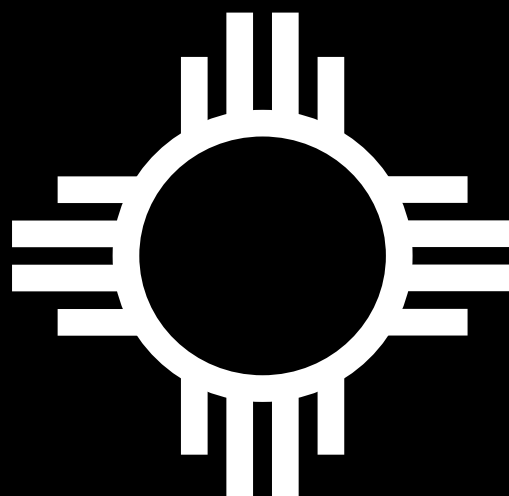


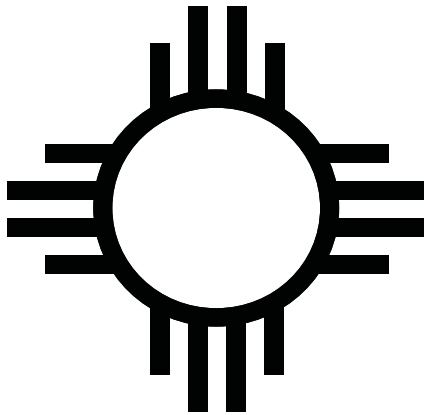
NEW MEXICO REGISTER



Volume XXI
Issue Number 16
August 31, 2010

New Mexico Register

Volume XXI, Issue Number 16
August 31, 2010



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

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2010

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New Mexico Register

Volume XXI, Number 16

August 31, 2010

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Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

LEGAL NOTICE FOR RULE HEARING

The Board of Acupuncture and Oriental Medicine will hold a Rule Hearing on Friday, October 8, 2010. The Rule Hearing will begin at 9:00 a.m. and will be held at the Regulation and Licensing Department, Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico in the Rio Grande Conference Room.

The purpose of the rule hearing is to allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.

The Board of Acupuncture and Oriental Medicine is proposing to adopt, amend or repeal the following Board Rules in 16.2.1 NMAC -General Provisions; 16.2.2 NMAC – Scope of Practice; 16.2.9 NMAC – Continuing Education; 16.2.10 NMAC – Fees; 16.2.20 NMAC – Expanded Practice Formulary.

Copies of the proposed rules are available after August 20, 2010 at the Board office in the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, or by calling (505) 476-4630 or via the internet at: www.rld.state.nm.us/acupuncture/index.html.

Interested persons may submit written comments regarding the proposed rules no later than 5:00 p.m., September 24, 2010, to Anita Villegas, Board Administrator, Board of Acupuncture and Oriental Medicine, 2550 Cerrillos Road, Santa Fe, NM 87504.

Persons wishing to present written comments at the hearing are asked to bring (10) copies for distribution to the Board and staff.

All written and oral testimony will be considered prior to adoption of the final rules.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4630 at least two weeks prior to the meeting or as soon as possible.

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING AND REGULAR MEETING

On October 13, 2010, at 5:30 pm, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM.

The hearing will address: Proposal to amend 20.11.3 NMAC, *Transportation Conformity*, and to incorporate an amended 20.11.3 NMAC into the New Mexico State Implementation Plan (SIP) for air quality. The Air Quality Division (AQD) of the City of Albuquerque Environmental Health Department is proposing these amendments in response to the promulgation by the U.S. Environmental Protection Agency (EPA) of an amended federal transportation conformity rule.

On March 24, 2010, the EPA promulgated changes to the transportation conformity rule which would affect PM_{2.5} and PM₁₀ nonattainment and maintenance areas. This rule became effective on April 23, 2010 [FR Vol. 75, No. 56, 14260-14285]. In response, and as required by EPA, the AQD is proposing amendments to update the local conformity regulation.

Transportation conformity is a Clean Air Act (CAA) requirement that ensures that federally-funded highway and transit projects “conform to” the purpose of the SIP. Conformity ensures that public health is protected by requiring early consideration of the air-quality impacts of transportation decisions in places where air quality does not currently meet national standards or has not met them in the past.

EPA’s updated rule:

* Provides guidance on implementation of transportation conformity under the 2006 PM_{2.5} national ambient air quality standards (NAAQS) to ensure that transportation planning and air quality planning are coordinated and that air quality is protected. Conformity will apply in 2006

PM_{2.5} nonattainment areas for this NAAQS on December 14, 2010, based on the one-year grace period for newly designated areas in the CAA and the transportation conformity rule;

* Includes the requirements for demonstrating conformity for the 2006 PM_{2.5} NAAQS, including the regional emissions test(s) that would apply before and after SIP motor vehicle emissions budgets are established for the revised NAAQS;

* Updates the baseline year for the interim emissions test to calendar year 2008 in 2006 PM_{2.5} nonattainment areas;

* Clarifies which budgets PM₁₀ nonattainment and maintenance areas would use for transportation conformity determinations, now that the annual PM₁₀ standard has been revoked;

* Clarifies that federally funded or approved highway and transit projects in PM_{2.5}, PM₁₀ and CO nonattainment and maintenance areas must not delay timely attainment or achievement of other interim milestones;

* Improves the health and environmental benefits of the existing transportation conformity program by requiring new PM_{2.5} nonattainment areas and existing PM₁₀ nonattainment and maintenance areas to use conformity tests that ensure that air quality is protected in areas that need to attain or maintain federal air quality standards; and

* Clarifies that hot-spot analyses are performed in a manner consistent with the CAA public health and environmental requirements.

Following the hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to consider adopting the proposed amendments to 20.11.3 NMAC, *Transportation Conformity*, and incorporating the amended regulation into the SIP.

The Air Board is the federally delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Air Board to administer and enforce the CAA and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards and regulations.

Hearings and meetings of the Air Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits and to examine witnesses

in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Anyone intending to present technical testimony is required by 20.11.82 NMAC, *Rulemaking Procedures - AQCB*, to submit a written Notice Of Intent (NOI) before 5:00 pm on September 28, 2010 to: Attn: October Hearing Record, Ms. Janice Wright, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW. The NOI shall identify the person's name, address and affiliation.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office, before 5:00pm on October 6, 2010. The comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to jcwright@cabq.gov and shall include the required name and address information.

Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Ms. Janice Wright, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or by phone 768-2601, or by e-mail at jcwright@cabq.gov, or by downloading a copy from the City of Albuquerque Air Quality Division website.

NOTICE FOR PERSON WITH DISABILITIES: If you have a disability and/or require special assistance please call (505) 768-2600 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY users call the New Mexico Relay at 1-800-659-8331 and special assistance will be made available to you to review any public meeting documents, including agendas and minutes

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 November 8, 2010, and continuing until completed at

the State Capitol Building, Room 321, 490 Old Santa Fe Trail, Santa Fe, NM 87501, for the purpose of hearing the matter in EIB No. 10-08 (R), the New Mexico Environment Department's ("NMED") proposal to adopt amendments to 20.2.70 NMAC (Operating Permits) and 20.2.74 NMAC (Permits - Prevention of Significant Deterioration (PSD)). The proposed amendments "tailor" the New Mexico air permitting program to reflect the designation of greenhouse gases as a "regulated air pollutant" under the Clean Air Act. Federal regulations require these changes to air permitting program rules to ensure that only the largest sources of greenhouse gas emissions in the state must obtain air permits for greenhouse gas emissions.

The proposed regulations 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 Kerwin Singleton at (505) 476-4350 or Kerwin.Singleton@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. 10-08 (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 August 31, 2010.

Any interested person shall submit a notice of intent to present technical testimony on October 8, 2010.

The Department shall submit their notice of intent to present rebuttal testimony on October 22, 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 87505
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 October 15, 2010 at the NMED, Personnel Services Bureau, P.O. Box 5469, 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 RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing commencing on November 8, 2010, and continuing until completed at the State Capital Building, Room 321, 490 Old Santa Fe Trail, Santa Fe, NM 87501, for the purpose of hearing the matter in EIB No. 10-09 (R), the New Mexico Environment Department's ("NMED") proposal to adopt new regulations 20.2.300 NMAC (Reporting of Greenhouse Gas Emissions) and 20.2.301 NMAC (Greenhouse Gas Reporting - Verification Requirements), and to repeal regulation 20.2.87 NMAC (Greenhouse Gas Emissions Reporting). The proposed

regulations establish revised state requirements for reporting of greenhouse gas emissions, and new requirements for third-party verification of some of these reports.

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 87507, on NMED's web site at www.nmenv.state.nm.us, or by contacting Brad Musick at (505) 476-4321 or Brad.Musick@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. 10-09 (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 August 31, 2010.

Any interested person shall submit their notice of intent to present technical testimony on October 15, 2010.

The Department shall submit their notice of intent to present rebuttal testimony on October 25, 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 87505
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 October 15, 2010 at the NMED, Personnel Services Bureau, P.O. Box 5469, 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 RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing commencing on December 6, 2010 and continuing day-to-day until completed, at the State Capitol, 490 Old Santa Fe Trail, Santa Fe, NM 87501, in room 317, for the purpose of hearing the matter in EIB No. 10-10 (R), the New Mexico Environment Department's ("NMED") proposal to amend the regulation, Clean Cars Rule, 20.2.88 NMAC. The regulation would waive the Clean Car Standards for model year 2011 though and including model year 2016, as new federal regulations provide similar levels of pollution control.

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 Emily Geery at (505) 476-4315 or Emily.Geery@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. 10-10 (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 August 31, 2010.

Any interested person shall submit a notice of intent to present technical testimony on October 22, 2010.

The Department shall submit their notice of intent to present rebuttal testimony on November 19, 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 87505
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 November 22, 2010, at the NMED, Personnel Services Bureau,

P.O. Box 5469, 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
DEPARTMENT OF FINANCE
AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION**

**Notice of Hearing of Amendments to
Rule 2.110.2 NMAC
Small Cities Community Development
Block Grants**

New Mexico Department of Finance and
Administration

The Department of Finance and Administration ("DFA") hereby gives notice that DFA will conduct a public hearing during the Community Development Council meeting in Room 311, State Capitol Building, 415 Old Santa Fe Trail, Santa Fe, New Mexico, 87503, on October 20, 2010 at 10:00 a.m. concerning amendments to 2.110.2.11 NMAC, 2.110.2.15 NMAC, 2.110.2.16, NMAC, 2.110.2.17, NMAC Small Cities Development Block Grants (hereinafter referred to as the "CDBG Rule").

Interested individuals may testify at the public hearing or submit written comments no later than 5:00 p.m. on October 19, 2010, to the Office of the Secretary, DFA, Bataan Memorial Building, Room 180, and Santa Fe, New Mexico, 87501. All written and oral testimony will be considered prior to adoption of the amendments. Copies of the text of the proposed CDBG Rule are available from Ms. Dolores Gonzales, Local Government Division, Bataan Memorial Building, Santa Fe, New Mexico, 87501 or at 505-827-4972 or from the DFA internet website <http://www.state.nm.us/clients/dfa/index.html>. These are amendments to 2.110.2.11, 2.110.2.15, 2.110.2.16, 2.110.2.17 NMAC effective XX,XX,XXXX.

**2.110.2.11 ELIGIBLE
ACTIVITIES/CATEGORIES**

A. Applicants may apply for funding assistance under the following categories:

- (1) community infrastructure;
- (2) housing;
- (3) public facility capital outlay;
- (4) economic development;
- (5) emergency;

(6) colonias;

(7) planning.

B. Eligible activities under each of the categories are listed below.

C. Community infrastructure: Eligible activities may include, but are not limited to, the following:

- (1) real property acquisition
- (2) construction or rehabilitation of the following:
 - (a) water systems;
 - (b) sewer systems;
 - (c) municipal utilities;
 - (d) roads;
 - (e) streets;
 - (f) highways;
 - (g) curbs;
 - (h) gutters;
 - (i) sidewalks;
 - (j) storm sewers;
 - (k) street lighting;
 - (l) traffic control devices;
 - (m) parking facilities;
 - (n) solid waste disposal facilities.

D. Housing: Eligible activities may include, but are not limited to, the following:

- (1) real property acquisition;
- (2) rehabilitation;
- (3) clearance;
- (4) demolition and removal of privately-owned or acquired property for use or resale in the provision of assisted housing;
- (5) provision of public facilities to increase housing opportunities;
- (6) financing the repair, rehabilitation and in some cases reconstruction of privately-owned residential or other properties through either loan or grant programs;
- (7) certain types of housing modernization;
- (8) temporary relocation assistance;
- (9) code enforcement;
- (10) historic preservation activities;
- (11) not to exceed ~~[fifty thousand dollars (\$50,000)]~~ sixty five thousand dollars (\$65,000) in CDBG funds per home can be used on home rehabilitation/repair activities.

E. Public facility capital outlay: Eligible activities may include, but are not limited to, such items as:

- (1) real property acquisition;
- (2) construction or improvement of community centers;
- (3) senior citizen centers;
- (4) nonresidential centers for the handicapped such as sheltered workshops;
- (5) other community facilities designed to provide health, social, recreational or similar community services for residents.

F. Economic development: The economic development

category is established to assist communities in the promotion of economic development and is described in detail in Section 26.

G. Emergency: The emergency fund provides funding for emergency projects which address life threatening situations resulting from disasters or imminent threats to health and safety.

(1) Applications under this category will be accepted throughout the year.

(2) Application shall include written verification and adequate documentation by a state agency and with the applicant's assessment of the life threatening situation and shall be submitted no later than 18 months from the certification by the applicant and documentation of the need for the emergency project.

(3) An applicant for emergency funding must verify that it does not have sufficient local resources to address the life threatening condition; and that other federal or state resources have been explored and are unavailable to alleviate the emergency.

H. Planning: In addition to municipalities and counties, water associations, including water and sanitation districts, and land grants as defined in Section 2.110.2.7, Subsection M; are eligible to apply directly for planning grants only. Planning grant assistance from the CDBG program, which is available only to a municipality or county, must be used for a comprehensive plan if the applicant does not have a current comprehensive plan (not older than five years from the date of application). A comprehensive plan must be adopted by ordinance, and it must include as a minimum the following elements;

(1) elements:

(a) land use; including (i) an analysis and mapping of existing land patterns and an inventory of the amount, type and intensity of uses by land category, as well as an analysis of effects of various land use patterns on greenhouse gas emissions; (ii) an analysis of trends in the supply and demand of land by land use category, including a projection of the distribution, location and extent of future land uses by land use category over a twenty-year period; (iii) goals, objectives and policies that address maintaining a broad variety of land uses, including the range of uses existing when the plan is adopted or amended; and (iv) specific actions and incentives that the contracting agency may use to promote planned development, reduction in greenhouse gas emissions, or otherwise encourage certain identified development patterns and the locations where such development patterns should be encouraged;

(b) housing; including (i) an analysis of existing housing supply and demand, analysis of greenhouse gas

emissions from the housing sector, and forecasted housing needs; (ii) goals, objectives and policies for the improvement of housing quality, variety and affordability, for reduction of greenhouse gas emissions, and for provision of adequate sites for housing and housing opportunities for all segments of the community; and (iii) a description of the actions that will be taken to implement housing goals, objectives and policies; and (iv) must comply with the affordable housing act.

(c) transportation; including (i) description and assessment of the location, type, capacity and condition of existing transportation facilities, such as freeways, arterial and collector streets, mass transit or other modes of transportation as may be appropriate, and analysis of greenhouse gas emissions from the transportation sector; (ii) goals, objectives and policies for encouraging safe, convenient, efficient and economical transportation, including mass transit and facilities for bicyclists and pedestrians, for reduction of greenhouse gas emissions, and a description of proposed levels of service and funding mechanisms; and (iii) a description and assessment of proposed location, type and capacity of proposed transportation facilities designed to implement transportation goals, objectives and policies and a description of funding mechanisms that will be used to fund proposed transportation improvements;

(d) infrastructure; including (i) a description and assessment of the location, type, capacity and condition of existing infrastructure, including emergency services, sewage, drainage, local utilities and other types of facilities; (ii) goals, objectives and policies for promoting the efficient provision of infrastructure, including a description of proposed levels of service; and (iii) a description and assessment of proposed facility expansion and improvements designed to support planned uses and implement infrastructure goals, objectives and policies;

(e) economic development; including (i) a description of existing job composition and trends by industry and location characteristics, such as access to transportation or proximity to natural or human resources, that influence the economic development potential of the contracting agency, and analysis of greenhouse gas emissions from the commercial and industrial sectors; (ii) goals, objectives and policies for promoting economic development, and for reduction of greenhouse gas emissions; and (iii) a description of the actions that the contracting agency will take to implement economic development goals, objectives and policies;

(f) water; including (i) description and assessment of the sources of water supply; (ii) the demand for water by residential,

commercial, institutional, industrial and recreational sectors; (iii) assessment of the water unaccounted for water losses due to leaks, theft or other reasons; (iv) goals, objectives and policies for promoting the efficient use of water and for managing periods of drought; and (v) an analysis of the demand for water that will result from future growth projected in the plan, when added to existing uses, and how the demand for water that will result from future projected growth will be served by current water supplies, water conservation, water reuse or a plan to obtain additional water supplies or increase water use efficiencies;

(g) hazards; , including (i) an analysis of the risks of hazards such as wildfire, floods, extreme weather conditions, accidents, and terrorism; (ii) goals, objectives and policies for hazard mitigation; and (iii) a description of the actions that will be taken to mitigate hazards;

(h) implementation; a compilation of the plan's goals, objectives, policies, standards or guidelines, along with specific actions to be completed in a stated sequence, which start with adoption of the comprehensive plan by ordinance;

(2) development of additional elements of a comprehensive plan may include, but are not limited to:

(a) drainage;

(b) parks, recreation and open space;

(c) tourism;

(d) growth management;

(e) fiscal impact analysis;

(f) intergovernmental cooperation;

(g) social services;

(h) historic preservation;

(i) asset management plan;

(3) if the entity has a current comprehensive plan (not older than five years from the date of application), it may apply for funding assistance for any of the following:

(a) data gathering analysis and special studies;

(b) base mapping, aerial photography, geographic information systems, or global positioning satellite studies;

(c) improvement of infrastructure capital improvement plans and individual project plans;

(d) development of codes and ordinances, that further refine the implementation of the comprehensive plan;

(e) climate change mitigation and adaptation plan;

(f) preliminary engineering report (according to USDA/RUS guidelines);

(g) related citizen participation or strategic planning process; or

(h) other functional or comprehensive planning activities;

(i) asset management plan;

(j) regionalization of infrastructure and service delivery.

(4) applicants may apply for funding assistance throughout the year as long as funds are available.

I. Colonias:

(1) The colonias category is established in the amount of 10% of the annual CDBG allocation for specific activities including water, sewer and housing improvements, which are the three conditions which qualify communities for designation to be carried out in areas along the U.S. - Mexican border.

(2) Eligible applicants for the colonias set aside are municipalities and counties located within 150 miles of the U.S. - Mexico border.

(3) Colonias must be designated by the municipality or county in which it is located. The designation must be on the basis of objective criteria, including:

(a) lack of potable water supply; or

(b) lack of adequate sewage systems; or

(c) lack of decent, safe and sanitary housing; and

(d) must have been in existence as a colonia prior to November, 1990.

(4) Appropriate documentation to substantiate these conditions must be provided along with the application for funding.

[2.110.2.11 NMAC - Rp 2 NMAC 110.2.11, 08-30-01; A, 08-13-04; A, 08-15-05; A, 12-14-06; A, 09-28-07; A, 10-15-09; A, xx-xx-10]

2.110.2.15 P R O G R A M REQUIREMENTS SECTION A: Public participation requirements - Applicants must provide opportunities for public participation in the development of community development goals, objectives, and applications for funding assistance by undertaking the following activities:

A. provide for and encourage citizen participation within their areas of jurisdiction with particular emphasis on participation by persons of low and moderate income;

B. provide citizens with reasonable and timely access to local meetings, information, and records relating to proposed and actual use of funds;

C. provide for technical assistance to groups and representatives of low and moderate income persons that request assistance in developing proposals;

D. {special note}: the level and type of assistance is to be determined by the applicant; and

E. provide for public hearings to obtain citizen participation and respond to proposals and questions at all stages;

F. prior to selecting a project and submitting an application for CDBG funding assistance, eligible applicants must conduct at least one public hearing for the following purposes:

(1) to advise citizens of the amount of CDBG funds expected to be made available for the current fiscal year;

(2) to advise citizens of the range of activities that may be undertaken with the CDBG funds;

(3) to advise citizens of the estimated amount of CDBG funds proposed to be used for activities that will meet the national objective to benefit to low and moderate income persons;

(4) to advise citizens of the proposed CDBG activities likely to result in displacement, and the unit of general local government's anti-displacement and relocation plans;

(5) to obtain recommendations from citizens regarding the community development and housing needs of the community;

(a) After considering all recommendations and input provided at the public hearing(s), the county commission or city/town/village council must select one project for which to submit an application for funding assistance at an official public meeting.

(b) The applicant must conduct a second public hearing to review program performance, past use of funds and make available to the public its community development and housing needs including the needs of low and moderate income families and the activities to be undertaken to meet such needs.

(c) This public hearing may occur subsequent to the submission of the application for funding assistance.

(d) Public hearing notices must be published in the non-legal section of newspapers ~~[and in other local media]~~, or posted in a minimum of three prominent public places within the project area, with reasonable time and public access.

(e) Evidence of compliance with these regulations must be provided with each application, i.e., hearing notice, minutes of public meetings, list of needs and activities to be undertaken, etc.

(f) Amendments to goals, objectives, and applications are also subject to public participation.

(6) provide for timely written answers to written complaints and grievances within 15 working days where practicable;

(7) identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of residents can be reasonably expected to participate.

[2.110.2.15 NMAC - Rp 2 NMAC 110.2.15, 08-30-01; A, xx-xx-10]

2.110.2.16 PROGRAM REQUIREMENTS Section B: Each CDBG application must meet at least one of the three national objectives, low and moderate income benefit, prevention or elimination of slums or blight or urgent need, which are herein described.

