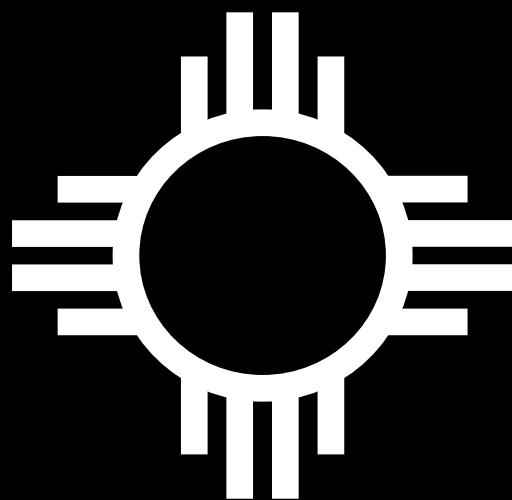


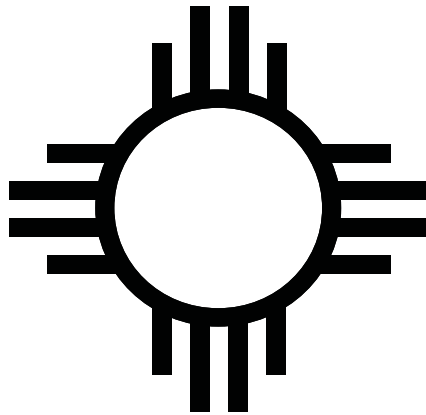
**NEW
MEXICO
REGISTER**



Volume XXI
Issue Number 19
October 15, 2010

New Mexico Register

**Volume XXI, Issue Number 19
October 15, 2010**



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

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

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New Mexico Register

Volume XXI, Number 19

October 15, 2010

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

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The New Mexico Register
 Published by
 The Commission of Public Records
 Administrative Law Division
 1205 Camino Carlos Rey
 Santa Fe, NM 87507

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

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail staterules@state.nm.us.

Notices of Rulemaking and Proposed Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT EARLY CHILDHOOD SERVICES DIVISION

NOTICE OF PUBLIC HEARING 8.15.2 NMAC

The Children, Youth and Families Department (CYFD), Early Childhood Services (ECS), will hold a formal public hearing on Monday, November 15, 2010, at 10:00 a.m. in Apodaca Hall on the 2nd floor of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico, to receive public comments regarding changes to regulations 8.15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers.

The proposed regulation changes may be obtained at www.newmexicokids.org or by calling 505-827-7499 or 1-800-832-1321. Interested persons may testify at the hearing or submit written comments no later than 5:00 p.m. on November 15, 2010. Written comments will be provided the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Mohammed Hussien, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number: 505-827-9978. For questions regarding the proposed regulation changes, please call 505-827-7499 or 1-800-832-1321.

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

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT STATE PARKS DIVISION

NOTICE OF PUBLIC HEARING AND RULEMAKING

STATE OF NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT, STATE PARKS DIVISION

The New Mexico Energy, Minerals and

Natural Resources Department, State Parks Division will hold a public hearing on proposed rule amendments at 6:00 p.m. on November 1, 2010 in Porter Hall (first floor), Wendell Chino Building, 1220 South Saint Francis Drive, Santa Fe, New Mexico.

The New Mexico Energy, Minerals and Natural Resources Department, State Parks Division is proposing changes to the following rules: 19.5.1 NMAC, General Provisions; and 19.5.2 NMAC, Park Visitor Provisions: Proposed changes to 19.5.1 NMAC include the addition of a definition for authorized areas. Proposed changes to 19.5.2 NMAC include, among others, requiring weed free hay to be used at state parks located on property owned by the State Game Commission, allowing activities such as bow fishing, expanding eligibility for the annual camping pass available to New Mexico disabled residents to include non-physical disabilities, and expanding the provisions relating to special use permits to specifically address public assemblies.

Copies of the proposed rule changes are available from the New Mexico Energy, Minerals and Natural Resources Department, State Parks Division, 1220 South Saint Francis Drive, Santa Fe, NM 87505, on its website, <http://www.emnrd.state.nm.us/> PRD/, or by contacting Alice Chavira at 505-476-3368, alice.chavira@state.nm.us.

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

Written comments and oral comments will be accepted at the public hearing on November 1, 2010 and written comments will be accepted until November 1, 2010 at 5:00PM by mail or e-mail. Please mail written comments to Alice Chavira, EMNRD, 1220 S. St. Francis Drive, Santa Fe, NM 87505 or submit them by e-mail to alice.chavira@state.nm.us.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Alice Chavira at least one week prior to the hearing or as soon as possible. Public documents can be provided in various accessible formats. Please contact Alice Chavira at 476-3368, through Relay New Mexico at 1-800-659-1779 Voice or 1-800-659-8331 TTY, if a summary or other type of accessible format is needed.

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

PLEASE NOTE 9/30/10 GAME
COMMISSION MEETING HAS BEEN
CANCELLED:

On Thursday, October 28, 2010, beginning at 9:00 a.m., at the **Inn of the Mountain Gods Resort & Casino, 287 Carrizo Canyon Road, Mescalero, NM 88340**, the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: Updates and Miscellaneous; Revocations; Evaluation of Game Management Unit 51 Option II Trial Elk License Allocation System as Described in 19.30.5.8 B(2)(l), NMAC; Open Game and Fish License/Permits Rule (19.30.9, NMAC); Set 2011-2012 Special Hunt Application Deadline Dates; Update on the Department's Response to House Joint Memorial 58 Requesting the Department of Game and Fish to Study the Consolidation of Various Hunting and Fishing Licenses and Stamps; Department will Request that the Commission Open the Falconry Rule (19.35.8, NMAC); Commission Approval to Dispose of Fixed Assets; and General Public Comments (comments limited to 3 minutes).

The following rules are available for public comment and discussion by the Commission:

- * Adoption of Amendment to the Trapping and Furbearers Rule (19.32.2, NMAC) to Conform to the Executive Order 2010-029;
- * Adoption of Proposed Amendments to the Bear and Cougar Rule (19.31.11, NMAC);
- * Adoption of a New Rule - Private Land Antelope License Allocation (19.30.12, NMAC);
- * Adoption of Proposed Amendments to the Pronghorn Antelope Rule (19.31.15, NMAC);
- * Adoption of Proposed Amendments to the Deer Rule (19.31.13, NMAC); and
- * Adoption of Proposed Amendments to the Following Rules - Boundary Descriptions for Wildlife Management Areas (19.30.4, NMAC), Hunting and Fishing License Application (19.31.3, NMAC), Hunting and Fishing - Manner and Method of Taking (19.31.10, NMAC).

A copy of the agenda or any of the affected rules can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504 or on the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Sonya Quintana at (505) 476-8029. Please contact Ms. Quintana at least 3 working days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please also contact Ms. Quintana if a summary or other type of accessible form is needed.

NEW MEXICO GAMING CONTROL BOARD

NEW MEXICO GAMING CONTROL BOARD

NOTICE OF HEARING ON AMENDMENTS TO RULES

The New Mexico Gaming Control Board ("Board") will hold a public hearing at 1:30 p.m. on November 29, 2010, at the New Mexico Gaming Control Board, 4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113 to consider amendments for the following rules: **15.1.9 NMAC, *Internal Control Minimum Standards for Gaming Devices under the Gaming Control Act*, 15.1.11 NMAC, *List of Excluded Persons Under The Gaming Control Act*, 15.1.24 NMAC, *Progressive Games and Gaming Devices*.**

Copies of the proposed amendments are available upon request to the New Mexico Gaming Control Board, 4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113, or by calling (505) 274-4345. The proposed changes are also available on our website at www.nmgcb.org. The Board can provide public documents in various accessible formats.

The hearing will be held before a hearing officer appointed by the Board. All interested parties may attend the hearing and present their views orally or submit written comments prior to the hearing. Written comments should be directed to

the Gaming Control Board, Office of the General Counsel, 4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113.

If you are an individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, please contact Denise Leyba, Gaming Control Board, at least one week prior to the hearing at (505) 274-4345.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) is scheduling a public hearing on Tuesday, November 16, 2010, at 9:00 a.m. in the ASD conference room of Plaza San Miguel, 729 St. Michael's Drive, Santa Fe.

The subject of the hearing is Cost Related Reimbursement of Nursing Facilities.

The Medical Assistance Division is proposing changes to the current Cost Related Reimbursement of Nursing Facilities rules to be effective 12/30/10 to change the cost report filing timelines to follow the Medicare guidelines of 150 days, to change the report form used to the Medicare Cost Report, to make any changes to reimbursement through rebasing or adjustments to base year costs pursuant to budget availability. These changes are due to state-wide budget constraints.

Interested persons may submit written comments no later than 5:00 p.m., November 16, 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/register/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 HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) is scheduling a public hearing on Tuesday, November 16, 2010, at 10:00 a.m. in the ASD conference room of Plaza San Miguel, 729 St. Michael's Drive, Santa Fe.

The subject of the hearing is Personal Care Option (PCO) Services. The Human Services Department (HSD), Medical Assistance Division (MAD or Medicaid), is proposing amendments to 8.315.4 NMAC, *Personal Care Option Services*. The following is a summary of the most significant proposed changes:

- * Strengthening language throughout to clarify that duplicative PCO services are not allowed for individuals receiving the same or similar services by other sources including natural supports. PCO services are supplemental to other sources including natural supports;
- * Clarifying cognitive assistance as a service within each appropriate Activity of Daily Living (ADL) and Instrumental Activity of Daily Living (IADL) service;
- * Requiring a legal representative for those in self direction that cannot make their own choices or communicate their responses;
- * Restructuring consumer delegated and directed regulations so it is not as repetitive and so that it adequately describes the roles and responsibilities of the PCO agency, caregivers and members;
- * Requiring a backup plan for those in self-directed care;
- * Clarifying the eligible population;
- * Clarifying covered and non-covered PCO services;
- * Clarifying temporary authorizations for PCO services;
- * Introducing a Personal Care Options Service Guide for use in recording observations and responses regarding an individual's functional level and independence to perform ADLs and IADLs. The guide provides an impairment rating system for identifying PCO services and service time ranges.

* Strengthening and/or clarifying the role of managed care wherever possible rather than older fee-for-service language, i.e.; and

* Clarifying sanctions and remedies.

Interested persons may submit written comments no later than 5:00 p.m., November 16, 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 STATE PERSONNEL BOARD

State Personnel Board Public Rules Hearing

The State Personnel Board will convene a Public Rules Hearing in Albuquerque, New Mexico on Friday, December 17, 2010. The hearing will be held during the Board's regular business meeting beginning at 8:30 a.m. located in Albuquerque, with the specific site location to be determined

The purpose of the Rule Hearing is to consider amending SPB Rules and Regulations related to: **Performance Appraisal, 1.7.9.9 NMAC.**

A final agenda for the board meeting will be available at the Board office on December 8, 2010.

Persons desiring to present their

views on the proposed changes may appear in person at said time and place or may submit written comments no later than 5:00 p.m. November 15, 2010, to the Board Office, 2600 Cerrillos Road, Santa Fe, New Mexico, 87505, attention, Ken Giles. Copies of the proposed rule changes are available on request from the Board office at the address listed above, by phone (505) 476-7805, or on the Internet at www.spo.state.nm.us/ beginning October 15, 2010.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service in order to attend or participate in the hearing, please contact the Director at 2600 Cerrillos Road, Santa Fe, New Mexico prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Director if a summary or other type of accessible format is needed.

NEW MEXICO RACING COMMISSION

NEW MEXICO RACING COMMISSION NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the New Mexico Racing Commission will hold a Regular Meeting and Rule Hearing on Thursday, October 28, 2010. The hearing will be held during the Commission's regular business meeting, beginning at 8:30 a.m. with executive session. Public session will begin at 10:30 a.m. The meeting will be held in the Boardroom located at 4900 Alameda Blvd. NE, Albuquerque, New Mexico.

The purpose of the Rule Hearing is to consider adoption of the proposed amendments and additions to the following Rules Governing Horse Racing in New Mexico No. 15.2.1 NMAC, 15.2.3 NMAC, 15.2.5 NMAC, 15.2.6 NMAC, 15.2.7 NMAC, and 16.47.1. NMAC. The comments submitted and discussion heard during the Rule Hearing will be considered and discussed by the Commission during the open meeting following the Rule Hearing. The Commission will vote on the proposed rules during the meeting.

Copies of the proposed rules may be obtained from India Hatch, Agency Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Suite A, Albuquerque, New Mexico 87113, (505) 222-0700. Interested persons may submit their views on the proposed rules to the

commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

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

India Hatch
Agency Director

Dated: September 27, 2010

NEW MEXICO REGULATION AND LICENSING DEPARTMENT SECURITIES DIVISION

NOTICE OF RULEMAKING

The Acting Director of the Securities Division proposes to amend the following existing Division rule: 12.11.14 NMAC, Notice Filings for Offerings of Covered Securities, Section 9.

Interested parties may access the proposed amendment on the Division's website at <http://www.rld.state.nm.us/Securities/index.html>. Copies may also be obtained by contacting the Division at (505) 476-4580. Interested persons may submit written comments no later than 5:00 p.m. Monday, November 15, 2010 regarding the proposed amendment to Marianne Woodard, Attorney, Securities Division, New Mexico Regulation and Licensing Department, 2550 Cerrillos Rd., Toney Anaya Bldg 3rd floor, Santa Fe, New Mexico 87505, or by fax to Ms. Woodard at (505) 984-0617.

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

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

Tax Administration Act

3.1.9.8 NMAC Section 7-1-26 NMSA 1978

(Claim for Refund - General)

Income Tax Act

3.3.1.9 NMAC Section 7-2-2 NMSA

1978
(Residency)

Withholding Tax Act

3.3.2.10 NMAC Section 7-3-12 NMSA 1978
(Withholding by Pass-Through Entities)

Oil and Gas Proceeds and Pass-Through Entity

Withholding Tax Act

3.3.5.2 NMAC Chapter 7, Article 3A NMSA 1978
(Scope)

3.3.5.6 NMAC Chapter 7, Article 3A NMSA 1978
(Objective)

3.3.5.7 NMAC Section 7-3A-3 NMSA 1978
(Definitions)

3.3.5.10 NMAC Section 7-3A-3 NMSA 1978
(Withholding Rates)

3.3.5.11 NMAC Section 7-3A-3 NMSA 1978
(Withholding Minimums)

3.3.5.12 NMAC Section 7-3A-3 NMSA 1978

(Remittees with a New Mexico Address)

3.3.5.13 NMAC Section 7-3A-3 NMSA 1978

(Payments to 501(C)(3) Organizations)

3.3.5.14 NMAC Section 7-3A-5 NMSA 1978

(Reasonable Cause for Not Withholding)

3.3.5.15 NMAC Section 7-3A-7 NMSA 1978

(Statements of Withholding and Information Returns)

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

Oil and Gas Proceeds and Pass-Through Entity

Withholding Tax Act

3.3.5.16 NMAC Section 7-3A-3 NMSA 1978
(Principal Place of Business or Residence in New Mexico)

3.3.5.17 NMAC Section 7-3A-5 NMSA 1978

(Optional Withholding Payment by Remittee, Owner)

3.3.5.18 NMAC Section 7-3A-3 NMSA 1978

(Disregarded Entities)

Income Tax Act

3.3.12.15 NMAC Section 7-2-12.2 NMSA 1978

(When Withheld Tax Not Considered Estimated Tax)

Corporate Income Tax Act

3.4.9.12 NMAC Section 7-2A-9.1 NMSA 1978

(When Withheld Tax Not Considered Estimated Tax)

These proposals were placed on file in the Office of the Secretary on October 1, 2010. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of these proposals, if filed, will be filed as required by law on or about December 15, 2010.

A public hearing will be held on these proposals on Tuesday, November 16, 2010, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before November 16, 2010.

3.1.9.8 CLAIM FOR REFUND - GENERAL:

A. Any person may submit a written claim for refund to the department when the person believes the person: 1) has made payment of or had withheld from that person any tax in excess of that for which the person was liable; 2) has been denied any credit or rebate claimed; or 3) has a claim of prior right to property possessed by the department pursuant to a levy. The secretary has not been given statutory authority to initiate action in the circumstances specified in numbers 1), 2) and 3) above. The person affected must initiate the claim for refund. The filing of a fully completed income, corporate income and franchise, estate or special fuel excise tax return or a fully completed amended income, corporate income and franchise, estate or special fuel excise tax return showing an overpayment of tax, a credit or rebate claimed will constitute the filing of a claim for refund and no separate claim for refund is required.

B. "Fully completed" means a return which complies with all the instructions for the return and contains all attachments required by those instructions.

C. A written claim for refund is timely if it meets the requirements for validity of [Section] 3.1.9.8 NMAC and is transmitted, delivered or mailed to the department prior to the expiration of the statutory time limits in Section 7-1-26 NMSA 1978.

D. A claim for refund is valid if it states the nature of the complaint and affirmative relief requested and if it

contains information sufficient to allow the processing of the claim.

E. Information sufficient to allow processing of a claim includes:

(1) taxpayer's name, address and identification number;

(2) the type or types of tax for which the refund is being claimed;

(3) the sum of money being claimed;

(4) the period for which the overpayment was made;

(5) the basis for the refund; and

(6) a copy of the appropriate, fully completed amended return for each period for which a refund is claimed.

