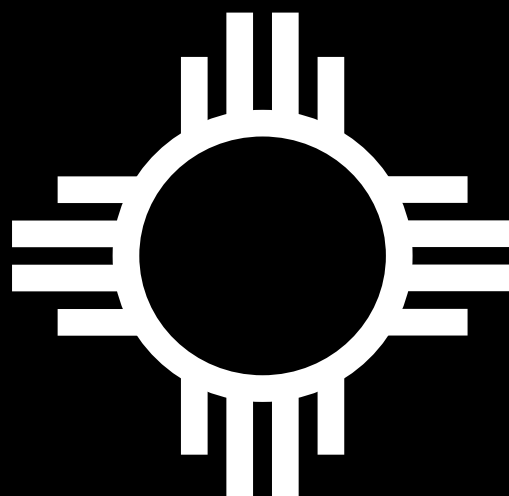


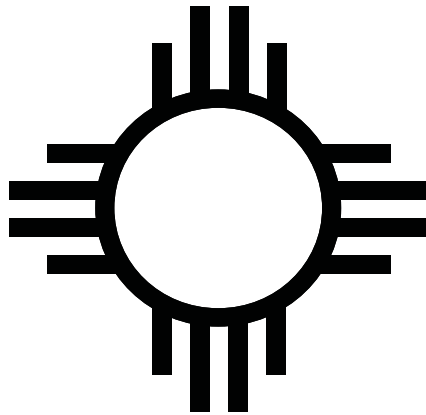
NEW MEXICO REGISTER



Volume XXI
Issue Number 13
July 15, 2010

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July 15, 2010



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

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New Mexico Register

Volume XXI, Number 13

July 15, 2010

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

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Notices of Rulemaking and Proposed Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

Notice of Hearings

New Mexico Department of Agriculture will hold public hearings to receive input on: the proposed abrogation of "The Apple Maggot Interior Quarantine" (21.17.35.1 thru 21.17.35.14); and proposed promulgation of a new rule identified as the "Japanese Beetle Exterior Quarantine."

Both hearings will be held at New Mexico Department of Agriculture, Albuquerque District Office located at 2604 Aztec Road NE on August 6, 2010. The hearing for the "Apple Maggot Interior Quarantine" will begin at 9:00 a.m., followed by the hearing for the "Japanese Beetle Exterior Quarantine" at 9:30 a.m. Written statements in support or opposition, signed by the submitting person, will be accepted if received prior to 5:00 p.m. on August 6, 2010. Written statements, inquiries, or requests for copies of the proposed changes should be directed to Brad Lewis, New Mexico Department of Agriculture, P.O. Box 30005, MSC 3BA, Las Cruces, NM 88003. Both rules can be viewed online at www.nmda.nmsu.edu.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing commencing on September 20, 2010, and continuing until completed, at the Senator Fabian Chavez Room, PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico, for the purpose of hearing the matter in EIB No. 10-04 (R), the New Mexico Environment Department's ("NMED") proposal to adopt a new regulation, 20.2.350 NMAC (Greenhouse Gas Cap and Trade Provisions). The proposed regulation establishes requirements for participation in a greenhouse gas cap-and-trade program. A cap-and-trade program is a market mechanism in which emissions are limited or capped at a specified level, and those participating in the system can trade allowances. The regulation will be implemented in conjunction with the regional cap-and-trade program being developed by the jurisdictions of the Western Climate Initiative.

The proposed regulation may be reviewed during regular business hours at the NMED Air Quality Bureau office, 1301 Siler Road, Building B, Santa Fe, New Mexico, on NMED's web site at www.nmenv.state.nm.us, or by contacting Sandra Ely at (505) 827-0351 or Sandra.Ely@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures - Environmental Improvement Board), the Environmental Improvement Act, Section 74-1-9, NMSA 1978, the Air Quality Control Act Section, 74-2-6, NMSA 1978, scheduling, procedural, and other orders entered by the Board or its Hearing Officer, and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses.

Persons wishing to present technical testimony must file a written notice of intent including the following:

- (1) identify the docket number, EIB No. 10-04(R);
- (2) identify the date of the hearing;
- (3) identify the person for whom the witness(es) will testify;
- (4) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (5) include the full written testimony of each technical witness;
- (6) attach each exhibit to be offered at the hearing; and
- (7) attach the text of any recommended modifications to the proposed regulation.

The Department shall submit its notice of intent to present technical testimony on July 16, 2010.

An interested person shall submit its notice of intent to present technical testimony on August 16, 2010.

The Department and other parties shall submit their notice of intent to present rebuttal testimony on August 30, 2010.

Notices of intent must be received in the Board's Office no later than 5:00 p.m. on the date specified above. The Board's Office address is provided below:

Joyce Medina, Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building

1190 St. Francis Dr., Room N-2150 / 2153
Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505) 827-2836

Any person, including a member of the public, who wishes to present non-technical public comment, testimony, or exhibit may do so without prior notification either in writing at any time before the conclusion of the hearing or in person at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by September 3, 2010 at the NMED, Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users may access her number via the New Mexico Relay Network at 1-800-659-8331.

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

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC MEETING AND RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on September 20, 2010 at 10:00 a.m. in the Board Room (Senator Fabian Chavez Room) at the new PERA Bldg, 33 Plaza La Prensa, Santa Fe, 87507. The purpose of the hearing is to consider the matter of EIB No. 10-03 (R), revisions to the New Mexico Drinking Water Regulations. The Safe Drinking Water Act section 300(g) (2)(a)(1) requires states with primary enforcement responsibility for public water systems to adopt regulations that are no less stringent than the national primary drinking water regulations. The proposed revision would update New Mexico's incorporation by reference of the National Primary Drinking Water Regulations, 40 CFR Part 141, and make this incorporation perpetual.

The proponent of this regulatory revision is the New Mexico Environment Department ("NMED").

The proposed drinking water regulation revision may be reviewed during regular business hours at the NMED Drinking Water Bureau office, 1052 Main Street NE, Los

Lunas, New Mexico or by contacting Angela Faye Cross at (505) 841-5376 or angela.faye.cross@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978 and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

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

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on September 3, 2010, and should reference the docket number, EIB No. 10-03 (R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Joyce Medina, Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N-2150 / 2153
Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505) 827-2836

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by September 3, 2010 at the NMED, Personnel Services Bureau, P.O. Drawer 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

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

NEW MEXICO MINING SAFETY BOARD

New Mexico Mining Safety Board

Notice of Public Meeting and Hearing of the New Mexico Mining Safety Board

The New Mexico Mining Safety Board will hold a public meeting beginning at 10:00 a.m. Thursday, August 26, 2010 in the conference room of the Workers' Compensation Administration 2410 Centre Ave. SE, Albuquerque, NM 87125-7198.

During the meeting, the Mining Safety Board will conduct a public hearing on proposed rules for mining safety proposed by the Mining Safety Board. The Board will consider comment regarding rules for Emergency Notification and Certification of Coal Mine Officials. To view proposed rules, go to the State Mine Inspector's homepage at <http://www.nmminefsafety.com>. Copies of the proposed rule changes are also available from the New Mexico Bureau of Mine Safety, 801 Leroy Place, Socorro, NM 87801 or by calling 575-835-5460. At the conclusion of the hearing, the Mining Safety Board may deliberate and vote on the proposed rule changes.

A copy of the agenda for the meeting/hearing will be available at least 24 hours before the meeting and may be obtained by contacting the State Mine Inspector, Terence Foreback at 575-835-5460. The agenda is also available on line at the State Mine Inspector's homepage at <http://www.nmminefsafety.com> and using the link for Mining Safety Board. If you need 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 Terence Foreback at least 48 hours prior to the hearing. Public documents can be provided in various accessible forms. Please contact Terence Foreback if a summary or other type of accessible form is needed.

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

NOTICE OF P.E.R.A. RULEMAKING

The Public Employees Retirement Association ("PERA") will consider changes to its rules promulgated under the Public Employees Retirement Act. Changes are proposed for the following Rules:

- 2.80.200 NMAC Organization and Operation of the Public Employees Retirement Board
- 2.80.300 NMAC Investment Policies and Procedures
- 2.80.400 NMAC Employee Membership
- 2.80.500 NMAC Remittance of Contributions
- 2.80.600 NMAC Service Credit and Purchase of Service Credit
- 2.80.700 NMAC Normal Retirement
- 2.80.1000 NMAC Disability Retirement Benefits
- 2.80.1100 NMAC Retired Members
- 2.80.1500 NMAC Appeal of Denial of Claim of Benefits

Copies of the draft rules are available for inspection in PERA's Office of General Counsel. Hard copies of the draft rules may be purchased for \$3.00. Written comments, inquiries or requests for copies should be directed to PERA's Office of General Counsel, P.O. Box 2123, Santa Fe, New Mexico, 87504-2123, (505) 476-9353 or 1-800-342-3422. Written comments or requests for copies may be submitted electronically to: judy.olson@state.nm.us. To be considered, written comments, arguments, views or relevant data should be submitted by 5:00 p.m. August 2, 2010. The PERA Board will review and consider all written comments addressing the proposed rule changes.

A formal rulemaking hearing will be held on August 10, 2010 at 9:00 a.m. in the Fabian Chavez Board Room of the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico. Oral comments will be taken at the public hearing. Final action on the rules will occur at the monthly meeting of the PERA Board on August 26, 2010, which will be held at 9:00 a.m. in Fabian Chavez Board Room (33 Plaza La Prensa, Santa Fe). All interested parties are requested to attend. Lobbyists must comply with the Lobbyist Regulation Act, NMSA 1978, Section 2-11-1 et. seq. (1997), which applies to rulemaking proceedings.

Individuals with a disability who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the

hearing may contact Jane Clifford at (505) 476-9305 or toll free at 1-800-342-3422 seven days prior to the hearing or as soon as possible.

**End of Notices and Proposed
Rules Section**

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Adopted Rules

NEW MEXICO ANIMAL SHELTERING BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 24 ANIMAL SHELTERING PROVIDERS PART 6 FORMULARY FOR EUTHANASIA TECHNICIANS

16.24.6.1 ISSUING AGENCY: Regulation & Licensing Department, Animal Sheltering Board.
[16.24.6.1 NMAC - N, 07/18/10]

16.24.6.2 SCOPE: This part applies to licensees, certificate holders and persons or agencies within the jurisdiction of the board.
[16.24.6.2 NMAC - N, 07/18/10]

16.24.6.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Animal Sheltering Act, Sections 77-1B-5, 77-1B-6.1 NMSA 1978.
[16.24.6.3 NMAC - N, 07/18/10]

16.24.6.4 DURATION: Until July 1, 2012
[16.24.6.4 NMAC - N, 07/18/10]

16.24.6.5 EFFECTIVE DATE: July 18, 2010 unless a later date is cited in the history note at the end of the section.
[16.24.6.5 NMAC - N, 07/18/10]

16.24.6.6 OBJECTIVE: This part lists the formulary for euthanasia technicians.
[16.24.6.6 NMAC - N, 07/18/10]

16.24.6.7 DEFINITIONS: [Reserved]

16.24.6.8 EUTHANASIA TECHNICIANS FORMULARY GENERAL PROVISIONS: The following general provisions shall apply to the formulary:

A. drugs, dangerous drugs and controlled substances are defined in the New Mexico Drug, Device and Cosmetic Act and the New Mexico Controlled Substances Act;

B. definitions from the New Mexico Drug, Device and Cosmetic Act and the New Mexico Controlled Substances Act apply to the appropriate terms in the formulary;

C. a euthanasia technician shall comply with all federal and state laws that pertain to obtaining, possessing, administering any drug;

D. a substance shall only be

approved for use if procured in compliance with all federal and state laws; the formulary does not supersede such laws; and

E. the following drugs, dangerous drugs and controlled substances are authorized in the modes of administration that are specified except as limited or restricted by federal or state law:

(1) Analgesics/sedatives:
(a) acepromazine 10mg/ml injectable

(b) xylazine 100mg/ml injectable

(2) Anesthetics
(a) ketamine HCL 100mg/ml injectable

(b) tiletamine HCL and zolazepam HCL 100mg/ml injectable

(3) Euthanasia solution
(a) sodium pentobarbital 260 mg/ml injectable

(b) sodium pentobarbital 390 mg/ml injectable

(c) sodium pentobarbital 392 mg/ml powder for injection

(d) sodium pentobarbital and phenytoin sodium combination solution for injection

(4) Diluents
(a) sterile water for injection

(b) sterile normal saline for injection

(c) bacteriostatic water for injection

(d) bacteriostatic normal saline for injection

[16.24.6.8 NMAC - N, 07/18/10]

HISTORY of 16.24.6 NMAC: [RESERVED]

NEW MEXICO ANIMAL SHELTERING BOARD

This is an amendment to 16.24.2 NMAC, Sections 13, 14 and 17, effective 07/18/10.

16.24.2.13 APPLICATION FOR LICENSURE AS A EUTHANASIA TECHNICIAN:

A. All persons who will provide euthanasia services on or after January 1, 2010, with the exception of licensed New Mexico veterinarians or state or federally licensed wildlife rehabilitators, shall be licensed by the board by January 1, 2010, or before they begin performing euthanasia services after January 1, 2010. Any person not licensed in that time frame may be in violation of the act for practicing euthanasia without a license.

B. In order to obtain a license as a licensed euthanasia technician, the applicant shall submit the following documentation and a completed application

on a form provided by the board which may available online, accompanied by the required fees:

(1) proof of age indicating the applicant is at least 18 years of age, such as a copy of a driver's license or a copy of a state issued identification card (do not submit a copy of a birth certificate);

(2) two 2" x 2" original photographs taken within the past six months;

(3) ~~[two completed fingerprint cards, a completed verification of fingerprints form,]~~ a notarized authorization for release of information form~~[- and the prescribed fee for a state and federal criminal history background check as specified in 16.24.2.17 NMAC];~~

(4) state criminal history background check as specified in 16.24.2.17 NMAC;

~~(4)~~ (5) verification that the applicant holds a high school diploma or its equivalent;

~~(5)~~ (6) verification that the applicant holds a certificate of completion, or similar document, of a board approved euthanasia technician training course within three years preceding the date the application for licensure is submitted, which course shall be approved as described in 16.24.2.18 NMAC;

~~(6)~~ (7) verification of passing a board approved examination administered by a certified euthanasia instructor at a board approved euthanasia training course with a grade of at least 80%;

~~(7)~~ (8) passing a board approved jurisprudence examination, administered by the board, with a grade of at least 80%;

~~(8)~~ (9) any other information or verifications the board may request.

C. 60-day temporary euthanasia technician license.

(1) A temporary license may be issued at the discretion of the board. The temporary license is intended to assist a licensed euthanasia agency to hire trained personnel in the event the agency's only licensed euthanasia technician leaves the agency or is no longer able to perform euthanasia for any reason. The temporary license is valid for a period of no more than 60 calendar days. The temporary license cannot be renewed by the euthanasia technician. No more than one temporary license may be granted to an individual unless approved by the board in consideration of extenuating circumstances.

(2) To qualify for a temporary license, an applicant shall submit all items required in Paragraphs (1) through (4) of Subsection B of 16.24.2.13 NMAC, submit proof of completion of a euthanasia technician training course within three

years preceding the date of the application, successfully complete the jurisprudence exam, and submit three references regarding euthanasia by injection proficiency from licensed veterinarians or New Mexico licensed euthanasia technicians who have witnessed the applicant perform these procedures.

[16.24.2.13 NMAC - N, 07/01/09; A, 07/18/10]

16.24.2.14 APPLICATION FOR CERTIFICATION AS A EUTHANASIA INSTRUCTOR:

A. In order to obtain a certificate as a certified euthanasia instructor the applicant shall submit the following documentation and a completed application on a form provided by the board, which may be available online, accompanied by the required fees:

(1) proof of age indicating the applicant is at least 21 years of age such as a copy of a driver's license or a copy of a state issued identification card (do not submit a copy of a birth certificate);

(2) two 2" x 2" original photographs taken within the past six months;

(3) ~~[-two-completed-fingerprint-cards, a completed verification of fingerprints form;]~~ a notarized authorization for release of information form ~~[and the prescribed fee for a state and federal criminal history background check as specified in 16.24.2.17 NMAC];~~

(4) state criminal history background check as specified in 16.24.2.17 NMAC;

~~[(4)]~~ (5) verification that the applicant holds a high school diploma or its equivalent;

~~[(5)]~~ (6) verification that the applicant holds a certificate of completion of a board approved euthanasia technician training course, completed within one year preceding the date the application for certification is submitted;

~~[(6)]~~ (7) verification of passing a board approved examination for a board approved euthanasia technician training course with a grade of at least 90%;

~~[(7)]~~ (8) verification of at least one year of practical experience in the euthanasia of shelter animals preceding the date of application;

~~[(8)]~~ (9) any other information or verifications the board may request.

B. The board may exempt a euthanasia instructor from taking a required board approved euthanasia technician training course and test based upon review of the applicant's credentials and practical experience in shelter euthanasia. The applicant shall be required to obtain a euthanasia instructor certificate and is subject to the required certified instructor

duties.

[16.24.2.14 NMAC - N, 07/01/09; A, 07/18/10]

16.24.2.17 APPLICANT BACKGROUND CHECK PROCEDURE:

A. Pursuant to Section 77-1B-5(N) NMSA 1978 all applicants for initial issuance, reinstatement or renewal of a license or certificate in New Mexico shall be required to ~~[be fingerprinted to]~~ establish positive identification for a state ~~[and federal]~~ criminal history background check, except commissioned law enforcement officers.

~~[A.]~~ Blank fingerprint cards shall be obtained from the department.

B. Fingerprints shall be taken:

~~[(1)]~~ under the supervision of and certified by a New Mexico state police officer, a county sheriff, or a municipal chief of police;

~~[(2)]~~ by comparable officers in the applicant's state of residence if the applicant is not a resident of New Mexico; or

~~[(3)]~~ at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Paragraphs (1) and (2) above;]

~~[(C.) B.]~~ Completed ~~[fingerprint cards]~~ RLD release of information form and DPS authorization for release of information form shall be submitted to the ~~[board]~~ department of public safety with a ~~[check]~~, money order or cashiers check made out to the ~~[board or credit card]~~ department of public safety, for the prescribed fee for the amount established by the department of public safety for the processing of state criminal history background checks.

[16.24.2.17 NMAC - N, 07/01/09; A, 07/18/10]

NEW MEXICO ANIMAL SHELTERING BOARD

This is an amendment to 16.24.5 NMAC Section 8, effective 07/18/10.

16.24.5.8 FEES: All fees are payable to the board and are non-refundable. No individual fee shall exceed \$150.00 annually. Fees are as follows.

A.	Application for euthanasia technician license	\$ [25.00] <u>50.00</u>
B.	Renewal for euthanasia technician license	\$ [15.00] <u>50.00</u>
C.	Application for 60-day temporary license	\$ 25.00
D.	Application for euthanasia instructor certification	\$ [75.00] <u>150.00</u>
E.	Renewal for euthanasia instructor certification	\$ [75.00] <u>150.00</u>
F.	Application for euthanasia agency license	\$ [100.00] <u>200.00</u>
G.	Renewal for euthanasia agency license	\$ [100.00] <u>200.00</u>
H.	Late renewal fee (includes technician, instructor and agency)	\$ 20.00
I.	Verification of licensure or certification	\$ 25.00
J.	Listing of licensees (paper or electronic)	\$ 50.00
K.	Charge for insufficient funds	\$ 25.00
L.	Duplicate licenses	\$ 15.00

[16.24.5.8 NMAC - N, 07/01/09; A, 07/18/10]

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.15 NMAC Sections 7, 8 and 11, effective July 23, 2010.

