;

C. prohibiting the use of passwords that could be easily guessed or subject to disclosure through a dictionary attack;

D. direction for keeping passwords confidential;

E. prohibiting any and all password sharing;

F. directing users to change passwords at regular intervals;

G. direction for changing temporary passwords at the first logon;

H. enforcing the implementation standard password formats to include a mix of alphabetic, numeric, special, and upper/lower case characters;

I. automated logon processes which must be approved by agency CIO;

J. implementing state password standards and protocols on agency computing resources; and

K. verifying proper enforcement of password management by the agency during an annual independent risk assessment.

[1.12.20.21 NMAC - N/E, 04/14/2010]

1.12.20.22 PROHIBITION OF USE OF PERSONAL COMPUTING DEVICES ON STATE EQUIPMENT OR SYSTEMS:

A. Connecting any computing device not owned by the state of New Mexico to a state network or to any state computing device is prohibited unless authorized in writing by the agency CIO.

B. Installation of any software, executable or other file to any state computing device is prohibited if that software, executable, or other file was downloaded by, is owned by, or was purchased by an employee or contractor with his or her own funds.

C. Installation of downloaded software, executables, or other files to any state computing device is prohibited when downloaded or installed by an employee or contractor for personal use. Downloaded software, executable, or other files include, but are not limited to: SKYPE, music files or other software, and personal photos.

[1.12.20.22 NMAC - N/E, 04/14/2010]

1.12.20.23 VULNERABILITY SCANNING:

A. All state owned computing devices that are, or will be, accessible from outside the agency network shall be scanned by DoIT, DoIT-approved contractor or DoIT-approved agency IT staff for vulnerabilities and weaknesses prior to installation on the state network and following any changes made to the software, operating system, or configuration.

B. For both internal and external systems, scans shall be performed at least annually by DoIT or a DoIT-approved contractor to ensure that no major vulnerabilities have been introduced into the environment. The frequency of additional scans shall be determined by the agency ISO; such determination shall depend upon the criticality and sensitivity of the information on the system.

C. Network vulnerability scanning shall be conducted after any new network software or hardware has been installed and after major configuration changes have been made on critical and essential agency systems.

D. Output from the scans shall be reviewed immediately by the agency IT staff or agency ISO and the results communicated to the agency CIO.

E. Any vulnerability detected as a result of a scan shall be immediately evaluated for risk and actions shall be taken by the agency to mitigate such risk.

F. Tools used to scan for vulnerabilities shall be updated quarterly to ensure that any recently discovered vulnerabilities are included in any scans.

G. If an agency has outsourced a server, application, or network services to another agency, the responsibility for vulnerability scanning shall be coordinated by both agencies.

H. Anyone authorized to perform vulnerability scanning shall have its process defined, documented, tested, and followed at all times to minimize the possibility of disruption of services. Reports of exposures to vulnerabilities shall immediately be forwarded to the agency CIO and agency general counsel.

I. Any vulnerability scanning other than that performed by an agency ISO shall be conducted only by qualified individuals or organizations contracted with or otherwise authorized in writing by the agency's CIO.

[1.12.20.23 NMAC - N/E, 04/14/2010]

1.12.20.24 PENETRATION

AND INTRUSION TESTING: All state computing infrastructures that provide information through a public network, either directly or through another dedicated circuit, and that provide information externally (such as through the world-wide web), shall be subject to annual independent penetration analysis and intrusion testing by qualified, independent third-party contractor approved by DoIT.

A. Penetration analysis and testing shall be used to determine whether:

(1) a user can make an unauthorized change to an application;

(2) a user can access the application and cause it to perform unauthorized tasks;

(3) an unauthorized individual can access, destroy or change any data;

(4) an unauthorized individual may access the application and cause it to take actions unintended by the application designer(s).

B. The output of the penetration testing and intrusion testing shall be reviewed by the agency ISO and any vulnerability detected shall be evaluated for risk and steps taken to mitigate the risk.

C. Any tools used to perform the penetration testing shall be kept updated to ensure that recently discovered vulnerabilities are included in any future testing.

D. Where an agency has outsourced a server, application, or network services to another agency, independent penetration testing shall be coordinated by both agencies.

E. Only an individual or individuals authorized in writing by the agency shall perform penetration testing. The agency ISO shall notify DoIT security staff two business days prior to any penetration test. Any attempt by the agency to perform penetration testing without prior notice to DoIT shall be deemed an unauthorized access attack which shall be reported to the state CIO.

F. All documents pertaining to security penetration tests, security investigations, security data and reports shall be categorized as sensitive and protected from public disclosure. Counsel for the agency shall review and approve such information to ensure compliance with state law.

[1.12.20.24 NMAC - N/E, 04/14/2010]

1.12.20.25 PROTECTION AGAINST MALICIOUS CODE:

A. Software and any other mechanism to prevent intrusions shall be implemented across agency systems to prevent as well as detect the introduction of malicious code. The introduction of malicious code can cause serious damage to networks, workstations, and business data.

B. Agency users shall be informed of the dangers of unauthorized or malicious code.

C. Agency shall implement controls to, first, detect and then prevent any computer virus from being introduced to the agency environment. The types of controls and frequency of updating signature files shall be dependent on the value and sensitivity of the information at risk.

D. For most agency workstations, virus signature files shall be kept updated by the agency system administrator. On host systems or servers, the signature files shall be updated when the virus software vendor's signature files are updated and made available.

[1.12.20.25 NMAC - N/E, 04/14/2010]

1.12.20.26 SYSTEM SECURITY CHECKING:

A. Systems that process or store sensitive or confidential information or services that provide support for critical services shall undergo technical security reviews by agency system administrators to ensure compliance with implementation standards and rules as promulgated by DoIT and check for vulnerabilities to threats discovered subsequent to the review. Technical reviews of systems and services essential to the support of critical agency functions shall be conducted by agency system administrators at least once every year. Random reviews of all systems and services shall be conducted at least once every 24 months.

B. Any deviations from expected or required results, as defined by the agency CIO or ISO which are detected by the technical security review shall be reported to the agency CIO and the agency ISO and shall be corrected immediately. Agency staff shall also be advised of such deviations and agency shall investigate deviations (including the review of system activity log records, if necessary) and provide results of investigation to agency ISO and CIO.

[1.12.20.26 NMAC - N/E, 04/14/2010]

1.12.20.27 PORTABLE DEVICES AND REMOVABLE MEDIA:

A. All state owned portable computing resources and removable media shall be secured to prevent compromise of confidentiality or integrity of information. All portable computing devices and removable media must be protected by a password.

B. No portable and removable media computing devices may store or transmit sensitive information without suitable protective measures approved by the agency CIO.

C. An agency user of portable computing devices such as notebooks, PDAs, laptops, and mobile phones, Smartphones, or any other such then current portable devices, shall obtain the approval from the agency CIO to use and such approval shall be based on satisfactory documentation that the requirements for physical protection, access controls, cryptographic techniques, back-ups, malware and malicious codes protection and the rules associated with connecting portable devices to networks and guidance on the use of these devices in public places have been met.

D. Agency users shall be instructed that when using portable computing devices or removable media in public places, meeting rooms and other unprotected areas outside of the agency's premises, they must use appropriate protection, such as using cryptographic techniques, firewalls, and updated virus protection shall be in place to avoid the unauthorized access to or disclosure of the agency information stored and processed by these devices.

E. Agency users shall be instructed that when such portable devices or removable media are used in public places care shall be taken to avoid the risk of unauthorized persons viewing on-screen sensitive or protected information.

F. Procedures protecting portable devices or removable media containing sensitive information against malicious software shall be developed, implemented, and be kept up-to-date.

G. Portable devices and removable media containing sensitive or protected information shall be attended at all times and shall be secured e.g. do not leave devices unattended in public places.

H. Agency shall provide training to all staff using portable devices and removable media to raise their awareness with respect to risks resulting from the use of portable devices and removable media and what controls are in place by the agency to protect state data and equipment.

I. Employees in the possession of portable devices and removable media shall not check such items in airline luggage systems or leave in unlocked vehicles. Such devices shall remain in the possession of the employee as carry-on luggage unless other arrangements are required by federal or state authorities.

J. In the event that a state-owned portable device or removable media is lost or stolen, it is the responsibility of the user of that device to immediately report the loss following procedures in 1.12.20.34 NMAC.

[1.12.20.27 NMAC - N/E, 04/14/2010]

1.12.20.28 TELEPHONES AND FAX EQUIPMENT:

A. Users are prohibited

from sending documents containing sensitive and confidential information via fax unless allowed by law.

B. Users are prohibited from using fax services to send or receive sensitive and confidential information.

C. Users are prohibited from using third-party fax services to send or receive sensitive and confidential information.

D. Users are prohibited from sending documents containing sensitive and private information via wireless fax devices.

E. Users are prohibited from sending teleconference call-in numbers and pass codes to a pager when sensitive and confidential information shall be discussed during the conference.

F. Teleconference chair people shall confirm that all teleconference participants are authorized participants, if sensitive or confidential information shall be discussed.

[1.12.20.28 NMAC - N/E, 04/14/2010]

1.12.20.29 MODEM USAGE: Connecting any dial-up modem to any computer systems which are also connected to the agency's local area network, to the state network, or to another internal communication network shall first be approved in writing by the agency CIO.

[1.12.20.29 NMAC - N/E, 04/14/2010]

1.12.20.30 PUBLIC WEBSITES CONTENT APPROVAL PROCESS:

A. Sensitive and confidential information shall not be available through a server accessible to a public network without appropriate safeguards in place as approved in writing by the agency CIO in consultation with the agency legal counsel. The agency ISO shall implement safeguards to ensure user authentication, data confidentiality and integrity, access control, data protection and logging mechanisms.

B. The design of any proposed web service shall be first reviewed and approved in writing by the agency CIO in coordination with DoIT to ensure that the security of the web server, protection of agency networks, performance of the site, integrity, and availability considerations are adequately addressed.

C. Agency websites and agency websites hosted outside the state network shall be tested for security vulnerabilities prior to being put into production by DoIT or a DoIT approved contractor.

D. Agency website content shall first be reviewed by the agency information owner and approved by the agency CIO to ensure that the collection and processing of information meets state security and privacy requirements. Such review shall ensure that the information is adequately protected in transit over public and state networks, in storage, and while being processed.

[1.12.20.30 NMAC - N/E, 04/14/2010]

1.12.20.31 BUSINESS CONTINUITY: This section is limited to the IT infrastructure and the data and applications of the local agency environment.

A. A threat and risk assessment shall be performed by the agency to determine the criticality of business systems and the time frame required for recovery in the event of disaster.

B. To minimize interruptions to normal agency business operations and critical agency business applications and to ensure they are protected from the effects of any major failures, each agency business unit or each agency ISO, under the direct guidance of the agency CIO, shall develop plans to meet the IT backup and recovery requirements of the agency and approved by DoIT.

C. Back-ups of critical agency data and software shall be performed daily.

[1.12.20.31 NMAC - N/E, 04/14/2010]

1.12.20.32 LOG-ON BANNER:

A. Log-on banners shall be implemented on all state IT systems to inform all users that agency systems are only for agency business and other approved uses consistent with agency policy, to inform that users their activities may be monitored, and to inform the user that they have no expectation of privacy.

B. Logon banners shall be displayed on computer screens during the authentication process.

[1.12.20.32 NMAC - N/E, 04/14/2010]

1.12.20.33 MONITORING SYSTEM ACCESS AND USE: NO EXPECTATION OF PRIVACY:

A. Consistent with applicable law, the agency reserves the right to monitor, inspect, and search at any time, all agency information systems and equipment used by agency users. Since agency computers and networks are provided for state business purposes, agency staff and any contractor(s) specifically allowed limited use of state systems or equipment shall have no expectation of privacy with regard to the information stored in or sent through the state information systems. Agency management may remove from its information systems any material unauthorized by the agency or by state statute.

B. Systems and applications shall be monitored and analyzed by agency ISO or agency designated IT staff to detect deviation from the state access control policy.

C. Events shall be recorded to provide evidence of misuse and to reconstruct lost or damaged data by the agency system administrator.

D. Audit logs shall be used to record user activities and other security-relevant events.

E. Audit log reports shall be produced to agency CIO and ISO and kept consistent with agency record retention schedules.

[1.12.20.33 NMAC - N/E, 04/14/2010]

1.12.20.34 LOST OR STOLEN IT ASSET: In the event of a lost or stolen IT asset, the user shall:

A. immediately report the incident to the user's supervisor;

B. immediately report the incident to the DoIT help desk at (505)827-2121 or EnterpriseSupportDesk@state.nm.us; a state IT asset incident form must be completed and signed by the agency CIO and returned to the DoIT help desk; the asset incident form can be found on the DoIT security web site at: http://www.doit.state.nm.us/securityoffice.html;

C. if stolen, user must contact the local law enforcement agency to report the theft and receive a crime report case number;

D. upon loss of or in the event of loss of an IT asset by theft, the agency CIO shall work with the DoIT ISO to identify the nature of the data exposed; the loss of confidential or sensitive data shall be reported to the agency executive management for direction.

[1.12.20.34 NMAC - N/E, 04/14/2010]

HISTORY OF 1.12.20 NMAC: [RESERVED]

NEW MEXICO BOARD OF NURSING

This is an amendment to 16.12.2 NMAC, Sections 7 and 10, effective 05-17-10.

16.12.2.7 DEFINITIONS:

A. Definitions beginning with the letter A:

(1) "actually engaged in nursing", employed, engaged, or holding a position which requires licensure or in which the maintenance of licensure as a nurse is expected;

(2) "administration of medications", a process whereby a prescribed drug or biological agent is given to a patient/client by a person licensed or certified by the board to administer medications;

(3) "advanced practice nurse", a master's prepared registered nurse who has

completed a program of study in a specialty area in an accredited nursing program, taken a certification examination in the same area, and been granted a license to practice as an advanced practice nurse with an expanded scope of practice; subcategories include certified nurse practitioner (CNP), certified registered nurse anesthetist (CRNA) and clinical nurse specialist (CNS);

(4) "affidavit", a sworn written statement made to affirm a statement of fact;

(5) "approval", the review and acceptance of a specific activity;

(6) "approval agency", agency, institution or organization with the authorization to award CE credit;

(7) "approved equivalent", a program reviewed and accepted by the board of nursing as meeting necessary regulatory/ statutory requirements;

(8) "assessment", the review and interpretation by a licensed individual of specific data necessary to determine the patient/client's care and treatment needs; (also see data collection);

(9) "assignment of nursing activity", assignment of nursing activity involves appointing or designating another licensed nurse or assistive personnel that is consistent with his/her scope of practice (licensed person) or role description (unlicensed person);

(10) "audit", an examination and verification of CE and practice documents.

B. Definitions beginning with the letter B:

(1) "basic nursing education", the scholastic route to initial licensure;

(2) "board", the New Mexico board of nursing.

C. Definitions beginning with the letter C:

(1) "certificate", a legal document granting permission to an unlicensed person to perform specific functions generally considered the practice of nursing under the direction of a licensed nurse;

(2) "collaboration", practice in conjunction with another health professional;

(3) "competency", competency in nursing is the ability to perform skillfully and proficiently the role of the licensee; the role encompasses essential knowledge, judgment, attitudes, values, skills and abilities, which are varied in range and complexity; competency is a dynamic concept and is based on educational training, preparation, and expertise;

(4) "consultation", to communicate regularly to set goals and objectives and to review and document outcomes;

(5) "contact hours", a unit of measurement to describe an approved, organized learning experience;

(6) "continuing education", planned learning experiences beyond a basic nursing education program; these experiences are designed to promote the development of knowledge, skills and attitudes for the enhancement of nursing practice, thus improving health care to the public;

(7) "continuing education unit (CEU)", ten contact hours of participation in an organized CE experience under responsible sponsorship, capable direction, and qualified instruction.

D. Definitions beginning with the letter D:

(1) "data collection", the process of obtaining information, material, fact or clinical observations which will be used in the assessment process; data collection is not limited to licensed individuals;

(2) "delegation", the transferring to a competent individual the authority to perform a selected nursing task in a selected situation. The nurse retains accountability of the delegation;

(3) "department of public safety", the New Mexico department of public safety or other state's department of public safety;

(4) "direct supervision for graduate permit holders", at a minimum, the person responsible for the direct supervision must be in the facility or on the unit with the graduate permit holder observing, directing and evaluating the performance of the permit holder; the supervisor must not be engaged in other activities that would prevent them from providing direct supervision.

E. Definitions beginning with the letter E:

(1) "educational institution", refers to an institution within the educational system which is organized and accredited for teaching and study (university, high school, post-secondary, approved area vocational institution);

(2) "eligible for graduation", individual who has met all the requirements of an educational program.

F. "Final transcript", an official record of course work and grades, issued by a school, which indicates date of program completion and certificate or degree awarded.

G. "Generally recognized organization", an association of nurses with common goals and concerns expressed through structured by laws. Rules and regulations, and whose recognition derives from both the profession and the public.

H. Definitions H - Reserved

I. Definitions beginning with the letter I:

(1) "inactive list", compilation of those licenses that are in good standing but not current;

(2) "initial license", the process of achieving the legal privilege to practice within a professional category upon the completion of all educational requirements and the successful writing of the national licensing examination;

(3) "institution of higher education", college or university.

J. "Jurisdiction", the licensure or regulatory authoritative body for nursing within a specific geographic area for which there is endorsement in New Mexico.

K. Definitions K - Reserved

L. Definitions beginning with the letter L:

(1) "lapsed status", a license which was not renewed by the expiration date on the license;

(2) "legal guardian", a person lawfully invested with the power, and charged with the duty, of taking care of the person and managing the property and rights of another person who is considered incapable of administering his own affairs;

(3) "letter of authorization", a document issued by the board which authorizes an individual to practice nursing in New Mexico under the auspices of an approved preceptorship for an advanced nursing expanded scope of practice prescriptive authority or for an advanced practice nurse from a compact state;

(4) "license", a legal document granting an individual the privilege and authority to engage in the practice of an occupation/profession;

(5) "licensure by endorsement", the process of achieving the legal privilege to practice within a professional category, in New Mexico, by individuals licensed in other jurisdictions, upon fulfilling all requirements set by this state.

M. Definitions beginning with the letter M:

(1) "medical emergency", a situation resulting from a disaster in which the number of persons requiring nursing care exceeds the availability of New Mexico registered nurses or licensed practical nurses;

(2) "monitoring system", a mechanism whereby programs may be approved for CE hours within a geographic area;

(3) "must", a requirement.

N. Definitions beginning with the letter N:

(1) "national licensing examination", examination for licensure as provided by the national council of state boards of nursing, inc.;

(2) "nationwide criminal history record", information concerning a person's arrests, indictments or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by

criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information of other states;

(3) "nationwide criminal history screening", a criminal history background investigation of an applicant for licensure by examination or endorsement through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant.

O. Definitions O - Reserved

P. Definitions beginning with the letter P:

(1) "permit-to-practice for GCNSs", a document conferring the privilege to practice as a graduate clinical nurse specialist, at a specific place of employment, under the direct supervision of a licensed CNS, CNP or physician; such permits will carry set expiration dates, are not renewable and are not transferable;

(2) "permit-to-practice for GNs and GPNs", a document conferring the privilege to practice nursing at a specific place of employment, under direct supervision of a RN only; such permits will carry set expiration dates, are not renewable or transferable;

(3) "permit-to-practice for GNPs", a document conferring the privilege to practice as a graduate nurse practitioner, at a specific place of employment, under the direct supervision of a physician or a certified nurse practitioner; direct supervision of a physician, licensed CNP or CNS is required for prescription writing; such permit will carry set expiration dates, are not renewable and are not transferable;

(4) "permit-to-practice for GRNAs", a document conferring the privilege to administer anesthesia to any person, as a GRNA, at a specific place of employment, functioning in an interdependent role under the direction of and in collaboration with a licensed physician, osteopathic physician, dentist or podiatrist licensed in New Mexico; such permits will carry set expiration dates, and are not renewable or transferable;

(5) "post-graduate program", any specialized knowledge and skills sought after completion of a basic nursing educational program which does not necessarily lead to an advanced degree;

(6) "preceptor", an individual at or above the level of licensure that an assigned student is seeking, who may serve as a teacher, mentor, role model or supervisor in a clinical setting;

(7) "prescriptive authority", the power to determine the need for drugs, immunizing agents or devices; selecting the remedy and writing a prescription;

(8) "private practice", employment status of an individual nurse who is self-employed.

Q. Definitions Q - Reserved

R. Definitions beginning with the letter R:

(1) "reactivation", the process of making current a license which has been in abeyance as a result of failure to comply with the necessary renewal requirements; this process does not involve board action at any juncture;

(2) "recognized national or state institutions/organizations", institutions and organizations recognized as providers of CE for nurses;

(3) "reinstatement", the process whereby a license which has been subject to revocation or suspension, is returned to its former status by individual board action; this process always involves board action, and requires filing of a form and payment of the reinstatement fee;

(4) "relicensure", the process of renewal, reactivation or reinstatement of a New Mexico nursing license;

(5) "refresher course", a formal program that has both didactic and clinical components designed to prepare a nurse who has been out of practice to re-enter the profession [~~or for a graduate nurse who has not successfully passed the national licensing examination~~].

S. Definitions beginning with the letter S:

(1) "state approved program", a basic nursing education program approved or accredited by a state board of nursing or a nationally recognized nursing education accreditation body;

(2) "shall", mandatory; a requirement;

(3) "should", a suggestion or recommendation; not a requirement;

(4) "sponsor/provider", any person, organization, agency, or institution which organizes, develops, implements, and evaluates a CE activity;

(5) "supervision/direction", initial verification of a person's knowledge and skills in the performance of a specific function or activity followed by periodic observation, direction and evaluation of that person's knowledge and skills as related to the specific functions or activity;

(6) "surrogate", an individual, other than a patient's agent or guardian, authorized under the uniform health-care decisions act to make a health-care decision for the patient.

T. "Temporary license", a nonrenewable, nontransferable document indicating a legal privilege to practice as a RN, LPN, CNP, CNS or CRNA, on a conditional basis for a specific period of time.

U. "Uniform Licensing Act", New Mexico statute which provides procedures to be utilized in disciplinary proceedings.

[1-1-98; 16.12.2.7 NMAC - Rn & A, 16 NMAC 12.2.7, 7-30-01; A, 12-31-01; A, 1-2-04; A, 02-17-06; A, 6-17-08; A, 05-17-10]

16.12.2.10 LICENSURE REQUIREMENTS FOR REGISTERED AND PRACTICAL NURSES: Licensure with the New Mexico board of nursing is mandatory and is the responsibility of the individual nurse, pursuant to the Nursing Practice Act. For states who are a part of the nurse licensure compact, licensure in New Mexico can only be issued to applicants who declare New Mexico as their primary state of residence.

A. Prerequisites for licensure of RNs and LPNs by examination in New Mexico.

(1) Completion of and eligible for graduation from a board approved course of study for the preparation of registered nurses or practical nurses, or an acceptable level of education as determined by the board or graduation from a program which is equivalent to an approved program of nursing in the United States.