F. ~~[This version of Section 3.1.9.8 NMAC is retroactively applicable to refund claims made on or after January 1, 1998.~~

G.] A claim that does not include the information required by Subsections D and E of 3.1.9.8 [D and E] NMAC is invalid. The department may return any invalid claim to the taxpayer. Alternatively the department may advise the taxpayer of the missing information and that the claim is invalid without submission of the missing information. If the taxpayer re-submits the claim with the required information or, when the return is not returned, submits all required information, the claim becomes valid only at the time the claim is re-submitted or the required information is supplied.

[H.] G. Example: A taxpayer submits an income tax return showing an amount due the taxpayer. The taxpayer either omits entering a social security account number or enters an obviously incorrect number. In either case, the income tax return is not fully completed and the taxpayer has failed to provide a proper identification number. The return is not a valid claim for refund.

H. An information return is not a claim for refund.

3.3.1.9 RESIDENCY

A. Full-year residents. For purposes of the Income Tax Act, the following are full-year residents of this state:

(1) an individual domiciled in this state during all of the taxable year, or

(2) an individual other than an individual described in Subsection D of this section who is physically present in this state for a total of one hundred eighty-five (185) days or more in the aggregate during the taxable year, regardless of domicile.

B. Part-year residents.

(1) An individual who is domiciled in New Mexico for part but not all of the taxable year, and who is physically present in New Mexico for fewer than 185 days, is a part-year resident.

(a) During the first taxable year

in which an individual is domiciled in New Mexico, if the individual is physically present in New Mexico for less than a total of 185 days, the individual will be treated as a non-resident of New Mexico for income tax purposes for the period prior to establishing domicile in New Mexico.

(b) An individual domiciled in New Mexico who is physically present in New Mexico for fewer than 185 days and changes his domicile to a place outside this state with the bona fide intention of continuing to live permanently outside New Mexico, is not a resident for Income Tax Act purposes for periods after that change of domicile.

(2) An individual who moves into this state with the intent to make New Mexico his permanent domicile is a first-year resident. A first-year resident should report any income earned prior to moving into New Mexico as nonresident income even if he is physically present in New Mexico for 185 days or more.

C. "Domicile" defined:

(1) A domicile is the place where an individual has a true, fixed home, is a permanent establishment to which the individual intends to return after an absence, and is where the individual has voluntarily fixed habitation of self and family with the intention of making a permanent home. Every individual has a domicile somewhere, and each individual has only one domicile at a time.

(2) Once established, domicile does not change until the individual moves to a new location with the bona fide intention of making that location his or her permanent home.

(3) No change in domicile results when an individual leaves the state if the individual's intent is to stay away only for a limited time, no matter how long, including:

(a) for a period of rest or vacation;

(b) to complete a particular transaction, perform a contract or fulfill an engagement or obligation, but intends to return to New Mexico whether or not the transaction, contract, engagement or obligation is completed, or

(c) to accomplish a particular purpose, but does not intend to remain in the new location once the purpose is accomplished.

(4) To determine domicile, the department shall give due weight to an individual's declaration of intent. However, those declarations shall not be conclusive where they are contradicted by facts, circumstances and the individual's conduct. In particular, the department will consider the following factors in determining whether an individual is domiciled in New Mexico (the list is not intended to be exclusive and is in no particular order):

(a) homes or places of abode

owned or rented (for the individual's use) by the individual, their location, size and value; and how they are used by the individual;

(b) where the individual spends time during the tax year and how that time is spent; e.g., whether the individual is retired or is actively involved in a business, and whether the individual travels and the reasons for traveling, and where the individual spends time when not required to be at a location for employment or business reasons, and the overall pattern of residence of the individual;

(c) employment, including how the individual earns a living, the location of the individual's place of employment, whether the individual owns a business, extent of involvement in business or profession and location of the business or professional office, and the proportion of in-state to out-of-state business activities;

(d) home or place of abode of the individual's spouse, children and dependent parents, and where minor children attend school;

(e) location of domicile in prior years;

(f) ownership of real property other than residences;

(g) location of transactions with financial institutions, including the individual's most active checking account and rental of safety deposit boxes;

(h) place of community affiliations, such as club and professional and social organization memberships;

(i) home address used for filing federal income tax returns;

(j) place where individual is registered to vote;

(k) state of driver's license or professional licenses;

(l) resident or nonresident status for purposes of tuition at state schools, colleges and universities, fishing and hunting licenses, and other official purposes; and

(m) where items or possessions that the individual considers "near and dear" to his or her heart are located, e.g., items of significant sentimental or economic value (such as art), family heirlooms, collections or valuables, or pets.

(5) The department shall evaluate questions regarding domicile on a case-by-case basis. No one of the factors considered by the department shall be conclusive with respect to an individual's domicile. Factors such as the state of driver's license, place of voter registration and home address may be given less weight, depending on the circumstances, because they are relatively easy to change for tax purposes.

D. "Domicile" and residency for armed forces personnel

(1) A resident of this state who is a member of the United States armed forces does not lose residence or domicile

in this state, or gain residency or domicile in another state, solely because the service member left this state in compliance with military orders.

(2) A resident of another state who is a member of the United States armed forces does not acquire residence or domicile in this state solely because the service member is in this state in compliance with military orders.

(3) A resident of another state who is a member of the United States armed forces does not become a resident of this state solely because the service person is in this state for one hundred and eighty-five (185) or more days in a taxable year.

(4) Compensation for service in the armed forces is subject to personal income tax only in the state of the service member's domicile. "Compensation for military service" does not include compensation for off-duty employment, or military retirement income.

(5) For purposes of this section, "armed forces" means all members of the army of the United States, the United States navy, the marine corps, the air force, the coast guard, all officers of the public health service detailed by proper authority for duty either with the army or the navy, reservists placed on active duty, and members of the national guard called to active federal duty.

E. Examples:

(1) A, a life-long resident of Texas, accepts a job in New Mexico. On December 5, 2003, A moves to New Mexico with the intention of making New Mexico her permanent home. A has established domicile in New Mexico during the 2003 tax year. Because she was physically present in New Mexico for fewer than 185 days during that year, she should file as a part-year resident, and she will be treated as a resident for personal income tax purpose only for that period after she establishes a New Mexico domicile.

(2) B, a resident of Arizona, makes several weekend visits to New Mexico in the early months of 2004. On July 1, 2004, he moves to New Mexico with the intention of making it his permanent home. Family matters call him back to Arizona on August 1, 2004, and he soon determines that he must remain in Arizona. B was domiciled in New Mexico during the thirty days he spent in this state with the intention of making it his permanent home. Because B was physically present in this state for fewer than 185 days in 2004, B should file as a part-year resident for that tax year. For personal income tax purposes he will be treated as a resident of New Mexico only from July 1 to August 1, 2004.

(3) C was born and raised in New Mexico. She leaves New Mexico in December 2003 to pursue a two-year master's degree program in Spain. She

intends to return to New Mexico when she completes her studies. During her absence she keeps her New Mexico driver's license and voter registration. Because New Mexico remains her domicile, C should file returns for tax years 2003, 2004 and 2005 as a full-year New Mexico resident.

(4) D, a resident of California, comes to New Mexico on three separate occasions in 2004 to work on a movie. D does not intend to remain in New Mexico, and when the movie is completed, D returns to her home in California. D is physically present in New Mexico for 200 days in 2004. Because D was physically present in New Mexico for at least 185 days, D must file as a full-year resident of New Mexico for tax year 2004.

(5) E, a resident of New Mexico, joined the army. Since joining the military, E has been stationed in various places around the world. Although E has not been back to New Mexico in the ten years since he joined the army, he continues to vote in New Mexico and holds a current New Mexico driver's license. E must file as a full-year resident of New Mexico.

(6) Same facts as Example 5, except that in August 2003, while stationed in Georgia, E retires from the military. Instead of returning to New Mexico, E moves to Florida where he intends to spend his retirement. For tax year 2003, E must file as a part-year resident, because he was not physically present in the state for 185 days or more. E is a resident of New Mexico until August 2003, when he moves to Florida with the intent of making that his permanent home.

(7) F, a resident of Texas, is an air force officer. In March 2002 he moves to New Mexico ~~[with his spouse]~~ to begin a two-year assignment at Kirtland Air Force Base. F is registered to vote in Texas and holds a Texas driver's license. F is not a resident of New Mexico in 2002. ~~[F's spouse is a full-year resident of New Mexico in 2002, regardless of domicile, because she is physically present in New Mexico for 185 days or more.]~~ During the second year of F's assignment, he registers to vote in New Mexico, obtains a New Mexico driver's license, and enrolls his son in a New Mexico university paying resident tuition. Although F's presence in New Mexico under military orders is not sufficient to establish New Mexico residency or domicile, his conduct in 2003 is sufficient to establish domicile. In 2003 F must file as a part-year resident of New Mexico. He will be treated as a non-resident for income tax purposes for that period of 2003 prior to establishing domicile in New Mexico.

(8) G is a Native American who lives and works on his tribe's pueblo in New Mexico. Federal law prohibits the state from taxing income earned by a Native American

who lives and works on his tribe's territory. G joins the marines and is stationed outside New Mexico. Because G's domicile remains unchanged during his military service, G's income from military service is treated as income earned on the tribe's territory by a tribal member living on the tribe's territory, and is not taxable by New Mexico.

3.3.2.10 WITHHOLDING BY PASS-THROUGH ENTITIES

A. **Withholding by pass-through entities; rate.** For periods beginning on or after January 1, 2004 and ending prior to January 1, 2011, the rate of withholding by pass-through entities pursuant to the provisions of Subsection D of Section 7-3-12 NMSA 1978 shall equal the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the taxable year.

B. **Withholding by pass-through entities; agreements; reasonable cause.** The obligation to collect and remit withholding amounts pursuant to Subsection D of Section 7-3-12 NMSA 1978 may be avoided if the nonresident owner submits to the pass-through entity an agreement authorized by Subsection E of that section in the form and manner prescribed by the secretary. An agreement may be restricted to a single taxable year, may cover multiple years or may be put into effect for an indefinite term subject to revocation by the nonresident owner. An agreement must be in the possession of the pass-through entity at the time the pass-through entity files its return for the taxable year to which the agreement pertains. When a nonresident owner becomes a resident of New Mexico, the agreement submitted by that owner is revoked automatically, effective for the taxable year in which the change in residence took place. The obligation to withhold may also be avoided if the pass-through entity demonstrates that failure to withhold is due to a reasonable cause pursuant to Subsection B of Section 7-3-5 NMSA 1978.

C. **Due date exception.** The due date specified in Section 7-3-6 NMSA 1978 does not apply to payment of amounts withheld in accordance with Section 7-3-12 NMSA 1978. The due date specified in Section 7-3-12 NMSA 1978 with respect to such amounts controls.

D. **Crediting to tax year.** Amounts withheld pursuant to the provisions of Section 7-3-12 NMSA 1978 with respect to an owner shall be credited to the owner for the same taxable year for which the income is required to be reported for federal income tax purposes.

E. **Withholding by pass-through entities for periods beginning on or after January 1, 2011 is governed by the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act and 3.3.5 NMAC.** 3.3.2.10 NMAC does not apply to such

withholding by pass-through entities after December 31, 2010 except as provided in Subsection E of 3.3.5.16 NMAC.

3.3.5.2 **SCOPE:** This part applies to all remitters of oil and gas proceeds from New Mexico wells and to pass-through entities.

3.3.5.6 **OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the [Oil and Gas Proceeds Withholding Tax Act] Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

3.3.5.7 **DEFINITIONS:** For the purposes of [Section 3.3.5.7] 3.3.5 NMAC:

A. ["gross amounts subject to withholding"] "gross amount" includes amounts deducted by the remitter for expenses and severance taxes, but does not include amounts deducted for expenses or taxes prior to receipt by the remitter. If a taxpayer receives a Form 1099-MISC for its oil and gas proceeds, the gross amount is the amount reported on federal Form 1099-MISC in box 2, royalties, and in box 7, nonemployee compensation;

B. "resident of New Mexico" means (1) an individual domiciled in this state during all of the taxable year, or (2) an individual other than an individual described in Subsection D of 3.2.1.9 NMAC who is physically present in this state for a total of one hundred eighty-five (185) days or more in the aggregate during the taxable year, regardless of domicile or (3) an individual who moves into this state with the intent to make New Mexico his permanent domicile; and

C. "net income" means "net income" as defined in Section 7-3A-2C NMSA 1978, after appropriate allocation and apportionment to New Mexico in accordance with the Uniform Division of Income for Tax Purposes Act.

3.3.5.10 WITHHOLDING RATES:

A. For periods beginning on or after January 1, 2005 and before January 1, 2011, the rate of withholding shall equal the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the taxable year.

B. For periods beginning on or after January 1, 2011, the rate of withholding pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act shall be set by directive of the secretary. The withholding rate set in the directive shall be effective no earlier than ninety (90) days after the date on which the directive is promulgated. The directive shall be posted on the taxation and revenue

department's web site, along with past, current and, when the rate is announced to change at a future time, future withholding rates and the time periods to which they pertain.

3.3.5.11 WITHHOLDING MINIMUMS: [No withholding is required if the amount withheld from any payment to a remitte is less than ten dollars (\$10.00); but the remitter may withhold from such payment without creating a right of action by the remitte against the remitter.]

A. With respect to oil and gas proceeds, no withholding from a payment to a remitte is required if:

(1) the sum of all payments, including the subject payment, to that remitte by the remitter in the calendar quarter does not exceed thirty dollars (\$30.00); and

(2) the amount to be withheld from the subject payment is less than ten dollars (\$10.00).

B. With respect to net income from pass-through entities, no withholding is required from a payment to an owner if the sum of all payments, including the subject payment, to that owner by the pass-through entity in the calendar quarter is less than thirty dollars (\$30.00).

C. The remitter may withhold from a payment described in Subsection A or B of this section without creating a right of action by the remitte or owner against the remitter or pass-through entity.

D. This version of 3.3.5.11 NMAC applies to payments for periods beginning on or after January 1, 2011.

3.3.5.12 REMITTEES WITH A NEW MEXICO ADDRESS: With respect to payments made for periods prior to January 1, 2011, a remitter is not obligated to deduct and withhold under the Oil and Gas Proceeds Withholding Tax Act from payments to a [remitte's] remitte with a New Mexico address. The relevant address for purposes of Section 7-3A-3 NMSA 1978 is the remitte address to which federal Form 1099-MISC is mailed or otherwise transmitted, or the address that is shown on federal Form W-9 or similar form. If federal law does not require the remitter to mail a federal Form 1099-MISC to the remitte, and the remitter has not received a federal Form W-9 or similar form, the relevant address is the address to which the oil and gas proceeds are mailed or otherwise transmitted. This section does not apply to payments for periods beginning on or after January 1, 2011. See 3.3.5.16 NMAC for equivalent provisions for withholding for periods beginning on or after January 1, 2011.

3.3.5.13 [REMITTEES WHO ARE] PAYMENTS TO 501(C)(3) ORGANIZATIONS: A remitter or pass-through entity is not obligated to deduct and withhold under the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act from payments to a remitte or owner granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the [United States] Internal Revenue Code [of 1986, as amended]. Acceptable proof that a remitte or owner is a 501(c)(3) organization includes a copy of the remitte's or owner's federal Form W-9, or a copy of the determination letter from the internal revenue service granting the remitte or owner 501(c)(3) status. This version of 3.3.5.13 NMAC applies to payments for periods beginning on or after January 1, 2011.

3.3.5.14 "REASONABLE CAUSE" FOR NOT WITHHOLDING: In addition to the cause set forth in Subsection C of Section 7-3A-5 NMSA 1978, the department will accept as "reasonable cause" for not withholding [includes, but is not limited to] the following:

A. written notification from a remitte that the payment is subject to further distribution by the remitte as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners [and/or] or production payment interest owners;

B. internal documentation such as signed division orders demonstrating that the payment is subject to further distribution by the remitte as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners [and/or] or production payment interest owners;

C. through December 31, 2011, reliance on a New Mexico address supplied by the remitte; the remitter may rely on a New Mexico address supplied by the remitte for up to thirty (30) days after receiving written notice from the remitte of a change in address to an address outside New Mexico; [and]

D. receipt of a written agreement from a remitte or owner under 3.3.5.17 NMAC that the remitte or owner will timely report and pay [tax on] amounts required to be withheld and remitted; [The agreement must be in a form prescribed by the department. It must be in the remitter's possession at the time it files its annual statement of withholding. The remitte may choose that the agreement remain in effect for a single taxable year, multiple taxable years, or an indefinite term subject to the remitte's revocation.]

E. inability to make payment of withholding from net income for

the quarter due to nonavailability of cash or due to contracts and other binding written covenants with unrelated third parties, unless cash payments have been made to any owner during the quarter, in which case the pass-through entity is liable for payment of the withholding amount due up to the extent of the cash payment made during the quarter;

F. with respect to tax years 2014 through 2018, the pass-through entity has elected pursuant to 26 USC 108(i) to defer income from the discharge of indebtedness in connection with the reacquisition after December 31, 2008 and before January 1, 2011 of an applicable debt instrument for the period 2014 through 2018 and the entity has insufficient cash to remit the withholding amount due on the deferred income reported in the year; and

G. any other reason acceptable to the secretary, to be determined on a case-by-case basis.

3.3.5.15 STATEMENTS OF WITHHOLDING AND INFORMATION RETURNS

A. Each remitter shall:

(1) provide a federal Form 1099-MISC to each remitte on or before February 15 of the year following the year for which the statement is made, reflecting the proceeds paid to the remitte and the state tax withheld;

(2) file an "annual summary of oil and gas proceeds withholding tax" information return with the department on or before the last day of February of the year following the year for which the statement is made; and

(3) attach to the "annual summary of oil and gas proceeds withholding tax" information return copies of federal Form 1099-MISC for each remitte of oil and gas proceeds from whom withholding was required. Remitters who submit federal Form 1099-MISC information returns by magnetic media or electronic transfer using the combined federal/state program, with the records coded to be forwarded to New Mexico, are not required to submit paper copies of federal Form 1099-MISC with the annual summary.