A. Low and moderate income benefit - An activity identified as principally benefiting (51%) persons of low and moderate income will be considered eligible only if it meets one of the criteria below:

(1) the activity must be carried out in a neighborhood or area consisting predominantly of persons of low and moderate income and provide services to such persons;

(2) the activity must involve facilities designed for use by a specific group of people or clientele predominantly of low and moderate income; or

(3) the activity must add or improve permanent residential structures which will be occupied by low and moderate income households upon completion; or

(4) the activity must involve creating or retaining jobs, the majority of which must be for persons of low and moderate income;

(5) the above can be substantiated with data from:

(a) the most recent low and moderate income data from the U.S. census (see attachment A);

(b) a special survey conducted using HUD approved methodology;

(c) income eligibility requirements consistent with HUD approved income limits.

B. Prevention or elimination of slums or blight - An activity identified as aiding in the prevention or elimination of a slum or blighted area must meet all of the following five criteria.

(1) The area must be designated by the applicant and must meet a definition of a slum, blighted, deteriorated or deteriorating area under state or local law (see definitions section of 2.110.2 NMAC).

(2) The area must exhibit at least one of the following physical signs of blight or decay.

(a) The area shall possess a substantial number of deteriorated or deteriorating buildings throughout; meaning at least one quarter of all the buildings in the area must be in a state of deterioration.

(b) The area shall possess public improvements throughout the area which must be in a general state of deterioration. For example, it would be insufficient for only one type of public improvement, such as the sewer system, to be in a state of deterioration; rather, the public improvements taken as a whole must clearly

exhibit signs of deterioration.

(3) Documentation must be maintained by the applicant on the boundaries of the area and the condition which qualified the area at the time of its designation.

(4) The activity must address one or more of the conditions which contributed to the deterioration of the area.

(5) To comply with this objective on a spot basis outside of a slum or blighted area the proposed activity must be designated to eliminate, specific conditions of blight or physical decay.

(a) acquisition and clearance of blighted properties;

(b) renovation and reuse of abandoned, historic properties;

(c) commercial revitalization through façade improvements;

(d) removal of environmental contamination on property to enable it to be redeveloped.

C. Urgent need - An activity identified as meeting community development needs having a particular urgency will be considered only if the applicant certifies the following:

(1) that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health and welfare of the community;

(2) that the condition(s) to be alleviated is of recent origin, i.e., it developed or became critical within 18 months preceding the certification by the applicant;

(3) that the applicant is unable to finance the activity on its own and other sources of funding are not available;

(4) in addition, verification of the urgency of the need must be provided with written documentation by the appropriate state agency;

(5) planning grants are not allowed under urgent need.

[2.110.2.16 NMAC - Rp 2 NMAC 110.2.16, 08-30-01; A, 10-15-09; A, xx-xx-10]

2.110.2.17 APPLICATION REQUIREMENTS

A. Number of applications - All eligible applicants may submit one application for CDBG funding assistance in the infrastructure, housing, public facility capital outlay, or colonias categories.

(1) Planning applicants may submit at anytime an additional application for funding and shall not exceed fifty thousand dollars (\$50,000).

(2) Applicants in the economic development or emergency may be submitted at any time and shall not exceed five hundred thousand dollars (\$500,000), subject to funding availability.

(3) Counties may submit multiple applications for planning grants for water associations.

(4) Planning, economic development and emergency applications may be submitted, at anytime, even if the applicant has not completed other CDBG projects.

B. Single purpose application -An application for CDBG funding must be limited to a project specific activity or set of activities which address a particular need in a designated target area of a unit of local government. The target area may not be the entire municipality or county.

C. Joint applications - Joint applications will be allowed when two or more eligible applicants within reasonable proximity of each other wish to address a common problem.

(1) One community will be designated to serve as the lead applicant and will be subject to administrative requirements and to the application limit requirements.

(2) However, other parties to the joint application may submit another application.

(3) Joint applications must satisfy certain federal criteria and must receive division approval prior to submitting an application for funding assistance.

(4) It should be noted that satisfying the required criteria, which is available from the division upon request, may take a significant period of time.

D. Application requirements for the following minimum requirements apply to all applications for CDBG funding:

(1) applications must involve a project that will be fully functional on a stand-alone basis once awarded CDBG and other committed funds have been expended and;

(2) projects shall be completed within twenty-four months of an ~~award of funding~~ executed grant agreement signed by both parties;

(3) applications may not exceed \$500,000;

(4) if the applicant, after conducting the required public hearing, determines that the previous year's CDBG unfunded application is still a priority, the applicant must submit the original along with a current year's resolution, updated project budget and schedule and any other information required by division staff.

(5) application must be complete, with all documentation provided as listed on the submission and attachment checklist included in the application, otherwise application will be deemed ineligible; application will be returned to the applicant and will not be considered for funding.

E. Threshold requirements - To encourage timely completion of projects and to maximize participation the following threshold requirements shall be met prior to

the application deadline.

(1) All projects for the eligible activities in the categories listed in Subsections C, D, E, and I of 2.110.2.11 NMAC must be completed at the time of application. (certificate of occupancy or certification of operation must be in place).

(2) All audit and monitoring findings and or concerns, for CDBG projects, must be resolved. A letter from the community to include documentation as applicable, clearing the findings and/or concerns. A letter from local government division (LGD) clearing all findings and or concerns.

(3) The current fiscal operating budget for any local public body as defined in Section 6-6-1 NMSA 1978 (as amended) applying for CDBG funds must be approved.

(4) The local government division financial management bureau will verify that financial quarterly/ monthly reports are current before CDBG applications deadline.

(5) The local government division, budget and finance bureau, shall report the applicant's most current audit filing with the state auditor office for all applicants that are counties and municipalities. They determine compliance with the budget certification rule, 2.2.3 NMAC. The CDC will take into consideration whether the counties or municipalities are in compliance with the budget certification rule.

(6) The set aside categories are exempt from threshold requirements set forth in Subsection E of 2.110.2.17 NMAC: planning, economic development, and emergency categories.

F. Matching requirements - In order to assist the council in making funding resources go further and to ensure there is a local investment in applications submitted to the council for funding consideration, the following will be required.

(1) Rural applicants must provide, at a minimum, a 5% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(2) Non-rural applicants must provide, at a minimum, a 10% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(3) Consistent with 2.110.2 NMAC, all applications in the economic development category must provide at least one private dollar for each dollar of CDBG funds requested.

(4) Local funds expended by eligible applicants for engineering, architectural design or environmental reviews prior to project approval can be applied towards the required match.

(5) Applicants may request a waiver of the matching requirement from the council if documentation can be provided

which demonstrates the absence of local resources to meet the required match. Criteria used to recommend approval/disapproval will be as follows:

(a) the required match must exceed 5% of the applicant's general fund budget;

(b) the required match must equal or exceed the non-earmarked balance of funds in the applicant's budget.

G. Other funding commitments - If other funding is necessary to make a proposed project feasible, funding commitments or commitments subject to CDBG approval, must be in place and letters of commitments from the funding agency must be submitted with the application.

H. Water conservation and drought commitments - In order to make the state's water supplies go further and to ensure proper levels of preparations are taken locally for periodic droughts, the following is encouraged.

(1) Applicants develop, adopt and submit to the state engineer a comprehensive water conservation ordinance.

(2) Applicants develop, adopt and submit to the state engineer a drought management plan.

(3) The ordinance and plan shall be accompanied by a program for its implementation.

(a) in developing a water conservation ordinance pursuant to this section: applicants shall adopt ordinances and codes to encourage water conservation measures; they shall identify and implement best management practices in their operations to improve conservation of the resources; and

(b) applicants shall consider and incorporate into its plan if appropriate, at least the following:

(i) water-efficient fixtures and appliances, including toilets, urinals, showerheads and faucets;

(ii) low-water-use landscaping and efficient irrigation;

(iii) water-efficient commercial and industrial water-use processes;

(iv) water reuse systems for both potable and non-potable water;

(v) distribution system leak repair;

(vi) dissemination of information regarding water-use efficiency measures, including public education programs and demonstrations of water-saving techniques;

(vii) water rate structures establishing rates or revenues that support the long term operation, maintenance, repair, and replacement of the system or facility and are designed to encourage water-use efficiency and reuse in a fiscally responsible manner and

(viii) incentives to

implement water-use efficiency techniques, including rebates to customers or others, to encourage the installation of water-use efficiency and reuse measures.

(c) the council shall encourage the applicant to submit a copy of its water conservation plan with applications for construction of any facility.

I. Asset management - In order to support the long term operation, maintenance, repair and replacement of system facilities, infrastructure, public facilities, or other eligible activities the following will be required.

(1) In order to ensure water and wastewater infrastructure is managed within a strategic framework driven by program and service delivery needs, communities that implement an asset management program and use that approach as the basis for their rate analysis will be credited in the application process for their achievement. The model for the asset management program is the international infrastructure asset management model, adopted by EPA. This approach includes five core components, which are as follows:

(a) current state of the assets: an asset inventory that includes the following at a minimum: asset name, asset location, asset condition, useful life, and an estimate of replacement value;

(b) level of service: a description of what the utility wishes to provide its customers;

(c) criticality: an evaluation of which assets are critical to the sustained operation of the utility;

(d) life cycle costing: at a minimum, a capital improvement plan that describes the replacement of assets and some consideration of operation and maintenance of the assets;

(e) financing plan: a description of the funding sources that will be used to pay for the capital and operational needs of the utility.

(2) For community infrastructure and public facilities, or other eligible activities an asset management plan will be required to be submitted at the time of application. The approach will follow the same five components described in Subparagraphs (a) - (e) of Paragraph (1) of Subsection I of 2.110.2.17 NMAC above. [2.110.2.17 NMAC - Rp 2 NMAC 110.2.17, 08-30-01; A, 08-13-04; A, 08-15-05; A, 12-14-06; A, 09-28-07; A, 09-30-08; A, 10-15-09; A, xx-xx-10]

NEW MEXICO GENERAL SERVICES DEPARTMENT PROPERTY CONTROL DIVISION

NOTICE OF PUBLIC HEARING

The New Mexico General Services Department/ Property Control Division will hold a public hearing on 1.5.25 NMAC "Lease-Purchase Rule". The Hearing will be held on Monday, November 8, 2010 at 9:00 a.m. in the Montoya Building Bid Room on the first floor, located at 1100 St. Francis Drive, Santa Fe, New Mexico 87505

The public hearing will be conducted to all persons who have an interest in leasing property to State of New Mexico with the intention of selling said property to General Services Department, Property Control Divisions.

A copy of the proposed rules can be obtained from:

Loraine Giron
1100 St. Francis Dr. Rm 2022
PO Box 6850
Santa Fe, NM 87502
(505) 827-2141

Please submit any written comments regarding the proposed rule to:

Loraine Giron
1100 St. Francis Dr. Rm 2022
PO Box 6850
Santa Fe, NM 87502
(505) 827-2141

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

NEW MEXICO DEPARTMENT OF HEALTH

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.30.10 NMAC "Award of Funds from Save Our Children's Sight Fund" and 7.30.11 NMAC "Vision Screening Test Standards for Students". The Hearing will be held on Wednesday, September 8, 2010 at 8:30 a.m. in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico.

The public hearing will be conducted to receive public comment regarding proposed promulgated rules.

A copy of the proposed rules can be obtained from:

Christina Galvez
Office of General Counsel
New Mexico Department of Health
1190 St. Francis Drive, Room N-4095
Santa Fe, New Mexico 87502
TEL: (505) 476-3543
FAX: (505) 827-2930

Please submit any written comments regarding the proposed rules to Ms. Galvez at the address listed above.

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

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Christina Galvez at the above address or telephone number. The Department requests at least ten (10) days advance notice for special accommodations requests.

NEW MEXICO DEPARTMENT OF HEALTH

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.34.2 NMAC "Advisory Board Responsibilities & Duties"; 7.34.3 NMAC "Registration Identification Cards" and 7.34.4 NMAC "Licensing Requirements For Producers, Production Facilities and Distribution". The Hearing will be held on Thursday, September 30, 2010 at 9:30 a.m. in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico.

The public hearing will be conducted to repeal and replace the existing medical cannabis rules.

A copy of the proposed rules can be obtained from:

Medical Cannabis Program
1190 St. Francis Dr. Suite S1202
Santa Fe, NM 87502
(505) 827-2321
www.nmhealth.org/IDB/medical.cannabis.shtml

Please submit any written comments regarding the proposed rules to:

Medical Cannabis Program
New Mexico Department of Health
1190 St. Francis Dr. Suite S1202
Santa Fe, NM 87502
(505) 827-2321

Medical.cannabis@state.nm.us

Copies of the agenda can be obtained on September 27, 2010, which can be obtained by contacting Andrea R. Alano by telephone at 505-476-3631.

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

If you are an individual with a disability who is in need of special services to attend or participate in the hearing, please contact Christina Galvez by telephone at (505) 476-3543. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) is scheduling a public hearing on September 29, 2010 at 1:00 p.m. in the South Park conference room, 2055 S. Pacheco St., Ste. 500-590, Santa Fe.

The subject of the hearing is: Emergency Services for Undocumented Aliens (EMSA). The Human Services Department, Medical Assistance Division, is proposing a change to the Medicaid emergency services for undocumented aliens' benefits. The primary change is to remove the restriction on services rendered out of state. In addition, the entire rule, 8.325.10 NMAC, *Emergency Services for Undocumented Aliens (EMSA)*, was reviewed for clarity resulting in additional changes in the wording but not otherwise affecting the benefits of the program.

Other changes in the rule being proposed at this time include the following:

- * Replacing outdated word usage, such as Medicaid with MAD, the Medical Assistance Division;
- * Providing more instruction on the eligibility of providers and their responsibilities;
- * Directing providers to enroll and follow a managed care or coordinated care contractor's instructions for billing and authorization of services;
- * Supporting providers to encourage an undocumented or a noncitizen alien individual to apply for EMSA eligibility when the provider believes that the service may qualify as an EMSA emergency service;
- * Directing providers to inform an undocumented alien recipient if the provider is unwilling to receive medicaid payment for the service when the service meets the EMSA emergency criteria for coverage;
- * Removing language that may have limited an alien individual from receiving EMSA medically necessary services while out of state;
- * Adding clarifying language on when an undocumented or a noncitizen alien individual may request a reconsideration of denied coverage of the service; and
- * Adding the word "medical" and removing the word "undocumented" from the Part name of the rule to maintain consistency with 8.285.400 NMAC, *Medicaid Eligibility - Emergency Medical Services for Aliens-Category 085*.

Interested persons may submit written comments no later than 5:00 p.m., September 29, 2010, to Kathryn Falls, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

Copies of all comments will be made available by the Medical Assistance Division upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

Copies of the Human Services Register and their proposed rules are available for review on our Website at www.hsd.state.nm.us/mad/registers/2010 or by sending a self-addressed stamped envelope to Medical Assistance Division, Program Oversight & Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing in Mabry Hall, Jerry Apodaca Building, 300 Don Gaspar St., Santa Fe, New Mexico 87501-2786, on October 1, 2010, from 9:00 a.m. to 12:00 noon. The purpose of the public hearing will be to obtain input on the following rules:

| RULE NUMBER | RULE NAME | PROPOSED ACTION |
|-------------|-------------------------------------|-----------------|
| 6.29.13 | Language Arts Common Core Standards | New |
| 6.29.14 | Math Common Core Standards | New |

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Kristine Meurer, Ph.D., Acting Assistant Secretary for Student Success, Public Education Department, 300 Don Gaspar St., Room 203, Santa Fe, New Mexico, 87501-2786, Fax (505) 827-6184, e-mail: Kristine.Meurer@state.nm.us.

Written comments must be received no later than 5:00 p.m. on October 1, 2010; however, submission of written comments as soon as possible is encouraged.

The text of the proposed rulemaking actions may be accessed on the Department's website (<http://www.ped.state.nm.us>) or obtained from Kristine Meurer, Ph.D., Acting Assistant Secretary for Student Success, NM Public Education Department, 300 Don Gaspar St., Room 203, Santa Fe, N.M. 87501-2786, Fax (505) 827-6184, e-mail: Kristine.Meurer@state.nm.us. The proposed rules will be made available at least thirty (30) days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Kristine Meurer (Kristine.meurer@state.nm.us) or (505) 827-6625 as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO
DEPARTMENT OF PUBLIC
SAFETY
TRAINING AND RECRUITING
DIVISION
Law Enforcement Academy**

Notice

**NEW MEXICO DEPARTMENT OF
PUBLIC SAFETY
NM LAW ENFORCEMENT ACADEMY
BOARD MEETING AND PUBLIC
HEARING**

On Thursday September 23, 2010, at 9:00 a.m., the New Mexico Law Enforcement Academy Board will hold a Regular Board Meeting and a Public Hearing on 10.29.7.8 2010-2011 In- Service Training Cycle for Law Enforcement Officers.

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

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

**NEW MEXICO
DEPARTMENT OF
TRANSPORTATION**

**THE NEW MEXICO DEPARTMENT
OF TRANSPORTATION**

NOTICE OF PUBLIC HEARING

The New Mexico Department of Transportation (NMDOT) will hold a public hearing for the purpose of receiving oral and written public comment on Rule Number 18.14.4 NMAC, Grade Crossings on Land and Railroad Tracks Controlled by the Department of Transportation. The purpose of the proposed rule is to establish procedures and standards for all existing and any new grade crossings on New Mexico State Transportation Commission or New Mexico Department of Transportation owned land and railroad tracks.

The hearing is scheduled on October 1, 2010, from 2:00 p.m. to 4:00 p.m. at the New Mexico Department of Transportation, General Office, Training Room 2, located at 1120 Cerrillos Road, Santa Fe, New Mexico. Please contact Frank Sharpless, Transit and Rail Division, New Mexico Department of Transportation, P.O. Box 1149, SB 4, Santa Fe, New Mexico 87504-1149, Telephone (505) 827-5607 to request a copy of the rule.

The hearing will be held before William (Tim) Harris, NMDOT Rail Manager. Interested persons may also present their views by written statements submitted on or before September 23, 2010, to New Mexico Department of Transportation, P.O. Box 1149, SB 4, Santa Fe, New Mexico 87504-1149, Telephone (505) 827-0906.

Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule in an accessible form may contact Frank Sharpless at (505) 827-5607 at least ten (10) days before the hearing.

**End of Notices and Proposed
Rules Section**

Adopted Rules

NEW MEXICO COAL SURFACE MINING COMMISSION

Explanatory Paragraph: This is an amendment to 19.8.1 NMAC, Section 7. It adopts a definition of “knowing or knowingly” and amends the definition of “owned or controlled and owns or controls” to be no less effective than the federal definitions of these terms at 30 CFR 701.5. It removes the definition of a “willful violation” and adopts a definition of “willful or willfully” in order to be no less effective than the federal definition at 30 CFR 701.5. This amendment will become effective 08-31-2010.

19.8.1.7 DEFINITIONS:

...

K. Definitions beginning with the letter “K”. **KNOWING OR KNOWINGLY** - means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation.

...

O. Definitions beginning with the letter “O”

...

(8) OWNED OR CONTROLLED AND OWNS OR CONTROLS - means any one or a combination of the relationships specified in Subparagraphs (a) and (b) of Paragraph (8) of Subsection O of 19.8.1.7 NMAC:

(a) ~~(i) being a permittee of a surface coal mining operation;~~
~~(ii) based on instruments of ownership or voting securities, owning of record in excess of 50 percent of an entity; or~~
~~(iii) having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations;~~

(a) being a permittee of a surface coal mining operation, or having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations;

(b) the following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is

conducted:

(i) being an officer or director of an entity;
(ii) being the operator of a surface coal mining operation;

(iii) having the ability to commit the financial or real property assets or working resources of an entity;

~~**(iv)** being a general partner in a partnership;~~

~~**(v)** based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50 percent of the entity; or~~

~~**(vi)** owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation;~~

(iv) being the sole proprietor of the entity;

(v) being a general partner in a partnership;

(vi) being a member in a limited liability company;

(vii) based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 percent or more of the entity; or

(viii) owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

...

W. Definitions beginning with the letter “W”

[(2) WILLFUL VIOLATION] - means an act of omission which violates the act, 19.8 NMAC Parts 1-35 or any permit conditions, committed by a person who intends the result which actually occurs.]

(2) WILLFUL OR WILLFULLY - means that a person who authorized, ordered or carried out an act or omission that resulted in either a violation or the failure to abate or correct a violation acted:

(a) intentionally, voluntarily, or consciously; and

(b) with intentional disregard or plain indifference to legal requirements.

...

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.7 NMAC, Sections 701, effective 08-31-2010.

19.8.7.701 IDENTIFICATION OF INTERESTS: An application shall contain the following information, except that the submission of a social security number is voluntary:

A. a statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

B. the name, address, telephone number and, as applicable, social security number and employer identification number of the:

(1) applicant;

(2) applicant’s resident agent; and

(3) person who will pay the abandoned mine land reclamation fee;

C. for each person who owns or controls the applicant under the definition of “owned or controlled” and “owns or controls” in Subsection O of 19.8.1.107 NMAC of these rules, as applicable:

(1) the person’s name, address, telephone number, social security number and employer identification number;

(2) the person’s ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(3) the title of the person’s position, date position was assumed, and when submitted under [Subsection D of 19.8.11.113] Subsection C of 19.8.11.1120 NMAC, date of departure from the position;

(4) each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five years preceding the date of the application; and

(5) the application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States;

D. for any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of “owned or controlled” and “owns or controls” in Subsection O of 19.8.1.107 NMAC, the operation’s:

(1) name, address, identifying numbers, including employer identification number, federal or state permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(2) ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

E. the name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined;

F. the name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area and the owner of record and residents of all dwellings and structures on and within one-half mile (2640 feet) of any part of the proposed permit area;

G. the mine safety and health administration (MSHA) numbers for all mine-associated structures that require MSHA approval;

H. a statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application; if requested by the applicant, any information required by this section which is not on public file pursuant to state law shall be held in confidence by the director, as provided under Subsection B of 19.8.6.606 NMAC;

I. after an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under Subsections A through D of 19.8.7.701 NMAC;

J. the applicant shall submit the information required by this section and 19.8.7.702 NMAC in any format prescribed by the director, that is approved by OSM.

[11-29-97; 19.8.7.701 NMAC - Rn, 19 NMAC 8.2.7.701, 9-29-2000; A, 12-31-2007; A, 08-31-2010]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.11 NMAC, Sections 1105 and 1114, and the adoption of three new sections in 19.8.11 NMAC, Sections 1119, 1120 and 1121, effective 08-31-2010.

19.8.11.1105 REVIEW OF PERMIT

APPLICATIONS:

A. Review and consultation.

(1) The director shall review the complete application and written comments, written objections submitted, and records of any informal conference held under 19.8.11.1101 through 1103 NMAC.