16.4.15.7 DEFINITIONS:

A. "Chiropractic" means the science, art and philosophy of things natural, the science of locating and removing interference with the transmissions or expression of nerve forces in the human body by the correction of misalignments or subluxations of the articulations and adjacent structures, more especially those of the vertebral column and pelvis, for the purpose of restoring and maintaining health for treatment of human disease

primarily by, but not limited to, adjustment and manipulation of the human structure. It shall include, but not be limited to, the prescription and administration of all natural agents in all forms to assist in the healing act, such as food, water, heat, light, cold, electricity, mechanical appliances, herbs, nutritional supplements, homeopathic remedies and any necessary diagnostic procedure, excluding invasive procedures, except as provided by the board by rule and regulation. It shall exclude operative surgery and prescription or use of controlled or dangerous drugs, except as provided by the board by rule and regulation.

B. "Certified advanced practice chiropractic physician" means advanced practice chiropractor who shall have prescriptive authority for therapeutic and diagnostic purposes as authorized by statute and stated by the board in 16.4.15.11 NMAC.

C. "Chiropractic physician" includes doctor of chiropractic, chiropractor, doctor of chiropractic medicine, and chiropractic physician and means a person who practices chiropractic as defined in the Chiropractic Physician Practice Act. Chiropractors are physicians that attempt to improve the quality of life, relieve pain and suffering and promote health and wellness with evidence-based and patient centered care as taught in their chiropractic educational institutions. The chiropractic profession, through its institutions, professional associations, continuing educational providers and requirements teaches its health care professionals to use natural treatments, therapeutic interventions and patient education to promote health and wellness when indicated by the evidence and with other interventions as taught within chiropractic educational institutions and providers of approved continuing education instruction when necessary to safely treat individuals with disease, deformity, disability and neuromusculoskeletal maladies.

[C:] D. "Nationally recognized credentialing agency" means agency that has been recognized by the board and may be updated annually. Any educational institution allowed to provide clinical and didactic programs credited toward advanced practice certification must have concurrent approval from the New Mexico medical board and the New Mexico board of chiropractic examiners.

[D:] E. "Chiropractic formulary" shall mean those substances that ~~[are natural or naturally derived that]~~ have been approved for use by the chiropractor registered in advanced practice by the chiropractic board and as by statute with consensus between the New Mexico medical board and New Mexico board of pharmacy. [16.4.15.7 NMAC - N, 3/31/2009; A, 7/23/2010]

16.4.15.8 A D V A N C E D PRACTICE REGISTRATION

GENERAL PROVISIONS: Advanced practice registration is authorized by 61-4-9.1(C) NMSA of the act and defined in 61-4-9.2 NMSA 1978 and allows the use of approved ~~[naturally derived]~~ substances through injection for therapeutic purposes.

A. A chiropractic physician shall have the prescriptive authority to administer through injection and prescribe the compounding of substances that are authorized in the advanced practice formulary. Those with active registration are allowed prescription authority that is limited to the current formulary as agreed on by the New Mexico board of chiropractic examiners and as by statute, by the New Mexico board of pharmacy and the New Mexico medical board. The New Mexico board of chiropractic examiners shall maintain a registry of all chiropractic physicians who are registered in advanced practice and shall notify the New Mexico board of pharmacy of all such current registered licensees no later than September 1st of each licensing period.

B. Chiropractic physicians applying for registry shall submit to the board:

(1) documentation that the doctor has successfully completed a competency examination administered by a nationally recognized credentialing agency or after December 31, 2012 successfully completed a graduate degree in a chiropractic clinical practice specialty;

(2) documentation that the chiropractic physician has successfully completed 90 clinical and didactic hours of education provided by an institution approved by the New Mexico medical board and the New Mexico board of chiropractic examiners;

(3) an application provided by the board for registry of the advanced practice certification.

C. A chiropractic physician without advanced practice certification may administer, dispense and prescribe any natural substance that is to be used in an oral or topical manner so long as that substance is not considered a dangerous drug.

D. The board shall annually renew the registration of a doctor of chiropractic medicine in good standing who is registered in advanced practice if the licensee has completed all continuing education required by 16.4.10 NMAC.

E. All advanced practice registrations shall automatically terminate when licensure as a doctor of chiropractic medicine:

(1) is placed on inactive status as stated in Paragraph (2) of Subsection A of 16.4.12.8 NMAC; or

(2) expires as stated in 16.4.13.8

NMAC; or

(3) is suspended, revoked or terminated for any reason as stated in 16.4.13.8 NMAC;

(4) is not renewed prior to the annual renewal date (July 1).

F. An advanced practice registration that is revoked or terminated shall not be reinstated. The chiropractic physician must reapply for expanded practice certification as a new applicant.

G. All advanced practice registrations that were automatically terminated due to inactive status, expiration or suspension as stated in 16.4.13.8 NMAC shall be automatically reinstated when licensure as a chiropractic physician is reinstated, provided that:

(1) all fees required by 16.4.1.13 NMAC have been paid; and

(2) all continuing education requirements stated in Subsection C of 16.4.15.10 NMAC have been completed; and

(3) any other reinstatement provisions, required by board rule, have been completed.

H. Each year the board may review the advanced practice formularies for necessary amendments. When new substances are added to a formulary, appropriate education in the use of the new substances may be approved and required by the board for chiropractic physician applying for registration or as continuing education for renewal of the applicable advanced practice registration. All amendments to the formulary shall be made following consensus of the NM board of medicine, NM pharmacy board and the NM board of chiropractic examiners.

I. A chiropractic physician certified for advanced practice under 16.4.15.11 NMAC that includes the use of controlled substances shall register with the federal DEA (drug enforcement agency) prior to obtaining, prescribing, administering, compounding the controlled substance.

J. A chiropractic physician registered in advanced practice, when prescribing, shall use prescription pads printed with his or her name, address, telephone number, license number and his or her advanced practice certification. If a chiropractic physician is using a prescription pad printed with the names of more than one chiropractic physician the above information for each chiropractic physician shall be on the pad and the pad shall have a separate signature line for each chiropractic physician. Each specific prescription shall indicate the name of the chiropractic physician for that prescription and shall be signed by the prescribing chiropractic physician.

[16.4.15.8 NMAC - N, 3/31/2009; A, 7/23/2010]

16.4.15.11 CHIROPRACTIC FORMULARY:

[A. Herbal medicines may be the crude substance or a prepared form that renders the crude substance clinically useful. it may include preparations, concentrates, refinements, isolates, extracts, and derivatives of herbs.

B. All homeopathic preparations medicines include all medicines named in the *homeopathic pharmacopoeia of the United States*.

C. Over-the-counter drugs to include, but not limited to, all drugs listed in the *PDR for OTC drugs* or other compendium of *United States otc* drugs:

- (1) all vitamins;
- (2) all minerals.

D. Enzymes to include those produced for therapeutic use to include digestive enzymes, proteolytic enzymes, anti-inflammatory enzymes and other therapeutic enzymes.

E. Glandular products to include products produced from, extracted from, isolated from animal glandular tissue. It includes desiccated or otherwise processed whole glandular tissue, including protein, lipid and carbohydrate constituents of glandular tissue and, hormones, enzymes and secretions.

F. Protomorphogens to include those components of the cell nuclear material that are responsible for morphogenic determination of cell characteristics.

G. Live cell products includes therapeutic agents that are live cells or that are produced or secreted, extracted or isolated from live cells:

- (1) gerovital;
- (2) all amino acids to include peptides and amino acid combinations.

H. All dietary supplements as listed in comprehensive natural medicines database, *PDR* for nutritional supplements or other compendium or commercial catalogue of dietary supplements.

I. All foods for special dietary use.

J. Bioidentical hormones to include all hormones compounds, or salt forms of those compounds, that have exactly the same chemical and molecular structure as hormones that are produced in the human body:

- (1) sterile water;
- (2) sterile saline;
- (3) sarapin or its generic;
- (4) caffeine;
- (5) procaine HCl;
- (6) oxygen;
- (7) epinephrine;
- (8) vapocoolants.]

A. Hormones for topical, sublingual, oral use

- (1) estradiol
- (2) progesterone

(3) testosterone
(4) desicated thyroid
B. Muscle relaxers;
cyclobenzaprine
C. NSAIDs - prescription strength
(1) ibuprofen
(2) naproxen
D. Prescription medications for topical use
(1) NMDC Ca² dextromethorphan
(2) NSAIDSs
(a) ketoprofen
(b) piroxicam
(c) naproxen
(d) ibuprofen
(e) diclofenac
(3) Muscle relaxers;
cyclobenzaprine
(4) Sodium chanel antagonist;
lidocaine
E. Homeopathics requiring prescription
F. Other substances by injection
(1) sterile water
(2) sterile saline
(3) sarapin or its generic
(4) caffeine
(5) procaine HCL
(6) epinephrine
(7) homeopathic for injection
G. Glutathione for inhalation

[16.4.15.11 NMAC - N, 09/11/2009; A, 7/23/2010]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.30.14 NMAC Sections 7, 8, 9, and 10 effective July 15, 2010.

19.30.14.7 DEFINITIONS:

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

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

C. "Warning tag" as used herein, shall mean a document issued by the department or other state or federal agency [that prevents] and affixed to a conveyance or equipment that prohibits a conveyance or equipment from entering into a water body until being properly decontaminated or otherwise approved for re-entry.

D. "Impound" shall mean to detain or subject to temporary control of the state other than detention for purposes of inspection a conveyance or equipment until the owner or person in control thereof shall meet all conditions for release of such conveyance or equipment.

E. "Decontaminate" shall mean to clean, drain, dry or otherwise treat a conveyance in accordance with guidelines established by the director in order to remove or destroy an aquatic invasive species.

F. "Proof of decontamination" shall mean verifiable documentary proof, official marking or tag affixed to the conveyance or equipment, or otherwise provided to the owner or person in control of a conveyance or equipment by a person legally authorized to effect decontamination that the conveyance or equipment is free from infestation, or otherwise demonstrate compliance with the decontamination requirement established by the director; such certification shall be valid only until the conveyance or equipment re-enters a water body.

G. "Trained personnel" means individuals who have successfully completed the United States fish and wildlife service's aquatic invasive species watercraft inspection and decontamination training, level I or level II, or an equivalent training recognized by the director.

[19.30.14.7 NMAC - N/E, 05-29-2009; A, 07-31-2009; A, 07-15-2010]

19.30.14.8 WARNING TAG:

The director shall prescribe and procure the printing of warning tags to be used for the state to identify any conveyance or equipment known or believed to contain an aquatic invasive species or a conveyance or equipment leaving an infested water body without being decontaminated.

A. [Any conveyance or equipment identified by trained personnel as known or believed to contain aquatic invasive species or leaving designated infested water shall have a warning tag immediately affixed to the hull.] Trained personnel may affix a warning tag to any conveyance or equipment known or believed to contain aquatic invasive species, based upon its point of origin or exposure to infested water, unless the person in control of such equipment or conveyance has proof of decontamination, or can otherwise demonstrate that the equipment or conveyance is not infested.

B. Trained personnel may affix a warning tag to a conveyance or equipment if they have reason to believe aquatic invasive species may be present and the person operating or in control of such conveyance or equipment refuses inspection.

[B.] C. Each warning tag shall be affixed on boats and other similar vessels within 12" of the boat number on the port (left) side only. In cases where no boat number is found the warning tag shall still be affixed in the same general location.

[C.] D. Each warning tag shall be individually affixed to all other conveyances and equipment in the most visible manner possible.

~~[D:] E.~~ No warning tag may be removed except by trained personnel or a person or entity certified by the director and only if the respective personnel, person or entity is acting in their official capacity and has inspected the conveyance or equipment, satisfied that proper decontamination or elimination of aquatic invasive species has occurred.

[19.30.14.8 NMAC - N/E, 05-29-2009; A, 07-31-2009; A, 07-15-2010]

19.30.14.9 IMPOUNDMENT OF CONVEYANCE OR EQUIPMENT:

A. Any law enforcement officer may impound any conveyance or equipment if warning tagged and the conveyance or equipment is currently in or entering a water body.

B. Any law enforcement officer may impound any conveyance or equipment known or believed to contain aquatic invasive species if such conveyance or equipment is currently in a water body or the person operating or in control of such conveyance or equipment fails to follow the enforcement officer's command to immediately prevent such from entering or remaining in a water body.

C. A warning tag shall be immediately affixed to any conveyance or equipment impounded pursuant to [the provision] Subsection B above.

D. Any impounded conveyance or equipment shall only be released from impoundment:

(1) upon receipt of satisfactory proof that decontamination requirements as prescribed by the director have been met; or

(2) upon receipt of a conditional release from the director wherein the owner or person responsible for the conveyance or equipment agrees to the specific terms and conditions that require immediate decontamination followed by an inspection to verify decontamination has occurred.

E. It shall be the responsibility of the owner of any impounded conveyance or equipment [impounded] to pay all costs, including storage fees, decontamination charges and towing associated with the impoundment and to reimburse any agency that incurs expenditures for the impoundment.

[19.30.14.9 NMAC - N/E, 05-29-2009; A, 07-31-2009; A, 07-15-2010]

19.30.14.10 LIMITED TRANSPORT:

[The provisions of paragraph G. (1) of House Bill 467, 2009 regular session shall not apply to any contractor with the department or the energy, minerals and natural resources department, or state or federal agencies or their employees, while performing their duties or contractual obligations when temporarily having in their custody AIS for

monitoring or transporting for purposes of testing, decontamination or disposal. The department may take temporary custody of a contaminated conveyance or equipment and authorize its owner to transport to a designated location for decontamination.] The department's employees, agents or designees, or employees of other state or federal agencies while acting in their official capacity may authorize an owner or person in control of a warning tagged conveyance or equipment to transport the conveyance or equipment to a location approved by the department or their designee.

[19.30.14.10 NMAC - N/E, 05-29-2009; Repealed, 07-31-2009; 19.30.14.10 NMAC - N, 07-31-2009; A, 07-15-2010]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.520 NMAC, Section 9, effective July 15, 2010.

8.102.520.9 EXEMPT INCOME:

The following income sources are not considered available for the gross income test, the net income test, and the cash payment calculation:

A. medicaid;

B. food stamp benefits;

C. government-subsidized foster care, if the child for whom the payment is received is not included in the benefit group;

D. SSI;

E. government-subsidized housing or a housing payment; government includes any federal, state, local or tribal government or a private non-profit or for profit entity operating housing programs or using governmental funds to provide subsidized housing or to make housing payments;

F. income excluded by federal law (described in 8.139.527 NMAC);

G. educational payments made directly to an educational institution;

H. government-subsidized child care;

I. earned income that belongs to a child 17 years of age or younger who is not the head of household; only earned income paid directly to the child is considered as belonging to the child;

J. [up to fifty dollars (\$50.00) of collected child support passed through to the benefit group by the CSED] up to \$50.00 child support disregard and up to \$100.00 child support pass-through distributed to the benefit group by the CSED;

K. an emergency one-time only payment made by other agencies or programs;

L. reimbursements for past or future identified expenses, to the

extent they do not exceed actual expenses, and do not represent a gain or benefit to the benefit group, such as expenses for job or job training related activities, travel, per diem, uniforms, transportation costs to and from the job or training site, and medical or dependent care reimbursements and any reimbursement for expenses incurred while participating in NMW work program activities; reimbursements for normal living expenses, such as rent, mortgage, clothing or food eaten at home are not excluded;

M. utility assistance payments such as from low-income home energy assistance program (LIHEAP), low-income assistance program (LITAP), or similar assistance programs.

[8.102.520.9 NMAC - Rp 8.102.520.8.I NMAC, 07/01/2001; A, 11/15/2007; A, 07/15/2010]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.106.520 NMAC, Section 9, effective July 15, 2010.

8.106.520.9 EXEMPT INCOME:

The following income sources or assistance types are not considered available for the gross income test, the net income test and the cash payment calculation:

A. medicaid;

B. food stamp benefits;

C. government-subsidized foster care, if the child for whom the payment is received is not included in the benefit group;

D. SSI;

E. government-subsidized housing or housing payment; government includes any federal, state, local or tribal government, or a private non-profit or for-profit entity operating housing programs or using government funds to provide subsidized housing or to make housing payments.

F. income excluded by federal law (described in 8.139.527 NMAC);

G. educational payments made directly to an educational institution;

H. government-subsidized child care;

I. earned income that belongs to a child 17 years of age or younger who is not the head of household; only earned income paid directly to the child is considered as belonging to the child;

J. [up to fifty dollars (\$50.00) of collected child support passed through to the benefit group by the CSED] up to \$50.00 child support disregard and up to \$100.00 child support pass-through distributed to the benefit group by the CSED;

K. an emergency one-time

only payment made by other agencies or programs;

L. reimbursements for past or future identified expenses, to the extent they do not exceed actual expenses and do not represent a gain or benefit to the benefit group, such as expenses for job or job training-related activities, travel, per diem, uniforms, transportation costs to and from the job or training site, medical or dependent care reimbursements and any reimbursement for expenses incurred while participating in NMW work program activities; reimbursements for normal living expenses, such as rent, mortgage, clothing or food eaten at home are not excluded;

M. utility assistance payments, such as from LIHEAP, LITAP or similar assistance programs.
[8.106.520.9 NMAC - N, 07/01/2004; A, 07/15/2010]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.510 NMAC, Sections 6 and 14, effective July 15, 2010.

8.200.510.6 OBJECTIVE: The objective of ~~[these regulations]~~ this rule is to provide eligibility policy and procedures for the medicaid program.
[8.200.510.6 NMAC - N, 1-1-01; A, 7-15-10]

8.200.510.14 RESOURCE AMOUNTS FOR SUPPLEMENTAL SECURITY INCOME (SSI) RELATED MEDICARE SAVINGS PROGRAMS (OMB AND SLIMB/QI1): The following resource standards are inclusive of the \$1,500 per person burial exclusion:

A. individual

\$8,100 and

B. couple

\$12,910.

[8.200.510.14 NMAC - N, 1-1-01; A, 1-1-02; 8.200.510.14 NMAC - N, 7-15-10]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.245.500 NMAC, Sections 6, 10 and 13, effective July 15, 2010.