B. Remitters who are not required by federal law to file a federal Form 1099-MISC but have a withholding tax obligation pursuant to the Oil and Gas Proceeds Withholding Tax Act must provide New Mexico an "annual statement of withholding of oil and gas proceeds," a pro forma federal Form 1099-MISC, or a form containing equivalent information, to each remitte and file a copy with the department to satisfy the filing requirements of the Oil and Gas Proceeds Withholding Tax Act.

C. If a pass-through entity is not required to file a federal income tax return for the taxable year, the entity shall

file an annual information return with the department not later than one hundred five (105) days after the end of its taxable year and provide to each of its owners sufficient information to enable the owner to comply with the provisions of the Income Tax Act or Corporate Income and Franchise Tax Act with respect to the owner's share of the net income.

3.3.5.16 **PRINCIPAL PLACE OF BUSINESS OR RESIDENCE IN NEW MEXICO**

A. Remitters and pass-through entities are not required to withhold from corporations whose principal place of business is in New Mexico or from individuals who are residents of New Mexico. If the corporation establishes that its place of business is in New Mexico or an individual establishes that his or her residence is in New Mexico, it does not matter where remittances to the corporation or individual are sent.

B. Corporations: If a remitter or pass-through entity is not excused from the obligation to deduct and withhold from payments to the corporation because the corporation is described in Paragraphs (2) through (4) of Subsection C of Section 7-3A-3 NMSA 1978 or the remitter or pass-through entity is party to an agreement in force with the remittee or owner pursuant to Subsection H of Section 7-3A-3 NMSA 1978, the obligation to deduct and withhold remains in force until the remitter or owner establishes that the corporation's principal place of business is in New Mexico except as provided in Subsection E of this section.

(1) Corporations incorporated in New Mexico: The remitter or pass-through entity may establish that the corporation's principal place of business is in New Mexico by acquiring and retaining a copy of the corporation's incorporation papers, sufficient portions of those papers to demonstrate incorporation in New Mexico, or information from the public regulation commission website indicating that the corporation is a New Mexico corporation in good standing and its address.

(2) Corporations incorporated in New Mexico or elsewhere: The remitter or pass-through entity may establish that the corporation's principal place of business is in New Mexico by acquiring and retaining from the corporation a notarized statement that the corporation's principal place of business is in New Mexico and setting forth the physical location of that principal place of business; provided that a post office box number, address of a postal forwarding service or equivalent addresses or the address of a bank, agent or nominee of the corporation are not acceptable as a physical location of the corporation for the purposes of Section 7-3A-3 NMSA 1978.

C. Individuals: If a remitter or pass-through entity is not excused from the obligation to deduct and withhold from payments to the individual because the remitter or pass-through entity is party to an agreement in force with the remittee or owner pursuant to Subsection H of Section 7-3A-3 NMSA 1978, the obligation to deduct and withhold remains in force until the remitter or owner establishes that the individual is a resident of New Mexico except as provided in Subsection E of this section. The remitter or pass-through entity may establish that the individual is a resident of New Mexico by acquiring and retaining a notarized statement that the individual is a resident of New Mexico and setting forth the physical location of the individual's abode in New Mexico; provided that a post office box number, address of a postal forwarding service or equivalent addresses or the address of a bank, agent or nominee of the individual are not acceptable as a physical location of the individual for the purposes of Section 7-3A-3 NMSA 1978.

D. The obligation to deduct and withhold applies with respect to all remittances and owners that are not corporations or individuals regardless of the remittee's or owner's physical or mailing address, effective January 1, 2011, unless the remitter or pass-through entity is party to an agreement in force with the remittee or owner pursuant to Subsection H of Section 7-3A-3 NMSA 1978.

E. To ease the transition to the new requirements of this section, remitters and pass-through entities may continue to rely on New Mexico addresses pursuant to 3.3.5.12 NMAC for withholding for calendar quarters ending prior to January 1, 2012.

3.3.5.17 **OPTIONAL WITHHOLDING PAYMENT BY REMITTEE, OWNER**

A. A remitter may enter into an agreement with a remittee that the remittee will remit to the taxation and revenue department at the time and in the manner required by the department the amounts that the remitter is required to withhold and remit with respect to payments to the remittee. Similarly, a pass-through entity may enter into an agreement with an owner that the owner will remit to the department the amounts that the pass-through entity is required to withhold and remit with respect to payments to the owner.

B. The agreement must be in a form prescribed by the department or substantially equivalent to such form. It must be in the remitter's or pass-through entity's possession at the time it files its annual statement of withholding pursuant to Section 7-3A-7 NMSA 1978. The agreement may remain in effect for a single taxable year,

multiple taxable years, or an indefinite term, and may be revoked or amended on mutual agreement of the parties.

C. Remittances to the department pursuant to an agreement by a remittee or owner that is subject to corporate income tax or personal income tax may be credited against the remittee's or owner's estimated tax liability pursuant to Section 7-2A-9.1 NMSA 1978 or Section 7-2-12.2 NMSA 1978 since the remittances relate to the remitter's or owner's own corporate income tax or personal income tax liability.

3.3.5.18 **DISREGARDED ENTITIES**

A. The term "pass-through entity," in addition to the exclusions listed in Subsection H of Section 7-3A-2 NMSA 1978, also excludes entities treated as "disregarded entities" for federal income tax purposes. These include qualified subchapter S subsidiaries, as defined in 26 USC Section 361(b)(3)(B), partnerships electing under 26 USC Section 761(a) to be treated as disregarded entities, qualified joint ventures, as defined in 26 USC Section 761(f), and qualified entities defined in internal revenue service revenue procedure 2002-69.

B. When a business association is treated as a disregarded entity for federal income tax purposes for only part of the association's taxable year, the association is subject to the withholding and reporting requirements of the Oil and Gas Proceeds and Pass-Through Entity Tax Withholding Act for that portion of the taxable year in which it is not treated as a disregarded entity and must submit an annual statement of withholding pursuant to Section 7-3A-7 NMSA 1978 covering that portion its taxable year in which the association was not treated as a disregarded entity.

3.3.12.15 **WHEN WITHHELD TAX NOT CONSIDERED ESTIMATED TAX:**

Payment pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act by an oil and gas proceeds remitter or a pass-through entity of withholding tax required to be withheld from payments to a remittee or an owner relate to the remittee's or owner's income tax or corporate income tax liability, not to the remitter's or pass-through entity's. Accordingly, when a remitter or pass-through entity is a person subject to personal income tax and has an obligation to pay estimated tax pursuant to Section 7-2-12.2 NMSA 1978, the person may not credit the amounts it withheld under Section 7-3A-3 NMSA 1978 from payments the person owes to remittances or owners against the person's own estimated tax liability. See 3.3.5.17 NMAC for treatment of withholding owed by remitter or pass-through entity but paid by

remittee or owner pursuant to an agreement.

3.4.9.12 WHEN WITHHELD TAX NOT CONSIDERED ESTIMATED TAX: Payment pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act by an oil and gas proceeds remitter or pass-through entity of withholding tax required to be withheld from payments to a remittee or an owner relate to the remittee's or owner's income tax or corporate income tax liability, not to the remitter's or pass-through entity's. Accordingly, when a remitter or pass-through entity is a corporation that also has an obligation to pay estimated tax pursuant to Section 7-2A-9.1 NMSA 1978, the corporation may not credit the amounts it withheld under Section 7-3A-3 NMSA 1978 from payments the corporation owes to remitees or owners against the corporation's own estimated tax liability. See 3.3.5.17 NMAC for treatment of withholding owed by remitter or pass-through entity but paid by remittee or owner pursuant to an agreement.

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

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

Gross Receipts and Compensating Tax Act

3.2.1.11 NMAC Section 7-9-3.4 NMSA 1978

(Construction)

3.2.212.22 NMAC Section 7-9-54 NMSA 1978

(Tangible Personal Property in Projects Financed by Industrial Revenue or Similar Bonds)

These proposals were placed on file in the Office of the Secretary on October 1, 2010. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of these proposals, if filed, will be filed as required by law on or about December 15, 2010.

A public hearing will be held on these proposals on Thursday, November 18, 2010, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe,

New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before November 18, 2010.

3.2.1.11 CONSTRUCTION.

A. Construction service as distinguished from other services.

(1) The term "construction" is limited to the activities, or management of the activities, which are listed in Section 7-9-3.4 NMSA 1978 and which physically change the land or physically create, change or demolish a building, structure or other facility as part of a construction project.

(2) "Construction" does not include services that do not physically change the land or physically create, change or demolish a building, structure or other facility as part of a construction project, even though they may be related to a construction project. The fact that a service may be a necessary prerequisite or ancillary to construction or a construction project does not in itself make the service a construction service. Excluded from the meaning of "construction" are activities such as, but not limited to: hauling to or from the construction site except as otherwise provided in Subsection C of [Section 3-2-52-40] 3.2.210.10 NMAC, maintenance work, landscape upkeep, the repair of equipment or appliances, laboratory work or accounting, architectural, engineering, surveying, traffic safety or legal services.

(3) "Construction" does not include leasing, such as renting or leasing equipment with or without an operator.

B. Speculative builders.

A person is engaged in the construction business if that person constructs improvements on real property which the person owns and which improved property is held for sale in the ordinary course of business.

C. Construction includes.

Pursuant to Section 7-9-3.4 NMSA 1978 the term "construction" includes the painting of structures, the installation of sprinkler systems and the building of irrigation pipelines.

D. Construction does not include.

(1) Pursuant to Section 7-9-3.4 NMSA 1978, the term "construction" does not include the installation of carpets or the installation of draperies.

(2) A person engaged in the construction business, however, may deliver to the seller a [Type-6] nontaxable transaction

certificate pursuant to Section 7-9-51 NMSA 1978, for the purchase of carpets, draperies, or installed carpet or installed draperies to the seller.

(3) Even though receipts from selling carpet installation services or drapery installation services to a person engaged in the construction business are receipts from the sale of a service for resale, a person engaged in the construction business may deliver to the seller a [Type-7] nontaxable transaction certificate pursuant to Section 7-9-52 NMSA 1978, for the purchase of carpet installation services or drapery installation services.

E. Oil and gas industry construction.

(1) "Construction", as this term is used in Section 7-9-3.4 NMSA 1978, includes the following activities related to the oil and gas industry:

(a) building and altering of gas compression plant facilities and pump stations, including: clearing of property sites; excavating for foundations; building and setting foundation forms; mixing, pouring, and finishing concrete foundations for buildings and plant equipment on foundations; fabricating and installing piping; installing electrical equipment, insulation, and instruments; erecting buildings; placing sidewalks, drives, parking areas; installing storage tanks; and dismantling equipment and reinstalling elsewhere;

(b) building of or extension of gas-gathering pipelines, including: connecting gathering lines to lease separators, fabricating and installing meter runs, digging trenches, beveling pipe, welding pipe, wrapping pipe, backfilling trenches, testing pipelines, fabricating and installing pipeline drips and installing conduit for pipelines crossing roads or railroads;

(c) building of or extension of product pipelines, including: building pressure-reducing stations; connecting pipelines to storage tanks, fabricating and installing valve assemblies, digging trenches, beveling pipe, welding pipe, wrapping pipe, laying pipe, backfilling trenches, testing pipelines and installing conduit for pipeline crossing roads or railroads;

(d) building secondary-recovery systems, including: excavating and building foundations, installing engines and water pumps, installing pipelines for water intake, installing pipelines for carrying pressured water to input wells, installing instruments and controls and erecting buildings;

(e) installing lease facilities, including: installing wellheads, flow lines, chemical injectors, separators, heater-treaters, tanks, stairways and walkways; building foundations; and setting pump units and engines, central power units and rod lines;

(f) demolishing pipelines,

including: digging trenches to uncover pipelines, dismantling and removing drips and meter runs, backfilling trenches, tamping and smoothing right-of-way;

(g) increasing pipeline capacity, including: removing small pipelines and replacing with larger lines, and digging adjoining trenches and laying new pipelines;

(h) repairing plant, including: replacing tubing in atmospheric condensers, replacing plugged boiler tubing; removing cracked, broken or damaged portions of foundations and replacing anew; replacing compressors, compressor engines, or pumps; and regrouting and realigning compressors;

(i) drilling wells, including: drilling ratholes, excavating cellars and pits, casing crew services, cementing services, directional drilling, drill stem testing and fishing jobs in connection with drilling operations;

(j) general dirt work, including: building roads, paving with caliche or other surfacing materials; digging pits, trenches, and disposal ponds, building firewalls and foundation footing; and constructing pads from caliche or other materials.

(2) "Construction", as the term is used in Section 7-9-3.4 NMSA 1978, does not include the following activities related to the oil and gas industry:

(a) well servicing, including: acidizing and fracturing formations; pulling and rerunning rods or tubing; loading or unloading a well; shooting; scraping paraffin; steaming flow lines and tubing; inspecting equipment; fishing jobs, other than in connection with drilling operations; bailing cave-ins; reverse circulating and resetting packers;

(b) lease and plant maintenance, including: cleaning; weed-control; preventive care of machinery, pipelines, gathering systems, and engines; tank cleaning; testing of flow lines by pressure or X-ray means; cleaning lines and tubing by acid treatment or mechanical means, or replacing and restoring machinery components;

(c) transporting equipment, including: transporting drilling rigs, rigging-up and rigging-down, and hauling water and mud;

(d) salvaging of materials from a "production unit", as defined in the Oil and Gas Emergency School Tax Act, such as: killing the gas pressure, removing casing heads, welding pull nipples on the casing, cutting or shooting casing strings, pulling casings from the well bore, cementing to fill the abandoned well or plug the well, filling the cellar, and welding steel pipe markers;

(e) rental of equipment such as: power tongs, blowout preventors, tanks, pipe racks, core barrels, integral parts of a drilling rig or integral parts of a circulation unit;

(f) measuring, "logging" and

surveying services in connection with the drilling of an oil or gas well; "logging" as that term is used in this subsection is a method of testing or measuring an oil or gas well by recording various aspects of the geological formations penetrated by the well.

F. Construction includes prefabricated buildings; prefabricated versus modular buildings.

(1) The sale of prefabricated buildings, whether constructed from metal or other material, is the sale of construction. A prefabricated building is a building designed to be permanently affixed to land and manufactured (usually off-site) in components or sub-assemblies which are then assembled at the building site. Prefabricated buildings are not designed to be portable or relocatable.

(2) A portable building or a modular relocatable building is a building manufactured (usually off-site) which is designed to be relocatable and, when delivered to the installation site, generally requires only blocking, levelling and, in the case of modular relocatable buildings, joining of modules. For the purposes of Subsection F of [Section] 3.2.1.11 NMAC, neither portable buildings, modular relocatable buildings nor manufactured homes defined as vehicles by Section 66-1-4.11 NMSA 1978 are prefabricated buildings.

G. Construction materials and services; landscaping.

(1) Landscaping items, such as ornaments, rocks, trees, plants, shrubs, sod and seed, which are sold to a person engaged in the construction business, that are an integral part of the construction project, are construction materials. Persons who seed, lay sod or install landscape items in conjunction with a construction project are performing construction services.

(2) Receipts from selling landscaping items to, and from seeding, laying sod or installing landscape items for, persons engaged in the construction business may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate to the seller as provided in Section 7-9-51 and Section 7-9-52 NMSA 1978, respectively.

H. Nontaxable transaction certificates.

(1) Nontaxable transaction certificates are available from the department for persons who are performing construction as set forth in Section 7-9-3.4 NMSA 1978 to issue to providers of construction materials and construction services.

(2) Only persons who are licensed by the state of New Mexico as construction contractors may apply for and use nontaxable transaction certificates under the provisions of Sections 7-9-51 NMSA 1978 and 7-9-52 NMSA 1978, except that a person who

performs construction activities as defined in Section 7-9-3.4 NMSA 1978 in the ordinary course of business, and who is exempt from the laws of the state of New Mexico requiring licensing as a contractor may issue such certificates.

I. Fixtures.

(1) [~~Construction includes the sale and installation of "fixtures" such as kitchen equipment, library equipment, science equipment and other miscellaneous equipment installed so that it becomes firmly attached to the realty. Fixtures are considered to be items of tangible personal property which are necessary or essential to the intended use of a construction project and which are so firmly attached to the realty as to constitute a part of the construction project.~~] Construction includes the construction and installation of fixtures. Fixtures are tangible personal property that becomes so related to particular real property that an interest in them arises under real property law. Tangible personal property that is permanently annexed or attached to the land, applied to a use or purpose that the real property to which it is attached is used, and intended to be permanently part of the real property is a fixture.

(2) Receipts from the sale of furniture, kitchen equipment, library shelves and other furniture or equipment sold on an assembled basis that does not become a ["fixture"] fixture is a sale of tangible personal property and not construction.

J. Construction materials; general.

(1) The term "construction materials" means tangible personal property which is intended to become an ingredient or component part of a construction project.

