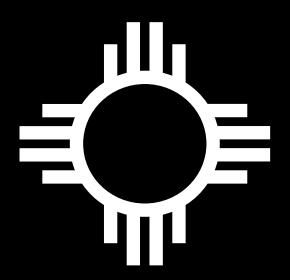
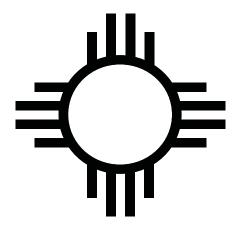
NEW MEXICO REGISTER



Volume XXII Issue Number 19 October 17, 2011

New Mexico Register

Volume XXII, Issue Number 19 October 17, 2011



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
2011

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New Mexico Register

Volume XXII, Number 19 October 17, 2011

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Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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

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Notices of Rulemaking and Proposed Rules

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On Thursday, October 13, 2011, beginning at 9:00 a.m., at New Mexico Department of Game & Fish, NW Area Office, 3841 Midway Place, NE, Albuquerque, NM 87109, the State Game Commission will meet to hear and consider action as appropriate on the following: Closed Executive Session; and Commission Decision on Finalist to be Interviewed for Director of New Mexico Department of Game & Fish Position.

A copy of the agenda and 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) 476-8027. Please contact Ms. Quintana at least 3 working days before the meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms upon request.

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On Thursday, November 3, 2011, beginning at 9:00 a.m., at Courtyard Marriott Conference Center, 560 Scott Avenue, Farmington, NM 87401, the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: Consideration of Fenn Farm Application for a Regulated Shooting Preserve; Consideration of Riverview Ranch Application for a Regulated Shooting Preserve; General Public Comments (comments limited to 3 minutes); Establish Application Deadlines for 2012-2013 Big Game Public Draws; Prospective

Amendments to the Upland Game Rule to Ensure Alignment with Statutory Changes Resulting from Senate Bill 196; Update on Management of San Juan River Quality Waters; FY 11 Depredation Summary and FY 12 Depredation Update; Prospective Department Legislative Initiatives; and Cebolleta Land Grant Purchase proposal for the Marquez Wildlife Management Area.

The Commission will go into Executive Session closed to the public pursuant to Section 10-15-H(8), NMSA, 1978, to discuss the disposal of certain Commissionowned lands.

A copy of the agenda and 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) 476-8027. Please contact Ms. Quintana at least 3 working days before the meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms upon request.

NEW MEXICO DEPARTMENT OF HEALTH

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.27.2 NMAC "Licensing Of Emergency Medical Services Personnel"; 7.27.11 NMAC "Supplemental Licensing Provisions". The Hearing will be held on Tuesday, October 25, 2011 at 9:00 a.m. in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico.

The public hearing will be conducted to repeal and replace the existing 7.27.2 rule and promulgate a new rule at 7.27.11 to identify scopes of practice which relates to 7.27.2.

A copy of these materials may be obtained from, and written comments may be submitted to:

Charles Schroeder, EMS Licensing Manager EMS Bureau New Mexico Department of Health 1301 Siler Rd., Bldg. F Santa Fe, NM 87507 (505) 476-8246

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

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

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

Notice of Public Hearing

The Human Services Department will hold a public hearing to consider proposed rules for the New Mexico Works Program Participation Status and Requirements. A public hearing to receive testimony on the proposed regulations will be held on November 17, 2011 at 10:00 am. The hearing will be held at the Income Support Division Conference Room at Pollon Plaza, 2009 S. Pacheco St., Santa Fe, NM 87505. The Conference Room is located in room 120 on the lower level. Individuals wishing to testify may contact the Income Support Division, P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling toll free 1-800-432-6217.

In accordance with the purpose of the New Mexico Works Act and guidance from our federal partner, the Administration for Children and Families (ACF), the Department is proposing regulations to ensure that all participants receiving cash assistance participate in work activities. Work activities include supports and training for those with barriers to getting jobs, help in finding jobs, and learning the skills to keep a job. The work activities help families succeed in becoming self sufficient, which is one of the goals of the New Mexico Works Act, the program for administering Temporary Assistance to Needy Families (TANF).

The proposed regulation is available on the Human Services Department website at http://www.hsd.state.nm/isd/ISDRegisters. html. Individuals wishing to testify or requesting a copy of the proposed regulation

should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, New Mexico, 87505-2348, or by calling 505-827-7250.

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

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 pm on November 17, 2011. Please send comments to:

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

Interested persons may also address comments via electronic mail to: <u>Vida.Tapia-Sanchez@state.nm.us</u>

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

Notice

The New Mexico Human Services Department (HSD) published a Notice of Public Hearing in the New Mexico Register Volume XXII, Number 13 dated July 15, 2011. The public hearing was held on August 18, 2011 to obtain input on the following rule: 8.313.3 NMAC, Cost Related Reimbursement of ICF/MR Facilities.

The Department will issue a "Withdrawal of Proposed Regulations" register. At a later date the Department intends to initiate the rulemaking process, at which time a notice will be published and a public hearing scheduled.

NEW MEXICO MEDICAL BOARD

NEW MEXICO MEDICAL BOARD

Notice

The New Mexico Medical Board will convene a regular Board Meeting on

Thursday, November 10, 2011 at 8:00 a.m. in the Conference Room, 2055 S. Pacheco, Building 400, Santa Fe, New Mexico. A Public Rule Hearing will be held on Thursday, November 10, 2011 at 1:00 p.m. The Board will reconvene after the Hearing to take action on the proposed rule. The Board may enter into Executive Session during the meeting to discuss licensing or limited personnel issues.

The purpose of the Rule Hearing is to consider amending 16.10.10 NMAC (Report of Settlements, Judgments, Adverse Actions and Credentialing Discrepancies.

A copy of the proposed rule will be available no later than November 3rd on request from the Board office at the address listed above, by phone (505) 476-7220, or on the Internet at www.nmmb@state.nm.us.

Persons desiring to present their views on the proposed amendment may appear in person at said time and place or may submit written comments no later than 5:00 p.m., November 4, 2011, to the board office, 2055 S. Pacheco, Building 400, Santa Fe, NM, 87505.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service in order to attend or participate in the hearing, please contact Lynnelle Tipton, Administrative Assistant at 2055 S. Pacheco, Building 400, Santa Fe, NM at least one week prior to the meeting. Public documents, including the agenda and minutes, can be provided in various accessible formats.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The NM Commission of Public Records has scheduled a regular meeting for Tuesday, November 15, 2011, at 9:30 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette L. Solano at 476-7902 by November 7, 2011. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the meeting.

NOTICE OF RULEMAKING

The Commission of Public Records may

consider the following items of rulemaking at the meeting:

Amendment

1.15.2 NMAC GRRDS,
General Administrative Records
1.15.3 NMAC GRRDS,
General Administrative Records (For Use

by Local Government and Educational Institutions)

1.18.350 NMAC

ERRDS,

General Services Department 1.18.420 NMAC

1.18.420 NMAC \to R R R D S , Regulation and Licensing Department

Gaming Control Board

Human Services Department

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

Case No. 11-00345-CO

IN THE MATTER OF THE ADOPTION OF AMENDMENTS TO THE COMMISSION'S RULES REGARDING EXPEDITED FILING FEES

NOTICE OF PROPOSED RULEMAKING AND HEARING NOTICE

NOTICE IS HEREBY GIVEN

that the New Mexico Public Regulation Commission ("NMPRC" or "Commission") proposes to amend its existing rules regarding expedited filing fees that are currently codified in the New Mexico Administrative Code ("NMAC") at 12.3.9(G)(3) NMAC. This matter comes before the Commission upon its own motion. Whereupon, being duly advised,

THE COMMISSION FINDS AND CONCLUDES:

- 1. NMSA 1978, §53-2-1 provides that the Commission shall charge and collect fees for filing documents and issuing certificates. The statute sets the amount of fees to be charged for various filings and also provides in paragraph (E) that the Commission may adopt rules establishing reasonable fees for providing an expedited service.
- 2. The Commission's rules regarding expedited service are found in section 12.3.1.9(G) NMAC. Fees for expedited filing are currently set at \$300 for one-day service and \$200 for two-day

service.

- 3. The Commission, by this rulemaking, desires to amend section 12.3.1.9(G) NMAC to reduce the fees by half, to \$150 for one-day service and \$100 for two-day service.
- 4. The rulemaking should be conducted, and any rule amendments adopted, under the authority granted the Commission by the New Mexico Constitution, art. XI, § 2, the Public Regulation Commission Act (see NMSA 1978, §§ 8-8-4 and 8-8-15) and NMSA 1978 § 53-2-1(E).
- 5. This Notice of Proposed Rulemaking should constitute due and lawful notice to all potentially interested parties.
- 6. A copy of the proposed rule to be considered for promulgation as an amendment to the current rule is attached hereto as "Exhibit 1." Additional copies of the proposed rule can be obtained from:

Nick Guillen NMPRC Records Management Bureau 1120 Paseo de Peralta Santa Fe, New Mexico 87501 Telephone: (505) 827-4366

IT IS THEREFORE ORDERED:

- A. A rulemaking proceeding should be, and hereby is, instituted in this Docket concerning whether and how this Commission's rules regarding fees for expedited filing, as currently codified in the New Mexico Administrative Code ("NMAC") at 12.3.1.9(G) NMAC, should be amended.
- **B.** This *Notice of Proposed Rulemaking* shall constitute due and lawful notice to all potentially interested parties.
- C. Any person wishing to comment on the proposed amendments to 12.3.1.9(G) NMAC may do so by submitting written comments no later than **October 17**, 2011. Comments suggesting changes to the rule amendments as proposed shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule amendments shall be provided in a format consistent with that of the existing rule.
- **D.** All pleadings, including comments, shall bear the caption and case number contained at the top of this Notice. Comments on the proposed rule shall be filed with the Commission's Records Division, at the address set out at paragraph 6 hereof.
- F. A public hearing on the proposed rule amendments, to be presided over by Commission Chairman Patrick H. Lyons or his designee, shall be held beginning at 1:00 P.M. on November 1,

2011 at the offices of the Commission, at the following location:

PERA Building, 4th Floor Hearing Room 1120 Paseo de Peralta Santa Fe, New Mexico 87501

- F. Persons providing public comment and/or participating in this public hearing are encouraged to provide specific comment on the proposed rule. Commenters are also encouraged to address any other topic that may be relevant to this rulemaking.
- G. Interested persons should contact the Commission at (505) 827-6947 to confirm the date, time and place of any public hearing because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the Hearing should contact Ms. Cecilia Rios at (505) 827-4501 at least 48 hours prior to the commencement of the Hearing.
- H. In accordance with NMSA 1978, § 8-8-15(B), this *Notice of Proposed Rulemaking*, including Exhibit 1, shall be mailed at least thirty days prior to the first hearing date to all persons who have made a written request for advance notice.
- I. In addition, copies of this *Notice of Proposed Rulemaking*, including Exhibit 1, shall be e-mailed to all persons on the attached Certificate of Service if their e-mail addresses are known. If their e-mail addresses are not known, then the same materials shall be mailed to such persons via regular mail.
- Rulemaking, without Exhibit 1, shall be published in at least two newspapers of regular circulation in the State of New Mexico, and in the New Mexico Register. Affidavits attesting to the publication of this Notice of Proposed Rulemaking as described above shall be filed in this docket.
- **K.** In addition, this Notice shall be posted on the Commission's official Web site.
- **L.** This *Notice of Proposed Rulemaking* is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 15th day of September, 2011.