(2) The director shall determine the adequacy of the fish and wildlife plan submitted pursuant to 19.8.9.905 NMAC, in consultation with state and federal fish and wildlife management and conservation agencies having responsibilities for the management and protection of fish and wildlife or their habitats which may be affected or impacted by the proposed surface coal mining and reclamation operations.

B. If the director decides to approve the application, he shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of 19.8.14 NMAC.

C. The director shall not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant, or by any person who owns or controls the applicant, is currently in violation of any provision of the act, SMCRA or any federal or state law, rule or regulation pertaining to air or water environmental protection. The director will make this determination based on a review of reasonably available information concerning violation notices and ownership or control links involving the applicant, including information pursuant to 19.8.7.701 and 702 NMAC and 19.8.11.1102 and 1116 NMAC. In the absence of a failure-to-abate cessation order, the director may presume that a notice of violation issued pursuant to 19.8.30.3001 NMAC or under a federal or state program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, where the abatement period for such notice of violation has not yet expired and where as part of the violation information provided pursuant to 19.8.7.702 NMAC, the applicant has provided certification that such violation is in the process of being so corrected. Such presumption shall not apply where evidence to the contrary is set forth in the permit application, or when the notice of violation is issued for a nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists the director shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to either:

(1) submit to the director, proof which is satisfactory to the director, department or agency which has jurisdiction over such violation that the violation:

(a) has been corrected; or

(b) is in the process of being

corrected; or

(2) establish to the director that the applicant or any person owned or controlled by either this applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation; if the administrative or judicial hearing authority either denies a stay applied for in the appeal or affirms the violation, then the applicant shall within 30 days of the judicial action submit proof required under Subparagraph (a) of Paragraph (1) of Subsection C of 19.8.11.1105 NMAC.

D. Any permit that is issued on the basis of proof submitted under Subparagraph (b) of Paragraph (1) or Paragraph (2) of Subsection C of 19.8.1105 NMAC that a violation is in the process of being corrected, or pending the outcome of an appeal described in Paragraph (2) of Subsection C of 19.8.11.1105 NMAC, shall be conditionally issued.

E. Before any final determination by the director that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violation of the act of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of the act, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 19.8.12.[1201] 1200 NMAC.

F. Final compliance review. After an application is approved, but before the permit is issued, the director shall reconsider its decision to approve the application, based on the compliance review required by Subsection C of 19.8.11.1105 NMAC in light of any new information submitted under Subsection I of 19.8.7.701 NMAC, or Subsection D of 19.8.7.702 NMAC. Upon the applicant's completion of the reporting requirements of Subsection D of 19.8.7.702 NMAC, the director will request a compliance history report from AVS no more than five business days before permit issuance, and will make that report part of the AVS record review required by 19.8.11.1116 NMAC.

[11-29-97; 19.8.11.1105 NMAC - Rn, 19 NMAC 8.2.11.1105, 9-29-2000; A, 4-28-2006; A, 12-31-2007; A, 08-31-2010]

19.8.11.1114 CONFORMANCE OF

PERMIT: The director shall include in the approved permit the following provision: The permittee has expressly undertaken in this permit application to comply with various performance standards and design criteria presently contained in or derived from [of] the New Mexico coal surface mining regulations. Such undertakings

are made upon the condition and with the understanding that any amendments to 19.8.11 NMAC shall entitle the permittee to apply for and receive a review of the related permit provision for the purpose of conforming the permit to the amended state regulations or making other appropriate permit amendments. The permittee and the mining and minerals division shall meet within 30 days of request by the permittee or notice by the director for the purpose of considering such amendments to the permit as are appropriate.

[11-29-97; 19.8.11.1114 NMAC - Rn, 19 NMAC 8.2.11.1114, 9-29-2000; A, 4-28-2006; A, 08-31-2010]

19.8.11.1119 POST-PERMIT ISSUANCE REQUIREMENTS AND OTHER ACTIONS BASED ON OWNERSHIP, CONTROL AND VIOLATION INFORMATION:

A. For the purposes of future permit eligibility determinations and enforcement actions, the director shall enter into AVS all:

(1) permit records, within 30 days after the permit is issued or subsequent changes made;

(2) unabated or uncorrected violations, within 30 days after the abatement or correction period for a violation expires;

(3) changes to information initially required to be provided by an applicant under 19.8.7.701 NMAC, within 30 days of receiving notice of a change; and

(4) changes in violation status, within 30 days after abatement, correction, or termination of a violation, or a decision from an administrative or judicial tribunal.

B. If, at any time, the director discovers that any person owns or controls an operation with an unabated or uncorrected violation, the director will determine whether enforcement action is appropriate under 19.8.31.3109 NMAC. The director shall enter the results of each enforcement action, including administrative and judicial decisions, into AVS.

C. The director shall serve a preliminary finding of permanent permit ineligibility under Subsection C of Section 69-25A-14 NMSA 1978 on an applicant or operator, if the criteria in Paragraphs (1) and (2) of Subsection C of 19.8.11.1119 NMAC are met. In making a finding under this subsection, the director will only consider control relationships and violations which would make, or would have made, the applicant or operator ineligible for a permit under Subsection C of 19.8.11.1105 NMAC or Subsection I of 19.8.11.1106 NMAC. The director shall make a preliminary finding of permanent permit ineligibility if it finds that:

(1) the applicant or operator controls or has controlled surface coal mining and reclamation operations with a

demonstrated pattern of willful violations under Subsection C of Section 69-25A-14 NMSA 1978; and

(2) the violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate the applicant's or operator's intent not to comply with the act, its implementing regulations, the regulatory program, or the permit.

D. The applicant or operator may request a hearing on a preliminary finding of permanent permit ineligibility as stated in Subsection E of 19.8.11.1105 NMAC.

E. Entry into AVS.

(1) If the applicant or operator does not request a hearing, and the time for seeking a hearing has expired, the director shall enter its finding into AVS.

(2) If the applicant or operator requests a hearing, the director shall enter its finding into AVS only if that finding is upheld on administrative appeal.

F. At any time, the director may identify any person who owns or controls an entire surface coal mining operation or any relevant portion or aspect thereof. If the director identifies such a person, the director shall issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. The director's written preliminary finding shall be based on evidence sufficient to establish a prima facie case of ownership or control.

G. After the director issues a written preliminary finding under Subsection F of 19.8.11.1119 NMAC, the director shall allow the person subject to the preliminary finding 30 days in which to submit any information tending to demonstrate the person's lack of ownership or control. If, after reviewing any information the person submits, the director is persuaded that the person is not an owner or controller, the director shall serve the person a written notice to that effect. If, after reviewing any information the person submits, the director still finds that the person is an owner or controller, or if the person does not submit any information within the 30-day period, the director shall issue a written finding and enter its finding into AVS.

H. If the director identifies the person subject to the preliminary finding as an owner or controller under Subsection G of 19.8.11.1119 NMAC, the person may challenge the finding as provided in 19.8.11.1117 and 1118 NMAC.

[19.8.11.1119 NMAC - N, 08-31-2010]

19.8.11.1120 POST-PERMIT ISSUANCE INFORMATION REQUIREMENTS FOR PERMITTEES:

A. Within 30 days after the issuance of a cessation order in accordance with 19.8.30.3000 NMAC, or a federal

cessation order issued in accordance with 30 CFR 843.11, the permittee must provide or update all the information required under Subsection C and D of 19.8.7.701 NMAC.

B. The permittee does not have to submit information under Subsection A of 19.8.11.1120 NMAC if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect.

C. Within 60 days of any addition, departure, or change in position of any person identified in Subsections C or D of 19.8.7.701 NMAC, the permittee must provide:

(1) the information required under Subsections C or D of 19.8.7.701 NMAC; and

(2) the date of any departure.

[19.8.11.1120 NMAC - N, 08-31-2010]

19.8.11.1121 CERTIFYING AND UPDATING EXISTING PERMIT APPLICATION INFORMATION:

A. If the applicant or operator has previously applied for a permit and the required information is already in AVS, then the applicant or operator may update the information as follows:

(1) if all or part of the information already in AVS is accurate and complete, then the applicant or operator may certify to the director by swearing or affirming, under oath and in writing, that the relevant information in AVS is accurate, complete, and up to date;

(2) if part of the information in AVS is missing or incorrect, the applicant or operator must submit to the director the necessary information or corrections and swear or affirm, under oath and in writing, that the information the applicant or operator submitted is accurate and complete;

(3) if the applicant or operator can neither certify that the data in AVS is accurate and complete nor make needed corrections, then the applicant or operator must include in his or her permit application the information required under 19.8.7.701 and 702 NMAC.

B. The applicant or operator must swear or affirm, under oath and in writing, that all information he or she provides in an application is accurate and complete.

C. The director may establish a central file to house the applicant's or operator's identity information, rather than place duplicate information in each permit application file. The director shall make the information available to the public upon request.

D. After the director approves an application, but before the director issues a permit, the applicant or operator must update, correct, or indicate that no change has occurred in the information

previously submitted under 19.8.7.701 and 702 NMAC and 19.8.11.1121 NMAC.
[19.8.11.1121 NMAC - N, 08-31-2010]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.20 NMAC, Section 2010, effective 08-31-2010.

19.8.20.2010 HYDROLOGIC BALANCE: WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS:

A. Treatment of disturbed area surface flow.

(1) With the exception of surface flow leaving the disturbed area with respect to which area the operator has complied with the requirements of 19.8.20.2009 NMAC, all surface flow that leaves the disturbed area shall be passed through a sedimentation pond or series of sedimentation ponds or other treatment facilities before leaving the permit area. Any discharge of water from underground workings to surface waters which does not meet the effluent limitations of 19.8.20 NMAC shall also be passed through a sedimentation pond, a series of sedimentation ponds, or a treatment facility before leaving the permit area.

(2) Sedimentation ponds and other treatment facilities shall be maintained until the disturbed area has been regraded and erosion on the regraded area has been controlled[-].

~~[(a) to prevent gully erosion from occurring; and~~

~~[(b) to insure that the quality of the untreated drainage from the disturbed area meets the applicable state and federal water quality standard requirements for the receiving stream, except during precipitation events which are equal to or greater than the 2-year recurrence interval;]~~

(3) Sedimentation ponds and treatment facilities for discharges from underground workings shall be maintained until either the discharge continuously meets the effluent limitations of 19.8.20 NMAC without treatment or until the discharge has permanently ceased.

(4) The director may grant exemptions from these requirements only when:

(a) the disturbed drainage area within the total disturbed area is small; and

(b) the person who conducts the surface coal mining operations demonstrates that sedimentation ponds and treatment facilities are not necessary for drainage from the disturbed drainage areas to meet the effluent limitations in Paragraph (8) of Subsection A of 19.8.20.2010 NMAC and

the applicable state and federal water quality standards for downstream and receiving waters.

(5) For the purposes of 19.8.20 NMAC only, disturbed area shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with 19.8.20 NMAC and the upstream area is not otherwise disturbed by the person who conducts the surface coal mining operations.

(6) Sedimentation ponds required by 19.8.20 NMAC shall be constructed in accordance with 19.8.20.2014 NMAC in appropriate locations before beginning any surface coal mining operations in the drainage area to be affected.

(7) Where the sedimentation pond or series of sedimentation ponds is used so as to result in the mixing of drainage from the disturbed areas with drainage from other areas not disturbed by current surface coal mining and reclamation operations, the permittee shall achieve the effluent limitations set forth below for all of the mixed drainage when it leaves the pond discharge point.

(8) Discharges of water from areas disturbed by surface mining activities and underground mining activities shall be made in compliance with all applicable state and federal water-quality laws and regulations and with the effluent limitations for coal mining promulgated by the U.S. environmental protection agency set forth in 40 CFR Part 434.

B. A discharge from the disturbed areas is not subject to the effluent limitations of 19.8.20 NMAC, if:

(1) the discharge is demonstrated by the discharger to have resulted from a precipitation event equal to or larger than a 10-year 24-hour precipitation event; and

(2) the discharge is from facilities designed, constructed, and maintained in accordance with the requirements of 19.8.20 NMAC.

C. Adequate facilities shall be installed, operated, and maintained to treat any water discharged from the disturbed area so that it complies with all federal and state laws and regulations and the limitations of 19.8.20 NMAC. If the pH of water to be discharged from the disturbed area is less than 6.0, an automatic lime feeder or other automatic neutralization process approved by the director shall be installed, operated, and maintained. The director may authorize the use of a manual system, if he finds that:

(1) flow is infrequent and presents small and infrequent treatment requirements to meet applicable standards which do not require use of an automatic neutralization process; and

(2) timely and consistent treatment is ensured.

[11-29-97; 19.8.20.2010 NMAC - Rn, 19

NMAC 8.2.20.2010, 9-29-2000; A, 12-31-2007; A, 08-31-2010]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.30 NMAC, Sections 3000, 3003 and 3004, effective 08-31-2010.

19.8.30.3000 C E S S A T I O N ORDERS:

A. The director, or his duly authorized representative shall immediately order a cessation of coal exploration operations or surface coal mining and reclamation operations or relevant portions thereof, if he determines, on the basis of an inspection, any conditions or practices exist or that any permittee is in violation of any requirements of the act, 19.8 NMAC or any permit condition, which condition, practice or violation creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

B. Surface coal mining operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources unless such operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations.

C. If the cessation order will not completely abate the imminent danger or harm in the most expeditious manner possible, the inspector shall impose affirmative obligations to abate the condition, practice or violation, specifying the time by which the abatement shall be accomplished. If affirmative obligations to abate are imposed, the inspector may consider suggestions by the operator concerning the economic and technological feasibility, in determining the most expeditious means of abatement and the period for correction of the condition, practice or violation causing an imminent danger to the health or safety of the public or significant environmental harm to land, air or water resources.

D. The director, or his duly authorized representative, shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations or relevant portions thereof, if he finds that a violation has not been abated within the period specified in a notice of violation issued under 19.8.30.3001 NMAC. The cessation order shall specify measures

deemed necessary by the inspector to abate the violations in the most expeditious manner possible.

E. A cessation order shall be effective upon prompt delivery to the permittee or his agent. The order shall remain in effect until the condition, practice or violation has been abated or until vacated, modified or terminated in writing by the director or his duly authorized representative. A cessation order shall be in writing, signed by the director or his duly authorized representative, and shall set forth with reasonable specificity:

(1) the nature of the violation, including a citation to the requirement allegedly violated and the imminent danger or harm allegedly involved;

(2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

(3) the time established for abatement, if appropriate, including the time for meeting any interim steps; and

(4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

F. Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

G. The director, or his duly authorized representative may modify, terminate or vacate a cessation order for a good cause, provided that no cessation order may be vacated because of inability to comply. The director may extend the time for abatement if he determines that good cause exists and that the failure to abate within the time previously set forth was not caused by lack of diligence on the part of the person to whom the cessation order was issued.

H. The director or his duly authorized representative shall terminate a cessation order by written notice to the person to whom the order was issued, when he determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right to assess civil penalties for violations included in the order.

I. A modification of an order shall result in the commencement of a new period within which to abate. However, before any extension in the total abatement time is granted, the requirements of Subsection F of 19.8.30.3000 NMAC must be complied with.

J. A cessation order which requires cessation of mining, expressly or by implication, shall expire within thirty (30) days after it has been served unless a hearing has been held within that time, or unless the cessation order has been previously

terminated, modified, or vacated in writing. The hearing shall be held on site or within such reasonable proximity as will permit viewing of the site during the course of the hearing. A cessation order shall not expire as provided above if the condition, practice, or violation in question has been abated or if the hearing has been waived or postponed at the request of the permittee. Expiration of the cessation order for failure to hold a hearing within thirty (30) days from notice of issuance does not affect the right of the director to assess any civil penalty for violations giving rise to such cessation order.

K. The hearing shall be conducted in accordance with the notice and hearing requirements of 19.8.30.3003 NMAC and 19.8.30.3004 NMAC governing informal hearings.

L. Within sixty days after issuing a cessation order, the director shall notify in writing any person who has been identified under ~~[Subsection D of 19.8.11.1113]~~ Subsection F of 19.8.11.1119 NMAC, Subsection C of 19.8.7.701 NMAC and Subsection D of 19.8.7.701 NMAC as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

[11-29-27; 19.8.30.3000 NMAC - Rn, 19 NMAC 8.2.30.3000, 9-29-2000; A, 12-31-2007; A, 08-31-2010]

19.8.30.3003 SERVICE OF NOTICES OF VIOLATION AND CESSATION ORDERS:

A. A notice of violation or cessation order shall be served on the person to whom it is directed or his designated agent promptly after issuance as follows.

(1) By tendering a copy at the coal exploration or surface coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry by the director's duly authorized representative, appears to be in charge of the coal exploration or surface coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be a supervisory employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his designated agent. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

B. A show cause order may

be served on the person to whom it is issued in either manner provided in Subsection A of 19.8.30.3003 NMAC.

C. Designation by any person of an agent for service of notices and orders shall be made in writing to the director.

D. The director shall cause copies of notices and order to be furnished to any person having an interest in the coal exploration, surface coal mining and reclamation operation or the permit area, such as the owner of the fee, a corporate officer of the permittee or entity conducting coal exploration, or the bonding company when so requested in writing.

E. Upon request, the director shall furnish copies of notices and orders and all documents relating to inspection and enforcement actions to the director of the office of surface mining reclamation and enforcement, pertaining to coal exploration operations and surface coal mining and reclamation operations which are subject to the provisions of a state-federal cooperative agreement.

[11-29-27; 19.8.30.3003 NMAC - Rn, 19 NMAC 8.2.30.3003, 9-29-2000; A, 08-31-2010]

19.8.30.3004 INFORMAL HEARINGS:

A. Within ten (10) days of service of a notice of violation under 19.8.30.3001 NMAC or cessation order under 19.8.30.3001 NMAC, the person to whom the notice or order was issued may require an informal hearing by notifying the director, in writing, of his request for such hearing. The director may, for good cause shown, extend the time for requesting a notice of a hearing provided that the total time for request including any such extension, does not exceed fifteen (15) days from service of notice or order.

B. The right to an informal hearing, as provided in this section, shall be deemed waived if the person to whom notice of violation or cessation order is given fails to request in writing such hearing within ten (10) days or if granted by the director, within any additional extension of time after service of the notice or order.

C. Within five days after the close of an informal hearing the director may affirm, modify or vacate the notice or order in writing. The decision shall be sent to the person to whom the notice or order was issued, or any person who filed a report which led to the notice or order.

D. At the request of the operator to whom the notice or order is given, the hearing on a notice of violation or cessation order may be delayed until a proposed civil penalty assessment is served in accordance with 19.8.31.3105 NMAC. In any event, the ~~[directory]~~ director may,

at an informal hearing, resolve the amount of a civil penalty with the agreement of the operator, notwithstanding that no proposed civil penalty assessment has yet been served in accordance with 19.8.31.3105 NMAC. [11-29-27; 19.8.30.3004 NMAC - Rn, 19 NMAC 8.2.30.3004, 9-29-2000; A, 08-31-2010]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.31 NMAC, Sections 3103 and 3109, and the adoption of a new section in 19.8.31 NMAC, Section 3113. The name of Part 31 is also amended in consequence of the inclusion of criminal penalties in the part in new Section 3113. This amendment is effective 08-31-2010.

CHAPTER 8 COAL MINING PART 31 ~~[CIVIL]~~ PENALTIES

19.8.31.3103 ASSESSMENT OF SEPARATE VIOLATION FOR EACH DAY:

A. The director may assess separately a civil penalty for each day from the date of issuance of the notice of violation ~~[of]~~ or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the director shall consider the factors listed in 19.8.31.3101 NMAC and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which is assigned more than 70 points, the director shall assess a civil penalty for a minimum of two separate days.

B. Whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order, a civil penalty of not less than \$750 shall be assessed for each day, not exceeding thirty (30) days for each such violation, during which such failure continues, except that, if the person to whom the notice or order was issued initiates review proceedings with respect to the violation, the abatement period shall be extended as follows:

(1) if suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under Subsection D of 69-25A-29 NMSA 1978 of the act, after a determination that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the director issues a

final order with respect to the violation in question; and

(2) if the person to whom the notice or order was issued initiated review proceedings under Section 69-25A-30 NMSA 1978 of the act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to Subsection B of Section 69-25A-30 NMSA 1978 of the act, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court not subject to appeal.

[11-29-97; 19.8.31.3103 NMAC - Rn, 19 NMAC 8.2.31.3103, 9-29-2000; A, 08-31-2010]

19.8.31.3109 INDIVIDUAL CIVIL PENALTIES:

A. Except as provided in Subsection B of 19.8.31.3109 NMAC, the director may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation of a permit condition, or a failure or refusal to comply with any order issued under the act.

~~[(1) Knowingly means that an individual knew or had reason to know in authorizing, ordering or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure or refusal.~~

~~[(2) Willfully means that an individual acted (1) either intentionally, voluntarily or consciously, and (2) with intentional disregard or plain indifference to legal requirements in authorizing, ordering or carrying out a corporate permittee's action or omission that constituted a violation, failure or refusal.~~

~~[(3) Violation, failure or refusal means a violation of a permit condition or a failure or refusal to comply with any order issued under the act.]~~

B. The director shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the director to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days.

[11-29-97; 19.8.31.3109 NMAC - Rn, 19 NMAC 8.2.31.3109, 9-29-2000; A, 08-31-2010]

19.8.31.3113 CRIMINAL PENALTIES: Under Section 69-25A-22 NMSA 1978, the director may request the attorney general to pursue criminal penalties against any person who:

A. willfully and knowingly
violates a condition of the permit;

B. willfully and knowingly
fails or refuses to comply with:

(1) any order issued under 69-25A-25 or 69-25A-30 NMSA 1978; or

(2) any order incorporated into a final decision issued by the director under the act (except for those orders specifically excluded under Subsection E of 69-25A-22 NMSA 1978); or

C. knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed with or required to be maintained by the director, or any order or decision issued by the director under the act. [19.8.31.3113 NMAC - N, 08-31-2010]

NEW MEXICO COAL SURFACE MINING COMMISSION

The following is an amendment of 19.8.34 NMAC, Sections 3402 and 3408, effective 08-31-2010.

19.8.34.3402 APPLICATION REQUIREMENTS AND PROCEDURES:

A. New operations.

(1) Any person who plans to commence or continue coal extraction after October 1, 1995, in reliance on the incidental mining exemption shall file a complete application for exemption with the director for each mining area.