(2) RN and PN graduates from non-U.S. nursing programs:

(a) shall have an evaluation of their nursing education credentials sent to the New Mexico board directly from a board recognized educational credentialing agency;

(i) the credentialing agency must be a member of a national credentialing organization and must be monitored by an external committee of credentialing experts and nursing educators;

(ii) the credentialing agency must demonstrate the ability to accurately analyze academic and licensure credentials in terms of U.S. comparability, with course-by-course analysis of nursing academic records;

(iii) the credentialing agency must manage the translation of original documents into English;

(iv) the credentialing agency will inform the board of nursing in the event of fraudulent documents;

(v) the credentials report must state the language of nursing instruction and language of textbooks for nursing education; and

(vi) the credentialing agency must only use original source documents in evaluating nursing education and must compare the foreign education to the U.S. education standards.

(b) Puerto Rico applicant's who are graduates of NLNAC accredited registered nurse program are eligible to sit NCLEX-RN exam.

(c) successful completion of any one of the approved English competency examinations with:

(i) a minimum score of 540 (207 on computerized version) on the test of English as a foreign language (TOEFL), a minimum score of 725 on test of English for international communication (TOEIC) or a minimum score of 6.5 overall with a 7.0 on the spoken portion on the academic version of international English language testing system (IELTS);

(ii) completion of a nursing program given in English in another country;

(iii) a passing score on a nursing licensure examination which is given in English; or

(iv) a certificate from the commission on graduates from foreign nursing schools or other agency which indicates successful completed of TOEFL, TOEIC or IELTS.

(3) Completion of the required board of nursing application for licensure by examination according to instructions and including the required fee.

(4) Completion of NCLEX application for the testing service according to instructions.

(5) Graduates who have compact state addresses or who declare another compact state as their state of residence on their application will have their application for examination, fingerprint cards and appropriate fees returned to them.

B. Nationwide criminal background check. Applicants for initial licensure in New Mexico are subject to a state and national criminal background check at their cost.

(1) Submit two (2) full sets of fingerprints, completed **finger print certificate form**, signed authorization for criminal background check and fee.

(2) Applications for exam or endorsement will not be processed without submission of fingerprints, **finger print certificate form**, **authorization for criminal background check form** and fee.

(3) If the criminal background check reveals a felony or violation of the Nursing Practice Act, the applicant/licensee will be notified to submit copies of legal documents and other related information to the board who will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

C. Complete application for licensure by examination, certification of eligibility for graduation or official transcript, fingerprints and fee must be received by the board office prior to being granted permission to take the national licensing examination (NCLEX). Certification of eligibility for graduation or official transcript, indicating date requirements for graduation from the nursing program were met and certificate or degree awarded or to be awarded, must be received in the board office directly from the registrar's office.

D. Results of the examination shall be reported to the individual applicant within four (4) weeks following the applicant's examination date. Examination results shall be released to the applicant's nursing program, and boards of nursing unless otherwise instructed, in writing, by applicant.

E. An initial license shall be valid for two (2) years.

F. Applications containing fraudulent or misrepresented information could be the basis for denial or revocation of licensure.

G. If the licensure process is not completed, the application becomes null and void one (1) year after date of the application being received at the board.

H. Permits-to-practice may be issued for employment at a specific institution(s) in New Mexico. Permits can be faxed or mailed directly to the New Mexico employing institution(s).

(1) To be eligible for a permit-to-practice, the applicant must:

(a) complete the application process to take the NCLEX within twelve (12) weeks of graduation; the permit to practice for RN and PN graduates of U.S. schools may be issued for a period not to exceed six months from the date of application; permits to practice may not be issued by New Mexico for employment at specific institution(s) in compact states; permits to practice will not be issued for applicants who declare residency in other compact states;

(b) RN and PN graduates from non-U.S. nursing programs may be issued a permit to practice in New Mexico for a period not to exceed six months from the date of application when requirements are met according to Paragraph (2) of Subsection A of 16.12.2.10 NMAC in this section;

(c) assure that prospective New Mexico employer(s) submit a letter of intent to employ to the board office, on agency letterhead, indicating the name of a specific New Mexico employer and name and nursing license number of the RN who is responsible for assuring direct supervision by a registered nurse;

(d) submit fingerprint cards and documents and fee to initiate a state and national criminal background check.

(2) Permits-to-practice cannot be transferred or renewed.

(3) Written notification from employer must be made to the board office in case of lost or stolen permit-to-practice.

(4) Permits-to-practice shall be valid until the examination results are disseminated but shall not exceed the expiration date on the permit.

(a) Applicants who fails the first or any subsequent examination shall not practice nursing until such time as the applicant passes a nursing licensing examination.

(b) Any applicant who is eligible to write the professional examination but elects to write the practical examination on the basis of practical nursing education equivalency and fails the practical examination shall not be granted graduate nurse status when the applicant applies to write the professional examination.

(c) Any applicant who fails to appear for the first examination for which applicant is eligible shall not practice nursing until such time as the applicant passes a licensing examination.

(5) Candidates who were not successful on the *national licensure examination* will receive the results as soon as they are available.

(6) Applicants who hold a graduate permit and do not become licensed prior to expiration date of the permit, may not continue to practice as a graduate nurse or graduate practical nurse.

I. Direct supervision for graduate permit holders:

(1) at a minimum, the RN responsible for direct supervision must be in the facility or on the unit with the graduate;

(2) the RN is responsible for observing, directing and evaluating the performance of the graduate;

(3) the RN supervisor must not be engaged in other activities that would prevent them from providing direct supervision.

J. Applicants who fail the examination may apply to retake the examination a maximum of [~~three~~] four times per year, but must wait [~~90~~] 45 days to retest.

(1) A fee will be charged by the board for all reexaminations.

(2) Applicants for reexamination must meet all NCLEX requirements for retaking the examination.

(3) Applicants who fail the examination [~~three~~] up to four times in one year from date received at the board must [~~complete a recognized refresher course which includes both theory and clinical and then~~] submit a new application for examination, documentation fingerprint cards and appropriate fees.

K. National council licensing examination.

(1) Applicants for licensure as RNs shall be required to pass the NCLEX for RNs.

(2) Applicants for licensure as PNs shall be required to pass the NCLEX for PNs.

(3) Applicants observed giving or receiving unauthorized assistance during the taking of the national licensing examination shall be referred to the board by a sworn complaint.

L. Prerequisites for licensure of registered nurses and licensed practical nurses by endorsement.

(1) Verification DIRECTLY from the licensing authority which shall include:

(a) graduation from an approved nursing program or an acceptable level of education as determined by the board or a nursing program which is equivalent to an approved program of nursing in the United States; and

(b) initial licensure by passing a national licensure examination in English or a state constructed licensure examination prior to October 1986.

(2) Applicants from licensing authorities which do not verify graduation from a nursing education program, must assure that a final transcript is sent to the board of nursing DIRECTLY from the educational institution or custodian of records verifying graduation from an approved nursing program or equivalent, or

(3) Puerto Rico applicants who are graduates of NLNAC accredited registered nurse programs are eligible to sit the NCLEX-RN exam; Canadian applicants who have been endorsed by another state after passing the Canadian nursing exam in English or the NCLEX are eligible for endorsement into NM.

(4) Complete and submit the required application for licensure by endorsement in accordance with all instructions, including the required fee.

(5) Complete and submit two full sets of fingerprints, **finger print certificate form**, the authorization for criminal background check, and the fee in accordance with all instructions found in Subsection B of 16.12.1.10 NMAC.

M. Qualifications for licensure as a RN or PN are pursuant to the Nursing Practice Act.

(1) LPN applicants initially licensed after July 1, 1969 must meet the educational requirements.

(2) Military personnel, licensed as LPNs by successful writing of the national licensing examination prior to July 1, 1977, may be licensed in New Mexico by endorsement providing their DD-214 shows the related civilian occupation to be "LPN."

(3) Continuing education is not required for initial licensure by endorsement. CE requirements must be met at the time of the first renewal.

(4) Disciplinary action taken or pending against a nursing license in another jurisdiction, or a conviction of a felony, may result in denial of a license.

N. A permit-to-practice may be issued to a New Mexico employer(s), for an endorsee who has not declared primary residence in a nurse licensure compact state awaiting results of the national licensing examination or the English equivalent from another country. The following must be submitted to the board:

(1) a completed endorsement application for licensure in accordance with all instructions and fee;

(2) two full sets of fingerprints, fingerprint certification form, the authorization for criminal background check and fee in accordance with all instructions found in Subsection B of 16.12.1.10 NMAC;

(3) written verification must be received DIRECTLY from the licensing authority: (a) that the applicant applied for the licensing examination within twelve (12) weeks of graduation and is eligible for licensure, or (b) that the first licensing examination after completion of nursing education has been applied for or taken;

(4) assure prospective New Mexico employer(s) submits a letter of intent to employ, on agency letterhead, indicating the name of the specific New Mexico employing institution and name and nursing license number of the RN who is responsible for assuring direct supervision by a registered nurse;

(5) meeting all other endorsement requirements;

(6) a permit-to-practice shall be valid from date of issuance until the applicant's examination results and licensure status have been verified by the other state or country, but shall not exceed six (6) months from the date of graduation.

O. A temporary license may be issued to an endorsee upon submission of:

(1) a completed endorsement application and required fee in accordance with all instructions;

(2) two full sets of fingerprints, fingerprint certificate form, the authorization for criminal background check and fee in accordance with all instructions found in Subsection B of 16.12.1.10 NMAC;

(3) the board will issue the temporary license to the applicant;

(4) a temporary license is valid for a period not to exceed six (6) months from the date of application, is non renewable and becomes null and void upon issuance of a current license, expiration, or withdrawal by board action;

(5) applicant is responsible for assuring that all requirements have been met and all documents have been received prior to the expiration date of the temporary license;

(6) the discovery of inaccurate or false information, on the licensure application, may be subject to recall of the temporary license by the board and denial of licensure.

P. An initial license shall be valid for two (2) years.

Q. If the licensure process is not completed, the application becomes null and void one (1) year after date received by the board.

R. In case of a medical emergency (as defined in these rules), nurses currently licensed to practice as a RN or LPN in a jurisdiction of the United States may practice in New Mexico without making application for a New Mexico license for a period not to exceed thirty (30) days.

S. Requirements for relicensure and reactivation. Applicants for relicensure and reactivation must meet CE requirements as stated in these rules, pursuant to the Nursing Practice Act [Section 61-3-24 NMSA 1978].

(1) Licensed nurses shall be required to complete the renewal process by the end of their renewal month every two (2) years.

(2) A renewal notice shall be mailed to the licensee at least six (6) weeks prior to the end of the renewal month.

(a) Renewal of license may be accepted no more than sixty (60) days prior to the expiration date of the license.

(b) Failure to receive notice renewal shall not relieve the licensee of the responsibility of renewing the license by the expiration date.

(c) If the license is not renewed by the end of the renewal month, licensee does not hold a valid license and shall not practice nursing in New Mexico until the lapsed licensed has been reactivated.

(d) A reactivation fee will be charged when license has lapsed.

(e) **Exception**: if renewing, nurses who are mobilized for active duty are not required to renew their license while on active duty, other than training, during a military action. A copy of the mobilization orders must be submitted to the board office prior to expiration of the license. The license extension shall end one month after deployment is concluded. No reactivation fee will be charged when the license is renewed.

(3) Thirty (30) hours of approved CE must be accrued within the 24 months immediately preceding expiration of license.

(a) Certified nurse practitioners must complete a total of 50 hours of approved CE each renewal.

(b) Certified RN anesthetists must submit a copy of the recertification card issued by AANA council on recertification for renewal of the CRNA license.

(c) Clinical nurse specialist must complete a total of 50 hours of approved

continuing education each renewal.

(d) Exception: if renewing, nurses mobilized for military action are not required to meet the CE requirements while on active duty, other than training, during a military action. A copy of the mobilization order must be submitted along with the renewal application.

(4) Individuals who reside out-of-state who do not hold primary residence in a nurse licensure compact state, but wish to maintain a current, valid New Mexico license, must meet the same requirements for licensure as licensees residing within the state who have declare New Mexico as their primary residence.

(5) Penalty: failure of licensee to meet the CE requirement for licensure shall result in the license not being renewed, reinstated, or reactivated. When the CE requirement has been met, an application for licensure may be submitted for consideration.

(6) Licenses can be verified by phone verification or on the board website.

(7) Individuals who are reactivating a license which has been lapsed for four or more years must complete a refresher course that includes both a didactic and clinical component designed to prepare a nurse who has been out of practice to re enter into practice.

(a) Renewal application, fingerprint cards and appropriate fees must be sent in with reactivation of a lapsed license.

(b) A temporary permit will be issued not to exceed six months to allow the individual to complete the refresher course clinical component. If documentation is not received by the board verifying successful completion of the refresher course prior to the temporary license expiration date, the individual will not be allowed to practice nursing.

(c) Advanced practice nurses who are reactivating a advanced practice license which has been lapsed for four or more years must also complete a refresher course that is reflective of their specific advanced practice knowledge, skills and expertise. A temporary permit will be issued not to exceed six months.

T. Requirements for name-address change:

(1) Address change: Immediate notification of address change **must be made**, to the board office.

(2) Name change: Nurse must use name as it appears on current license, name may be changed when license is renewed.

(a) Submit a copy of the legal document required for name change (ONLY recorded marriage certificate, divorce decree or court order accepted).

(b) Remit the required fee.

U. Reactivation/reinstatement of a lapsed license must meet the requirements for relicensure pursuant to the Nursing Practice Act and these rules. A reactivated or reinstated license shall be valid for two (2) years.

V. Inactive status. Licensee may request her/his license be placed on inactive status during the renewal cycle only; however, the licensee may not function in a nursing capacity as a New Mexico licensed nurse until the license is reactivated.

[1-1-98; 16.12.2.10 NMAC - Rn & A, 16 NMAC 12.2.10, 7-30-01; A, 12-31-01; A, 04-01-02; A, 1-2-04; A, 6-01-04; A, 02-17-06; A, 6-17-08; A, 05-17-10]

NEW MEXICO BOARD OF PHARMACY

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 19 PHARMACISTS
PART 33 TELE-PHARMACY AND REMOTE DISPENSING

16.19.33.1 ISSUING AGENCY: Regulation and Licensing Department - Board of Pharmacy.
[16.19.33.1 NMAC - N, 05-14-10]

16.19.33.2 SCOPE: This section applies to hub pharmacies and remote tele-pharmacies. Both the hub pharmacy and all remote tele-pharmacies must be located within New Mexico. The remote tele-pharmacy must be greater than 25 miles from an existing community pharmacy to qualify under these rules.
[16.19.33.2 NMAC - N, 05-14-10]

16.19.33.3 STATUTORY AUTHORITY: Section 61-11-6.A.(6) NMSA 1978 requires that the board of pharmacy provide for the licensing of retail pharmacies and nonresident pharmacies and for the inspection of their facilities and activities. Section 61-11-6.A.(1) NMSA 1978 requires the board of pharmacy to adopt, regularly review and revise or repeal rules and regulations necessary to carry out the provisions of the Pharmacy Act.
[16.19.33.3 NMAC - N, 05-14-10]

16.19.33.4 DURATION: Permanent.
[16.19.33.4 NMAC - N, 05-14-10]

16.19.33.5 EFFECTIVE DATE: May 14, 2010, unless a different date is cited at the end of a section.
[16.19.33.5 NMAC - N, 05-14-10]

16.19.33.6 OBJECTIVE: The objective of Part 33 of Chapter 19 is to ensure the safe and competent delivery of quality pharmaceutical products and the provision of pharmaceutical care to the public by establishing standards for the operation of remote dispensing sites and tele-pharmacy, including but not limited to minimum space requirements and standards for equipment, accessories, personnel, dispensing and labeling.
[16.19.33.6 NMAC - N, 05-14-10]

16.19.33.7 DEFINITIONS:

A. "Average number of prescriptions filled per day (ANPFD)" means the total number of prescriptions filled during a calendar month divided by the total number of days open that month.

B. "Electronic link" means a real time, continuous computer video and audio link between the hub pharmacy and the remote tele-pharmacy during all hours of operation and in compliance with Paragraph (4) of Subsection A of 16.19.33.9 NMAC.

C. "Continuous video supervision" means a constant live video link with not less that four camera views which allow for real time live monitoring of the remote tele-pharmacy remote dispensing site which is recorded for a minimum of one hundred-eighty (180) days.

D. "Patient-pharmacist audio visual link" means a real time audio visual link from the private patient counseling area of the remote tele-pharmacy to the pharmacist at the hub pharmacy.

E. "Hub pharmacy" means a New Mexico licensed pharmacy operating under the direct control of a pharmacist from which computer-aided pharmacist supervision of a remote tele-pharmacy occurs.

F. "Hub pharmacist" means a New Mexico registered pharmacist who oversees the day to day operations of a remote tele-pharmacy via an electronic link that includes provisions for visual observations and inspection of the inside of the pharmacy and all prescription orders prior to dispensing. This oversight is to include visual inspection of and patient consultation for any prescription order dispensed from the remote tele-pharmacy.

G. "Pharmacist-in-charge" means the pharmacist for the hub pharmacy from which the hub pharmacist oversees the day to day operation of a remote tele-pharmacy and who shall comply with 16.19.6.9 NMAC.

H. "Pharmacist site visits" defines how often a pharmacist must physically visit the remote tele-pharmacy:

(1) at least once a month when the ANPFD is 1 to 50;

(2) at least once every two weeks when the ANPFD is 51 to 100 per day;

(3) at least once per week when the ANPFD is 101 to 150;

(4) at least twice per week when

the ANPFD is 151 to 200;

(5) a pharmacist is required on site full time during normal operating hours if the ANPFD exceeds 200.

I. "Remote dispensing site" means a pharmacy location primarily staffed by technicians and remote dispensing technology "electric link" and continuous video supervision with required supervision and in person visits from the hub pharmacy pharmacist.

J. "Remote tele-pharmacy" means a licensed pharmacy located in the state of New Mexico staffed by a remote tele-pharmacy technician who practices under the direct, computer aided and supervision of a hub pharmacist working from the hub pharmacy by electronic link during all hours of operation.

K. "Remote tele-pharmacy technician" means a New Mexico registered pharmacy technician employed by the hub pharmacy, with a minimum of two-thousand hours of experience working as a certified registered pharmacy technician who under the computer aided supervision of an off-site pharmacist, handles the day to day operation of a remote tele-pharmacy, including the preparation and dispensing of prescription drugs.

L. "Practice of tele-pharmacy" means the provision of pharmacist care by registered pharmacies and pharmacists through the use of telecommunications or other technologies to patients or their agents at a remote site.

[16.19.33.7 NMAC - N, 05-14-10]

16.19.33.8 PURPOSE: The board of pharmacy is responsible for maintaining, continuing and enhancing the development of the education and professional role of the pharmacist for the protection of the health, welfare and safety of the citizens of New Mexico. New Mexico is facing a pharmacy services accessibility problem due to the closing of pharmacies and the lack of registered pharmacists. In order to maintain or make pharmacy services available in communities that have no licensed pharmacy or are in jeopardy of losing their licensed pharmacy, rules are necessary to permit remote tele-pharmacy services and remote dispensing.

[16.19.33.8 NMAC - N, 05-14-10]

16.19.33.9 OPERATIONS:

A. A remote tele-pharmacy shall comply with all standards of 16.19.6.8 NMAC governing the procedure for obtaining a license to operate a pharmacy in New Mexico:

(1) The license holder of the hub pharmacy must apply for a license to operate a remote tele-pharmacy. A remote tele-pharmacy license is established for the purpose of conducting a remote tele-pharmacy. The license is issued to a remote tele-pharmacy connected to a hub pharmacy via an electronic link. The initial licensure fee and subsequent license renewal fee are the same as those for retail pharmacies, as required by Subsection E of 16.19.12.13 NMAC.

(2) A remote tele-pharmacy that operates under different ownership than the hub pharmacy to which it is attached; shall have a written contractual agreement outlining the responsibilities of each pharmacy. This written agreement shall be submitted with the initial licensure application for a remote tele-pharmacy. Any subsequent changes to that contractual agreement shall be submitted to the boards executive director for approval. The applicant must provide sufficient evidence that the proposed location is in an area of the state lacking access to a retail pharmacy; the board will utilize the evidence supplied by the applicant and from other sources when making a determination that sufficient evidence exists to approve an application for a remote tele-pharmacy.

(3) A remote tele-pharmacy shall comply with all the applicable requirements for a pharmacy as contained in 16.19.6 NMAC.

(4) A remote tele-pharmacy shall be connected to a hub pharmacy via an electronic link. All links must be fully operational during all hours of operation of the remote tele-pharmacy. If the link malfunctions, the remote tele-pharmacy must be closed unless a pharmacist is physically present at the remote tele-pharmacy site.

(a) Video equipment must be capable of providing an adequate number of simultaneous views of the pharmacy operation at the remote tele-pharmacy.

(b) The video equipment at the remote tele-pharmacy site must be capable of resolution sufficient to allow for pharmacist identification of medication dosage forms and the reading of bottle labels via video camera.

(c) The video equipment at the remote tele-pharmacy site must be capable of recording and maintaining at least one hundred-eighty (180) days of video surveillance of the remote tele-pharmacy site and operations for future review.

(d) Only a remote tele-pharmacy technician designated for that site or a pharmacist who is physically present at the remote tele-pharmacy may access a remote tele-pharmacy site, linked to a hub pharmacy via an electronic link.

(e) The remote tele-pharmacy may only remain open as long as the designated pharmacy technician is present in the remote tele-pharmacy and the hub pharmacist is present at the hub pharmacy or at the remote site.

(f) The name of each certified pharmacy technician that works at a remote tele-pharmacy shall be recorded with the New Mexico board of pharmacy.

(5) The pharmacist in charge of the hub pharmacy shall produce a policy and procedure manual for the safe and effective operation of the remote tele-pharmacy and the oversight by the hub pharmacy. This manual shall be available for board inspection in both the remote tele-pharmacy and the hub pharmacy. The policy and procedure manual shall be reviewed by the pharmacist-in-charge annually and revised if necessary to promote improvements in safety and service at the remote tele-pharmacy. The annual review and any changes to the manual shall be documented.

(6) The pharmacist-in-charge is responsible for an ongoing review of incident reports and outcomes, with appropriate corrective action taken.

(7) The pharmacist employed by the hub pharmacy must visit and complete inspections of the remote tele-pharmacy according to the visitation requirements of Subsection H of 16.19.33.8 NMAC. A list of inspection criteria shall be included in the policy and procedure manual for the remote tele-pharmacy. The pharmacist's inspection shall include a determination of the average number of prescriptions filled per day. A copy of the inspection report shall be reviewed and signed by the pharmacist-in-charge of the hub pharmacy and a copy of the inspection report shall be maintained at both the remote tele-pharmacy and at the hub pharmacy for the board of pharmacy inspection.