NEW MEXICO PUBLIC REGULATION COMMISSION

PATRICK H. LYONS, CHAIRMAN THERESA BECENTI-AGUILAR, VICE CHAIR

JASON A. MARKS, COMMISSIONER JEROME D. BLOCK, COMMISSIONER BEN L. HALL, COMMISSIONER

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

3.1.4.9 NMAC Section 7-1-9 NMSA 1978

(The Requirement of a Correct Mailing Address)

3.1.4.13 NMAC Section 7-1-14 NMSA 1978

(Reporting According to Business Location)
3.1.9.13 NMAC Section 7-1-29 NMSA
1978

(Conditions for Refund or Credit)

3.1.12.8 NMAC Section 7-1-10 NMSA 1978

(Reporting Sale or Use of Fuel for Turboprop or Jet-Type Engines)

Native American Veterans' Income Tax Settlement Fund

3.3.2.11 NMAC Section 7-2H-3 NMSA 1978

(Claims for Settlement Payments from the Native American Veterans' Income Tax Settlement Fund)

These proposals were placed on file in the Office of the Secretary on October 3, 2011. 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, 2011.

A public hearing will be held on these proposals on Thursday, November 17, 2011, 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 17, 2011.

3.1.4.9 THE REQUIREMENT OF A CORRECT MAILING ADDRESS:

All notices. returns or applications required to be made by the taxpayer must include the correct mailing address of the taxpayer and the taxpayer must promptly advise the department in writing of any change in mailing address. If the department has prescribed a form or format for reporting a change of address, the form or format must be followed provided that, if the required information is contained in a change of address form or notice of the United States postal service, the United States postal service change of address form or notice may be used in lieu of the department form.

If a taxpayer notifies the United States postal service of a change in the taxpayer's mailing address and this information is given by the United States postal service to the department either voluntarily or upon the department's request, the taxpayer shall have fulfilled the taxpayer's obligation to notify the department of a change in mailing address. Unless the taxpayer specifically notifies the department that the change of mailing address does not apply to mailings from the department to the taxpayer, the notice by the taxpayer to the United States postal service of a change in the taxpayer's mailing address and given by the United States postal service to the department applies to mailings from the department.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.4.9 NMAC - Rn, 3 NMAC 1.4.9, 12/29/00; A, XXX]

3.1.4.13 R E P O R T I N G ACCORDING TO BUSINESS LOCATION

A. REPORTING ACCORDING TO BUSINESS LOCATION - GENERAL:

- (1) Any person maintaining more than one place of business in New Mexico and reporting under one identification number is required to report the taxable gross receipts for each location on a single CRS-1 form. Receipts from locations in each municipality or in each county outside a municipality where a place or places of business are maintained must be indicated separately on the CRS-1 form.
- (2) A person who maintains multiple places of business in a single municipality or multiple places of business not within a municipality but within a single county and who reports under one identification number is required to combine the taxable gross receipts from these places of business, indicating the total taxable gross receipts derived from all locations in each municipality or county on the CRS-1 form.
- (3) For persons engaged in the construction business, "place of business" includes each place where construction is performed.

- (4) The "place of business" of a person who has no other place of business in New Mexico, but who has sales personnel who reside in New Mexico, includes each place where such personnel reside. Such persons are required to report gross receipts in the manner provided in Paragraphs (1) and (2) of Subsection A of 3.1.4.13 NMAC. The place of business of a person who has no other place of business and does not have sales personnel who reside in New Mexico but who does have service technicians who perform service calls in New Mexico is "out of state", whether the service technicians live in New Mexico or elsewhere. For the purposes of Paragraph (4) of Subsection A of 3.1.4.13 NMAC, a "service technician" is an employee whose primary work responsibility is the repair, servicing and maintenance of the products sold or serviced by the employer and whose sales activities are at most incidental.
- (5) A person [, other than an itinerant peddler,] who is liable for the gross receipts tax and who has no "place of business" or resident sales personnel [or other employees such as service technicians] in New Mexico is required to indicate on the CRS-1 form that the business location is "out-of-state".
- (6) A person is required to report receipts for the location where the place of business is maintained even though the sale or delivery of goods or services was not performed at or from the place of business, except as provided in Subsection J of this section. It should be noted, however, that each construction site, as indicated in Paragraph (3) of Subsection A of 3.1.4.13 NMAC, is a "place of business" for this purpose.
- (7) If a person has more than one place of business in New Mexico, the department will accept, on audit, this person's method of crediting sales to each place of business, provided the method of crediting is in accordance with the person's regular accounting practice and contains no obvious distortion.
- (8) Example 1: The X company maintains its only place of business in Roswell, but sends its sales personnel to different cities in New Mexico to solicit sales and take orders. X is not required to report its gross receipts for each municipality in which its sales personnel are operating. X reports its gross receipts only for Roswell because its sole place of business is Roswell.
- (9) Example 2: The Z company maintains its only place of business in Grants. It makes deliveries in its own trucks to customers in various other cities within New Mexico. Z is not required to report its gross receipts for each municipality in which it makes deliveries. Z reports its gross receipts only for Grants. It is not maintaining a place of business in municipalities outside

Grants solely because of its deliveries.

- (10) Example 3: The W furniture company maintains its only office and showroom inside the city limits of Carrizozo. W's furniture warehouse is located outside the Carrizozo city limits. Furniture sold by W is, for the most part, delivered from its warehouse. W's "place of business" is in Carrizozo and it must report all its gross receipts for that municipality, regardless of the location of its warehouse.
- (11) Example 4: The X appliance company maintains offices and showrooms in both Truth or Consequences and Las Cruces. The Truth or Consequences place of business initiates a sale of a refrigerator. The refrigerator is delivered from stock held in the Las Cruces place of business. X's place of business to which it credits the sale will be accepted on audit, if the crediting is in accordance with X's method of crediting sales in its regular accounting practice and contains no obvious distortion. If X credits the sale to its Truth or Consequences place of business, the department will accept Truth or Consequences as the location of the sale. The same result will occur if X credits the sale to its Las Cruces place of business.

B. REPORTING ACCORDING TO BUSINESS LOCATION - UTILITIES:

- (1) Each municipality and the portion of each county outside a municipality in which customers of a utility are located constitute separate places of business. The physical location of the customer's premises or other place to which the utility's product or service is delivered to the customer is a business location of the utility.
- (2) The department will accept, on audit, a utility's method of crediting its sales to its places of business, provided the method of crediting is based on the location of its customers as business locations and the method of crediting contains no obvious distortion.
- (3) For the purposes of 3.1.4.13 NMAC, "utility" means a public utility or any other person selling and delivering or causing to be delivered to the customer's residence or place of business water via pipeline, electricity, natural gas or propane, butane, heating oil or similar fuel or providing cable television service, telephone service or internet access service to the customer's residence or place of business.
- C. REPORTING
 BY PERSONS ENGAGED IN THE
 LEASING BUSINESS: A person from out
 of state who is engaged in the business of
 leasing as defined in Subsection E of Section
 7-9-3 NMSA 1978 and who has no place of
 business or resident sales personnel in New
 Mexico is required to indicate "out-of-state"
 on the CRS-1 report form and to calculate
 gross receipts tax due using the tax rate for
 the state. An out-of-state person engaged in

the business of leasing who has a place of business or resident sales personnel in New Mexico is required to report gross receipts for each municipality or area within a county outside of any municipalities in which the person maintains a place of business or resident sales personnel. An in-state person engaged in the business of leasing with more than one place of business is required to report gross receipts for each municipality or area within a county outside of any municipality in which the person maintains a place of business.

REPORTING D. TAXABLE GROSS RECEIPTS BY A PERSON MAINTAINING A BUSINESS OUTSIDE THE BOUNDARIES OF A MUNICIPALITY ON LAND OWNED BY THAT MUNICIPALITY: For the purpose of distribution of the amount provided in Section 7-1-6.4 NMSA 1978, persons maintaining a place of business outside the boundaries of a municipality on land owned by that municipality are required to report their gross receipts for that location. For the purpose of calculating the amount of state and local gross receipts tax due, such persons shall use the sum of the gross receipts tax rate for the state plus all applicable tax rates for county-imposed taxes administered at the same time and in the same manner as the gross receipts tax.

E. I T I N E R A N T PEDDLERS - TEMPORARY BUSINESS LOCATIONS:

- (1) An itinerant peddler is a person who sells from a nonreserved location chosen for temporary periods on a first-come, first-served basis. An itinerant peddler does no advertising or soliciting, has no one employed to sell and is not employed as a salesperson.
- (2) An itinerant peddler shall report taxable gross receipts by the municipality or the area of a county outside any municipality where the peddler maintains a place of business. If the itinerant peddler sells from only one location, that location shall be the place of business. If an individual peddler has no set sales location, the place of business shall be the peddler's temporary or permanent residence within New Mexico.
- (3) Example: X occasionally places a blanket on a sidewalk in a town wherever X can find space for the blanket and sells homemade pies. X is an itinerant peddler because the space is not reserved specifically for X, it is chosen for temporary periods, and X is not employed nor does X have employees. Additionally, because X cannot be expected to be found regularly carrying on business at the same sidewalk location every day, X's place of business, for reporting purposes, is X's residence.
- (4) Any person who pays a fee to occupy a particular location or space for a determined period of time and who sells any

- item or performs any service at that location is not an itinerant peddler and shall report that location as a place of business.
- (5) Example: X pays fifty dollars \$50.00 to rent a space for a booth for two days during a festival. X is not an itinerant peddler because the space was assigned, and during the festival X could normally be expected to be found carrying on business at that place. X must therefore report the gross receipts from sales made during the festival to the location of the space.
- (6) Any person who, in advance, advertises through print or broadcast media or otherwise represents to the public that the person will be at a particular location for a specified period of time and who sells property or performs service at that location shall report that location as a place of business.
- (7) Example: X sells fish from a truck in a shopping center parking lot. X places an advertisement in the local paper informing the public where X will be located and the dates when X will sell fish at that location. X is not an itinerant peddler because X advertises and solicits business, and X can normally be expected to be found at that location during the time designated in the advertisement. The shopping center is X's place of business and X must report all activity occurring there to that location.
- F. O B V I O U S DISTORTION: For purposes of 3.1.4.13 NMAC, obvious distortion shall be presumed whenever the method used to credit sales to a place of business treats similar transactions inconsistently. Any method which intentionally credits sales to a location with a lower combined tax rate primarily for the purpose of reducing the taxpayer's total tax liability shall be presumed to contain obvious distortion, shall not be allowed and may be the basis of establishing intent to evade or defeat tax under the provisions of Section 7-1-72 NMSA 1978.