(2) No person may commence coal extraction based upon the exemption until the director approves such application, except as provided in Paragraph (3) of Subsection E of 19.8.34.3402 NMAC.

B. Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to October 1, 1995, may continue mining operations for 60 days after October 1, 1995. Coal extraction may not continue after such 60 day period unless that person files an administratively complete application or exemption with the director. If an administratively complete application is filed within 60 days the person may continue extracting coal in reliance on the exemption beyond the 60-day period until the director makes an administrative decision on such application.

C. Additional information. The director shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.

D. Public comment period. Following publication of the newspaper notice required by Subsection I of 19.8.34.3403 NMAC, the director shall provide a period of no less than 30

days during which time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections.

E. Exemption determination.

(1) No later than 90 days after filing of an administratively complete application, the director shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this part, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

(2) The determination of exemption shall be based upon information contained in the application and any other information available to the director at that time.

(3) If the director fails to provide an applicant with the determination as specified in Paragraph (1) of Subsection E of 19.8.34.3402 NMAC, an applicant who has not begun may commence coal extraction pending a determination on the application unless the director issues an interim finding, together with reasons therefore, that the applicant may not begin coal extraction.

F. Administrative review.

(1) Any adversely affected person may request administrative review of a determination under Subsection E of 19.8.34.3402 NMAC within 30 days of the notification of such determination in accordance with procedures established under 19.8.12.[1201] 1200 NMAC.

(2) A petition for administrative review filed under 19.8.12.[1201] 1200 NMAC shall not suspend the effect of a determination under Subsection E of 19.8.34.3402 NMAC. [11-29-97; 19.8.34.3402 NMAC - Rn, 19 NMAC 8.2.34.3402, 9-29-2000; A, 12-31-2007; A, 08-31-2010]

19.8.34.3408 REVOCATION AND ENFORCEMENT:

A. Responsibility of the director. The director shall conduct an annual compliance review of the mining area utilizing the annual report submitted pursuant to 19.8.34.3409 NMAC, an on-site inspection and any other information available to the director.

B. If the director has reason(s) to believe that a specific mining area was not exempt under the provisions of this part at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the director shall notify the operator that the exemption may be revoked and the reason(s) therefor. The exemption will be revoked unless the operator demonstrates to the director within

30 days that the mining area in question should continue to be exempt.

C. Director's finding and administrative review.

(1) If the director finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the director shall revoke the exemption and immediately notify the operator and intervenors. If a decision is made not to revoke an exemption, the director shall immediately notify the operator and intervenors.

(2) Any adversely affected person may request administrative review of a decision whether to revoke an exemption within 30 days of the notification of such decision in accordance with procedures established under 19.8.12.[1201] 1200 NMAC.

(3) A petition for administrative review filed under 19.8.12.[1201] 1200 NMAC shall not suspend the effect of a decision whether to revoke an exemption.

D. Direct enforcement.

(1) An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of these regulations which occurred prior to the revocation of the exemption.

(2) An operator who does not conduct activities in accordance with the terms of an approved exemption and knows or should know such activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of these regulations which occur during the period of such activities.

(3) Upon revocation of an exemption or denial of an exemption application an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of these regulations with regard to conditions, areas and activities existing at the time of revocation or denial. [11-29-97; 19.8.34.3408 NMAC - Rn, 19 NMAC 8.2.34.3408, 9-29-2000; A, 12-31-2007; A, 08-31-2010]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.35 NMAC, Section 13, effective 08-31-2010.

19.8.35.13 ADMINISTRATIVE AND JUDICIAL REVIEW OF A VER DETERMINATION: A determination that the requester has or does not have valid existing rights is subject to administrative and judicial review under 19.8.12.1200 NMAC [~~19.8.12.1201~~ NMAC] and 19.8.12.1202 NMAC. [19.8.35.13 NMAC - N, 1-15-2002; A, 08-31-2010]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.7 NMAC Sections 5, 8, 9, 10 and 13, effective 09-18-10.

16.5.7.5 EFFECTIVE DATE: September 30, 1996, unless a different date is cited at the end of a section [or Paragraph]. [9-30-96; 16.5.7.5 NMAC - Rn, 16 NMAC 5.7.5, 12-14-00; A, 09-18-10]

16.5.7.8 CATEGORIES OF TEMPORARY LICENSES: Applications for a temporary New Mexico dental license may be issued in the following categories for specific purposes if education and experience requirements are met:

A. Clinical educator. Dentists, not currently licensed in New Mexico, who provide clinical education or training that includes demonstrations on live subjects must apply for temporary licensure. The temporary license is issued for 48 hours; if the course lasts longer than two days, additional 48 hour licenses may be requested upon payment of the applicable fees; a temporary license may not be issued for less than 48 hours.

B. A student who is enrolled in an ADA accredited dental specialty program or an ADA accredited general practice dental residency program, or an advanced education in general dentistry program, who holds a current, valid license in good standing in another US jurisdiction, may be granted a temporary 48 hour license for the purpose of observing or assisting a licensed New Mexico practitioner in cases for educational purposes. If the resident or student is enrolled in an accredited program in the state of New Mexico and holds a current, valid license in good standing in another US jurisdiction, they may be granted a temporary license for up to 12 months. This temporary license may be renewed annually only for purposes of completing the educational program.

C. Clinical practice in underserved area or state institutions. A dentist may be granted temporary licensure to practice in a state institution, a program approved or maintained by the New Mexico Department of Health (NMDOH), or a program or clinic designated by the New Mexico department of health (NMDOH), as dental care underserved area. (DCUA). The New Mexico department of health (NMDOH) may recommend to the New Mexico board of dental health care, counties, communities, county census divisions, or in the case of urban areas, neighborhoods, zip codes, and census tracts to be considered as dental care underserved areas (DCUA's).

Areas recommended as DCUA's may reflect those areas designated by the federal government as dental health professional shortage areas (DHPSA). The New Mexico board of dental health care will request annually from NMDOH a written report of which areas are recommended as DCUA's and will update the listing throughout the year as appropriate. The New Mexico board of dental health care may designate DCUA's based upon these recommendations:

(1) the temporary license holder is restricted to work exclusively in the institution or program named on the application or the temporary license certificate;

(2) a temporary license for clinical practice in an under served area or state institution is valid for twelve months and shall expire at the end of that period; the board may re-issue the temporary license for three additional twelve-month periods; each license reissue must be approved by the board; the licensee must contact the board office three months prior to the expiration date to begin the re-issue process;

(3) the New Mexico board of dental health care shall rely upon the listing of recommended practices in underserved areas or state institutions, and the listing of recommended DCUA's provided by NMDOH in its review of applications for clinical practice in underserved areas; temporary licenses will be reissued only for sites and DCUA's that remain on the recommended listings by the New Mexico department of health;

(4) a temporary license to practice in an underserved area may be converted to a license by credentials provided the applicant:

(a) meets all requisite requirements listed in 16.5.8 NMAC and provides all documentation as required in 16.5.8.10 NMAC of these rules, with exception of the requirement to have a license in good standing for 5 years;

(b) practices for at least 1000 hours per year under a temporary license in an underserved area for three consecutive years; one year of credit will be granted for;

(i) an ADA accredited residency or ADA recognized specialty program; or

(ii) private practice of 1000 or more hours per year; and

(c) has no complaints under board investigation, actions pending or actions taken against the applicant's temporary license;

(d) has renewed the temporary license yearly, and has paid the required license fees;

(e) has maintained the same continuing education requirements of regularly licensed dentists as set forth in 16.5.10 NMAC of these rules; the annual continuing education requirements are to

be based upon 1/3 [prorata] prorated share of those required of a licensee applying for license renewal on a triennial basis; and

(f) applies for conversion of a temporary license to a license by credentials pursuant to 16.5.7.15 NMAC of these rules.

D. Emergency practitioner. Out of state specialists needed for emergency care in a hospital may be granted a temporary license:

(1) the information normally given in official documentation may be given in written or verbal form because of the emergency nature of the license;

(2) this category will be given a 48 hour temporary license but it may be extended in forty-eight hour increments until the dentist can leave the patient to the care of others; and

(3) the New Mexico licensed dentist acting as the sponsor for the temporary licensee must be responsible for the validity of the following credentials:

(a) the license number in the state in which the applicant resides and practices, and the current status of the license;

(b) proof of liability insurance; and

(c) verification of status of hospital credentials in state of residence or practice.

E. Replacement practitioner. A dentist may be granted temporary licensure for six or twelve months to work exclusively with patients in the practice of a New Mexico licensed dentist who is unable to practice dentistry because of physical or mental illness, injury, pregnancy, impairment, physical absence, or other condition approved by the board:

(1) the temporary license holder is restricted to work exclusively in the practice named on the application; and

(2) a temporary license as a replacement practitioner is valid for no longer than 12 months, and may not be reissued.

F. Charitable practitioner: Out of state dentist(s) desiring to practice at a board approved charitable event and receive no compensation may be granted a 48 hour temporary licensure for the charitable event. Charitable practitioner temporary licensee is restricted to work exclusively at the charitable event named on the application and must comply with the New Mexico Dental Health Care Act.

(1) The charitable event must be board approved 45 days prior to the scheduled charitable event.

(2) Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or a delegate(s) of the board will review and approve the application.

(3) The sponsoring charitable event entity shall appoint a NM licensed dentist(s) who will sponsor and be in association

with during the time the applicant practices dentistry in New Mexico.

(4) Temporary licensure will be issued for 48 hours.

(5) The NM licensed dentist(s) acting as a sponsor(s) for the charitable practitioner temporary licensee(s) must be responsible for submitting documentation for each applicant; The sponsoring dentist must submit an affidavit attesting to the qualifications of the applicant and attesting to the following:

(a) verification of the license in good standing;

(b) verification of graduation from a council on dental accreditation (CODA) accredited dental school; and

(c) verification of having taken a course in infection control technique within the past 12 months.

(6) The completed applications must be filed with the New Mexico board of dental health care 10 days prior to the scheduled charitable event.

(7) The completed application signed and notarized must include:

(a) the application fee;

(b) the sponsor of the charitable event and the NM licensed dentist(s) sponsoring the applicant, with contact numbers;

(c) copy of current active license in good standing from the state the applicant is currently practicing;

(d) proof of liability insurance; and

(e) copy of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR).

(8) Temporary license must be posted at the charitable event.

(9) Patients who receive dental care during the charitable event will be given a list of dentists whom they can contact if post operative care is needed.

(10) Charitable practitioner licensure is not eligible for conversion to any other temporary license, or any conversion for New Mexico licensure by credentials.

[3-17-73, 3-16-94, 4-15-94, 5-31-95, 9-30-96; 16.5.7.8 NMAC - Rn & A, 16 NMAC 5.7.8, 12-14-00; A, 3-29-02; A, 07-17-08; A, 09-18-10]

16.5.7.9 PREREQUISITE REQUIREMENTS FOR TEMPORARY LICENSURE:

[Each applicant for temporary licensure must possess the following qualifications:] Charitable practitioners as defined in Subsection F of 16.5.7.8 NMAC are not required to comply with Subsection D and E of this section. All other applicants for temporary licensure must possess each of the following qualifications:

A. graduated and received a diploma from an accredited dental school or college as defined in 61-5A-12, A;

B. if the temporary license is for a practice specialty, the applicant must have obtained a postgraduate degree or certificate from an accredited dental college, school of dentistry or other residency program that is accredited by the American dental association commission on dental accreditation;

C. hold a valid license in good standing from another state or territory of the United States;

D. applicants requesting a six or twelve month temporary license must pass the jurisprudence exam with a score of at least a 75 percentile;

E. for those applying for a initial temporary license in public health dentistry or as a replacement practitioner, the board requires a level III background status report from a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fee directly to a board designated professional background service to initiate this service; the license may be provisionally issued while awaiting the report from a board designated professional background service.

[3-14-73, 5-31-95; 16.5.7.9 NMAC - Rn & A, 16 NMAC 5.7.9, 12-14-00; A, 06-14-01; A, 07-16-07; A, 07-17-08; A, 09-18-10]

16.5.7.10 DOCUMENTATION REQUIREMENTS: ~~[Each applicant for temporary license must submit the required fees and following documentation:] Except as otherwise required by Subsection F of 16.5.7.8 NMAC, charitable practitioners do not need to comply with the following for temporary licensure. All other applicants for temporary licensure must submit the required fees and following documentation:~~

A. completed application signed and notarized with a passport quality photo taken within 6 months. Applications are valid for 1 year from the date of receipt;

B. verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession; verification must be sent directly to the office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form;

C. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association or the American red cross; ~~[and] cannot be a self-study course;~~

D. an affidavit from the New Mexico licensed dentist who is sponsoring the applicant attesting to the qualifications of the applicant and the activities the applicant will perform; applicants for temporary

licensure in underserved areas and state institutions must:

(1) provide an affidavit from the administrative supervisor of the applicant's proposed employer organization as defined in Subsection C of 16.5.7.8 NMAC attesting to supervision and oversight by a New Mexico licensed dentist, and bearing the signature of both; or

(2) provide an affidavit from the New Mexico department of health specifying supervision will be by a licensed New Mexico dentist and bearing the signature of both ~~[and];~~

(3) report any changes in supervision or oversight of the temporary licensee to the board within (30) thirty days of the change; ~~and~~

(4) provide proof of acceptable liability insurance coverage;

E. in addition, applicants requesting temporary licensure in public health dentistry or as a replacement practitioner must submit the following:

(1) official transcripts or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;

(2) copy of national board examination certificate or score card;

(3) proof of having taken a course in infection control technique within the past twelve months;

(4) applicant shall authorize the drug enforcement administration (DEA) and American association of dental examiners clearinghouse to send verification of status directly to the board office;

(5) the board will obtain verification of applicant status from the national practitioners data bank; and

(6) a level III status report from a board designated professional background service must be received directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board; the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public;

(7) in addition to the documentation required above, an applicant for temporary licensure in a specialty area must request official transcripts from the residency program and/or postgraduate training program to be sent directly to the board office from the accredited program.

[3-14-73, 5-31-95, 9-30-96; 16.5.7.10 NMAC - Rn, 16 NMAC 5.7.10, 12-14-00;

A, 06-14-01; A, 3-29-02, A, 07-16-07; A, 09-18-10]

16.5.7.13 R E - I S S U E PROCEDURES: To remain eligible for temporary licensure; temporary license holders who are eligible for re-issue per ~~[Paragraph (2) Subsection C of 16.5.7.8 NMAC or Paragraph (3) Subsection C of]~~ 16.5.7.8 NMAC ~~[will be sent a renewal application prior to the expiration date of their temporary license;]~~ must contact the board office three months prior to the expiration date to begin the re-issue process. All requirements regarding re-issue are the same as the initial application as defined in 16.5.7.10 NMAC. The form, application and fee and proof of 20 hours of continuing education must be post-marked on or before the expiration date.

[12-15-97; 16.5.7.13 NMAC - Rn, 16 NMAC 5.7.13, 12-14-00; A, 09-18-10]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.21 NMAC Sections 8, 9, 10, 11, 14 and 15, effective 09-18-10.

16.5.21.8 CATEGORIES OF TEMPORARY LICENSES: Temporary dental hygiene licenses may be issued in the following categories for specific purposes, if education and experience requirements are met.

A. Clinical educator.

(1) Dental hygienists, not currently licensed in New Mexico, who provide continuing education or training that includes clinical demonstrations on live subjects must apply for temporary licensure. The temporary license is issued for forty eight hours (two days). If the course lasts longer than two days, additional ~~[fourty]~~ forty eight hour licenses may be requested upon payment of the applicable fees.

(2) Dental hygienists, not currently licensed in New Mexico, who intend to serve as a faculty member of an accredited dental hygiene program must apply for a temporary license. The temporary license is issued for twelve months and may be renewed one time. Temporary licensees must be granted a license under the provisions of Part 19 of these rules or 16.5.21.15 NMAC of this section prior to the expiration date of the temporary license to continue ~~[uninterrupted]~~ uninterrupted practice of dental hygiene in New Mexico.

B. Public health dental hygiene. A dental hygienist may be granted temporary licensure to practice in a state institution, public health clinic or public health program approved or maintained by the New Mexico department of health.

The temporary license holder is restricted to work exclusively in the institution or program named on the application. A temporary license may be issued for six or twelve months and may be renewed one time. Temporary licensees must be granted a license under the provisions of Part 19 of these rules or [16.2.21.5 of this section] 16.5.21.15 NMAC prior to the expiration date of the temporary license to continue uninterrupted practice of dental hygiene in New Mexico.

C. Charitable dental hygienist: Out of state dental hygienist(s) desiring to practice at a board approved charitable event and receive no compensation may be granted a 48 hour temporary licensure for the charitable event. Charitable dental hygienist temporary licensee is restricted to work exclusively at the charitable event named on the application and must comply with the New Mexico Dental Health Care Act.

(1) The charitable event must be board approved 45 days prior to the scheduled charitable event.

(2) Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or a delegate(s) of the committee will review and approve the application.

(3) The sponsoring charitable event entity shall appoint a NM licensed dentist(s) or dental hygienist(s) who will sponsor and be in association with during the time the applicant practices dental hygiene in New Mexico.

(4) Temporary licensure will be issued for 48 hours.

(5) The NM licensed dentists(s) or dental hygienist(s) acting as a sponsor(s) for the charitable dental hygienist temporary licensee(s) must be responsible for the submitting documentation for each applicant; the sponsoring dentist or dental hygienist must submit an affidavit attesting to the qualification of the applicant and attesting to the following:

(a) verification of the license in good standing;

(b) verification of graduation from a council on dental accreditation (CODA) dental hygiene school; and

(c) verification of having taken a course in infection control technique within the past 12 months.

(6) The completed applications must be filed with the New Mexico board of dental health care 10 days prior to the scheduled charitable event.

(7) The completed application signed and notarized must include:

(a) the application fee;

(b) the sponsor of the charitable event and the NM licensed dentist(s) or dental hygienist sponsoring the applicant, with contact numbers;

(c) copy of current active license in good standing from the state the applicant is currently practicing;

(d) proof of liability insurance; and

(e) copy of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR).

(8) Temporary license must be posted at the event.

(9) Patients who receive dental care during the charitable event will be given a list of dentists or dental hygienists whom they can contact if post operative care is needed.

(10) Charitable dental hygienist licensure is not eligible for conversion to any other temporary license, or any conversion for New Mexico licensure by credentials.

[3-14-73, 5-31-95, 9-30-96; 16.5.21.8 NMAC - Rn & A, 16 NMAC 5.21.8, 12-30-02; A, 09-18-10]

16.5.21.9 REQUIREMENTS FOR TEMPORARY LICENSURE:

[Applicants for temporary licensure as a dental hygienist must possess the following qualifications:] Charitable dental hygienist as defined in Subsection C of 16.5.21.8 NMAC are not required to comply with Subsection C of this section. All other applicants for temporary licensure must possess each of the following qualification:

A. graduated and received a diploma from an accredited dental hygiene program consisting of at least two academic years of dental hygiene curriculum as defined in Section 61-5A-13; and

B. hold a valid license obtained through a clinical examination in another state or territory of the United States;

C. applicants requesting a six or twelve month temporary license are required to successfully complete the jurisprudence exam.

[3-14-73, 5-31-95, 9-30-96; 16.5.21.9 NMAC - Rn, 16 NMAC 5.21.9, 12-30-02; A, 09-18-10]

16.5.21.10 DOCUMENTATION REQUIREMENTS:

[Each applicant for a temporary dental hygiene license must submit the required fees and following documentation:] Except as otherwise required by Subsection C of 16.5.21.8 NMAC, charitable dental hygienist do not need to comply with the following for temporary licensure. All other applicants for temporary licensure must submit the required fees and following documentation:

A. completed application, signed and notarized with a passport quality photo taken within six months affixed to the application; applications are valid for one year from the date of receipt;

B. proof of current basic life support (BLS) or cardiac pulmonary

resuscitation (CPR) certification accepted by the American heart association or the American red cross; cannot be a self-study course;

C. copies of all valid licenses and a letter from the applicant attesting to the status of each license;

D. an affidavit from the New Mexico licensed dental hygienist or dentist who will sponsor the applicant, attesting to the qualifications of the applicant and the activities the applicant will perform;

E. a list of activities to be practiced and the time period for which the temporary license is requested;

F. in addition, applicants requesting temporary licensure in public health must submit the following documentation:

(1) official transcripts or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental hygiene program, to be sent directly to the board office from the accredited program;

(2) copy of national board examination certificate or score card; and

(3) proof of having taken a course in infection control technique within the past 12 months.

[3-14-73, 5-31-95, 9-30-96; 16.5.21.10 NMAC - Rn, 16 NMAC 5.21.10, 12-30-02; A, 04-16-08; A, 09-18-10]

16.5.21.11 RE-EXAMINATION

PROCEDURE: An applicant who does not obtain a passing score on the jurisprudence exam must submit the re-examination fee as defined in [section 8.4 of Part 18] Subsection D of 16.5.18.8 NMAC to re-take the exam.

[9-30-96; 16.5.21.11 NMAC - Rn, 16 NMAC 5.21.11, 12-30-02; A, 09-18-10]

16.5.21.14 R E - I S S U E

PROCEDURES: To remain eligible for temporary licensure; temporary license holders who are eligible for reissue per [paragraph 16.5.21.8A.2 and B of this section will be sent a renewal application prior to the expiration date of their temporary license.] Paragraph (2) of Subsection A and Subsection B of 16.5.21.8 NMAC must contact the board office three months prior to the expiration date to begin the re-issue process. All requirements regarding re-issue are the same as the initial application as defined in 16.5.21.8 NMAC. The application, fee and proof of 15 hours of continuing education must be post-marked on or before the expiration date.

[16.5.21.14 NMAC - N, 12-30-02; A, 09-18-10]

16.5.21.15 CONVERSION OF TEMPORARY LICENSE TO LICENSE BY CREDENTIALS OR EXAMINATION: Temporary licenses

may be renewed once for a 12 month time period. After that renewal the license is no longer eligible for re-issue. If ~~uninterrupted~~ uninterrupted practice of dental hygiene in New Mexico is desired after two (2) years, then a temporary licensee must convert to a dental hygiene license by credentials or examination. Only temporary licenses previously issued for 12 months are eligible for conversion to a permanent license by credential or examination.

A. Following the completion of the requirements for licensure, some of which were submitted with the temporary application, the ~~[applicant]~~ applicant will complete an application for licensure by credentials.