(8) The number of pharmacy technicians that a hub pharmacist shall oversee shall be limited according to 16.19.22.10 NMAC. Any pharmacy technicians on duty at the hub pharmacy site shall be taken into account along with any remote tele-pharmacy technicians working at remote tele-pharmacy sites, when computing the ratio of pharmacists to pharmacy technicians. Application for an increase in the ration of pharmacy technicians to pharmacists may be made in accordance with Subsection B of 16.19.22.10 NMAC.

(9) A remote tele-pharmacy may have a dangerous drug inventory. Any controlled substances shall be kept at the remote site in accordance with 16.19.20 NMAC.

(a) If controlled substances are kept, the remote tele-pharmacy shall be registered with the drug enforcement administration and obtain a DEA number.

(b) If controlled substances are kept, the remote tele-pharmacy shall have a valid New Mexico controlled substance registration as required in 16.19.20 NMAC.

(c) All controlled substances kept in inventory by the remote tele-pharmacy shall be listed on a perpetual inventory log,

which shall be updated upon the dispensing of each controlled substance prescription or other disposition.

(d) The pharmacist shall perform monthly audits of all controlled substances during regular inspection visits to the remote tele-pharmacy.

(10) Prescriptions may be received, entered and filled or re-filled by the hub pharmacy and sent to the remote tele-pharmacy for distribution to the patient during hours when the technician is present in the remote tele-pharmacy. A pharmacist at the hub pharmacy must approve each prescription before it leaves the remote tele-pharmacy site.

(a) The pharmacist's initials and the technician's initials shall be recorded.

(b) The pharmacist shall compare the stock bottle, drug dispensed and drug strength. The entire prescription label must be checked for accuracy. All prescriptions distributed by the remote-tele-pharmacy must have the label affixed to the prescription container prior to being inspected by the pharmacist via electronic link.

(11) Patient counseling shall be done by a pharmacist via an electronic link. The pharmacist shall counsel the patient or the patient's agent on all new prescriptions and refills. All counseling, according to Subsection E of 16.19.4.16 NMAC, remains the responsibility of the pharmacist at the hub pharmacy via an electronic link.

[16.19.33.9 NMAC - N, 05-14-10]

HISTORY OF 16.19.33 NMAC: [RESERVED]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.4 NMAC, Section 17, effective 05-14-10.

16.19.4.17 PHARMACIST CLINICIAN:

A. Purpose: The purpose of these regulations is to implement the Pharmacist Prescriptive Authority Act, Sections 61-11B-1 through 61-11B-3 NMSA 1978 by providing minimum standards, terms and conditions for the certification, registration, practice, and supervision of pharmacist clinicians. These regulations are adopted pursuant to Section 61-11B-3 of the Pharmacist Prescriptive Authority Act.

B. Initial certification and registrants:

(1) The board may certify and register a pharmacist as a pharmacist clinician upon completion of an application for certification and satisfaction of the requirements set forth in these regulations.

(2) A pharmacist who applies for certification and registration as a pharmacist clinician shall complete application forms as required by the board and shall pay a fee. The fee shall be set by the board to defray the cost of processing the application, which fee is not returnable.

(3) To obtain initial certification and registration as a pharmacist clinician, she/he must submit the following:

(a) proof of completion of sixty (60) hour board approved physical assessment course, followed by a 150 hour, 300 patient contact preceptorship supervised by a physician or other practitioner with prescriptive authority, with hours counted only during direct patient interactions;

(b) the applicant will submit a log of patient encounters as part of the application;

(c) patient encounters must be[~~initialed~~] **initiated** and completed within 2 years of the application.

(4) The board shall register each pharmacist certified as a pharmacist clinician.

(5) Upon certification and registration by the board, the name and address of the pharmacist clinician, (name of the supervising physician if applicable), and other pertinent information shall be enrolled by the board on a roster of pharmacist clinicians.

C. Biennial renewal of registration:

(1) Renewal applications shall be submitted prior to the license expiration.

(2) Applications for renewal must include:

(a) documentation of continuing education hours, including proof of completion of twenty (20) hours of American council of pharmaceutical education approved (ACPE) or category I of the American medical association approved (AMA), (live continuing education meeting, seminar, workshop, symposium), beyond the required hours in 16.19.4.10 NMAC (as amended), as required by the board; and

(b) a current protocol of collaborative practice signed by the supervising physician (if prescriptive authority is sought); and

(c) a copy of the pharmacist clinicians registration with the supervising physicians board (if prescriptive authority is sought); and

(d) other additional information as requested by the board.

D. Prescriptive authority, guidelines or protocol:

(1) Only a registered pharmacist clinician with current protocols, registered with the New Mexico medical board or the New Mexico board of osteopathic medical examiners, may exercise prescriptive authority.

(2) A pharmacist clinician seeking to exercise prescriptive authority shall submit an application to the board. The application must include the supervising physicians' name and current medical license, protocol of collaborative practice and other information requested by the board. A pharmacist may submit the application with the initial application for certification or as a separate application after becoming certified and registered as a pharmacist clinician.

(3) The protocol will be established and approved by the supervising physician as set forth in these regulations and will be kept on file at each practice site of the pharmacist clinician and with the board.

(4) The protocol must include:

(a) name of the physician(s) authorized to prescribe dangerous drugs and name of the pharmacist clinician;

(b) statement of the types of prescriptive authority decisions the pharmacist clinician is authorized to make, including, but not limited to:

(i) types of diseases, dangerous drugs or dangerous drug categories involved and the type of prescriptive authority authorized in each case;

(ii) procedures, decision criteria or plan the pharmacist clinician is to follow when exercising prescriptive authority;

(c) activities to be followed by the pharmacist clinician while exercising prescriptive authority, including documentation of feedback to the authorizing physician concerning specific decisions made; documentation may be made on the prescriptive record, patient profile, patient medical chart or in a separate log book;

(d) description of appropriate mechanisms for consulting with the supervising physician, including a quality assurance program for review of medical services provided by the pharmacist clinician, (this quality assurance program will be available for board review); and

(e) description of the scope of practice of the pharmacist clinician.

E. Scope of practice:

(1) A pharmacist clinician shall perform only those services that are delineated in the protocol and are within the scope of practice of the supervising physician and/or alternate supervising physician(s).

(2) A pharmacist clinician may practice in a health care institution within the policies of that institution.

(3) A pharmacist clinician may prescribe controlled substances provided that the pharmacist clinician (i) has obtained a New Mexico controlled substances registration and a drug enforcement agency registration, and (ii) prescribes controlled substances within the parameters of written guidelines or protocols established under

these regulations and Section 3, A. of the Pharmacist Prescriptive Authority Act.

(4) The board may, in its discretion after investigation and evaluation, place limitations on the tasks a pharmacist clinician may perform under the authority and direction of a supervising physician and/or alternate supervising physician(s).

F. Collaborative professional relationship between pharmacist clinicians and supervising physician(s):

(1) The direction and supervision of pharmacist clinicians may be rendered by approved supervising physician/designated alternate supervising physician(s).

(2) This direction may be done by written protocol or by oral consultation. It is the responsibility of the supervising physician to assure that the appropriate directions are given and understood.

(3) The pharmacist clinician must have prompt access to consultation with the physician for advice and direction.

(4) Upon any change in supervising physician between registration renewals, a pharmacist clinician shall submit to the board, within ten (10) working days, the new supervising physician's name, current medical license, and protocol; notification to and completion of requirements for the supervising physicians' board shall be completed per that boards requirements. This notice requirement does not apply to an alternate supervising physician who is designated to cover during the absence of the supervising physician.

G. Complaints and appeals:

(1) The chair of the board will appoint two (2) members of the board, and the president of the supervising physician respective board will appoint (2) members of the respective board to the oversight committee; the oversight committee will review complaints concerning the pharmacist clinician practice; the oversight committee will make a report that may include non-binding recommendations to both the board and respective board(s) regarding disciplinary action. Each board can accept or reject the recommendations.

(2) Any applicant for certification or any pharmacist clinician may appeal a decision of the board in accordance with the provisions of the Uniform Licensing Act, Sections 61-1-1 to 61-1-33 NMSA 1978.

[03-14-98; 16.19.4.17 NMAC - Rn, 16 NMAC 19.4.17, 03-30-02; 16.19.4.17 NMAC - Rn, 16.19.4.18 NMAC, 12-15-02; A, 09-30-03; A, 01-31-07; A, 05-14-10]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.6 NMAC, Sections 10, 11, 15, and 22, effective 05-14-10.

16.19.6.10 MINIMUM STANDARDS:

A. The restricted area to be occupied by the prescription department shall be an undivided area of not less than 240 square feet. The floor area shall extend the full length of the prescription compounding counter. This area shall provide for the compounding and dispensing and storage of all dangerous or restricted drugs, pharmaceuticals, or chemicals under proper condition of sanitation, temperature, light, ventilation, segregation and security. No space in this area shall provide for an office, auxiliary store room or public restroom(s).

(1) A private restroom, for exclusive use by the pharmacy staff, may be attached to the restricted area. This restroom does not count as square footage for the restricted area.

(2) An office for the exclusive use by the pharmacy may be attached to the restricted area. No general store accounting functions may be performed in this office. This area will not be considered as square footage for the restricted area.

(3) An auxiliary storage area for the exclusive use of the pharmacy may be attached to the restricted area. No items may be stored in this area that are not directly related to the operations performed in the restricted area. This area will not be considered as square footage for the restricted area.

(4) Each pharmacy shall provide facilities whereby a pharmacist may professionally counsel a patient or a patients' agent and protect the right to privacy and confidentiality.

B. An exception to the minimum space footage requirement may be considered by the board on an individual basis. The board may consider such factors as:

(1) Rural area location with small population.

(2) No pharmacy within the same geographical area.

(3) No prescription area of less than 120 square feet will be acceptable.

(4) All special waivers will be subject to review annually for reconsideration.

C. The prescription compounding counter must provide a minimum of 16 square feet of unobstructed compounding and dispensing space for one pharmacist and a minimum of 24 square feet for two or more pharmacists when on duty concurrently. **The counter shall be of adequate height of at least 36 inches, if necessary, five-percent (5%) or at least one work station will comply with the American with Disabilities Act.**

D. The restricted floor area shall be unobstructed for a minimum width of thirty inches from the prescription compounding center.

E. The pharmacy restricted area shall be separated from the merchandising area by a barrier of sufficient height and depth to render the dangerous drugs within the pharmacy inaccessible to the reach of any unauthorized person. All windows, doors, and gates to the restricted area shall be equipped with secure locks. The restricted area shall be locked in the absence of a pharmacist on the premises.

F. The restricted area shall contain an adequate sink with hot and cold water.

G. The restricted area shall contain a refrigerator capable of maintaining the adequate temperature.

H. The restricted area of a retail pharmacy established in conjunction with any other business other than a retail drug store, shall be separated from the merchandising area of the other business by a permanent barrier or partition from floor to roof with entry doors that may be securely locked when a pharmacist is not on duty.

[16.19.6.10 NMAC - Rp, 16 NMAC 19.6.10, 03-30-02; A, 05-14-10]

16.19.6.11 MINIMUM EQUIPMENT AND ACCESSORY STANDARDS:

A. The pharmacy shall have the necessary equipment for the safe and appropriate storage, compounding, packaging, labeling, dispensing and preparations of drugs and parenteral products appropriate to the scope of pharmaceutical services provided. The following items shall be in the pharmacy:

(1) an updated reference source, appropriate to each practice site, either electronic or paper version;

(2) one copy of the most recently published New Mexico pharmacy laws, rules and regulations and available revisions, either electronic or paper version.

B. PARENTERAL PHARMACEUTICALS

(1) Purpose: To ensure that the citizens of New Mexico receive routine safe and competent delivery of parenteral products and nutritional support throughout the state. To establish guidelines for licensure and inspection of such facilities by the state board of pharmacy.

(2) Definitions

(a) "Parenteral products pharmacy" is a retail pharmacy which

prepares and distributes prescriptions for sterile products intended for parenteral administration to patients either at home or in or out of an institution licensed by the state.

(b) "Parenteral product" means any preparation administered by injection through one or more layers of skin tissue.

(c) "Sterile" means a preparation that has undergone a valid sterilization process and is devoid of all living microorganisms, packaged in such a way to ensure the retention of this characteristic.

(d) "Preparation" means a sterile product which has been subjected to manipulation by a pharmacist under aseptic conditions to render the product suitable for administration.

(e) "Aseptic conditions" means a cabinet or facility capable of obtaining ISO class 5 clean air as defined by the federal standards 209E and which is certified by a testing agency at least every six months.

(f) "Aseptic technique" means proper manipulation of articles within a ISO class 5 clean air room or station to maintain sterility.

(g) "Disinfectant" means a chemical compound used to kill and or control microbial growth within a ISO class 5 area or its surroundings and is approved for such use by the environmental protection agency.

(h) "Antimicrobial soap" means soap containing an active ingredient that is active both in vitro and vivo against skin microorganisms.

(i) "Surgical hand scrub" means an antimicrobial containing preparation which significantly decreases the number of microorganisms on intact skin.

(j) "SOP" means standard operating procedures. These are written standards for performance for tasks and operations within a facility.

(k) "Quality control" means procedures performed on preparations to assess their sterility and/or freedom from other contamination.

(l) "Quality assurance" means the procedures involved to maintain standards of goods and services.

(m) "ISO class 5 environment" means having less than 100 particles 0.5 microns or larger per cubic foot.

(n) "ISO class 8 environment" means having less than 100,000 particles 0.5 microns or larger per cubic foot.

(o) "Critical area" means any area in the controlled area where products or containers are exposed to the environment.

(p) "Process validation" means documented evidence providing a high degree of assurance that a specific process will consistently produce a product meeting its predetermined specifications and quality attributes.

(q) "Positive pressure controlled area" means the clean room is to have a positive pressure differential relative to the adjacent pharmacy.

(r) "Barrier isolator" is an enclosed containment device which provides a controlled ISO class 5 environment. The device has four components; the stainless steel shell, HEPA filtration of entering and exiting air flows, glove ports for people interaction and an air lock for moving products into and out of the controlled environment.

(s) "Plan of care" means an individualized care plan for each patient receiving parenteral products in a home setting to include the following:

(i) a description of actual or potential drug therapy problems and their proposed solutions;

(ii) a description of desired outcomes of drug therapy provided;

(iii) a proposal for patient education and counseling; and

(iv) a plan specifying proactive objective and subjective monitoring (e.g. vital signs, laboratory test, physical findings, patient response, toxicity, adverse reactions, and non compliance) and the frequency with which monitoring is to occur.

(t) USP/NF standards means USP/NF Chapter 797 titled "pharmacy compounding - sterile products".

(u) "Cytotoxic drugs" shall be defined in the most current American hospital formulary service (AHFS).

(3) Pharmacist-in-charge: In order to obtain a license, all parenteral product pharmacies must designate a pharmacist in charge of operations who is:

(a) licensed to practice pharmacy in the state of New Mexico;

(b) responsible for the development, implementation and continuing review of written SOP's consistent with USP/NF standards which are used by the operation in their daily operation;

(c) pharmacist on staff who is available for twenty-four hour seven-day-a-week services;

(d) responsible for establishing a system to assure that the products prepared by the establishment are administered by licensed personnel or properly trained and instructed patients;

(e) responsible for developing an appropriate and individualized plan of care in collaboration with patient or caregiver and other healthcare providers for each patient receiving parenteral products in a home setting.

(4) Physical requirements:

(a) The parenteral products pharmacy must have sufficient floor space to assure that the products are properly prepared and stored to prevent contamination or deterioration prior to administration to the patient and meet the following:

(i) be separated physically from other pharmacy activities and enclosed on all sides except for doors and/or windows for the passage of materials;

(ii) the minimum size of a retail pharmacy must be 240 square feet; a retail pharmacy with preparation of sterile products capabilities must have 340 square feet; the stand alone parenteral product pharmacy must have a minimum of 240 square feet;

(iii) addition of a parenteral area in existing pharmacies will require submission of plans for remodeling to the board office for approval and inspection prior to licensure;

(iv) a new parenteral pharmacy must comply with Sections 8, 9, 10 and 11 of the regulations.

(b) Equipment and materials. The parenteral products pharmacy has sufficient equipment and physical facilities to safely compound and store such products and includes the following:

(i) either a ISO class 5 clean air work station or a room which meets ISO class 5 conditions;

(ii) refrigeration capacity for proper storage of prepared parenterals at 2C to 8C after preparation and until prescriptions are received by the patient or their agent;

(iii) if bulk reconstitution of antibiotics is performed the facility has a freezer capable of freezing and storing the product at -20C for periods not to exceed the manufacturer's recommendations;

(c) References. Parenteral products pharmacies maintain in their library at least one current edition reference book from each category listed below in addition to other required references:

(i) drug monograph reference, i.e., USP-DI, AHFS: drug information service, martindale's extra pharmacopoeia, or other suitable reference;

(ii) stability and incompatibility reference; i.e., trissell's handbook of parenteral medications, king/cutter IV incompatibilities, or other suitable reference;

(iii) reference on pharmaceutical technology and compounding; i.e., remington's pharmaceutical sciences, block's disinfection sterilization and preservation, or other suitable reference;

(iv) periodicals, i.e., American journal of hospital pharmacy, ASHP's clinical pharmacy, American journal of parenteral and enteral nutrition, or other suitable periodical.

(5) Documentation requirements for parenteral product pharmacies: Written

policies and procedures must be available for inspection and review by authorized agents of the board of pharmacy. Written policies and procedures must be submitted to the state board of pharmacy prior to the issuance of any license. These records must include but are not limited to:

(a) cleaning, disinfection, evaluation and maintenance of the preparation area;

(b) regular recertification of the clean air unit or units by independent testing agencies;

(c) surveillance of parenteral solutions for microbiological contamination;

(d) surveillance of parenteral solutions for particulate contamination;

(e) personnel qualifications, training and performance guidelines;

(f) facility and equipment guidelines and standards;

(g) SOP's for dispensing all solutions and medications;

(h) SOP's for disposal of physical, chemical and infectious waste;

(i) quality control guidelines and standards;

(j) quality assurance guidelines and standards;

(k) SOP's for determination of stability, incompatibilities or drug interactions.

(6) Record keeping and patient profile: The parenteral products pharmacy is required to maintain complete records of each patient's medications which include but are not limited to the following:

(a) prescription records including the original Rx, refill authorization, alterations in the original Rx, and interruptions in therapy due to hospitalization;

(b) patient's history including pertinent information regarding allergy or adverse drug reactions experienced by the patients;

(c) patients receiving parenteral products in a home setting are contacted at a frequency appropriate to the complexity of the patient's health problems and drug therapy as documented on patient specific plan of care and with each new prescription, change in therapy or condition;

(d) documentation that the patient receiving parenteral products in a home setting or their agent has received a written copy of their plan of care and training in the safe administration of their medication.

C. STERILE PHARMACEUTICAL PREPARATION

(1) Pharmacies compounding sterile pharmaceuticals shall prepare products in an appropriate aseptic environment which meets ISO class 5 requirements. Devices used to maintain a ISO class 5 environment will:

(a) be certified in the course of normal operation by an independent contractor according to Federal Standard 209E et seq. for operational efficiency at least every 6 months and when moved, certification records will be maintained for 3 years;

(b) have pre-filters which are inspected periodically and inspection/ replacement date documented according to written policy; and

(c) have a positive pressure controlled area that is certified as at least a ISO class 8 which is functionally separate from other areas of the pharmacy and which minimizes the opportunity for particulate and microbial contamination; this area shall:

(i) have a controlled aseptic environment or contain a device which maintains an aseptic environment;

(ii) be clean, lighted, and at an average of 80-150 foot candles;

(iii) be a minimum of 100 sq. ft to support sterile compounding activities;

(iv) be used only for the compounding of sterile pharmaceuticals using appropriate aseptic technique including gowning and gloving;

(v) be designed to avoid outside traffic and airflow;

(vi) be ventilated in a manner which does not interfere with aseptic environment control conditions;

(vii) have non-porous, washable floor coverings, hard cleanable walls and ceilings (which may include acoustical ceiling tiles coated with an acrylic paint) to enable regular disinfection; (contain only compounding medication and supplies and not be used for bulk storage;

(viii) a self contained, ISO class 5 barrier isolator not located in the clean room is acceptable; the barrier isolator may only be located in an area which is maintained under sanitary conditions and traveled only by persons engaged in sterile product preparation; such barrier isolators must be certified by an independent certification contractor according to ISO class 5 conditions, as defined by federal standard 209E et seq. prior to use and at six-month intervals; certification records will be maintained for 3 years;

(d) store medications and supplies on shelves above the floor;

(e) develop and implement a disposal process for packaging materials, used supplies, containers, syringes, and needles; this process shall be performed to enhance sanitation and avoid accumulation in the controlled area;

(f) prohibit particle generating activities in the controlled area:

(i) removal of medications or supplies from cardboard boxes shall not be done in the controlled area;

(ii) cardboard boxes or other packaging/shipping material which generate an unacceptable amount of particles shall not be permitted; the removal of immediate packaging designed to retain sterility or stability will be allowed;

(g) cytotoxic drugs shall:

(i) be prepared in a vertical flow biological safety cabinet, micro-biological isolation chamber or equivalent containment device;

(ii) be prepared in a cabinet thoroughly cleaned prior to use for preparation of other products; said cleaning will be documented;

(iii) be prepared in a cabinet located in a controlled area as described in 11.C.(1).(c);

(iv) be disposed of according to written policies and procedures maintained at the facility;

(h) maintain a library of specialty references appropriate for the scope of services provided; reference material may be hard copy or computerized.

(2) Requirements for training.

(a) All pharmacists prior to compounding sterile pharmaceuticals, or supervising pharmacy personnel compounding sterile pharmaceuticals, all shall have completed [~~a minimum of 20 contact hours of~~] didactic, experiential training and competency evaluation through demonstration and testing (written or practical) as outlined by the pharmacist-in-charge and described in the policy and procedures or training manual. Such training shall be evidenced by completion of a recognized course in [~~an~~] **a board approved** accredited college of pharmacy or [~~an ACPE approved~~] course which shall include instruction and hands-on experience in the following areas:

(i) aseptic technique;

(ii) critical area contamination factors;

(iii) environmental monitoring;

(iv) facilities;

(v) equipment and supplies;

(vi) sterile pharmaceutical calculations and terminology;

(vii) sterile pharmaceutical compounding documentation;

(viii) quality assurance procedures;

(ix) proper gowning and gloving technique;

(x) the handling of cytotoxic and hazardous drugs; and

(xi) general conduct in the controlled area.

(b) All pharmacist interns prior

to compounding sterile pharmaceuticals shall have completed [~~a minimum of 40 hours of~~] instruction and experience in the areas listed in Paragraph [~~1~~] **2**. Such training will be obtained through the:

(i) completion of a structured on-the-job didactic and experiential training program at this pharmacy (not transferable to another pharmacy); or

(ii) completion of a [~~course sponsored by an ACPE~~] **board** approved [~~provider~~] **course**;

(iii) certification by university of New Mexico college of pharmacy.