G. SPACE PROVIDED BY CLIENT CONSTITUTES BUSINESS LOCATION:

- (1) Except as provided otherwise in Paragraph (6) of Subsection G of 3.1.4.13 NMAC, any person performing a service who occupies space provided by the purchaser of the service being performed has established a business location if the following conditions are present:
- (a) the space is occupied by the provider of the service for a period of six consecutive months or longer;
- (b) the provider or employees of the provider of the service are expected, by the purchaser of the services or representatives of the purchaser, to be available at that location during established times; and
- (c) critical elements of the service are performed at, managed or coordinated from the purchaser's location.

- (2) The following indicia will be considered in determining if the above conditions are present:
- (a) the provider of the service has assigned employees to the client's location as a condition of employment;
- (b) telephone is assigned for the exclusive use by the service provider;
- (c) the space has been designated for the use of the service provider;
- (d) the space contains office furniture or equipment furnished by either the client or the service provider for the sole use of the service provider;
- (e) the service provider is identified by business name on a sign located in or adjacent to the provided space;
- (f) the client or other persons can expect to communicate, either in person or by telephone, with the service provider or employees or representatives of the service provider at the space provided by the client; and
- (g) the contract between the client and the service provider requires the client to provide space to the service provider.
- (3) Any person meeting the three conditions as evidenced by the listed indicia must report the receipts derived from the performance of the service at the client's location to the municipality or county in which the furnished space is located.
- (4) Example 1: X has entered into a contract to perform research and development services for the army at a location on White Sands missile range within Doña Ana county. The term of the contract is one year and is renewable annually. X is required by the contract to assign employees to the project at White Sands missile base on a full-time basis. The assigned employees consider White Sands as their place of employment. The army furnishes X with office and shop space as well as furniture and equipment. The space is identified as X's location by a sign containing X's business name at the main entrance to the assigned space. A specific telephone number has been assigned for X's exclusive use during the term of the contract. X shall report the receipts from services performed at the White Sands location under this contract using Doña Ana county as the location of business for gross receipts tax purposes.
- (5) Example 2: Y has entered into a maintenance contract with a state agency to maintain and repair computer equipment. The state agency provides storage facilities to Y for the storage of equipment and parts which will be used by Y in the maintenance and repair of computer equipment. Y's employees are present at the location of the state agency only when required to repair the computers. The agency contacts Y at Y's regular place of business to report equipment problems and to request necessary repairs. On receipt of a request from the agency,

- Y dispatches an employee to the agency's location to repair the equipment. The location of the state agency does not constitute a separate business location for Y. Y shall report its receipts from the state agency under this contract to the location where Y maintains a regular place of business.
- (6) The provisions of Subsection G of 3.1.4.13 NMAC do not apply when:
- (a) the provider of the service is a co-employer or joint employer with the client of the employees at the client's location or has entered into a contract to provide temporary employees to work at the client's facilities under the client's supervision and control; and
- (b) the provider of the service has no employees at the client's location other than employees described in Subparagraph (a) of Paragraph (6) of Subsection G of 3.1.4.13 NMAC above.
- H. REPORTING
 ACCORDING TO BUSINESS
 LOCATION PERSONS
 SUBJECT TO INTERSTATE
 TELECOMMUNICATIONS GROSS
 RECEIPTS TAX ACT:
- (1) Each municipality and the portion of each county outside all municipalities in which customers of a person who is engaging in an interstate telecommunications business and who is subject to the interstate telecommunications gross receipts tax are located constitute separate places of business. Except for commercial mobile radio service as defined by 47 C.F.R. 20.3, the location of the person's customer is the location of the telephone sets, other receiving devices or other points of delivery of the interstate telecommunications service.
- (2) The department will accept, on audit, the person's method of crediting its sales to its places of business, provided the method of crediting is based on the location of its customers as business locations and the method of crediting contains no obvious distortion.
- (3) This version of Subsection H of 3.1.4.13 NMAC applies to all interstate telecommunications gross receipts tax returns due after January 1, 2000.
- REPORTING I. ACCORDING TO BUSINESS LOCATION - COMMERCIAL MOBILE RADIO SERVICE PROVIDERS: For interstate telecommunications gross receipts tax returns due after January 1, 2000, each municipality and the portion of each county outside all municipalities in which customers of the provider of a commercial mobile radio service as defined by 47 C.F.R. 20.3 are located constitute separate places of business. With respect to the provision of commercial mobile radio service, the business location of a customer will be determined by the customer's service

- location. A customer's service location is determined first by the customer's billing address within the licensed service area. If the customer does not have a billing address within the licensed service area or if the customer's billing address is a post office box or mail-drop, then the customer's service location is the street or rural address of the customer's residence or business facility within that service area.
- TRANSACTIONS ON TRIBAL TERRITORY: A person selling or delivering goods or performing services on the tribal land of a tribe or pueblo that has entered into a gross receipts tax cooperative agreement with the state of New Mexico pursuant to Section 9-11-12.1 NMSA 1978 is required to report those receipts based on the tribal location of the sale or delivery of the goods or performance of the service rather than the person's business location. [3/5/70, 7/6/79, 11/20/79, 4/11/83, 11/5/85, 1/4/88, 8/22/88, 12/29/89, 8/15/90, 9/3/92, 2/22/95, 10/31/96, 7/30/99, 10/29/99; 3.1.4.13 NMAC - Rn & A, 3 NMAC 1.4.13, 12/29/00; A, 12/30/03; A, 1/17/06; A, 4/30/07; A, XXX1

3.1.9.13 **CONDITIONS FOR REFUND OR CREDIT:**

- A. A refund or credit of tax may be granted to a taxpayer by the secretary or secretary's delegate only if all the following conditions are satisfied:
- (1) the tax has been erroneously paid and payment has been verified from the department's or taxpayer's records;
- (2) the taxpayer has submitted a proper claim for refund pursuant to Section 7-1-26 NMSA 1978 and the regulations thereunder; and
- (3) the secretary has secured the prior approval of the attorney general for any refund of tax and interest erroneously paid [and amounting to \$5,000 or more] when such approval is required in Subsection A of Section 7-1-29 NMSA 1978.
- B. The secretary or secretary's delegate, in response to a claim for refund for one type of tax, may credit the amount to be refunded against the amount of any other tax due from the taxpayer. The secretary or secretary's delegate shall give a full accounting of the crediting transaction to the claimant.
- C. A taxpayer may not create a credit for a discovered overpayment of tax by understating the amount due on current tax returns to offset amounts paid on prior returns.
- [7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.9.13 NMAC Rn, 3 NMAC 1.9.13, 1/15/01; A, XXX]
- 3.1.12.8 **REPORTING SALE** OR USE OF FUEL FOR TURBOPROP OR JETTYPE ENGINES:

- A. [Section 716.7 NMSA 1978 provides that an amount each month equal to 3.59% of the gross receipts or value attributable to the sale or use of fuel specially prepared and sold for use in turboprop or jettype engines shall be distributed to the state aviation fund.] Each month, the department shall distribute to the state aviation fund a percentage of the gross receipts or value attributable to the sale or use of fuel specially prepared and sold for use in turboprop or jet-type engines as specified in Section 7-1-6.7 NMSA 1978.
- B. In order for department to be able to determine the correct amount to be distributed to the aviation fund, the department requires, pursuant to Subsection 7110E NMSA 1978, taxpayers who are in the business of selling fuel for use in turboprop and jet engines, users who are direct purchasers of such fuel from outofstate sources and users who purchase such fuel through the use of nontaxable transaction certificates are required to report the dollar amount of such sales or purchases to the department on forms to be supplied by the department. This information shall be submitted to the department as an attachment to the taxpayer's monthly CRS1 report and is due by the 25th day of the month following the end of the period covered by the CRS1 report.

[7/2/82, 11/5/85, 8/15/90, 10/31/96; 3.1.12.8 NMAC - Rn & A, 3 NMAC 1.12.8, 1/15/01; A, XXX]

3.3.2.11 CLAIMS FOR SETTLEMENT PAYMENTS FROM THE NATIVE AMERICAN VETERANS' INCOME TAX SETTLEMENT FUND

- A. A claim for a settlement payment from the Native American veterans' income tax settlement fund may be made for any period of active duty in the armed forces of the United States during which the claimant or, where the claimant is a successor, the deceased veteran:
- (1) was a member of a federally recognized Indian nation, tribe, or pueblo;
- (2) was a resident within the boundaries of the Indian member's or the member's spouse's reservation or pueblo grant, or within the boundaries of lands held in trust by the United States for the benefit of the member or spouse or the member's or spouse's nation, tribe or pueblo; and
- (3) had New Mexico personal income tax withheld from his or her active duty military pay, and the amount withheld:
- (a) has not already been refunded to the claimant or the claimant's representative; and
- (b) cannot be claimed as a refund by filing a New Mexico personal income tax return because the period for filing a refund has run under the applicable statute of limitations.