B. Any additional licenses acquired during the time practicing under a temporary license must be reported on the application for licensure by credentials or examination.

C. Any actions taken against the applicant's license in any other jurisdiction while licensed in New Mexico under a temporary license must be reported on the application for license by credentials or examination.

D. Upon receipt of a complete application a committee member shall approve a New Mexico license by credential or examination unless there is any action pending against the temporary license. Then at the discretion of the committee or ~~[it's]~~ its agent, the temporary license may be extended until pending action is settled. If action is taken against the temporary license, conversion to a license by credentials or examination will be halted and the temporary license will no longer be renewed. [16.5.21.15 NMAC - N, 12-30-02; A, 09-18-10]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.28 NMAC Sections 9 and 10, effective 09-18-10.

16.5.28.9 CERTIFICATION BY EXAMINATION: Applicants for certification in local anesthesia by exam must possess the following qualifications and submit the required fees and documentation, along with a completed application.

A. Qualifications:

(1) a current active license in good standing to practice dental hygiene in New Mexico;

(2) successful completion of an approved educational program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training given in an accredited dental hygiene program; and

(3) successfully pass a written and clinical local anesthesia examination

administered by WREB; the results of the WREB exam are valid in New Mexico for a period not to exceed five years.

B. Documentation:

(1) copy of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association or the American red cross; cannot be a self-study course;

(2) transcript from an accredited dental hygiene program documenting successful completion of an approved educational program in local anesthesia; and

(3) certificate or score card from WREB indicating successful completion and date of local anesthesia exam.

[3/14/73, 4/10/81, 5/31/95, 12/15/97; 16.5.28.9 NMAC - Rn, 16 NMAC 5.28.9, 04/17/06; A, 04/16/08; A, 07/17/08; A, 09/18/10]

16.5.28.10 CERTIFICATION BY CREDENTIALS: Applicants for certification in local anesthesia by credentials must possess the following qualifications and submit the required fees and documentation, along with a completed application.

A. Qualifications:

(1) a current active license in good standing to practice dental hygiene in New Mexico;

(2) successful completion of educational coursework in local anesthesia; and

(3) administration of local anesthesia in the practice of dental hygiene for at least three of the past five years.

B. Documentation:

(1) copy of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association or the American red cross; cannot be a self-study course;

(2) proof of successful completion of educational coursework in local anesthesia;

(3) proof of certification by examination to practice local anesthesia in another state;

(4) a letter of verification from each jurisdiction where the applicant holds a certificate for administering local anesthesia, sent directly from the board in each jurisdiction, describing any disciplinary action taken against the applicant; and

(5) proof of administration of local anesthesia while engaged in the practice of dental hygiene in at least three of the past five consecutive years; proof may be by notarized letters from employers, supervisors of dental clinics of the uniformed services of the United States, or faculty administrators of schools of dental hygiene or dentistry.

[3/16/94, 5/31/95, 12/15/97; 16.5.28.10 NMAC - Rn, 16 NMAC 5.28.10, 04/17/06;

A, 04/16/08; A, 07/17/08; A, 09/18/10]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.6 NMAC, Section 11, effective 8-31-2010.

19.31.6.11 F A L C O N R Y SEASONS:

A. Species that can be taken, open areas, and hunting seasons: 2010-2011 season, all dates are 2010 unless otherwise specified:

(1) The season for dove shall be statewide and shall be open September 1 through November 12 and November 28 through December 31.

(2) The season for band-tailed pigeon shall be September 1 through December 16 for the regular hunting area and October 1 through January 15, 2011 for the southwest hunting area. A free permit is required.

(3) The season for sandhill crane shall be in the eastern New Mexico sandhill crane hunt area and shall be open from October 17 through January 31, 2011. A free permit is required.

(4) The season for sandhill crane in the Estancia valley shall be October 30 through December 28. A special season permit is required.

(5) Duck: Central flyway seasons shall be open in the North zone - September 18-26, October 2-3, and October 9 through January 12, 2011; South zone - September 18-26, October 16-17, and October 27 through January 30, 2011. Pacific flyway seasons shall be as follows: October 2-3, and October 18 through January 30, 2011.

(6) Light goose: Central flyway seasons shall be open October 17 through January 31, 2011. Pacific flyway season shall be north zone - September 25 through October 10, and November 1 through January 30, 2011; south zone - October [47] 16 through January 30, 2011.

(7) Dark goose: Central flyway seasons shall be open October 17 through January 31, 2011. Pacific flyway season shall be north zone - September 25 through October 10, and November 1 through January 30, 2011; south zone - October [47] 16 through January 30, 2011.

(8) Common snipe: Central and Pacific flyways seasons shall be: October 16 through January 30, 2011.

(9) Common moorhen: Central flyway season shall be: October 2 through January 16, 2011. Pacific flyway season shall be: [October 16] October 2-3, and October 18 through January 30, 2011.

(10) Sora and Virginia rails:

Central and Pacific flyways seasons shall be: September 18 through January 2, 2011.

B. Daily bag limits: shall be three birds (singly or in the aggregate) and possession limits shall be six birds (singly or in the aggregate) as established herein.

(1) There is no daily bag or possession limit on Eurasian-collared dove.

(2) Season limit for sandhill crane in the Estancia valley shall be 9 birds.

[19.31.6.11 NMAC - Rp, 19.31.6.11 NMAC, 8-16-2010; A, 8-31-10]

NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.14 NMAC, Sections 8 and 13, effective August 31, 2010.

5.7.14.8 STUDENT ELIGIBILITY: To be eligible for a scholarship, a student must:

A. be a citizen of the United States;

B. at small universities, have either:

(1) a high school GPA of 3.5 or higher and an ACT score of 20 or higher, or SAT equivalent;

(2) a high school GPA of 3.0 or higher and an ACT score of 23 or higher, or SAT equivalent;

C. at large universities, have either:

(1) a high school GPA of 3.5 or higher and an ACT score of 23 or higher, or SAT equivalent;

(2) a high school GPA of 3.0 and an ACT score of 26 or higher, or SAT equivalent;

D. as an undergraduate transfer student, meet the requirements stated in Subsections B or C of 5.7.14.8 NMAC, or have a transfer college GPA of 3.50 or higher;

E. be required to sign a statement of declaration of residency;

F. be enrolled or accepted for enrollment as a full-time undergraduate student;

G. or, a non-citizen of the United States: under this provision, participating institutions must submit a proposal for ensuring that non-citizens meet merit requirements for eligibility that are comparable to those required of United States citizens under this program; only after said proposal is reviewed and approved by the commission can participating institutions allow foreign nationals that are undergraduate and graduate students to participate in the program[;]

~~H. in no case shall competitive scholarship awards to foreign nationals exceed ten percent of total number~~

~~of scholarships authorized in Subsection A of 5.7.14.13 NMAC].~~

[9/30/98; 5.7.14.8 NMAC - Rn, 5 NMAC 7.14.8, 8/30/2007; A, 8/31/2010]

5.7.14.13 ADMINISTRATION OF COMPETITIVE SCHOLARSHIPS:

A. The number of competitive scholarships granted by any small university cannot exceed 6 percent of their previous year's full-time equivalent enrollment (FTE). ~~[The number of competitive scholarships granted by any large university cannot exceed 2.5 percent of their previous year's FTE enrollment. The total number of participants in both small and large universities may never exceed 6 percent of the previous year's FTE enrollment for the small universities and 2.5 percent of the previous year's FTE enrollment for the larger universities.]~~

B. The higher education department is the authorizing agency and shall maintain the necessary records to assure that all program requirements are being met.

C. Each institution will have the responsibility to assure that all program requirements are being met.

[9/30/98; 5.7.14.13 NMAC - Rn & A, 5 NMAC 7.14.13, 8/30/2007; A, 8/31/2010]

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

16.22.9 NMAC, Continuing Professional Education Requirements, filed October 16, 2006 is repealed and replaced by 16.22.9 NMAC, Continuing Professional Education Requirements, effective September 16, 2010.

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 22 PSYCHOLOGISTS AND PSYCHOLOGIST ASSOCIATES PART 9 CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

16.22.9.1 ISSUING AGENCY: Regulation and Licensing Department, State Board of Psychologist Examiners

[16.22.9.1 NMAC - Rp, 16.22.9.1 NMAC, 09/16/10]

16.22.9.2 SCOPE: The provisions of Part 9 apply to psychologists and psychologist associates licensed to

practice in New Mexico.

[16.22.9.2 NMAC - Rp, 16.22.9.2 NMAC, 09/16/10]

16.22.9.3 STATUTORY AUTHORITY: This part is adopted pursuant to the Professional Psychologist Examiners Act, Section 61-9-6, 61-9-7.

[16.22.9.3 NMAC - Rp, 16.22.9.3 NMAC, 09/16/10]

16.22.9.4 DURATION: Permanent.

[16.22.9.4 NMAC - Rp, 16.22.9.4 NMAC, 09/16/10]

16.22.9.5 EFFECTIVE DATE: September 16, 2010, unless a later date is cited at the end of a section.

[16.22.9.5 NMAC - Rp, 16.22.9.5 NMAC, 09/16/10]

16.22.9.6 OBJECTIVE: This part establishes criteria for continuing professional education for psychologists and psychologist associates licensed in New Mexico.

[16.22.9.6 NMAC - Rp, 16.22.9.6 NMAC, 09/16/10]

16.22.9.7 DEFINITIONS: [RESERVED]

[Refer to 16.22.1.7 NMAC]

16.22.9.8 REQUIRED HOURS: CULTURAL COMPETENCE

A. Purpose. The purpose of CPE requirements for psychologists is to ensure that licensees update and advance their skills such that the public shall benefit from the most current and effective standards of professional practice. To further the goal of public benefit, all psychologists are encouraged to fulfill a portion of their continuing professional education requirements in the areas of ethics, professional conduct, and treatment and evaluation of culturally diverse populations.

B. Required hours. The board requires forty (40) hours of CPE for licensed psychologists and psychologist associates during every two (2) years. Credits in category I may be used to fulfill requirements in categories II and III. Credits in category II may be used to fulfill requirements in category III. The board may reject any credit applied for continuing education by a licensee if the licensee has either failed to demonstrate the validity of the continuing education experience to the standards of the board or falsified any information provided to the board regarding the continuing education credit sought. The required hours shall be as follows:

(1) Category I: a minimum of ten (10) hours and a maximum of forty (40) hours;

(2) Category II: a maximum of twenty-five (25) hours;

(3) Category III: a maximum of fifteen (15) hours;

(4) Category IV: a minimum of four (4) hours;

(5) Category V: a minimum of five (5) hours;

(6) it is acceptable for psychologists to obtain different combinations of hours in each category, even to the exclusion of categories II or III, provided that minimum and maximum requirements for the categories are met.

C. Cultural competence.

Shall include attention to cultural diversity, as specifically noted in the title, description of objectives, or curriculum of the presentation, symposium, workshop, seminar, or course. The topic of the presentation, symposium, workshop, seminar, or course need not be on cultural competence; however one of the objectives or the description of topics covered must clearly indicate attention to cultural competence, as deemed satisfactory to the board.

(1) Newly licensed psychologists and psychologist associates with restricted and unrestricted licenses shall complete eight (8) CPE credit hours of cultural competence coursework promulgated by the board one year from the date the license was issued specific to New Mexico cultural diversity.

(2) Psychologists and psychologist associates with restricted and unrestricted licenses shall complete four (4) CPE credit hours of clinical diversity coursework related to population served biennially at the time of license renewal.

[16.22.9.8 NMAC - Rp, 16.22.9.9 NMAC, 09/16/10]

16.22.9.9 CPE PROGRAM CATEGORIES

A. Category I shall consist of the following types of programs:

(1) Formally organized workshops, seminars, grand rounds or classes which maintain an attendance roster and are approved by or under the auspices of an accredited institution of higher education offering graduate instruction.

(2) Workshops, seminars, or classes which maintain an attendance roster and are certified or recognized by a national or international accrediting organization, including:

(a) the American psychological association;

(b) the American psychiatric association;

(c) the American medical association;

(d) the American association for marriage and family therapy;

(e) the American counseling association;

(f) the international congress of psychology;

(g) the national association of social workers;

(h) the New Mexico psychological association;

(i) the national association of school psychologists; or

(j) the New Mexico state board of psychologist examiners.

(3) Formal college or university-level courses relevant to professional psychological activities, including but not limited to neuropsychology, forensic psychology, development, language skills, statistics, and cultural competence, as deemed satisfactory to the board, in mental health services, will be granted five (5) CPE credit hours for a one-semester credit course and ten (10) CPE credit hours for a three-semester credit course.

(4) Participation in the board will be granted hour-for-hour CPE credit up to twenty (20) hours.

B. Category II shall consist of the following types of programs:

(1) Non-supervised independent study or home study programs conducted by accrediting agencies listed in Paragraph (2) of Subsection A of 16.22.9.9 NMSA will be granted hour-for-hour CPE credit.

(2) Symposia or presentations (except for poster sessions) at annual conventions of national or regional professional organizations in psychology (for example, American psychological association, and Rocky Mountain psychological association) or a closely related discipline may be claimed for CPE credit. Four (4) hours may be claimed for the first time each scientific or professional presentation was made.

(3) Publications related to the practice of psychology: CPE hours may be claimed for each publication of an article in a professional journal or book chapter authored by the licensee according to author listing:

(a) eight (8) hours for the first author;

(b) six (6) hours for the second author;

(c) four (4) hours for the third author; and

(d) two (2) hours for any subsequent author.

(4) Books related to the practice of psychology: An authored book may be claimed for fifteen (15) hours. Editorships cannot be considered for CPE credit.

(5) A presenter providing continuing education in psychology or in a related field in this or another state may claim hour per hour credit up to eight (8) CPE credit hours per year for the first time the presentation is made. The presentation must be approved by one of the nine organizations

listed in Paragraph (2) of Subsection A of 16.22.9.9 NMAC.

C. Category III shall consist of the following types of programs:

(1) Attendance at symposia or presentations (except for poster sessions) at annual conventions of national or regional professional organizations in psychology (for example, American psychological association, Rocky Mountain psychological association) or a closely related discipline for which the licensee documents attendance, title of symposia and presentations, and presenters shall be granted hour-for-hour CPE credit.

(2) Participation in the New Mexico psychological association executive board, or formal offices or committees established by the board, the New Mexico psychological association, the American psychological association, or other professional organizations, if the tasks are clearly related to issues of ethics, professional standards, or practice-related skills shall be granted CPE credit of one (1) hour for every three (3) hours of participation. The licensee must document dates of participation and number of hours of each participation.

D. Category IV shall consist of the following types of programs: A course containing attention to cultural diversity, as specifically noted in the title, description of objectives, or curriculum of the presentation, symposium, workshop, seminar, or course. The topic of the presentation, symposium, workshop, seminar, or course need not be on cultural competence; however one of the objectives or the description of topics covered must clearly indicate attention to cultural competence, as deemed satisfactory to the board.

E. Category V shall consist of the following types of programs: A course containing attention to the ethics of practice related to psychology. The topic of the presentation, symposium, workshop, seminar, or course need be on ethics and the objectives or the description of topics covered must clearly indicate attention to ethics, as deemed satisfactory to the board.

[16.22.9.9 NMAC - Rp, 16.22.9.8 NMAC, 09/16/10]

16.22.9.10 CARRY-OVER HOURS; EXEMPTIONS; TIME EXTENSIONS

A. Carry-over hours. No hours shall be carried over from one compliance-reporting period to another compliance reporting period.

B. Exemptions and extensions of time.

(1) Licenses on retirement or inactive status as provided in Part 10 are not exempt from CPE requirements of this Part 9.

(2) Extensions of time for

completing and reporting CPE requirements shall be granted for good cause only upon a written request filed with the board by the licensee prior to the date for compliance. Unless extenuating circumstances beyond the control of the licensee cause extraordinary hardship, the extension of time for completing and reporting CPE requirements shall not exceed one (1) year. The board may grant one extension of time of up to sixty (60) calendar days for filing a request for the extension of time upon a finding of good cause
[16.22.9.10 NMAC - Rp, 16.22.9.10 NMAC, 09/16/10]

16.22.9.11 COMPLIANCE: FAILURE TO COMPLY AND LICENSE RENEWAL

A. Compliance reporting requirements. Every two (2) years during the designated annual renewal period, each licensee shall submit an attestation that he has completed the CPE requirements. The board reserves the right to audit any licensee to submit evidence or documentation of the CPE credits (e.g. course or program certificate of training, transcript, course or workshop brochures or published descriptions, copies of registration forms, payment invoices or receipts, specific evidence of attendance, etc.). Therefore, it is the responsibility of each licensee to establish and maintain detailed records of CPE compliance for two (2) years after the reporting period. The board shall not allow continuing education credit for personal psychotherapy, workshops for personal growth, the provision of paid or volunteer services to professional associations other than APA or statewide associations of licensed psychologists in New Mexico, foreign language courses, computer training, office management, or practice building.

B. Failure to comply. Failure to complete or report continuing professional education requirements as provided in this part is grounds for withholding renewal of a license or for suspension or revocation of a license as provided in the act. Fraud or deception in reporting CPE credit is a separate violation of the code and is grounds for withholding renewal of a license or for suspension or revocation of a license as provided in the act. [16.22.9.11 NMAC - Rp, 16.22.9.11 NMAC, 09/16/10]

HISTORY OF 16.22.9 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

SBPE 9*, Renewal of Certificate filed 11/15/79.

Rule 12, Renewal of Certificate filed 11/1/83.

Rule 12, Renewal of Certificate filed 3/19/84.

Rule 12, Renewal of Certificate filed 4/19/85.
Rule 12, Renewal of Certificate filed 2/9/87.
NMBPE Rule 8 Renewal of License filed 12/28/89.

NMBPE Rule 8, Renewal of License filed 8/28/90.

Rule No. 8, Renewal of License filed 4/24/95.

History of Repealed Material:

16 NMAC 22.5, Licensure Renewal, filed 11/14/97 - Repealed effective 4/16/2000

16.22.9 NMAC, Continuing Professional Education Requirements, filed 3/17/2000 - Repealed effective 11/15/2006

16.22.9 NMAC, Continuing Professional Education Requirements, filed 10-16-2006 - Repealed effective 9/16/2010

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

This is an amendment to 16.22.1 NMAC, Section 7, effective September 16, 2010.

16.22.1.7 DEFINITIONS:

A. As used in these regulations, the following words and phrases have the following meanings, unless the context or intent clearly indicates a different meaning:

(1) "Act" means the Professional Psychologist Act, Section 61-9-1 through 61-9-19 NMSA 1978.

(2) "Administrator" or "board administrator" means the staff person assigned certain express or implied executive and administrative functions of the board as defined by board regulations or as required to carry out the provisions of the act.

(3) "Adult" means all persons 18 years of age or older.

(4) "Applicant" means a person who has completed all educational requirements of the eligibility requirements for licensure and has submitted a complete application to the board. An applicant is seeking approval of his or her application by the board to advance him or her to candidacy for licensure.

(5) "Board" means the New Mexico state board of psychologist examiners.

(6) "Board administrator" or "administrator" means the staff person assigned certain express or implied executive and administrative functions of the board as defined by board regulations or as required to carry out the provisions of the act.

(7) "Board certified psychiatrist" means a physician licensed in New Mexico who has been certified by the American board of psychiatry and neurology in the specialty of psychiatry or the subspecialty of

child and adolescent psychiatry.

(8) "Board regulations" or "regulations" means any part adopted by the board pursuant to authority under the act and includes any superseding regulation.

(9) "Candidate" is an applicant whose application has been approved by the board and is eligible to take the online jurisprudence examination.

(10) "Children/adolescents" mean all persons through 17 years of age (children 2-12 years; adolescents 13-17 years).

(11) "Client" means a person, corporate entity, patient or organization that is a recipient of psychological services. A corporate entity or other organization is a client when the purpose of the professional contract is to provide services of benefit primarily to the organization rather than to the individuals. In the case of individuals with legal guardians, including minors and legally incompetent adults, the legal guardian shall be the client for decision-making purposes, except that the individual receiving services shall be the client for:

(a) issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitative dual relationships; and

(b) issues specifically reserved to the individual, and agreed to by the guardian prior to rendering of services, such as confidential communication in a therapy relationship;

(c) all matters specifically designated to individuals in the Mental Health Code and Children's Code, NMSA 1978.

(12) "Collaborative relationship" means a cooperative working relationship between a conditional prescribing or prescribing psychologist and a health care practitioner in the provision of patient care, including cooperation in the management and delivery of physical and mental health care, to ensure optimal patient care.

(13) "Confidential information" means information revealed by a patient or clients or otherwise obtained by a psychologist, as a result of a confidential relationship where there is reasonable expectation that the information is not to be disclosed by the psychologist without the informed written consent of the patient or client in accordance with the Public Health Act, Section 24-1-20 NMSA 1978. A confidential relationship, as used here, results from:

(a) the relationship between the patient(s) or client(s) and the psychologist, or

(b) the circumstances under which the information was revealed or obtained; when such information is revealed or obtained through the psychologist's interaction with an individual from within a client corporation or organization, and that

interaction is the result of the professional contract between the psychologist and the client, the confidential relationship is between the psychologist and the client, not between the psychologist and an individual within the organization; in this instance, information obtained by the psychologist from the individual shall be available to the organization unless such information was obtained in a separate professional relationship with that individual and is therefore subject to confidentiality requirements in itself.

(14) "Conditional prescribing psychologist" means a licensed psychologist who holds a valid conditional prescription certificate.

(15) "Conditional prescription certificate" means a document issued by the board to a licensed psychologist that permits the holder to prescribe psychotropic medication under the supervision of a licensed physician pursuant to the act.

(16) "Conflict of interest" means any situation or relationship that compromises or impairs, or appears to compromise or impair, the neutrality, independence or objectivity of a psychologist, psychologist associate, supervising physician, or board member, including relationships or situations that arise from past or present familial, social, fiduciary, business, financial, health care provider-patient relationship, agency, or other personal relationship. Paying or receiving an appropriate fee for supervisory services is not a conflict of interest. Conflict of interest includes dual relationships as provided herein at 16.22.2.9 NMAC. If a conflict of interest or dual relationship arises during the performance of the professional duties of a psychologist, psychologist associate, supervising physician, or board member, he shall immediately report the conflict of interest or dual relationship to the board and shall cease that professional relationship.

(17) "Consultant" means a licensed psychologist who provides professional advice or opinion to another licensed psychologist and who has no professional relationship with the patient or client, has no authority over the case, or has no responsibility for the services performed for the patient or client or the welfare of the patient or client.