(c) All pharmacy technicians who compound sterile pharmaceuticals shall [~~have a high school or equivalent education and~~] be a certified pharmacy technician, and complete [~~a minimum of 40 hours of~~] instruction and experience in the areas listed in Paragraph [~~1~~] **2**. Such training will be obtained through the:

(i) completion of a structured on-the-job didactic and experiential training program at this pharmacy (not transferable to another pharmacy) which provides[~~40 hours of~~] instruction and experience in the areas listed in Paragraph [~~1~~] **2**; or

(ii) completion of [~~a course sponsored by an ACPE approved provider~~] **a board approved course** which provides [~~40 hours of~~] instructions and experience in the areas listed in Paragraph [~~1~~] **2**.

(d) All pharmacists compounding sterile chemotherapy drugs or supervising pharmacy interns or technicians compounding sterile chemotherapy drugs shall[~~,effective December 31, 2008,~~] have completed a board approved [~~training program~~] **course** in chemotherapy drug preparation. All pharmacy interns and technicians must complete this training prior to preparing sterile chemotherapy drug products.

(e) Documentation of training. A written record of initial and in-service training and the results of written or practical testing and process validation of pharmacy personnel shall be maintained and contain the following information:

(i) name of person receiving the training or completing the testing or process validation;

(ii) date(s) of the training, testing, or process validation;

(iii) general description of the topics covered in the training or testing or of the process validated;

(iv) name of person supervising the training, testing, or process validation;

(v) signature of the person receiving the training or completing the testing or process validation and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or process validation of personnel.

(f) No product intended for patient uses shall be compounded by an individual until the process validation test indicates that the individual can competently perform aseptic procedures.

(g) On an annual basis the pharmacist-in-charge shall assure continuing competency of pharmacy personnel through in-service education, training, and process validation to supplement initial training. A written record of such training will be maintained for 3 years.

(3) Patient or caregiver training for home sterile products.

(a) The pharmacist shall maintain documentation that the patient has received training consistent with regulation 16.19.4.17.5 NMAC.

(b) The facility shall provide a 24-hour toll free telephone number for use by patients of the pharmacy.

(c) There shall be a documented, ongoing quality assurance program that monitors patient care and pharmaceutical care outcomes, including the following:

(i) routine performance of prospective drug use review and patient monitoring functions by a pharmacist;

(ii) patient monitoring plans that include written outcome measures and systems for routine patient assessment;

(iii) documentation of patient training; and

(4) Quality assurance/ compounding and preparation of sterile pharmaceuticals.

(a) There shall be a documented, ongoing performance improvement control program that monitors personnel performance, equipment, and facilities:

(i) all aspects of sterile product preparation, storage, and distribution, including details such as the choice of cleaning materials and disinfectants and monitoring of equipment accuracy shall be addressed in policy and procedures;

(ii) if bulk compounding of parenteral solutions is performed using non-sterile chemicals, appropriate end product testing must be documented prior to the release of the product from quarantine; the test must include appropriate tests for particulate matter and pyrogens;

(iii) there shall be documentation of quality assurance audits at regular, planned intervals, including infection control and sterile technique audits; a plan for corrective action of problems identified by quality assurance audits shall be developed which includes procedures for documentation of identified problems and action taken; a periodic evaluation as stated in the policy and procedures of the effectiveness of the quality assurance activities shall be completed and documented;

(iv) the label of each sterile compounded product shall contain: patient name; if batch filling, lot or control number; solution, ingredient names, amounts; expiration date and time, when applicable; directions for use (only if the patient is the end user; not in a hospital setting), including infusion rates, specific times scheduled when appropriate; name or initials of person preparing the product and, if prepared by supportive personnel, the name or identifying initials and the name or initials of the pharmacist that completed the final check; when appropriate, ancillary instructions such as storage instructions or cautionary systems, including cytotoxic warning labels and containment bags; 8 device instructions when needed.

(b) There shall be a mechanism for tracking and retrieving products which have been recalled.

(c) Automated compounding devices shall:

(i) have accuracy verified on a routine basis at least every thirty days per manufacturer's specifications;

(ii) be observed every thirty days by the operator during the mixing process to ensure the device is working properly;

(iii) have data entry verified by a pharmacist prior to compounding; and

(iv) have accuracy of delivery of the end product verified according to written policies and procedures.

(d) If batch preparation of sterile products is being performed, a worksheet (log) must be maintained for each batch. This worksheet shall consist of formula, components, compounding directions or procedures, a sample label and evaluation and testing requirements, if applicable, and shall be used to document the following:

(i) all solutions and ingredients and their corresponding amounts, concentrations and volumes;

(ii) component manufacturer and lot number;

(iii) lot or control number assigned to batch;

(iv) date of preparation;

(v) expiration date of batch prepared products;

(vi) identity of personnel in preparation and pharmacist responsible for final check;

(vii) comparison of actual yield to anticipated yield, when appropriate.

(5) Application of regulation: Pharmacies licensed by the board prior to

adoption of this regulation shall comply with the controlled area standards defined in section 11.C.(1).(c). by December 31, 2002. When these pharmacies change ownership, remodel the pharmacy, or relocate the pharmacy after the effective date of this regulation, Section 11(2)A.3. shall apply. All other portions of this regulation apply on the effective date.

[16.19.6.11 NMAC - Rp, 16 NMAC 19.6.11, 03-30-02; A, 01-15-2005; A, 01-15-08; A, 05-14-10]

16.19.6.15 DISPOSITION OF DANGEROUS DRUGS OR CONTROLLED SUBSTANCES: Permission shall be obtained, in writing, from the board, after inspection, before any inventory of dangerous drugs or controlled substances may be sold, transferred, disposed of, or otherwise removed from the current premises. All sales shall be subject to the laws of the state.

A. DISPENSED PHARMACEUTICALS, COLLECTION AND DISPOSAL: Patient dispensed legend and OTC medications that are unwanted or expired may be returned to an authorized pharmacy for destruction. The pharmacy must submit a protocol or subsequent changes to the board or the boards agent, for approval. Once approved the pharmacy is authorized to collect pharmaceuticals for destruction. A protocol is to be submitted to the board of pharmacy for staff approval. Such protocol must include:

(1) Secure and enclosed collection unit that does not allow for unauthorized access.

(2) A description of the dedicated area for collection unit inside the pharmacy within site of the authorized pharmacy staff.

(3) Direction of collection that allows for safe and secure disposition.

(4) Name of contracted disposal company that is licensed for pharmaceutical destruction.

(5) Frequency of collection and destruction by disposal company.

(6) Records of collection and destruction supplied by the disposal company.

B. Items accepted at a take back site may include:

(1) dangerous drugs (prescription drugs);

(2) controlled substances if authorized under federal law or rule;

(3) over-the-counter medications;

(4) veterinary medications;

(5) medicated ointments and lotions;

(6) liquid medication in glass or leak-proof containers.

C. Items NOT accepted at a take back site may include:

(1) needles;

(2) thermometers;

(3) bloody or infectious waste;

(4) personal care products;

(5) controlled substances (unless authorized by federal law);

(6) hydrogen peroxide;

(7) empty containers;

(8) business waste.

D. Collected medications are not for re-dispensing.

E. Directions for take back for patients and list od accepted and non-accepted products must be posted on the collection unit.

F. Suspension of the pharmacy's authority to collect and dispose of dispensed pharmaceutical shall occur upon violation of the approved protocol. The pharmacy may petition the board for removal of that suspension.

[16.19.6.15 NMAC - Rp, 16 NMAC 19.6.15, 03-30-02; A, 05-14-10]

16.19.6.22 COMPUTERIZED PRESCRIPTION INFORMATION:

A. Computers for the storage and retrieval of prescription information do not replace the requirement that a prescription written by a practitioner or telephoned to the pharmacist by a practitioner and reduced to hardcopy be retained as permanent record. Computers shall be maintained as required by the Pharmacy Act; the Drug, Device, and Cosmetic Act; the Controlled Substance Act; and the board of pharmacy regulations.

B. The computer shall be capable of producing a printout of prescription information within a 72 hour period on demand, with certification by the practitioner stating it is a true and accurate record. Requested printouts include: patient specific; practitioner specific; drug specific; or date specific reports. The printout shall include:

(1) the original prescription number;

(2) the practitioner's name;

(3) full name and address of patient;

(4) date of issuance of original prescription order by the practitioner and the date filled;

(5) name, strength, dosage form, quantity of drug prescribed;

(6) total number of refills authorized by the practitioner;

(7) the quantity dispensed is different than the quantity prescribed, then record of the quantity dispensed;

(8) in the case of a controlled substance, the name, address and DEA registration number of the practitioner and the schedule of the drug;

(9) identification of the dispensing pharmacist; computer-generated pharmacist initials are considered to be the pharmacist of record unless overridden manually by a different pharmacist who will be the pharmacist of record.

C. Permanent records of electronic prescriptions, transmitted directly over approved secure electronic prescribing networks or other board approved transmissions standards, do not have to be reduced to hardcopy provided the following requirements are met.

(1) Electronic prescription information or data must be maintained in the original format received for ten years.

(2) Documentation of business associate agreements with "network vendors", electronic prescription transmission intermediaries and pharmacy software vendors involved in the transmission and formatting of the prescription who can provide documentation of chain of trust of who has had access to prescription content is available.

(3) Reliable backup copies of the information are available and stored in a secure manner as approved by the board.

(4) All elements required on a prescription and record keeping requirements are fulfilled including identification of the dispensing pharmacist of record.

D. Electronically archived prescription records of scanned images of indirect written or faxed prescriptions are permitted provided the following requirements are met:

(1) images of scanned prescriptions are readily retrievable and can be reproduces in a manner consistent with state and federal laws within a seventy-two hour period;

(2) the identity of the pharmacist approving the scanned imaging and of the pharmacist responsible for destroying the original document after three years is clearly documented;

(3) the electronic form shows the exact and legible image of the original prescription;

(4) the original paper prescription document must be maintained for a minimum of three years and the electronic image of the prescription for ten years;

(5) the prescription is not for a controlled substance except as allowed by federal law;

(6) reliable backup copies of the information are available and stored in a secure manner as approved by the board;

(7) all elements required on a prescription and record keeping requirements are fulfilled including identification of the dispensing pharmacist of record;

(8) the original paper prescription document for a non-controlled substance must be maintained

on the licensed premises for a period of 120 days from the initial date of dispensing;

(9) the original paper prescription document for a controlled substance must be maintained on the licensed premises for a period of two years from the initial date of dispensing.

E. Electronic records of prescriptions and patient prescription records may be stored offsite on secure electronic servers provided the following requirements are met:

(1) records are readily retrievable;

(2) all Health Insurance Portability and Accountability Act and board of pharmacy patient privacy requirements are met;

(3) reliable backup copies of the information are available and stored in a secure manner as approved by the board.

F. Original paper prescription documents may be stored offsite after the minimum period of storage on the licensed premises has been reached, provided that the following requirements are met:

(1) the storage area is maintained so that records are secure and prevented from unauthorized access;

(2) the storage area is maintained with appropriate fire suppression safeguards and climate control capabilities;

(3) all Health Insurance Portability and Accountability Act and board of pharmacy patient privacy requirements are met;

(4) the pharmacist-in charge maintains a record-keeping system that records storage location(s) and documents an inventory of original paper prescription documents that are maintained offsite;

(5) original paper prescription records must be able to be produced within three business days upon the request of the board or an authorized officer of the law.

[16.19.6.22 NMAC - Rp, 16 NMAC 19.6.22, 03-30-02; A, 06-30-06; A, 05-14-10]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.20 NMAC, Sections 8, 65, 66, 67, 68 and 69, effective 05-14-10.

16.19.20.8 REGISTRATION REQUIREMENTS: Persons required to register:

A. manufacture - term includes repackagers;

B. distributors - term includes wholesale drug distributors;

C. dispensers - pharmacies, hospital pharmacies, clinics (both health and veterinarian);

D. practitioners - includes a physician, doctor of oriental medicine, dentist, physician assistant, certified nurse practitioner, clinical nurse specialist, certified nurse-midwife, veterinarian, pharmacist, pharmacist clinician, certified registered nurse anesthetists, psychologists**, chiropractic examiner, euthanasia technicians** or other person licensed or certified to prescribe and administer drugs that are subject to the Controlled Substances Act;

E. scientific investigators or researchers;

F. analytical laboratories and chemical analysis laboratories;

G. teaching institutes;

H. special projects and demonstrations which bear directly on misuse or abuse of controlled substances - may include public agencies, institutions of higher education and private organizations;

I. registration waiver: an individual licensed practitioner (e.g., intern, resident, staff physician, mid-level practitioner) who is an agent or employee of a hospital or clinic, licensed by the board, may, when acting in the usual course of employment or business, order controlled substances, for administration to the patients of the facility, under controlled substance registration of the hospital or clinic in which he or she is employed provided that:

(1) the ordering of controlled substances for administration, to the patients of the hospital or clinic, is in the usual course of professional practice and the hospital or clinic authorizes the practitioner to order controlled substances for the administration to its patients under its state controlled substance registration;

(2) the hospital or clinic has verified with the practitioner's licensing board that the practitioner is permitted to order controlled substances within the state;

(3) the practitioner acts only within their scope of employment in that hospital or clinic;

(4) the hospital or clinic maintains a current list of practitioners given such authorization and includes the practitioner's full name, date of birth, professional classification and license number, and home and business addresses and phone numbers;

(5) the list is available at all times to board inspectors, the D.E.A., law enforcement and health professional licensing boards; and

(6) the hospital or clinic shall submit a current list of authorized practitioners with each hospital or clinic controlled substance renewal application.

[16.19.20.8 NMAC - Rp 16 NMAC 19.20.8, 07-15-02; A, 12-15-02; A, 07-15-2004; A, 05-14-10]

16.19.20.65 SCHEDULE I:

A. NMSA 1978 Section 30-31-6 schedule I shall consist of the following drugs and other substances, by whatever name, common or usual name, chemical name or brand name designated, listed in this section; **OPIATES**, unless specifically exempt or unless listed in another schedule, any of the following opiates, including its' isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

(1) Acetylmethadol
(2) Allyl prodine
(3) Alphacetylmethadol
(4) Alphameprodine
(5) Alphamethadol
(6) Alpha-methyl fentanyl
(7) Benzethidine
(8) Betacetylmethadol
(9) Betameprodine
(10) Betamethadol
(11) Betaprodine
(12) Clonitazene
(13) Dextromoramide
(14) Diampromide
(15) Diethylthiambutene
(16) Dimethylthiambutene
(17) Difenoxin
(18) Dimenoxadol
(19) Dimepheptanol
(20) Dimethylthiambutene
(21) Dioxaphetyl Butyrate
(22) Dipipanone
(23) Ethylmethylthiambutene
(24) Etonitazene
(25) Etoxeridine
(26) Furethidine
(27) Hydroxypethidine
(28) Ketobemidone
(29) Levomoramide
(30) Levophenacylmorphan
(31) Morpheridine
(32) Noracymethadol
(33) Norlevorphanol
(34) Normethadone
(35) Norpipanone
(36) Phenadoxone
(37) Phenampromide
(38) Phenomorphan
(39) Phenoperidine
(40) Piritramide
(41) Proheptazine
(42) Properidine
(43) Propiram
(44) Racemoramide
(45) Tilidine
(46) Trimeperidine

B. OPIUM DERIVATIVES: Unless specifically exempt or unless listed in another schedule, any of the following opium derivatives, its'

salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation.

(1) Acetorphine
(2) Acetyl dihydrocodeine
(3) Benzyl morphine
(4) Codeine methylbromide
(5) Codeine-N-Oxide
(6) Cyprenorphine
(7) Desomorphine
(8) Dehydro morphine
(9) Etorphine
(10) Heroin
(11) Hydromorphinol
(12) Methyldesorphine
(13) Methyldihydromorphine
(14) Morphine methylbromide
(15) Morphine methylsulfonate
(16) Morphine-N-Oxide
(17) Myrophine
(18) Nicocodeine
(19) Nicomorphine
(20) Normorphine
(21) Pholcodine
(22) Thebacon
(23) Drotebanol
(24) Beta-Hydroxy-3-Methylfentanyl
(25) 3-Methylthiofentanyl
(26) Acetyl-Alpha-Methyl fentanyl
(27) Alpha-Methylthiofentanyl
(28) Beta-hydroxfentanyl
(29) Para-Fluoro fentanyl
(30) Thiofentanyl

C. HALLUCINOGENIC SUBSTANCES: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation (for purpose of this sub-section only, the term "isomers" includes the optical position, and geometric isomers).

(1) 3,4 -methylenedioxy amphetamine
(2) 5 - methoxy - 3,4-methylenedioxy amphetamine
(3) 3,4,5 -trimethoxy amphetamine
(4) Bufotenine
(5) Diethyltryptamine; DET
(6) Dimethyltryptamine; DMT
(7) 4-methyl-2,5-dimethoxy-amphetamine; DOM or STP
(8) Lysergic acid diethylamide
(9) Lysergic acid diethylamide
(10) Marijuana
(11) Mescaline
(12) Peyote
(13) N-ethyl-3-piperidyl benzilate
(14) N-methyl-3-piperidyl benzilate
(15) Psilocybin
(16) Psilocyn
(17) Tetrahydrocannabinols
(18) Parahexyl (synthetic analog of delta-9-tetrahydrocannabinol (THC) an active ingredient of cannabis)
(19) Hashish
(20) 2,5-dimethoxyamphetamine; 2, 5-DMA
(21) 4-bromo-2, 5-dimethoxy-amphetamine; 2,5-DMA
(22) 4-methoxyamphetamine; PMA
(23) Ethylamine N-ethyl-1-phenylcyclohexylamine (PCE)
(24) Pyrrolidine 1-(1-phenylcyclohexyl)-pyrrolidine (PCPy), (PHP) analog of the drug phencyclidine
(25) Thiophene (analog of phencyclidine) TCP or TPCP
(26) Alpha-ethyltryptamine
(27) 2, 5-dimethoxy-4-ethylamphet-amine
[~~(29)~~] (28) Ibogaine
(29) 2,.5 dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7)
(30) Alpha-methyltryptamine (AMT)
(31) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT)

D. DEPRESSANTS: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its' salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone
(2) Methaqualone
(3) Benzodiazepines
(a) bromazepam
(b) camazepam
(c) clobazam
(d) cloxazolam
(e) delorazepam
(f) ethyl loflazepate
(g) fludiazepam
(h) flunitrazepam
(i) haloxazolam
(j) ketazolam
(k) loprazolam
(l) lormetazepam
(m) medazepam
(n) nimetazepam
(o) nitrazepam
(p) nordiazepam
(q) oxazolam
(r) pinazepam
(s) tetrazepam
(4) Gamma hydroxybutyric acid and any chemical compound that is metabolically converted to GHB.
(5) Gamma butyrolactone and any chemical compound that is metabolically converted to GHB.
(6) 1-4 butane diol and any chemical compound that is metabolically converted to GHB.

E. STIMULANTS: Unless specifically exempted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its' salts, isomers, and salts of isomers.

(1) Fenethylline
(2) N-ethylamphetamine
(3) cis-4-methylaminorex
(4) N, N-dimethylamphetamine
(5) N-benzylpiperazine (BZP, 1-benzylpiperazine)

F. Any material, compound, mixture of preparation which contains any quantity of the following substances.

(1) 3-Methylfentanyl(N-3-methyl-1-(2-phenyl-ethyl)-4-Piperidyl)-N-phenylpropanamide, its' optical and geometric isomers, salts and salts of isomers.
(2) 3, 4-methylenedioxymethamphetamine (MDMA), its' optical, positional and geometric isomers, salts and salts of isomers.
(3) 1-methyl-4-phenyl-4-proprionoxypiperidine (MPPP), its' optical isomers, salts, and salts of isomers.
(4) 1-(-2-phenylethyl)-4-phenyl-4-acetoxy piperidine (PEPAP), its' optical isomers, salts and salts of isomers.
(5) Cathinone.
(6) Methcathinone.

[16.19.20.65 NMAC - Rp 16 NMAC 19.20.28, 07-15-02; A, 06-30-05; A, 01-15-08; A, 05-14-10]

16.19.20.66 SCHEDULE II:

A. Shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section. Substance, vegetable origin or chemical synthesis. Unless specifically exempt or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(1) Opium and opiate, and any salts, compound, derivative, or preparation of opium or opiate excluding naloxone, dextrorphan, nalbuphine, naltrexone and apomorphine but including the following:
(a) raw opium
(b) opium extracts
(c) opium fluid extracts
(d) powdered opium

(e) granulated opium
(f) tincture of opium
(g) codeine
(h) ethylmorphine
(i) etorphine hydrochloride
(j) hydrocodone
(k) hydromorphone
(l) metopon
(m) morphine
(n) oxycodone
(o) oxymorphone
(p) thebaine
(q) alfentanil
(r) oripavine

(2) Any salt, compound derivative, or preparation thereof, which is chemically equivalent or identical with any of the substances referred to in 16.19.20.66.A.(1) NMAC, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include de-cocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

B. OPIATES: Unless specifically excepted or unless in another schedule any of the following opiates, including its' isomers, esters, ethers, salts and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation except dextrose and levopropoxyphene.

(1) Alphaprodine
(2) Anileridine
(3) Bezitramide
(4) Diphenoxylate
(5) Dihydrocodeine
(6) Dextropropoxyphene (bulk) non-dosage form
(7) Fentanyl
(8) Isomethadone
(9) Levomethorphan
(10) Levorphanol
(11) Metazocine
(12) Methadone
(13) Methadone-Intermediate
(14) Monamide-Intermediate
(15) Pethidine
(16) Pethidine-Intermediate A
(17) Pethidine-Intermediate B
(18) Pethidine-Intermediate C
(19) Phenazocine
(20) Piminodine
(21) Racemethorphan
(22) Racemorphan
(23) Sufentanil
(24) Carfentanil
(25) Levo-alphacetylmethadol (LAAM)
(26) Tapentadol

C. STIMULANTS: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system. **(See 16.19.21 NMAC- Drug Precursors)**

(1) Amphetamine, its' salts, optical isomers and salts of its' optical isomers.
(2) Methamphetamine, its' salts, isomers and salts of isomers.
(3) Phenmetrazine and its' salts.
(4) Methylphenidate
(5) Lisdexamfetamine

D. DEPRESSANTS: Unless specifically exempt or unless listed in another schedule any material, compound mixture or preparation which contains any quantity of the substance having a depressant effect on the central nervous system, including its' salts, isomers and salts of isomers is possible within the specific chemical designation.

(1) Amobarbital
(2) Secobarbital
(3) Pentobarbital
(4) Phencyclidine
(5) Dronabinol (synthetic) - in sesame oil and encapsulated in soft gelatin capsules in a drug product approved by the U.S. food and drug administration
(6) Glutethimide
(7) 1-phenylcyclohexylamine
(8) 1-piperidinocyclohexanecarbonitrile

E. HALLUCINOGENIC SUBSTANCES: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its' salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purpose of this paragraph only, the term "isomers" includes the optical position, and geometric isomers): Nabilone

F. MISCELLANEOUS:

(1) Dihydroetorphine
(2) Bulk dextropropoxyphene
(3) Remifentanil

[16.19.20.66 NMAC - Rp 16 NMAC 19.20.28(1), 07-15-02; A, 06-30-05; A, 01-15-08; A, 05-14-10]

16.19.20.67 SCHEDULE III: Shall consist of drugs and other substances, by whatever official name, common or usual name designated listed in this section.