8.245.500.6 OBJECTIVE: The objective of ~~[these regulations]~~ this rule is to provide eligibility policy and procedures for the medicaid program.
[2/1/95; 8.245.500.6 NMAC - Rn, 8 NMAC 4.SMB.000.6, 12/1/09; A, 7/15/10]

8.245.500.10 RESOURCE STANDARDS: The value of an applicant/

recipient's countable resources must not exceed ~~[\$4,000]~~ the amount set forth in 8.200.510.14 NMAC, resource amounts for supplemental security income (SSI) related medicare savings programs (OMB and SLIMB/QI1). The resource limit for an applicant couple is ~~[\$6,000]~~ cannot exceed the amount for a couple set forth in 8.200.510.14 NMAC. An applicant/recipient with an ineligible spouse is eligible if the couple's countable resources do not exceed ~~[\$6,000]~~ the amount set forth in 8.200.510.14 NMAC, when resources are deemed. A resource determination is always made as of the first moment of the first day of the month. An applicant/recipient is ineligible for any month in which the countable resources exceed the current resource standard as of the first moment of the first day of the month. Changes in the amount of resources during a month do not affect eligibility for that month. ~~[See 8.215.500.11 NMAC, resource standards;]~~ See 8.215.500.13 NMAC, countable resources, and 8.215.500.14 NMAC, resource exclusions, for information on exclusions, disregards, and countable resources.

[2/1/95; 8.245.500.10 NMAC - Rn, 8 NMAC 4.SMB.510 & A, 12/1/09; A, 7/15/10]

8.245.500.13 UNEARNED INCOME: Unearned income exclusions: All social security and railroad retirement beneficiaries receive cost of living adjustments (COLAs) in January of each year. The ~~[income support specialist (ISS)]~~ ISS caseworker must disregard the COLA from January through March when (re)determining SLIMB eligibility. For redeterminations made in January, February and March and for new SLIMB applications registered in January, February, or March, the ~~[ISS]~~ ISS caseworker uses the December social security and railroad retirement benefit amounts. For SLIMB applications registered from April through December, total gross income including the new COLA figures are used to determine income and compared to the new April federal poverty levels. This exclusion does not apply to other types of income.

[2/1/95; 8.245.500.13 NMAC - Rn, 8 NMAC 4.SMB.522, 12/1/09; A, 7/15/10]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.250.500 NMAC, Sections 10 and 13, effective July 15, 2010.

8.250.500.10 RESOURCE STANDARDS: The value of an applicant/recipient's countable resources must not exceed ~~[\$4,000]~~ the amount set forth in 8.200.510.14 NMAC, resource amounts for supplemental security income (SSI)

related medicare savings programs (OMB and SLIMB/QI1). The resource limit for an applicant couple is ~~[\$6,000]~~ cannot exceed the amount for a couple set forth in 8.200.510.14 NMAC. An applicant/recipient with an ineligible spouse is eligible if the couple's countable resources do not exceed ~~[\$6,000]~~ the amount set forth in 8.200.510.14 NMAC, when resources are deemed. A resource determination is always made as of the first moment of the first day of the month. An applicant/recipient is ineligible for any month in which the countable resources exceed the current resource standard as of the first moment of the first day of the month. Changes in the amount of resources during a month do not affect eligibility for that month. ~~[See 8.215.500.11 NMAC, resource standards;]~~ See 8.215.500.13 NMAC, countable resources, and 8.215.500.14 NMAC, resource exclusions, for information on exclusions, disregards, and countable resources.

[4/30/98; 8.250.500.10 NMAC - Rn, 8 NMAC 4.QIS.510 & A, 12/1/09; A, 7/15/10]

8.250.500.13 UNEARNED INCOME: Unearned income exclusions: All social security and railroad retirement beneficiaries receive cost of living adjustments (COLAs) in January of each year. The ~~[income support specialist (ISS)]~~ ISS caseworker must disregard the COLA from January through March when (re)determining QI1 eligibility. For redeterminations made in January, February and March and for new QI1 applications registered in January, February or March, the ~~[ISS]~~ ISS caseworker uses the December social security and railroad retirement benefit amounts. For QI1 applications registered from April through December, total gross income including the new COLA figures are used to determine income and compared to the new April federal poverty levels. This exclusion does not apply to other types of income.

[4/30/98; 8.250.500.13 NMAC - Rn, 8 NMAC 4.QIS.522, 12/1/09; A, 7/15/10]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.240.500 NMAC, Sections 5, 6, 9, 10, 12, 13 and 14, effective July 15, 2010. This rule was also renumbered and reformatted from 8 NMAC 4.QMB.000 and 8 NMAC 4.QMB.500 to comply with NMAC requirements.

8.240.500.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of the section.
[2/1/95; 8.240.500.5 NMAC - Rn, 8 NMAC 4.QMB.000.5 & A, 7/15/10]

8.240.500.6 OBJECTIVE: The objective of ~~[these regulations]~~ this rule is to provide eligibility policy and procedures for the medicaid program. [2/1/95; 8.240.500.6 NMAC - Rn, 8 NMAC 4.QMB.000.6 & A, 7/15/10]

8.240.500.9 GENERAL NEED DETERMINATION: Applicants for, or recipients of, the qualified medicare beneficiaries (QMB) program must apply for and take all necessary steps to obtain any income or resources to which they may be entitled. Recipients of supplemental security income (SSI) or aid to families with dependent children (AFDC) who apply for QMB are excluded from this requirement. ~~[QMB recipients are not required to (re) apply for benefits under the Veterans and Survivors Improvement Act of 1978.]~~ A victim of crime is not required to accept victim compensation payments from a state-administered fund established to aid crime victims as a condition of eligibility. [2/1/95; 9/15/95; 8.240.500.9 NMAC - Rn, 8 NMAC 4.QMB.500 & A, 7/15/10]

8.240.500.10 RESOURCE STANDARDS: The value of an applicant/recipient's individual countable resources must not exceed ~~[\$4,000]~~ the amount set forth in 8.200.510.14 NMAC, resource amounts for supplemental security income (SSI) related medicare savings programs (QMB and SLIMB/QI). The resource limit for an applicant couple is ~~[\$6,000]~~ the amount set forth in 8.200.510.14 NMAC. An applicant/recipient with an ineligible spouse is eligible if the couple's countable resources do not exceed ~~[\$6,000]~~ the amount set forth in 8.200.510.14 NMAC, when resources are deemed. The resource determination is always made as of the first moment of the first day of the month. The applicant/recipient is ineligible for any month in which the countable resources exceed the current resource standard as of the first moment of the first day of the month. Changes in the amount of resources during a month do not affect eligibility for that month. ~~[See Section SSI-510, Supplemental Security Income Methodology]~~ See 8.215.500.13 NMAC, countable resources, and 8.215.500.14 NMAC, resource exclusions, for specific information on exclusions, disregards, and calculation of countable resources. [2/1/95; 9/15/95; 8.240.500.10 NMAC - Rn, 8 NMAC 4.QMB.510 & A, 7/15/10]

8.240.500.12 INCOME STANDARDS: The income ceiling for QMB eligibility is 100[%] percent of the federal income poverty guidelines. These guidelines are updated annually effective April 1st. ~~[See Section MAD-520, Income Standards]~~ See 8.200.520 NMAC, Income Standards. If the applicant is a minor

child, income must be deemed from the parent(s). Income must be verified and documented in the case record. ~~[See Section SSI-520, Supplemental Security Income Methodology]~~ See 8.215.500.13 NMAC, countable resources, and 8.215.500.14 NMAC, resource exclusions, for specific information on exclusions, disregards, and calculation of countable income. [2/1/95; 9/15/95; 8.240.500.12 NMAC - Rn, 8 NMAC 4.QMB.520 & A, 7/15/10]

8.240.500.13 UNEARNED INCOME: Unearned income exclusions: All social security and railroad retirement beneficiaries receive cost of living adjustments (COLAs) in January of each year. The ~~[income support specialist (ISS)]~~ ISD caseworker must disregard the COLA from January through March when (re)determining QMB eligibility. For redeterminations made in January, February and March and for new QMB applications registered in January, February or March, the ~~[ISS]~~ ISD caseworker uses the December social security and railroad retirement benefit amounts. For QMB applications registered from April through December, total gross income including the new COLA figures are used to determine income and compared to the new April federal poverty levels. This exclusion does not apply to other types of income. [2/1/95; 9/15/95; 8.240.500.13 NMAC - Rn, 8 NMAC 4.QMB.522 & A, 7/15/10]

8.240.500.14 DEEMED INCOME:
A. Minor applicant/recipient living with parent(s): If the applicant/recipient is a minor who lives with a parent(s), deemed income from the parent(s) must be considered in accordance with ~~[Section SSI-523]~~ 8.215.500.21 NMAC, deemed income, and applicable subsections.

B. Applicant/recipient living with an ineligible spouse: If an applicant/recipient is living in the same household with an ineligible spouse, the income of the applicant/recipient and the income of the ineligible spouse must be considered in accordance with the following paragraphs. ~~[Information contained in Section SSI-523 regarding income determination methodology used when an applicant/recipient lives with an ineligible spouse no longer applies to the QMB program.]~~

(1) Evaluation of applicant/recipient's Income: The ~~[ISS]~~ ISD caseworker determines the amount of income available to the applicant/recipient using only the applicant/recipient's own income. Allow the standard \$20 disregard in accordance with instructions in ~~[Section SSI-525.2]~~ Subsection B of 8.215.500.22 NMAC of the medical assistance division policy manual. If the applicant/recipient has

earned income, allow the earned income disregard as specified in ~~[Section SSI-525.3]~~ Subsection C of 8.215.500.22 NMAC. From the combined total of the applicant/recipient's remaining earned and unearned income, subtract up to the difference between 100 percent of the federal income poverty level for two ~~[(2)]~~ persons and 100 percent of the federal income poverty level for one ~~[(1)]~~ person. This is referred to as the FPL disregard. Compare the remaining countable income of the applicant/recipient to the individual income standard for the QMB program. If the applicant/recipient's remaining countable income is greater than the individual standard, s/he is ineligible for the QMB program. If the applicant/recipient's remaining countable income is less than the individual income standard, proceed to the following section.

(2) Evaluation of the ineligible spouse's gross income: The ~~[ISS]~~ ISD caseworker determines the total gross earned and unearned income of the ineligible spouse. From this combined amount, subtract a living allowance for any ineligible minor dependent child(ren) of either member of the couple who live(s) in the home. The deductible amount of the ineligible child(ren)'s living allowance cannot exceed the ineligible spouse's total gross income. The amount of the living allowance for an ineligible child is determined by subtracting the child's gross income from the figure which represents the difference between 100 percent of the federal income poverty level for two ~~[(2)]~~ persons and 100 percent of the federal income poverty level for one ~~[(1)]~~ person. A "child" must be under ~~[eighteen (18)]~~ 18 years of age or under ~~[twenty-one (21)]~~ 21 years of age if a full-time student at an institution of learning.

(3) Determination of countable income for eligibility purposes: The ~~[ISS]~~ ISD caseworker adds the gross unearned income of the applicant/recipient (without applying any disregards) to the gross unearned income of the ineligible spouse. The ~~[ISS]~~ ISD caseworker then adds the total gross earned income of the applicant/recipient to the total gross earned income of the ineligible spouse. From the combined total gross earnings of the couple, the ~~[ISS]~~ ISD caseworker subtracts one earned income disregard (the first \$65 of the total earnings plus 1/2 of the remainder). The resulting figure is the total combined countable earnings of the couple. Add the couple's total combined countable earned income to their total gross unearned income. From this figure subtract the standard \$20 disregard determined in accordance with ~~[Section SSI-525.2]~~ Subsection B of 8.215.500.22 NMAC. Next, subtract the amount of the FPL disregard which the applicant/recipient was allowed. Finally, subtract the amount of the ineligible child(ren)'s living allowance

which was calculated in [Section ~~QMB~~ 523.22] Paragraph (2) of Subsection B of 8.240.500.14 NMAC. The resulting figure is the countable income of the couple. Compare it to the couple standard for QMB. If the countable income of the couple exceeds the couple standard, the applicant/recipient is ineligible for the QMB program. If the countable income of the couple is less than the couple standard, the applicant/recipient is eligible for the QMB program of the factor of income.
[2/1/95; 9/15/95; 8.240.500.14 NMAC - Rn, 8 NMAC 4.QMB.523 & A, 7/15/10]

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS
STATE RECORDS CENTER AND
ARCHIVES**

This is an amendment to 1.13.2 NMAC, Sections 9 and 10, effective July 15, 2010.

1.13.2.9 STORAGE BOXES:

~~[A.]~~ Microfilm box - \$1.90
~~B.] A.~~ Maps and drawings box - \$2.10

~~[C.] B.~~ Cubic foot records storage box - \$2.00
[7/1/95, 1/1/98; 1.13.2.9 NMAC - Rn, 1 NMAC 3.100.8.1 & A, 3/14/01; A, 7/1/09; A, 7/15/10]

**1.13.2.10 ACID-FREE
ARCHIVAL STORAGE CONTAINERS:**

A. Document storage box 15 ¼ in. x 10 ¼ in. x 5 in. - ~~[\$4.90]~~ \$3.94
B. Document storage box 15 ¼ in. x 10 ¼ in. x 2 in - ~~[\$4.85]~~ \$3.89
C. Record storage box 15 in. x 12 in. x 10 in. - ~~[\$5.40]~~ \$4.36
D. Full telescope box 15 in. x 11 ½ in. x 3 in. - ~~[\$12.05]~~ \$6.93
E. Full telescope box 24 ½ in. x 20 ½ in. x 3 in. - ~~[\$19.20]~~ \$10.92
F. Clam shell box 15 ¼ in. x 10 ¼ in. x ~~3 ½ in.~~ 3 in. - ~~[\$5.05]~~ \$4.15
G. Newspaper box 25 in. x 19 in. x 2 ½ in. - ~~[\$22.20]~~ \$11.29
H. Legal size folder full tab package (100 count) - ~~[\$34.40]~~ \$26.00
I. Letter size folder full tab package (100 count) - ~~[\$28.20]~~ \$23.00
J. Corrugated board, 40 in. x 60 in. sheet - ~~[\$12.01]~~ \$8.75
K. Legal size, acid-lignin free paper, 20 lb. bond, package (500 count) - \$20.44
L. Letter size, acid-lignin free paper, 20 lb. bond, package (500 count) - \$14.95
M. Polyester transparent sleeve, 5 in. x 7 in. - \$0.76
N. Polyester transparent sleeve, 8 ¾ in. x 11 ¼ in. - \$1.16

O. Polyester transparent sleeve, 8 ¾ in. x 14 ¼ in. - \$1.31

P. Polyester transparent sleeve, 9 ¼ in. x 12 ¼ in. - \$1.32

Q. Polyester transparent sleeve, 11 ¼ in. x 14 ¼ in. - \$1.37

~~[K.] R.~~ Other containers and archival supplies - containers of sizes other than those listed above and other archival supplies may be available at cost plus five percent.

[1.13.2.10 NMAC - N, 3/14/01; A, 4/30/02; A, 6/30/04; A, 6/1/06; A, 7/1/09; A, 7/15/10]

[Please contact the Archives and Historical Services Division at 505-476-7956 for the availability and prices of the other containers and supplies noted in Subsection R.]

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS
STATE RECORDS CENTER AND
ARCHIVES**

This is an amendment to 1.14.2 NMAC, Sections 7, 9, 12, 13 and 14, effective July 15, 2010.

1.14.2.7 DEFINITIONS:

A. "Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, including district courts. See Sections 14-3-2 and 14-3-15 NMSA 1978.

B. "Approved microphotography system" means a microphotography system that has been approved in writing by the administrator under the provisions of Section 14-3-15 NMSA 1978.

C. "CD-ROM mastering process" means the creation of the first recording (the master) in the compact disk-read only memory replication process.

D. "CD - R O M premastering" see premastering.

E. "Compact disk" means read-only optical disk available in formats for audio, data and other information.

F. "Compact disk-read only memory" means optical disk that is created by a mastering process and used for reading.

G. "Compact disk-write once read many" means an optical disk that is written and then available for reading.

H. "Density" means the light-absorbing or light-reflecting characteristics of a photographic image, filter, etc.; or the number of pixels per square inch.

I. "Disposition" means the final action that puts into effect the results of

an appraisal decision for a record series (e.g., transfer to archives or destruction).

~~[F.] J.~~ "Document accountability" means the process whereby original documents are compared against the images produced, so that the film ensures the validity and integrity of the images.

~~[F.] K.~~ "Dots per inch" means the measurement of output device resolution and quality, e.g., number of pixels per inch on display device. Measures the number of dots horizontally and vertically.

~~[K.] L.~~ "Enhancement algorithms" means the set of techniques for processing an image so that the result is visually clearer than the original image.

~~[L.] M.~~ "JPEG" means the specific compressed image file format specified by ISO. [See JPEG acronym]

~~[M.] N.~~ "Imaging" means the process of converting human readable media, such as paper or microfilm, into information that can be stored and retrieved electronically.

~~[N.] O.~~ "Master" (noun) means: (1) in micrographics, the original microform produced from which duplicates or intermediates can be obtained (ISO); and (2) in electronic imaging, the first recording, one from which duplicates can be obtained.

~~[O.] P.~~ "Master" (verb) means creating the first recording.

~~[P.] Q.~~ "Microphotography" means the transfer of images onto storage media including but not limited to film, tape, disk, or other information storage techniques that meet the Performance Guidelines for Legal Acceptance of Public Records produced by information technology system technologies pursuant to regulations adopted by the commission of public records. See Section 14-3-2 NMSA 1978.

~~[Q.] R.~~ "Microphotography program manager" means the person responsible for the microphotography system program in a state agency.

~~[R.] S.~~ "Microphotography system" means all microphotography equipment, services, policies, procedures and supplies that together create, store and reproduce public records.

~~[S.] T.~~ "Open system" means a system that implements sufficient open specifications for interfaces, services, and supporting formats to enable properly engineered image processing applications that can be ported with minimal changes across a wide range of systems; can inter-operate with other applications on local and remote systems; and can interact with users in a manner that facilitates access and maintenance of public records on such systems.

~~[T.] U.~~ "Open system environment" means the comprehensive set of interfaces, services, and supporting

formats, plus user aspects, for portability or interoperability of applications and data.

[U:] V. "Optical disk" means the medium that will accept and retain information in the form of marks in a recording layer that can be read with an optical beam. See also compact disk-read only memory, rewritable optical disk and write-once read many optical disk.

[W:] W. "Pixel" means the smallest element of a display surface that can be independently assigned color or intensity.

[W:] X. "Premaster" means the intermediate recording from which a master will be created.

[X:] Y. "Premastering" means the conversion to digital code, the addition of error correction codes and the intelligent preprocessing of the data records. It also includes the phase of optical disk production in which machine-readable and bit-stream data are converted to optical disk.

[Y:] Z. "Records" means information preserved by any technique in any medium, now known, or later developed, that can be recognized by ordinary human sensory capabilities either directly or with the aid of technology.

[Z:] AA. "Records custodian" means the statutory head of an agency [~~which creates or maintains the records that are being microphotographed;~~] or his designee.

[AA:] BB. "Resolution" means the ability of a system to record fine detail, or the measure of that fine detail.

[BB:] CC. "Scanner" means a device that converts a document into binary (digital) code by detecting and measuring the intensity of light reflected from paper or transmitted through microfilm.

[CC:] DD. "Tag image file format" means the standardized format for storage of digitalized images, which contains a header or tag that defines the exact data structure of the associated image.