(2) Tangible personal property intended ultimately to become an ingredient or component part of a construction project although not purchased for a specific project is nonetheless a construction material. *Example:* A government agency makes bulk purchases of asphalt which is stored by the agency for use in future road construction or repair projects. The asphalt is a construction material.

(3) Tools, equipment and other tangible personal property not designed or intended to become ingredients or component parts of a construction project are not construction materials if such materials accidentally become part of a construction project. *Example:* A workman accidentally drops a pair of gloves and a hammer into a form into which concrete is being poured. Because the gloves and the hammer are not intended to be included in the concrete structure, they are not construction materials.

K. Meaning of "building".

[(+) As used in Section 7-9-3.4 NMSA 1978, the noun "building" means a roofed and walled structure designed for

permanent use but excludes an enclosure so closely combined with the machinery or equipment it supports, houses or serves that it must be replaced, retired or abandoned contemporaneously with the machinery or equipment.

~~[(2) A "building" includes the structural components integral to the building and necessary to the operation or maintenance of the building but does not include equipment, systems or components installed to perform, support or serve the activities and processes conducted in the building and which are classified for depreciation purposes as 3-year property, 5-year property, 7-year property, 10-year property or 15-year property by Section 168 of the Internal Revenue Code or, if the Internal Revenue Code is amended to rename or replace these depreciation classes, would have been classified for depreciation purposes as 3-year property, 5-year property, 7-year property, 10-year property or 15-year property but for the amendment.]~~

~~(3) Example: A building may include any of the following equipment, systems or components:~~

~~(a) elevators and escalators used in whole or in part to move people;~~

~~(b) heating, cooling and air conditioning systems except for air conditioning and air handling systems and components, separately depreciated under Section 168, installed to meet temperature, humidity or cleanliness requirements for the operation of machinery or equipment or the manufacture, processing or storage of products;~~

~~(c) electrical systems except for electrical systems and components, separately depreciated under Section 168, installed to power machinery or equipment operated as part of the activities and processes conducted in the building and not necessary to the operation or maintenance of the building; and~~

~~(d) plumbing systems except for plumbing systems and components, separately depreciated under Section 168, installed to perform, serve or support the activities and processes conducted in the building, such as for the handling, transportation or treatment of ingredients, chemicals, waste or water for a manufacturing or other process.]~~

3.2.212.22 T A N G I B L E PERSONAL PROPERTY IN PROJECTS FINANCED BY INDUSTRIAL REVENUE OR SIMILAR BONDS:

A. For the purposes of this section, a "bond project" is an arrangement entered into under the authority of the Industrial Revenue Bond Act, the County Industrial Revenue Bond Act or similar act in which a private person agrees (i) to arrange for the constructing and equipping

of a facility for a state or local government by acting as agent for the government in procuring construction services, other services, tangible personal property which becomes an ingredient or component part of a construction project and other tangible personal property necessary for constructing and equipping the facility, (ii) to lease the completed facility from the government and (iii) to buy the facility upon repayment of the bonds. The government agrees to own the facility, to finance the project in whole or in part through the issuance of bonds, to designate the private person as its agent in procuring the necessary property and services, to lease the facility to the private person and to sell the facility to the private person upon repayment of the bonds.

B. Receipts from the sale of tangible personal property to the private person who is acting as agent for the government with respect to the bond project are deductible under Section 7-9-54 NMSA 1978 if the tangible personal property is not an ingredient or component part of a construction project. ~~[To be deductible, the bond project tangible personal property must meet all of the following criteria:~~

~~(1) the cost of the tangible personal property does not increase the basis, as determined under the provisions of Section 1011 of the Internal Revenue Code in effect on the date the bond project commences, of the structure or other facility included in the definition of construction; and~~

~~(2) the tangible personal property is:~~

~~(a) not included in, or similar to, the list of structures and facilities specifically itemized in the definition of construction at Section 7-9-3 NMSA 1978; and~~

~~(b) classified for depreciation purposes as 3-year property, 5-year property, 7-year property, 10-year property or 15-year property by Section 168 of the Internal Revenue Code in effect on the date the bond project commences or, if the Internal Revenue Code is amended to rename or replace these depreciation classes, would have been classified for depreciation purposes as 3-year property, 5-year property, 7-year property, 10-year property or 15-year property but for the amendment.]~~

C. A bond project commences when the governing body of the state or local government takes official action to enter into the arrangement, but no earlier than the adoption of an inducement resolution.

D. Receipts from the sale of tangible personal property which becomes an ingredient or component part of a construction project, whether the sale is to the private person acting as agent for the government in a project financed by industrial revenue or similar bonds or to the government itself, are not deductible under

Section 7-9-54 NMSA 1978.

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

This is an amendment to 19.15.110 NMAC, Section 11, effective 10/15/2010.

19.15.110.11 BIODIESEL FUEL DELIVERY DOCUMENTATION:

A. An invoice, bill of lading, shipping paper, or other documentation, must accompany each delivery of fuel other than a sale by a retail or nonretail dealer (e.g. cardlock) to a consumer.

B. The delivery documentation for biodiesel blends above 5 percent is required to state the actual volume percent biodiesel in the fuel. For example, ["B2 biodiesel blend", "B5 biodiesel blend", "B6 biodiesel blend", "B20 biodiesel blend", etc., for the specific volume percent of biodiesel in that particular delivery of fuel. Biodiesel blends up to and including 5 percent (B5) do not require the actual volume percent biodiesel in the fuel but do require the statement "May contain up to 5% biodiesel".

C. [A—biodiesel] For biodiesel blend levels above 5 percent, a certificate of analysis for each batch or production lot is required to verify that the B100 biodiesel has been analyzed and complies with, at minimum, ASTM D6751 biodiesel fuel test methods and specifications.

[19.15.110.11 NMAC - N, 08/16/10; A, 10/15/10]

NEW MEXICO EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.1 NMAC, Section 14, effective October 15, 2010

2.82.1.14 MEDICAL REVIEW BOARD AND APPEAL OF RECOMMENDATIONS:

~~[A.—All appeals of the medical review board's recommendation to not grant a disability retirement shall be conducted by a hearing of the board. The hearings of the board may be conducted by a committee of three. The committee will consist of two members appointed by the chairman and approved by the board, and the director. The appointments by the chairman shall take place at the regular October meeting each year. The actions of this committee shall be governed by the statutes and administrative rules and regulations of the board.~~

~~—B:] A.~~ The educational retirement board shall engage a medical review board composed of three physicians

well qualified in general [medicine, with individual specialties in internal medicine, gynecology, orthopedics, psychiatry and family practice] medical knowledge. This board shall review all disability examination reports and advise the educational retirement board of the nature and extent of disability for all applicants for disability benefits and the nature and extent of disability for those members already approved for benefits when it becomes necessary to determine their continued eligibility. The medical review board shall also render advice to the educational retirement board on the selection of ~~[examiners] physicians or other qualified persons to perform tests and examinations upon applicants for disability and other medical matters.~~

~~[C:] B.~~ The director may engage physicians and other qualified persons throughout the state to perform tests and examinations upon applicants for disability. Results of such examinations shall be reported in detail to ~~[the board but reviewed by the medical review board], and reviewed by the medical review board.~~ The director is authorized to pay a reasonable fee for the reports and examinations requested by the medical review board.

C. Appeals of recommendations by the medical review board that the educational retirement board not grant a disability retirement shall be conducted by a panel of three members of the educational retirement board appointed by the chairman and approved by the board. The appointments by the chairman shall take place at the regular October meeting each year. In the event that a member of the appeals panel resigns from the panel, the chairman may appoint a member of the educational retirement board to serve for the remaining portion of the one year term. The appointment shall become effectively immediately; provided, however, that it shall be subject to approval by the board at its first meeting occurring after said appointment. The actions of this panel shall be governed by the statutes and administrative rules and regulations of the educational retirement board.

[6-30-99; 2.82.1.14 NMAC - Rn, 2 NMAC 82.1.14, 11-30-2001; A, 10-15-2010]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.7.10.100 NMAC, effective 10/28/2010.

20.7.10.100 ADOPTION OF 40 CFR PART 141:

A. Except as otherwise

provided in this section, the regulations of the USEPA set forth at 40 CFR Part 141 through [July 1, 2007] June 4, 2010 are hereby incorporated by reference into this part. ~~[Notwithstanding the incorporation of 40 CFR Part 141 through July 1, 2007, the following USEPA regulations are also incorporated by reference to the extent that they amend Part 141: Lead and Copper Rule, 72 Fed. Reg. 57782 (Oct. 10, 2007).]~~

B. The term "state" means the New Mexico environment department when used in 40 CFR Part 141, in lieu of the meaning set forth in 40 CFR section 141.2.

C. The term "service connection" has the meaning set forth in Subsection L of 20.7.10.7 NMAC, in addition to the meaning set forth in 40 CFR section 141.2.

[20.7.10.100 NMAC - N, 12/04/2002; A, 04/16/2007; A, 10/15/2008; A, 10/28/2010]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

Explanatory paragraph: This is an amendment to 8.302.2 NMAC, Section 11, which will be effective October 15, 2010. The Medical Assistance Division (MAD) is amending Paragraphs (3) and (4) of Subsection B, changing the one-time grace period from 60 calendar days to a one-time 90 calendar day grace period.

8.302.2.11 BILLING AND CLAIMS FILING LIMITATIONS:

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

(3) In the event the provider's claim or part of the claim is returned, denied, or paid at an incorrect amount the provider must resubmit the claim or an adjustment request within 90 calendar days of the date of the return, denial or payment of an incorrect amount, that was submitted in the initial timely filing period. This additional [60] 90 calendar day period is a one-time grace period following the return, denial or mis-payment for a claim that was filed in the initial timely filing period and is based on the remittance advice date or return notice. Additional [60] 90 calendar day grace periods are not allowed. However, within the 90 calendar day grace period the provider may continue to resubmit the claim or adjustment requests until the 90 calendar day grace period has expired.

(4) Adjustments to claims for which the provider feels additional payment is due, or for which the provider desires to change information previously submitted on

the claim, the claim or adjustment request with any necessary explanations must be received by MAD or its selected claims processing contractor with the provider using a MAD-approved adjustment format and supplying all necessary information to process the claim within the one-time [60] 90 calendar day allowed grace period. [2/1/95; 8.302.2.11 NMAC - Rn, 8 NMAC 4.MAD.702.2 & A, 5/1/04; A, 5/1/10; A, 10/15/10]

NEW MEXICO STATE PERSONNEL BOARD

This is an emergency amendment to 1.7.8 NMAC Section 13, effective 10-01-10, adopted by the State Personnel Board at their meeting on 10-01-10.

1.7.8.13 DRUG TESTS:

A. The initial and confirmatory drug tests shall be performed by a state licensed laboratory in accordance with the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing. The laboratory shall have the capability of performing initial and confirmatory tests for each drug or metabolite for which service is offered.

B. The following initial cutoff [levels] concentrations shall be used when screening specimens on the initial drug tests to determine whether they are negative for these [five] seven drugs or classes of drugs.

(1) Marijuana metabolites 50
(ng/ml)
(2) Cocaine metabolites
[300] 150 (ng/ml)
(3) Opiate metabolites
2,000 (ng/ml)
(4) 6-Acetylmorphine 10
(ng/ml)
[(+)] (5) Phencyclidine (PCP) 25
(ng/ml)

[(+)] (6) Amphetamines
[1,000] 500 (ng/ml)
(7) MDMA 500 (ng/ml)

C. All specimens identified as positive on the initial drug test, shall be confirmed by the laboratory at the cutoff [values] concentration listed below for each drug. All confirmations shall be by quantitative analysis:

(1) Marijuana [metabolites¹]
metabolite - Delta - 9-tetrahydrocannabinol - 9-carboxylic acid (THCA) 15 (ng/ml)

(2) Cocaine [metabolites²]
metabolite - Benzoyllecgonine
[150] 100 (ng/ml)

(3) Opiates:
(a) Morphine 2,000 (ng/ml)
(b) Codeine 2,000 (ng/ml)
(4) 6-Acetylmorphine 10
(ng/ml)

[(+)] (5) Phencyclidine (PCP) 25
(ng/ml)
[(5)] (6) Amphetamines:
(a) Amphetamine [500] 250

(b) Methamphetamine¹
[500] 250 (ng/ml)

[(6)] ¹Delta-9-tetrahydrocannabinol
-9-carboxylic acid]

[(7)] ²Benzoyllecgonine]
(7) MDMA

(Methylenedioxymethamphetamine) 250
(ng/ml)

(a) MDA
(Methylenedioxyamphetamine) 250
(ng/ml)

(b) MDEA
(Methylenedioxyethylamphetamine) 250
(ng/ml)

(8) ¹To be reported as positive for
methamphetamine, a specimen must also

contain amphetamine at a concentration
equal to or greater than 100 ng/ml.

D. The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens reported as positive on the confirmatory test shall be reported positive for a specific drug.

E. The laboratory shall retain and place those specimens confirmed positive in properly secured long-term frozen storage for at least 365 calendar days. An agency may request the laboratory to retain the specimen for an additional period of time. If the laboratory does not receive a request to retain the specimen during the initial 365 calendar day period, the specimen may be discarded.

[1.7.8.13 NMAC - Rp, 1.7.8.13 NMAC, 02/12/2010; A/E, 10/01/2010]

NEW MEXICO BOARD OF PHARMACY

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 19 PHARMACISTS PART 35 DRUG WAREHOUSE

16.19.35.1 ISSUING AGENCY:
Regulation and Licensing Department -
Board of Pharmacy.
[16.19.35.1 NMAC - N, 11-15-10]

16.19.35.2 SCOPE: This section applies to all licensed clinics, hospitals and pharmacies.
[16.19.35.2 NMAC - N, 11-15-10]

**16.19.35.3 STATUTORY
AUTHORITY:** Section 61-11-6(A)
(6) NMSA 1978 authorizes the board of
pharmacy to provide for the licensing of all
places where dangerous drugs are stored or

administered and for the inspection of their facilities and activities. Section 61-11-14(B)
(10) NMSA 1978 authorizes the board to issue limited drug permits for home care services.

[16.19.35.3 NMAC - N, 11-15-10]

16.19.35.4 DURATION:
Permanent.

[16.19.35.4 NMAC - N, 11-15-10]

16.19.35.5 EFFECTIVE DATE:
November 15, 2010, unless a different date is cited at the end of a section.

[16.19.35.5 NMAC - N, 11-15-10]

16.19.35.6 OBJECTIVE: The objective of Part 35 of Chapter 19 is to establish standards for the safe and competent storage of pharmaceutical products in facilities located off-site from the licensed clinic, hospital or pharmacy.

[16.19.35.6 NMAC - N, 11-15-10]

16.19.35.7 DEFINITIONS:
"Drug warehouse" means an off-site physical storage location of a clinic, hospital or pharmacy currently licensed by the New Mexico board of pharmacy. Dangerous drugs may be stored for the use of the licensed clinic, hospital or pharmacy.
[16.19.35.7 NMAC - N, 11-15-10]

16.19.35.8 FACILITIES:

A. All facilities at which prescription drugs are stored shall:

(1) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(2) have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment and security;

(3) have a quarantine area for storage of prescriptions that are outdated, damaged, deteriorated, misbranded, counterfeit or suspected of being counterfeit or adulterated, otherwise unfit for use;

(4) be maintained in a clean and orderly condition;

(5) be free from infestation by insects, rodents, birds, or vermin of any kind;

(6) be a commercial location and not a personal dwelling or residence;

(7) provide and maintain appropriate inventory controls in order to detect and document any theft, counterfeiting or diversion of prescription drugs or devices.

B. Controlled substances must be isolated from non-controlled substance drugs and stored in a secure area in accordance with DEA security requirements and standards.

[16.19.35.8 NMAC - N, 11-15-10]

16.19.35.9 STORAGE: All

prescription drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or in compliance with standards in the current edition of an official compendium, such as United States pharmacopeia-national formulary (USP/NF).

A. If no requirements are established for a prescription drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality and purity are not adversely affected.

B. Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices or logs shall be utilized to document proper storage of prescription drugs.

C. The record keeping requirements in Subsection F of 16.19.8.13 NMAC shall be followed for all stored prescription drugs.
[16.19.35.9 NMAC - N, 11-15-10]

16.19.35.10 SECURITY:

A. All facilities used for drug warehouses shall be secure from unauthorized entry and;

(1) access from outside the premises shall be kept to a minimum and well-controlled;

(2) the outside perimeter of the premises shall be well-lighted;

(3) entry into areas where prescription drugs are held shall be limited to authorized personnel.

B. All facilities shall be equipped with a security system that will provide suitable protection against, detect and document any instances of theft, diversion or counterfeiting and;

(1) all facilities shall be equipped with an alarm system to detect entry after hours;

(2) all facilities shall be equipped with a security system that will provide suitable protection against theft and diversion;

(3) the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

[16.19.35.10 NMAC - N, 11-15-10]

16.19.35.11 EXAMINATION OF MATERIALS:

A. Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated prescription drugs or prescription drugs that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination, adulteration, misbranding, counterfeiting,

contraband, suspected of being counterfeit or contraband, or other damage to the contents.

B. Each outgoing shipment shall be carefully inspected for identity of the prescription drug products and to ensure that there is no delivery of prescription drugs that have been damaged in storage or held under improper conditions.

C. Upon receipt, a drug warehouse must review records for the acquisition of prescription drugs or devices for accuracy and completeness.