A. STIMULANTS: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system.

(1) Those compounds, mixtures or preparations in dosage unit form containing any stimulant, amphetamine, phenmetrazine or methamphetamine previously exempt, for which the exemption was revoked by FDA Regulation Title 21, Part 308.13, and any other drug of the quantitative composition shown in that regulation for those drugs or which is the same except that it contains a lesser quantity of controlled substances.
(2) Benzphetamine.
(3) Phendimetrazine.
(4) Chlorphentermine.
(5) Clortermine.

B. DEPRESSANTS: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system.

(1) Any compound, mixture or preparation containing:
(a) amobarbital;
(b) secobarbital;
(c) pentobarbital;
(d) butalbital; or any salt thereof and one or more active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:
(a) amobarbital;
(b) secobarbital;
(c) pentobarbital; or any salt of any of these drugs approved by the FDA for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid.
(4) Chlorhexadol
(5) Lysergic Acid
(6) Lysergic Acid Amide
(7) Methyprylon
(8) Sulfondiethylmethane
(9) Sulfonethylmethane
(10) Sulfonmethane
(11) Tiletamine/zolazepam (Telazol)
(12) Ketamine Hydrochloride
(13) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug and Cosmetic Act.
(14) Embutramide

C. Nalorphine (a narcotic drug).

D. Buprenorphine.

E. NARCOTIC DRUGS: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation containing limited

quantities of the following narcotic drugs, or any salts thereof.

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage units, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

F. ANABOLIC STEROIDS: The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth. Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances listed in this section:

(1) boldenone
(2) chloro testosterone
(3) clostebol
(4) dehydrochlormethyltestosterone
(5) dihydrotestosterone
(6) drostanolone
(7) ethylestrenol
(8) fluoxymesterone
(9) formebolone
(10) mestanolone
(11) mesterolone
(12) methandienone
(13) methandranone
(14) methandriol
(15) methandrostenolone
(16) methenolone
(17) methyltrienolone
(18) methyltestosterone
(19) mibolerone
(20) nandrolone
(21) norbolethone
(22) norethandrolone
(23) oxandrolone
(24) oxymesterone
(25) oxymetholone
(26) stanolone
(27) stanozolol
(28) testolactone
(29) testosterone
(30) trenbolone; and
(31) any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.

G. Exempt anabolic steroids: Compounds, mixtures, or preparations that contain an anabolic steroid that have been exempted by the board from Subsection E of 16.19.20.67 NMAC, schedule III to the same extent that the substance has been exempted from the application of the Federal Controlled Substance Act, if the substance is listed as an exempt anabolic steroid product under 21 C.F.R. Section 1308.34 and its subsequent amendments.

[16.19.20.67 NMAC - Rp 16 NMAC 19.20.28(2), 07-15-02; A, 02-15-03; A, 06-30-05; A, 01-31-07; A, 01-15-08; A, 05-14-10]

16.19.20.68 SCHEDULE IV: Shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section:

A. DEPRESSANTS: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Alprazolam
(2) Barbital
(3) Chloral Betaine
(4) Chloral Hydrate
(5) Chlordiazepoxide
(6) Clonazepam
(7) Clorazepate
(8) Clotiazepam
(9) Diazepam
(10) Estazolam
(11) Ethchlorvynol
(12) Ethinamate
(13) Flurazepam
(14) Halazepam
(15) Lorazepam
(16) Mebutamate
(17) Meprobamate
(18) Methohexital
(19) Methylphenobarbital
(20) Midazolam
(21) Oxazepam
(22) Paraldehyde
(23) Petrichloral
(24) Phenobarbital
(25) Prazepam
(26) Quazepam
(27) Temazepam
(28) Triazolam
(29) Zopiclone

B. FENFLURAMINE: Any material, compound, mixture or preparation which contains any quantity of the following substance, including its' salts, isomers (whether optical position, or geometric) and its' salts, or such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine

C. STIMULANTS: Unless specifically exempt or unless listed in another schedule any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its' salts, isomers (whether optical position, or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Diethylpropion
(2) Phentermine
(3) Pemoline (including organometallic complexes and chelates thereon)
(4) Pipradrol
(5) SPA ((-)-1-dimethyl amino-1,2-diphenylmethane)
(6) Mazindol
(7) Cathine
(8) Fencamfamin
(9) Fenproporex
(10) Mefenorex
(11) Modafinil
(12) Sibutramine

D. OTHER SUBSTANCES: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its' salts:

(1) Dextropropoxyphene(Alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane)
(2) Pentazocine
(3) Carisoprodol
(4) Nalbuphine Hydrochloride
(5) Butorphanol Tartrate
(6) Dezocine
(7) Dichloralphenazone

(8) Zaleplon

(9) Zolpidem

E. NARCOTIC DRUG: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof: Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

F. EXEMPTION OF CHLORAL: When packaged in a sealed, oxygen-free environment, under nitrogen pressure, safeguarded against exposure to the air. Chloral when existing under the above conditions, is a substance which is not intended for general administration to a human being or another animal, and contains no narcotic controlled substances and is packaged in such a form that the package quantity does not present any significant potential for abuse. All persons who engage in industrial activities with respect to such chloral are subject to registration; but shall be exempt from Section 30-31-16 through 19 of the New Mexico Controlled Substances Act and 16.19.20.19 NMAC through 16.19.20.52 NMAC of the board of pharmacy regulations.

G. EXEMPT COMPOUNDS: Librax and Menrium are preparations which contain chlordiazepoxide, a depressant listed in Schedule IV, 16.19.20.68.A.5 NMAC and other ingredients in such combinations, quantity, preparation or concentration as to vitiate the potential for abuse of chlordiazepoxide, and are hereby exempt preparations.

(1) Librax

(2) Menrium, 5-2

(3) Menrium, 4-5

(4) Menrium, 10-4

[16.19.20.68 NMAC - Rp 16 NMAC 19.20.28(3), 07-15-02; A, 06-30-05; A, 05-14-10]

16.19.20.69 SCHEDULE V:

A. Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone.

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(6) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

B. Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers.

(1) Pyrovalerone.

(2) Pseudoephedrine as a drug that includes any compound, mixture, or preparation that contains any detectable quantity of pseudoephedrine, its salts or its optical isomers, or salts of its optical isomers. Pursuant to 30-31-10.C the following substances are excluded from Schedule V controlled substances: pseudoephedrine products in liquid form including liquid filled gel caps and pseudoephedrine products already classified as dangerous drugs.

C. Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Lacosamide [(R)-2acetoamido-N-benzyl-3-methoxy-propionamide]

(2) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid]

[16.19.20.69 NMAC - Rp 16 NMAC 19.20.28(4), 07-15-02; A, 06-30-05; A, 06-30-06; A, 01-31-07; A, 05-14-10]

NEW MEXICO PUBLIC REGULATION COMMISSION

Repealer: The New Mexico Public Regulation Commission repeals its rule entitled "Energy Efficiency", 17.7.2 NMAC (filed 2-02-2007) and replaces it with the new rule 17.7.2 NMAC, "Energy Efficiency". Effective date of Repeal: May 3, 2010.

NEW MEXICO PUBLIC REGULATION COMMISSION

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 7 ENERGY CONSERVATION
PART 2 ENERGY EFFICIENCY

17.7.2.1 ISSUING AGENCY: The New Mexico Public Regulation Commission.
[17.7.2.1 NMAC - Rp, 17.7.2.1 NMAC, 5-3-10]

17.7.2.2 SCOPE: This rule applies to all electric, gas and rural electric cooperative utilities subject to the commission's jurisdiction.
[17.7.2.2 NMAC - Rp, 17.7.2.2 NMAC, 5-3-10]

17.7.2.3 STATUTORY AUTHORITY: NMSA 1978, Sections 8-8-16, 63-3-1, 62-8-6, 62-17-1 et seq.
[17.7.2.3 NMAC - Rp, 17.7.2.3 NMAC, 5-3-10]

17.7.2.4 DURATION: Permanent.
[17.7.2.4 NMAC - Rp, 17.7.2.4 NMAC, 5-3-10]

17.7.2.5 EFFECTIVE DATE: May 3, 2010, unless a later date is cited at the end of a section. Applications filed prior to this effective date shall be governed by the specific orders related to those applications.
[17.7.2.5 NMAC - Rp, 17.7.2.5 NMAC, 5-3-10]

17.7.2.6 OBJECTIVE: The purpose of this rule is to implement the Efficient Use of Energy Act such that public utilities and distribution cooperative utilities include all cost-effective and achievable energy efficiency and load management resources in their energy resource portfolios; and to set forth the commission's policy and

requirements for energy efficiency and load management programs.
[17.7.2.6 NMAC - Rp, 17.7.2.6 NMAC, 5-3-10]

17.7.2.7 DEFINITIONS: As used in this rule:

A. achievable means those energy efficiency or load management resources available to the utility using its best efforts;

B. affected customer class means a rate class comprised of either electricity or natural gas customers that pay for utility energy efficiency and load management programs;

C. alternative energy efficiency provider means an entity that assumes, with the consent of the utility, the duties and responsibilities of the public utility to provide ratepayer-funded load management and energy efficiency programs to the utility's customers;

D. avoided supply side costs means gas and electricity commodity costs, and avoided generation, transportation, transmission, distribution, operations and maintenance, administrative and general costs, and other avoided costs of supplying energy or capacity to customers;

E. commission means the New Mexico public regulation commission;

F. contractor means an individual, entity or governmental instrumentality with whom a utility or an alternative energy efficiency provider enters into a written contract for services related to the provision of one or more energy efficiency programs;

G. cost-effective means that the energy efficiency or load management program meets the total resource cost test, except that for self-direct programs a cost-effective measure has a simple payback of more than one year but less than seven years;

H. customer means a utility customer at a single, contiguous field, location or facility, regardless of the number of meters at that field, location or facility;

I. deemed savings means expected energy and demand savings attributed to well-known or commercially available energy efficiency and load management devices or measures based on standard engineering calculations, ratings, simulation models or field measurement studies, periodically adjusted as appropriate for New Mexico specific data, including building and household characteristics, and climate conditions in pertinent region(s) within the state;

J. demand savings means the load reduction occurring during the relevant peak period(s) as a direct result of energy efficiency and load management programs;

K. distribution cooperative utility means a utility with distribution facilities organized as a rural electric cooperative pursuant to Laws 1937, Chapter 100 or the Rural Electric Cooperative Act or similarly organized in other states;

L. economic benefit means a net financial benefit which members of a customer class can achieve through available program participation;

M. emissions means all air emissions regulated by state or federal authorities, including but not limited to all criteria pollutants and hazardous air pollutants, plus mercury and CO2 (carbon dioxide);

N. energy efficiency means measures, including energy conservation measures, or programs that target consumer behavior, equipment or devices, to result in a decrease in consumption of electricity or natural gas without reducing the level or quality of energy services;

O. energy savings means the reduction in a customer's consumption of energy as a direct result of an energy efficiency program(s);

P. interested parties means intervenors in the public utility's last general rate case and energy efficiency filing, plus persons specifically expressing to the utility an interest in energy efficiency, and excluding persons expressing to the utility that they are not interested;

Q. large customer means a customer with electricity consumption greater than seven thousand megawatt-hours per year or natural gas use greater than three hundred sixty thousand decatherms per year;

R. life cycle means the expected useful life of the energy efficiency measure being deployed;

S. load management means measures or programs that target equipment or devices that result in decreased peak electricity demand or to shift demand from peak to off-peak periods;

T. low income customer means a customer that lives with an annual household income at or below 200% of the federal poverty level as published each year by the U.S. department of health and human services;

U. measures means the components of a public utility program, and includes any material, device, technology, educational program, practice or facility alteration that makes it possible to deliver a comparable level and quality of end-use energy service while using less energy than would otherwise be required;

V. measurement and verification or M&V means commission-directed activities to determine or approximate with a high degree of certainty the actual demand and energy reductions from energy efficiency and load management programs;

W. non-energy benefits means benefits which do not affect the total resource cost of a program, including but not limited to benefits of low-income customer participation in utility programs, and reductions in greenhouse gas emissions, regulated air emissions, water consumption and natural resource depletion;

X. portfolio means all programs which will continue to be offered, and those proposed to be offered, by the public utility;

Y. program costs mean the reasonable costs incurred by a utility as a result of developing, implementing and administering approved program(s);

Z. program means one or more measures provided as part of a single offering to consumers. An example of a program is a weatherization program which includes insulation replacement, weather stripping, and window replacement;

AA. public utility or utility means a public utility as defined in the Public Utility Act (NMSA 1978, Section 62-3-1 et seq.) that is not also a distribution cooperative utility;

BB. statutory tariff cap means seventy-five thousand dollars ($75,000) per year per customer; and

CC. total resource cost test or TRC test means a standard that is met if the monetary costs that are borne by the utility and the participants and that are incurred to develop, acquire and operate energy efficiency or load management resources on a life-cycle basis are less than the avoided monetary costs associated with developing, acquiring and operating the associated supply-side resources.
[17.7.2.7 NMAC - Rp, 17.7.2.7 NMAC, 5-3-10]

17.7.2.8 PREFILING REQUIREMENTS FOR PROGRAM APPROVAL:

A. Solicitation of public input from interested parties. Public utilities shall, during the program planning and development process, and before seeking commission approval, solicit non-binding recommendations on the design, implementation and use of third-party energy service contractors through competitive bidding on programs from commission staff, the attorney general, the energy, minerals and natural resources department and other interested parties.

B. Section 62-17-6.A consents. If the utility plans to propose a tariff that exceeds the statutory tariff cap, it shall first obtain consent from the affected customer. Each consent must be in writing and must specify an amount and period for which the cap will be exceeded.
[17.7.2.8 NMAC - Rp, 17.7.2.8 NMAC, 5-3-

10]

17.7.2.9 FILING REQUIREMENTS FOR PROGRAM APPROVAL:

A. Compliance with pre-filing requirements. The utility shall describe the public participation process it used to obtain input from interested parties during the planning and development of its proposed program(s), and shall provide any written consents obtained pursuant to Subsection B of 17.7.2.8 NMAC.

B. Timing. Requests for program approval shall be made in a single filing at least every two years, except for good cause shown or as otherwise ordered by the commission.

C. Program selection.

(1) Cost effectiveness is a mandatory criterion for program selection; only programs that are cost effective are eligible for approval.

(2) When selecting among multiple potential programs, all of which are cost effective, a utility shall consider the following criteria:

(a) the extent to which the program provides significant system benefits to all members of a customer class, including non-participants;

(b) the extent to which the program offers potential for broad participation within an affected customer class;

(c) the program's ratio of cost effectiveness under the TRC test;

(d) total estimated energy and demand savings;

(e) the existence of substantial non-energy benefits, consistent with the legislative findings in the Efficient Use of Energy Act;

(f) administrative ease of program deployment;

(g) overall portfolio development considerations; and

(h) performance risk of the technologies and methods required for the program.

(3) As part of its application, the utility shall explain how it applied these criteria to select the proposed program(s).

D. Indirect impact measures that may not, in and of themselves, be cost effective, such as general education activities, energy audits, and research and development, are permissible to the extent that those measures do not negate the overall cost effectiveness of the utility's energy efficiency portfolio.

E. In its applications for program approval, a utility shall provide to the commission and interested parties, along with an executive summary to facilitate commission review, the following:

(1) summary of existing programs and description of their relationship to the proposed programs, including a detailed explanation of all customer education efforts;

(2) the program objectives, including measures and projected savings;

(3) rate impact and customer bill impact, including data showing that the tariff rider will not cause any customer to be charged an amount greater than that permitted by the Efficient Use of Energy Act;

(4) program implementation and administration plan;

(5) a description of the responsibilities which will be assigned to utility personnel and to contractors;

(6) the targeted market segment, and the program's marketing and outreach plan;

(7) program participation requirements, if any;

(8) the time period during which the program will be offered;

(9) the expected useful life of the measures;

(10) detailed program budgets with projected expenditures, identifying program costs which will be borne by the utility and collected from its customers, with customer class allocations if appropriate;

(11) the participant costs;

(12) demonstration that the program is cost effective pursuant to the total resource cost test;

(13) a plan for how program energy and capacity savings can be measured and verified;

(14) the rationale and methodology used by the utility to estimate the proposed expenditures, and allocate the expenditures across programs and customer classes;

(15) proposed market transformation, and building code and appliance standard reforms, if any, which they have studied or propose as part of their program portfolios;

(16) forecasts of proposed program expenditures, energy and capacity savings, cost effectiveness and other items in a manner that facilitates comparison with actual results for purposes of measurement and verification, and compilation of annual reports;

(17) a general description of the programs which the utility specifically studied and rejected; and

(18) a description of any competitive bid process for programs undertaken by the utility.

F. Cost effectiveness using the total resource cost (TRC) test. While each program proposed by a utility must be cost effective, each measure within a program need not be cost effective.

G. The utility shall separately identify and present the assumptions, calculations and other elements associated with the TRC test. Those elements include, but are not limited to:

(1) cost of capital and discount rate employed by the utility and determination of net present value calculations;

(2) program costs to both the utility and participants;

(3) shared or allocated program costs or investments, along with a description of the sharing or allocation method;

(4) expected number of participants and program savings per participant in energy units and dollars;

(5) value of the energy/or capacity savings expected, including deemed savings, from the program to both participants and non-participants; and

(6) the period of analysis (life cycle) and a description of all resources which are assumed to be avoided by deployment of the efficiency program, including other quantifiable monetary savings.

H. In calculating the total resource cost of programs, costs shared among individual programs, such as market research and planning, program design, measurement and verification and annual reporting shall be allocated to individual programs in proportion to the direct costs assigned to those programs, unless the utility demonstrates that another allocation method is more appropriate.

I. General advertising, market transformation and education-type costs that promote energy efficiency or load management not tied to a specific program, should not be included as program costs for purposes of calculating a program's TRC test.

J. Participation and benefits requirements:

(1) the utility shall demonstrate that the portfolio of programs it offers or will offer is cost-effective and designed to provide every affected customer class with the opportunity to participate and benefit economically; and

(2) the overall design of portfolio offerings shall achieve widespread program access and availability within each affected customer class; for the residential class some utility energy efficiency programs shall be designed to enable low-income customer participation; utilities shall describe the extent to which the programs offered allow low-income customers to participate, recognizing the financial constraints of those customers.

K. Incentives and regulatory disincentives or barriers. This sub-section addresses the statutory requirement applicable to electric public utilities that regulatory disincentives or barriers be removed to the extent possible

and that electric public utilities have the opportunity to earn a profit on cost-effective energy efficiency and load management resource development that, with satisfactory program performance, is financially more attractive to the utility than supply-side utility resources.

(1) Tariff rider or base rate adder. An adder to the tariff rider or base rates will be determined each year based upon the energy and demand savings achieved by the electric public utility. This adder shall commence with savings projected for programs in effect in the calendar year of the effective date of this rule.

(2) Caps on adders. Notwithstanding any other provision of this sub-section:

(a) no adder shall be paid with respect to any energy efficiency or load management program that has been determined by the independent program evaluator's measurement and verification report filed with the commission to have a ratio of cost effectiveness under the TRC cost test of less than one, as determined before any amounts for the adders set forth in this sub-section are taken into account;

(b) the amount of any revenues for any adder received with respect to any energy efficiency or load management program shall be limited to the amount which, when added to the program's other program costs, does not cause that program's ratio of cost effectiveness under the TRC to become less than one (1); and

(c) the amount of any revenues for any adder received with respect to any energy efficiency or load management program shall be limited to the amount which, when added to all amounts recovered through the tariff rider or in base rates, will not cause any customer to be charged an amount greater than that permitted by the Efficient Use of Energy Act.

(3) Calculation of the adder. The adder will be calculated as follows:

(a) lifetime energy savings will be the total lifetime KWh savings from additional participation in all programs in the utility's portfolio during a twelve-month period, grossed up to account for system losses;

(b) annual demand savings will be the reduction to annual peak KW the utility achieves each year through its energy efficiency and load management programs; and

(c) the adder each year will equal the lifetime KWh energy savings times $0.01 per KWh, plus the total annual KW demand savings times $10 per KW.

(4) Adjustment to the adder calculation for low-income customer programs. In determining the lifetime energy savings from a given utility portfolio, lifetime energy savings from programs targeted exclusively to low-income customers will be valued at 1.25 times the actual KWh savings.

(5) Adjustment to the adder calculation for better performance. If in any calendar year the additional annual energy savings from programs in that year are 1% or more of the total utility retail sales in that calendar year, the adder shall equal $0.0125/KWh times the lifetime energy savings. If the excess is 1.5% or more, the adder shall equal $0.015/KWh times the lifetime energy savings.

(6) True-up of the adder calculation for measurement and performance results. After each comprehensive independent evaluator's measurement and verification report, the adder shall be adjusted to true-up the KW and KWh savings for which the adder was calculated and paid with the KW and KWh savings as determined in the report. The true-up process shall include adjustments to the adder level for performance at the levels specified in paragraphs (5) above and (7)(b)) below.

(7) Rate design and ratemaking modifications. The commission will develop rate design and ratemaking methods that address regulatory disincentives or barriers to electric public utilities to achieve energy efficiency savings.

(a) Any party may, and each investor-owned electric utility shall, make a filing that proposes rate design and ratemaking methods to remove regulatory disincentives or barriers for that utility to achieve energy efficiency savings. Such proposal shall be included as part of that utility's general rate case, provided that the general rate case is filed on or before July 1, 2010. If a general rate case for a utility has not been initiated by July 1, 2010, then the utility shall, unless otherwise ordered by the commission, file such a proposal for consideration and approval in a rate design proceeding by no later than July 1, 2010. If a utility does not file such a proposal by July 1, 2010, and has not been granted an extension of time to file such a proposal by the commission on or before that date, that utility's authority to receive the adder shall terminate automatically on July 1, 2010, unless otherwise ordered by the commission. These methods may include allowing the recovery of some or all fixed costs through fixed charges to customers, decoupling or other ratemaking and rate design methodologies. In presenting its proposal, the utility shall provide, for informational or other purposes, a rate schedule for residential customers that adjusts fixed charges only for customers other than low-use residential customers.

(b) Reduced Adder. From and after the date that the commission-approved rate design or ratemaking methods for removing regulatory disincentives or barriers become effective for each electric public utility, the adder for new energy savings achieved from programs for such utility shall be reduced to $0.005 per KWh plus $10 per KW for savings less than 1%, and $0.00625 and $0.0075 per KWh for savings of at least 1% and 1.5% respectively, plus 10KW, as described in Paragraph (5) of this sub-section. This reduced adder shall remain in effect unless and until the commission, upon the petition of any party or upon the commission's own motion, determines that another amount is appropriate to accomplish the removal of disincentives and provision of incentives.