- B. A claim for a settlement payment must provide the following substantiation of the claimant's or, where the claimant is a successor, the deceased veteran's, eligibility for the claim and the amount of the claim.
- (1) Active duty in the armed forces of the United States. The claimant must provide a copy of certificate of release or discharge from active duty (DD Form 214) or other proof of service provided by the department of defense and approved by the department of veterans' service. If a claimant does not have a copy of his or her DD Form 214 or other proof of service, the claimant can request that the department of veterans' services request the claimant's DD Form 214 or other proof of service from the department of defense.
- (2) Status as a Native American. The claimant must provide a statement signed by the claimant that the claimant or, where the claimant is a successor, the deceased veteran was a member of a federally recognized Indian nation, tribe, or pueblo during the period(s) of his or her active duty in the armed forces of the United States
- (3) Domicile on tribal land during period(s) of active duty. The claimant must substantiate domicile on tribal land (as described in Paragraph (2) of Subsection A above) during the period(s) any New Mexico personal income tax was withheld from active duty military pay. If the address shown on the DD Form 214 or other proof of service is on the claimant's tribal land, the claimant's or deceased veteran's DD Form 214 is sufficient substantiation. If the address shown on the claimant's or deceased veteran's DD Form 214 or other proof of service is not on tribal land, or the claimant cannot establish that the address is on tribal land, the claimant must provide a statement signed by the claimant that the claimant or deceased veteran was domiciled on tribal land during the period(s) any New Mexico personal income tax was withheld from active duty military pay; the statement must provide the claimant's or deceased veteran's address on the tribal land for each period and an official designated by the nation, tribe, or pueblo must attest that each address is on tribal land.
- (a) For the purposes of this regulation, "domicile" means a place where an individual has a true fixed home and is a permanent establishment to which the individual intends to return after an absence. Every individual has a domicile somewhere, and each individual has only one domicile at a time. 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. No change in domicile results when an individual leaves the tribal land if the

individual's intent is to stay away only for a limited time, no matter how long.

(b) Examples:

- (i) G is a Native American who lives and works on his tribe's pueblo in New Mexico. G joins the marines and is stationed outside New Mexico. G's domicile remains unchanged during his military service unless G moves to a new location with the intent to make that location his permanent home after leaving the military.
- (ii) C is a Native American who lives on her tribe's pueblo in New Mexico. She leaves New Mexico to pursue a two-year master's degree program in Spain. She intends to return to her pueblo when she completes her studies. She remains domiciled on her pueblo while in Spain.
- (4) Amount of New Mexico personal income tax withheld from active duty military pay. The claimant can substantiate this amount by providing copies of Form(s) W-2 covering active duty military pay for the year(s) during which New Mexico personal income tax was withheld. If a claimant does not have copies of the applicable Form(s) W-2 for one or more of these years, the claimant can request that the taxation and revenue department obtain the claimant's or deceased veteran's Form(s) W-2 (or other withholding information in a form approved by taxation and revenue department) from the department of defense.
- (5) Amount of withholding has not already been refunded. The claimant must provide a signed statement attesting that the claimant or deceased veteran did not receive a refund of the New Mexico personal income tax withheld for the year(s) for which the claimant is filing a claim for a settlement payment.
- C. A claim for a settlement payment must be made by the eligible Native American veteran, or, in the case of a deceased veteran, by the veteran's surviving spouse, other successor or personal representative (an executor, administrator, or anyone in charge of the deceased veteran's property). If the claim is being made for a deceased veteran, the claim must be accompanied by a death certificate or other proof of death and by:
- (1) if the claimant is a successor who is not the surviving spouse of the deceased veteran, a signed and dated notarized statement attesting that:
- (a) the value of the entire probate estate of the decedent, wherever located, less liens and encumbrances, does not exceed thirty thousand dollars (\$30,000);
- (b) at least 30 days have elapsed since the death of the decedent; and
- (c) the successor is entitled to the settlement payment, or
- (2) if the claimant is a personal representative, executor, or other

- representative authorized to administer the estate under applicable state law or the tribal law of the deceased veteran, a signed and dated notarized statement attesting that:
- (a) he or she has been duly appointed as the personal representative, executor, or other representative of the estate of the decedent; and
- (b) a copy of that appointment is attached;
- (3) if the estate exceeds thirty thousand dollars (\$30,000), only the surviving spouse, a personal representative, an executor, or other representative of the estate as designated by applicable law or tradition may make a claim.
- D. No claim for a settlement payment can be made for an amount of withholding that can be claimed as a refund by filing a New Mexico personal income tax return. A New Mexico personal income tax return can be filed by a Native American veteran to claim a refund by the later of:
- (1) December 31 of the year three years after the veteran separated from military service, or
- (2) December 31 of the year three years after the year [the] in which New Mexico personal income tax was withheld from the active duty pay of the veteran.
- E. All claims for settlement payments must be made with the department of veterans' services on the form prescribed by the taxation and revenue department. No claim for a settlement payment may be made after December 31, 2012.
- F. Settlement payments will include interest on substantiated amounts of eligible withholding, computed on a daily basis from the date of withholding to the date a settlement warrant is issued at the rate specified for individuals pursuant to Section 6621 of the Internal Revenue Code of 1986. The date of withholding will be determined as follows:
- (1) for withholding that occurred over an entire calendar year, one-twelfth of the amount withheld during the year will [the] be considered to have been paid on the last day of each calendar month of the year; or
- (2) for withholding that occurred over a period of less than an entire calendar year, the amount withheld during the period will be divided by the number of months (including partial months) in the period, and the resulting amount will be considered to have been paid on the last day of each calendar month during the period.
- G. Eligible settlement payments will be made by the taxation and revenue department from the Native American veterans' income tax settlement fund. Settlement payments will be made on a "first come, first served" basis until the fund is exhausted or until no further claims are

received.

- H. Department of veterans' services must determine whether the claim meets the requirements of Paragraphs (1), (2) and (3) of Subsection B above and must act on a claim for settlement payment within 210 days of receipt of the claim. Claims not acted upon within 210 days are deemed denied.
- I. A claimant whose claim is denied by department of veterans' services for failure to meet the requirements of Paragraphs (1), (2) and (3) of Subsection B above may dispute the denial by filing with the secretary of the department of veterans' services a written protest of the denial.
- (1) The protest must contain the name and address of the claimant and must state with specificity the grounds for the protest. All evidence in support of the protest must also be submitted with the written protest. The secretary or designated hearing officer shall not consider any evidence that has not been submitted to the department of veterans' services at least 10 days prior to the hearing.
- (2) The written protest must be filed within 30 days of the date of mailing to the claimant by the department of veterans' services of the denial of the claim.
- (3) Upon timely receipt of a protest, the department of veterans' services shall promptly set a date for hearing and on that date hear the protest. The hearing shall be scheduled no later than 90 days after the filing of the written protest. Notice of the hearing shall be mailed to the protestant no less than 15 days prior to the date of the hearing. The secretary of the department of veterans' services may designate a hearing officer to conduct the hearing. The claimants may appear at a hearing for themselves, may have the assistance of an advocate, or may be represented by an attorney. Hearings shall not be open to the public except upon request of the claimant and may be postponed or continued at the discretion of the secretary or hearing officer.
- (4) The technical rules of evidence and the rules of civil procedure shall not apply in the hearings, but hearings shall be conducted so that claims are amply and fairly presented. It is the burden of the claimant to prove that the denial of the claim was improper.
- (5) A complete record of the proceedings will be made. A written decision shall be issued within 30 days of the hearing.
- J. If the department of veterans' services approves the claim, the claim will be sent to taxation and revenue department to determine whether the claim meets the requirements of Paragraphs (4) and (5) of Subsection B above. The taxation and revenue department must act on a claim within 210 days of the date that the claim is received by the taxation and revenue

department from the department of veterans' services. Claims not acted upon within 210 days are deemed denied.

- K. A claimant whose claim is denied in whole or in part by the taxation and revenue department for failure to meet the requirements of Paragraphs (4) and (5) of Subsection B above may dispute the denial by filing with the secretary of the taxation and revenue department a written protest of the denial.
- (1) The protest must contain the name and address of the claimant and must state with specificity the grounds for the protest. All evidence in support of the protest must also be submitted with the written protest. The secretary or designated hearing officer shall not consider any evidence that has not been submitted to the taxation and revenue department at least 10 days prior to the hearing.
- (2) The written protest must be filed within 30 days of the date of mailing to the claimant by the taxation and revenue department of the denial of the claim.
- (3) Upon timely receipt of a protest, the taxation and revenue department shall promptly set a date for hearing and on that date hear the protest. The hearing shall be scheduled no later than 90 days after the filing of the written protest. Notice of the hearing shall be mailed to the protestant no less than 15 days prior to the date of the hearing. The secretary of the taxation and revenue department may designate a hearing officer to conduct the hearing. The claimants may appear at a hearing for themselves, may have the assistance of an advocate, or may be represented by an attorney. Hearings shall not be open to the public except upon request of the claimant and may be postponed or continued at the discretion of the secretary or hearing officer.
- (4) The technical rules of evidence and the rules of civil procedure shall not apply in the hearings, but hearings shall be conducted so that claims are amply and fairly presented. It is the burden of the claimant to prove that the claimant or deceased veteran is entitled to a settlement payment.
- (5) A complete record of the proceedings will be made. A written decision shall be issued within thirty (30) days of the hearing.

[3.3.2.11 NMAC - N, 12/1/09; A, XXX]

NEW MEXICO WATER QUALITY CONTROL COMMISSION

NEW MEXICO WATER QUALITY CONTROL COMMISSION

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.6.6 NMAC.

The New Mexico Water Quality Control Commission will hold a public hearing beginning at 9:00 a.m. on November 16, 2011 at the New Mexico State Capitol Building, Room 307, 490 Old Santa Fe Trail, Santa Fe, New Mexico to consider proposed amendments to the Commission's Dairy Rule, 20.6.6 NMAC, proposed in WQCC Docket Number 11-04(R) by the New Mexico Environment Department (NMED), the Dairy Industry Group for a Clean Environment (DIGCE), Amigos Bravos, Caballo Concerned Citizens and the Sierra Club Rio Grande Chapter (Coalition).

The proposed rule changes correct minor errors and provide greater flexibility to dairy operators in the management of their facilities while still continuing to protect ground water.

The proposed changes may be reviewed during regular business hours at the Commission Administrator's office located in the Harold Runnels Building, 1190 St. Francis Drive, Room N-2153 Santa Fe, NM, 87505. In addition, copies of the proposed amendments are posted on the NMED website at http://www.nmenv.state.nm.us/gwb/NMED-GWQB-DairyRegDevelopment.htm.

The hearing will be conducted in accordance with the Guidelines for Water Quality Control Commission Regulation Hearings, the Water Quality Act, Section 74-6-6 NMSA 1978, and other applicable procedures. Written comments regarding the proposed revisions may be addressed to Ms. Carmella Casados, Commission Administrator, at the above address; reference docket number WQCC 11-04(R).