[16.19.35.11 NMAC - N, 11-15-10]

16.19.35.12 RECORD KEEPING:

A. Drug warehouses shall establish and maintain inventories and records of all transactions regarding receipt and distribution of other disposition of prescription drugs. These records shall be maintained at the clinic, hospital or pharmacy and must include the following information:

(1) the identity and quantity of the drugs received and distributed or disposed of; and

(2) the dates of receipt and distribution or other disposition of the drugs;

(3) the name, location and license number of the business, health care practitioner or other entity appropriately licensed to possess, dispense, distribute, administer or destroy prescription drugs.

B. Inventories and records shall be made available for inspection and photocopying by authorized inspectors employed by the board and authorized federal, state or local law enforcement agency officials for a retention period of three (3) years following disposition of the drugs.

C. Registrants must petition the board for a waiver in order to store the required records at an alternate location. The registrant must provide the board in writing, of the address (mailing and street), telephone number, and the name and title of the person designated by the registrant as the custodian of the records. Any changes of custodian or location of records must be reported in writing to the board within fifteen (15) actual days. Any records approved by waiver to be stored at an alternate location must be available within two (2) working days of a request by authorized board personnel or officials of a federal, state or local law enforcement agency.

D. Drug warehouses shall report any theft, suspected theft, diversion or other significant loss of any prescription drug or device to the board and FDA and where applicable to the DEA.

[16.19.35.12 NMAC - N, 11-15-10]

16.19.35.13 WRITTEN POLICIES AND PROCEDURES:

A. Drug warehouses shall establish, maintain and adhere to written policies and procedures which shall be followed:

(1) for the receipt, security, storage, inventory, and distribution of prescription drugs, including policies and procedures;

(2) for identifying, recording and reporting losses or thefts; and

(3) for correcting all errors and inaccuracies in inventories.

B. Drug warehouses shall include in their written policies and procedures the following:

(1) a procedure whereby the oldest approved stock of a prescription drug product is distributed first; the procedure may permit deviation from this requirement if such deviation is temporary and appropriate;

(2) a procedure to be followed for handling recalls and withdrawals of prescription drugs; such procedure shall be adequate to deal with recalls and withdrawals due to;

(a) any action initiated at the request of the food and drug administration or other federal, state or local law enforcement or other government agency, including the state licensing agency;

(b) any voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or

(c) any action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design;

(3) a procedure to ensure that drug warehouses prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of strike, fire, flood or other natural disaster or other situations of local, state, or national emergency;

(4) a procedure to ensure that any outdated prescription drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed; this procedure shall provide for written documentation of the disposition of outdated prescription drugs; this documentation shall be maintained for three (3) years after disposition of the outdated drugs;

(5) a procedure for the destruction of outdated prescription drugs in accordance with state and federal laws, including all necessary documentation, maintained for a minimum of three (3) years and the appropriate witnessing of the destruction of outdated prescription drugs in accordance with all applicable federal and state requirements;

(6) a procedure for the disposing and destruction of containers, labels and packaging to ensure that the containers, labels and packaging can not be used in counterfeiting activities, including all

necessary documentation, maintained for a minimum of three (3) years and the appropriate witnessing of the destruction of any labels, packaging, immediate containers or containers in accordance with all federal and state requirements;

(7) a procedure for reporting criminal or suspected criminal activities involving the inventory of prescription drugs to the board, FDA as required by the agency and if applicable, DEA, within three (3) business days.

[16.19.35.13 NMAC - N, 11-15-10]

16.19.35.14 RESPONSIBLE PERSONS:

Drug warehouses shall establish and maintain lists of officers, directors, managers and other persons in charge of drug warehouse storage and handling, including a description of their duties and a summary of their qualifications.

[16.19.35.14 NMAC - N, 11-15-10]

16.19.35.15 COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAW:

Drug warehouses shall operate in compliance with applicable federal, state and local laws and regulations.

A. Drug warehouses shall permit board authorized personnel and authorized federal, state and local law enforcement officials to enter and inspect their premises, delivery vehicles and to audit their records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law. Such officials shall be required to show appropriate identification prior to being permitted access to wholesale drug distributors' premises and delivery vehicles.

B. Drug warehouses that deal in controlled substances shall register with the board and the DEA and shall comply with all applicable state, local and DEA regulations.

C. A licensed drug warehouse may distribute only to persons who are licensed to possess dangerous drugs.

D. Controlled substances may only be distributed or delivered to persons in this state who are registered by the board and the DEA to possess controlled substances.

[16.19.35.15 NMAC - N, 11-15-10]

16.19.35.16 MINIMUM REQUIRED INFORMATION FOR DRUG WAREHOUSE LICENSURE:

A. Every clinic, hospital or pharmacy requiring off-site storage of drugs shall license with the board by application and provide information required by the board on an application approved by the board, including but not limited to:

(1) all trade or business names used by the licensee (includes "is doing business as" and "formerly known as")

which cannot be identical to the name used by another unrelated wholesale distributor licensed to purchase drugs or devices in the state;

(2) name(s) of the owner and operator of the licensee (if not the same person) including;

(a) if a person: the name, business address and date of birth;

(b) if a partnership: the name, business address, date of birth of each partner and the name of the partnership and federal employer identification number;

(c) if a corporation: the name, business address, date of birth, title of each corporate officer and director, the corporate names, the name of the state of incorporation, federal employer identification number, the name of the parent company, if any; the name and business address of each shareholder owning ten percent (10%) or more of the voting stock of the corporation, including over-the-counter (OTC) stock, unless the stock is traded on a major stock exchange and not OTC, publicly held corporations may request a waiver to the requirements of this Paragraph pursuant to 16.19.32 NMAC;

(d) if sole proprietorship: the full name, business address, date of birth of the sole proprietor and the name and federal employer identification number of the business entity;

(e) if a limited liability company: the name of each member, the name of each manager, the name of the limited liability company and federal employer identification number, the name of the state in which the limited liability company was originated;

(f) any other relevant information that the board requires;

(3) name(s), business address(es), telephone number(s) of a person(s) to serve as the designated representative(s) for each facility of the wholesale distributor that engages in the distribution of drugs and additional information as required in Subsection F of 16.19.8.13 NMAC;

(4) a list of all state and federal licenses, registrations or permits, including the license, registration or permit numbers issued to the wholesale drug distributor by any other state and federal authority that authorizes the wholesale distributor to purchase, possess and distribute drugs;

(5) a list of all disciplinary actions by state and federal agencies against the wholesale distributor as well as any such actions against principals, owners, directors or officers;

(6) a full description of each facility and warehouse, including all locations utilized for drug storage or distribution; the description must include the following:

(a) square footage;

(b) security and alarm system descriptions;

(c) terms of lease or ownership;

(d) address and;

(e) temperature and humidity controls;

(7) a copy of the drug warehouse written policies and procedures.

B. Every clinic, hospital or pharmacy who operates a drug warehouse shall submit a reasonable fee to be determined by the board.

C. Each drug warehouse must undergo an inspection by the board or a third party working on behalf of the board for the purpose of inspecting the warehouse operations prior to initial licensure and periodically thereafter in accordance with a schedule to be determined by the board.

D. All drug warehouses must display or have readily available all licenses and the most recent inspection report administered by the board.

E. Changes in any information in this section shall be submitted to the board or to the third party working on behalf of the board within thirty (30) days of such change unless otherwise noted.

[16.19.35.16 NMAC - N, 11-15-10]

16.19.35.17 MINIMUM QUALIFICATIONS:

A. The board shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in warehousing of prescription drugs within the state:

(1) any conviction of the applicant under any federal, state or local laws relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances;

(2) any felony convictions of the applicant under federal, state or local law;

(3) the applicant's past experience in the distribution of prescription drugs, including controlled substances;

(4) the furnishing by the applicant of false or fraudulent material in any application made in connection with prescription drug manufacturing or prescription drug distribution;

(5) suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;

(6) compliance with licensing requirements under previously granted licenses, if any;

(7) compliance with requirements to maintain or make available to the board or to federal, state, or local law enforcement officials those records required under this section; and

(8) any findings by the board that the applicant has violated or been disciplined by a regulatory agency in any state for violating and federal, state, or local

laws relating to drug or device wholesale distribution;

(9) any other factors or qualifications the board considers relevant to and consistent with the public health and safety.

B. The board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be in the public interest. Public interest considerations shall be based upon factors and qualifications that are directly related to the protection of the public health and safety.

[16.19.35.17 NMAC - N, 11-15-10]

HISTORY OF 16.19.35 NMAC: [RESERVED]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.12 NMAC, Section 13, effective 11-15-2010.

16.19.12.13 LICENSE FEES:

- A. License fee for drug manufacturer \$700.00 bi-ennially
- B. Wholesale drug distributor \$700.00 bi-ennially
- C. Drug manufacturer/re-packager \$700.00 bi-ennially
- D. Re-packager \$700.00 bi-ennially
- E. Retail pharmacy license \$300.00 bi-ennially
- F. Hospital pharmacy license \$300.00 bi-ennially
- G. Hospital drug room pursuant to Section 61-11-7 of Pharmacy Act \$60.00
- H. Duplicate license \$10.00
- I. Nonresident pharmacies \$400.00 bi-ennially
- J. Seller or dispenser of contact lenses \$400.00 bi-ennially
- K. Alternative reduced licensure fee for wholesale drug distributor/manufacturer/re-packager as determined by the board or board's designee.
- L. Dangerous drug research \$200.00 bi-ennially

M. Drug warehouse \$200.00 bi-ennially

[03-07-80...05-01-93; 16.19.12.13 NMAC - Rn, 16 NMAC 19.12.13, 03-30-02; A, 09-30-03; A, 07-15-04; A, 01-15-2005; A, 12-15-05; A, 01-31-07; A, 11-15-10]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.22 NMAC, Sections 1, 7, 8, 9, 11, 14, and 15, effective 11-15-2010.

16.19.22.1 ISSUING AGENCY: Regulation and Licensing Department- Board of Pharmacy, (505) [841-9102] **222-9835.**

[16.19.22.1 NMAC - Rp, 16 NMAC 19.22.1, 06-27-2001; A, 11-15-10]

16.19.22.7 DEFINITIONS:

A. "Direct supervision"
means that the pharmacist onsite shall observe and direct to a degree sufficient to assure the accurate completion of the activities of the pharmacy technicians and must provide a final check of all aspects of the prepared product and document the final check before dispensing.

B. "Indirect supervision"
means that the pharmacist offsite shall observe via live surveillance cameras and direct pharmacy activity remotely via remote tele-pharmacy communication technology to a degree sufficient to assure the accurate completion of the activities of the pharmacy technicians and must provide a final check of all aspects of the prepared product and document the final check before dispensing.

[A:] C. "Pharmacy technician" means a person who, under the supervision of a licensed pharmacist, performs repetitive tasks not requiring the professional [judgement] judgment of a pharmacist. This includes assisting in various technical activities associated with the preparation and distribution of medications.

(1) "Certified pharmacy technician" means a pharmacy technician who has completed the training and certification outlined in 16.19.22.9 NMAC [and], completed a board approved certification exam, is registered by the board of pharmacy and maintains current board approved certification.

(2) "Non-certified pharmacy technician" means a pharmacy technician who is in the process of completing the training and education outlined in 16.19.22.9 NMAC and is registered by the board of pharmacy.

(3) "Remote pharmacy technician" means a certified pharmacy technician who meets the special requirements for indirect supervision at a remote dispensing site as specified in the board of pharmacy tele-pharmacy regulations.

D. "Prescription drug"
means and human drug required by

federal or state law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to Section 503(b) of the Federal Food, Drug and Cosmetic Act.

E. "Professional judgment" means a cognitive process, by a licensed professional, that takes education, experience, current primary literature and current standards of practice into consideration when drawing conclusions and reaching decisions.

F. "Stocking" means placement of the prescription drug container on the pharmacy shelf or other areas of the facility where the product is available for use.

[E:] G. "Supervision" means that the pharmacist shall observe and direct to a sufficient degree to assure the accurate completion of the activities of the pharmacy technicians and must provide a final check of all aspects of the prepared product and document the final check before dispensing.

[B:] H. "Support personnel" means pharmacy personnel other than pharmacy technicians, which may include clerks, [typists, secretaries] secretary's and delivery personnel, who under the supervision of a pharmacist, may perform [clerical] duties associated with the practice of pharmacy, [but no including the] excluding the direct processing and filling of prescriptions, stocking prescription drugs, or duties restricted to only a pharmacist, pharmacist intern, or pharmacy technician.

I. "Technician training sponsor" means pharmacist-in-charge, pharmacist or designated administrator at a pharmacy technician training program who assumes responsibility for training and duties performed by a non-certified technician.

[16.19.22.7 NMAC - Rp, 16 NMAC 19.22.7, 06-27-2001; A, 11-15-10]

16.19.22.8 PERMISSIBLE ACTIVITIES: [permissible activities of appropriately trained pharmacy technicians; under the supervision of a pharmacist; include, but are not limited to the following:

A. The preparation, mixing, assembling, packaging and labeling of medications and sterile products; and

B. Filling of a prescription or medication order including counting, pouring, labeling or reconstituting medications; and

C. Duties and tasks not requiring the use of professional judgement as defined in 16.19.4.7 NMAC:] Pharmacy technician activities under the direct supervision of a pharmacist shall be limited to tasks enumerated in policies and procedures implemented by the pharmacist-in-charge that do not require

professional judgment.

[16.19.22.8 NMAC - Rp, 16 NMAC 19.22.8, 06-27-2001; A, 11-15-10]

16.19.22.9 TRAINING AND EDUCATION:

A. The pharmacist-in-charge shall ensure that the pharmacy technician has completed initial training which includes:

(1) federal and state laws and regulations that affect pharmacy practice; specific regulations which address the use of supportive personnel and technicians;

(2) ethical and professional standards of practice;

~~[(B)]~~ A total of 220 hours of on-the-job or board approved training and education is required within the first year of registration in the following areas:

~~[(4)]~~ (3) medical and pharmaceutical terminology, symbols and abbreviations used in the practice of pharmacy and components of a prescription;

~~[(2)]~~ (4) pharmaceutical calculations necessary for the preparation and dispensing of drug products;

~~[(3)]~~ (5) manufacturing, preparation, packaging, labeling and proper storage of drug products;

~~[(4)]~~ (6) dosage forms and routes of administration; and

~~[(5)]~~ (7) trade and generic names for medications frequently dispensed by the pharmacy;

~~[(6)]~~ Applicants failing to complete training and education within one year may petition the Board for a one time extension]

(8) basic comprehension of pharmacology;**(9) basic knowledge of appropriate pharmacy references.**

~~[(C)]~~ **B.** If the duties of the technician will include the preparation of sterile products then, in addition to the training and education requirements listed in [16.19.22.9.3 NMAC] this section, the technician will complete training outlined in [12 NMAC 19.6.11 (2)] Paragraph (2) of Subsection C of 16.19.6.11 NMAC.

~~[(D)]~~ **C.** A written record of training and education will be maintained by the pharmacy technician and contain the following:

(1) name of person receiving the training;

(2) date(s) of the training;

(3) description of the topics covered;

(4) names of the person(s) who provided the training; and

(5) signature of the technician and the [pharmacist-in-charge. Education and training records will be maintained by the pharmacy for a minimum of three years after resignation or termination of the technician] technician training sponsor.

D. A written record of training and education must be submitted to the board with certification exam documentation to obtain certified pharmacy technician registration.

E. All technicians are required to obtain board approved certification within one year of registration with the board as a technician.

E. The pharmacist-in-charge shall be responsible for the implementation of policies and procedures for additional training appropriate to duties and responsibilities performed by a pharmacy technician as well as an ongoing quality assurance plan to assure competency.

[16.19.22.9 NMAC - Rp, 16 NMAC 19.22.9, 06-27-2001; A, 11-15-10]

16.19.22.11 I M P R O P E R ACTIVITIES OF PHARMACY TECHNICIANS:

A. The supervising pharmacist and the pharmacist-in-charge are responsible for the actions of pharmacy technicians. [Performing] Performance of tasks by the pharmacy technician and support personnel outside the limits of the regulations that are authorized by the supervising pharmacist shall constitute unprofessional conduct on the part of the pharmacist and the pharmacist-in-charge.

(1) The following responsibilities require the use of professional judgment and therefore shall be performed only by a pharmacist or pharmacist intern:

(a) receipt of all new verbal prescription orders and reduction to writing;

(b) evaluation and interpretation of the prescription order and any necessary clinical clarification prior to dispensing;

(c) clinical consultation with a patient or his agent regarding a prescription or over-the-counter drug;

(d) evaluation of available clinical data in patient medication record system;

(e) oral communication with the patient or patient's agent of information, as defined in the section under patient counseling, in order to improve therapy by ensuring proper use of drugs and devices;

(f) professional consultation with the prescriber, the prescriber's agent, or any other health care professional or authorized agent regarding a patient and any medical information pertaining to the prescription.

(2) ONLY A PHARMACIST SHALL PERFORM THE FOLLOWING DUTIES:

(a) final check on all aspects of the completed prescription including sterile

products and cytotoxic preparations, and assumption of the responsibility for the filled prescription, including, but not limited to, appropriateness of dose, accuracy of drug, strength, labeling, verification of ingredients and proper container;

(b) evaluation of pharmaceuticals for formulary selection within the facility;

(c) supervision of all pharmacy technicians and support personnel activities including preparations, mixing, assembling, packaging, labeling and storage of medication;

(d) ensure the pharmacy technicians and support personnel have been properly trained for the duties they may perform;

(e) any verbal communication with a patient or patient's representative regarding a change in drug therapy or performing therapeutic interchanges (i.e. drugs with similar effects in specific therapeutic categories); this does not apply to substitution of generic equivalents;

(f) any other duty required of a pharmacist by any federal or state law.