[17.7.2.9 NMAC - Rp, 17.7.2.9 NMAC, 5-3-10]

17.7.2.10 RESIDENTIAL PROGRAMS:

A. Purpose. This section requires public utilities to establish cost-effective energy efficiency programs to ensure that residential customers, regardless of income, have the opportunity to participate and benefit economically. The programs should be intended to assist residential customers or households, including low-income customers, with conserving energy, reducing demand or reducing residential energy bills.

B. A public utility may establish an energy efficiency program specifically for its low-income customers to assist the utility's efforts in offering a balanced portfolio of energy efficiency programs.

(1) Low-income program funding. A public utility's allocation of total energy efficiency program funding to low-income programs is to be based upon factors to be articulated by the utility such as:

(a) the program's expected customer participation rates for eligible customers;

(b) the program's potential to reduce the burden of utility costs on low-income customers; and

(c) the program's ability to reduce energy demand and consumption.

(2) Integration.

(a) A public utility may coordinate program service with existing resources in the community, including affordable housing programs, and low-income weatherization programs managed by the state of New Mexico. This section does not preclude the utility from designing and proposing low-income programs.

(b) Low-income energy efficiency programs should be designed, whenever possible, to provide program services through providers that have demonstrated experience and effectiveness in the administration and provision of low-income energy efficiency services and in

identification of and outreach to low-income households. In the absence of qualified independent agencies, a public utility electing not to provide program services directly may solicit competitive bids for the provision of services by providers of related housing and construction services, and ensure appropriate training of such providers.

(3) Notification. Public utilities shall notify customers experiencing ability-to-pay problems of the utility's energy efficiency programs and hardship funds.

(4) Total resource cost test for low-income customer programs. In developing the TRC test for energy efficiency and load management programs directed to low income customers, unless otherwise quantified by the commission in a proceeding, electric public utilities shall assume that 20% of the calculated energy savings is the reasonable value of reductions in working capital, reduced collection costs, low or bad-debt expense, improved customer service effectiveness and other appropriate utility system economic benefits associated with low income programs.

[17.7.2.10 NMAC - Rp, 17.7.2.10 NMAC, 5-3-10]

17.7.2.11 LARGE CUSTOMER SELF-DIRECTED PROGRAMS AND EXEMPTIONS:

A. General. Large customer self-directed programs shall not require approval of the commission. The utility, however, shall describe the process it employs for such self-directed programs on its system either in its annual report or its application**.** A large customer shall receive approval for a credit for and equal to the incremental expenditures that customer has made at its facilities on and after January 1, 2005 toward cost-effective energy efficiency and load management, upon demonstration to the reasonable satisfaction of the utility or self-direct program administrator that its expenditures are cost-effective. The utility shall assign a person to evaluate and approve or disapprove large customer requests for credits or exemptions. The commission may appoint a self-direct program administrator, in lieu of the utility's designated person, for good cause shown.

B. Eligibility. Large customers applying for an electricity credit or exemption must meet the electricity consumption size criterion, and those applying for a gas credit or exemption must meet the gas consumption criterion. Projects by qualified customers that save electricity are eligible for an electricity credit only. Projects that save natural gas are eligible for a gas credit only. Projects that save electricity and gas are eligible for both credits, although the same energy efficiency expenditures cannot be used twice. Customers become eligible for self-direct program credits only after expenditures for a qualifying energy efficiency project(s) are made. Expenditures must be documented and approved by the utility or administrator prior to the credit being awarded. If expenditures are ongoing, the customer should present and receive approval for its expenditures to the utility or program administrator annually.

C. Requirements for approval of self-direct projects or exemptions. Self-direct program participants, or large customers seeking exemption, shall submit qualified in-house or contracted engineering studies, and such other information as may be reasonably required by the utility or program administrator, to demonstrate qualification for self-direct program credits or exemptions. Large customers must respond to reasonable utility or administrator information requests and allow the utility or administrator to perform site visits if necessary. Eligible expenditures shall have a simple payback period of more than one year but less than seven years. Projects that have received rebates, financial support or other substantial program support from a utility are not eligible for a credit. The utility or administrator shall act in a timely manner on requests for self-direct program approval.

D. Requirements for exemptions from the tariff rider. A large customer shall receive an exemption to paying seventy percent (70%) of the tariff rider if that customer demonstrates to the reasonable satisfaction of the utility or self-direct program administrator that it has exhausted all cost-effective energy efficiency measures in its facility (or group of facilities if facilities are aggregated in order to qualify). A determination of exemption is valid for 24 months. After the expiration of 24 months, a customer may request approval for exemption again by demonstrating that it has exhausted all cost effective energy efficiency in its facility or facilities.

E. Review procedure. Approvals or disapprovals of credits or exemptions by the utility or administrator shall be subject to commission review. The utility or administrator shall file notice of each self-direct program approval or disapproval with the commission, and serve that notice on interested parties, within five business days of the action. Notice of an appeal of an approval or disapproval shall be filed with the commission within 30 days of the approval or disapproval action.

F. Credits for self-direct programs. Credits for approved self-direct programs may be used to offset up to seventy percent (70%) of the tariff rider authorized by the Efficient Use of Energy Act until the credit is exhausted. Any credit not fully utilized in the year it is received shall carry over to subsequent years. The process of reviewing self-direct programs and awarding credits shall be designed to minimize utility administrative costs.

G. Measurement and verification of self-direct programs. Self-direct projects, expenditures and exemptions under this section shall be evaluated by the independent program evaluator. Large customers with approved self-direct programs or exemptions shall permit the evaluator access to all relevant engineering studies and documentation needed to verify energy savings of the project, and allow access to its site for reasonable inspections, at reasonable times. All records relevant to a self-direct program shall be maintained by the large customer for the duration of that program. The evaluator shall use the measurement and verification standards described in 17.7.2.14 NMAC, subject to appropriate protections for confidentiality, and the evaluator's findings shall be reported in the annual report to the commission pursuant to the Efficient Use of Energy Act. Following a determination by the independent program evaluator that a project is not achieving the cost-effectiveness requirements of this section, the customer's credit for that project shall be suspended, unless otherwise ordered by the commission.

H. Confidentiality. Upon request by the large customer, the information provided pursuant to this section by large customers to the utility or program administrator, program evaluator or others shall remain confidential except as otherwise ordered by the commission.

[17.7.2.11 NMAC - Rp, 17.7.2.11 NMAC, 5-3-10]

17.7.2.12 FILING REQUIREMENTS FOR COST RECOVERY:

A. General requirements. A public utility that undertakes approved cost-effective energy efficiency and load management programs shall have the option of recovering its prudent and reasonable costs and, for electric public utility adders, for such programs through an approved tariff rider, which, for electric utilities, shall be annually adjusted, or in base rates, or through a combination of the two. A utility may, with the approval of the commission, , recover such amounts as a single-year expensed amount, or amortized over a reasonable period, with a return at the utility's last-approved cost of capital, unless a different return is ordered by the commission.

B. Cost eligibility for recovery. All costs that are consistent with program approvals are recoverable so long as the utility acts reasonably to address significant changed circumstances which may occur between the time of program approval and program expenditure.

C. Tariff rider recovery.

If tariff rider cost recovery is sought, a utility shall present a proposed tariff rider or riders to the commission for approval. The proposed tariff rider(s) shall incorporate recovery of any costs currently permitted recovery, as well as any new costs for which the utility seeks recovery. All proposed tariff riders, including those that are filed to recover the adders permitted by Subsection K of 17.7.2.9 NMAC, or that propose to adjust the adder pursuant to Paragraph (6) of Subsection K of 17.7.2.9 NMAC, shall be accompanied by an **advice notice** containing the information required by 17.1.2.210.11 NMAC and served upon the individuals and entities set forth in that rule.

(1) A tariff rider proposed by a public utility to fund approved energy efficiency and load management programs shall go into effect thirty (30) days after filing, unless suspended by the commission for a period not to exceed one hundred eighty (180) days. If the tariff rider is not approved or suspended within thirty (30) days after filing, it shall be deemed approved as a matter of law. If the commission has not acted to approve or disapprove the tariff rider by the end of an ordered suspension period, it shall be deemed approved as a matter of law. Applications for tariff rider approval filed prior to related program approval shall not be subject to the suspension and approval deadlines set forth in this paragraph, until program approval is obtained.

(2) It is standard practice that tariff riders will be collected on a monthly basis. If the utility desires a tariff rider recovery which occurs other than monthly, it shall demonstrate to the commission why such a recovery frequency is preferable to monthly.

(3) Except for good cause shown, cost recovery should be implemented no earlier than the first billing cycle in which the affected customer class has an opportunity to participate.

(4) Tariff riders will be assessed on a percentage-of-bill basis, unless the utility demonstrates that its proposed tariff rider shall not result in customers paying tariff-rider amounts greater than those authorized by statute.

(5) The proposed tariff rider(s) shall be consistent with program approval findings that every affected customer class has the opportunity to participate and benefit economically.

(6) Over-recoveries or under-recoveries shall be credited or charged to the tariff rider along with any carrying charge approved by the commission.

D. Recovery in base rates. If base rate recovery of costs and adders is sought, a utility shall present proposed treatment to the commission for approval. The proposal shall incorporate recovery of any costs currently permitted recovery, as well as any new costs for which the utility seeks base rate recovery. The proposed recovery rate design shall be consistent with program approval findings that every affected customer class has the opportunity to participate and benefit economically.

E. The time period over which recovery is being sought shall be included as part of the utility's cost recovery filing request, as well as any request for carrying costs on deferrals. Deferral costs will also be permitted for cost overruns associated with exceeded participation levels and incorrect assumptions about billing determinants which cause over- or under-recoveries.

F. Program costs and incentives may be deferred for future recovery through creation of a regulatory asset, provided that the deferred recovery does not cause the tariff rider, or customer impact, to any customer to exceed $75,000 per year. In addition, if the utility proposes that program costs be capitalized, the utility shall demonstrate that the proposed pre-tax cost of capital associated with the program is reasonable. Any combination of proposed tariff rider and base rate recovery shall not increase any customer's bill by more than $75,000 per year without the customer's consent.

G. Impact of rate moratoriums. Utilities which are subject to a rate moratorium or freeze and which seek to implement energy efficiency or load management programs during the moratorium shall obtain advance commission determinations on whether costs incurred during the rate moratorium period will be permitted recovery.

H. Except as otherwise required by law or ordered by the commission, the value of proceeds from the sale or trade of any emission credits or allowances resulting from a utility's energy efficiency programs shall be used to offset program costs. This subsection shall not preclude a utility or other party from seeking alternative treatment for these credits or allowances.

[17.7.2.12 NMAC - Rp, 17.7.2.12 NMAC, 5-3-10]

17.7.2.13 REPORTING REQUIREMENTS:

A. General. Each utility providing energy efficiency or load management programs shall file an annual report with the commission, and post that report on a publicly accessible website.

B. Timing. Public service company of New Mexico (and its successors) shall file its report on on April 1st of each year. Southwestern public service company (and its successors) shall file its report on May 1 of each year. El Paso electric company (and its successors) shall file its report on June 1 of each year. All other public utilities with greater than 250,000 New Mexico customers shall file their reports on April 1st of each year. All other public utilities with fewer than 250,000 New Mexico customers shall file their reports on August 1st of each year.

C. Contents. Annual reports shall include the following:

(1) the most recent measurement and verification report (M&V report) of the independent program evaluator, which includes documentation, at both the total portfolio and individual program levels, of expenditures, measured and verified savings, and cost-effectiveness of all utility programs including self-direct programs, as well as deemed savings assumptions and all other assumptions used by the evaluator; the M&V report shall also include such other information as the commission may from time-to-time require; M&V processes should confirm that measures were actually installed, the installation meets reasonable quality standards, and the measures are operating correctly and are expected to generate the predicted savings;

(2) a statement of any program-related expenditures not covered by the independent measurement and verification report;

(3) a statement of any funds that were budgeted but not spent during the prior year;

(4) any material variances in any projected total program costs, with an explanation for the variance;

(5) reconciliation of tariff-rider collections from the prior year, along with an adjustment to the rider as necessary to make up under- or over-collections;

(6) the following specific, documented information for each utility program for the previous calendar year:

(a) a comparison of forecasted savings to verified achieved savings for each of the utility's energy efficiency programs;

(b) number of program participants served by each project;

(c) utility and participant costs, including M&V costs broken down by program;

(d) total avoided supply-side costs broken down by type of avoided cost (generation, transmission, distribution, etc.);

(e) total cost per kilowatt hour (KWh), kilowatt (KW) or therm saved over the life of the measure;

(f) total economic benefits for the reporting period; and

(g) net present value of all economic benefits for the life of the measures;

(7) a description and, to the extent practical, quantification of the non-energy benefits of the utility's portfolio of programs; this description shall include the emission reductions associated with

the saved energy, as well as associated emissions credits the utility has received, and the disposition of those credits; and

(8) information on the number of customers applying for and participating in self-direct programs, the number of customers applying for and receiving exemptions, measurement and verification of self-direct program targets, payback periods and achievements, expenditures by customers on qualifying projects, and expenses incurred by the utility or administrator to oversee these programs.

D. Audit. The commission may order a utility to submit an external audit that examines whether the utility's energy efficiency and load management program costs are being properly assigned to programs in accordance with this rule, commission orders, and other applicable requirements and standards. The cost of such audit shall be considered recoverable program costs, unless the audit results in an order of the commission containing findings of malfeasance on the part of the utility, in which case, the costs of the audit shall not be recoverable by the utility through the ratemaking process.

[17.7.2.13 NMAC - Rp, 17.7.2.13 NMAC, 5-3-10]

17.7.2.14 INDEPENDENT PROGRAM EVALUATOR:

A Measurement and verification (M&V). The development of energy efficiency programs that deliver reliable energy savings for New Mexico ratepayers depends on well-designed methods of independent program measurement and verification, as follows:

(1) independent program evaluator selection and scope of work: the commission will direct and control the independent evaluation of energy efficiency programs; initially, the commission will accomplish this by appointing an evaluation committee for each utility upon the effective date of this rule; the evaluation committee shall consist of a representative of the utility, representatives of consumers, environmental interests, commission staff and such other persons as the commission may from time-to-time name; committee members shall serve at the pleasure of the commission; this committee will establish a competitive bidding process for evaluator selection, develop the scope and term of work for the program evaluation, establish any rotating program evaluation schedule as may be desirable, and select an independent program evaluator(s);

(2) all potential evaluators shall submit competitive bids, shall be qualified by education and experience, and shall disclose any professional services provided to the utility, any of its affiliates or any of the evaluation committee members within the last seven years; the financial interests of the independent evaluator must be independent of evaluation results; the contract for evaluator services shall be between the utility and evaluator, with funding for the evaluator contract to be recovered from the tariff rider; the contract shall specify that the work is to be performed for the benefit of the commission and that approval or denial of payments under the contract may be reviewed by the evaluation committee at its discretion; renewals of the evaluator's contract shall also be determined by the evaluation committee; disputes within the evaluation committee shall be resolved by the commission; the commission may review this procedure at any time;

(3) utility cooperation with independent program evaluator and availability of records: the utility shall cooperate with the evaluator, and shall make information and personnel available to assist and respond to evaluator inquiries on a reasonable basis; all relevant records shall be maintained by the utility;

(4) M&V protocols: the evaluator shall employ appropriate international performance measurement and verification protocols (IPMVP), or describe any deviation from those protocols, and the reason for that deviation; and

(5) deemed savings: the independent program evaluator may utilize deemed savings in the measurement and verification of utility program energy and demand savings; deemed savings will not relieve the evaluator of the duty to verify savings with statistically significant samples.

[17.7.2.14 NMAC - N, 5-3-10]

17.7.2.15 MODIFICATION OR TERMINATION OF PROGRAMS:

A. General. The commission may direct a utility to modify or terminate a particular energy efficiency or load management program if, after an adequate period for implementation of the program, the commission determines the program is not sufficiently meeting its goals and purposes. Termination of a program or programs shall be accomplished in a manner that allows the utility to fully recover its reasonable and prudent program costs.

B. Modification or termination of a program shall not nullify any obligations already incurred by the utility, alternative energy efficiency provider or contractor for the performance or failure to perform prior to the effective date of the modification or termination.

C. The utility or any interested party may request that the commission modify or terminate a program or programs for good cause. Utilities shall request program budget modification for any budget changes exceeding 25%.

[17.7.2.15 NMAC - Rp, 17.7.2.14 NMAC, 5-3-10]

17.7.2.16 ALTERNATIVE ENERGY EFFICIENCY PROVIDERS:

A. With a public utility's consent, the commission may allow for an alternative entity to provide ratepayer-funded energy efficiency and load management to customers of that public utility. That alternative energy efficiency provider shall assume all responsibilities of the utility to provide approved energy efficiency and load management programs to the utility's customers, including all filing and reporting requirements.

B. Utilities are permitted to cooperate with each other on a consensual basis to extend programs offering energy efficiency beyond their customer base.

[17.7.2.16 NMAC - Rp, 17.7.2.15 NMAC, 5-3-10]

17.7.2.17 RURAL ELECTRIC COOPERATIVES:

A. Distribution cooperative utilities shall, within 24 months after the effective date of this rule and every 24 months thereafter, examine the potential to assist their customers in reducing energy consumption or peak electricity demand in a cost-effective manner. Based on these studies, distribution cooperative utilities shall establish energy efficiency and load management targets and shall begin to implement cost-effective energy efficiency and load management programs that are economically feasible and practical for their members and customers. Approval for such programs shall reside with the governing body of each distribution cooperative utility and not with the commission.

B. Each distribution cooperative utility shall file with the commission concurrently with its annual report, filed by May 1st, a report that describes the cooperative's examination of efficiency potential described in Subsection A of 17.7.2.17 NMAC as well as all of the distribution cooperative utility's programs or measures that promote energy efficiency, conservation or load management. The report shall set forth the costs of each of the programs or measures for the previous calendar year and the resulting effect on the consumption of electricity. In offering or implementing energy efficiency, conservation or load management programs, a distribution cooperative utility shall attempt to minimize any cross-subsidies between customer classes.

C. Each distribution cooperative utility shall include in the report required by Subsection B of 17.7.2.17 NMAC a description of all programs or measures to promote energy efficiency, conservation or load management that are planned and the anticipated date for implementation.

D. Costs resulting from

programs or measures to promote energy efficiency, conservation or load management may be recovered by the distribution cooperative utility through its general rates. In requesting approval to recover such costs in general rates, the distribution cooperative utility may elect to use the procedure set forth in NMSA 1978, Section 62-8-7(G).

E. The commission may develop a form which the cooperatives shall use to comply with this section.

[17.7.2.17 NMAC - Rp, 17.7.2.16 NMAC, 5-3-10]

17.7.2.18 VARIANCES: Applications for a variance from any of the provisions of this guideline shall:

A. state the reason(s) for the variance request;

B. identify each of the sections of this guideline for which a variance is requested;

C. describe the effect the variance will have, if granted, on compliance with this guideline;

D. describe how granting the variance will not compromise, or will further, the purposes of this guideline; and

E. indicate why the proposed variance is a reasonable alternative to the requirements of this guideline.

[17.7.2.18 NMAC - Rp, 17.7.2.17 NMAC, 5-3-10]

HISTORY of 17.7.2 NMAC:
Pre NMAC History: none.

History of Repealed Material:
17.7.2 NMAC, Energy Efficiency (filed 02-02-2007), repealed 05-3-2010.

NMAC History:
17.7.2 NMAC, Energy Efficiency (filed 02-02-2007) was replaced by 17.7.2 NMAC, Energy Efficiency, effective 05-3-2010.

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

LABOR RELATIONS DIVISION

This is an emergency amendment to 11.1.2 NMAC, Sections 11, 12 and 13, effective April 15, 2010.

11.1.2.11 PROCEDURE TO BE EMPLOYED IN THE PREDETERMINATION OF WAGE RATES ON PUBLIC WORKS: [~~Authority: Subsections A to F of 11.1.2.11 NMAC adopted pursuant to Section 13-4-11, New Mexico Statutes Annotated, 1978 Compilation.~~

~~A. Purpose and scope: The regulations contained in this part set forth the procedure for the determination of prevailing wage rates, on a statewide basis, pursuant to Section 13-4-10, NMSA 1978.~~

~~B. Computation of prevailing wage rate and definitions: The director shall determine the prevailing wage and prevailing fringe benefit rates for respective classes of workers employed on public works projects at the same wage rates and fringe benefits rates used in collective bargaining agreements between labor organizations and their signatory employers in the state of New Mexico that govern predominantly similar classes or classification of workers and the crafts involved. The prevailing wage rate for workers employed on projects within the street, highway, utility and light engineering construction classification (type "A") and for workers employed on building projects and heavy engineering projects within the general building (type "B") and heavy engineering construction classification (type "H") and for workers employed on projects determined within the residential building classification (type "C") shall be established on a statewide basis without regard to incentive, or subsistence pay. However, while incentive or subsistence pay shall not be considered in determining the statewide base wage rate, it shall be computed and applied on a zone basis in type "B" and type "H" construction in accordance with the same formula utilized to determine the prevailing statewide base wage rate. For the purpose of incentive or subsistence pay determination, "zone basis" shall mean location, municipality or site from which the, incentive or subsistence pay data received by the director. Working foreman hours shall be included in the determination of the prevailing wage for that particular craft based upon information received by the director.~~

~~(1) The director shall determine prevailing wage rates and prevailing fringe benefit rates for respective classes of workers employed on public works projects at the same wage rates and fringe benefit rates used in collective bargaining agreements between labor organizations and their signatory employers that govern predominately similar classes or classifications of workers. The director shall also give due regard to information obtained during the director's determination of the prevailing wage rates and prevailing fringe benefit rates made pursuant to this subsection. The term "due regard" means that the director shall consider credible substantial information from any interested person with respect to why the prevailing wage should not be the same wage set by the collective bargaining agreement. Such information shall be given the weight appropriate to its credibility and gravity and the director may rely on such evidence to make reasonable adjustment to the wage indicated by the weighted average of collective bargaining agreement in the locality.~~

~~(2) The term "base wage rate" contemplated in this section, shall mean the straight time hours and hourly rate paid each worker.~~

~~(3) Fringe benefits, as defined in Section 13-4-10.1c, NMSA, 1978, shall be determined by the director as established in Paragraph (1) of Subsection B. The fringe benefit figure so determined may also be expressed by a dollar amount representing fringe benefits.~~

~~(4) The term "locality" shall mean the boundaries of the state of New Mexico.~~

~~(5) As defined in these regulations "worker means any individual employed as a non-professional public works project subject to the New Mexico Public Works Act.~~

~~(6) The first annual determination of prevailing wage rates shall be set by the director, pursuant to 11.1.2.11 NMAC. In the event that any subsequent prevailing wage rate determination would result in lowering or increasing the prevailing wage by more than five percent (5%), the director shall establish the prevailing wage rate at no more than five percent (5%) above or below the most recently determined amount.~~

~~C. Determinations shall be made in the following manner provided that due regard is given to other data as established in Paragraph (1) of Subsection B.~~

~~(1) The director shall determine the prevailing wage and prevailing fringe benefit rates for respective classes of workers employed on public works projects at the same wage rates and fringe benefit rates used in collective bargaining agreements between labor organizations and their signatory employers in the state of New Mexico that govern predominately similar classes or classification of workers and the crafts involved.~~