~~[(18) "Continuing professional education" means educational opportunities beyond doctoral education and initial entry level training as a psychologist or psychologist associate for which hourly credit is earned to:~~

~~(a) enable maintenance of competence, including cultural competence, by applicants and licensees;~~

~~(b) become aware of new developments; and~~

~~(c) provide responsible, quality~~

~~services.]~~

~~(18) "Continuing professional education" means educational opportunities beyond doctoral education and initial entry level training as a psychologist or psychologist associate for which hourly credit is earned. It is the process through which professional licensees review psychological concepts and techniques, acquire new knowledge or skills relevant to their work, and improve their competence in current skills. These activities are intended to supplement what has already been attained in training and practice. It is an ongoing process consisting of formal learning activities at the postgraduate level that are:~~

~~(a) relevant to psychological practice, education, and science;~~

~~(b) enable psychologists to keep pace with emerging issues and technologies; and~~

~~(c) allow psychologists to maintain, develop and increase competencies in order to improve services to the public and enhance contributions to the profession.~~

(19) "Controlled substance" means any drug, substance or immediate precursor enumerated in schedules I through V of the U.S. Drug Enforcement Administration, Controlled Substance Act and in Sections 30-31-6 thru 30-31-10 of the act.

(20) "Court order" means the written communication of a member of the judiciary, or other court magistrate or administrator, if such authority has been lawfully delegated to such magistrate or administrator that is under the authority of law.

(21) "Criminal Offender Employment Act", Sections 28-2-1 thru 28-2-6 NMSA 1978 is the statutory provision regulating the relevance and weight to be given an applicant, candidate, or licensee's criminal record, by the board, during the licensure or renewal process.

(22) "Cultural competence" means the ability and the will to respond to the unique needs of an individual patient that arise from the patient's culture, and the ability to use aspects of the person's culture as a resource or tool to assist with the intervention. Cultural competence includes being able to:

(a) recognize and respond to health related beliefs and cultural values;

(b) incorporate research about disease incidence and prevalence, and treatment efficacy; and

(c) know when to seek consultation about the patient's culture.

(23) "Currently enrolled" means enrolled as a student in a college or university.

(24) "Custodian" means the board administrator.

(25) "Doctoral program in

psychology" includes programs whose degree specify a doctoral degree in counseling, clinical or school psychology, as well as those programs the board deems to be equivalent to the requirements contained in the Professional Psychologist Act, using the standards and guidelines set forth by the APA or the ASPPB as a guide.

(26) "Drug or substance" means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any respective supplement to those publications. It does not include devices or their components, parts or accessories.

(27) "Electronic transmission" means the sending of information through the telephone lines, cable or internet, as in e-mail or facsimile (fax).

(28) "Ethno-pharmacology" means the basic and clinical sciences of treatment of specific mental illness with ethnically or culturally appropriate drugs.

(29) "Filed with the board" means hand delivered or postal mail received during normal business hours by the board office in Santa Fe, New Mexico.

(30) "Geriatric" means all persons 65 years of age and over.

(31) "Good cause" means the inability to comply because of illness, undue hardship, or extenuating circumstances that are not willful and are beyond the control of the person asserting good cause. The person asserting good cause shall have the burden to demonstrate good cause.

(32) "Governmental Conduct Act" 10-16-1 thru 10-16-18 NMSA 1978 is the statutory provision which sets forth standards of conduct and ethical principles for public service.

(33) "Health care practitioner" means a licensed physician, osteopathic physician or nurse practitioner with independent, licensed prescribing privilege.

(34) "Inactive status" means a procedure of the board to affirm that a licensee is not engaged in active practice.

(35) "Initial application" means the initial application for licensure filed with the board by an applicant not previously or currently licensed in any jurisdiction.

(36) "Inspection of Public Records Act", 14-2-1 thru 14-2-12 NMSA 1978 is the statutory provision acknowledging the fundamental right of access to public records afforded citizens and media in a democracy, and governing the administration of that right.

(37) "Licensed" means licensed or certified, registered, or any other term including temporary, provisional, emergency, unrestricted, active or inactive license or licensure, when such term identifies a person whose professional behavior is subject to regulation by the board by authority of the

act.

(38) "Licensee" means a psychologist licensed pursuant to the provisions of the act and board regulations.

(39) "Licensee in good standing" means a licensed psychologist who is not the subject of a pending investigation, adjudicatory proceeding, or petition on appeal or review, or whose license is not restricted, suspended, or revoked in New Mexico or any other state or licensing jurisdiction.

(40) "Medical supervision" means direct oversight of the psychologist trainee's psychopharmacological practice by a qualified supervising physician approved by the board. Supervision may be on-site or off-site as specified in the rule.

(41) "Medical supervisor" means a qualified supervising physician approved by the board.

(42) "Member of the family" means a parent, spouse, child, stepchild, grandchild, grandparent, sibling, uncle, aunt, niece or nephew, or other relative by blood, marriage, or legal process with whom the supervisor or physician supervisor has or has had a close familial relationship.

(43) "Member of the household" means residing within the same dwelling unit, either continuously or intermittently, regardless of whether fee or rent is paid or received.

(44) "National certification exam" means an examination that evaluates the psychopharmacological knowledge base of the applicant, is developed with the intention to administer it to psychologists seeking certificates or licenses to prescribe psychotropic medication in any state with prescriptive authority for psychologists, and meets standards acceptable to the board and the medical board.

(45) "Nationwide criminal history record" means information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information in other states."

(46) "Nationwide criminal history screening" means a criminal history background investigation of an applicant for licensure by examination or endorsement through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant."

[(45)] (47) "New Mexico administrative code" or "NMAC", Section 14-4-7.2 NMSA 1978 is the official compilation of current rules filed by state agencies in accordance with New Mexico statutes.

[(46)] (48) "New Mexico statutes annotated 1978 or NMSA 1978" is the official compilation of state laws.

[(47)] (49) "Non-licensed person" means a student, an applicant or postdoctoral person working under supervision in order to satisfy licensure requirements in psychology, and employees or staff of a licensed psychologist

[(48)] (50) "Open Meetings Act", 10-15 NMSA 1978 is the statutory provision requiring that public business be conducted in full public view; providing guidelines governing both public and closed meetings, and regulating the notice, agenda and minutes of such meetings.

[(49)] (51) "Outdated test" means a test for which a revision has been available for three (3) or more years.

[(50)] (52) "Out-of-state psychologist" means a psychologist licensed in another state, a territorial possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, the U.S. Virgin Islands, or a Canadian province who is in good standing in his or her licensing jurisdiction(s).

[(51)] (53) "Patient" means a person who is treated, examined, assessed, or interviewed by a licensed psychologist or licensed psychologist associate or a non-licensed person working under supervision as provided in these regulations. In the case of minor patients or adult patients who are legally incompetent, the legal guardian shall represent the patient for decision-making purposes, except that the patient shall be directly consulted by the psychologist or psychologist associate for:

(a) issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitative dual relationships;

(b) issues specifically reserved to the individual, and agreed to by the guardian prior to rendering of services, such as confidential communication in a therapy relationship, and

(c) all matters specifically designated to individuals in the Mental Health and Developmental Disabilities Code (MHDDC), Section 43-1-19 NMSA 1978, and the Children's Code, Section 32A-1-1 thru 32A-1-20 NMSA 1978.

[(52)] (54) "Physician" means an allopathic or osteopathic physician.

[(53)] (55) "Practice of psychology" means the observation, description, evaluation, interpretation and modification of human behavior by the application of psychological principles,

methods and procedures for the purpose of preventing or eliminating symptomatic, maladaptive or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health and mental health, and further means the rendering of such psychological services to individuals, families or groups, regardless of whether payment is received for services rendered. The practice of psychology includes psychological testing or neuropsychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, psychopharmacotherapy, hypnosis, biofeedback, behavior analysis and therapy; diagnosis and treatment of any mental and emotional disorder or disability, alcoholism and substance abuse, disorders of habit or conduct and the psychological aspects of physical illness, accident, injury and disability, and psycho-educational evaluation, therapy, remediation and consultation.

[(54)] (56) "Practicum" means a period of supervised clinical training and practice in which specific scientific and clinical techniques and diagnoses are learned.

[(55)] (57) "Prescribing applicant" means a licensed psychologist who has made application to the board for a conditional prescribing or prescribing certificate.

[(56)] (58) "Prescribing psychologist" means a licensed psychologist who holds a valid prescription certificate.

[(57)] (59) "Prescription" means an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, and bearing the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue. No person other than a practitioner shall prescribe or write a prescription.

[(58)] (60) "Prescription certificate" means a document issued by the board to a licensed psychologist that permits the holder to prescribe psychotropic medication pursuant to the act.

[(59)] (61) "Primary treating health care practitioner" means the health care practitioner who is directly responsible for treating a specific illness or condition of a patient. The primary treating health care practitioner may be a primary care practitioner, or may be a medical specialist.

[(60)] (62) "Professional relationship" means a mutually agreed-upon relationship between a psychologist and a patient(s) or client(s) for the purpose

of the patient(s) or client(s) obtaining the psychologist's professional services.

[(64)] (63) "Professional service" means all actions of the psychologist in the context of a professional relationship with a client or patient.

[(62)] (64) "Properly made application" means a completed form for a psychologist or psychologist associate license filed with the board that is complete in all particulars and appears on its face to satisfy all minimum age, educational, supervision, payment, and other requirements except examination requirements for licensure as required by the act and these regulations.

[(63)] (65) "Psychologist" means a person who engages in the practice of psychology or holds himself or herself out to the public by any title or description of services representing himself or herself as a psychologist, which incorporates the words "psychological", "psychologist", "psychology", or when a person describes himself or herself as above and, under such title or description offers to render or renders services involving the application of principles, methods and procedures of the science and profession of psychology to persons for compensation or other personal gain.

[(64)] (66) "Psychopharmacology" [aka RxP] means the basic and clinical science of drugs used to treat mental illnesses.

[(65)] (67) "Psychopharmacotherapy" means the application of pharmacotherapeutics to psychological problems. A key principle is the assessment of a patient's history that helps establish the appropriate role of drug therapy. Essential steps include evaluation, physical assessment, recognizing the disorder, adequate understanding of efficacy safety, pharmaco-kinetics, pharmaco-dynamics and application in the clinical setting.

[(66)] (68) "Psychotropic medication" means a controlled substance or dangerous drug that may not be dispensed or administered without a prescription, whose indication for use has been approved by the federal food and drug administration for the treatment of mental disorders and is listed as a psychotherapeutic agent in drug facts and comparisons or in the American hospital formulary service.

[(67)] (69) "Public Health Act", 24-1-1 thru 24-1-30 NMSA 1978, governs the confidentiality of patient or client record.

[(68)] (70) "Restricted license" means a psychologist who holds a temporary, provisional, emergency or inactive license.

[(69)] (71) "Rule" means board regulations.

[(70)] (72) "Socio-cultural" means aspects of mental illness related to social and cultural mores and traditions of varied social

and cultural groups.

[(71)] (73) "School" means a college or a university or other institution of higher education that is regionally accredited and that offers a full-time graduate course of study in psychology as defined by rule of the board or that is approved the American psychological association.

[(72)] (74) "Sponsoring psychologist" means a licensed psychologist in New Mexico who agrees to provide adequate oversight of an out-of-state psychologist ordered by a court to perform an independent examination; the sponsoring psychologist remains responsible for the professional conduct of the out-of-state psychologist and the welfare of the patient or client.

[(73)] (75) "State Rules Act", Sections 14-4-1 thru 14-4-5 NMSA 1978, is the statutory provision that ensures that state agencies file with the state records center and archives all rules and regulations including amendments or repeals.

[(74)] (76) "Statute" means a law that governs conduct within its scope. A bill passed by the legislature becomes a statute; and "statutory authority" means the boundaries of the board's lawful responsibility as laid out by the statute that created it.

[(75)] (77) "Substantial compliance" means sufficient compliance with the statutes or rules so as to carry out the intent for which the statutes or rules were adopted and in a manner that accomplishes the reasonable objectives of the statutes or rules.

[(76)] (78) "Supervisee" means any person who functions under the authority of a licensed psychologist to provide psychological services as provided in the act or board regulations.

[(77)] (79) "Supervisor" means a licensed psychologist who agrees to provide adequate supervision over a student, applicant, employee, staff, or other non-licensed person and who remains ultimately responsible for the professional conduct of the non-licensed person and the welfare of the patient.

[(78)] (80) "Supervisory plan" means a written document signed by an applicant for psychology license or a conditional prescribing certificate and the supervisor of the applicant that describes the nature of the supervisory relationship including but not limited to the number of hours of supervision, population served, and credentials of supervisor, and is presented to the board for approval.

[(79)] (81) "Uniform Licensing Act", Section 61-1-1 thru 61-1-33 NMSA 1978 is the statutory provision that governs the major duties of the board in areas of:

(a) procedures which must be followed to accord due process to applicants

for licensure and to licensees if the board takes action against the licensee for acts of misconduct that would adversely affect public health, safety and welfare, and

(b) rule making procedures that the board shall follow in adopting valid regulations affecting psychologists and psychologist associates.

[(80)] (82) "Unrestricted license" means a license in psychology with full privileges and responsibilities as described in these regulations but is renewed annually or biennially. It does not have a limitation of a provisional license, temporary license, emergency license or inactive license as described herein.

B. Definitions in Subsection B pertain to conditional prescribing and prescribing psychologists only.

(1) "Adults" mean all persons over 18 years of age through 65 years of age.

(2) "Board" means the New Mexico state board of psychologist examiners.

(3) "Children/adolescents" mean all persons through 18 years of age (children, 2-12 years; adolescents 12-18 years).

(4) "Collaborative relationship" means a cooperative working relationship between a conditional prescribing or prescribing psychologist and a health care practitioner in the provision of patient care, including cooperation in the management and delivery of physical and mental health care, to ensure optimal patient care.

(5) "Conditional prescribing psychologist" means a licensed psychologist who holds a valid conditional prescription certificate.

(6) "Conditional prescription certificate" means a document issued by the board to a licensed psychologist that permits the holder to prescribe psychotropic medication under the supervision of a licensed physician pursuant to the Professional Psychologist Act.

(7) "Conflict of interest" means past or present familial, social, fiduciary, business, financial, health care provider-patient relationship, agency, or other personal relationship that impairs or compromises or appears to impair or compromise the supervisor's neutrality, independence or objectivity. Paying or receiving an appropriate fee for supervisory services is not a conflict of interest. Conflict of interest includes dual relationship. If a conflict of interest or dual relationship arises during the supervision, the supervisor shall immediately report the conflict of interest or dual relationship to the board and shall cease supervision of the supervised psychologist.

(8) "Controlled substance" means any drug, substance or immediate precursor enumerated in schedules I through V of the Controlled Substance Act.

(9) "Drug" or "substance" means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any respective supplement to those publications. It does not include devices or their components, parts or accessories.

(10) "Ethno-pharmacology" means the basic and clinical sciences of treatment of specific mental illness with ethnically or culturally appropriate drugs.

(11) "Geriatric" means all persons over 65 years of age.

(12) "Health care practitioner" means a licensed physician, osteopathic physician or nurse practitioner with independent, licensed prescribing privilege.

(13) "Log" means a written record of patient examination and treatment that contains elements specified in the regulations and which is required as a basis for evaluation of the applicant for licensure.

(14) "Member of the family" means a parent, spouse, child, stepchild, grandchild, grandparent, sibling, uncle, aunt, niece or nephew, or other relative by blood, marriage, or legal process with whom the supervisor or physician supervisor has or has had a close familial relationship.

(15) "Member of the household" means residing within the same dwelling unit, either continuously or intermittently, regardless of whether fee or rent is paid or received.

(16) "National certification exam" means an examination that evaluates the psychopharmacological knowledge base of the applicant, is developed with the intention to administer it to psychologists seeking certificates or licenses to prescribe psychotropic medication in any state with prescriptive authority for psychologists, and meets standards acceptable to the board and the medical board.

(17) "Physician" means an allopathic or osteopathic physician.

(18) "Practice of psychology" means the observation, description, evaluation, interpretation and modification of human behavior by the application of psychological principles, methods and procedures for the purpose of preventing or eliminating symptomatic, maladaptive or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health and mental health, and further means the rendering of such psychological services to individuals, families or groups regardless of whether payment is received for services rendered. The practice of psychology includes psychological testing or neuropsychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes

and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, behavior analysis and therapy; diagnosis and treatment of any mental and emotional disorder or disability, alcoholism and substance abuse, disorders of habit or conduct and the psychological aspects of physical illness, accident, injury and disability; and psycho-educational evaluation, therapy, remediation and consultation.

(19) "Practicum" means a period of supervised clinical training and practice in which specific scientific and clinical techniques and diagnoses are learned.

(20) "Prescribing psychologist" means a licensed psychologist who holds a valid prescription certificate.

(21) "Prescription" means an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, and bearing the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue. No person other than a practitioner shall prescribe or write a prescription.

(22) "Prescription certificate" means a document issued by the board to a licensed psychologist that permits the holder to prescribe psychotropic medication pursuant to the Professional Psychologist Act.

(23) "Primary treating health care practitioner" means the health care practitioner who is directly responsible for treating a specific illness or condition of a patient. The primary treating health care practitioner may be a primary care practitioner, or may be a medical specialist.

(24) "Psychologist" means a person who engages in the practice of psychology or holds himself out to the public by any title or description of services representing himself as a psychologist, which incorporates the words "psychological", "psychologist", "psychology", or when a person describes himself as above and, under such title or description, offers to render or renders services involving the application of principles, methods and procedures of the science and profession of psychology to persons for compensation or other personal gain.

(25) "Psychopharmacology" means the basic and clinical sciences of drugs used to treat mental illnesses.

(26) "Psychopharmacotherapy" means the application of pharmacotherapeutics to psychological problems. A key principle is the assessment of a patient's history that helps establish the appropriate role of drug therapy. Essential steps include recognition of the disorder,

adequate understanding of efficacy safety, pharmaco-kinetics, pharmaco-dynamics and application in the clinical setting.

(27) "Psychotropic medication" means a controlled substance or dangerous drug that may not be dispensed or administered without a prescription, whose indication for use has been approved by the federal food and drug administration for the treatment of mental disorders and is listed as a psychotherapeutic agent in drug facts and comparisons or in the American hospital formulary service.

(28) "School" means a college or a university or other institution of higher education that is regionally accredited and that offers a full-time graduate course of study in psychology as defined by rule of the board or that is approved by the American psychological association.

(29) "Socio-cultural" means aspects of mental illness related to social and cultural mores and traditions of varied social and cultural groups.

(30) "Supervision" means direct oversight of the psychologist trainee's psychopharmacological practice by qualified supervising physician approved by the board. Supervision may be on or off site as specified in the rule.

(31) "Applicant" means a licensed psychologist who has made application to the board for a conditional prescribing or prescribing certificate.

(32) "Supervisor" means a qualified supervising physician approved by the board.

[16.22.1.7 NMAC - Rp, 16.22.1.7 NMAC, 11/15/06; A, 03/21/09; A, 09/16/10]

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

This is an amendment to 16.22.2 NMAC, Section 8, effective September 16, 2010.

16.22.2.8 RULES OF COMPETENCE

A. Limits on practice.

The psychologist shall limit practice and supervision to the areas of competence in which proficiency has been gained through education, training, and experience.

B. Maintaining competency. The psychologist shall maintain current competency in the areas in which he practices, through continuing professional education, consultation, and/or other procedures, in conformance with current standards of scientific and professional knowledge.

C. Psychologists with restricted and unrestricted licenses and psychologist associates shall complete eight (8) hours of cultural competence coursework

promulgated by the board during the first year of licensure; and also shall take [eight (8)] four (4) additional hours in cultural competence, as deemed satisfactory to the board, every [four (4)] two (2) years as detailed in 16.22.9 NMAC.

D. Adding new services and techniques. The psychologist, when developing competency in a service or technique that is either new to the psychologist or new to the profession, shall engage in ongoing consultation with other psychologists or relevant professionals, and shall seek appropriate education and training in the new area. The psychologist shall inform clients or patients of the innovative nature and the known risks and benefits associated with the services, so that the client or patient can exercise freedom of choice concerning such services.

E. Referral. The psychologist shall make or recommend referral to professional, technical, or administrative, or public resources when such referral is clearly in the best interest of the clients or patient(s).

F. Sufficient professional information. A psychologist shall not render a formal professional opinion about a person or diagnose or treat a person without direct and substantial professional contact and a formal assessment of that person.

G. Maintenance and retention of records.

(1) The psychologist rendering professional services to a client or patient shall maintain professional records that include:

- (a) the presenting problem(s) or the reason the client(s) or patient(s) sought the psychologist's services;
- (b) diagnosis and/or clinical formulation;
- (c) the fee arrangement;
- (d) the date and substance of each billed contact or service;
- (e) any test results or other evaluative results obtained and any basic test data from which they were derived;
- (f) notation and results of formal consultations with other providers;
- (g) a copy of all test or other evaluative reports prepared as part of the professional relationship;
- (h) the date of termination of services.

(2) The psychologist shall ensure that all data entries in the professional records are maintained for a period of not less than five (5) years after the last date that service was rendered. The psychologist shall comply with other legal requirements for record retention, even if longer periods of retention are required for other purposes.

(3) The psychologist shall store and dispose of written, electronic, and other records in a manner that protects

confidentiality.

(4) For each person professionally supervised, the psychologist shall maintain for a period of not less than five (5) years after the last date of supervision a record of the supervisory session that shall include, among other information, the type, place, and general content of the session.

(5) Upon request by the client, patient, or legal representative of the client or patient, the psychologist shall release records under his control, except as otherwise provided in these rules and regulations or state law. Lack of payment for services does not constitute grounds for refusing to release client or patient records.

H. Continuity of care. The psychologist shall make arrangements for another appropriate professional or professionals to deal with emergency needs of his clients, as appropriate, during periods of his foreseeable absences from professional availability.

[16.22.2.8 NMAC - Rp, 16.22.2.8 NMAC, 11/15/06; A, 09/16/10]

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

This is an amendment to 16.22.4 NMAC, Section 8, effective September 16, 2010.

16.22.4.8 EDUCATIONAL REQUIREMENTS

A. The board shall issue a license as a psychologist to an applicant, otherwise qualified, who furnishes evidence satisfactory to the board that the applicant is a graduate of a doctoral program that is designated as a doctoral program in psychology by [a ~~nationally recognized designation system~~] association of state and provincial psychology boards (ASPPB) or that is accredited by a nationally recognized accreditation body and hold a degree with a major in clinical, counseling or school psychology from a university offering a full-time course of study in psychology.