B. In accordance with section 61-11-20 NMSA 1978 a pharmacy technicians registration may be revoked, denied, or suspended for grounds stated in section 61-11-20(A).

[16.19.22.11 NMAC - Rp, 16 NMAC 19.22.11, 06-27-2001; A, 11-15-10]

16.19.22.14 REGISTRATION OF PHARMACY TECHNICIANS:

A. Application (and required registration fee) shall be submitted to the board [within 10 days] prior to performing any technician duties. Non-certified pharmacy technicians must:

(1) Complete requirements for certified pharmacy technician within (1) one year of original application.

(2) Not re-apply with the board of pharmacy as a non-certified pharmacy technician.

(3) Provide the name of the technician training sponsor responsible for training and education with application.

(4) Provide documentation of training and completion of certification exam to be registered as a certified pharmacy technician.

B. Registration for certified pharmacy technicians will expire [annually] biennially on the last day of their birth month and must be renewed prior to expiration. Registration renewal applications must include documentation of current national certification.

[16.19.22.14 NMAC - Rp, 16 NMAC 19.22.14, 06-27-2001; A, 11-15-10]

16.19.22.15 CHANGE OF

ADDRESS: Pharmacy technicians shall report in writing or through the online process available on the board's website of any change of address or employment to the board within ten (10) days.
[16.19.22.15 NMAC - Rp, 16 NMAC 19.22.15, 06-27-2001; A, 11-15-10]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The Public Education Department has repealed 6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau, effective October 15, 2010. The Department has adopted new rule 6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau, effective October 15, 2010.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 75 INSTRUCTIONAL MATERIALS AND TECHNOLOGY PART 2 RELATING TO THE PUBLIC EDUCATION DEPARTMENT INSTRUCTIONAL MATERIAL BUREAU

6.75.2.1 ISSUING AGENCY:
Public Education Department
[6.75.2.1 NMAC - Rp, 6.75.2.1 NMAC, 10/15/10]

6.75.2.2 SCOPE: This rule governs the procedures for the adoption, purchase, and delivery of instructional material.
[6.75.2.2 NMAC - Rp, 6.75.2.2 NMAC, 10/15/10]

6.75.2.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to Sections 9-24-8, 22-2-1, 22-15-4, and 22-15-8 NMSA 1978.
[6.75.2.3 NMAC - Rp, 6.75.2.3 NMAC, 10/15/10]

6.75.2.4 DURATION:
Permanent
[6.75.2.4 NMAC - Rp, 6.75.2.4 NMAC, 10/15/10]

6.75.2.5 EFFECTIVE DATE:
October 15, 2010, unless a later date is cited at the end of a section.
[6.75.2.5 NMAC - Rp, 6.75.2.5 NMAC, 10/15/10]

6.75.2.6 OBJECTIVE: This rule is designed to facilitate the adoption, requisition and distribution of instructional

material.
[6.75.2.6 NMAC - Rp, 6.75.2.6 NMAC, 10/15/10]

6.75.2.7 DEFINITIONS:

A. "Adoption" means authorization by the secretary of a multiple list of core/basal instructional materials and a list of supplemental materials for use in the schools.

B. "Adoption cycle" means the six year adoption cycle as described in Subsection B of 6.75.2.8 NMAC.

C. "Alternative format" means the exact duplicate version of the title submission in a format or language other than the original version; examples of alternative formats include CD-ROM, software, online or web based, DVD, compact video or audio disc, video or audio tape.

D. "Basal" means the materials that constitute the necessary instructional components of a course of study, generally including a student edition, a teacher edition, and workbooks.

E. "BIE" means the bureau of Indian education of the United States department of education.

F. "Bundles/packages" means supplemental instructional material packaged together for retail, identified and labeled as: "teacher support", "student support" or "classroom support".

G. "Challenge to title score" means a written, publisher-submitted document challenging the final score of a title submitted for consideration as an adopted core/basal text.

H. "Chief" means the bureau chief of the state instructional material bureau.

I. "Classroom kit" means the packaging of supplemental student support materials which provide exact duplicate items per student for whole class instruction and is sold as one retail price.

J. "Core" means those subjects for which the department has developed content standards and benchmarks.

K. "Data" refers to a collection of information, electronic or non-electronic. Data can also refer to raw facts, figures or symbols.

L. "Department" means the New Mexico public education department.

M. "Depository" or "textbook depository" - see New Mexico instructional material depository.

N. "Digital direct instruction course/program" means computer based instruction in which courses use software as the primary delivery method of instruction. The digital instructor provides direct instruction to the student. The classroom instructor primarily provides support rather than instruction. A text book

may or may not be required. These courses will be accepted as supplemental material only; they will not be accepted as core/basal material for the review process.

O. "Digital learning content" means technology application information incorporated within the content of the core/basal instructional material for the purpose of supporting development of technological knowledge and skills that students can then apply to all curriculum areas.

P. "Distribution" means transporting to the schools those items of instructional material on the multiple list requisitioned by a particular school or school district.

Q. "Educational media" means print, digital, or electronic material providing or conveying information to the student or otherwise containing intellectual content and contributing to the learning process. Educational courseware or programming that is the primary provider of instruction as well as of information is not included in this definition.

R. "Educational digital media" means a digital system of instructional material, computer software, interactive videodisc, magnetic media, CD-ROM, DVD, computer courseware, online services, electronic media, or other means of conveying information to the student or otherwise containing intellectual content that contributes to the learning process. Educational courseware or programming that is the primary provider of instruction as well as of information is not included in this definition.

S. "Electronic record" means a computer generated item such as an email message, a document file, an image file, etc., received and stored in a form only an electronic device can process.

T. "Eligible entities" means education entities that may participate in the state-funded instructional material program, including:

(1) all public schools and districts, charter schools, and state-supported schools; and

(2) non-public schools that have applied and been approved for participation in the program.

U. "Email" means:
(1) a system that enables users to compose, transmit, receive and manage electronic messages and images across wired or wireless computer networks and through gateways connecting to other local area networks;

(2) a message transmitted electronically over a communications network.

V. "Form E, Version CB" means the publisher's form for the submission of core/basal titles of teacher and

student editions and student workbooks.

W. "Form E, Version SP" means the publisher's form for the submission of supplemental materials, including bundles, packages, classroom kits, kits, sets, libraries, and collections.

X. "Governing authority" means the governing authority of a state agency, a public two-year post secondary institution, or a non-public school accredited by the department.

Y. "In-state distribution point". See "New Mexico instructional materials in-state distribution point"

Z. "Instructional material" means school textbooks, educational digital media, electronic books, and other technology that are used as the basis for instruction, including combinations of textbooks, learning kits, supplemental material, and other educational technology (not to include computers, laptops, handheld computers, or other devices used to access instructional material content).

AA. "Instructional material bureau" means that unit established within the department pursuant to the Instructional Material Law.

BB. "Instructional material summer review institute" means the annual review of all submitted core/basal instructional materials conducted required by 22-15-8 NMSA 1978. The institute is conducted by the bureau during the first full week of June.

CC. "Kit" means supplemental instructional material packaged together for one retail price.

DD. "Local school board" means the governing body of a school district or, as appropriate, the governing authority of a charter school.

EE. "Multiple list" means an adopted authorized list of core/basal instructional materials and an adopted authorized list of supplemental instructional materials for use in the schools approved annually, by August 1, by the secretary of education.

FF. "New Mexico instructional material in-state distribution point" means a facility or a set of procedures developed and maintained by a publisher, used by only that publisher, meeting the criteria established in Subsection C of 6.75.2.12 NMAC and authorized through application to the bureau chief, for the purpose of facilitating distribution of that publisher's instructional materials within New Mexico. The distribution point is responsible for accounting, acquisition, storage, distribution and disposition of adopted textbooks and supplemental instructional materials.

GG. "New Mexico instructional material depository" means a facility authorized through application to the

bureau chief to serve as an agent representing multiple publishers and other educational entities for the purpose of managing district/school instructional material orders. The depository is responsible for accounting, acquisition, storage, distribution and disposition of adopted and supplemental instructional materials.

HH. "New Mexico regional review center" means a state authorized location where samples of instructional materials are received from publishers and made available to evaluators, teachers and educational practitioners. The review center is responsible for storage, disposition and inventory of current adopted textbooks and supplemental instructional materials.

II. "Non public school" as used in instructional material law means a secondary or elementary school operated and supported by private individuals, private organizations, corporations, or federal agencies rather than by local or state government or by local or state public agency. Examples include private sectarian schools, private nonsectarian schools, and BIE schools.

JJ. "Online course/program" means computer based instruction in which courses use the internet as the primary delivery method of information. A text book is required and all other materials, as well as, instructional support provided by an on-site instructor.

KK. "Online direct instruction course/program" means computer based instruction in which courses use the internet as the primary delivery method of instruction. The cyber instructor provides direct instruction to the student. The classroom instructor primarily provides support rather than instruction. A text book may or may not be required. These courses will be accepted as supplemental submissions only; they will not be accepted as core/basal submissions for the review process.

LL. "Packages/bundles" means supplemental instructional material packaged together as a single unit of purchase, identified and labeled as "teacher support", "student support" and "classroom support".

MM. "Professional development" means the process of increasing the professional capabilities of staff by providing training and educational opportunities.

NN. "Protest" - see "challenge to title score"

OO. "Permanent records" means records that are preserved in an archive.

PP. "Public record" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made

or received by any agency in pursuance of law or in connection with the transaction of public business, preserved or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of the data contained therein. (Public Records Act, Section 14-3-2 NMSA 1978)

QQ. "Publisher's agreement" means an agreement between the department and the publisher or publisher's agent to provide certain material at the lowest price for the use of students in New Mexico schools and including a penalty for failure to perform.

RR. "Review set" means core/basal instructional materials organized for the purpose of a grade level title submission: student edition, teacher edition, student workbook, and alternative format(s).

SS. "Reading intervention program" as used in instructional material law means instructional materials specifically organized and intended to support a program of instruction to develop increased reading skills of struggling readers.

TT. "Regional review center" - See New Mexico regional review center

UU. "Request for applications (RFA)" means the written notice issued by the department to all publishers listing the subjects for which they will adopt material in a specific year and the terms and conditions under which applications from publishers to supply such material will be considered.

VV. "Requisition" means a list of items from the multiple list that local school boards or governing authorities wish to purchase. Such a list must be in a format specified by the in-state distributors and must be transmitted to the in-state distribution point before it becomes a requisition.

WW. "Review" means a standardized process examining submitted core/basal instructional materials to determine the extent of the material's alignment with the requirements of instructional material law and therefore its suitability for adoption under instructional material law. There are four categories of review.

(1) A "review" is conducted during the annual summer review institute (institute) by a panel of three highly qualified teachers who have been selected for this purpose.

(2) A "second review" is conducted during the annual summer review institute for all titles submitted for review that did not achieve a 90% alignment score, but that achieved or exceeded an 80% score. The second review is conducted by a different panel of three highly qualified teachers in

order to validate scores and ensure that titles receive a full opportunity to meet adoption requirements.

(3) A “departmental review” is a third review that may be convened for any submitted title at the chief’s discretion. It may be conducted during the institute or at a later time. The departmental review is conducted by a panel of three department administrators in order to ensure the reliability and validity of the review process.

XX. “Review set” means the student edition, teacher edition and student workbook for a title that has been submitted for adoption.

YY. “Set” means supplemental curriculum or instructional materials packaged together as a single unit, with one retail price.

ZZ. “Special review” means a review of new material that is not conducted during the summer review institute, but is conducted within twelve months of the secretary’s authorization of the adoption. It may be convened at the request of a publisher with the approval of the chief, or for other reasons as determined by the chief. The special review is conducted by a panel of three highly qualified teachers who have been selected for this purpose. If requested by a publisher, the cost of the special review is borne by the publisher.

AAA. “Substitution” means the replacement of an item under publisher’s agreement with a revised edition of the item.

BBB. “Summer review institute” - see “instructional material summer review institute”

CCC. “Supplement 9” means the written set of administrative requirements developed by the instructional material bureau to provide guidance regarding regulations, policy and general procedures for districts, charter schools, non-public schools, state-supported schools and publishers to participate in the “free use of instructional material” program.

DDD. “Supplemental materials” means materials used to reinforce, enrich, or extend the basic program of instruction; including ancillary items referenced as, bundles, packages, kits, classroom kits, sets, libraries, and collections.

EEE. “Waiver” means a process by which a district may request authorization to use instructional material money allocated for the purchase of core/basal materials to purchase supplemental instructional materials.

[6.75.2.7 NMAC - Rp, 6.75.2.7 NMAC, 10/15/10]

6.75.2.8 REQUIREMENTS: RESPONSIBILITIES OF THE DEPARTMENT

A. Annual adoption. There

shall be one (1) annual adoption, provided however, that the department may allow other adoptions upon a finding that an emergency is determined to exist.

B. Material shall be adopted for a period of six years. The subject area of each annual adoption shall consist of those subject areas whose adoption period expires at the end of the year during which the adoption is conducted.

C. The department will issue the request for applications (RFA). The RFA shall specify:

(1) timelines for adoption, requisition, and distribution of instructional material;

(2) length of publisher’s agreement;

(3) a submission fee to be collected by the department not to exceed the retail value of the materials submitted for adoption; and

(4) such other terms and conditions as the department determines.

D. The chief, subject to review by the department, may reject any application that fails to comply fully with the provisions of the request for applications, or may reject any or all applications.

E. The department may accept any conforming application which is determined to be most advantageous to the state, considering the educational value of material, cost to state, reliability of the publisher, and all other significant factors.

F. The department shall conduct an annual summer review institute during the first full week of June each year for the review of core/basal texts submitted for the current adoption.

G. In conducting the summer review institute, the department shall:

(1) appoint highly qualified teachers (licensure levels 2 and 3-A) who are endorsed in the content areas under review as the reviewers of record; to the extent possible, reviewers will be selected proportionally across the state from the eight local school board regions and Albuquerque;

(2) appoint highly qualified teachers (licensure levels 2 and 3-A) as facilitators of the review teams;

(3) appoint New Mexico community members, parents, level one teachers, and students preparing for careers as teachers to observe the reviewers of record in the review;

(4) contract with qualified vendors to arrange venue management and to provide for meals, lodging and compensation consistent with prevailing rates for facilitators and reviewers; and

(5) where appropriate as determined by the chief, reimburse other personnel who have contracted or agreed to provide services such as clerical support,

process management, additional supervision or training for mileage, provided they meet state qualification standards for mileage reimbursement, and provide room and board and meal reimbursement not to exceed state standards for meal reimbursement.

H. Printed and digital materials under review shall be scored according to the extent of their alignment with state content and performance standards, pedagogy consistent with current educational taxonomies, and other relevant criteria.

I. The department shall develop and use a standardized review form incorporating the scoring rubric and space for the publishers’ alignment citations and the reviewer’s scores.

J. The review form shall be divided into two sections.

K. Section I shall consist of citations showing alignment with New Mexico standards and benchmarks and shall include scorable performance indicators for all relevant standards and benchmarks consistent with Bloom’s taxonomy or other generally accepted taxonomies as determined by the content bureau.

L. Section II shall consist of citations showing that the material under review meets other relevant criteria, including but not limited to:

(1) is built around effective pedagogy and instructional design;

(2) incorporates the principles of culturally responsive pedagogy and differentiated instruction;

(3) incorporates and reflects current educational taxonomies supporting the development of higher order thinking skills;

(4) has no factual error;

(5) has no religious affiliation or partisanship;

(6) has no cultural bias or gender bias;

(7) demonstrates and reflects images, references and points of view reflecting a multicultural society;

(8) integrates digital learning content within the text;

(9) supports differentiated or personalized learning through style, pace, or needs;

(10) can be adapted or configured by teacher to meet evolving needs;

(11) supports accountability through integration of assessments and content; and

(12) provides both formative and summative assessment opportunities.

M. Core/basal materials may also be scored on the basis of research-based, data proven effectiveness, publisher-provided professional development, pedagogy consistent with current educational taxonomies and other relevant criteria as

determined by the bureau chief or developed in consultation with the content bureau and other highly qualified educational practitioners.

N. The materials under review shall be scored as follows.

(1) Core/basal materials that achieve a final total score of 90% or higher alignment with state content and performance standards and other relevant criteria may be considered for recommendation to the secretary for adoption as core/basal materials.

(2) Core/basal materials that score less than 90% alignment but greater than 80% with state content and performance standards and other relevant criteria shall be re-assessed by a second panel of reviewers for validation of the score.

(3) The chief, subject to the review of the department, may also convene a departmental panel of reviewers in order to ensure the validity and reliability of the review process.

(4) Core/basal materials that score less than 90% alignment with state content and performance standards and other relevant criteria will be recommended to the secretary for adoption as supplemental.

(5) Submitted supplemental titles may also be considered for recommendation to the secretary for adoption as supplemental materials.

O. Educational digital media. The contract, review, and evaluation process and standards involving digital, electronic, or web-based materials and media shall be the same as print materials, with these qualifications.