~~(2) If the director determines that no collective bargaining agreement exists, the director may take a weighted average of the information and data that is submitted, and utilize this weighted average data as the prevailing wage rate and fringe benefit rate. A weighted average shall mean the sum of the wage or fringe rates divided by the number of wage or fringe rates submitted.~~

~~(3) If more than one collective bargaining agreement exists for the same classification or craft in the state of New Mexico, the director shall take a weighted average of the agreements to set the prevailing wage and fringe rates. A weighted average shall mean the sum of the wage or fringe rates as determined by the collective bargaining agreements divided by the number of applicable number of collective bargaining agreements.~~

~~D. Obtaining and~~

~~compiling wage rate information: For the purpose of making wage determinations, the director shall conduct a continuing program for the obtaining and compiling of collective bargaining agreements in order to accurately determine the prevailing wage and fringe rate for public works projects.~~

~~(1) Collective and bargaining agreement wage rate and fringe benefit information shall include the following information:~~

~~(a) the validity and accuracy of such wage information must be verified upon submittal, and if the wage information is submitted on paper, the verification shall be in writing and signed by the person submitting the data;~~

~~(b) such verification need not be in any particular form, but shall contain the following information:~~

~~(i) a statement by the person submitting the data that, to the best of his or her knowledge and belief, the information submitted is true and accurate;~~

~~(ii) a statement by classification as described in 11.1.2.13 NMAC and corresponding crafts and the corresponding wage rate and fringe benefit;~~

~~(iii) a general description of the nature of the work performed on each classification and by each craft;~~

~~(iv) identification and signature by the contractor (signatory) with whom the wage rate and fringe benefit were negotiated.~~

~~(2) Separate determinations shall be prepared for the street, highway, utility and light engineering classification (type "A"), and for the general building (type "B") and heavy engineering construction classification (type "H") and for the residential construction classification (type "C"), and wage determination shall be issued on the basis thereof.~~

~~(3) Prevailing wage and fringe rates will be issued on July 1 of every calendar year based on collective bargaining agreements and/or other relevant information. All collective bargaining agreements and/or other relevant data must be submitted to the director by the second Friday in March for consideration. Prevailing wage and fringe rates shall remain in effect until superceded by new wages.~~

~~(4) Prevailing wage and fringe benefit rates determined by the provisions of this section shall be compiled as official records and kept on file in the director's office and the records shall be updated in accordance with the applicable rates used in subsequent collective bargaining agreements.~~

~~(5) Prevailing wage and fringe rates shall be set on a statewide basis.~~

~~E. Review of prevailing wage determination after notice to all interested parties: Wage and fringe rate results shall be reviewed at a meeting with all known interested parties at least forty five (45) days prior to their annual July 1 adoption. The time, date and place of said meeting will be established at the discretion of the director. Notice of the subject matter, the time, date and place of the meeting, the manner in which interested persons may present their views. Any objections to the wage or fringe rates results may be communicated to the director by an interested party either orally at such meeting or in writing delivered to the director on or before the date of such meeting, and the director shall make a record of any and all objections and of his/her rulings thereon prior to making his determination of prevailing wage rates. The director shall notify the objecting party and all other parties in attendance at the meeting of his ruling(s) on objections simultaneously with the making of his wage determination. Objections to the prevailing wage determinations not made by any interested party receiving proper and timely notice of such meeting shall be deemed waived.~~

~~F. Appeal of the director's wage and fringe rates shall be made pursuant to 11.1.2.16 NMAC.~~]

Authority: Subsections A to G of 11.1.2.11 NMAC adopted pursuant to Section 13-4-11, New Mexico Statutes Annotated, 1978 Compilation.

A. Purpose and scope: The regulations contained in this part set forth the procedure for the determination of prevailing wage rates, on a statewide basis, pursuant to Section 13-4-11, NMSA 1978.

B. Computation of prevailing wage rate and definitions: The prevailing wage rate for laborers and mechanics employed on projects within the street, highway, utility and light engineering construction classification (type "A") and for laborers and mechanics employed on building projects and heavy engineering projects within the general building (type "B") and heavy engineering construction classification (type "H") and for laborers and mechanics employed on projects determined within the residential building classification (type "C") shall be computed on a statewide basis without regard to zone, incentive, or subsistence pay. However, while zone, incentive, or subsistence pay shall not be considered in determining the statewide base wage rate, it shall be computed and applied on a locality basis in type "B" and type "C" construction in accordance with the same formula utilized to determine the prevailing statewide base wage rate. For the purpose of zone, incentive or subsistence pay determination, "locality basis" shall mean location, municipality or site from which the zone, incentive or subsistence pay data emanated for the survey. Working foreman hours shall be included in the determination of the prevailing wage for that particular craft by surveying hours worked with the majority of the mechanics in that classification paid by that contractor/subcontractor. Where working foremen are the only mechanics on that project, those hours will be surveyed at the predetermined rated issued on that project. Working foremen in groupings for truck drivers, operators, and laborers shall not be included. For each classification the director shall employ the following methodology:

(1) The base wage rate paid in each work classification shall be grouped in ten cent ($ .10) numerically consecutive intervals, beginning with $.01 and including $.105, from which a weighted average of each group shall be taken, (see the following example).

Example:

Rates paid as follows would be grouped in this manner:

256 man hours at $10.01 = $2,562.56
340 man hours at $10.05 = $3,417.00
204 man hours at $10.10 = $2,060.40
800 man hours (for group) into
$8,039.96 = $10.05 base wage for group

2,011 man hours at $10.11 = $20,331.21
722 man hours at $10.16 = $7,335.52
1,067 man hours at $10.20 = $10,883.40
3,800 man hours (for group) into
$38,550.13 = $10.14 base wage for group
and so forth

(2) The prevailing wage rate for a given classification on contract work of a similar nature in the state shall be:

(a) The base wage rate (as determined in Paragraph (1) of Subsection B of 11.1.2.11 NMAC above) paid for the majority of man hours worked in said classification, or

(b) In the event that (1) is not applicable, then the base wage rate (as determined in Paragraph (1) of Subsection B of 11.1.2.11 NMAC above) paid for the greater number of man hours, provided that such greater number constitutes at least thirty per cent (30%) of the man hours worked in the classification.

(c) In the event that neither (1) nor (2) above is applicable the weighted average in the classification shall be the prevailing rate.

(d) In the event that the prevailing wage rate as determined by the application of (1) or (2) above (whichever is applicable) would result in lowering the prevailing wage as determined from the last survey immediately preceding by more than 3%, the director shall compute the rate under Rule (3) above, and unless application of Rule (3) above would have the effect of

further lowering the rate, the prevailing rate determined shall be the rate computed by application of Rule (3) above or the rate as was determined by the last survey preceding, whichever is lower.

(e) Fringe benefits as part of wages, as defined in Section 13-4-12 (A) (2), NMSA, 1978, shall be determined by applying Subparagraph (d) of Paragraph (2) of Subsection B of 11.1.2.11 NMAC above to the total dollar amount of fringe benefits paid by each contractor multiplied by the number of hours for which the total was paid. The fringe benefit figure so determined shall be expressed by a single dollar figure representing the total dollar amount of fringe benefits prevailing as a lump sum, rather than by separate dollar amounts representing each individual category of fringe benefits found to be prevailing.

(3) The term "base wage rate" contemplated in this section, shall mean the straight time hours and hourly rate paid each laborer or mechanic.

(4) The term "weighted average" shall mean the sum of the products of the grouped man hours times group base wage rate divided by the total number of man hours worked in the classification.

(5) The term "similar nature" shall mean contract work performed on projects as defined in the several Subparagraphs of Subsection B of 11.1.2.9 NMAC of these regulations.

(6) The term "director" shall mean the public official charged by law with the administration of the Public Works Minimum Wage Act.

(7) The term "state" shall mean the state of New Mexico.

C. Obtaining and compiling wage rate information and preparation of wage rate surveys: For the purpose of making wage determinations, the director shall conduct a continuing program for the obtaining and compiling of wage rate information, as required by Section 13-4-11, NMSA 1978, employing the procedures set forth in this Section.

(1) Separate surveys shall be prepared for the street, highway, utility and light engineering classification (type "A"), and for the general building (type "B") and heavy engineering construction classification (type "H") and for the residential construction classification (type "C"), and wage determination shall be issued on the basis thereof.

(2) The annual survey period shall be the month of June of each year. Wage rate decisions issued as a result of this survey and wage determination shall remain effective until superseded beginning fifteen (15) days following the making of the wage determination pursuant to Subsection D of 11.1.2.11 NMAC of these rules and regulations. Each annual survey and wage determination shall be and remain valid and the director shall issue to requesting agencies wage decisions based thereon until such survey and wage determination is superseded by an effective new survey and wage determination. A wage determination based upon a new survey shall not go into effect pending a final disposition of any appeal to the labor and industrial commission, sitting as the appeals board. If no appeal is timely filed pursuant to properly preserved objection as provided in Subsection D of 11.1.2.11 NMAC, infra, such survey and determination shall become effective on the applicable date specified in Paragraph (2) of Subsection C of 11.1.2.11 NMAC, above.

(3) Surveys and wage rate determination shall be on a statewide basis.

(4) Wage rate surveys prepared by the director for the street, highway, utility and light engineering construction classification (type "A"), and for the general building (type "B") and for the residential building construction classification (type "C"), and for heavy engineering construction classification (type "H") shall be compiled from certified weekly payrolls and verified wage information submitted and prepared in accordance with Subsection C of 11.1.2.10 NMAC of these rules and regulations and shall be utilized by the director in making wage rate determinations; provided, the director shall encourage the voluntary submission of wage data by contractors, contractors' associations, labor organizations and public officers. He shall give due regard to such information, voluntarily submitted, together with information obtained from field surveys, conducted in accordance with Section 13-4-11, NMSA 1978, in evaluating the validity and accuracy of certified payrolls and verified wage information incorporated in the director's survey.

(a) Certified weekly payrolls and verified wage information: The director shall compile his survey from the information contained in the certified payrolls and verified information submitted for the survey period prepared in accordance with Subsection C of 11.1.2.10 NMAC of these rules and regulations. Not less than twenty-five (25) days prior to the time scheduled for the hearing specified in Subsection D of 11.1.2.11 NMAC infra, the director shall prepare a detailed statement of the information, if any, which he has excluded from said certified payrolls or verified wage information in preparing his survey. Said statement, together with all certified payrolls and verified wage information, shall be available for inspection by any interested party in the offices of the director, subject to limitations imposed by Subsection F of 11.1.2.10 NMAC, supra. To the extent the director fails to object in said detailed statement, the information contained in said certified payrolls or verified wage information shall be incorporated by the director directly into the survey for the period concerned and the director shall be barred from raising any objection to said information in any subsequent proceeding before the labor and industrial commission, sitting as the appeals board, or otherwise. The information contained in said certified payrolls or verified wage information shall be conclusive upon him as to its validity, accuracy and completeness. This provision shall not prevent any interested party from objecting to information contained in such certified payrolls or verified wage information.

(b) Within the time limits specified in Subparagraph (a) of Paragraph (4) of Subsection C of 11.1.2.11 NMAC, supra, the director may object to the information contained in certified weekly payrolls or verified wage information timely submitted to him and refuse to incorporate it in his survey only on the ground that information contained therein does not accurately state the wages being paid mechanics or laborers employed under said contract or is not in accordance with the wage rates contained in the contract specifications, if any.

(c) The director may omit from his survey information contained in certified payrolls or in properly prepared and submitted verified wage information only to the extent he has a specific objection as enumerated in Subparagraph (a) of Paragraph (4) of Subsection C of 11.1.2.11 NMAC, supra, thereto.

D. Review of survey results after notice to all interested parties: Survey results shall be reviewed at a meeting with all known interested parties. The time, date and place of said meeting will be established at the discretion of the director. Notice of the subject matter, the time, date and place of the meeting, the manner in which interested persons may present their views, and the method by which copies of the survey results (including lists of contractors and projects covered by the survey) and copies of the director's statement of information excluded from the survey pursuant to Paragraph (4) of Subsection C of 11.1.2.11 NMAC, supra, may be obtained, shall be published once at least thirty (30) days prior to the meeting date in a newspaper of general circulation. Such notice shall also be mailed by the director to all known interested parties at least thirty (30) days prior to the meeting date along with a copy of the survey results (including lists of contractors and projects covered by the survey) and a copy of the labor commissioner's statement of information excluded from the survey pursuant to Paragraph (4) of Subsection C of 11.1.2.11 NMAC, supra. Any objections to the survey results may be communicated to the director by an interested party either orally at such meeting or in writing delivered to the director

on or before the date of such meeting, and the director shall make a record of any and all objections and of his rulings thereon prior to making his determination of prevailing wage rates. The director shall notify the objecting party and all other parties in attendance at the meeting of his ruling(s) on objections simultaneously with the making of his wage determination. Objections to the survey results not made by any interested party receiving proper and timely notice of such meeting shall be deemed waived and shall not constitute a ground for appeal unless the basis for such objection shall not have been reasonably discoverable by examination of the certified payrolls and verified wage information upon which the survey results are based, which data and all work papers and other material relating thereto shall be available at the office of the director, not less than thirty (30) days prior to such meeting, for inspection and copying by any interested party. For purposes of this Subsection D of 11.1.2.11 NMAC the term "all interested parties" shall include without limitation the state highway department, incorporated cities and Class A and B counties and their respective school boards or authorities, state institutions of higher learning and other contracting agencies which with regular frequency undertake public works projects subject to the Act, and all other persons (including labor organizations, contractors and contractor associations) who make written request to the director to receive notice as provided in this section.

E. Determination of prevailing wage rates: The director shall determine prevailing wage rates applicable in the state for the type of construction proposed based on the survey data assembled and compiled.

F. Addendum changes: Wage rate corrections or changes to decisions rendered shall not be issued without allowing the requesting agency at least ten (10) days notice before the date bids are to be submitted.

G. Effectiveness of wage rate decisions: Wage rate decisions shall remain effective until superseded; provided that changes to decisions rendered shall not be issued without allowing the requesting agency at least ten (10) days notice before the date bids are to be submitted. New wage rate decisions shall be issued for all contracts on which bids have not been submitted before the date on which a new survey and wage determination becomes effective pursuant to Subsection C of 11.1.2.11 NMAC, supra, provided, that any such new decision shall not supersede any previously issued decision unless such new decision is received by the contracting agency at least ten (10) days prior to the date on which bids are to be submitted. Notwithstanding anything in these regulations to the contrary or apparently to the contrary, the director shall not be required to issue a wage rate decision to a requesting agency unless such agency reasonably expects to advertise the contract for bids and to receive bids within 120 days from the date of its written request. [5/31/72, 1/14/76, 6/4/79, 3/7/80, 1/29/81, 5/28/81, 11/4/88, 2/8/90, 2/14/94, 8/15/98; 11.1.2.11 NMAC - Rn & A, 11 NMAC 1.1.11, 12/31/09; A/E, 4/15/10]

11.1.2.12 ADOPTION OF STANDARD JOB CLASSIFICATIONS AND DESCRIPTIONS APPLICABLE ON PUBLIC WORKS IN NEW MEXICO SUBJECT TO THE PUBLIC WORKS MINIMUM WAGE ACT: [~~Authority: Subsections A to C of 11.1.2.12 NMAC adopted pursuant to Section 13-4-11, New Mexico Statutes Annotated, 1978 Compilation~~

~~A. Purpose and scope: The regulations in this part set forth the procedures for establishment of standard job classifications and descriptions for various classifications of workers employed on contract work of a similar nature and as defined in the several paragraphs of Subsection B of 11.1.2.9 NMAC, of these rules and regulations. These are adopted in order to permit the director to administer the Public Works Minimum Wage Act uniformly.~~

~~B. Adoption of standard job classifications and descriptions:~~

~~(1) The director may seek the assistance of contractors, contractors' associations, labor organizations, interested parties, and public officers in establishing standard job classifications and descriptions for work to be performed in the state subject to the Public Works Minimum Wage Act. Separate standard job classifications and descriptions shall be established for each of the separate types of construction projects as defined in the several paragraphs of Subsection B of 11.1.2.9 NMAC, of these rules and regulations in order to reflect the various classifications of laborers and mechanics employed on contract work of a similar nature.~~

~~(2) Standard job classifications and descriptions shall be adopted as regulations by the director pursuant to Section 13-4-11, NMSA 1978, and in accordance with the procedures set out in 11.1.2.15 NMAC. Existing job classifications and descriptions shall remain effective until superseded on the effective date of newly adopted standard job classifications and descriptions as provided in 11.1.2.15 NMAC. Upon issuance by the director of new standard job classifications and descriptions pursuant to Subsection B of 11.1.2.15 NMAC infra, the director shall mail copies of the said job classifications and descriptions pursuant to Paragraph (3) of Subsection B of 11.1.2.14 NMAC, infra.~~

~~C. Addition, deletion, or modification of job classifications:~~

~~(1) Any person wishing to add, delete or modify a standard job classification and description shall submit a written request containing the proposed classification and description.~~

~~(2) Any proposal for a standard job classification and description shall contain the following clearly defined information:~~

~~(a) occupational title;~~

~~(b) a description of the physical duties to be performed by a laborer or mechanic having such a classification;~~

~~(c) evidence of existing prevailing rates of pay, including fringe benefits;~~

~~(d) evidence that the proposed classification is used in the type of contract work for which the classification is proposed; and~~

~~(e) such other justification as the director may deem advisable in the circumstances.~~]

Authority: Subsections A to C of 11.1.2.12 NMAC adopted pursuant to Section 13-4-11, New Mexico Statutes Annotated, 1978 Compilation

A. Purpose and scope: The regulations in this part set forth the procedures for establishment of standard job classifications and descriptions for various classifications of laborers and mechanics employed on contract work of a similar nature and as defined in the several Paragraphs of Subsection B of 11.1.2.9 NMAC, of these rules and regulations. These are adopted in order to permit the director to administer the Public Works Minimum Wage Act uniformly.

B. Adoption of standard job classifications and descriptions:

(1) The director may seek the assistance of contractors, contractors' associations, labor organizations, interested parties, and public officers in establishing standard job classifications and descriptions for work to be performed in the state subject to the Public Works Minimum Wage Act. Separate standard job classifications and descriptions shall be established for each of the separate types of construction projects as defined in the several Paragraphs of Subsection B of 11.1.2.9 NMAC, of these rules and regulations in order to reflect the various classifications of laborers and mechanics employed on contract work of a similar nature.

(2) Standard job classifications and descriptions shall be adopted as regulations by the director pursuant to Section 13-4-11, NMSA 1978, and in accordance with the procedures set out in Section 15 of these rules and regulations. Existing job classifications and descriptions shall remain effective until superseded on

the effective date of newly adopted standard job classifications and descriptions as provided in Section 15 of these rules and regulations. Upon issuance by the director of new standard job classifications and descriptions pursuant to Subsection B of 11.1.2.15 NMAC infra, the director shall mail copies of the said job classifications and descriptions pursuant to Paragraph (3) of Subsection B of 11.1.2.14 NMAC, infra.

C. Addition, deletion, or modification of job classifications:

(1) Any person wishing to add, delete, or modify a standard job classification and description shall submit a written request containing the proposed classification and description.

(2) Any proposal for a standard job classification and description shall contain the following clearly defined information:

(a) occupational title;

(b) a description of the physical duties to be performed by a laborer or mechanic having such a classification;

(c) evidence of existing prevailing rates of pay, including fringe benefits;

(d) evidence that the proposed classification is used in the type of contract work for which the classification is proposed; and

(e) Such other justification as the director may deem advisable in the circumstances.

[5/31/72, 1/14/76, 6/4/79, 11/4/88; 11.1.2.12 NMAC - Rn & A, 11 NMAC 1.1.12, 12/31/09; A/E, 4/15/10]

11.1.2.13 [~~CATEGORIES WITHIN EACH CRAFT CLASSIFICATION, APPLIED ON PUBLIC WORKS PROJECTS IN NEW MEXICO:~~ ~~Authority: Subsections A to C of 11.1.2.13 NMAC adopted pursuant to Section 13-4-11, New Mexico Statutes Annotated, 1978 Compilation.~~

~~A. Purpose and scope: The regulations in this part set forth the establishment of categories within the various crafts employed on contract work of a similar nature within each such craft which will remain constant and reflect the skill differential of each classification within the craft. Predetermination of wage rates for each category will be made based on information provided to the director for each classification. Within a category or classification subclassifications should be broken out and distinct in wage rate data provided to the director, i.e., sound technicians, operator groups, laborer groups.~~

~~B. Categories for type "A" construction: The following classifications within the various crafts shall be determined by the director.~~

~~(1) bricklayer, blocklayer, stonemason;~~

~~(2) carpenters;~~

~~(3) cement masons;~~

~~(4) electricians-lineman/ wireman or technician (outside);~~

~~(5) ironworkers;~~

~~(6) operators (groups);~~

~~(7) truck drivers (groups);~~

~~(8) brush painters;~~

~~(9) spray painters;~~

~~(10) plumbers, pipe fitters, steam fitters;~~

~~(11) laborers (groups);~~

~~C. Categories for type "B"construction: The following classifications within the various crafts shall be determined by the director.~~

~~(1) heat and frost insulator;~~

~~(2) boilermaker;~~

~~(3) bricklayer, blocklayer, stonemason;~~

~~(4) carpenter/lather - building;~~

~~(5) drywall finisher/taper;~~

~~(6) cement mason (composition or mastic - finishing machine operator) - building;~~

~~(7) electricians: wireman or technician (inside), lineman or technician (outside): installer (sound);~~

~~(8) elevator constructor;~~

~~(9) elevator constructor helper;~~

~~(10) glazier;~~

~~(11) ironworker;~~

~~(12) painters;~~

~~(13) plasterer;~~

~~(14) plumbers and pipefitters, lead burner;~~

~~(15) roofer;~~

~~(16) sheet metal worker;~~

~~(17) soft floor layer (carpet, asph. tile, linoleum);~~

~~(18) sprinkler fitter;~~

~~(19) tile setter;~~

~~(20) tile setter helper;~~

~~(21) laborers (groups);~~

~~(22) operators - building (groups);~~

~~(23) truck drivers - building (groups);~~

~~(24) operators - heavy engineering (groups).~~

~~D. Categories for type "C" construction: The following classifications within the various crafts shall be determined by the director.~~

~~(1) heat and frost insulator;~~

~~(2) boilermaker;~~

~~(3) bricklayer, blocklayer, stonemason;~~

~~(4) carpenter/lather - building;~~

~~(5) drywall finisher/taper;~~

~~(6) cement mason (composition or mastic - finishing machine operator) - building;~~

~~(7) electricians: wireman or technician (inside), lineman or technician (outside), installer (sound);~~

~~(8) elevator constructor;~~

~~(9) elevator constructor helper;~~

~~(10) glazier;~~

~~(11) ironworker;~~

~~(12) painters;~~

~~(13) plasterer;~~

~~(14) plumbers and pipefitters, lead burner;~~

~~(15) roofer;~~

~~(16) sheet metal worker;~~

~~(17) soft floor layer (carpet, asph. tile, linoleum);~~

~~(18) sprinkler fitter;~~

~~(19) tile setter;~~

~~(20) tile setter helper;~~

~~(21) laborers, groups~~

~~(22) operators - building, groups;~~

~~(23) truck drivers - building, groups;~~

~~(24) operators - heavy engineering, groups.~~

~~E. Categories for type "H" construction: The following classifications within the various crafts shall be determined by the director.~~

~~(1) heat and frost insulator;~~

~~(2) boiler maker;~~

~~(3) bricklayer/blocklayer/stone mason;~~

~~(4) carpenter/lather;~~

~~(5) millwright/piledriver;~~

~~(6) cement mason;~~

~~(7) electricians (and all included subclassifications);~~

~~(8) glazier;~~

~~(9) ironworker;~~

~~(10) painter;~~

~~(11) plumber/pipefitter.~~]

SURVEY CATEGORIES AND WAGE DIFFERENTIALS WITHIN EACH CRAFT CLASSIFICATION, APPLIED ON PUBLIC WORKS PROJECTS IN NEW MEXICO: Authority: Subsections A to E of 11.1.2.13 NMAC adopted pursuant to Section 13-4-11, New Mexico Statutes Annotated, 1978 Compilation.