[DD:] EE. "Traditional microfilm" means the production of traditional microfilm in which source documents are photographed utilizing a camera and images are captured on film. [7-29-96, 1-12-98; 1.14.2.1.7 NMAC - Rn, 1 NMAC 3.2.60.1.7 & A, 12-29-00; A, 04-30-02; A, 06-01-06; A, 06-30-09; A, 07-15-10]

1.14.2.9 MICROPHOTOGRAPHY SYSTEM APPROVAL:

A. The state records administrator shall approve [~~or disapprove in writing~~] all microphotography system plans for microfilm, COM and imaging. [~~No records shall be destroyed where an unapproved microphotography system is being used.~~] Original records shall not be destroyed until an agency has an approved microphotography plan and the state records administrator has approved the destruction

(see 1.13.30 NMAC, *Destruction of Public Records and Non Records*). Approval of a microphotography system plan shall be for five years, unless the system is modified (see Subsection D of 1.14.2.16 NMAC). Renewal of approval is contingent upon submission of a five year system review or an amended plan.

B. Agencies shall comply with the requirements in this rule for microfilming or digitizing public records to ensure that the informational content of the record is captured and preserved for the life of the record.

C. Agencies shall request in writing the approval of a new, a modified and an existing microphotography system plan not previously approved, including but not limited to microfilm, COM and digital imaging.

(1) Traditional microfilm: microphotography plans for traditional microfilm shall meet all requirements as specified in Sections 9, 10 and 11 of 1.14.2 NMAC.

(2) COM: microphotography plans for computer output microfilm shall meet all requirements as specified in Sections 9, 12, 13 and 14 of 1.14.2 NMAC.

(3) Digital imaging: microphotography plans submitted for digital imaging shall meet all requirements as specified in Sections 9, 14, 15 and 16 of 1.14.2 NMAC.

D. The approval of a microphotography system plan shall be obtained before any source documents are submitted for destruction.

[7-29-96, 1-12-98; 1.14.2.9 NMAC - Rn, 1 NMAC 3.2.60.1.8 & A, 12-29-00; A, 06-30-09; A, 07-15-10]

1.14.2.12 STANDARD FOR COMPUTER OUTPUT MICROFILM (COM):

These standards apply to the production of master microfilm from records digitally created (born digital) or imaged (scanned) from paper. [The SRCA recognizes that producing quality microfilm, directly from digital images offers the greatest potential for ensuring the preservation of electronic permanent records or those with a retention period greater than 15 years. Recommended ANSI/AIIM MS1-1996 practices for addressing operational procedures related to alphanumeric COM provide the necessary controls to ensure reasonable quality control for digital-to-film technology.]

A. [A COM system shall be determined to meet the minimum standards of the New Mexico commission of public records if the combined results of the consumables (i.e., film, chemicals, etc.) and equipment producing COM meet the standards developed and approved by the ANSI/AIIM MS1-1996 (see 1.14.2.17

NMAC). The requirements of the most current revision of the standard shall prevail, unless otherwise specified in this rule.] State agencies shall utilize a COM system capable of recording faithfully onto microfilm all of the information contained in the digital image. Agencies utilizing a service provider for writing digital images to COM shall have a written agreement in place to provide for compliance with this standard.

B. The following standards for production, testing, and inspection of COM shall be met:

- (1) ANSI/AIIM MS1;
- (2) ANSI/AIIM MS5;
- (3) ANSI/AIIM MS28;
- (4) ANSI/AIIM MS39;
- (5) ANSI/AIIM MS43; and
- (6) ANSI/NAPM IT9.17.

C. Record grouping. Before converting images to COM records shall be properly organized and grouped.

(1) Records shall be carefully inspected for completeness and the description and retention period of the record verified.

(2) The proper order of the materials shall be determined before conversion to COM.

(3) Active records shall not be filmed with inactive records.

(4) Documents from different record series may be filmed on a single roll provided retention periods are the same.

D. [Quality monitoring of scanner. All operations using the digital-to-film process shall follow procedures outlined in ANSI/AIIM MS44 *Recommended Practice for Quality Control of Image Scanners*. The AHM Scanner Test Chart #2 shall be scanned weekly on each scanner and included at the front and end of each roll. The scan chart at the beginning shall correspond to the week of the earliest scanned record on the roll, and the one at the end shall be scanned during the week of the last scanned record on the roll. The date that each chart was scanned must be displayed on the film. Additionally, a control scanned image of AHM Scanner Test Chart #2 shall be created once as a control image and placed directly preceding the weekly test chart on each roll of film. The purpose is to easily compare variations in quality over long periods of time. It is vital that the test charts used are scanned on the same equipment that processed the source documents on the film. Charts scanned on one piece of equipment shall never be used on reels with images from another scanner.] Film writer quality control. State agencies shall ensure that the film writer has the correct density/contrast level by using a reference white target file with a range of 0.9 to 1.1.

E. Quality monitoring of images. [Each image shall be visually compared against its corresponding original

document in order to identify and correct the following defects:

- (1) missing pages;
- (2) page skew;
- (3) text cutoff at edges;
- (4) double-page feeds;
- (5) contrast problems; and
- (6) images in a different order than originals.] Quality monitoring of images is controlled at the time of document scanning. See 1.14.2.14 NMAC, standard for imaging.

F. Resolution [test targets] standard: A system used to create microfilm from digital images shall have a self-test process to ensure that all of the available pixels are consistently available for recording purposes. The COM unit shall be tested regularly to ensure optimal functionality.

~~[(4) COM produced from scanned or born digital images shall include resolution charts as recommended in ANSI/AHIM MS 44-1993 Recommended Practice for COM Recording Systems Having an Internal Electronic Forms Generating System-Operational Practices for Inspection and Quality Control.]~~

~~— (2) The COM unit shall be tested for resolution adherence each day of operation.]~~

G. Density: [The minimum background density on microfilm output shall be within the ranges prescribed in ANSI/AHIM MS 1-1996 Standard Recommended Practice for Alphanumeric Computer-Output Microforms - Operational Practices for Inspection and Quality Control.]

(1) Density of master negative COM shall measure between 0.80 to 1.20.

(2) Required base plus fog density (relative Dmin) for unexposed processed microfilms shall not exceed 0.10.

(3) Background density on positive appearing silver masters shall be no greater than 0.30.

~~[(4) The COM unit shall be tested for density adherence each day of operation.]~~

H. Reduction ratios: [The reduction chosen for COM shall be consistent with recommended practices for microfilm of records of permanent retention. A reduction ratio not exceeding 48:1 is required.] The selection of a reduction ration is application specific. An agency shall take into account the characteristics of the record, the task the system is designed to perform, and the user requirements to be satisfied when selecting a reduction ratio.

I. Image resolution: Resolution shall be adequate to duplicate all details of the document in order that the COM qualify as a true copy of the original record. Image resolution shall meet standards specified in Subsection G of 1.14.2.14 NMAC.

~~[(4) An image resolution of 300 dpi shall be used for text.]~~

~~— (2) Smaller fonts or fonts that~~

contain detailed serifs require a resolution of 400 to 600 dpi range depending on the characteristics in the font that are to be preserved.

~~— (3) Photographs and other halftone records shall have a scanning resolution of 600 dpi.~~

~~— (4) Engineering, surveying and other records which require precise measurement shall be scanned at a sufficiently high resolution to provide for adequate representation of the original record.]~~

J. Image formats. Digital images shall be in a standard image format such as Group IV TIFF, BMP or PDF.

K. Blip coding. To effectively organize a roll of COM the use of a multi-level blip coding strategy may be used. Blips are rectangular marks exposed by the film recorder under each page as they are written on the film. These marks can be programmed to appear in different sizes to identify file level, document level, page level, etc. images. Applying this sequence to recorded documents, a large blip designates the first page of a document while small blips indicate supporting pages within the document.

L. Page orientation. Pages can be recorded on microfilm in two ways. In "cine mode" where the text on a page runs perpendicular to the length of the film and in "comic mode" where the text on a page runs parallel to the length of the film. Unless a lower reduction ratio is needed for acceptable image quality, recording letter and legal sized pages in comic mode is preferable. This is accomplished by rotating the images 90° prior to recording or feeding the page "sideways" through the scanner. The advantage of comic mode recording is that more pages can be written on each roll of film saving storage space and promoting more efficient scanning in the event that the film needs to be used to recover lost image data.

M. Page spacing. Pages need to have sufficient separation to allow a film scanner to reliably differentiate adjacent pages on the film. There should be a minimum separation of 0.06" (1.5mm) between adjacent pages. Pages that touch each other at any point may preclude them from being captured separately by a microfilm scanner. Although maximizing packing density improves scanning efficiency, documents recorded on film should not span rolls.

N. [Microfilm] COM targets. All microfilm shall have the following targets to be in compliance with this rule:

(1) Statement of intent and purpose. A statement of intent and purpose shall be filmed at the beginning and end of each roll of film and shall contain the following information:

(a) authority under which microfilming is being done;

(b) name of the agency for which the microfilming is being done;

(c) statement indicating the records microfilmed are in the legal custody of the agency, and that the records were created as part of the normal course of business;

(d) statement certifying the agency is microfilming in accordance with an approved microphotography plan on file with the SRCA;

(e) statement certifying that it is the policy of the agency to microfilm the specified records and that the microfilm is an accurate representation of the original copy which will be maintained as the legal copy of record in lieu of paper, and that the paper records are destroyed after microfilming in accordance with all requirements of the Public Records Act; and

(f) name, title, and signature of records custodian or microphotography program manager.

(2) Resolution test targets. COM produced from either scanned or born digital images shall include [resolution charts as recommended in ANSI/AHIM MS 44-1993 Recommended Practice for COM Recording Systems Having an Internal Electronic Forms Generating System - Operational Practices for Inspection and Quality Control.] manufacturer's self-test targets specified in Subsection F of 1.14.2.12 NMAC.

(3) Density targets. See Subsection G of 1.14.2.12 NMAC.

(4) Start of roll target. Start of roll target shall contain the following information:

(a) roll number;

(b) name of agency and office to which the records belong;

(c) record(s) or file(s) being microfilmed;

(d) date of filming;

(e) name of camera operator; and

(f) description of first record image on the roll of film.

(5) End of roll target. End of roll target shall contain the following information:

(a) roll number;

(b) name of agency and office to which the records belong;

(c) record(s) or file(s) being microfilmed;

(d) date of filming and name of camera operator; and

(e) description of last record image on the roll of film.

O. Microfilm image sequence and spacing. The following image sequence and spacing shall be used:

(1) Start of roll:

(a) film leader;

(b) a single statement of intent and

purpose;

- (c) a single resolution target;
- (d) a single density target;
- (e) a single start of roll target; and
- (f) four spaces.

(2) Digital or scanned images.

(3) End of roll:

- (a) four spaces;
- (b) a single end of roll target;
- (c) a single density target;
- (d) a single resolution target;
- (e) a single statement of intent and

purpose; and

(f) film trailer.

P. Microfilm qualifications: Agencies shall produce a *master* negative microfilm and a *working copy*. An agency shall have a re-inspection program and process in place for all master microfilm produced.

(1) Master microfilm shall:

(a) be of a wet silver gelatin composition;

(b) meet the minimum standards for the production of master microfilm specified in this section for density, resolution, targeting and spacing;

(c) shall be re-mastered if it fails inspection;

(d) be stored off-site (for security purposes) for the full period prescribed by the agency's records retention and disposition schedule.

(2) Working copy microfilm is designated for reference or everyday use in an office and may be of silver halide, diazo, or of a vesicular composition. An agency shall produce a minimum of one working copy of microfilm.

(3) If multiple working copies of security or preservation microfilm are needed, it is recommended that the production of such microfilm conform to a three-generation system as noted in section 7.1 of ANSI/AIIM MS48-1990. Such a system consists of master negative; a second-generation copy of the master negative that serves as a duplicate negative to be used for producing additional copies; and one or more third-generation working copies produced from the second-generation film.

(4) Agencies using COM systems that do not produce an original silver gelatin film shall make a silver gelatin duplicate negative that meets this standard before depositing such film for storage at the SRCA.

Q. Master COM shall be inspected by state agencies or by vendors filming for agencies. Inspection shall consist of verification of the following:

- (1) targets;
- (2) indexing;
- (3) labeling;
- (4) document accountability;
- (5) density;
- (6) resolution; and

(7) visual observation of major defects and errors.

R. Master COM stored at the SRCA are subject to audit by the SRCA staff at any time and shall comply with the standards set out in Subsection Q of 1.14.2.12 NMAC.

S. Microfilm container identification.

(1) All master microfilm roll containers shall contain the following minimum information:

(a) name and address of the custodial agency;

(b) date converted to COM;

(c) identification of the first and last document on the roll of film;

(d) identification of the inclusive dates of the oldest and the most recent document by month, date and year;

(e) records series names and corresponding records retention and disposition schedule item number;

(f) disposition trigger date (i.e., date file closed, date contract terminated, etc.);

(g) name and address of the entity producing the roll of film; and

(h) roll number.

(2) Master microfilm rolls that do not contain the required information on the label shall be returned to the agency for re-labeling. If SRCA is required to ship the master microfilm rolls back to the agency, the custodial agency shall be responsible for the shipping costs.

T. Indexing requirements. The agency shall maintain an index for the purpose of tracking all microphotography records. The index shall include the following:

(1) agency code;

(2) record series title and corresponding records retention and disposition schedule item number;

(3) retention period;

(4) inclusive dates;

(5) trigger date;

(6) date filmed; and

(7) access restrictions.

U. Destruction of original copy.

(1) Prior to the final destruction of any scanned paper records, all requirements of this rule shall be met.

(2) Agencies shall submit a request for destruction which includes the following information:

(a) a statement that the records for destruction have been scanned and converted to COM;

(b) that the microfilm has been filmed in accordance to 1.14.2. NMAC microphotography standards;

(c) roll numbers;

(d) record series; and

(e) shall be signed by the records

custodian for destruction approval.

V. Expungement. An agency required to perform expungement of COM shall create and maintain an expungement certificate that details the reason for the expungement, the authority to expunge, the date of the original filming and the date of the expungement. The expungement certification shall indicate that the original and all known copies have been expunged.

[11-16-82, 12-20-88, 1-19-89, 3-29-92, 7-29-92, 8-24-96; 1.14.2.12 NMAC - Rn, 1 NMAC 3.2.60.1.10 & A, 12-29-00; A, 04-30-02; A, 07-15-03; A, 06-01-06; A, 06-30-09; A, 07-15-10]

1.14.2.13 COM SYSTEM PLAN: A COM plan shall be submitted together with an imaging plan for approval by the state records administrator (see 1.14.2.16 NMAC, *imaging system plan*.) Agencies with an approved imaging plan on file with the SRCA shall submit the COM plan as an addendum to the imaging plan. The COM system plan shall address each of the elements in this section.

A. purpose of the system;

B. specific goals of the system including the identification of the official copy of record;

C. record series [~~to be microphotographed~~] affected as identified in the records retention and disposition schedule;

D. system specifications;

E. schema for indexing;

F. disposition of records (source documents) microfilmed;

G. disposition plan for COM (masters and working copies) when legal retention has been met;

H. off-site storage location of COM masters and re-inspection program and process;

I. system implementation date; and

J. [~~five year review; amendments and modifications;~~] statement certifying requirements specified in 1.14.2.12 NMAC standard for computer output microfilm(COM) have been implemented by the agency.

[1.14.2.13 NMAC - N, 12-29-00; A, 07-15-03; A, 06/01/06; A, 06-30-09; A, 07-15-10]

1.14.2.14 STANDARD FOR IMAGING: This section is limited in scope to the conversion of documents to digitized images suitable for storage on optical, magnetic media, or converted to COM. The standards listed in this section are intended to maintain the integrity of the original record and to ensure that the image produced is an adequate substitute for the original record and serves the purpose for which such record was created or maintained.

A. All state agencies shall submit an imaging system plan to the state records administrator for approval prior to implementing a digital imaging system for the conversion of paper documents to a digital format. The imaging plan shall address all of the requirements as specified in 1.14.2.14 NMAC.

B. The imaging system shall be an open system. Variants from an open system, such as proprietary hardware, software or formats, shall require justification.

C. Media life expectancy issues.

(1) Life expectancy rating of any media to be employed by an imaging system used for keeping of public records shall correspond to, and not be less than, the retention period of the records, unless otherwise approved.

(2) Where the life expectancy of media is shorter than retention periods of records imaged, migration shall be addressed as a part of the submitted plan for approval. The migration plan shall provide for review of the hardware and software at least every five years. Where it has been determined that the media are not readable by current off-the-shelf equipment, the agency shall provide for migration to current, generally accessible media. This includes the accessibility of the index as well as accessibility of documents.

(3) Digital images converted to COM shall meet all of the requirements specified in [Section] 1.14.2.12 NMAC.

D. The agency shall verify completeness of image capture. Verification shall be completed at point of capture and before the mastering of an optical [;] or magnetic disk [;or] and conversion to COM. Inspection of the images shall verify the following:

- (1) image filename;
- (2) aproved file format as defined in Subsection H of 1.14.2.14 NMAC;
- (3) 300 DPI for each image type;
- (4) image quality; and
- (5) indexing terms correspond to appropriate image.

E. The agency shall test disks for readability. During production each disk shall be tested for readability. In addition, every year a representative sample of stored disks shall be tested in order to early detect any deterioration.

F. Based upon the value of the records being imaged, the agency shall provide adequate system security and audit functions in accordance with the Performance Guidelines for the Legal Acceptance of Public Records, 1.13.70 NMAC.

G. Scanned images shall meet the following standards.

(1) Scanning resolution shall be 300 DPI optical minimum, for text.

(2) Photographic records and other halftone records shall have a scanning resolution at least equal to the original.

(3) Resolution shall be adequate to duplicate all details of each document in order for that document to qualify as a true copy. Engineering, surveying and other records, the usage of which requires precise measurement, shall be imaged at a sufficiently high resolution to provide for that measurement.

(4) Digitized images shall be legible for all purposes for which the original records might be used. All characters in digitized images shall be clearly formed and fully recognizable without regard to their surrounding contexts.

H. Image and media formats.

(1) Images shall be in a standard image format such as Group IV TIFF, PDF or BMP. Compression of images for storage is acceptable if the output resolution requirements for use are met. GIF and JPEG are acceptable compressed formats. Plain black and white "two level" images shall not be converted to JPEG; at least 16 gray levels are necessary before JPEG is a useful gray scale image.

(2) Where optical media is used, file and directory structures shall be compliant with ISO 9660 - High Sierra Level 1 - eight dot three file naming, limited nested subdirectories. Any variance shall be justified.

(3) Where optical media are used for permanent records storage, they shall be of the highest quality available. Any variance shall be justified.

I. Labeling requirements for all master security optical media stored at the SRCA.

(1) All master optical disc containers shall contain at a minimum the following information:

- (a) name and address of the custodial agency;
- (b) date mastered;
- (c) identification of the first and last document on the disc;
- (d) identification of the inclusive dates of the oldest and the most recent document by month, date and year;
- (e) records series names and corresponding records retention and disposition schedule item number;
- (f) disposition trigger dates (i.e., date file closed, date contract terminated, etc.);
- (g) name and address of the entity producing the disc; and
- (h) disc or other identification number.

(2) Master security optical media that do not contain the required information on the label shall be returned to the agency for re-labeling. If SRCA is required to ship

the master optical media back to the agency, the custodial agency shall be responsible for the shipping costs.