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

Persons wishing to present technical testimony must file with the Commission a written notice of intent to do so. The requirements for a notice of intent can be found in the Commission's Guidelines for Regulation Hearings and may be modified by procedural orders entered in this matter, which may be obtained from the Administrator. Notices of intent for the hearing must be received in the Office of the Commission Administrator by 5:00 pm on November 1, and should reference the name of the regulation, the date of the hearing, and docket number WQCC 11-04 (R).

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact the Personnel Services Bureau by November 1, 2011. The Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502-5469, (505) 827-9872. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

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

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Notice is hereby given that on Thursday, October 27, 2011, commencing at 1:30 p.m., the New Mexico Workers' Compensation Administration will conduct a public hearing on the changes to the medical fee schedule and WCA Rules, including updates to the medical rules at Part 7, the safety rules at Part 2, and the UEF Rules at Part 12. Changes to the Complaint form, the Application to WCJ, and the Joint Petition for Lump Sum Settlement will also be considered.

The hearing will be conducted at the Workers' Compensation Administration, 2410 Centre Avenue S.E., Albuquerque, NM. Copies of the changes to the proposed fee schedule and rule amendments will be available on October 1, 2011. You may obtain a copy of the proposed rules at the WCA website at: http://www.workerscomp.state.nm.us/ or contact the WCA General Counsel Office at 841-6083 for a copy via e-mail. If you would like to receive a copy by mail, please submit a postage paid, self-addressed envelope with your request.

Comments made in writing and at the public hearing will be taken into consideration. Written comments pertaining to these issues will be accepted from October 13, 2011 until the close of business on November 14, 2011. Oral comments will be limited to five (5) minutes per speaker.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aide or service to attend or participate in the hearing or meetings, please contact the General Counsel Office at (505) 841-6083.

Or you may inquire about assistance through the New Mexico relay network at 1-800-659-8331.

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

This is an amendment to 8.14.14 NMAC, Sections 7, 10, 12, 13, 14, 15, 18, 19, 20, 21 and 25, effective 10/17/2011.

8.14.14.7 DEFINITIONS:

- A. "Action plan" means a written document in response to a sanction submitted by the facility to the department for approval which states those actions that the program implements, with specific time frames and responsible parties for each, to correct the deficiencies found by the department in the previous on-site visit or review of documents.
- B. "Adjudicate" means to make a finding of whether a child committed a delinquent act.
- C. "Administrator" means the person in charge of the daily operation of the facility. The administrator may be the person named on the certification or an authorized representative of the applicant [and/or] or designee.
- D. "Annual certification" is an authorization to a facility to operate for a one (1) year period of time. The effective date is noted on the face of the document. The annual certification is issued on an initial and renewal basis following investigation of an initial application for certification [and/or] or the inspection of the facility by the department, unless a complaint is received during the certification period that warrants the issuance of a sanction.
- E. "Appearances" means the act of the hearing officer in recording, for the record, the names of person(s) appearing at the hearing and their representatives, if any.
- F. "**Appellant**" means the party seeking review of a final decision of the department.
- G. "Applicant" means the county, municipality or other facility operator, in whose name a certification for a facility has been issued and who is legally responsible for compliance with applicable laws, standards or regulations.
- H. "Application" means the forms, attachments and other writings and drawings required to be completed as part of the process of granting or denying an annual certification or provisional certification.
- I. "Authority" means the New Mexico Children's Code, Section 32A-2-5; 32A-2-9; 32A-2-11 as amended.
- J. "Burden of proof" the burden of persuasion is on the party to convince the hearing officer of all elements of the case by a preponderance of the

evidence.

- K. "Capacity" means the number of beds available to the facility as established through certification standards without a waiver provision.
- L. "Certification" means the document issued by the department which authorizes the operation of a facility pursuant to certification standards. The term "certification" may include an annual certification and provisional certification.
- M. "Collated facility" means a facility located within or as part of or on the same immediate grounds of an existing county or municipal jail, or courthouse, which contains a jail, provided that all federal and state requirements for a collocated facility are met. No facility that is not an existing collocated facility, as of December 31, 1993, shall be certified as a collocated facility after that date.
- N. "**Deficiency**" means a violation of, or failure to, comply with a provision(s) of these regulations.
- O. "Denial of an application and denial of annual certification" means action by the department refusing to grant an annual certification or provisional certification.
- P. "**Department**" means the New Mexico children, youth and families department.
- Q. "Detention screening tool" means the instrument used to guide the detention decision.
- R. "Direct care staff" means an employee of the facility who provides supervision, security, custody and control of facility residents; this excludes contractual personnel and volunteers.
- S. "Directed action plan" means an action plan related to a sanction that the department writes and specifies that the facility must enforce within the specific time frame.
- T. "Direct supervision" means direct care staff who provide direct supervision, observation, interaction and programming by being physically present with juveniles at all times.
- U. "**Director**" means the director of the juvenile justice division of the New Mexico children, youth and families department.
- V. "Emergency suspension of certification" means the department's prohibition of operation of a facility for a stated period of time by temporary withdrawal of the certification, prior to a hearing on the matter, when immediate action is required to protect human health and safety.
- W. "Facility" means all juvenile detention facilities required to be certified by the department by authority of

- the New Mexico Children's Code, Section 32A-2-4, NMSA 1978, as amended.
- X. "Final decision" means the written document following a hearing, stating the final determination of the secretary.
- Y. "Five-day hearing" means the hearing noted in the emergency suspension order and notice of hearing. See the definition of "emergency suspension of certification" above.
- Z. "Health and safety deficiencies" means non-compliance with any standard which relates to conditions or circumstances leading to death, physical harm, or psychological harm to recipient(s) of services or any pervasive conditions that pose a threat to the physical safety of occupants, or any pervasive neglect of residents or abuse of residents or the pervasive detainment of status offenders.
- AA. "Hearing officer" means a person the secretary designates to conduct pre-hearing conferences, hearings, and issue reports and recommendations, based on the information produced at the hearing.
- BB. "Imminent danger" means a danger which could reasonably be expected to cause death or serious harm to detained juveniles or staff and which requires immediate correction.
- CC. "Inspection" means an entry into, and examination of the facility's premises, records, including staff interviews, interviews with juveniles, and any relevant information needed to show compliance with these standards.
- DD. "Juvenile" means any person who is less than eighteen (18) years old.
- EE. "Certifying authority" means the children, youth and families department.
- FF. "Long term" means a separate or collocated facility certified to detain juveniles for longer than a (72) hour period.
- GG. "Maintenance" means the care of building(s), by keeping them in a repaired and safe condition and the grounds in a safe, sanitary and presentable condition.
- HH. "Management" means the juvenile detention center manager, supervisor, superintendent or administrator.
- II. "Official notice" means information concerning the status of a facility's certification.
- JJ. "Partial compliance" means that a facility is found to meet the conditions of participation, with moderate to few non-health and safety deficiencies and is able to receive a temporary certification so long as the implementation of a corrective

action plan is achieved.

KK. "Prospective applicant" means the county, municipality or other facility operator, in whose name a certification for operation of a facility is submitted. The prospective applicant may be represented by the administrator or supervisor of the facility.

LL. "Provision al certification" means a temporary certification, not to exceed two (2) consecutive one hundred twenty (120) day provisional certifications, to operate a facility.

MM. "**Recipient**" means the person or entity who receives service of notice.

NN. "Revocation of certification" means the department's prohibition of operation of a facility by withdrawal of a certification.

OO. "**Sanctions**" means a measure imposed by the department for a violation(s) of certification standards.

PP. "Standard of compliance" means the degree of compliance required by these regulations is designated by the use of the words shall and must and may. Shall and must designate mandatory requirements that may not be waived. May is permissive and designates other requirements that may be determined to be non-applicable by the Department.

QQ. "**Secretary**" means the secretary of the New Mexico children, youth and families department.

RR. "Serious incident" environmental hazards, or detention or situations that require emergency services. Environmental hazards include unsafe conditions which create immediate threat to life or safety, including but not limited to fire and contagious disease requiring quarantine. Emergency services include; unanticipated admission to a hospital, other psychiatric facility, or the provision of emergency services including, but not limited to treatment for broken bones, cuts requiring sutures, poisoning, contagious diseases requiring quarantine, requiring specialized medical treatment. medication under-dose or overdose requiring treatment, or incidents between residents or residents and staff resulting in physical or psychological harm or which could result in psychological harm or a confrontation between staff(s) or resident(s) that results in any restraint, use of force or behaviormanagement technique, or other conditions requiring specialized treatment at an urgent care center, emergency room or by EMS.

SS. "Severability" means if any part or application of these regulations is held invalid, the remainder or its application to other situations or persons shall not be effected.

TT. "Six (6) hour

certification" means a certified facility that may only detain juveniles for no more than a six (6) hour period for the purpose of arranging transportation [and/or] or release.

UU. "Forty-eight (48) hour certification" means a certified facility that may only detain juveniles for no more than forty-eight (48) hour period for the purpose of arranging transportation [and/or] or release.

VV. "Status offender" means a runaway, a truant, [and/or] or a juvenile who has committed a status offense that is not classified a delinquent act (exception: out-of-state runaway juveniles as mandated by state [and/or] or federal law).

WW. "Substantial compliance" means that a facility is found to meet the conditions of participation, without deficiencies, or with minor to few non-health and safety deficiencies, and is able to receive full certification.

XX. "Suspension of certification" means the department's prohibition of operation of a facility for a stated period of time through withdrawal of the certification, after notice and an opportunity for a hearing.

YY. "Supervision" means the direct observation and guidance by adult staff at all times by being physically present with the juveniles [and/or] or through video monitoring with direct observation.

ZZ. "Usage" means the masculine pronoun includes the feminine and neuter, and, the singular number includes the plural and the plural includes the singular.

AAA. "Waiver" means a temporary or provisional certification to operate a facility which is in nonconformance with the standards for a period of time set by the secretary. A waiver from the department may be granted to a facility for up to two (2) years only. Any request for a waiver for re-certification of a waiver, denied by the department is not subject to the hearing process and procedures.

BBB. "Working days" means when determining compliance with various deadlines in these regulations, Monday through Friday, of each calendar week, excluding state observed holidays.

<u>CCC. "SARA" means</u> <u>screenings, admissions and releases</u> <u>application.</u>

DDD. <u>"RAI"</u> means risk assessment instrument.

EEE. "OJJDP" means office of juvenile justice and delinquency prevention.

FFF. <u>"AECF"</u> means Annie E. Casey foundation.

GGG. "Isolation" means the removal of a juvenile from the general population living unit for the purpose of deescalating an incident and regaining control.