A. Purpose and scope: The regulations in this part set forth the establishment of survey categories within the various crafts employed on contract work of a similar nature, and of wage rate differentials within each such craft which will remain constant and reflect the skill differential of each classification within the craft, provided that changes may be made if future surveys clearly substantiate such change.

B. Survey categories for type A construction: The following classifications within the various crafts shall be surveyed by the director in his survey:

(1) bricklayer, blocklayer, stonemason;

(2) carpenters;

(3) cement masons;

(4) electricians-lineman/ wireman or technician (outside);

(5) ironworkers;
(6) *group iv operators;
(7) *group ii truck drivers;
(8) brush painters;
(9) spray painters;
(10) plumbers, pipe fitters, steam fitters;
(11) *group II laborers (semi-skilled).
(12) Each of the above asterisked categories shall constitute the basis for wage rate differentials for the respective crafts which each represents. When appropriate wage requests are made for crafts which are not listed above, the director shall utilize the same survey procedures and base periods to determine the prevailing rate as he uses for the other crafts.

C. Survey categories for type "B" and Type "C" construction: The following classifications within the various crafts shall be surveyed by the director in his survey:
(1) asbestos worker/heat and frost insulator;
(2) boilermaker;
(3) bricklayer, blocklayer, stonemason;
(4) carpenter/lather - building; residential;
(5) carpenter/lather - heavy engineering;
(6) cement mason (composition or mastic - finishing machine operator) - building, residential, and heavy engineering;
(7) electricians: *wireman or technician (inside), *lineman or technician (outside); *installer (sound);
(8) elevator constructor;
(9) helper;
(10) glazier;
(11) ironworker;
(12) *painters;
(13) plasterer;
(14) plumbers and pipefitters, lead burner;
(15) roofer;
(16) sheet metal worker;
(17) soft floor layer (carpet, asph. tile, linoleum);
(18) sprinkler fitter;
(19) tile setter, helper;
(20) *group VIII operators - building ; residential;
(21) semi - skilled laborers: cement mason tenders; hodcarriers; plaster spreader opr.; plaster tenders; gunite nozzlemen; pumpcrete nozzlemen - building; residential;
(22) tenders (to cement mason and plasterer); hodcarriers - heavy engineering;
(23) *group II truck drivers - building; residential;
(24) *group IV operators - heavy engineering;
(25) *group II truck drivers - heavy engineering.
(26) Each of the above asterisked categories shall constitute the basis for wage rate differentials for the respective crafts which each represents. When appropriate wage requests are made for crafts which are not listed above, the director shall utilize the same survey procedures and base periods to determine the prevailing rate as he uses for other crafts.

D. Wage rate differentials in craft classifications:
(1) The director may seek the assistance of contractors, contractors' associations, labor organizations, other interested parties and public officers in setting appropriate wage differentials within each craft employed on contract work of a similar nature.
(2) Informational data pertaining to wage rate differentials within a craft employed on contract work of a similar nature may be presented to the director by any of the above-named interested parties.

E. Changes in wage spreads:
(1) Wage rate investigations shall be conducted to ascertain the propriety of wage differentials within craft classifications employed on contract work of a similar nature.
(2) When a change in wage rate differential is indicated by substantial evidence, all known interested parties shall be notified and given a reasonable time in which to present their views before a permanent change in a wage differential is made by the director.

F. Appendix A: Electrician classifications and wage spreads for type "A" construction:
(1) Groundman (outside) -$3.41;
(2) Equipment operator (outside) -$0.59;
(3) Lineman/wireman or technician(outside) (Base);
(4) Cable splicer (outside) +$1.18.

G. Appendix B: Laborer classification groups and wage spreads for type "A" construction:
(1) Group I (unskilled): -$0.30: building and common laborer; carpenter tender chainman; rodman; stakedriver; concrete buggy operator (hand); concrete workers; flagman; soil sample tester;
(2) Group II (semiskilled): (base): wagon, air tract, drill and diamond drillers' tender (outside); air and power tool man (not a carpenter's tool); asphalt heaterman; asphalt jointman; asphalt raker; batching plant scaleman; tenderers (to cement mason and plasterer); chain sawman; concrete power buggyman; concrete touch-up man; concrete sawman - coring mach.; curbing machine, asphalt or cement; cutting torchman; metal form setter-road; grade setter; hod carrier; mortar mixer and mason tender; powderman or blaster helper; sandblaster; scaler; vibratorman (hand type) ; vibratory compactor (hand type); window washer; nurseryman-gardener; wagon, air tract, drill and diamond driller (outside); roadway hardware worker;
(3) Group III (miscellaneous): +$0.40: gunite pumpcreteman and nozzleman; multi-plate setter; manhole builder; pipielayer; powderman-blaster-makeup; landscaper; traffic control technician; laboratory technician.

H. Appendix C: Equipment operator classification groups and wage spreads for type "A" construction:
(1) Group I: -$0.80: concr. paving curing machine;
(2) Group II: -$0.60: belt type conveyors (material and concrete); broom (self prop.); fork lift; grease truck oper.; head oiler; hydro lift; tractor (under 50 drawbar HP with or without attach.); indus. loco. brakeman; front end loader (2CY or less): fireman; oiler; screedman; roller (pull type); mulching machine, roller (self propelled);
(3) Group III: -$0.02: concr. paving form grader; concr. paving gang vibrator; concr. paving joint or saw mach.; concr. paving sub grader; tractor with backhoe attachment; subgrade or base finisher; power plant (elec. gen. or welding mach.);
(4) Group IV: (base): bulldozer (including self-propelled roller with dozer attachment); batch or continuous mix plant (concr., soil cement, or asph.); roller (steel wheel); front end loader (2 through 10CY); scraper oper., motor grader;
(5) Group V: +$0.00: asph. distr.; asph. paving or laydown mach.; asph. retort heater; mixer, heavy duty, asph. or soil cement; trenching mach.; clam type shaftmucker; backhoe, clamshell, dragline, gradall, shovel (under 3/4 CY); elevating grader or belt loader; cranes (crawler or mobile) under 20 ton; air compressor (300 CFM and over); crushing screening and washing plants; drlg. mach. (cable core or rotary); mixer, concr. (1 CY and less); pump (6 in. intake or over); winch truck; hoist (1 drum); indus. loco. motorman; lumber stacker; tractor (50 drawbar HP or over);
(6) Group VI: +$0.15: concr. paver mixer; hoist (2 drums and over); side boom; traveling crane; piledriver; backhoe, clamshell, dragline, gradall, shovel (3/4 CY to 3 CY); cranes (crawler or mobile) 20 ton to 40 ton; front end loader (over 10 CY); mixer., concr. (over 1 CY); mechanic and/or welder;
(7) Group VII: +$0.20: concr. slip-form paving mach.; concr. paving finishing mach.; concr. paving longitudinal float; gunite mach.; refrig.; jumbo form or drlg.; stage; slusher; concr. paving spreader;

pumpcrete mach.; grout pump oper.;

(8) Group VIII: +$0.35: mine hoist; bulldozer (multiple units); scraper (multiple units); mucking mach.; backhoe, clamshell, dragline, gradall, shovel (over 3 CY); cranes (crawler or mobile) over 40 tons;

(9) Group IX: +$0.85: belt loader (CMI type) oper.; pipemobile oper. assistant; derrick, cableway;

(10) Group X: +$1.65: pipemobile operator; mole operator.

I. Appendix D: Truck driver classification groups and wage spreads for type "A" construction:

(1) Group I: -$0.20: pick-up truck 3/4 ton or under; warehouseman; dump truck, under 8 cubic yards; flatbed, 1 1/2 ton or under;

(2) Group II: (BASE): dump truck, 8 to 16 cubic yards; tank truck, under 6,000 gallons; flatbed, over 1 1/2 ton;

(3) Group III: +$0.20: spreader box (self-propelled); distributor (asphalt) transit mix; lowboy, light equipment; off-highway hauler; tank truck, over 6,000 gallons; dump truck, over 16 cubic yards; trailer semi-trailer dump;

(4) Group IV: +$0.40: diesel-powered transport; lowboy, heavy equipment.

J. Appendix E: Electrician classifications and wage spreads for type "H" heavy engineering construction:

(1) Outside classifications:

(a) Groundman (outside) -$3.41;

(b) Equipment operator (outside) -$0.59;

(c) Lineman or technician (outside) (base);

(d) Cable splicer (outside) +$1.18.

(2) Inside classifications:

(a) Wireman or technician (inside) (base);

(b) Cable splicer (inside) +$1.73.

(3) Sound classifications:

(a) Installer (sound) (base);

(b) Technician (sound) +$1.55;

(c) Soundman +$3.62.

K. Appendix F: Laborer classification groups and wage spreads for type "H" heavy engineering construction:

(1) Group I (unskilled): -$0.30: building and common laborer; carpenter tender; chainman; rodman; stakedriver; concr. buggy opr. (hand); concr. workers; flagmen; soil sample tester;

(2) Group II (semi-skilled): (base): wagon, air tract, drill and diamond drillers' tender (outside); air and power tool opr. (not a carpenter's tool); asbestos remover; asph. heaterman; asph. jointman; asph.raker; batching plant scaleman; tenderers (to cement mason and plasterer); chain sawman; concr. power buggyman opr.; concr. touch-up man; concr. sawman - coring mach.; curbing mach., asph. or cement; cutting torchman; metal form setter-road; grade setter; hod carrier; mortar mixer and mason tender; powderman or blaster helper; sandblaster; scaler; vibratorman (hand type); vibratory compactor (hand type); window washer; nurseryman-gardener; wagon, air tract, drill and diamond driller (outside); roadway hardware worker;

(3) Group III (miscellaneous): +$0.30: gunite pumpcreteman and nozzleman; multi-plate setter; manhole builder; pipelayer; powderman - blaster - makeup; landscaper; traffic control technician; laboratory technician;

(4) Group IV (shaft workers): +$0.87: air tugger opr.; concr. workers (incl. all cement chipping and finish, underground); drillers; form setters and handlers; hand muckers; miners; powdermen; timbermen (wood or steel); reinforcing steel setters; tunnel liner; plate setters, all cutting and welding incidental to miner's work; toplanders; bottomlanders;

(5) Group V (shaft workers): +$1.12: shifters;

(6) Group VI (tunnel workers): -$0.15: laborers and handmuckers;

(7) Group VII (tunnel workers): +$0.00: groutmen; nippers; trackmen;

(8) Group VIII (tunnel workers): +$0.25: drillers; form setters and handlers; scalers; miners; timbermen; brakemen; concr. workers (incl. all cement chipping and finishing underground); reinforcing steel setters; timbermen (wood or steel); tunnel liner plate setters; all cutting and welding incidental to miner's work;

(9) Group IX (tunnel workers): +$0.45: powdermen;

(10) Group X (tunnel workers): +$1.12: shifters.

L. Appendix G: Equipment operator classification groups and wage spreads for type "H" - heavy engineering construction:

(1) Group I: -$0.80: concr. paving curing machine;

(2) Group II: -$0.60: belt type conveyors (material and concr.); broom (self prop.); forklift; greases truck oper.; head oiler; hydro lift; tractor (under 50 drawbar HP with or without attach.); indus. loco. brakeman; front end loader (2 CY or less); fireman; oiler; screedman; roller (pull type); mulching machine, roller (self propelled);

(3) Group III: -$0.02: concr. paving form grader; concr. paving gang vibrator; concr. paving joint or saw mach.; concr. paving sub grader; tractor with backhoe attachment; subgrade or base finisher; power plant (elec. gen. or welding mach.);

(4) Group IV: (base): bulldozer (including self-propelled roller with dozer attachment); batch or continuous mix plant (concr., soil-cement, or asph.); roller (steel wheel); front end loader (2 through 10 CY); scraper oper.; motor grader;

(5) Group V: +$0.00: asph. distr.; paving or laydown mach.; asph. retort heater; mixer, heavy duty, asph. or soil cement; trenching mach.; clam type shaftmucker; backhoe, clamshell, dragline, gradall, shovel (under 3/4 CY); elevating grader or belt loader; cranes (crawler or mobile) under 20 ton; air compressor (300 CFM and over); crushing screening and washing plants; drlg. mach. (cable core or rotary); mixer, concr. (1 CY and less); pump (6 in. intake or over); winch truck; hoist (1 drum); indus. loco. motorman; lumber stacker; tractor (50 drawbar HP or over);

(6) Group VI: +$0.15: concr. paver mixer; hoist (2 drums and over); side boom; traveling crane; piledriver; backhoe, clamshell, dragline, gradall, shovel (3/4 CY to 3 CY); cranes (crawler or mobile) 20 ton to 40 ton; front end loader (over 10 CY); mixer., concr. (over 1 CY); mechanic and/or welder;

(7) Group VII: +$0.20: concr. slip-form paving mach.; concr. paving finishing mach.; concr. paving longitudinal float; gunite mach.; refrig.; jumbo form or drlg.; stage; slusher; concr. paving spreader; pumpcrete mach.; grout pump oper.;

(8) Group VIII: +$0.35: mine hoist; bulldozer (multiple units); scraper (multiple units); mucking mach.; backhoe, clamshell, dragline, gradall, shovel (over 3 CY); cranes (crawler or mobile) over 40 tons;

(9) Group IX: +$0.85: belt loader (CMI type) oper.; pipemobile oper. assistant; derrick, cableway;

(10) Group X: +$1.65: pipemobile operator; mole operator.

M. Appendix H: Truck driver classification groups and wage spreads for type "H" - heavy engineering construction:

(1) Group I: -$0.20: pick-up truck 3/4 ton or under; warehouseman; dump truck, under 8 cubic yards; flatbed, 1 1/2 ton or under;

(2) Group II: (base): dump truck, 8 to 16 cubic yards; tank truck, under 6,000 gallons; flatbed, over 1 1/2 ton;

(3) Group III: +$0.20: spreader box (self-propelled); distributor (asphalt) transit mix; lowboy, light equipment; off-highway hauler; tank truck, over 6,000 gallons; dump truck, over 16 cubic yards; trailer semi-trailer dump;

(4) Group IV: +$0.40: diesel-powered transport; lowboy, heavy equipment.

N. Appendix I: Electrician classifications and wage spreads for type

"B" building construction and type "A" residential construction:

(1) Outside classifications:

(a) Groundman (outside) -$3.41;

(b) Equipment operator (outside) -$0.59;

(c) Lineman or technician (outside) (base);

(d) Cable splicer (outside) +$1.18.

(2) Inside classifications:

(a) Wireman or technician (inside) (base);

(b) Cable splicer (inside) +1.73.

(3) Sound classifications:

(a) Installer (sound) (base);

(b) Technician (sound) +$1.55;

(c) Soundman +$3.62.

O. Appendix J: Laborer classification groups and wage spreads for type "B" building and type "C" residential construction:

(1) Group I: -$0.87: watchmen;

(2) Group II (unskilled): -$0.30: building and common laborers; carpenter tenders; concr. workers; stakedrivers; concr. buggy opr. (hand); flagmen; soil sample tester;

(3) Group III (semi-skilled): (base): air and power tool opr. (not a carpenter's tool); asbestos remover; asph. heaterman; asph. jointman; asph. raker; batching plant scaleman; chain sawman; concr. touch-up man; concr. sawman - coring mach.; curbing mach. asph. or cement; cutting torchman; metal form setter-road; grade setter; gunite reboundmen; rod and chainmen; concrete power buggy opr.; powderman or blaster helper; sandblaster (pot men); nozzlemen; scaler; vibratorman (handtype); vibratory compactor (hand type); wagon core and diamond drillers' tenders (outside); window washers; fog mach. opr.; nurseryman-gardener; multi-plate setter; conc. burner; cement mason tenders; hodcarriers; mortar mixers; plaster spreader opr.; plaster tenders; gunite nozzlemen; pipelayer; pumpcrete nozzlemen; manhole builder; roadway hardware worker;

(4) Group IV: +$0.10: wagon, core, diamond drillers;

(5) Group V: (miscellaneous): +$0.30: landscaper; traffic control technican; laboratory technician;

(6) Group VI: +$0.45: powdermen and blasters.

P. Appendix K: Equipment operator classification groups and wage spreads for type "B" building construction and type "C" residential construction:

(1) Group I: -$2.52: fireman; oiler; helpers: mechanic, welder, grease truck; screedman; scale oper. such as (bin-a-batch) rubber tired farmtype tractor; tractors under 50 H.P w/o attachments; brakeman; concr. paving curing mach. (bridge type);

(2) Group II: -$1.48: rollers; sheepsfoot or pneumatic self propelled w/o dozer; concr. conveyor; service truck opr. (head oiler); air compressor (300 CFM and over); pumps (6" and over); screening plants: concr. mixers (under 1 CY); concr. saw or grinder-span type; hoists, 1 drum; air tugger; elevating belt type loaders; fork-lift lumber stacker; tractor-farm type (under 50 H.P. w/attachments); motorman and industrial locomotive opr.; winch trucks; front end loader (under 2 CY). power plants which generate over 15 KW; welding machines;

(3) Group III: -$1.40: bituminous distributors; boilers, retort and hot oil heaters; concr. mixers (1 CY and over). concr. paver (single drum); drlg. equip.; motor graders (rough); shaft and tunnel equip.; refrig., slusher, jumbo form; trenching mach. (all types); pumpcrete and gunite mach.; slipform paver; mech. bull-floats; concr. slab spreading mach.; concr. slab finish. mach.; asph. plants; bitum. finish mach.; crushing plants;

(4) Group IV: -$1.34: front end loader (2 thru 10 CY); rollers steel wheeled (all types); bulldozers: scrapers (motor or towed); elevating graders; concr. batching plants; self-propelled rollers, (equipped w/ dozer); twin-bowl scrapers and quad 8 or 9 pushers; three bowl scrapers; tractor (farm type) w/hydraulic backhoes;

(5) Group V: -$1.28: concr. paver, double drum; cat cranes; hysters; side and swingboom cats; hoist (2 drum); auto fine grader;

(6) Group VI: -$1.18: mucking mach. (all types); motor grader-finish;

(7) GroupVII: -$1.08: hydraulic cranes (with less than 50' of boom - 20 tons and under); steam engineers; loader (front end and over 10 CY); concr. pump (snorkel type); mechanic welder;

(8) Group VIII: (base): all shovel type equip.: cranes; draglines; backhoes; derricks; guy and stiff leg; pipemobile (#2 opr.); piledriver; hydraulic cranes (20 tons and over); mine hoist (belt loader "CMI" type); cranes, draglines (w/booms and jib over 150'). shovel (wheel type); boring mach. (tunnel or shaft mole); pipemobile.

Q. Appendix L: Truck driver classification groups and wage spreads for type "B" building construction and type "C" residential construction:

(1) Group I: -$0.12: pick-up 3/4 ton and under; service station; lubrication; light tire repair or washer; swamper or riding helper; teamster 2 or 4 up; ambulance driver;

(2) Group II: (base): bus or taxi driver; dump or batch truck, under 8 CY WLC; flatbed (bobtail) 2 ton and under; mechanic and welder helper: forklift under 5 ton MRC;

(3) Group III: +$0.08: dump trucks (incl. all hwy. and off-hwy.) 8 up to 16 CY WLC; water, fuel or oil trucks less than 3,000 gal.; flatbed (bobtail) over 2 tons;

(4) Group IV: +$0.20: distributor driver; hvy. tire repair; lumber carrier driver; young buggy or similar equip.; transit mix or agitator 2 or 3 axle bobtail equip.; scissor truck; bulk cement bobtail 2 or 3 axles; semi-trailer driver (flatbed or van single axle); forklift 5 ton and over MRC; field equip. servicemen;

(5) Group V: +$0.25: dumpster and dumpcrete driver; water, fuel or oil truck (3,000 to 6,000 gal. capacity); lowboy, light equip. driver; euclid type tank wagon (under 6,000 gal.);

(6) Group VI: +$0.35: vacuum truck; dump trucks (incl. all hwy. and off-hwy.) 16 up to 22 CY WLC;

(7) Group VII: +$0.45: transit mix or agitator semi or 4 axle equip. driver; flaherty truck type spreader box driver; slurry truck driver; bulk cement driver: semi-doubles: 4 axle bobtail; winch truck and "A" frame; dump trucks (incl. all hwy. and off-hwy.) 22 CY up to 35 CY WLC head field equip. serviceman;

(8) Group VIII: +$0.59: euclid diesel powered turnarocker; terra cobra; DW 10; DW 20; letourneau pulls and similar diesel powered equip.; lowboy heavy equip. driver; water, fuel or oil trucks (6,000 gal. and over incl. tank wagon drivers); semi-trailer driver (flatbed or van tandems); light equip. mechanic; dump trucks (incl. all hwy. and off-hwy.) 35 CY WLC and over; truck and trailer or semi-trailer (flatbed); eject all driver;

(9) Group IX: +$0.74: lowboy (heavy equip., double gooseneck); heavy equip. mechanic; welder (body and fender man); warehouseman; material checker-cardexman; expeditor.

[5/31/72, 1/14/76, 6/4/76, 6/4/79, 1/29/81, 5/28/81, 3/25/85, 8/29/85, 12/16/85, 11/4/88, 9/25/89, 1/14/92, 2/14/94, 5/31/94, 8/15/98; 11.1.2.13 NMAC - Rn & A, 11 NMAC 1.1.13, 12/31/09; A/E, 4/15/10]

End of Adopted Rules Section

Submittal Deadlines and Publication Dates
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Volume XXI	Submittal Deadline	Publication Date
Issue Number 1	January 4	January 15
Issue Number 2	January 19	January 29
Issue Number 3	February 1	February 12
Issue Number 4	February 15	February 26
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 3	May 14
Issue Number 10	May 17	May 28
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 30
Issue Number 15	August 2	August 16
Issue Number 16	August 17	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 18	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 30

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