(3) For optical media not stored at the SRCA the labeling shall consist of:

- (a) agency name;
- (b) date mastered;
- (c) record series name and number;
- (d) inclusive dates of the records series; and
- (e) the overall content of the optical disk, independent of any index that may be contained on the disk itself.

J. The agency shall maintain an index for the purpose of tracking all microphotography records. The index shall include the following:

- (1) agency code;
- (2) record series title and corresponding records retention and disposition schedule item number;
- (3) retention period;
- (4) inclusive dates;
- (5) trigger date;
- (6) date filmed; and
- (7) access restrictions.

K. Documents from different record series may be imaged on a single medium (magnetic disk, optical disk, etc.) provided destruction dates coincide, or the disposition plan provides for the maintenance of the media for the longest retention period of any record on the media.

L. Page counts in physical files shall be verified in the scanned versions and certified as complete prior to mastering or writing the optical disk. The certification of completeness shall be kept on file by the agency.

M. Expungement [issues]. An agency shall perform expungement of images in accordance with statutory requirements or court order.

(1) ~~[The system capability to expunge (obliterate all traces of images and their related index entries) shall be required in some instances.] An agency shall create and maintain an expungement certificate that details the reason for the expungement, the authority to expunge, the date of the original scanning and the date of the expungement. The expungement certification shall indicate that the original and all known copies have been expunged.~~ The potential for expungement orders shall be addressed in the imaging plan.

(2) When expungement of records is necessary, the plan shall provide for the remastering of all media that have been modified.

(3) When expungement of records is necessary, the plan shall provide for all index records and related image files to be obliterated from the database and the image file storage, and from all backup media.

N. P r e s e r v a t i o n : Preservation requirements are based on the

retention period of the digital image.

(1) Digital records that have an established life cycle of fifteen years or less and are declared the official copy of record may be stored electronically.

(2) Digital records that have a long-term retention requirement of sixteen to fifty years shall meet the requirements specified in Subsection C of 1.14.2.14 NMAC. If converted to COM the requirements of Subsection C do not apply.

(3) Digital records that have a retention period greater than fifty years or have a permanent retention shall be converted to COM. For COM requirements see 1.14.2.11 NMAC and 1.14.2.12 NMAC.

O. Imaging systems shall meet the imaging standards developed by ANSI and enumerated in section 1.14.2.17 NMAC. If not, adequate justification must be provided. The requirements of the most current revision of the standard shall prevail, unless otherwise specified in this rule.

P. New imaging system applications shall be backward compatible with pre-existing applications, or, where they are not, a migration plan for pre-existing images and indexes shall be provided, or dual systems shall be run until the records retention periods for all pre-existing imaged records have expired.

[7-29-96, 8-24-96, 1-12-98; 1.14.2.14 NMAC - Rn, 1 NMAC 3.2.60.1.11 & A, 12-29-00; A, 07-15-03; A, 06-01-06; A, 06-30-09; A, 07-15-10]

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS
STATE RECORDS CENTER AND
ARCHIVES
AND
NEW MEXICO CULTURAL
AFFAIRS DEPARTMENT
LIBRARY DIVISION**

1 NMAC 3.4.10, Publications: Filing, Distribution, Format and Style Requirements, filed April 18, 1997 is repealed effective July 15, 2010 and replaced by 1.25.10 NMAC, Publications: Filing, Distribution, Format and Style, effective July 15, 2010.

**NEW MEXICO
COMMISSION OF PUBLIC
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STATE RECORDS CENTER AND
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NEW MEXICO CULTURAL
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LIBRARY DIVISION**

TITLE 1 G E N E R A L

**GOVERNMENT ADMINISTRATION
CHAPTER 25 P U B L I C A T I O N S
AND MANUALS OF PROCEDURES
PART 10 P U B L I C A T I O N S :
FILING, DISTRIBUTION, FORMAT
AND STYLE**

1.25.10.1 I S S U I N G A G E N C Y :
State Commission of Public Records - State Records Center and Archives and the State Library Division of the Cultural Affairs Department

[1.25.10.1 NMAC - Rp, 1 NMAC 3.4.10.1, 7/15/2010]

1.25.10.2 S C O P E : All state agencies
[1.25.10.2 NMAC - Rp, 1 NMAC 3.4.10.2, 7/15/2010]

**1.25.10.3 S T A T U T O R Y
A U T H O R I T Y :**

A. Section 14-3-21 NMSA
1978 directs the state commission of public records to adopt and promulgate uniform standards of style and format for official reports of state agencies required by law.

B. Section 14-3-22
NMSA 1978 directs agencies to follow the uniform standards of style and format for certain publications prescribed by the state commission of public records.

C. Section 14-4-4 NMSA
1978 directs agencies to file five copies of any publication issued by that agency with the state records center and archives.

D. Section 18-2-4 NMSA
1978 directs the state librarian to establish and administer a library depository system for state documents and publications.

E. Section 18-2-4.1 NMSA
1978 directs agencies to deposit at least 25 copies of all publications issued by that agency with the state documents depository clearinghouse at the state library.
[1.25.10.3 NMAC - Rp, 1 NMAC 3.4.10.3, 7/15/2010]

1.25.10.4 D U R A T I O N :
Permanent
[1.25.10.4 NMAC - Rp, 1 NMAC 3.4.10.4, 7/15/2010]

1.25.10.5 E F F E C T I V E D A T E :
July 15, 2010, unless a later date is cited at the end of a section.
[1.25.10.5 NMAC - Rp, 1 NMAC 3.4.10.5, 7/15/2010]

1.25.10.6 O B J E C T I V E : To establish standards and procedures for filing, preserving and providing access to state publications and to reduce unnecessary expense to the taxpayers in connection with publications designed primarily for the purpose of reporting to, or informing, the governor, the legislature, other state agencies

or the political subdivisions of this state.

[1.25.10.6 NMAC - Rp, 1 NMAC 3.4.10.6, 7/15/2010]

1.25.10.7 D E F I N I T I O N S :

A. "Agency" means any agency, authority, board, bureau, commission, committee, department, institution or officer of state government except the judicial and legislative branches of state government.

B. "Depositories" means those libraries designated by the state library division to receive publications.

C. "Digital preservation" means policies, strategies and actions taken to ensure access to digitized and born digital content and the accurate rendering of authenticated content over time.

D. "Firewall" means computer hardware or software that prevents unauthorized access to private data by outside computer users.

E. "List of optional items" means that list generated by the state library division to identify those publications which have no retention requirements for depositories.

F. "Memorandum of agreement" means the official agreement between the state library and the library selected to be a depository.

G. "Memorandum of understanding" means an official agreement between the state library and any state agency.

H. "Metadata" means "data about data"; it is information that describes another set of data. Metadata is descriptive information that facilitates the management of and access to other information. Metadata may be generated automatically or created manually and it may be internal or external to the digital object itself. Regardless of how it is created or stored, maintaining accurate and reliable metadata is essential to the long-term preservation of electronic state publications.

I. "Publication" means any information published as an individual document at government expense or as required by law that is intended for public distribution. Such publications include but are not limited to pamphlets, reports, directories, catalogs, bibliographies, brochures or periodicals.

J. "Publications officer" means the person(s) designated to be responsible for distributing the publications of that agency to the state library division.

K. "Robots.txt file" means a text file that stops search engines from crawling the website, selected pages in the site, or selected file types in the site.

L. "URL" means "uniform resource locator" or the address that servers connect to through the internet.

[1.25.10.7 NMAC - Rp, 1 NMAC 3.4.10.7, 7/15/2010]

1.25.10.8 F I L I N G PUBLICATIONS: State agencies are required to deposit copies of all state publications intended for public distribution with the state library division within 30 days of publication. Publications may be deposited in any one of three formats: paper (Subsection A), electronic (Subsection B) or through an agency's website (Subsection C).

A. Paper publications shall meet the minimum style and format requirements outlined in Subsection A of 1.25.10.9 NMAC. State agencies shall deposit 30 copies of each publication.

B. Electronic publications shall meet the minimum style and format requirements outlined in Subsections A and B of 1.25.10.9 NMAC. State agencies shall deposit an electronic copy in an approved format. The electronic copy shall be submitted to the state library division via one of the following approved delivery mechanisms:

- (1) e-mail;
- (2) optical storage media; or
- (3) file transfer protocol (FTP).

C. Internet publications shall meet the minimum style and format requirements outlined in Subsections A and B of 1.25.10.9 NMAC. State agencies that elect to publish through the internet shall:

(1) enter into a memorandum of understanding with the state library specifying the terms and conditions in which state publications will be retrieved from the internet for digital preservation and to ensure the minimum standards for internet publications are met;

(2) designate an appropriate contact person to be responsible for electronic state publications and to act as liaison with the state library;

(3) provide the state library with guaranteed access, at no charge, to the agency's internet publications; if a "robots.txt" file or similar device is used to prevent harvesting of a state agency site then that file shall include an exception for harvesting by state library's designated harvesting system;

(4) meet the metadata standards specified in Subsection E of 1.25.10.9 NMAC;

(5) provide access to publications by providing a link or series of links from the agency's primary URL; for publications accessible only by database searching or similar means, an alternative path such as a hidden link to a comprehensive site map shall be provided;

(6) meet the internet publishing requirements of the *Americans with Disabilities Act of 1990* as amended; and

(7) leave the publication in its original format at a location on the agency's

website for six months after its initial release to ensure that the publication has been collected by the state library.

D. State agencies digitizing older publications previously issued in paper shall provide a digitized copy in an approved format to the state library; the state library shall deliver a copy to the state records center and archives via an approved delivery mechanism.

[1.25.10.8 NMAC - Rp, 1 NMAC 3.4.10.9, 7/15/2010]

1.25.10.9 STYLE AND FORMAT:

A. State publications in all formats shall display at the beginning of the publication the title of the publication, name of the agency, publication date, physical address, email address and website URL.

B. Pages shall be numbered for identification.

C. Paper publications shall be printed on both sides of pages, back to back, head to head, and of a method which shall be at a minimum cost that is verifiable.

D. For publications available in electronic format, the approved electronic formats and their preferred order are:

- (1) portable document format (PDF);
- (2) PDF/A;
- (3) hypertext markup language (HTML); and
- (4) extensible markup language (XML).

E. State publications made available by internet connection shall include the following descriptive metadata:

- (1) name of the agency;
- (2) publication date;
- (3) title of the publication;
- (4) a narrative description of the publication, and
- (5) keyword, subject or selected

terms from within the publication.

[1.25.10.9 NMAC - Rp, 1 NMAC 3.4.10.8, 7/15/2010]

1.25.10.10 DESIGNATION OF PUBLICATIONS OFFICER: Section 18-2-4.1 NMSA 1978 directs agencies to deposit copies of all publications issued by that agency with the state documents depository clearinghouse at the state library.

A. State agencies must have an approved publications officer on file with the state library. A publications officer shall be designated by the statutory head of the agency to distribute the publications of that agency to the state library division. If a memorandum of understanding exists between the state library division and a state agency, the publications officer(s) is responsible for complying with all terms of the memorandum of understanding.

B. The publications officer shall be re-appointed annually by the statutory head of the agency, using a form approved by the state librarian.

C. The form shall include but is not limited to the following: name and signature of the statutory head (agency head or cabinet secretary); name and signature of the publications officer; division or bureau (if acceptable); agency code; agency name and mailing address; fiscal year of designation; phone number; fax number and e-mail address.

D. If a publications officer leaves the employment of an agency or is released from these duties, the agency shall immediately notify the state library division regarding the change, and the agency head shall appoint a new publications officer.

[1.25.10.10 NMAC - Rp, 1 NMAC 3.4.10.9, 7/15/2010]

1.25.10.11 DEPOSITORY LIBRARIES: Subsection J of Section 18-2-4 NMSA 1978 directs the state librarian to establish and administer a library depository system for state documents and publications.

A. Depositories shall provide sufficient space in a public area to adequately house the state publications.

B. Depositories shall provide training to their staff to enable patrons to find and use publications.

C. Depositories shall provide access to the publications by author/agency, title, and subject.

D. Depositories shall provide appropriate technology to use publications regardless of physical format or characteristics.

E. Retention of publications by depositories shall be for at least five years from date of receipt, except as noted on the list of optional items. Disposal of optional items is up to the discretion of each depository.

F. Depositories shall accept all state publications entered into the depository system and sent to them.

G. Six months written notice is required for either the state library division or the depository library to terminate the memorandum or agreement.

H. Upon termination of depository status, depositories shall return all publications no longer desired to the state library division or to another depository, as specified by the state library division.

I. Failure to comply with Subsections A through G of 1.25.10.11 NMAC shall result in cancellation of depository status.

[1.25.10.11 NMAC - Rp, 1 NMAC 3.4.10.10, 7/15/2010]

HISTORY OF 1.25.10 NMAC:

Pre-NMAC History: The material in this

part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives: SRC Rule 72-1, Style and Format for Official Reports, filed 3/15/1972, by Commission of Public Records.

SRC Rule 77-3, State Records Center and Archives, Style and Format for Certain Publications; filed 9/1/1977, by Commission of Public Records.

NMSL Rule 79-1A, State Documents Depository Clearinghouse, February 1, 1979; filed 2/14/1979, by New Mexico State Library.

SRC Rule No. 88-1, State Documents Depository Clearinghouse, filed 5/18/1988, by New Mexico State Library.

History of Repealed Material:

1 NMAC 3.4.10, Publications: Filing, Distribution, Format and Style Requirements, filed jointly 4/18/1997 by Commission of Public Records and New Mexico State Library - Repealed effective 7/15/2010 and replaced by 1.25.10 NMAC, Publications: Filing, Distribution, Format and Style, effective 7/15/2010.

NMAC History:

1 NMAC 3.40, Publications: Filing, Distribution, Format and Style Requirements, filed 3/1/1995, replaced by

1 NMAC 3.4.10, Publications: Filing, Distribution, Format and Style Requirements, filed 4/18/1997 for NMAC renumbering purposes.

NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL

This is an amendment to 6.27.1 NMAC, Sections 3, 6 and 7, effective July 15, 2010.

6.27.1.3 STATUTORY AUTHORITY: The Public School Capital Outlay Act, [Section 22-24-5] Sections 22-24-1 to 22-24-11 NMSA 1978.

[6.27.1.3 NMAC - N, 11/14/2000; A, 07/15/2010]

6.27.1.6 OBJECTIVE: The objective of the rule is to establish the [general provisions] definitions for rules filed in this chapter and rules for the general operation of the public school capital outlay council.

[6.27.1.6 NMAC - N, 11/14/2000; A, 07/15/2010]

6.27.1.7 DEFINITIONS: As used in this chapter:

A. "public school facilities authority ("authority")" means that entity created under the public school capital outlay council pursuant to Subsection A of

Section 22-24-9 NMSA 1978;

B. "council" means the public school capital outlay council;

C. "department" means the public education department;

D. "director" means the director of the public school facilities authority; [and]

E. "secretary" means the secretary of public education; and

F. "school district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes; for purposes of the rules within this chapter, references to "school district" or "district" shall also be applicable to state chartered charter schools, the New Mexico school for the blind and visually impaired ("NMSBVI") and the New Mexico school for the deaf ("NMSD").

[6.27.1.7 NMAC - N, 11/14/2000; A, 06/15/2004; A, 07/15/2010]

NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL

This is an amendment to 6.27.2 NMAC, Sections 3, 9, 11 and 12, effective July 15, 2010.

6.27.2.3 STATUTORY AUTHORITY: The Public School Capital Outlay Act, [Section 22-24-5] Sections 22-24-1 to 22-24-11 and 22-20-1 NMSA 1978.

[6.27.2.3 NMAC - N, 06/15/04; A, 07/15/10]

6.27.2.9 AUTHORITY: DUTIES

A. The authority shall perform duties as provided by law and as directed by the council.

B. As required by law and rule, or in addition to such duties as set forth in law and rule, the authority shall:

(1) consult with the secretary of public education or the secretary's designee prior to recommending building standards for public school facilities to the council;

(2) maintain the statewide database that reflects the condition of each public school facility;

(3) [recommend to the council a schedule for the authority to develop a uniform web-based facility information management system;] develop, implement and maintain a uniform web-based facility information management systems (FIMS);

(4) [implement and maintain the uniform web-based facility information management system; and] assist public school districts with implementation and maintenance of FIMS;

(5) account for all distributions of

grant assistance from the fund for which the initial award was made after July 1, 2004, and make annual reports to the department, the governor, the legislative education study committee, the legislative finance committee, the public school capital outlay oversight task force and the legislature; and

(6) administer all appropriations, monies, projects, contracts, agreements, records, property, equipment and supplies previously administered by the deficiencies correction unit of the public school capital outlay council.

C. [Advise the council of the need to make allocations for emergencies that require immediate action by the authority to safeguard life, health, or property. If the emergency necessitates immediate action prior to the next council meeting, the director shall immediately inform the chair. Emergency allocations shall not exceed \$100,000 per occurrence and shall be ratified by the council at its next meeting.] Advise the council of the need to make allocations for emergencies that require immediate action by the authority to safeguard the health or safety of students or school personnel, or where there is a threat of significant property damage if immediate action is not taken. All applications for emergency capital outlay grant assistance must be submitted to the authority on the current, approved, and designated form, and which form shall be signed by the school board president, the school district superintendent and the regional manager of the authority for the region in which the school is located. As part of the application, a quorum of the school board submitting the application must meet either in a regular meeting or a special meeting called for the purpose of declaring an emergency. The school board, in addition to declaring an emergency, must certify that no other funds are available to address the emergency. Depending upon the amount of the emergency grant request, the following procedures shall apply.

(1) If the grant request is for \$150,000 or less, the director, with the approval of the council chair, may grant or advance up to \$150,000 for school district emergencies if it is determined by the director that sufficient district funds are not available. In instances where district cash flow or cash balances prevent available funds from being used for the emergency, emergency assistance may be offered in the form of an advance to be repaid as opposed to a grant.

(2) If the grant request is for more than \$150,000, consideration of the request must be by a quorum of the council in a public meeting. The district will be notified of when and where the meeting will be held and will be provided the opportunity to appear before the council to address the emergency funding request. In instances

where district cash flow or cash balances prevent available funds from being used for the emergency, emergency assistance may be offered in the form of an advance to be repaid by the district.

[6.27.2.9 NMAC - N, 06/15/04; A, 08/31/05; A, 07/15/10]

6.27.2.11 OVERSIGHT AND IMPLEMENTATION OF PROJECTS FUNDED WHOLLY OR IN PART BY THE COUNCIL

A. The authority shall develop an agreement for each project defining the respective roles and responsibilities of the authority and the district.

B. The authority shall:

(1) oversee the procurement process;

(2) require the use of standardized construction documents and the use of a standardized process for change orders;

(3) review plans and specifications for compliance with the statewide adequacy standards and all applicable codes and regulations;

(4) coordinate all required reviews and approvals;

(5) require standardized reporting to monitor progress of projects;

(6) conduct periodic on-site inspections and inspection of documents to ensure compliance with project specifications;

(7) ensure timely payments for completed work; and

(8) maintain records for completed projects, including warranties.

C. The authority shall report to the council concerning the progress of projects:

(1) The authority shall identify and make recommendations to the council concerning any substantial noncompliance with any reporting requirement or condition.