[8.14.14.7 NMAC - N, 7/31/01; A, 10/17/11]

8.14.14.10 STAFF TRAINING:

A. Training shall be provided annually to all employees by qualified instructors. Employees shall be trained in behavior management interventions, suicide prevention and alcohol and drug withdrawal annually as part of their required training.

В. The facility shall have a written policy and procedure providing that all new full-time employees receive forty (40) hours of orientation/training before being independently assigned to a particular job. This orientation/training is to include at a minimum; orientation in the purpose, goals, policies and procedures of the institution and parent agency; working conditions and regulations; responsibilities employees; suicide prevention, behavior management methods, alcohol and drug withdrawal and an overview of the juvenile justice and correctional field. Credit for prior training received is acceptable so long as the training occurred within the past year.

C. The facility shall have a written policy and procedure providing that all support employees who have regular or daily juvenile contact receive an additional sixteen (16) hours of training each subsequent year in the area of juvenile detention issues.

D. The facility shall have a written policy and procedure approved by the department providing that all new juvenile detention officers receive an additional eighty (80) hours of training during their first year of employment, (40) hours of which includes basic juvenile detention officers course. All employees receive forty (40) hours of training each year of employment. For example, training includes the following areas. Formal training is identified as (F), orientation training is identified (O)

(1) (O) security procedures;

(2) (O) supervision of juveniles;

(3) (F) behavior management method:

(4) (F) report writing;

(5) (O) rules and regulations for juveniles;

(6) (O) rights and responsibilities of juveniles;

(7) (O) fire and emergency procedures;

(8) (O) key control;

(9) (F) interpersonal relations;

(10) (F) [social/cultural lifestyles of the juvenile population] <u>cultural/linguistic</u> <u>competency training</u>;

(11) (F) child growth and development;

(12) (F) communication skills;

(13) (F) first aid/CPR;

 $\hspace{1cm} \hbox{ (14) (F) suicide prevention risk/} \\ safety; \\$

- (15) (F) certified course in restraint training; or behavioral management method and
- (16) (O) intake criteria/and reporting.
- E. The facility shall have a written policy and procedure that all part-time staff and volunteers working less than forty (40) hours per week receive training appropriate to their assignments; volunteers working the same schedule as full-time, paid staff, receive the same training as full-time staff.
- F. The facility shall have emergency policy and procedures and all facility personnel shall be trained in their implementation.
- G. All training records are incorporated into the employee's file. [8.14.14.10 NMAC N, 7/31/01; A, 10/17/11]

8.14.14.12 PHYSICAL PLANT:

- Α. Facility sites: detention facility for juveniles may be collocated within or as part of or on the same immediate grounds of an existing municipal or county jail or courthouse which contains a jail, provided that all federal and state requirements for a collocated facility are met, in accordance with subsection 8.14.14.13 NMAC. See 28 C.F.R. 31.03. No such collocated facility for juveniles that is not an existing collocated facility as of December 31, 1993, shall be certified as a collocated facility. Any such collocated facility that is in existence as of that date shall only thereafter be certified if all required standards contained herein are met.
- B. The requirements for separation in collocated facilities are:
- (1) separation between juveniles and adults time sharing facility spatial areas, so that there can be no sustained sight or sound contact between juvenile and adult residents;
- (2) total separation in all juvenile and adult programs, including recreation, education, counseling, health care, dining, sleeping and general living activities;
- (3) an independent and comprehensive operational plan for the juvenile detention center providing for a full range of separate services is in place;
- (4) no program activities may be shared by juveniles and incarcerated adults; and
- (5) separate juvenile and adult staff, including management at an administrative level, security staff and direct care staff such as recreation, education and social services/counseling.
- C. Specialized services staff such as cooks, bookkeepers and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of

- juvenile and adults, can serve both.
- D. The day to day management, security and direct care functions of the juvenile detention center is separately staffed, dedicated solely to the juvenile population within the facilities. (exception 6 hour facilities only) A detention facility may be located separate and apart from other municipal or county structures provided that all minimum standards and safety measures are met.
- E. The detention facility must meet the following standards:
- (1) an area large enough to provide an outdoor recreation area for the maximum capacity of children. (long term facilities only)
- (2) the recreation area must be located to prevent children from seeing passersby, except at a reasonable distance and to prevent passing contraband. (long term facilities only)
- (3) the site must be large enough to prevent encroachment of new construction on adjoining properties. (exception 6 hour facilities only)
- (4) the site must be sufficiently large to discourage exposure at windows and to prevent passing contraband through or over a fence or wall. (exception 6 hour facilities only)
- (5) there should be sufficient area to allow future expansion of the facility; and (exception 6 hour facilities only)
- (6) there should be adequate parking space for staff and visitors. (exception 6 hour facilities only)
- F. All approvals of local zoning boards, city or county commissioners or other responsible local bodies are necessary to receive certification.
- G. The facility shall conform to all applicable state and local health, safety and building codes and accessibility requirement of the American's With Disabilities Act.
- H. The population in housing or living units cannot exceed the rated capacity of certification, unless otherwise waived. The children, youth and families department shall issue waivers.
- I. Multi purpose facilities shall be made equally available to male and female juveniles while maintaining necessary privacy sight and sound separation and no physical contact shall be permitted.
- J. Water for showers is temperature controlled.
- K. Room dimensions: living units are primarily designed for single occupancy sleeping rooms. Any use of multiple occupancy rooms cannot exceed twenty percent of the single bed capacity of the unit. There are at least 80 percent of all beds in rooms designed for single occupancy only. (new construction only)
 - L. New construction-room

- dimensions: single sleeping rooms have at least seventy (70) square feet of floor space. (new construction only) living quarters:
- (1) all sleeping rooms in detention facilities provide;
- (2) access to the following sanitation facilities;
- (3) toilet above floor level which is available for use;
 - (4) wash basin and drinking water;
 - (5) hot and cold running water;
 - (6) a bed at above floor level;
- (7) natural light [and/or] \underline{or} artificial light; and
 - (8) shower facilities.
- M. All new construction must provide in the sleeping rooms:
- (1) toilet above floor level which is available for use;
 - (2) wash basin and drinking water;
 - (3) hot and cold running water;
 - (4) a bed above floor level;
- $(5) \quad \text{natural} \quad \text{light} \quad [\frac{\text{and/or}}{\text{or}}] \quad \underline{\text{or}} \\ \text{artificial light and;}$
 - (6) access to shower facilities.
- N. At no time shall male and female juveniles occupy the same sleeping room, privacy must be provided with no direct line of sight by the opposite gender.
- O. Heating, cooling and ventilation: ventilation shall be available in the event of a power failure. All heating, air conditioning, piping, boilers and ventilation equipment shall be installed and maintained to meet all requirements of current state and local mechanical, electrical and construction codes. Temperatures shall be maintained at a reasonable temperature at all times.
- P. The total indoor/outdoor activity area outside the sleeping area provides space of at least one hundred (100) square feet per juvenile. Any outdoor recreation area shall be surrounded by a wall or fence sixteen (16) feet in height.
- Q. A visual barrier shall be constructed preventing the general public from observing the juveniles when in use; a 3/8" woven wire mesh cover shall be installed. [if direct supervision of juveniles is not provided.] (exception 6 hour and 48 hour facilities)
 - R. Space:
- (1) Visitation area: the visiting area shall provide privacy during visits.
- (2) Religious services: space shall be available for religious services. (exception 6 hour facilities only)
- (3) Holding/confinement rooms: when there is a confinement room separate from the living unit, it must contain access to plumbing and security furniture.
- (4) Interview space: interview space shall be available in or near the living unit.
- (5) Telephone: the facility shall operate a telephone in a designated area.

- (6) Personal belongings: there shall be a reasonable amount of secured storage space provided for storage of juveniles' property and personal belongings.
- (7) Storage rooms for clothing, bedding and facility supplies shall be provided.
- (8) Separate and locked space shall be provided for mechanical equipment and an inventory & sign in/out logs maintained. (new construction only)
- (9) Building maintenance: there shall be a written plan for preventive maintenance of the physical plant with provisions for emergency repairs or replacement of equipment. This plan shall be reviewed annually and updated if needed.
- (10) Access for disabled: the facility construction shall provide for the removal of architectural barriers to physically handicapped persons, in compliance with the Americans with Disabilities Act.
- (11) Access for disabled: disabled juveniles are housed in a manner that provides for their safety and security. Cells or housing units used by them are designed for their use, and shall provide the maximum possible integration with the general population.
- (12) Appropriate facility programs and activities shall be accessible to disabled juveniles confined in the facility.
- (13) All parts of the facility that are accessible to the public shall be accessible to and usable by disabled staff, residents and visitors.
- (14) Dayroom dimensions: there shall be a day room for each housing unit or detention room cluster; the room shall have a minimum of thirty-five (35) square feet of floor space per juvenile and is separate and distinct from the sleeping area, which is adjacent and accessible. (new construction only)
- (15) Shared facility spatial areas: units housing male and female juveniles, sharing day rooms, rest rooms and activity areas, provide separate and private areas for both genders and prevents all direct line of sight or sound contact between males and females when in their sleeping quarters, shower areas or other areas requiring privacy. [8.14.14.12 NMAC N, 7/31/01; A, 10/17/11]

8.14.14.13 SAFETY AND EMERGENCY:

- A. The facility shall maintain and document its compliance with all applicable safety codes, including:
- (1) a fire alarm and automatic detection system; if there is not a fire alarm and automatic detection system, the facility must address these or other deficiencies within six (6) months;
- (2) the safety and emergency policies and procedures of the facility shall

- provide that a qualified fire and safety officer perform a comprehensive and thorough inspection of the facility for compliance with safety and fire prevention standards annually and the facility provides documentation of the inspection;
- (3) health and sanitation: the facility shall comply with applicable federal, state and local sanitation, safety and health codes
- B. Fire safety and equipment: the facility must be equipped with noncombustible receptacles for smoking materials and separate containers for other combustible refuse at readily accessible locations in the living quarters and other locations throughout the facility.
- C. Special containers for flammable liquids and for rags used with flammable liquids shall be provided and checked daily and an inventory & sign in/out log maintained.
- D. Space for the secure storage of chemical agents, restraining devices and related security equipment, is located in an area that is readily accessible to authorized persons only.
- E. Fire safety and equipment: written policy and procedure shall specify the facility's fire prevention regulations, practices, and evacuation for staff, residents and visitors, and include a provision for an adequate fire protection service; a system of fire inspection and testing of equipment semi-annually. An annual inspection by the state fire marshal or other qualified person(s) approved by the state fire marshal; and availability of fire hoses or extinguishers at appropriate locations throughout the facility.
- F. Facility furnishings are purchased with proof of the fire safety performance requirements of the materials selected.
- G. The facility must have access to an alternate power source to maintain essential services in an emergency. Power generators are tested at least every two (2) weeks and other emergency equipment and systems are tested at least monthly for effectiveness and shall be repaired or replaced as necessary. Documentation of tests shall be maintained.
- H. The facility shall provide for the prompt release of juveniles from locked areas in case of emergency, and a secondary release system shall be in place in the facility. These release procedures shall be set out in the safety and emergency procedures.
- I. The facility shall have exits that are properly positioned, clearly, distinctly and permanently marked, in order to evacuate juveniles and staff in the event of fire or other emergency. All housing areas and places of assembly for fifty (50) or more persons shall have two (2) exits.