B. It is the responsibility of the prospective applicant to provide evidence, at the time of application that the program from which he or she graduated is in substantial compliance with the requirements of the Professional Psychology Act.

[16.22.4.8 NMAC - Rp, 16.22.4.8 NMAC, 11/15/06; A, 03/21/09; A, 09/16/10]

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

This is an amendment to 16.22.5 NMAC, Sections 8, 9, 12, 13 and 15, effective September 16, 2010.

16.22.5.8 APPLICATION; EXAMINATION; PROCESS

A. A non-refundable application fee set by the board is due at the time of each initial application. Additional fees may be charged and will be collected by the board, as necessary, for the administration of examinations.

B. The applicant may be considered for licensure if he fulfills conditions of 16.22.5.9, 16.22.5.10, 16.22.5.11, 16.22.5.12, 16.22.5.13, 16.22.5.14 or 16.22.5.15 NMAC.

C. NATIONWIDE CRIMINAL HISTORY SCREENING.

All applicants for initial licensure in any category in New Mexico are subject to a state and national criminal history screening at their expense. All applicants must submit two (2) full sets of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee at the time of application.

(1) Applications for licensure will not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.

(2) Applications will be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

(3) If the criminal background screening reveals a felony or a violation of the Psychologist Examiners Practice Act, the applicant/licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

[16.22.5.8 NMAC - Rp, 16.22.5.9 NMAC, 11/15/06; A, 09/16/10]

16.22.5.9 APPLICATIONS NOT PREVIOUSLY LICENSED IN ANY JURISDICTION

A. Initial application procedure. To open an initial application file, the applicant shall submit the following:

- (1) a completed and signed application;
- (2) verification of predoctoral internship and supervision as described in 16.22.5 NMAC;
- (3) the application fee as required by the board;

(4) official transcripts directly from the institution's office of the registrar;

(5) if the applicant chooses, a notarized letter from the graduate office of the degree-granting institution that documents the date of the doctoral degree; indicating (a) the date of completion of all requirements for the doctoral degree, and (b) the specific psychology program that the applicant completed;

(6) three (3) letters of reference; dated within the last two (2) years and two (2) of the letters must be from a licensed practicing psychologist familiar with their clinical work, and can attest to their competency and moral character;

(7) verification of postdoctoral supervision as described in 16.22.6 NMAC.

B. If the application is not complete, the applicant will be notified of all deficiencies within thirty (30) days of the board's receipt. The application process shall be completed within thirty (30) days of the receipt at the board office of all materials listed in Subsection A of 16.22.5.9 NMAC. The applicant must have all documents in the board office at least sixty (60) days prior to taking the examination for professional practice in psychology (EPPP).

C. Complete applications will be reviewed by the board and a notification of approval, denial or need for additional information will be issued to the applicant within thirty (30) days.

D. The written examination for licensure is the EPPP, developed by the association of state and provincial psychology boards (ASPPB) and administered by the professional examination service (PES). An applicant shall be eligible to take the EPPP three (3) times within the eighteen (18) months following the date the applicant was notified of the board's approval of their application.

(1) If the applicant does not pass the EPPP any of the three (3) times it is administered within eighteen (18) months, the applicant shall submit a new initial application.

(2) Upon the submission of the new application, the rules and regulations in effect at the time the new initial application is received will be used to determine whether an applicant meets the requirements for licensure.

E. The applicant shall take and pass an online jurisprudence examination after the board had received his EPPP score from the ASPPB reporting service, indicating that the applicant received a passing score pursuant to the act.

F. During the first year of licensure an applicant shall furnish evidence to the board that demonstrates an awareness and knowledge of New Mexico cultures.

G. When the applicant fulfills all the requirements of this section, a license will be issued. If postdoctoral

supervised experience is incomplete, the applicant will be issued an 18-month provisional license. This is not subject to renewal or extension. The applicant will be issued an unrestricted license when the applicant has met the postdoctoral supervised experience as defined in 16.22.6 NMAC.

H. The applicant may request an additional twelve (12) months to complete necessary supervisory hours in accordance with the act, but the applicant will be practicing under supervision and under the supervisor's license and can no longer hold a provisional license. This request will only be honored one (1) time. [16.22.5.9 NMAC - Rp, 16.22.5.10 NMAC, 11/15/06; A, 03/21/09; A, 09/16/10]

16.22.5.12 APPLICANTS LICENSED IN ANOTHER JURISDICTION WHO DO NOT QUALIFY UNDER SECTION 16.22.5.10, 16.22.5.11, 16.22.5.12, 16.22.5.13, 16.22.5.14 OR 16.22.5.15 NMAC

A. Application procedure. ~~[To open an application file, the applicant shall submit the following:]~~ An applicant seeking licensure under this section may obtain a license pursuant to Section 61-9-12 of the act if the applicant fulfills the following conditions:

(1) a completed and signed application;

(2) the application fee as required by the board;

(3) official doctoral degree transcripts sent directly from the institution's office of the registrar;

(4) if the applicant chooses, a notarized letter from the graduate office of the degree-granting institution that documents the date of the doctoral degree; the letter shall indicate (a) the date of completion of all requirements for the doctoral degree, and (b) the specific psychology program the applicant completed;

(5) license verification from all jurisdictions in which the applicant is or has been granted a psychologist license;

(6) three (3) letters of reference dated within the last two (2) years and two (2) of the letters must be from a licensed practicing psychologist familiar with their clinical work, and can attest to their competency and moral character;

(7) verification of predoctoral internship and supervision as defined in 16.22.6 NMAC;

(8) verification of postdoctoral supervised experience as defined in 16.22.6 NMAC; and

(9) verification of passing the EPPP as defined in 16.22.7.8 NMAC.

B. Upon approval by the board, an applicant must take and pass an online jurisprudence examination and during the first year of licensure furnish evidence to

the board that demonstrates an awareness and knowledge of New Mexico cultures.

[16.22.5.12 NMAC - Rp, 16.22.5.12 NMAC, 11/15/06; A, 03/21/09; A, 09/16/10]

16.22.5.13 APPLICANTS SEEKING A [SIX-MONTH] TEMPORARY LICENSE

A. A temporary six (6) month license may be issued to a psychologist who meets the following conditions:

(1) the applicant is licensed in another jurisdiction and in good standing, and the out-of-state- license meets current licensing criteria for New Mexico;

(2) the applicant qualifies under 16.22.5.10, 16.22.5.11, 16.22.5.12 or 16.22.5.15 NMAC of this part;

(3) the applicant completes a form provided by the board that includes required information and the appropriate fees set by the board;

(4) the temporary license will expire in six (6) months ~~[and is not subject to extension or renewal];~~ and

(5) the temporary may be extended at the discretion of the board with a written request thirty (30) days prior to the expiration, stating the reason for extension.

B. Nothing in this section should be construed to prevent an applicant with a temporary license from applying for an unrestricted license. The applicant may apply for an unrestricted license by completing a form provided by the board, remitting appropriate fees, and taking and passing the online jurisprudence examination.

[16.22.5.13 NMAC - N, 11/15/06; A, 09/16/10]

16.22.5.15 APPLICANTS WHO ARE GRADUATES FROM PROGRAMS OUTSIDE THE UNITED STATES AND CANADA- RECIPROCITY

A. Graduates of programs outside the United States and Canada shall be evaluated according to the following criteria for New Mexico licensure:

(1) applicants shall meet the requirements set forth in Subsection A of 16.22.4.8 NMAC of these regulations; "substantial equivalencies" of professional schools in the United States, Canada, or any other jurisdiction under ASPPB shall meet the requirements set forth in 16.22.4 NMAC;

(2) applicants for licensure whose applications are based on graduation from universities outside the United States and Canada shall provide the board with such documents and evidence to establish that their formal education is equivalent to a doctoral program in psychology granted by a United States university that is regionally accredited; equivalency will be reviewed by a board approved agency specializing in the credentialing of foreign graduates; such

documents and evidence include:

(a) an original diploma or other certificate of graduation which will be returned, and a photocopy of such a document which will be retained;

(b) an official transcript or comparable document of all course work completed;

(c) a certified translation of all documents submitted in a language other than English;

(d) satisfactory evidence of supervised experience; and

(e) a statement prepared by the applicant listing studies and research based on documents referenced in this section in a format as comparable as possible to a transcript issued by a United States university.

B. After evaluation and acceptance by the board, the applicant shall take and pass the EPPP and an online jurisprudence examination to obtain licensure.

[16.22.5.15 NMAC - N, 11/15/06, A, 09/16/10]

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

This is an amendment to 16.22.8 NMAC, Sections 7, 8, 9, 10 and 12, effective September 16, 2010.

16.22.8.7 DEFINITIONS:

A. "Nationwide criminal history record" means information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information in other states.

B. "Nationwide criminal history screening" means a criminal history background investigation of a licensee applying for licensure renewal through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant.

C. "Statewide criminal history record" means information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals,

sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized database of the department of public safety or the repositories of criminal history information in municipal jurisdictions.

D. "Statewide criminal history screening" means a criminal history background investigation of a licensee applying for licensure renewal through the use of fingerprints submitted to the department of public safety and resulting in the generation of a statewide criminal history record for that licensee.

[16.22.8.7 NMAC - N, 09/16/10]

16.22.8.8 LICENSE RENEWAL: Licensees shall renew their licenses to practice psychology biennially on or before July 1 of alternate years by remitting to the board office a renewal fee of six hundred dollars (\$600) with the renewal application form provided by the board. Continuing education hours shall be documented every [four-(4)] two (2) years at the time of license renewal as described in Part 9.

A. All renewal applications will be subject to a one time nationwide and statewide criminal history screening. Renewal applications will be processed pending the completion of the statewide criminal history screening and may be granted while the screening still pending.

B. If the nationwide or statewide criminal background screening reveals a felony or a violation of the Psychologist Examiners Act, the licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

[16.22.8.8 NMAC - Rp, 16.22.8.8 NMAC, 11/15/06; A, 09/16/10]

16.22.8.9 LICENSE RENEWAL DEADLINE: Licenses shall be renewed biennially before July 1 and must be submitted through the online renewal system, post-marked or hand-delivered.

[16.22.8.9 NMAC - Rp, 16.22.8.9 NMAC, 11/15/06; A, 09/16/10]

16.22.8.10 LICENSE RENEWAL NOTICES: Renewal [application] post card notices will be mailed to each current licensee prior to the expiration date of the license.

[16.22.8.10 NMAC - Rp, 16.22.8.10 NMAC, 11/15/06; A, 09/16/10]

16.22.8.12 RENEWAL AFTER JULY 1

A. The board shall initiate license suspension proceedings and thereafter shall suspend a license for failure

to renew if the licensee failed to renew his license by July 1 of the appropriate year. Any person who renders or offers to render psychological services while his license is suspended is subject to disciplinary action. A licensee who chooses to permanently retire from practice shall inform the board in writing previous to the expiration date of the license and will be considered honorary retired as a non-disciplinary revocation.

B. A license suspended for failure to renew may be renewed within a period of one (1) year after the suspension upon payment of the renewal fee plus a late fee and proof of continuing education satisfactory to the board.

C. The license shall be revoked if the license has not renewed within one (1) year of the suspension for failure to renew. Any licensee whose license is revoked for failure to renew shall be required to make a new application and shall satisfy all requirements for licensure in effect at the time the application is filed.

D. Unless currently licensed to practice psychology under the act, no person shall:

(1) engage in the practice of psychology;

(2) use the title or represent himself as a psychologist or psychologist associate; or

(3) use any other title, abbreviation, letters, signs or devices that indicate the person is a psychologist or psychologists associate.

E. It is a misdemeanor:

(1) for any person not licensed under the act to practice psychology or represent himself as a psychologist or a psychologist associate;

(2) for any person to practice psychology during the time that his license as a psychologist or psychologist associate is suspended, revoked, or lapsed.

[16.22.8.12 NMAC - Rp, 16.22.8.12 NMAC, 11/15/06; A, 09/16/10]

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

This is an amendment to 16.22.13 NMAC, Section 8, effective September 16, 2010.

16.22.13.8 FEE SCHEDULE:

A. All fees payable to the board are non-refundable. The fees for the (EPPP), and the (PEP) are in addition to the fees described below, and determined by the professional examination service offering the examination on behalf of the board.

B. Application fees. (psychologists, psychologist associates, conditional prescribing and prescribing psychologists):

(1) initial application fee- [initial application fee expires 24 months from the date application is received in the board office] \$300.00

(2) online jurisprudence examination: \$75.00

(3) re-examination fee for jurisprudence exam: \$75.00

(4) application for an out of state psychologist to conduct court-ordered independent examination (per case): \$150.00

(5) initial conditional prescription certificate: \$75.00

(6) 60 day extension of conditional prescription: \$100.00

(7) second-year conditional prescription certificate: \$75.00

(8) prescription certificate: \$75.00

(9) temporary license fee: \$300.00

C. Biennial/annual renewal fees psychologists, psychologist associates, conditional prescribing and prescribing psychologists:

(1) one-time annual renewal by psychologists and psychologist associates meeting first-year New Mexico licensure requirements: \$300.00

(2) biennial renewal active status psychologists and psychologist associates: \$600.00

(3) biennial renewal active status (conditional prescribing and prescribing psychologists): \$150.00

(4) annual renewal inactive status: \$150.00

(5) late fee (received after July 1 and within 1 year of suspension): active status (psychologists, psychologist associates, conditional prescribing and prescribing psychologist): \$100.00

(6) reinstatement fee from inactive to active status: \$300.00

D. Other miscellaneous charges

(1) duplicate/replacement wall certificate: \$25.00

(2) licensee lists: \$100.00

(3) licensee labels: \$150.00

(4) per page copy fee for public information request: \$.25 cents

(5) license verification fee: \$15.00 [16.22.13.8 NMAC - Rp, 16.22.13.8 NMAC, 11/15/06; A, 03/21/09; A, 09/16/10]

NEW MEXICO RACING COMMISSION

This is an amendment to 15.2.5 NMAC Section 13, effective date of September 1, 2010.

15.2.5.13 RUNNING OF THE RACE:

A. EQUIPMENT.

(1) ~~[No whip shall weigh more than one pound nor exceed 31 inches in length, including the popper. No whip shall be used unless it has affixed to the end a looped popper not less than one and one-quarter (1 1/4) inches in width, and not over three (3) inches in length, and be feathered above the popper with not less than three (3) rows of feathers, each feather not less than one (1) inch in length. There shall be no holes in the popper. All whips are subject to inspection and approval by the stewards.] All riding crops are subject to inspection and approval by the stewards and the clerk of scales. This rule will become effective December 10, 2010.~~

(a) For all thoroughbred races (measured in furlongs) the riding crops shall have a shaft, a flap and will be allowed in flat racing including training. No riding crop shall weigh more than eight ounces nor exceed 30 inches in length, including the shaft. No riding crop shall be used unless the shaft is a minimum of one-half inch in diameter; and the shaft contact area must be smooth, with no protrusions or raised surface and covered by shock absorbing material that gives a compression factor of at least one-millimeter throughout its circumference.

(b) The flap is the only allowable attachment to the shaft and must meet the following specifications. The length beyond the end of the shaft shall be a maximum of one inch with a minimum width of .08 inch and a maximum of 1.6 inches. There shall be no reinforcements or additions beyond the end of the shaft. There shall be no binding within seven inches of the end of the shaft and the flap must include shock absorbing characteristics similar to those of the contact area of the shaft.

(c) For all quarter horse races (measured in yards) riding crops will be allowed in flat racing including training. No riding crop shall weigh more than one pound nor exceed 31 inches in length, including the popper. No riding crop shall be used unless it has affixed to the end a looped popper not less than one and one-quarter (1 1/4) inches in width, and not over three (3) inches in length, and be feathered above the popper with no less than three (3) rows of feathers, each feather not less than one (1) inch in length. There shall be no holes in the popper.

(2) No bridle shall exceed two

pounds.

(3) Reins. No jockey, apprentice jockey, exercise person or any person mounted on a horse shall ride, breeze, exercise, gallop or workout a horse on the grounds of a facility under the jurisdiction of the commission unless the horse is equipped with a nylon rein or a safety rein. A safety rein is a rein with a wire or nylon cord stitched into the traditional leather rein during the manufacturing process and the safety cord is attached to the bit with a metal clasp.

(4) Toe grabs with a height greater than two millimeters worn on the front shoes of thoroughbred horses while racing are prohibited. The horse shall be scratched and the trainer may be subject to fine.

(5) A horse's tongue may be tied down with clean bandages, gauze or tongue strap.

(6) No licensee may add blinkers to a horse's equipment or discontinue their use without the prior approval of the starter, the paddock judge, and the stewards.

(7) No licensee may change any equipment used on a horse in its last race without approval of the paddock judge or stewards.

(8) Any licensed assistant starter and any licensee mounted on a horse or stable pony on the association's racing surface (racetrack surface) must wear a properly fastened New Mexico racing commission approved protective helmet and safety vest. The safety vest worn by a jockey shall weigh no more than two pounds and all vests shall be designed to provide shock-absorbing protection to the upper body of at least a rating of five, as defined by the British equestrian trade association (BETA).

B. RACING NUMBERS.

(1) Each horse shall carry a conspicuous saddle cloth number corresponding to the official number given that horse on the official program.

(2) In the case of a coupled entry that includes more than one horse, each horse in the entry shall carry the same number, with a different distinguishing letter following the number. As an example, two horses in the same entry shall appear in the official program as 1 and 1A.

(3) Each horse in the mutual field shall carry a separate number or may carry the same number with a distinguishing letter following the number.

C. JOCKEY REQUIREMENTS.

(1) Jockeys shall report to the jockeys' quarters at the time designated by the association. Jockeys shall report their engagements and any overweight to the clerk of scales. Jockeys shall not leave the jockeys' quarters, except to ride in scheduled races, until all of their riding engagements of the day have been fulfilled except as

approved by the stewards.

(2) A jockey who has not fulfilled all riding engagements, who desires to leave the jockeys' quarters, must first receive the permission of the stewards and must be accompanied by an association security guard.

(3) Except as otherwise provided by this subsection, a jockey engaged for a certain race or for a specified time may not fail or refuse to abide by the engagement agreement, unless excused by the stewards. Failure to fulfill riding engagements may result in disciplinary action.

(4) A jockey may be excused by the stewards from fulfilling the jockey's riding engagement if the jockey believes the horse he or she is to ride is unsafe, or the racecourse he or she is to ride on is unsafe, or the jockey is ill or injured, or other extenuating circumstances. No jockey may take off a mount for reasons of safety without first mounting and taking that horse to the track and/or commission veterinarian unless that horse is unruly in the paddock. In that event a jockey's fee is not earned.

(5) The stewards may require a jockey who is excused from fulfilling a riding engagement, because of illness or injury, to pass a physical examination conducted by a licensed physician not employed by the association before resuming race riding.

(6) While in the jockeys' quarters, jockeys shall have no contact or communication with any person outside the jockeys' quarters other than commission personnel and officials, an owner or trainer for whom the jockey is riding or a representative of the regular news media, except with the permission of the stewards. Any communication permitted by the stewards may be conducted only in the presence of the clerk of scales or other person designated by the stewards.

(7) Jockeys shall be weighed out for their respective mounts by the clerk of scales not more than 30 minutes before post time for each race.

(8) A jockey's fee shall be considered earned when the jockey is weighed out by the clerk of scales. In the event an owner or trainer elects to remove a jockey from his or her mount after naming a rider at the time of draw, the stewards may require a double jockey fee to be paid. The fee to be paid is equal to that earned by the jockey who rode the horse. The fee shall not be considered earned when a jockey(s), of their own free will, take themselves off their mounts, where injury to the horse or rider is not involved. Any conditions or considerations not covered by the above rule shall be at the discretion of the stewards. All jockey protests must be filed prior to the race.

(9) Only valets employed by the association shall assist jockeys in weighing

out.

(10) A jockey's weight shall include his/her clothing, boots, saddle and its attachments and any other equipment except the whip, bridle, bit or reins, safety helmet, safety vest, blinkers, goggles and number cloth. Upon the stewards' approval, jockeys may be allowed up to three (3) pounds more than published and announced weights to account for inclement weather clothing and equipment when weighing in.

(11) Seven pounds is the limit of overweight any horse is permitted to carry.

(12) Once jockeys have fulfilled their riding engagements for the day and have left the jockeys' quarters, they shall not be re-admitted to the jockeys' quarters until after the entire racing program for that day has been completed, except with permission of the stewards.

D. Paddock to Post.

(1) Each horse shall carry the full weight assigned for that race from the paddock to the starting post, and shall parade past the stewards' stand, unless excused by the stewards. The post parade shall not exceed 12 minutes, unless otherwise ordered by the stewards. It shall be the duty of the stewards to ensure that the horses arrive at the starting gate as near to post time as possible.

(2) In the post parade, all pony persons, or trainers who pony horses, must wear upper body apparel in accordance with the policy of the commission.

(3) After the horses enter the track, no jockey may dismount nor entrust his horse to the care of an attendant unless, because of accident occurring to the jockey, the horse or the equipment, and with the prior consent of the starter. During any delay during which a jockey is permitted to dismount, all other jockeys may dismount and their horses may be attended by others. After the horses enter the track, only the jockey, an assistant starter, the official veterinarian, the racing veterinarian or an outrider or pony rider may touch the horse before the start of the race.

(4) If a jockey is seriously injured on the way to the post, the horse may be returned to the paddock and a replacement jockey obtained.

(5) After passing the stewards' stand in parade, the horses may break formation and proceed to the post in any manner unless otherwise directed by the stewards. Once at the post, the horses shall be started without unnecessary delay.

(6) In case of accident to a jockey or his/her mount or equipment, the stewards or the starter may permit the jockey to dismount and the horse to be cared for during the delay, and may permit all jockeys to dismount and all horses to be attended to during the delay.

(7) If a jockey is thrown on the way from the paddock to the post, the horse must

be remounted, returned to the point where the jockey was thrown and then proceed over the route of the parade to the post. The horse must carry its assigned weight from paddock to post and from post to finish.

(8) If a horse leaves the course while moving from paddock to post, the horse shall be returned to the course at the nearest practical point to that at which it left the course, and shall complete its parade to the post from the point at which it left the course unless ordered scratched by the stewards.

(9) No person shall willfully delay the arrival of a horse at the post.