(2) The authority shall identify and make recommendations to the council regarding any misfeasance or malfeasance in the implementation of the project warranting the withholding of all or part of the grant assistance for the project.]

A. The authority shall:

(1) oversee the procurement process;

(2) require the use of standardized construction documents and the use of a standardized process for change orders;

(3) review plans and specifications for compliance with the statewide adequacy standards and all applicable codes and regulations;

(4) coordinate all required reviews and approvals;

(5) require standardized reporting and use of the construction information management system (CIMS) to monitor

progress of projects;

(6) conduct periodic on-site inspections and inspection of documents to ensure compliance with project specifications;

(7) ensure timely payments for completed work;

(8) on or before the 12th month following substantial completion of the project or phase, the authority will schedule a review of all project expenditures that apply to both the scope of work and to the statewide adequacy standards to insure that the overall expenditures align with the match percentages after necessary offsets and waivers as identified in the memorandum of understanding for the project; following mutual agreement on the overall and final financial project status, project balances will be reallocated by the council; all council awards must be fully reconciled and reallocated no later than eighteen (18) months after substantial completion; and

(9) maintain records for completed projects, including warranties.

B. Management and oversight involvement by the authority shall be either direct or indirect, depending on the degree of qualified personnel in the district and ability to provide proper oversight of the project. Even with respect to responsibilities granted to the district, the authority must be consulted and must approve the actions taken in order for the authority to authorize payment for the work.

C. The authority shall develop an agreement for each project defining the respective roles and responsibilities of the authority and the district. The process shall be defined in the district agreement and may include responsibilities for the following, which shall be accomplished through the use of standardized documents, procedures, and reports, the construction information management system (CIMS), and also include review, approval and payment for completed work at each phase.

(1) Pre-design phase:

(a) assist districts in developing initial scope of project and budget;

(b) assist districts in development of educational specifications where required; and

(c) assist districts in developing the request for proposals for design professionals where necessary.

(2) Design phase:

(a) prepare or assist in developing contracts for design professionals, consultants and other required services;

(b) final review and approval of the various submittal phases including but not limited to; program statement, schematic design, design development and construction documents for completeness;

(c) periodic review and validation

of scope of work, budget, schedule, value engineering, and plans and specifications;

(d) issue or review invitation to bid;

(e) assist or conduct pre-bid conference;

(f) coordinate bid opening; and

(g) review and evaluate bids.

(3) Construction phase:

(a) prepare or assist in development of contracts for construction;

(b) assist or conduct pre-construction conference;

(c) coordinate weekly project meeting with architect, engineer, consultants, district personnel, contractors and sub-contractors;

(d) provide interface for understanding of issues, disputes, and mediation;

(e) review, approve and oversee changes to the work; and

(f) periodic review and validation of work to insure conformance with contract and industry standards of quality.

(4) Project close-out:

(a) verify all work complete;

(b) coordinate operations and maintenance training;

(c) review as-built drawings;

(d) approve final close-out documents;

(e) review warranties;

(f) ensure final acceptance by district;

(g) update facility information management system (FIMS) for new facilities and equipment;

(h) ensure all required documents related to the projects are properly held and archived;

(i) ensure that one-year warranty inspections are conducted and oversee any required repairs or remedies; and

(j) schedule and conduct project budget closeout review with the district.

D. The authority shall report to the council concerning the progress of projects.

(1) The authority shall identify and make recommendations to the council concerning any substantial noncompliance with any reporting requirement or condition.

(2) The authority shall identify and make recommendations to the council regarding any misfeasance or malfeasance in the implementation of the project warranting the withholding of all or part of the grant assistance for the project.

[6.27.2.11 NMAC - N, 06/15/04; A, 07/15/10]

6.27.2.12 OTHER SCHOOL CONSTRUCTION PROJECTS; REQUIRED APPROVALS UNDER SECTION 22-20-1 NMSA 1978

A. Each local school board

must secure the approval of the director or the director's designee prior to the construction or letting of contracts for construction of any school building or related school structure or before reopening an existing structure that was formerly used as a school building but that has not been used for that purpose during the previous year. As used in this subsection, "construction" means any project for which the construction industries division of the regulation and licensing department (CID) requires permitting. A "related school structure" means a project involving any structure or part of a structure under the control of the local school district for which the construction industries division requires permitting.

B. Excepted from the requirements of Subsection A of this section, but not from permitting requirements of CID or other jurisdictions having authority are school construction projects with a value of \$200,000 or less, exclusive of gross receipts tax. For such projects, however, the local school board shall complete a notice of school construction, on the current, approved and designated form, which form shall be submitted to the authority at least ten (10) days prior to the construction or the letting of contracts for construction of the project. It shall be the responsibility of the local school board or its designee to obtain all required permits and approvals from local, state and federal agencies having jurisdiction over any portion of the proposed construction. Additionally, if the construction project involves the construction of new buildings or structures, additions to existing structures or the demolition of existing structures, the local school board or its designee shall submit to the authority a dimensioned or scaled floor plan and site plan showing the proposed construction and any building or structure to be demolished. The site plan shall illustrate the distance of the new construction or demolition from existing structures and shall be sufficiently detailed to provide an accurate representation of the proposed construction or demolition.

[B:] C. A written request for approval meeting the requirements of Subsection A of Section 22-20-1 NMSA 1978 must be submitted to the director on a form prescribed by the director. The form shall include an assurance that any contract for the construction of a public school facility, including contracts funded in whole or in part with insurance proceeds, shall contain provisions requiring the construction to be in compliance with the statewide adequacy standards.

[C:] D. The director or the director's designee shall approve the request if the director reasonably determines that the conditions set forth in Subsection B of Section 22-20-1 NMSA 1978 have been met, including:

(1) certification by the secretary that the construction shall support the educational program of the school district; and

(2) determination that the construction project is in compliance with the statewide adequacy standards.

[D:] E. Within thirty (30) days of receipt of the request for approval, the director or the director's designee shall notify the local school board and the department of the approval or disapproval of the request.

[E:] F. No local school board may construct, or cause the construction of, any public school building within four hundred (400) feet of any main artery of travel without the prior written approval of the department or its designee.

[F:] G. The authority will coordinate all required reviews and approvals.

[6.27.2.12 NMAC - N, 06/15/04; A, 08/31/05; A, 07/15/10]

NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL

This is an amendment to 6.27.3 NMAC, Sections 3 and 8 through 18, effective July 15, 2010.

6.27.3.3 STATUTORY AUTHORITY: The Public School Capital Outlay Act, [~~Section 22-24-5~~] Sections 22-24-1 to 22-24-11 NMSA 1978.

[6.27.3.3 NMAC - Rp, 6.27.2.3 NMAC, 06/15/04; A, 07/15/10]

6.27.3.8 GENERAL PROCEDURES:

A. The authority shall present a proposed calendar and proposed application to the council prior to the beginning of the allocation cycle for a given year.

B. The council shall determine the estimated available funding for the allocation cycle for a given year.

~~[(1) For funding cycles established for fiscal years FY 2005 and FY 2006, the council shall review the estimated allocations necessary for projects that were partially funded by the council in September 2003 but are not completed. The estimated allocations identified for these projects shall be deemed priority allocations by the council.~~

~~[(2)]~~ The authority, at the direction of the council, shall advise school districts of the funding available for each allocation cycle and the resultant potential applicant pool. In making the determination, the council shall consider prior awards for phased projects, contingencies, and phasing requirements as they pertain to current

rankings and estimated funding.

C. Condition index ranking:

(1) In accordance with the calendar established by the council [~~for the application cycle for FY 2006~~], the authority shall report to the council regarding the methodology used to determine the condition index ranking, including any recommendations for affirming or refining the methodology.

(2) The authority, in cooperation with school districts, shall regularly review and update the statewide data used to determine the condition index ranking. School districts shall regularly review and provide corrections of inaccurate or missing data to the authority with respect to the statewide data used to determine the condition index rating. In accordance with the timelines established by the council, the authority shall transmit the application, the calendar, the condition index rankings, and such other information as the council deems relevant to all school districts.

(3) A school district aggrieved by a determination of the authority regarding the condition index ranking of a public school under the authority of the district may appeal the matter to the council in accordance with the procedures established in 6.27.1.10 NMAC. The appeal must specify the data that the school district believes to be erroneous.

D. The authority shall provide assistance to school districts with respect to the application process and requirements, and preparation of the application, if necessary.

E. The authority shall provide on-going analyses and technical assistance to school districts with regard to:

(1) adequacy standards;

(2) master plans;

(3) [~~maintenance plans and implementation of such plans~~] educational specifications;

(4) preventive maintenance programs, including the implementation and maintenance of the facility information management system (FIMS);

~~[(4)]~~ (5) assessments used to determine whether a school building is renovated or replaced;

~~[(5)]~~ (6) space utilization; and

~~[(6)]~~ (7) phasing, financing and cost benefit analyses.

F. The authority shall establish procedures to ensure consultation with the secretary in the event of any potential or perceived conflict between a proposed action of the authority and an educational program.

[6.27.3.8 NMAC - N, 06/15/04; A, 08/31/05; A, 07/15/10]

6.27.3.9 STATE / LOCAL MATCH DETERMINATION. The

department shall notify the council and each school district of the state/local match for each school district for every allocation cycle in accordance with the calendar established by the council.

A. The match shall be calculated annually in accordance with the requirements of Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978. In calculating the match:

(1) the final prior year net taxable value for the school district means the net taxable value for the calendar year immediately preceding the calendar year in which the allocation is made;

(2) the MEM for the school district is the average full-time-equivalent enrollment of students attending public schools, including charter schools, in a school district on the [fortieth;] eightieth and one hundred twentieth days of the prior school year; the state MEM is the total final funded MEM for the prior school year as reported by the department.

B. The notification shall include the net taxable value, the sum of the property tax mill levies, and the MEM used to determine the state/local match.

C. If a school district believes that either the prior year net taxable value for the school district or the MEM used to calculate the state/local match is incorrect, the school district shall notify the department within thirty (30) days of receiving the notification and shall provide documentation as to the data the school district believes to be correct. The department shall review the information provided by the school district and notify the school district and the council of its determination within thirty (30) days of receiving the school district's objections.

D. A school district recognized by the council for conducting an exemplary preventive maintenance program pursuant to Subsection G of 6.27.3.11 NMAC, may be eligible for a reduction in local match of up to five percent (5%) on capital outlay awards.

E. Projects which receive phased project funding over multiple award cycles will maintain the state/local match ratio of the year when the project was initially awarded, except in extraordinary circumstances as determined by the council. [6.27.3.9 NMAC - N, 06/15/04; A, 08/31/05; A, 07/15/10]

6.27.3.10 SPECIAL APPROPRIATION REJECTION: OFFSET.

A. The school district must determine whether to accept or reject any legislative appropriation made after January 1, 2003 for non-operating purposes either directly to the subject school district or to another governmental entity for the purpose of passing the money through directly to

the subject school district, but excluding educational technology appropriations made prior to January 1, 2005 and reauthorizations of appropriations previously made to the school district. This includes determinations with regard to direct appropriations for charter schools within the school district. After January 1, 2007, determinations regarding appropriations for non-operating purposes to a specific state-chartered charter school shall be made by the charter school unless the appropriation was previously used to calculate a reduction pursuant to this section regardless of whether the charter school is a state-chartered charter school at the time of the appropriation or later becomes a state-chartered school.

(1) The school district must notify the department of finance and administration and the public education department in writing that it is rejecting an appropriation prior to June 1 of the fiscal year during which the appropriation is made.

(2) The rejection of the direct appropriation must be supported by the affirmative action of the local school board.

(3) Submission of the completed questionnaire for a project funded by a direct legislative appropriation and the corresponding sale of the bonds will be deemed to constitute the school district's acceptance of the project.

B. Any direct appropriation not otherwise excepted from this requirement and not rejected by the school district shall result in the application of the offset as calculated pursuant to Paragraph (6) of Subsection B of Section 22-24-5 NMSA 1978. The total of direct appropriations shall include an amount, certified to the council by the department, equal to the educational technology appropriations made to the subject school district on or after January 1, 2003 and prior to January 1, 2005 and not previously used to offset distributions pursuant to the Technology for Education Act. All federal money disbursed to a school district for non-operating purposes pursuant to Title XIV of the American Recovery and Reinvestment Act of 2009 shall also result in the application of the offset pursuant to this subsection.

(1) The total shall exclude one-half of the amount of any appropriation made or reauthorized after January 1, 2007 if the purpose of the appropriation or reauthorization is to fund, in whole or in part, a capital outlay project that, when prioritized by the council pursuant to this section either in the immediately preceding funding cycle or in the current funding cycle, ranked in the top one hundred and fifty projects statewide.

(2) The total shall exclude the proportionate share of any appropriation made or reauthorized after January 1, 2008 for a capital project that will be jointly used by a governmental entity other than the

subject school district. A school district proposing to jointly use a facility funded from a capital outlay appropriation shall submit a joint-use agreement executed between the district and governmental entity which details the terms of the proportional use as well as any future capital, operational and maintenance costs associated with the facility. The council shall determine the proportionate share to be used by the district and provide this information to the department to include in the calculation of the applicable offset. Joint-use agreements requests received prior to June 1 of the fiscal year will be calculated into the offset applicable to each school district for the current standards-based award cycle. Joint-use agreements requests received after June 1 of the fiscal year will carry-forward and be applicable to future award cycles under the standards-based process.

[6.27.3.10 NMAC - N, 06/15/04; A, 08/31/05; A, 07/15/10]

6.27.3.11 PREVENTIVE MAINTENANCE [PLANS] PROGRAM

A. Each school district, including those school districts not applying for grant assistance pursuant to the Public School Capital Outlay Act, shall develop and implement a preventive maintenance plan meeting the requirements of this section.

B. ~~[For project allocation cycles beginning after September 1, 2003; a] A school district shall not be eligible for funding pursuant to Section 22-24-5 NMSA 1978 unless:~~

(1) the school district has implemented a preventive maintenance plan that has been approved by the council; and which plan has subsequently been updated within the last twelve (12) months for any changes in facilities, equipment, available resources, new policies, new procedures, and added capabilities; and

(2) [if applicable, the school district is participating in the implementation of the facility information management system] the school district is effectively using the facility information management system (FIMS).

C. The preventive maintenance plan for each public school building, including portable classrooms and any charter school buildings under the authority of the school district, must at a minimum include:

(1) [address the regularly scheduled repair and maintenance needed to keep a building component operating at peak efficiency and to extend its useful life; and] the maintenance mission statement and maintenance goals which specify the broad purpose of the maintenance department and list the goals to be undertaken during the next twelve (12) months;

(2) [identify the budget, personnel,

and staff support dedicated to implementation of the plans, must identify necessary licenses or certifications and associated training requirements and must provide for school district's monitoring and evaluation of the implementation of the plan;] the maintenance organization and staffing responsibilities, by providing an organization chart depicting the supervisory chain for directing maintenance and custodial activities, and listing the general responsibilities of each group;

(3) the maintenance priorities and procedures, by listing the priorities for the accomplishment of maintenance related work and providing implemented procedures for the conduct of the maintenance program, such as work order processing, material and equipment acquisition, contractor oversight, safety, staff professional development, equipment upgrades and data updates;

(4) equipment inspection and maintenance schedules which shall provide the schedule for the reoccurring inspection and maintenance, at prescribed frequencies, for all facility systems and equipment;

(5) scheduled preventive maintenance tasks which detail the specific inspection and maintenance requirements to be employed;

(6) established custodial duties, responsibilities, and a schedule of tasks performed at each of its schools; and

(7) major maintenance, repair and replacement projects required to be in its current facility master plan that the school district will execute under the capital renewal program.

[D. Preventive maintenance includes scheduled activities intended to prevent breakdowns and premature failures, including periodic inspections, lubrications, calibration and replacement of expendable components of equipment and addressing each of the following systems and functions:

(1) school site: adequate water source and appropriate means of effluent disposal;

(2) access areas and parking: maintained surface areas that are stable, firm and slip resistant;

(3) drainage;

(4) security, including fences, walls and site lighting;

(5) area, space and fixtures used for site recreation and outdoor physical education;

(6) electrical systems;

(7) plumbing and septic systems;

(8) heating, ventilations and air conditioning systems;

(9) windows and doors;

(10) exterior finishes; and

(11) interior finishes.]

D. The school district's preventive maintenance program includes scheduled activities intended to provide fully functional and reliable building

systems aimed at advancing the learning process, providing healthy, safe conditions and preventing breakdowns and premature failures. Common tasks consist of diagnostic tests, inspections, cleaning, lubrication, calibration and replacement of expendable components of building systems and equipment to address each of the following school facility systems and elements:

(1) substructure; including foundations and floor slabs;

(2) shell; including exterior walls, doors, windows, roof coverings and openings;

(3) interior; floors, walls, partitions, ceilings, interior doors, equipment rooms and restrooms;

(4) services; including electrical distribution, lighting, fire and life safety equipment, heating; ventilation, air conditioning and refrigeration equipment, plumbing fixtures, elevators and lifts;

(5) equipment; including kitchen equipment and furnishings; and

(6) sitework; including roadways and parking lots, fencing and walls, sidewalks, grounds drainage, signage, playgrounds and exterior utility distribution.

E. [Each school district, including those school districts not applying for grant assistance pursuant to the Public School Capital Outlay Act;] All school districts shall participate in the facility information management system (FIMS) in accordance with the schedule and policies adopted by the council. The facility information management system shall:

(1) [provide a centralized database of maintenance activities to allow for monitoring, supporting and evaluating school-level and districtwide maintenance efforts;] provide for a comprehensive and systematized process for identifying maintenance requirements, scheduling work and documenting completed work; and

[(2) provide comprehensive maintenance request and expenditure information to the school districts and the council; and

(3) facilitate training of facilities maintenance and management personnel;]

(2) provide a database of maintenance and related service activities to allow for analysis and decision making for school district and statewide maintenance efforts, with maintenance measures established and periodic analysis conducted by both school districts and the authority to identify opportunities for improved school facilities.

F. Commensurate with the above provisions, school districts shall provide comprehensive professional development programs for its maintenance personnel to provide requisite skills and the authority will assist as necessary with implementing such programs.

G. A school district identified by the council to have an exemplary preventive maintenance program may be eligible for up to a five percent (5%) reduction in its local match on a capital outlay award.

(1) Exemplary maintenance is demonstrated by achieving and sustaining optimum performance of all building systems expected useful life anticipated to be met or exceeded through highly efficient use of resources.

(2) The council shall annually review and adopt the specific criteria and process for confirming that a district is demonstrating exemplary maintenance.