- J. Evacuation plans/fire drills: The facility shall have a written plan for evacuation in the event of fire or major emergency that is approved through the fire marshal.
- K. The plan shall be reviewed annually, updated if necessary, and documented. The plan shall include the following:
- (1) location of building/floor plans;
- (2) use of exit signs and directional arrows for traffic flow;
- (3) location of publicly posted plans;
- (4) documented fire drills are conducted monthly, the facility develops policies and procedures to rotate drills monthly between the shifts and,
- (5) documented evacuation drills shall be conducted annually.
- L. The facility shall <u>have</u> a written policy and procedure to provide for safe, appropriate handling of the following:
- (1) dangerous juveniles who are detained:
- (2) hostage and disturbance plans; and
- (3) group arrests and work stoppage.
- M. There shall be shall a written policy and procedure governing the control and use of all flammable, toxic, and caustic materials.

[8.14.14.13 NMAC - N, 7/31/01; A, 10/17/11]

8.14.14.14 S E C U R I T Y , STAFFING AND CONTROL:

- A. All facilities shall submit a plan to JJD within ninety (90) days of beginning operations and then each year thereafter at time of renewal of certificate, which demonstrates the facility's ability to provide adequate management, control, supervision, staff coverage, program activities and security, and address at a minimum:
 - (1) facility structure;
 - (2) population flow;
- (3) staff ratios for facilities are a minimum of one juvenile detention officer providing direct supervision as set out in subsection 8.14.14.12 NMAC. (6 hour facilities must provide staff coverage and staff patterns only); the facility maintains a control center;
- (4) staff ratios provide for separate juvenile and adult staff, in accordance with Paragraph 5 of Subsection B of 8.14.14.12 NMAC; (exception 6 hour only)
- (5) adequate supervision during day time and lockdown time, and suicide prevention coverage (including sleeping hours);
- (6) recreational activity (indoor and outdoor); (exception 6 hour and 48 hour

facilities only);

- (7) staff training;
- (8) staff absence policy (e.g., sick leave, vacation, etc.); [and]
- (9) juveniles shall be safe from physical and verbal assault; harassment, threats of violence, theft, intimidation, sexual harassment or sexual misconduct; and
- [(9)] (10) other policies and procedures designed to safeguard against haphazard or accidental sight or sound contact between juveniles and incarcerated adults; the plan shall be reviewed annually.
- B. All facilities shall maintain approved staff/child ratios with a minimum of one (1) direct supervision juvenile detention officer for every ten (10) juveniles during day and swing shift and a ratio of one (1) direct supervision juvenile detention officer for every sixteen (16) juveniles on the facility's sleeping hours shifts.
- C. Staff of the same gender as the juvenile shall be present when performing the following; body cavity search [(as per 70.12)], strip searches, and monitoring of the shower and toilet areas; and
- (1) there is no direct line of sight or sound between males and females in these areas or living quarters;
- (2) the facility shall keep a list on file of two (2) readily available juvenile detention officers who can be called to the facility. (exception 6 hour facilities only)
- D. The facility shall maintain a control center which is staffed at all times.
- E. The facility perimeter shall be secured in such a way that juveniles remain within the perimeter and that access by the general public is denied without proper authorization.
- F. Behavior management: the facility shall have a written policy and procedure to govern the availability, control, inventory and use of physical/mechanical [and/or] or chemical restraints. The policies and procedures shall provide as follows:
- (1) restraints are only used when juvenile residents of the facility are engaged in behavior that poses a clear and serious threat of bodily harm to self or others;
- (2) restraints are only used as a last resort after all other attempted less restrictive interventions have failed;
- (3) mechanical restraints shall only be applied by, or with the authorization of the facility administrator, or designee, physician, nurse, or mental health provider;
- (4) restraints shall be defined in the policy and procedure as "the use of any physical, mechanical device or chemical used to restrict movement of a juvenile resident or the movement or normal function of a portion of an individual's body during isolated, serious incidents involving bodily

injury to self or others";

- (5) the facility shall conduct semi annual training for behavior management and train on the use of verbal de-escalation; and
- (6) chemical restraint may only be used during a disturbance or riot.
- G. The facility may not use restraints:
 - (1) as punishment;
 - (2) for convenience of staff, or;
- (3) as a substitute for programs or activities.
- H. Physical/mechanical restraints: the following shall be incorporated in the policy and procedures under section F above:
- (1) Physical/mechanical restraints may only be used when it is absolutely necessary to protect the resident from injury to himself or others.
- (2) The facility is responsible for training the staff on the proper techniques for applying the restraint whether physical or mechanical and for insuring proper monitoring of the resident while in restraint.
- (3) Facility staff monitor a resident placed in mechanical restraints at a minimum of every five (5) minutes and records each of those checks in the resident's records.
- (4) An order for mechanical restraint may not be in effect for periods longer than one (1) hour for every twenty four (24) hour period, unless written authorization from a licensed and authorized health care professional is provided.
- (5) The mechanical devices used at the facility are manufactured devices developed specifically for such use, and therefore designed to cause the least possible physical discomfort, and to avoid physical injury to the resident.
- (6) The mechanical devices shall be one or more of the following devices:
 - (a) hinge handcuffs;
 - (b) "AD" belt;
 - (c) belly chain;
 - (d) foot shackles;
 - (e) safety helmet, and;
 - (f) soft cuffs.
- (7) Whenever any of the devices specified above are available in leather, or with leather buffers provided to minimize chaffing, such devices are preferred for use in the facility. No other device is permitted.
- (8) The use of restraint chairs is prohibited.
- I. The administration of chemical/medical restraints shall not be used except under the direction and authorization of a licensed medical provider after all other efforts to manage the behavior have failed.
- J. The facility shall have a written policy and procedure requiring that all security perimeter entrances, exterior doors and all doors the facility administrator determines should be locked are kept locked

- except when used for admission or exit of employees, detained juveniles or visitors, and in emergencies.
- K. Written policy and procedure shall provide for weekly inspection and maintenance of security devices.
- L. Written policy and procedure shall require that staff inspect every area of the facility daily, and submit a written report/notation to an administrative official for review whenever deficiencies are noted. All such documentation shall be readily available to the department.
- M. The facility shall have a written policy and procedure to search staff, juveniles and visitors for contraband that is posted at the facility's main entrance. This policy shall be reviewed and updated annually.
- N. Body search: written policy and procedure shall provide for the following:
- (1) all such inspections are conducted in private and manual or instrument inspection of body cavities are performed only by medical personnel;
- (2) manual or instrument inspection of juvenile body cavities are conducted only when there is reason to do so and when authorized by the facility administrator or designee; and
- (3) visual inspections are conducted only when there is a reason to believe that the juvenile is carrying contraband or other prohibited material.
- O. Strip searches shall be performed without specific authorization only upon admittance or return to the facility, all other times shall be based on reasonable suspicion, and after being granted approval from the facility administrator or his designee.
- P. Reporting and recording incident reports: all special incidents, including, but not limited to, the taking of hostages, use of restraint equipment or the use of physical force are reported in writing to the facility administrator within twenty four (24) hours:
- (1) the documentation includes the date and signature of the staff person reporting the incident and
- (2) the report is placed in the juvenile's case record and reviewed by the facility administrator [and/or] or the parent agency and a courtesy copy sent to the juvenile probation/parole officer.
- Q. Whenever a juvenile is placed in mechanical restraints such as hinged handcuffs, AD belt, belly chain foot shackles, safety helmet or soft cuffs, except when used during transportation outside the secure area, the following information shall be recorded in a log maintained for that purpose prior to the end of the shift on which the restraint occurred and shall be reported

to CYFD certification manager within twenty four (24) hours, except holidays and weekends, during which the report will be made the next business day. Notification must be in writing and include the following information: (1) the name of the juvenile; (2) the date and time restraints were used; (3) the type of restraint used; (4) the name of the staff member requesting use of the restraint; (5) the name of the supervisor authorizing the use of restraint; (6) the name of the staff member(s) who actually conducted the restraint; (7) the reason for the use of the restraint; (8) the date and time the juvenile was released from the restraint; and (9) the name and title of the health professional authorizing continued use of the restraint, if necessary. The facility will notify the department of a lockdown status or suspension of services or variation of normal daily operations. The notification will be done within twenty four (24) hours except as provided above. A statement describing provision of essential services and a plan to restore normal operations shall accompany the notification.

- [Q:] R. Firearms are not permitted in the facility except in emergency situations, as defined by the facility policy and procedures.
- [R:] S. The facility shall have a written policy and procedure governing the control and use of keys that are designed to provide a full accounting of all material related to the ingress/egress to the facility.
- [S-] T. The facility shall have a written policy and procedure governing the control and use of tools, medical and culinary equipment.
- [7:] <u>U.</u> The facility shall have a written policy and procedure for handling escapes, runaways and unauthorized absences and shall be reviewed at least annually and updated as necessary. The policy includes all reporting of events, investigation protocol and reports to the department.
- [U-] V. The facility shall have a written policy and procedure requiring that all persons injured in an incident receive immediate medical examination and treatment.
- [V-] \underline{W} . The facility shall have a written policy and procedure that provides for a communications system within the facility, and between the facility and the community, in the event of an emergency.
- [X:] \underline{Y} . A written report shall be prepared following all uses of force and is

submitted to the facility administrator and department.