(1) Educational digital media shall comply with current interoperability standards; and any other specifications deemed necessary by the chief for an appropriate and effective review of educational digital media.

(2) Equipment such as computer hardware, technology devices or equipment intended to deliver or display the material but which are not instructional materials shall not be offered free or at reduced prices with instructional materials. This includes but is not limited to computers, laptops, handheld devices, microscopes, CD/DVD players, overhead or LCD projectors, electronic whiteboards, phone/music/transmitting and listening devices, and cameras.

(3) Publishers are required to provide to the instructional material bureau at the time of the review any hardware, software, or special equipment which may be needed for a review of instructional material.

(4) Publishers will be responsible for costs associated with the provision of needed hardware, software or special equipment.

(5) Materials requiring proprietary

equipment provided by or through the publisher will not be considered for adoption.

P. Subsequent to the review, materials will be recommended to the secretary for adoptions by a panel of reviewers and department staff. The secretary will authorize adoption of instructional materials no later than August 1 of each adoption cycle.

Q. Pursuant to Section 22-15-13 NMSA 1978, the department may enter into a publisher's agreement for the purchase and delivery of instructional material selected from the multiple list adopted by the department.

R. Administration. It is the responsibility of the instructional material bureau to administer the provisions of the Instructional Material Law (22-15-1 NMSA 1978). The bureau shall issue such additional guidance, clarification and direction as deemed necessary by the chief to promote effective, efficient and equitable processes for all bureau responsibilities pertaining to the free use of instructional materials. This material shall be compiled or revised annually and issued as a supplement to 6.75.2 NMAC. The supplement is hereby incorporated by reference as if fully set out within this document. In addition, the bureau shall develop, implement and maintain procedures to address the requirements that:

(1) funds are efficiently allocated by the instructional material bureau to districts, charter schools, and state-supported schools using estimated forty-day membership for the next school year;

(2) funds are efficiently allocated by the instructional material bureau for non-public schools using estimated forty day membership for the next school year;

(3) funds are efficiently disbursed by the flowthrough bureau of the administrative services division to districts, charter schools, and state-supported schools;

(4) funds are efficiently reimbursed by flowthrough bureau of the administrative services division to depositories on behalf of non-public schools after determining that the materials purchased meet state requirements;

(5) schools wishing to use instructional material funds to purchase non-adopted materials are provided with examples and assistance in determining whether the desired materials are allowed under instructional material law; and

(6) the state is receiving the lowest price offered for materials.

S. Pursuant to Subsections A and B of 22-15-4 NMSA 1978 the bureau shall, at the discretion of the chief, conduct periodic audits of the instructional material accounts and textbook inventories required under Subsections E and F of 6.75.2.9 NMAC and by Paragraphs (3) through (5) of Subsection C of 6.75.2.10 NMAC, of any entities receiving funds under the provisions

of Instructional Material Law.

T. Pursuant to Subsection C of 22-15-4 NMSA 1978 the bureau shall withdraw or withhold the privilege of participating in the free use of instructional material in case of any violation of or noncompliance with the provisions of the Instructional Material Law or any rules adopted pursuant to that law.

U. The department shall consider for approval, requests for waiver by the local superintendent to use funds allocated for the purchase of adopted core/basal instructional material to purchase non-adopted or supplemental material. The request shall include the specific materials to be purchased, the cost of the purchase and justification for the purchase relating to the improved performance of students.

[6.75.2.8 NMAC - Rp, 6.75.2.8 NMAC, 10/15/10]

6.75.2.9 REQUIREMENTS: RESPONSIBILITIES OF LOCAL SCHOOL BOARDS OR GOVERNING AUTHORITIES

A. Each local school board shall develop and implement a process for the selection of instructional materials and shall ensure that parents and other community members are involved in the implementation of this process.

B. Schools and districts must submit to authorized New Mexico depositories or authorized New Mexico in-state distribution points all requisitions for instructional materials for the next school year no later than March 31, unless justification is provided. Delivery schedules are to be as follows.

(1) For core and supplemental instructional materials requisitions received by the New Mexico depository or in-state distribution point prior to March 31 of each year, delivery to schools shall be made by the later of the following dates: within thirty (30) days prior to the beginning of classes, or by July 1.

(2) Core and supplemental orders received after March 31 will be delivered by the later of the following dates: within sixty (60) days after the receipt of the order or August 1.

(3) For free instructional material requisitions received by the New Mexico depository or in-state distribution point prior to March 31, delivery to schools shall be made by the later of the following dates: within thirty (30) days prior to the beginning of classes, or by July 1.

(4) Free instructional material requisitions received after March 31 will be delivered by the later of the following dates: within sixty (60) days after the receipt of the order or August 1.

C. Each public school district, charter school, and state institution

may purchase items of instructional material as defined herein and not on the state-adopted list by issuing a purchase order to the publisher or the publisher's authorized agent. The entity is responsible for payment to the vendor/publisher, etc. The cost of the items, plus transportation charges, will be charged to the supplemental funds (50 % of the total allocation) line item of the entity's instructional material allocation.

D. If entities do not receive their orders on a timely basis, they shall provide to the bureau written documented evidence of ordering dates and other pertinent information as required by the department.

E. Annually, at a time specified by the department, each local school board of a school district and each governing authority of a state institution or non-public school acquiring instructional material pursuant to the Instructional Material Law (22-15-1 to 22-15-14 NMSA 1978) shall file a report with the department. The annual report shall include the total instructional material allocation received, the average per pupil cost, year-end cash balances and other documentation as required by the department.

F. Pursuant to the Instructional Material Law (22-15-1 to 22-15-14 NMSA 1978), each local school board of a school district and each governing authority of a state institution or non-public school shall keep an itemized list of instructional materials purchased by school and publisher.

G. Disposal of instructional materials.

(1) Out of adoption (older than 6 years). Instructional material deemed unusable/obsolete does not require PED-IMB approval to discard or donate. These items may be disposed of at the district/school's discretion.

(2) In-adoption (still within the 6 year cycle).

(a) A district/school wishing to discard, donate or give away instructional material still listed on the NM multiple adoption list that must obtain PED-IMB approval. The request shall include a letter justifying the request to discard, donate or give the items away and an inventory listing of the materials shall be provided to the chief.

(b) A district/school wishing to sell instructional material that is under adoption does not require PED-IMB approval. All funds received from the sale of the material must be remitted to PED-IMB for redeposit in the school's/district's instructional material account.

(3) Upon order of the chief, a school/district, state institution, or non public school shall transfer to the department or its designee instructional material purchased

with instructional material funds that is in usable condition and for which there is no use expected by the respective schools.

H. All entities receiving monies for instructional materials will be provided training on the process of obtaining funds, ordering materials, receiving funds, returning funds for sold or lost materials, and completing the annual report.

[6.75.2.9 NMAC - Rp, 6.75.2.9 NMAC, 10/15/10]

6.75.2.10 REQUIREMENTS: RESPONSIBILITIES OF NON-PUBLIC SCHOOLS

A. Instructional material funds shall be distributed to nonpublic schools as agents for the benefit of students entitled to the free use of the instructional material (22-15-7 NMSA 1978).

B. Eligibility to participate in the free use of instructional materials is authorized by application to the chief. Application must be made by April 1 preceding the first school year for which participation is requested.

(1) Upon approval, the non-public school is authorized to participate in the fund for two consecutive years.

(2) Application to renew participation for an additional two years must be made by April 1 in the second year of participation.

C. Funding is dependent upon the nonpublic school meeting the following requirements.

(1) Provide all information requested on the initial application and on all applications for renewal.

(2) Submit a 40-day membership count annually.

(3) Submit an annual instructional material budget report by August 1.

(4) Submit an annual instructional material inventory report by August 1.

(5) Submit requested reports as deemed necessary by the bureau.

(6) If the nonpublic school shows no instructional material budget activity by November 15th of the school year, the school's participation in the free instructional material process will be suspended for the remainder of the school year. To reinstate the funding for the following school year the school must complete a re-application process before February.

D. The non-public school as agent receiving instructional material pursuant to the Instructional Material Law (22-15-1 NMSA 1978) is responsible for distribution of the instructional material for use by eligible students and for the safekeeping of the instructional material.

E. The non-public school may select instructional material for the use of its students from the multiple list adopted by the department. Each non-

public school may also purchase items of instructional material as defined herein and not on the state-adopted list provided such purchases are made through a New Mexico instructional material depository or a New Mexico in-state distribution point.

F. Schools must submit all instructional materials requisitions for the next school year no later than March 31, unless justification is provided. Delivery schedules are the same as specified in Paragraphs (1) through (4) of Subsection B of 6.75.2.9 NMAC.

G. The department shall provide payment to a publisher or depository on behalf of a non-public school for instructional material as defined above.

H. Any balance remaining in an instructional material account of a non-public school at the end of the fiscal year shall remain available for reimbursement by the department for instructional material purchases in subsequent years.

I. Disposal of instructional materials.

(1) If closure of a non-public school is imminent, the school shall inform the chief in writing within 30-days of closure. Disposal of instructional material purchased with state instructional material funds shall follow these procedures.

(2) Out of adoption (older than 6 years). Instructional material deemed unusable/obsolete does not require PED-IMB approval to discard or donate. These items may be disposed of at the nonpublic school's discretion.

(3) In-adoption (still within the 6 year cycle)

(a) A nonpublic school wishing to discard, donate or give away instructional material still listed on the NM multiple adoption list must obtain PED-IMB approval. The request shall include a letter of justification and the request to discard, donate or give the items away and an inventory listing of the materials

(b) A nonpublic school wishing to sell instructional material that is under adoption must obtain PED-IMB approval. All funds received from the sale of the material must be remitted to PED-IMB.

(4) Upon order of the chief, a school district, state institution, or non public school shall transfer to the department or its designee instructional material purchased with instructional material funds that is in usable condition and for which there is no use expected by the respective schools.

J. All money collected by a non-public school for the sale, loss, damage or destruction of instructional material received pursuant to the Instructional Material Law shall be sent to the department of education.

K. The non-public school as agent receiving instructional material shall

keep accurate records of all instructional material, including cost records, on forms and by procedures prescribed by the division.

L. Annually, at a time specified by the department, each governing authority of a non-public school acquiring instructional material pursuant to the Instructional Material Law shall file a report with the department that includes an itemized list of instructional material purchased, by vendor; the total cost of the instructional material; the average per-student cost; and the year-end cash balance.

[6.75.2.10 NMAC - N, 10/15/10]

6.75.2.11 REQUIREMENTS: RESPONSIBILITIES OF PUBLISHERS

A. Publisher's agreements shall be returned to the department fully executed by the publisher no later than thirty (30) days after receipt by the publisher. Failure to return the fully executed publisher's agreement may result in the rejection of the publisher's application.

B. Publisher's agreements shall be for a period of six (6) years, except where material is necessary for:

(1) the completion or update of a series or educational media previously adopted; or

(2) the transfer of a subject from one section to another.

C. The publisher's agreement shall:

(1) require that the publisher agrees to furnish and provide distribution to the schools the instructional material submitted and adopted;

(2) require that the publisher agrees to keep sufficient stock at the designated New Mexico instructional material depository or New Mexico instructional material in-state distribution point to assure delivery in accordance with the timelines set forth in this regulation;

(3) require that if delivery of instructional material is delayed beyond deadlines established in 6.75.2.12 NMAC or specified in correspondence to the publisher by the chief, the publisher shall pay the NMPED \$100 per day for each day delivery is delayed, up to a maximum of \$10,000 per title, as liquidated damages, to include instructional materials labeled/promoted as being of no cost or at reduced price;

(4) require that the publisher (or designee) agrees to bill the public school districts, charter schools and state supported schools for instructional material ordered;

(5) require that the publisher (or designee) agrees to bill the New Mexico public education department on the behalf of the nonpublic schools;

(6) require that all materials submitted for adoption and sale in the state of New Mexico conform to the requirements of the Consumer Product Safety Improvement

Act;

(7) require that the publisher agrees to submit files of adopted instructional materials that conform to the national instructional material accessibility standard (NIMAS) at no additional cost to the national instructional material accessibility center (NIMAC) repository at the American printing house for the blind (Section 22.15.26-29 NMSA, 1978 "Braille Access Act", and 6.75.4 NMAC);

(8) require the publisher to maintain, for three years after the termination or expiration of the agreement, or after any court proceedings involving this agreement, copies of all billings generated under this agreement.

D. Qualifications.

(1) Publishers are required to provide to the instructional material bureau at the time of the review any hardware, software, or special equipment which may be needed for a review of instructional material.

(2) Publishers will be responsible for costs associated with the provision of needed hardware, software or special equipment.

(3) Items of instructional material, including accompanying material, must be in proof format by the adoption date and in finished format by May 1 immediately preceding the annual instructional material summer review institute.

(4) Substitutions of new or revised editions will be allowed by the chief:

(a) only if the substitution will be advantageous to the user schools;

(b) subject to all terms and conditions of the original publisher's agreement, including price; and

(c) upon a determination by the chief that the proposed changes are minor, the new edition is substantially the same material as the old edition, and a special review is not necessary.

(5) Software updates that improve functionality, performance, or accuracy may be allowed after review by the chief.

(6) Materials designated by the publisher on the final approved list as free or reduced cost material and services such as teachers' editions, workbooks, duplicating masters, in service training, consultants, etc., will be made available at no cost or at a reduced cost to any schools that adopt its instructional material.

(7) Free or reduced cost materials or service may not include computer hardware, technology devices or equipment intended to deliver or display the material but which are not instructional materials. This includes but is not limited to computers, laptops, handheld devices, microscopes, CD/DVD players, overhead or LCD projectors, electronic whiteboards, phone/music/transmitting and listening devices, and

cameras.

(8) Any free or reduced cost material or service described on the state adoption list and made available at no cost or at a reduced cost to a school that adopts its instructional material will be made available on an equitable basis to all schools that adopt its instructional material.

(9) The quantity of free or reduced price material provided shall be calculated according to the number of teachers using the material, and not according to the amount of material purchased.

(10) The publisher shall make no offer of free or reduced price material or services that have not been designated as such on the final approved list.

(11) If the publisher fails to list all free or reduced price material and services the publisher will be suspended from participation in the New Mexico instructional material process until such time as the department determines that the publisher shall be allowed to resume participation.

(12) If the publisher fails to make available at no cost or at a reduced cost to all schools the same material or service that is offered or provided at no cost or at a reduced cost to any school, the publisher will be suspended from participation in the New Mexico instructional material process until such time as the department determines that the publisher shall be allowed to resume participation.

E. The publisher shall designate a New Mexico instructional material depository meeting the criteria established in Subsection C of 6.75.2.12 NMAC or a New Mexico in-state distribution point meeting the criteria established in Subsection C of 6.75.2.13 NMAC for the distribution of instructional material and to act as the agent for the publisher for requisition, billing, and receipt of payments for the purchase of instructional material.

F. The publisher shall provide samples of core/basal student and teacher instructional materials as well as other material they deem necessary to provide adequate instruction to designated regional review centers within thirty (30) days of the finalization of a publisher's agreement.

G. The publisher shall reduce the price of instructional material under publisher's agreement in New Mexico when prices are reduced elsewhere in the United States so that no such item or items shall at any time be sold in New Mexico at a higher wholesale price than received for items elsewhere in the United States, like conditions prevailing.

H. The publisher shall ensure the use of the international standard book number (ISBN) system where applicable.

I. Publishers are prohibited from conducting a pilot program in which schools receive free materials and professional development during the eighteen (18) month period previous to the official date of adoption of those materials (August 1 for each cycle).

J. Challenges to review scores must be filed by the publisher within ten working days of receipt of the price agreement from the department.

[6.75.2.11 NMAC - Rp, 6.75.2.10 NMAC, 10/15/10]

6.75.2.12 REQUIREMENTS: RESPONSIBILITIES OF NEW MEXICO INSTRUCTIONAL MATERIAL DEPOSITORIES

A. It is the responsibility of depositories to distribute instructional materials to schools and districts in a timely and accurate fashion and to ensure the following.

(1) For core and supplemental instructional materials requisitions received by the New Mexico depository or in-state distribution point prior to March 31 of each year, delivery to schools shall be made by the later of the following dates: within thirty (30) days prior to the beginning of classes, or by July 1.

(2) Core and supplemental orders received after March 31 will be delivered by the later of the following dates: within sixty (60) days after the receipt of the order or August 1.

(3) For free instructional material requisitions received by the New Mexico depository or in-state distribution point prior to March 31, delivery to schools shall be made by the later of the following dates: within thirty (30) days prior to the beginning of classes, or by July 1.

(4) Free instructional material requisitions received after March 31 will be delivered by the later of the following dates: within sixty (60) days after the receipt of the order or August 1.

B. The depositories will provide training to all entities receiving monies for instructional materials on the online process for ordering instructional materials.

C. Depositories must meet the following requirements:

(1) financial viability adequate to ensure performance of all obligations under a contract between the publisher and the depository for the purpose of distributing instructional material to schools and school districts within New Mexico;

(2) warehouse facilities, including location, equipment, and staffing patterns, adequate to ensure performance of all obligations under a contract between the publisher and the depository for the purpose of distributing instructional material to

schools and school districts within New Mexico;

(3) procedures, systems and capacity to interface directly with an approved online ordering, inventory and reporting system to receive and process instructional material orders;

(4) procedures, systems and capacity to communicate such reports as the department may require in the automated format as established by the department; and

(5) sufficient inventory of instructional material to fill requisitions in accordance with the timelines set forth in this regulation.