(10) The starter shall load horses into the starting gate in any order deemed necessary to ensure a safe and fair start. An appointed representative may tail the horse with the starter's consent. In case of an emergency, the starter may grant approval for a horse to be tailed. In any case, the steward's shall be notified of who is tailing horses.

E. POST TO FINISH.

(1) The start.

(a) The starter is responsible for assuring that each participant receives a fair start.

(b) If, when the starter dispatches the field, any door at the front of the starting gate stalls should not open properly due to a mechanical failure or malfunction or should any action by any starting personnel directly cause a horse to receive an unfair start, the stewards may declare such a horse a non-starter.

(c) Should a horse, not scratched prior to the start, not be in the starting gate stall thereby causing it to be left when the field is dispatched by the starter, the horse shall be declared a non-starter by the stewards.

(d) Should an accident or malfunction of the starting gate, or other unforeseeable event compromise the fairness of the race or the safety of race participants, the stewards may declare individual horses to be non-starters, exclude individual horses from one or more pari-mutuel pools or declare a "no contest" and refund all wagers except as otherwise provided in the rules involving multi-race wagers.

(2) Interference, jostling or striking.

(a) A jockey shall not ride carelessly or willfully so as to permit his/her mount to interfere with, impede or intimidate any other horse in the race.

(b) No jockey shall carelessly or willfully jostle, strike or touch another jockey or another jockey's horse or equipment.

(c) No jockey shall unnecessarily cause his/her horse to shorten its stride so as to give the appearance of having suffered a foul.

(3) Maintaining a straight course.

(a) When the way is clear in a race, a horse may be ridden to any part of the course, but if any horse swerves, or is ridden to either side, so as to interfere with, impede or intimidate any other horse, it is a foul.

(b) The offending horse may be disqualified, if in the opinion of the stewards, the foul altered the finish of the race, regardless of whether the foul was accidental, willful or the result of careless riding.

(c) If the stewards determine the foul was intentional, or due to careless riding, they may fine or suspend the guilty jockey.

(d) In a straightaway race, every horse must maintain position as nearly as possible in the lane in which it starts. If a horse is ridden, drifts or swerves out of its lane in such a manner that it interferes with, impedes or intimidates another horse, it is a foul and may result in the disqualification of the offending horse.

(4) Disqualification.

(a) When the stewards determine that a horse shall be disqualified for interference, they may place the offending horse behind such horse as in their judgment it interfered with, or they may place it last.

(b) If a horse is disqualified for a foul, any horse or horses with which it is coupled as an entry may also be disqualified.

(c) When a horse is disqualified for interference in a time trial race, it shall receive the time of the horse it is placed behind plus one-hundredth of a second penalty or more exact measurement if photo finish equipment permits, and shall be eligible to qualify for the finals or consolations of the race on the basis of the assigned time.

(d) The stewards may determine that a horse shall be unplaced for the purpose of purse distribution and trial qualification.

(e) In determining the extent of disqualification, the stewards in their discretion may: declare null and void a track record set or equaled by a disqualified horse, or any horses coupled with it as an entry; affirm the placing judges' order of finish and suspend or fine a jockey if, in the stewards' opinion, the foul riding did not affect the order of finish; disqualify the offending horse and not penalize a jockey if in the stewards' opinion the interference to another horse in a race was not the result of an intentional foul or careless riding on the part of a jockey.

(5) Horses shall be ridden out: All horses shall be ridden out in every race. A jockey shall not ease up or coast to the finish, without adequate cause, even if the horse has no apparent chance to win prize money.

(6) Use of [whips] riding crops.

(a) Although the use of a [whip] riding crop is not required, any jockey who uses a [whip] riding crop during a race shall do so only in a manner consistent with exerting his/her best efforts to win.

(b) In all races where a jockey will ride without a [whip] riding crop, an announcement of such fact shall be made over the public address system.

(c) No electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than the [ordinary whip] riding crop approved by the stewards, shall be possessed by anyone, or applied by anyone to the horse at any time on the grounds of the association during the meeting, whether in a race or otherwise.

(d) [Whips] Riding crops shall not be used on two-year-old horses before March 1 of each year.

(e) Indiscriminate use of the whip is prohibited including whipping a horse: on the head, flanks or on any other part of its body other than the shoulders or hind quarters except when necessary to control a horse; during the post parade or after the finish of the race except when necessary to control the horse; excessively or brutally causing welts or breaks in the skin; when the horse is clearly out of the race or has obtained its maximum placing; persistently even though the horse is showing no response under the [whip] riding crop; or striking another rider or horse.

(f) The riding crop shall only be used for safety, correction and encouragement.

(g) After the race, the horses will be subject to inspection by a racing or official veterinarian looking for cuts, welts or bruises in the skin. Any adverse findings shall be reported to the stewards.

(h) The giving of instructions by any licensee that if obeyed would lead to a violation of this rule may result in disciplinary action also being taken against the licensee who gave such instructions.

(7) Horse leaving the racecourse. If a horse leaves the racecourse during a race, it must turn back and resume the race from the point at which it originally left the course.

(8) Returning after the finish.

(a) After a race has been run, the jockey shall ride promptly to the finish line, dismount and report to the clerk of scales to be weighed in. Jockeys shall weigh in with all pieces of equipment with which they weighed out.

(b) If a jockey is prevented from riding to the finish line because of an accident or illness to the jockey or the horse, the jockey may walk or be transported to the scales, or may be excused from weighing in by the stewards.

(9) Unsaddling. No person shall assist a jockey with unsaddling except with permission of the stewards and no one shall place a covering over a horse before it is unsaddled.

(10) Weighing in.

(a) A jockey shall weigh in at no less than the same weight at which he/she weighed out, and if under that weight by more than two pounds and after consideration of mitigating circumstances by the board of stewards, his/her mount [shall] may be disqualified from any portion of the purse money.

(b) In the event of such disqualification, all monies wagered on the horse shall be refunded unless the race has been declared official.

(c) If any jockey weighs in at more than [two] three pounds over the proper or declared weight, the jockey [shall] may be fined, [or] suspended or ruled off by the stewards, having due regard for any excess weight caused by rain or mud. The case shall be reported to the commission for such action, as it may deem proper.

(d) Upon approval of the stewards, the jockeys may be allowed up to three pounds more than published and announced weights to account for inclement weather clothing and equipment when weighing in.

(e) The post-race weight of jockeys includes any sweat, dirt and mud that have accumulated on the jockey, jockey's clothing and jockey's safety equipment. This accounts for additional weight, depending on specific equipment, as well as weather, track and racing conditions.

(11) Dead heats.

(a) When a race results in a dead heat, the dead heat shall not be run off, owners shall divide except where division would conflict with the conditions of the races.

(b) When two horses run a dead heat for first place, all purses or prizes to which first and second horses would have been entitled shall be divided equally between them; and this applies in dividing all purses or prizes whatever the number of horses running a dead heat and whatever places for which the dead heat is run.

(c) In a dead heat for first place, each horse involved shall be deemed a winner and liable to penalty for the amount it shall receive.

(d) When a dead heat is run for second place and an objection is made to the winner of the race, and sustained, the horses, which ran a dead heat, shall be deemed to have run a dead heat for first place.

(e) If the dividing owners cannot agree as to which of them is to have a cup or other prize, which cannot be divided, the question shall be determined by lot by the stewards.

(f) On a dead heat for a match, the match is off for pari-mutuel payoffs and mutuels are refunded.

[15.2.5.13 NMAC - Rp, 15 NMAC 2.5.13, 03/15/2001; A, 08/30/2007; A, 12/01/08; A, 06/30/09; A, 09/15/09; A, 08/16/10; A, 09/01/10]

NEW MEXICO RACING COMMISSION

Explanatory paragraph: This is an addition of Subsections G. and H. to Section 9 of 15.2.6 NMAC allowing out of competition testing and also stating the recommended penalties for this section. Subsections A. through F. were not published as there were no changes made. In addition, amendments were made to Section 10 of 15.2.6 NMAC and Subsection C. of Section 12 of 15.2.6 NMAC, effective date September 1, 2010.

...

15.2.6.9 MEDICATIONS AND PROHIBITED SUBSTANCES:

...

G. OUT OF COMPETITION TESTING:

(1) A horse may be subject to out of competition testing without advance notice if the horse is:

(a) on the grounds of a racetrack or training center under the jurisdiction of the commission;

(b) under the care or control of a trainer or owner licensed by the commission; or

(c) any horse whose papers are filed in the racing office; or

(d) has been nominated to a stakes race.

(2) This rule applies to prohibited substances, practices and procedures are as follows:

(a) class I, class II and class III drugs as listed with the New Mexico racing commission;

(b) blood doping agents including, but not limited to, erythropoietin (EP), darbepoetin, oxyglobin, hempure, aranasep or any substance that abnormally enhances the oxygenation of body tissues; and

(c) gene doping agents or the non-therapeutic use of genes, genetic elements, or cells that have the capacity to enhance athletic performance or produce analgesia.

(3) The permitted quantitative test level of clenbuterol for out of competition horses shall be administered in such dosage amount that the official test sample shall not exceed 300 picograms per milliliter of serum or plasma.

(4) Horses to be tested may be selected at random, with probable cause or as determined by the commission or an agent of the commission.

(5) The commission veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, may at any time take a urine, blood or hair sample from a horse for this purpose.

(6) Split samples shall be collected in accordance with Paragraphs (3) and (4) of Subsection B of 15.2.6.10 NMAC and shall be secured and made available for further testing in accordance with Subsection C of 15.2.6.10 NMAC.

(7) All horses selected for testing must report to the test barn within 24 hours, unless the trainer or owner provides verification of an extenuating circumstance that makes it impossible.

(8) Any licensee who does not comply with the rule or the commission veterinarian for a sample may be subject to disciplinary action.

(9) Cooperation with the commission veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, includes:

(a) assisting in the immediate location and identification of the horse selected for out of competition testing; and

(b) assisting the veterinarian in properly procuring the samples.

(10) Out of competition samples will be sent to the official laboratory of the commission, or another laboratory as designated by the commission, with reports made in accordance with the provisions of the medication rules and the penalty provisions therefore.

H. OUT OF COMPETITION PENALTY RECOMMENDATIONS (in absence of mitigating circumstances).

(1) The penalty for any horse not presented for testing at the association's test barn within 24 hours of notification is a maximum suspension of 120 days.

(2) The penalty for the trainer of a horse not presented for testing at the association's test barn within 24 hours of notification is a maximum suspension of 180 days.

(3) The penalty for any horse with a positive test is a maximum suspension of 120 days and the horse's papers will be removed from the racing office.

(4) The penalty for the trainer of a horse with a positive test is a maximum \$1,500 fine and a maximum suspension of 180 days.

[15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 04/13/2001; A, 08/30/2001; A, 07/15/2002; A, 08/15/2002; A, 09/29/2006; A, 10/31/2006; A, 08/30/2007; A, 01/31/2008; A, 03/01/2009; A, 06/15/09; A, 06/30/09; A, 09/15/09; A, 12/15/09; A, 03/16/10; A, 07/05/10; A, 09/01/10]

15.2.6.10 TESTING: A. REPORTING TO THE TEST BARN:

(1) The official winning horse [and], or any other horse, or both horses ordered by the commission and/or the stewards shall be taken to the test barn to

have a blood and/or urine sample taken at the direction of the official veterinarian.

(2) Random or extra testing may be required by the stewards or the commission at any time on any horse [on-association grounds].

(3) Unless otherwise directed by the stewards or the official veterinarian, a horse that is selected for testing must be taken directly to the test barn.

(4) A track security guard shall monitor access to the test barn area during and immediately following each racing performance. All persons who wish to enter the test barn area must be a minimum of 18-years-old, be currently licensed by the commission, display their commission identification badge and have a legitimate reason for being in the test barn area.

B. SAMPLE COLLECTION:

(1) Sample collection shall be done in accordance with the RCI drug testing and quality assurance program external chain of custody guidelines, or other guidelines and instructions provided by the official veterinarian.

(2) The official veterinarian shall determine a minimum sample requirement for the primary testing laboratory. A primary testing laboratory must be accredited by the association of racing commissioners international and approved by the commission.

(3) If the specimen obtained from a horse is less than the minimum sample requirement, the entire specimen shall be sent to the primary testing laboratory.

(4) If a specimen obtained is greater than the minimum sample requirement but less than twice that amount, the portion of the sample that is greater than the minimum sample requirement shall be secured as the split sample.

(5) If a specimen obtained is greater than twice the minimum sample requirement, a portion of the sample approximately equal to the amount provided for the primary testing laboratory shall be secured as the split sample.

C. STORAGE AND SHIPMENT OF SPLIT SAMPLES:

(1) Split samples obtained in accordance with Paragraphs (3) and (4) Subsection B, of 15.2.6.10 NMAC above shall be secured and made available for further testing. A split sample shall be secured in the test barn under the same manner as the portion of the specimen acquired for shipment to a primary laboratory until such time as specimens are packed and secured for shipment to the primary laboratory. Split samples shall then be transferred to a freezer at a secure location as provided by state statute or approved by the commission.

(2) A trainer, owner or designee of a horse having been notified that a written

report from a primary laboratory states that a prohibited substance has been found in a specimen obtained pursuant to these rules may request that a split sample corresponding to the portion of the specimen tested by the primary laboratory be sent to another laboratory approved by the commission. The request must be made and confirmed with the commission not later than 48 hours excluding weekends and holidays after the trainer of the horse receives written notice of the findings of the primary laboratory. The trainer's first choice, second choice and third choice of laboratories, for the split sample to be sent to, shall be listed within that 48 hours and kept on file with the horsemen's association. Any request not received within the specified deadline shall be considered a positive test. Any split sample so requested must be shipped within seven (7) working days after the trainer's 48 hour deadline or the New Mexico horsemen's association may be subject to disciplinary action.

(3) The owner, trainer or designee requesting testing of a split sample shall be responsible for the cost of shipping and testing. Failure of the owner, trainer or designee to appear at the time and place designated by the official veterinarian shall constitute a waiver of all rights to split sample testing. Prior to shipment, the commission shall confirm the split sample laboratory's willingness to provide the testing requested, the laboratory's willingness to send results to both the person requesting the testing and the commission, and arrangements for payment satisfactory to the split sample laboratory. A split sample testing laboratory must be accredited by the association of racing commissioners international and approved by the commission. If an association of racing commissioners international reference laboratory will accept split samples, that laboratory must be included among the laboratories approved for split sample testing.

(4) Prior to opening the split sample freezer, the commission shall provide a split sample chain of custody verification form that shall provide a place for recording the following information and such other information as the commission may require. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample.

(5) Split sample chain of custody form requirements: the date and time the sample is removed from the split sample freezer; the sample number; the address where the split sample is to be sent; the name of the carrier and the address where the sample is to be taken for shipment; verification of retrieval of the split sample from the freezer; verification of each specific step of the split sample packaging in accordance with the recommended procedure verification of the address of the split sample laboratory

on the split sample package; verification of the condition of the split sample package immediately prior to transfer of custody to the carrier; the date and time custody of the sample is transferred to the carrier.

(6) A split sample shall be removed from the split sample freezer by a commission representative in the presence of a representative of the horsemen's association.

(7) The owner, trainer or designee shall pack the split sample for shipment in the presence of the representative of the commission, in accordance with the packaging procedures recommended by the commission. A form shall be signed by both the horsemen's representative and the commission representative to confirm the packaging of the split sample. The exterior of the package shall be secured and identified with initialed tape, evidence tape or other means to prevent tampering with the package.

(8) The package containing the split sample shall be transported to the location where custody is transferred to the delivery carrier charged with delivery of the package to the commission-approved laboratory selected by the owner or trainer.

(9) The owner, trainer or designee and the commission representative shall inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(10) The split sample chain of custody verification form shall be completed and signed by the representatives of the commission and the owner or trainer. A commission representative shall keep the original and provide a copy for the owner or trainer.

D. OFFICIAL STATE RACING CHEMIST: The state racing commission may hire or contract with a qualified chemist to act as the official state racing chemist. The duties of the official state racing chemist shall include, but shall not be limited to the following:

(1) review and evaluate all scientific data submitted by the official testing laboratory concerning any race horse's positive drug test;

(2) submit a written report to the agency director of the racing commission concerning each positive test, certifying the positive test as such, or that the test does not constitute a positive test based on the scientific data submitted by the official testing laboratory; if the test does not constitute a positive test it may be referred back to the laboratory for further testing;

(3) in the event that a split sample is sent for independent testing and the result of that test does not confirm with the results of the primary testing laboratory, the official state racing chemist shall review all scientific

data submitted by the laboratory which tested the split and make recommendations to the agency director;

(4) appear before the racing commission as an expert witness, as needed in matters concerning chemical testing for drugs and medications;

(5) consult with the racing commission in matters concerning chemical testing for drugs and medication as the need arises;

(6) at least once each year inspect the official testing laboratory and the racetrack collection facilities to insure their compliance with, and use of, proper scientific techniques and procedures.

[15.2.6.10 NMAC - Rp, 15 NMAC 2.6.10, 04/13/2001; A, 03/30/2007; A, 09/01/10]

15.2.6.12 P H Y S I C A L INSPECTION OF HORSES:

A. ASSESSMENT OF RACING CONDITION:

(1) Every horse entered to participate in an official race may be subjected to a veterinary inspection.

(2) The inspection shall be conducted by the official veterinarian or the racing veterinarian.

(3) The trainer of each horse or a representative of the trainer must present the horse for inspection as required by the examining veterinarian.

(4) The assessment of a horse's racing condition shall be based on the recommendations of the American association of equine practitioners and shall include: proper identification of each horse inspected; observation of each horse in motion; manual palpation when indicated; close observation in the paddock and saddling area, during the parade to post and at the starting gate; any other inspection deemed necessary by the official veterinarian and/or the racing veterinarian or the stewards.

(5) Every horse shall be observed by the racing veterinarian during and after the race.

(6) The official veterinarian and/or the racing veterinarian shall maintain a health and racing soundness record of each horse inspected.

B. VETERINARIAN'S LIST:

(1) The racing veterinarian shall maintain a list of all horses which are determined to be unfit to compete in a race due to physical distress, unsoundness, infirmity or medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the racing veterinarian, the horse has satisfactorily recovered the capability of competing in a race.

C. POST MORTEM EXAMINATION:

~~(1) The commission may [conduct] require a postmortem examination of any horse that [is injured in this jurisdiction while in training or in competition and that subsequently expires or is destroyed. In proceeding with a postmortem examination the Commission or its designee shall coordinate with the trainer and/or owner to determine and address any insurance requirements.]~~ dies or is euthanized on association grounds.

(2) The commission may ~~[conduct]~~ require a postmortem examination of any horse that ~~[expires while housed on association grounds or]~~ dies or is euthanized at recognized training facilities within this jurisdiction. ~~[Trainers and owners shall be required to comply with such action as a condition of licensure.]~~

(3) If a postmortem examination is to be conducted, the commission shall take possession of the horse upon death for a postmortem examination. All shoes and equipment on the horse's legs shall be left on the horse.

~~[(3)](4)~~ [The Commission may take possession of the horse upon death for postmortem examination.] If a postmortem examination is to be conducted, the commission or its representative shall collect blood, urine, bodily fluids, or other biologic specimens immediately, if possible before euthanization. The commission may submit blood, urine, ~~[other]~~ bodily fluid, or other biologic specimens ~~[or other anatomical specimens]~~ collected during a postmortem examination for testing ~~[by the Commission-selected laboratory or its designee. Upon completion of the postmortem examination, the carcass may be returned to the owner or disposed of at the owner's option.]~~ analysis. The presence of a prohibited substance in a specimen collected during the postmortem examination may constitute a violation.

(5) Requests for each postmortem examination shall be filed with the official veterinarian by the owner's or trainer's veterinarian within one hour of the death and shall be submitted on a necropsy submission form entitled New Mexico racing commission necropsy submission form, hereby incorporated by reference and which is available at all official veterinarian offices and all stable gates. The trainer or their designee is responsible to supply all information to complete this form.

~~[(4)](6)~~ [The presence of a prohibited substance in a horse, found by the official laboratory or its designee in a bodily fluid specimen collected during the postmortem examination of a horse, which breaks down during a race constitutes a violation of these rules.] All licensees shall be required to comply with postmortem examination requirements as a condition of licensure. In proceeding with a postmortem examination the commission or its designee

shall coordinate with the owner or the owner's authorized agent to determine and address any insurance requirements.

~~[(5)](7)~~ [The cost of Commission-ordered postmortem examinations; testing and disposal shall be borne by the Commission.] Postmortem examinations shall be conducted according to the most recent edition of the American association of equine practitioners' guidelines for the necropsy of racehorses.

(8) Upon completion of the postmortem examination the diagnostic laboratory shall file a written report with the racing commission's agency director and official veterinarian.

[15.2.6.12 NMAC - Rp, 15 NMAC 2.6.12, 04/13/2001; A, 09/01/10]

End of Adopted Rules Section

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Other Material Related to Administrative Law

NEW MEXICO DEPARTMENT OF HEALTH

NOTICE OF MEDICAL MARIJUANA CANNABIS ADVISORY BOARD MEETING

The New Mexico Department of Health will hold a Medical Cannabis Advisory Board meeting on Wednesday, September 29, 2010 to review and recommend to the department the approval of additional debilitating medical conditions that would benefit from the medical use of cannabis. The meeting will be held on Wednesday, September 29, 2010 beginning at 10:00 a.m. in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico.

The public hearing will be conducted to elect a Chairperson and review submitted petitions from any individual or association of individuals requesting the addition of a new medical condition, medical treatment or disease for the purpose of participating in the medical cannabis program.

The Department will accept petitions until September 8, 2010 in the office of the Medical Cannabis program, Runnels Building Room S-1310, 1190 St. Francis Drive, Santa Fe, New Mexico 87505. Please visit the Medical Cannabis Program website for petition requirements and further details regarding the Medical Marijuana Advisory Board meeting at www.nmhealth.org/IDB/medical.cannabis.shtml.

Copies of the agenda can be obtained on September 27, 2010, which can be obtained by contacting Andrea R. Alano by telephone at 505-476-3631.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aide or service to attend or participate in the hearing, please contact Christina Galvez by telephone at 505-476-3543, or by fax at 505-827-2930. The Department requests at least ten (10) days' advance notice to provide requested special accommodations.

NEW MEXICO COMMISSION OF PUBLIC RECORDS HISTORICAL RECORDS ADVISORY BOARD

NOTICE OF REGULAR MEETING

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

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 |
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| 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.