[6.27.2.11 NMAC - N, 06/15/04; A, 08/31/05; A, 07/15/10]

6.27.3.12 APPLICATIONS: MINIMUM REQUIREMENTS

A. The application must verify that the school district has submitted a five-year facilities plan. The facilities plan must include:

(1) enrollment projections, which are updated at the beginning of each fiscal year and reflect the final funded membership for the prior school year;

(2) projections for facilities needed to maintain a full-day kindergarten program;

(3) the school district's mission statement, facility goals and objectives, and the steps taken by the school district to address the priority of needs. The goals and objectives should address how the master plan supports the educational programs and needs of the district;

(4) a prioritization of the district's capital needs, including maintenance-related capital renewal;

[(4)] (5) description of community involvement in the development of the master plan;

[(5)] (6) if the application or master plan establish ranked priorities for public school capital outlay projects within the district that do not conform with the condition index rankings of public school buildings within the school district, the school district must provide a detailed explanation as to the rationale for the difference;

[(6)] (7) a map of the school district addressing, at a minimum, the following factors: location of all current sites, land owned by the school district, location of any planned expansion (indicating whether the site is owned by the school district), school district growth areas and other school district facilities; and

[(7)] (8) addressing of the facilities needs of charter schools located within the school district.

B. The application must assure that the school district is willing and able to pay any portion of the public school

capital outlay project that is not funded with grant assistance from the fund and must provide information on the anticipated source of the local share, the timelines for ensuring the local share and any known contingencies in ensuring the local share.

C. The application must address the needs of any charter school located in the school district or provide documentation that the facilities of the charter school has a smaller deviation from the statewide adequacy standards than other district facilities included in the application.

D. The application must include a preventive maintenance [plan] program meeting the requirements of 6.27.3.11 NMAC.

E. ~~[The application must assure that the school district agrees to comply with any reporting requirements or conditions imposed by the council pursuant to Section 22-24-5.1 NMSA 1978]~~ The application must address how the school district preventive maintenance program complies with the requirements of 6.27.3.11 NMAC.

F. If the proposed project exceeds the statewide adequacy standards, the application must provide a detailed explanation of the variance and a cost analysis of the cost of meeting the statewide adequacy standards and the excess costs associated with exceeding the statewide adequacy standards.

G. If the application is for a charter school located in privately owned facilities, the district must include documentation sufficient to ensure that the provisions of Article IX, Section 14 of the Constitution of New Mexico (the "anti-donation clause") are not violated and that there were no violations of any conflict of interest laws.

H. Special provision: roof repair and replacement initiative

(1) A school district desiring a grant award for roof repair or replacement shall submit an application on a form approved by the council. The application shall include an assessment of roofs on school district buildings that create a threat of significant property damage.

(2) The authority shall verify the assessment. The council shall prioritize applications for assistance pursuant to the roof repair and replacement initiative using a special condition ranking index for roofs.

(3) The council shall approve applications on the established priority basis to the extent of available funds. No project shall be approved unless the council determines that the school district is willing and able to pay the portion of the total project cost not funded with grant assistance from the fund. The state share of the cost of an approved project is calculated pursuant to the methodology in Paragraph (5) of

Subsection B of Section 22-24-5 NMSA 1978.

~~(4) [Grants made pursuant to this subsection shall be expended by the school district prior to September 1, 2008:] Roof repairs funded under this program shall be expeditiously completed. Any grants made pursuant to this subsection shall be expended by the school district on or before to the date specified by the council.~~

~~[I. Notwithstanding the provisions of Paragraph (3) of this subsection, those serious deficiencies in the roofs identified pursuant to Section 22-24-4.1 NMSA 1978 as adversely affecting the health or safety of students and school personnel shall be corrected under this subsection, regardless of the local effort or percentage of indebtedness of the school district, subject to the following provisions:~~

~~— (1) if the council determines that the school district has excess capital improvement funds received pursuant to the Public School Capital Improvements Act, the cost of correcting the roof deficiencies shall first come from the school district's excess funds, and if the excess funds are insufficient to correct the deficiencies, the difference shall be paid from the public school capital outlay fund; and~~

~~— (2) if the school district refuses to pay its share of the cost of correcting deficiencies as determined pursuant to Paragraph (1) of this subsection, future distributions from the public school capital improvements fund pursuant to Section 22-25-9 NMSA 1978 shall not be made to the school district but shall be made to the public school capital outlay fund until the public school capital outlay fund is reimbursed in full for the school district's share.~~

~~— (3) The council shall allocate funds pursuant to this subsection no later than September 30, 2005. Funds made available pursuant to this subsection must be expended by the school district no later than September 30, 2007.]~~

~~[6.27.3.12 NMAC - N, 06/15/04; A, 08/31/05; A, 07/15/10]~~

6.27.3.13 G R A N T ASSISTANCE DETERMINATIONS

A. The council shall consider all applications meeting the requirements of this rule and, after public hearing and consideration of recommendations by the authority and by any subcommittee that may be appointed by the chair for this purpose, approve those applications selected for grant assistance during the allocation cycle.

B. The council shall prioritize all applications using the statewide adequacy standards. The amount of outstanding deviation from the standards as shown in the New Mexico condition index [rankings] ranking shall be used by the

council in evaluating and prioritizing public school capital outlay projects; provided however, that the council may fashion such solutions to the needs established by the rankings as appropriate and also, in making its awards based on the priorities, the council may consider:

(1) the timeliness of a district's ability to provide its match;

(2) phasing possibilities or the ability to totally fund and complete a project;

(3) the need for additional planning time;

(4) the inability of a district to be able to effectuate multiple awards in terms of actual construction;

(5) the status of the district's financial audits;

~~[(5)]~~ (6) the impact on its educational program; and

~~[(6)]~~ (7) such other factors as the council may deem relevant or appropriate.

C. Notwithstanding the provisions of subsection B of this section~~[:]~~ , in an emergency in which the council determines that the health or safety of students or school personnel is at immediate risk or where there is a threat of significant property damage if immediate action is not taken, the council may award emergency grant assistance pursuant to Subsection C of 6.27.2.9 NMAC for a project using criteria other than the statewide adequacy standards.

~~[(1) For fiscal years FY 2005 and FY 2006, the council shall review the estimated allocations for projects that were partially funded by the council in September 2003 but are not completed. The estimated allocations identified for these projects shall be given priority for grant assistance by the council in a three-year phased process, subject to completion of an application for continuation projects developed by the authority and approved by the council.~~

~~(2) In an emergency in which the council determines that the health or safety of students or school personnel is at immediate risk or in which the council determines there is a threat of significant property damage, the council may award grant assistance for a project using criteria other than the statewide adequacy standards:]~~

D. The council shall make its allocations for grant assistance in a manner that the council determines will maximize the utilization of the available funding for any given allocation cycle. This determination may include allocations for grant assistance for one or more phases of a project upon the recommendation of the authority and any subcommittee of the council appointed by the chair for this purpose.

E. An application for grant assistance shall not be approved unless the council makes a determination that:

(1) the public school capital outlay

project is needed and is included in the school district's top priorities;

(2) the school district has used its resources in a prudent manner as demonstrated by the school district's adherence to the priorities established in its master plan, its implementation of a preventive maintenance plan and such other information as the council finds relevant;

(3) the school district has provided insurance for buildings of the local school district in accordance with the provisions of Section 13-5-3 NMSA 1978;

(4) the school district has submitted a five-year facilities plan that meets the requirements of Subsection A of Section 6.27.3.12 of this rule;

(5) the school district has implemented an updated preventive maintenance plan and is effectively utilizing the facility information management system (FIMS) to meet the requirements of 6.27.3.11 of this rule;

~~[(5)]~~ (6) school district is willing and able to pay any portion of the total cost of the public school capital outlay project not funded with grant assistance from the fund;

~~[(6)]~~ (7) the school district has addressed the capital needs of any charter schools located in the district by including the needs in the application or demonstrating that the facilities of the charter school has a smaller deviation from the statewide adequacy standards than other district facilities included in the application; and

~~[(7)]~~ (8) the school district has agreed in writing to comply with any reporting requirements or conditions established by the council pursuant to Section 22-24-5.1 NMSA 1978. The school district must acknowledge that the council may direct that the authority manage and provide direct administration of the project, either as a condition of approval of the project or upon a finding by the council that the project is repeatedly in substantial noncompliance with any reporting requirement or condition.

F. Upon recommendation of the authority, the council shall determine whether direct or indirect project management by the authority shall apply to the project. In making its recommendation, the authority shall consider:

(1) the district's preference and financial capabilities, including a determination by the council authorizing direct payment to the contractor;

(2) the district's capacity, including training and certification in procurement and contract requirements; and

(3) the authority's staffing capacity.

G. Approval of a project by the council may include such necessary and reasonable conditions or contingencies imposed by the council to ensure that the

project meets the requirements of law and rule and is effectively and prudently administered and managed.

[6.27.3.13 NMAC - N, 06/15/04; A, 08/31/05; A, 07/15/10]

6.27.3.14 CALCULATION OF GRANT ASSISTANCE

A. The amount of an award for grant assistance for a project shall be determined as follows:

(1) Total project cost means the total amount necessary to complete the public school capital outlay project less:

(a) any insurance reimbursement received by the school district for the project; and

(b) any amount attributable to costs associated with aspects of a project that exceed the statewide adequacy standards.

(2) The final state share amount of the total project cost is determined by:

(a) applying the ratio calculated pursuant to ~~[Subsection A of]~~ 6.27.3.9 NMAC in accordance with the requirements of Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978 to the total project cost to produce the state share amount; ~~[and]~~

(b) subtracting from the state share amount the amount calculated pursuant to Paragraph (6) of Subsection B of Section 22-24-5 NMSA 1978; ~~and~~

(c) in instances where a project will utilize a lease with option to purchase arrangement, the final state share amount may be in the form of additional lease costs for leasehold improvements.

B. Notwithstanding the requirements of Subsection A of this section:

(1) If the council determines that a district has used all of its local resources and that the district is not expected to have any available local resources by a date determined annually by the council, the council may adjust the amount of local share otherwise required. Before making any adjustment to the local share, the council shall consider whether:

(a) the school district has insufficient bonding capacity over the next four years to provide the local match necessary to complete the project and, for all educational purposes, has a residential property tax rate of at least ten dollars (\$10.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds; or

(b) the school district

(i) has fewer than an average of eight hundred full-time-equivalent students on the fortieth, eightieth and one hundred twentieth days of the prior school year;

(ii) has at least seventy

percent of its students eligible for free or reduced fee lunch;

(iii) has a share of the total project cost, as calculated pursuant to provisions of this section, that would be greater than fifty percent; and

(iv) for all educational purposes, has a residential property tax rate of at least seven dollars (\$7.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds; or

(c) the school district has:

(i) an enrollment growth rate over the previous school year of at least two and one-half percent;

(ii) pursuant to its five-year facilities plan, will be building a new school within the next two years; and

(iii) for all educational purposes, has a residential property tax rate of at least ten dollars (\$10.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds.

~~[(2) The offsets calculated pursuant to Paragraph (6) of Subsection B of Section 22-24-5 NMSA 1978 do not apply to the following projects:~~

~~(a) appropriations to school districts for facilities for full-day kindergarten programs through the 2004 Capital Projects General Obligation Bond Act; or~~

~~(b) projects partially funded by the council in September 2003 but that are not completed, subject to the district's maintaining continued local support; or~~

~~(c) continuation projects funded by appropriations to subject school districts in Section 150 of Laws 2004, Chapter 126.]~~

(2) Allocations from the fund made by the council for the purpose of demolishing abandoned school district facilities provide that the council may enter into an agreement with the school district under which an amount equal to the savings to the district in lower insurance premiums are used to reimburse the fund fully or partially for the demolition costs allocated to the district.

C. Amounts awarded to school districts may be adjusted if the council determines that a previous award is insufficient to bring a project to statewide adequacy standards. A school district may apply for an adjustment to a previous award of grant assistance by submitting an application on the current, approved, and designated form detailing the additional state and local match funds necessary to bring the school to adequacy.

D. In instances where the district lacks the additional funds to meet the local share of the project, the award may be adjusted by the council upon approval of an application submitted by the district on the current, approved, and designated form. The authority, in consultation with the public education department shall review the applicant school district's financial position presented in the application and make a recommendation to the council whether an awards adjustment should be considered. The council shall use the criteria provided in Section 22-24-5(B)(8)(a) and (b) NMSA 1978 to determine whether an adjustment be made. An adjustment may include increasing the state share together with an increase for the local match for the project.

E. In addition to considering an adjustment of the local share pursuant to Subsections B or D of this section, the council may consider granting a local share advance if the council determines that a need exists to complete the project in a timely manner and the school district affirms its willingness and ability to repay the advance within 48 months of the granting of the advance.

[6.27.3.14 NMAC - N, 06/15/04; A, 08/31/05; A, 07/15/10]

6.27.3.15 P O R T A B L E CLASSROOMS

[A. The authority shall develop applications for loan, disposition, transfer or return of state-owned portable classroom buildings. The application for loan of portable classrooms shall address, at a minimum:

(1) the need for loan of portable classroom(s), including explanation of why needs of district cannot be met using existing facilities;

(2) description of the proposed use of portable classrooms;

(3) the anticipated duration of the loan; and

(4) the ability of the district to maintain and provide insurance of the portable classroom(s) while in the custody of the district.

B. The application for return of portable classrooms shall address, at a minimum:

(1) the reason(s) the district no longer needs the portable classroom(s);

(2) the manner in which the district is addressing the need(s) that occasioned the request for portable classrooms;

(3) the effective date of the proposed return; and

(4) a detailed description of the current condition of the portable classroom(s).

C. The district shall submit the application, including any application by a charter school for loan of a portable

classroom, to the authority:

D. The authority shall forward the application to the council, together with a recommendation to the council for action on the application.

E. Upon a finding that the application submitted by the district demonstrates sufficient need for a loan of a portable classroom(s), the council shall approve the loan.

F. Upon approval of the loan by the council, the district and the authority shall enter into an agreement for the loan of the portable classrooms to the district.

G. The council may, in its discretion, authorize the authority to transfer to the district or otherwise permanently dispose of the portable classrooms with the prior approval of the state board of finance.]

A. The council may authorize expenditures from the public school capital outlay fund to purchase portable classroom buildings for loan to school districts to meet a temporary requirement. The council has authorized the authority to administer its portable classroom loan program in the manner set forth in this rule. Purchases of portable classroom buildings not associated with a capital outlay project award require specific authorization by the council. When an award includes provisions to use allocations from the public school capital outlay fund to purchase portable classroom buildings as part of that project, no further approval is required from the council for the portables to be purchased. Such portables, however, remain the property of the council, and when they are no longer needed by a school district because of the construction of permanent facilities, the school district shall return the portables to the authority. Nothing in this rule applies to portable classroom buildings purchased with school district funds. Should a school district find that it no longer needs a portable classroom building purchased with school district funds, the authority may purchase the portable classroom building from the school district. Such a purchase would need council approval only if the purchase is not associated with a capital outlay award for another district.

B. The authority shall develop applications for loan, transfer or return of state-owned portable classroom buildings. Applications shall be signed by the school district superintendent and shall be delivered to the authority regional manager of the region in which the school district is located. The application for loan of portable classrooms shall address, at a minimum:

(1) the need for loan of portable classrooms, including explanation of why the needs of district cannot be met using existing facilities;

(2) description of the proposed use of portable classrooms;

(3) the anticipated duration of the loan;

(4) the ability of the district to maintain and provide insurance of the portable classrooms while in the custody of the district, and that the portable classrooms will be included in the district preventive maintenance program;

(5) the number of units requested; and

(6) the anticipated duration of the loan.

C. The application for return or transfer of portable classrooms shall address, at a minimum:

(1) the reason(s) the district no longer needs the portable classrooms or no longer needs the portable classroom at its present location but needs them elsewhere;

(2) the manner in which the district is addressing the need(s) that occasioned the request for portable classrooms;

(3) the effective date of the proposed return or transfer; and

(4) a detailed description of the current condition of the portable classrooms.

D. Applications for loan, transfer or return of state owned portable classroom buildings shall be submitted to the authority. The application will be reviewed by the director of the authority, who shall make a determination of approval or denial, and notify the school district of the determination in writing. The director shall periodically report to the council with respect to the applications granted or denied.

E. A portable classroom use agreement shall be required for portable classroom units loaned for each school site. The agreement shall require the signatures of the district superintendent and the director, or their designees. The term of use shall not exceed five (5) years. Such agreements may be renewed and the term extended for additional five (5) year intervals if the district makes a written request to the authority no later than sixty (60) days prior to the end of the term of the current agreement. If the school district determines that a portable classroom is no longer required during the term of the current agreement, the school district must provide written notification to the authority at least one hundred twenty (120) days prior to the date the portable classroom is no longer required. All rights and responsibilities of the parties to the portable classroom use agreement shall remain in effect under the terms of the agreement until such time as the authority determines to allow early release of the school district from the terms of the agreement.

F. The school district is responsible for making the arrangements for and paying all expenses related to disconnecting and transporting the portable

classroom from its current location, and all site preparation, utility extensions, permits and other costs for placement at a new location. Additionally, the relocation of the portable must comply with the requirements of 6.27.2.12 NMAC.

G. The school district, at its sole expense shall keep, repair and maintain the portable classroom and all related improvements in a reasonable state of repair and preservation and shall not suffer or permit any continuing nuisance thereon. The portable classroom shall be maintained in an as is or better condition as existed when the district took possession of the building. This will include preventive maintenance on the building systems and installed equipment in accordance with the school district's preventive maintenance plan. All renovations, upgrades and building modifications shall become the responsibility of the receiving school district.

H. The council may, in its discretion, authorize the authority to permanently transfer portable classrooms to the district or otherwise permanently dispose of the portable classrooms in accordance with Chapter 13, Article 6 NMSA 1978.

[6.27.3.15 NMAC - Rp, 6.27.2.13 NMAC, 06/15/04; A, 07/15/10]

6.27.3.16 ASSISTANCE FOR PUBLIC SCHOOL LEASE PAYMENTS

[A. For fiscal years 2005 through 2009, the authority shall consult with the department and recommend a proposed calendar and proposed application to the council for assistance to school districts for the purpose of making lease payments for classroom facilities, including charter schools.]

[B.] A. Applications for assistance to school districts for the purpose of making lease payments for classroom facilities shall be made to the authority by the school district. Classroom facilities include the space needed, as determined by the minimum required under statewide adequacy standards for the direct administration of school activities. Only charter schools are eligible to receive grants for the purpose of assistance with making lease payments for classroom facilities pursuant to a lease purchase agreement. Applications for such lease assistance on behalf of locally chartered charter schools shall be made to the authority through the school district; provided, however, that if the school district fails to make an application on behalf of a charter school, the charter school may submit its application directly to the authority. A state chartered charter school shall submit its application directly to the authority. The application must contain all supporting documentation, including:

(1) a copy of the lease or lease purchase agreement;

(2) the annualized cost of the lease for the fiscal year for which the school seeks assistance; and

(3) the MEM using leased classroom facilities, as determined by calculating:

(a) the average full-time-equivalent enrollment using leased classroom facilities on the [fortieth:] eightieth and one hundred twentieth days of the prior school year; or

(b) in the case of an approved charter school that has not commenced classroom instruction, the estimated full-time-equivalent enrollment that will use leased classroom facilities in the first year of instruction, as shown in the approved charter school application, provided that, after the [fortieth] eightieth day of the school year, the MEM shall be adjusted to reflect the full-time-equivalent enrollment on that date.