[6.75.2.12 NMAC - Rp, 6.75.2.11 NMAC, 10/15/10]

6.75.2.13 REQUIREMENTS: Responsibilities of in-state distribution points

A. It is the responsibility of publishers operating in-state distribution points to distribute instructional materials to schools and districts in a timely and accurate fashion and to ensure the following.

(1) For core and supplemental instructional materials requisitions received by the New Mexico depository or in-state distribution point prior to March 31 of each year, delivery to schools shall be made by the later of the following dates: within thirty (30) days prior to the beginning of classes, or by July 1.

(2) Core and supplemental orders received after March 31 will be delivered by the later of the following dates: within sixty (60) days after the receipt of the order or August 1.

(3) For free instructional material requisitions received by the New Mexico depository or in-state distribution point prior to March 31, delivery to schools shall be made by the later of the following dates: within thirty (30) days prior to the beginning of classes, or by July 1.

(4) Free instructional material requisitions received after March 31 will be delivered by the later of the following dates: within sixty (60) days after the receipt of the order or August 1.

B. The publisher operating the in-state distribution point will provide training to all entities receiving monies for instructional materials on the process for ordering instructional materials.

C. In-state distribution points must meet the following requirements:

(1) financial viability adequate to ensure performance of all obligations described in Paragraphs (1) through (4) of Subsection A of 6.75.2.13 NMAC for distributing instructional material to schools and school districts within New Mexico;

(2) storage and shipping facilities and procedures adequate to ensure performance of all obligations under

Paragraphs (1) through (4) of Subsection A of 6.75.2.13 NMAC for distributing instructional material to schools and school districts within New Mexico;

(3) contractual arrangements with a New Mexico instructional material depository to receive, process and forward instructional material orders through an approved online ordering, inventory and reporting system, or procedures, systems and capacity to interface directly with an approved online ordering, inventory and reporting system to receive and process instructional material orders;

(4) procedures, systems and capacity to communicate such reports as the department may require in the automated format as established by the department; and

(5) sufficient inventory of instructional material to fill requisitions in accordance with the timelines set forth in this regulation.

[6.75.2.13 NMAC - Rp, 6.75.2.11 NMAC, 10/15/10]

6.75.2.14 UNOBLIGATED AND UNEXPENDED INSTRUCTIONAL MATERIAL BALANCES

A. Instructional material funds allocated to a school district or state institution during any fiscal year and not obligated or expended prior to the close of that fiscal year are available to the school district or state institution for expenditure in subsequent fiscal years. Funds meeting this definition shall be budgeted and expended in subsequent fiscal years consistent with the requirements of Subsection C of Section 22-15-9 NMSA 1978.

B. Any balance remaining in an instructional material account of a non-public school at the end of a fiscal year remains available for reimbursement by the department for multiple list instructional material purchases in subsequent fiscal years.

[6.75.2.14 NMAC - Rp, 6.75.2.12 NMAC, 10/15/10]

HISTORY OF 6.75.2 NMAC:

Pre-NMAC History: The material is this part was derived from that previously filed with the State Records Center and Archives: SDE 75-2, (Certificate No. 75-2) Regulation Relating to the State Department of Education Instructional Materials Division, filed 6-4-75.

SDE 77-2, Regulation Relating to the State Department of Education Instructional Materials Division, filed 2-7-77.

SBE 79-12, Relating to the State Department of Education Instructional Material Division, Procedures for the Adoption, Purchase and Delivery of Instructional Material, filed 9-21-79.

SBE Regulation No. 83-5, Relating to the State Department of Education Instructional

Material Division - Procedures for the Adoption, Purchase, and Delivery of Instructional Material, filed 8-31-83.

SBE Regulation 93-20, Relating to the State Department of Education Instructional Materials Bureau - Procedures for the Adoption, Purchase, and Delivery of Instructional Material, filed 10-19-93.

History of Repealed Material:

6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau, filed 11-1-2000 - Repealed effective 1-31-2006.

6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau, filed 1-13-2006 - Repealed effective 10-15-2010.

NEW MEXICO SECRETARY OF STATE

This is an emergency amendment to 1.10.25 NMAC, Sections 7 through 10 and adding a new Section 11, effective September 21, 2010.

1.10.25.7 DEFINITIONS:

A. "Voter registration organization" means one or more persons organized as a group that are engaged in voter registration activities and includes, but is not limited to, political parties, candidate committees, political action committees, political advertising campaigns, campaign committees and non-partisan interest groups.

B. "Registrant" means a qualified elector who has completed and subscribed a new or existing certificate of voter registration.

C. "Registration agent" means a state, county or federal employee who provides voter registration at a state agency (a/k/a registration officer), or tribal registration officer, or any other individual who assists another person in completion of a voter registration application.

D. "Third-party registration agent" means any [other individual who either registers or assists another person in completion of a certificate of voter registration on behalf of an] individual who solicits and provides substantive assistance to another person (who is not his or her family member) in the completion of a certificate of voter registration on behalf of a voter registration organization that is not a state, county or federal agency.

[E. "Voter's copy" means the receipt for the certificate of voter registration, provided to the voter by a third-party registration agent.]

E. "Assist" or "assistance" means taking physical possession of a certificate of voter registration completed by a registrant. An individual who engages

in conduct intentionally designed to either disenfranchise a potential or current voter or defraud the state of New Mexico through the voter registration process shall be deemed to have assisted a voter.

F. "Voter's receipt" means the receipt for the certificate of voter registration, provided to the voter by a third-party registration agent.

G. "A person having decision-making authority involving the organization's voter registration activities" means a person who organizes or directs voter registration drives.

[1.10.25.7 NMAC - N, 8-15-2005; A/E, 9-21-2010]

1.10.25.8 SECRETARY OF STATE PROCEDURES:

[A.] All third-party registration agents shall register with the secretary of state or the county clerk, prior to acting as a third-party registration agent, on a prescribed form. The form may be hand-delivered, hand-delivered by another person, or delivered by mail or facsimile.

B. The secretary of state shall prescribe a certificate of voter registration that includes a receipt for voter registration that shall be provided to the voter by the third-party registration agent. The voter's copy may include language informing the voter that the third-party registration agent is responsible for returning the original certificate of voter registration to the secretary of state or county clerk and that failure of the third-party registration agent to do so will result in the voter not being registered to vote in elections in New Mexico.

C. The secretary of state shall keep a record of all certificates of voter registration with a traceable number that are provided to third-party registration agents. Registration forms may be provided in quantities of fifty (50) per organization or individual. The secretary of state retains the discretion to increase these quantities for special events or circumstances.]

A. All voter registration organizations shall register with the secretary of state or a county clerk, prior to the provision of substantive assistance to a registrant, on a prescribed form that will be made available on the internet on the secretary of state's website and at county clerk offices. The form may be hand-delivered, hand-delivered by another person, or delivered by mail or as a portable document format (.pdf) file via email to the secretary of state's office. The form must bear a legible notary seal or the equivalent.

B. All third-party registration agents shall register with the secretary of state or a county clerk, prior to the provision of substantive assistance to a registrant, on a prescribed form that

will be made available on the internet on the secretary of state's website and at county clerk offices. The form may be hand-delivered, hand-delivered by another person, or delivered by mail or as a portable document format (.pdf) file via email to the secretary of state's office. The form must bear a legible notary seal or the equivalent. Third-party voter registration agents shall not be required to fill out the requisite forms in person at the secretary of state's or a county clerk's office.

C. The secretary of state's office shall time and date stamp each completed voter registration form received before sending the form to the appropriate county for entry into the voter registration database.

D. Beginning March 1, 2011, the secretary of state shall prescribe a certificate of voter registration that includes a receipt for voter registration that shall be provided to the voter by the third-party registration agent. The voter's receipt shall include language informing the voter that the third-party registration agent is responsible for returning the original certificate of voter registration to the secretary of state or county clerk if he or she assists in completing the form - i.e., if he or she takes possession of the completed form - and that failure of the third-party registration agent to do so will result in the voter not being registered to vote in elections in New Mexico.

E. The secretary of state shall keep a record of all certificates of voter registration with a traceable number that is provided to voter registration organizations. The secretary of state shall also provide New Mexico voter registration forms in quantities of twenty (20) per third party voter registration agent. The secretary of state retains discretion to increase these quantities for special events and circumstances. Any member of a voter registration organization may pick up blank New Mexico voter registration forms, including on behalf of other third party voter registration agents in the organization, provided, however, that any agent picking up forms for another agent must produce the absent agent's completed log pursuant to Subsection H of 1.10.25.8 NMAC. The secretary of state shall also keep a list of all third-party registration agents which will be available on the secretary of state's website.

F. For purposes of computing any time period specified in this rule, the secretary of state's office and its agents shall exclude intermediate Saturdays, Sundays, and federal or state holidays.

G. All third party voter registration agents must complete training regarding the use of voter registration forms, the requirements that Section 1-4-49 NMSA 1978, places on third party voter registration agents, and the penalties for failing to comply

with Section 1-4-49 NMSA 1978. Such training will be offered in person, both from the secretary of state's office and from each county clerk in the state of New Mexico, but training must also be made available to all third party voter registration agents who cannot attend in person, including making training available through the internet on the secretary of state's website.

H. Each third party voter registration agent shall maintain a log regarding the use of each blank state of New Mexico voter registration card the agent receives from the secretary of state or a county clerk. The log, the form of which will be available on the secretary of state's website, shall include the unique identification number associated with each form, whether the registrant or the third party voter registration agent took possession of the form upon completion by the registrant, and, if the third party voter registration agent took possession of the form upon completion by the registrant, the date the form was completed by the registrant. Third party voter registration agents shall produce a completed log when requesting additional blank voter registration forms from the secretary of state or a county clerk. [1.10.25.8 NMAC - N, 8-15-2005; A/E, 9-21-2010]

1.10.25.9 P R E S C R I B E D FORMS:

- A.** Name of organization.
- B.** Permanent address of the organization.
- C.** Telephone number of the organization.
- D.** Name of the third-party registration agent.
- E.** Permanent or temporary addresses, if any, of third-party registration agent.
- F.** Date of birth of third-party registration agent.
- G.** Social security number of third-party registration agent.
- H.** Telephone number of third-party registration agent (optional).
- I.** A signed, sworn statement by each third-party registration agent that the agent will obey all state laws and rules regarding the registration of voters. The sworn statement shall contain language advising the agent of criminal penalties provided for false registration.
- J.** A printed notification that completed forms must be delivered to the secretary of state or county clerk within forty-eight (48) hours of completion or the next business day if the appropriate office is closed for that forty-eight (48) hour period.
- K.** A printed notification that the form is a public record, except for the social security number and date of birth.]
- A. Prescribed form for**

voter registration organizations.

- (1)** Name of voter registration organization.
- (2)** Permanent or temporary address, if any, of the voter registration organization.
- (3)** Telephone number of the voter registration organization.
- (4)** Names of the officers of the voter registration organization.
- (5)** A printed notification that the prescribed form completed by voter registration organizations is a public record.
- (6)** A signed, sworn statement by a representative of the voter registration organization that the organization and its agents will obey all state laws and rules regarding the registration of voters. The sworn statement shall contain language advising the organization of the criminal penalties associating with submitting a false registration.
- (7)** A printed notification that completed certificates of voter registration must be placed in the mail or delivered to the secretary of state or county clerk within forty-eight (48) hours of the voter registration organization or its agents taking possession of a certificate of voter registration completed by a registrant. The notification shall specify that the forty-eight (48) hour deadline excludes intermediate Saturdays, Sundays, and federal or state holidays.
- B. Prescribed form for third-party registration agents.**
- (1)** Name of organization.
- (2)** Permanent address of the organization.
- (3)** Telephone number of the organization.
- (4)** Name of the third-party registration agent.
- (5)** Permanent or temporary addresses, if any, of third-party registration agent.
- (6)** Date of birth of third-party registration agent.
- (7)** Social security number of third-party registration agent.
- (8)** Telephone number of third-party registration agent (optional).
- (9)** A signed, sworn statement by each third-party registration agent that the agent will obey all state laws and rules regarding the registration of voters. The sworn statement shall contain language advising the agent of criminal penalties provided for false registration.
- (10)** A printed notification that completed certificates of voter registration must be placed in the mail or delivered to the secretary of state or county clerk within forty-eight (48) hours of the third-party registration agent taking possession of a certificate of voter registration completed by a registrant. The notification shall specify

that the forty-eight (48) hour deadline excludes intermediate Saturdays, Sundays, and federal or state holidays.

(11) A printed notification that the form is a public record, except for the social security number and date of birth.

[1.10.25.9 NMAC - N, 8-15-2005; A/E, 9-21-2010]

1.10.25.10 COUNTY CLERK PROCEDURES:

A. To minimize inconvenience to third-party registration agents, the secretary of state may designate county clerks as agents in registration of third-party registration agents. The secretary of state shall provide all prescribed forms to county clerks, along with directions for their completion and maintenance.

B. The county clerk shall keep a record of all certificates of voter registration with a traceable number that are provided to third-party registration agents. A county clerk shall also provide voter registration forms in quantities of fifty (50) per organization. The county clerk may retain discretion to increase these quantities for special events or circumstances.

C. The county clerk shall promptly forward by facsimile means, copies of all documents required of third-party registration agents and file originals in the office of the county clerk.]

A. The secretary of state may designate county clerks as agents in the registration of voter registration organizations and third-party registration agents. The secretary of state shall provide all prescribed forms to county clerks, along with directions for their completion and maintenance.

B. The county clerk shall keep a record of all certificates of voter registration with a traceable number that is provided to voter registration organizations. A county clerk shall also provide New Mexico voter registration forms in quantities of twenty (20) per third party voter registration agent. The county clerk retains discretion to increase these quantities for special events or circumstances. Any member of a voter registration organization may pick up blank New Mexico voter registration forms, including on behalf of other third party voter registration agents in the organization, provided, however, that any agent picking forms up for another agent must produce the absent agent's completed log pursuant to Subsection H of 1.10.25.8 NMAC.

C. The county clerk shall promptly forward to the secretary of state copies of all documents required of voter registration organizations and third-party registration agents and file originals in the office of the county clerk.

[1.10.25.10 NMAC - N, 8-15-2005; A/E,

9-21-2010]

1.10.25.11 PENALTIES:

A. A person will be found guilty of a petty misdemeanor for violation of Section 1-4-49 NMSA 1978 only if the violation was intentional.

B. A person will be subject to civil penalties for violation of Section 1-4-49 NMSA 1978 only if the violation was intentional or if the person has engaged in a pattern or practice of violating Section 1-4-49 NMSA 1978.

[1.10.25.11 NMAC - N/E, 9-21-2010]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

Explanatory Paragraph: This is an amendment to Subsection K of 3.2.1.18 NMAC, effective 10/15/10. Subsection K is being amended to clarify which receipts from officiating events in New Mexico are subject to gross receipts tax. This amendment is necessary to make this rule consistent with the passage of an exemption (Section 7-9-41.1 NMSA 1978) during the 2009 Legislative Session for the receipts from officiating services for New Mexico Activities Association-sanctioned events.

3.2.1.18 GROSS RECEIPTS; SERVICES.

K. Athletic officials.

(1) Receipts from refereeing, umpiring, scoring or other officiating at school events sanctioned by the New Mexico activities association are exempt from gross receipts tax pursuant to Section 7-9-41.4 NMSA 1978.

(2) Receipts of a referee, umpire, scorer or other similar athletic official from umpiring, refereeing, scoring or officiating at a sporting event located in New Mexico that is not sanctioned by the New Mexico activities association, are receipts derived from performance of a service and are subject to the gross receipts tax. Such receipts will not be exempted from the gross receipts tax as "wages" unless the umpires, referees, scorers and other athletic officials demonstrate to the department that such receipts are derived from an employment relationship whereby they are employees within the meaning of [Section] 3.2.105.7 NMAC.

[9/29/67, 12/5/69, 3/3/71, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 3/16/79, 6/18/79, 11/20/79, 4/7/82, 1/6/84, 5/4/84, 10/16/84, 4/2/86, 10/21/86, 6/28/89, 11/26/90, 11/15/96, 1/31/97, 4/30/97; R, 3 NMAC 2.1.18.28, 4/30/97; 3 NMAC 2.1.18.31, 4/30/97; 10/31/97, 7/31/98; R, 4/30/99, 11/15/99,

3.2.1.18 NMAC - Rn & A, 3 NMAC 2.1.18, 10/31/2000; A, 5/31/02; A, 12/30/03; A, 3/15/10; A, 10/15/10]

End of Adopted Rules Section

Other Material Related to Administrative Law

**NEW MEXICO BOARD
OF EXAMINERS FOR
ARCHITECTS**

**New Mexico Board of Examiners for
Architects**

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

Regular Meeting

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, November 12, 2010. The meeting will be held in the Conference Room of the Board office, #5 Calle Medico, Ste. C in Santa Fe beginning at 9:00 a.m. Disciplinary matters may also be discussed.

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

**End of Other Related Material
Section**

Submittal Deadlines and Publication Dates 2010

Volume XXI	Submittal Deadline	Publication Date
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 18	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 30

Submittal Deadlines and Publication Dates 2011

Volume XXII	Submittal Deadline	Publication Date
Issue Number 1	January 4	January 14
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
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 18	April 29
Issue Number 9	May 2	May 16
Issue Number 10	May 17	May 31
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 18	July 29
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 3	October 17
Issue Number 20	October 18	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	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.