[C. The authority shall determine, on a facility-by-facility basis, the cost per MEM by dividing the annualized cost of the lease by the MEM calculated in Paragraph (3) of Subsection B of this section:

(1) If the cost per MEM for a facility is less than three hundred dollars (\$300) for fiscal year 2005 and six hundred dollars (\$600) for fiscal years 2006 through 2009, the assistance for the leased facility will be the actual annualized cost of the lease payments for the fiscal year for which assistance is granted:

(2) If the cost per MEM for a facility is greater than three hundred dollars (\$300) for fiscal year 2005 and six hundred dollars (\$600) for fiscal years 2006 through 2009, the assistance for the leased facility for the fiscal year for which assistance is granted is calculated at three hundred dollars (\$300) per MEM for fiscal year 2005 and six hundred dollars (\$600) for fiscal years 2006 through 2009:

(3) If the total statewide assistance for any fiscal year as calculated pursuant to Paragraphs (1) and (2) of this Subsection produces a sum greater than four million dollars (\$4,000,000), the rate of three hundred dollars (\$300) per MEM for fiscal year 2005 and six hundred dollars (\$600) for fiscal years 2006 through 2009 shall be reduced proportionally and the assistance for each facility entitled to assistance shall be recalculated accordingly:

D. A charter school receiving assistance in an amount less than the actual annualized costs may be entitled to further assistance from grant funds that may be made available to the department under Subsection (b) of 20 United States Code Section 7221d. The federal share of the cost for any eligible fiscal share may not exceed the allowable federal share as follows:

(1) 90 percent of the cost, for the first fiscal year for which the program receives the federal assistance;

(2) 80 percent in the second such year;

(3) 60 percent in the third such year;

(4) 40 percent in the fourth such year; and

(5) 20 percent in the fifth such year.]

B. The amount of a grant to a school district shall not exceed:

(1) the actual annual lease payments owed for leasing classroom space for schools, including charter schools, in the district; or

(2) seven hundred dollars (\$700) multiplied by the number of MEM using the leased classroom facilities; provided that in fiscal year 2009 and in each subsequent fiscal year, this amount shall be adjusted by the percentage increase between the penultimate calendar year of the consumer price index for the United States, all items, as published by the United States department of labor.

C. A grant received for the lease payments of a charter school may be used by that charter school as a state match necessary to obtain federal grants.

D. At the end of each fiscal year, any unexpended or unencumbered balance of the appropriation shall revert to the fund.

E. The authority shall consult with the department regarding applications for charter school lease assistance and provide recommendations to the council regarding the applications.

[6.27.3.16 NMAC - N, 06/15/04; A, 08/31/05, A, 07/15/10]

6.27.3.17 ASSISTANCE FOR FACILITY MASTER PLANNING

A. All facility master plans are required to meet the requirements and guidelines of the authority's school district facilities master plan components and guidelines.

B. Council assistance will be granted only to create a new facility master plan and upon expiration of a current plan, except in cases of high growth within a school district which may warrant modification of the plan prior to expiration of its five-year term. Annual updates to existing master plans are the responsibility of the school district.

C. The school district shall not be under current contract with a facilities master plan contractor prior to award by the council to be eligible for funding in the award cycle.

D. The facilities master plan shall be completed and reviewed by the authority within one year of the grant award or awarded funds may revert.

E. Except as provided in Paragraph (1) below, no grant for facilities

master planning shall be made unless the council determines that the school district is willing and able to pay the local portion of the total cost of developing or updating the facility master plan. The local portion shall be determined pursuant to 6.27.3.9 NMAC.

(1) An allocation from the fund may be used to pay the total cost of developing or updating the facility master plan if:

(a) the school district has fewer than an average of six hundred full-time-equivalent students on the eightieth and one hundred twentieth days of the prior school year; or

(b) the school district meets all of the following requirements:

(i) the school district has fewer than an average of one thousand full-time equivalent students on the eightieth and one hundred twentieth days of the prior school year;

(ii) the school district has at least seventy percent of its students eligible for free or reduced-fee lunch;

(iii) the state share of the total cost, if calculated pursuant to the methodology in Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978, would be less than fifty percent; and

(iv) for all educational purposes, the school district has a residential property tax rate of at least seven dollars on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds.

(2) If reduction/waiver or advance of local match is being requested, a school district must submit an application on the current, approved, and designated form and certify that no other funds are available.

[6.27.3.17 NMAC - N, 08/31/05; 6.27.3.17 NMAC - N, 07/15/10]

[6.27.3.17] 6.27.3.18 CHARTER SCHOOL FACILITIES[;] REQUIREMENTS AND GRANT ASSISTANCE

A. The facilities of a charter school [that-is] approved on or after July 1, 2005 and before July 1, 2010 shall meet educational occupancy standards required by applicable New Mexico construction codes. [The] Existing facilities of a charter school [that is in existence, or has been] approved[;] prior to July 1, 2005 shall be evaluated, prioritized and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools; [proved] provided that for charter schools in leased facilities, grants may only be used as additional lease payments for leasehold improvements.

B. On or after July 1, 2010,

an application for a charter shall not be approved and an existing charter shall not be renewed unless the charter school:

(1) is housed in a public facility that is:

(a) owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or one of its agencies or a tribal government; and

(b) subject to evaluation and prioritization and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state; or

(2) if it is not housed in a public building described in Subparagraph (a) of Paragraph (1) of this subsection, demonstrates that:

(a) the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state; and

(b) either:

(i) public buildings are not available or adequate for the educational program of the charter school; or

(ii) the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

C. When a charter school proposes to use a public facility, prior to the occupancy of the public facility by the charter school the charter school shall notify the council of the intended use, together with such other information as requested by the authority.

(1) Within sixty days of the notification to the council, the authority shall assess the public facility in order to determine the extent of compliance with the statewide adequacy standards and the amount of outstanding deviation from those standards. The results of the assessment shall be submitted to the charter school, the school district in which the charter school is located and the council.

(2) Once assessed pursuant to Paragraph (1) of this subsection, the public facility shall be prioritized and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state.

D. All charter schools shall have an established preventive maintenance program, either through its host school district, the property owner or its own resources. The established preventive maintenance procedures shall be in writing, be updated annually, and must include provisions for the timely inspection of life safety systems.

[6.27.3.18 NMAC - Rn & A, 6.27.3.17 NMAC, 07/15/10]

NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL

This is an amendment to 6.27.30 NMAC, Sections 2, 7, 14, 15, 16 and 17, effective July 15, 2010.

6.27.30.2 SCOPE. The purpose of this rule is to provide statewide adequacy standards for public school buildings and grounds, including buildings and grounds of charter schools. These standards shall serve to establish the level of standards necessary to provide and sustain the environment to meet the needs of public schools and to assist their staff in developing their buildings and grounds. The applications of these standards shall be limited to educational space needed to support educational and technology programs and curricula, defined and justified as required by public education department standards and benchmarks, and that is sustainable within the operational budget for staffing, maintenance, and full utilizations of the facilities. The New Mexico public school statewide adequacy standards are dynamic and the council plans to review them at least annually, and change them as time and circumstances require. These standards are intended for use in the evaluation of existing public school facilities and are not intended to limit the flexibility of design solutions for new construction and renovation projects. A companion document is the New Mexico public school adequacy planning guide, provided by the state for use in the programming and design of school projects to meet adequacy. The New Mexico public school adequacy planning guide is incorporated by reference into these standards, and may be amended by the council with adequate notice and input from the public.

[6.27.30.2 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07; A, 7/15/10]

6.27.30.7 DEFINITIONS. Unless otherwise specified, the following definitions apply:

A. "ancillary space" means any subordinate space necessary to support an activity or function of main programmatic space(s);

B. "art education program" includes visual and performing arts programs;

C. "combination school" means a school that contains the elementary, middle school/junior high school and high school or any combination thereof;

D. "council" means the public school capital outlay council;

E. “equipment” means a specified item not affixed to the real property of a school facility;

F. “exterior envelope” means the exterior walls, floor and roof of a building;

G. “fixture” means a specified item that is affixed to the real property of a school facility;

H. “general use classroom” means a classroom space that is or can be appropriately configured for instruction in at least the areas of language arts (including bilingual), mathematics and social studies;

I. “gross sf” means a measurement from exterior wall to exterior wall and calculated to obtain the gross square footage of a space;

[F:] J. “infrastructure” means the on-site physical support systems needed for the operation of the school, including internal roads, and utilities, and drainage systems, and building subsystems such as structure, mechanical, electrical, data, and telecommunications;

[F:] K. “interior finish” means an aesthetic or protective final coating or fabric applied to an exposed surface inside the building;

[K:] L. “interior surface” means any exposed area of the interior enclosure for an interior space, finished or unfinished;

[F:] M. “net sf” means a measurement from interior face of wall to interior face of wall and calculated to obtain the net square footage of a space;

[M:] N. “planned school program capacity” means the planned number of students to be accommodated in the entire facility when all phases of construction are fully completed; these shall include students in regular education classes in combination with special education students requiring special education classrooms in compliance with public education department requirements;

[N:] O. “qualified student or MEM” means those terms as defined in Section 22-8-2 NMSA 1978;

[O:] P. “school facility” means a building or group of buildings and outdoor area that are administered together to comprise a school;

[P:] Q. “school site or school campus” means one or more parcels of land where a school facility is located; more than one school facility may be located on a school site or school campus;

[Q:] R. “space” means the net square footage located within the interior of a building;

[R:] S. “specialty classroom” means a classroom space that is or can be appropriately configured for instruction in a specific subject such as science, physical education, special education or art;

[S:] T. “specialty program

capacity” means the planned number of students to be accommodated in a specialty program area in compliance with public education department requirements; and

[F:] U. “teacherage” means a residence that houses a teacher or administrator on site.

[6.27.30.7 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07; A, 7/15/10]

6.27.30.14 SPECIALTY CLASSROOMS.

A. Science:

(1) For grades K through 6 , no additional space is required beyond the classroom requirement.

(2) For grades 7 through 12, 4 net sf/student of the specialty program capacity for science is required. The space shall not be smaller than the average classroom at the facility. This space is included in the academic classroom requirement and may be used for other instruction. The space shall have science fixtures and equipment, in accordance with the standard equipment necessary to meet the educational requirements of the public education department. If an alternate science learning method is used by a school district, the district shall verify the appropriate alternate fixtures and equipment to the council. Provide at least 80 net sf for securable, well-ventilated storage/prep space for each science room having science fixtures and equipment. Storage/prep room(s) may be combined and shared between more than one classroom.

B. Special education classroom. If a special education space is provided and the space is required to support educational programs, services, and curricula, the space shall not be smaller than 450 net sf. When the need is demonstrated in type II (d-level) classrooms, additional space in the classroom shall be provided with, or students shall have an accessible route to; an accessible unisex restroom with one toilet, sink, washer/dryer and shower stall/tub, [a kitchenette,] and at least 15 net sf of storage. When the need is demonstrated in 7th grade classrooms and above, a kitchenette with at least 15 net sf of storage shall be provided.

C. Art education programs. A school facility shall have classroom space to deliver art education programs, including dance, music, theatre/drama, and visual arts programs, or have access to an alternate learning method. Classroom space(s) for art education shall not be smaller than the average classroom at the facility. Art education classroom space(s) may be included in the academic classroom requirement and may be used for other instruction.

(1) Elementary school. Art education programs may be accommodated within a general use or dedicated art

classroom. Provide additional dedicated art program storage of at least 60 net sf per facility.

(2) Middle school/junior high school. Classroom space(s) for art education programs shall have no less than 4 net sf/student of the specialty program capacity for art. Provide additional ancillary space for group music practice, individual music practice room(s), specialized storage/library rooms, and office(s).

(3) High school. Classroom space(s) for art education programs shall have no less than 5 net sf/student of the specialty program capacity for art. Provide additional ancillary space for group music practice, individual music practice room(s), specialized storage/library rooms, and office(s).

(4) Combination school. A combination school shall provide the elements of the grades served by paragraphs (1), (2) and (3) above without duplication.

D. Career education

(1) Elementary school. No requirement.

(2) Middle school/junior high school. Career education programs shall be provided with no less than 3 net sf/student of the specialty program capacity of the school for career education. Each program lab or classroom space shall not be smaller than 650 net sf.

(3) High school. Career education programs space shall be provided with no less than 4 net sf/student of the specialty program capacity of the school for career education. Each program lab or classroom space shall not be smaller than 650 net sf.

(4) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards.

E. Technology-aided instruction. A school facility shall have space to deliver educational technology-aided instructional programs or have access to an alternate learning method. This requirement may be distributed throughout other program spaces within the facility.

(1) Elementary school. Provide space that meets 3 net sf/student of the planned school program capacity, with no less than 700 net sf.

(2) Middle school/junior high school. Provide space that meets 3 net sf/student of the planned school program capacity, with no less than 800 net sf.

(3) High school. Provide space that meets 3 net sf/student of the planned school program capacity, with no less than 900 net sf.

(4) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication,

but meeting the higher standards.

F. Alternate delivery method. If an alternate delivery method is used by a school district for instruction, the space used for the alternate method may be approved following review by the council. [6.27.30.14 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07; A, 7/15/10]

6.27.30.15 PHYSICAL EDUCATION.

A. General requirements. A school facility shall have an area, space and fixtures for physical education activity. This space may have more than one function and may fulfill more than one standard requirement.

(1) Elementary school. Provide an indoor physical education teaching facility with at least 2,400 net sf. This space may have multi-purpose use in accommodating other educational program activities such as art program performances. In addition, no less than 200 net sf for office/physical education equipment storage space shall be provided.

(2) Middle school/junior high school. For a middle school/junior high school facility, an indoor physical education teaching facility that shall have a minimum of 5,200 net sf plus bleachers for 1.5 design capacity.

(3) High school. A physical education complex shall have a minimum of 6,500 net sf plus bleachers for 1.5 design capacity.

(4) Combination school. Provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher net sf standards with bleacher capacity for at least 2.0-planned school program capacity. A single high school gymnasium shall fulfill the minimum requirements of both high school and middle school/junior high school classes. If the school includes an elementary, then it shall provide in addition the separate space required for an elementary school. This space may have more than one function and may fulfill more than one standard requirement.

B. Additional physical education requirements. In addition to space requirements in Subsection A:

(1) Elementary school. One office shall be provided, with physical education equipment storage with a minimum of 150 net sf. This space may have more than one function and may fulfill more than one standard requirement.

(2) Middle school/junior high school. Two dressing rooms shall be provided, with lockers, showers and restroom fixtures. Two offices shall be provided, each with a minimum of 150 net sf. Each shall be provided with a telephone. Physical education equipment storage space

shall be provided.

(3) High school. Two dressing rooms shall be provided, with lockers, showers and restroom fixtures. Two offices shall be provided, each with a minimum of 150 net sf. Each shall be provided with a telephone. Physical education equipment storage space shall be provided.

(4) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards.

[6.27.30.15 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07; A, 7/15/10]

6.27.30.16 LIBRARIES AND MEDIA CENTERS/RESEARCH AREA - GENERAL REQUIREMENTS.

A. A school facility shall have space for students to access research materials, literature, non-text reading materials, books and technology. This shall include space for reading, listening and viewing materials.

(1) Elementary school. The area for stacks and seating space shall be at least 3 net sf/student of the planned school program capacity, but no less than 1,000 net sf. In addition, office/workroom space and secure storage shall be provided.

(2) Middle school/junior high school or high school. The area for stacks and seating shall be at least 3 net sf/student of the planned school program capacity ~~[but no less than 2,000 net sf]~~. In addition, office/workroom space and secure storage shall be provided.

(3) Combination school. Provide the elements of the grades set out in Paragraphs (1) and (2) above without duplication, but meeting the higher standards.

B. A school facility shall have library fixtures, equipment and resources in accordance with the standard equipment necessary to meet the educational requirements of the public education department.

[6.27.30.16 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07; A, 7/15/10]

6.27.30.17 FOOD SERVICE STANDARDS.

A. Cafeterias - general requirements

(1) Serving and dining. A school facility shall have a covered area or space, or combination, to permit students to eat within the school site, outside of general classrooms. This space may have more than one function and may fulfill more than one adequacy standards requirement. Dining area shall be sized for the planned school program capacity to allow for a meal period requiring no more than 3 servings in compliance with public education department requirements.

The dining area shall have no less than 15 net sf/seated student.

(2) Serving area shall be provided in addition to dining area.

(3) Fixtures and equipment. A school facility shall have space, fixtures and equipment accessible to the serving area, in accordance with the standard equipment required, for the preparation, receipt, storage or service of food to students.

(a) The space, fixtures and equipment shall be appropriate for the food service program of the school facility and shall be provided in consideration of the location of the facility and frequency of food service supply deliveries. Food service facilities and equipment shall comply with the food service and food processing regulations of the New Mexico department of environment.

(b) Fixtures and equipment should include: food prep area items, including sink, oven, range, serving area equipment (or buffet equipment), dishwasher, and cold storage, dry storage and other appropriate fixture and equipment items.

B. Kitchen. Kitchen and equipment shall comply with either the food preparation kitchen or the serving kitchen standards defined as follows:

(1) Food preparation kitchen - 2 net sf/meal served minimum based upon the single largest serving period:

(a) Elementary school: 1,000 net sf minimum

(b) Middle school/junior high school: 1,600 net sf minimum

(c) High school: 1,700 sf minimum

(d) Combination school: shall provide the elements of the grades served by Subparagraphs (a), (b) and (c) above without duplication, but meeting the higher standards.

(2) Serving kitchen. Where food is not prepared, there shall be a minimum of 200 net sf with a hand wash sink and a phone.

[6.27.30.17 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07; A, 7/15/10]

NEW MEXICO DEPARTMENT OF TRANSPORTATION

This is an emergency repeal of 18 NMAC 28.2 rule, New Mexico State Highway and Transportation Department's Disadvantaged Business Enterprise Program (filed 9/17/1999). This repeal will be effective June 25, 2010. There is currently no existing New Mexico statutory authority that permits the New Mexico Department of Transportation to either regulate or promulgate rules on this subject. The

aforementioned Rule, 18 NMAC 28.2 was, in the opinion of the Office of General Counsel for the New Mexico Department of Transportation, mistakenly adopted in 1999. The Office of General Counsel for the New Mexico Department of Transportation therefore seeks to immediately repeal 18 NMAC 28.2 to protect the public health, safety and welfare of the citizens of the State of New Mexico. The New Mexico Department of Transportation will conduct a formal rule hearing within 120 days of the filing of this repeal with the State Records Center and Archives. The notification of public hearing and rulemaking will be published in the New Mexico Register at a future date.

End of Adopted Rules Section

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Other Material Related to Administrative Law

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

**New Mexico Board of Examiners for
Architects**

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

Regular Meeting

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, August 6, 2010. The meeting will be held in the Conference Room of the Board office, #5 Calle Medico, Ste. C in Santa Fe beginning at 9:00 a.m. Disciplinary matters may also be discussed.

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

**End of Other Related Material
Section**

Submittal Deadlines and Publication Dates 2010

Volume XXI	Submittal Deadline	Publication Date
Issue Number 1	January 4	January 15
Issue Number 2	January 19	January 29
Issue Number 3	February 1	February 12
Issue Number 4	February 15	February 26
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 3	May 14
Issue Number 10	May 17	May 28
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 30
Issue Number 15	August 2	August 16
Issue Number 16	August 17	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 18	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 30

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