- [4:] Z. The facility shall have a written policy and procedure governing the transportation of juveniles when transportation is performed by facility staff.
- [Z-] AA. The facility shall have a written policy and procedure [providing] to provide transportation [for use] in emergencies [and/or] or evacuation from the facility including all notifications to the public and to the department.
- [AA:] BB. The facility shall have a written policy and procedure governing transportation of juveniles outside the facility and from one jurisdiction to another.
- [BB:] CC. The facility shall have a written policy and procedure ensuring separation of juveniles and incarcerated adults to pro-actively safeguard against haphazard [and/or] or accidental sight or sound contact between juveniles and incarcerated adults, where the juveniles are confined in juvenile detention centers developed within an adult jail, within the same building as incarcerated adults, or on the same grounds where the adults are incarcerated.
- [CC:] DD. Proactive safeguards against such haphazard or accidental sight or sound contact between these populations applies to all possible areas, including entrances, booking areas, living areas, day rooms, multi-purpose rooms, recreational areas, elevators, sally ports, and visitation rooms.
- [DD:] EE. Facilities shall provide adequate documentation of their internal monitoring for compliance with these standards.
- [EE:] FF. Facilities shall have a written policy prohibiting the admittance of status offenders.
- [8.14.14.14 NMAC N, 7/31/01; A, 10/17/11]

8.14.14.15 FOOD SERVICE:

- A. Food services shall comply with the applicable sanitation and health codes as promulgated by federal, state and local authorities.
- B. The facility shall have written policies and procedures approved by the department requiring that food service staff develop planned menus that are nutritionally balanced and approved by a [trained] state licensed dietician. In the planning and preparation of all meals, food flavor, texture, temperature, appearance and palatability shall be considered.
- C. A staff member, experienced in food service management shall supervise food service operations, unless such food services are contracted with another agency in which case the staff member shall monitor the contract for

- compliance with policy and contract.
- D. The facility shall have written policies and procedures providing for special diets as prescribed by appropriate medical or dental personnel, and to provide for religious dietary laws. As mandated by state and federal law.
- The facility shall have E. written policies and procedures that shall require that the food service provider serve at least three (3) meals, two (2) of which are hot meals, provided at regular meal times during each twenty four (24) hour period. There shall be no more than fourteen (14) hours between the evening meal and breakfast. The facility food service supervisor may allow variation in the requirement for three (3) meals at regular meal times, so long as the three (3) meals within the twenty four (24) hour period meet the daily basic nutritional requirements and the fourteen (14) hour requirement.

[8.14.14.15 NMAC - N, 7/31/01; A, 10/17/11]

8.14.14.18 JUVENILE RIGHTS AND RESPONSIBILITIES:

- A. The facility shall have written policies and procedures stating that juveniles are not subject to discrimination based on race, national origin, color, creed, sex, physical handicap, or religion is required.
- B. Any child who is not a delinquent offender, but who is abused or neglected, and juveniles charged with status offenses, shall not be held in the facility. (exception out of state runaways as mandated by state and federal statutes as provided in as interstate compact for juveniles.
- C. The facility shall have written policies and procedures requiring equal access to programs and services for male and female juveniles.
- D. The facility shall have written policies and procedures requiring that supervision and control of juveniles be provided by staff [and/or] or trained volunteers.
- E. A written grievance procedure for major rule violations shall be explained and made available to all juveniles, and allows for at least one timely level of appeal. Release of a juvenile is not a remedy. (exception 6 hour facilities only)
- F. The facility shall have written policies and procedures providing for review of all disciplinary hearings and dispositions by the facility administrator or designee, to assess conformity with policy and procedure. (exception 6 hour facilities only)
- G. The facility shall have written policies and procedures providing that a juvenile charged with a major [rules] violation of the facility rules is given a written copy of the alleged violation within

- twenty four (24) hours of the discovery of the infraction, excluding weekends and holidays. How the juvenile is sanctioned for the rule violation is documented. (exception 6 hour facilities only)
- H. The facility shall have written policies and procedures specifying that juveniles charged with rule violations are scheduled for and receive a hearing within seventy-two (72) hours of the incident. The hearing may be postponed or continued for a reasonable time through a written waiver by the juvenile or for good cause. The officer citing the juvenile cannot be the hearing officer. (exception 6 hour and 48 hour facilities only)
- I. The facility shall have written policies and procedures providing that juveniles charged with rule violations are present at the hearing, unless they waive that right in writing or through behavior. Juveniles may be excluded during the testimony of any juvenile whose testimony must be given in confidence. The reason for the juvenile's absence or exclusion is documented. (exception 6 hour facilities only)
- J. The facility shall have written policies and procedures which provides that juveniles can participate in religious services and religious counseling on a voluntary basis, subject only to limitations necessary to maintain security. (excluding 6 hour certification facilities)
- K. At least one (1) hour of recreation shall be provided daily to males and females, and when the weather permits, outdoor exercise. A structured hour of leisure time activity shall be provided in addition to the recreation time. (exception 6 hour and 48 hour facilities) The detention facility shall provide an appropriate range of daily indoor and outdoor recreational activities which are structured to meet the needs of juveniles of various ages, interests and abilities.
- (1) Recreational activities shall provide a balance of group play, competitive games and quiet individual activity.
- (2) The detention facility shall provide the necessary equipment for conducting appropriate indoor and outdoor recreational program.
- L. Juveniles shall be provided access to their legal counsel.
- M. Juveniles may make confidential contact with attorneys and their authorized representatives, contact including but not limited to, telephone communications, uncensored correspondence and visits. However, attorney and authorized representative are subject to the facility's visitation search procedure.
- N. Juveniles shall not be transferred to a county jail solely on the basis of attaining the age of eighteen (18) while detained in a juvenile detention facility.

- [N-:] O. Written policy and procedures shall provide that disciplinary hearing cases or rule violations are conducted by an impartial person or panel of persons trained in the facility's policies and procedures. (exception 6 hour certification facilities)
- (1) a record is made of the disciplinary hearing and a copy of the written decision is given to the juvenile with an explanation of the right to appeal; and (exception 6 hour facilities only)
- (2) the juvenile may appeal a decision of the disciplinary hearing officer(s) to the administrator or higher supervisory authority; the administrator or higher supervisory authority either affirms or reverses the decision of the disciplinary hearing officer(s) within five (5) days of the appeal. (exception 6 hour facilities only)
- [Θ :] P. Juveniles are not subject to corporal or cruel punishment, humiliation, mental abuse or punitive interference with the daily functions of living, such as eating, sleeping, or access to education.
- [P:] Q. Juveniles are not required to participate in uncompensated employment unless the work is related to housekeeping, maintenance of the facility or grounds, or personal hygienic needs, or the work is part of an approved vocational or training program.
- [Q-] R. Juveniles are permitted visitors, subject only to the limitations necessary to maintain order and security.
- [R-] <u>S.</u> Juveniles may communicate or correspond with families and friends, as well as with public officials, the courts and their attorneys, subject to any security issue.
- [S-] T. Juveniles may maintain the length and style of their hair, except if any such style causes a risk to health and safety.
- [7:] <u>U.</u> Juveniles may maintain facial hair, except when such restrictions are necessary for reasons of health and safety.
- $[\underline{\text{U-}}]\ \underline{\text{V}}.$ All written information is provided in a language that the juvenile can comprehend. Completion of orientation is documented by a statement that is signed and dated by the juvenile and placed in the master file.
- $[\underline{\forall \cdot}] \ \underline{W}_{\cdot} \quad Library \quad materials \quad are \\ available to all juveniles.$
- $[W_{\cdot}]$ X. Community social service programs are accessible to juveniles.
- [X-] Y. Juveniles are afforded access to mental health counseling and crisis intervention services in accordance with their needs. (exception 6 hour facilities only)
- [Y.] Z. The facility shall have a written policies and procedures to handle all mental health emergencies and to provide for a change in setting for any juvenile experiencing a mental health emergency.

- [Z.] <u>AA.</u> Juveniles may access telephone services, subject to written policy and procedure limitations.
- [8.14.14.18 NMAC N, 7/31/01; A, 10/17/11]

8.14.14.19 RULES AND DISCIPLINE:

- A. A rule book containing all chargeable offenses, ranges of penalties and disciplinary procedures shall be posted in a conspicuous and accessible area; a copy shall be given to each juvenile upon admission and staff member, and is translated into those languages spoken by a significant number of juveniles within the community. When a literacy or language problem prevents a juvenile from understanding the rule book, a staff member or translator conveys the information to the juvenile. (exception 6 hour facilities only)
- B. Written policies and procedures shall specify that room restrictions for minor misbehavior serves only a "cooling off" purpose, which is as short in time duration as necessary; (exception 6 hour facilities only)
- (1) prior to room restriction, juveniles must have the reasons for the restriction explained to them and have an opportunity to explain the behavior leading to the restriction;
- (2) during room restriction staff contact is made with the juvenile at a minimum interval of at least every fifteen (15) minutes; each check is documented, the juvenile's behavior described, and the reason for permitting the juvenile to remain in isolation noted;
- (3) when a juvenile is charged with a major rule violation requiring confinement for the safety of the juvenile or other juveniles, or to maintain the security of the facility, the youth may be confined for a period of up to seventy two (72) hours and the juvenile is monitored every five (5) minutes and each check is documented, the juveniles behavior described and the reason for permitting the juvenile to remain in isolation noted; if the juvenile's behavior improves, he/she is returned to general population; confinement for periods of up to seventy two (72) hours shall be reviewed every twenty four (24) hours by the administrator or designee who is not involved in the major rule infraction following the same considerations list in 3. (exception 6 hour and 48 hour facilities only)
- C. Each employee prepares a disciplinary report when a juvenile commits a major violation of facility rules or reportable minor violations. Disciplinary reports include the following information:
 - (1) specified rule(s) violated;
- (2) a formal statement of the charge;
 - (3) an explanation of the event,

which includes who was involved, what transpired, and the time and location of occurrence:

- (4) unusual juvenile behavior;
- (5) staff witnesses;
- (6) disposition of any physical evidence;
- (7) any immediate action taken, including the use of behavior management method; reporting staff member's signature; and the
 - (8) date and time report is made.
- D. Whenever a juvenile is removed from the regular program, a supervisor reviews the action and documents approval of the action. The counselor and probation officer are notified within twenty-four (24) hours after removal.
- E. Juveniles placed in confinement or observation shall be checked visually every five (5) minutes and visited at least one (1) time each day by personnel from administrative, supervisory, clinical, social work, religious, or medical units. The juvenile is provided with a minimum of two (2) hours recreational time per day. A log recording who authorized the confinement, persons visiting the juvenile, the person authorizing release from confinement, and the time of release is maintained and available for inspection to the department.
- F. Deprivation of food and education are prohibited.
- G. All documentation shall be kept in juvenile file and in a facility discipline file. If a juvenile is found not guilty of a rule violation, the report will be removed from the juveniles' files.
- H. The behavior management system shall be designed to provide incentives for positive behavior and afford proportional measures of accountability.
- (1) Incentives for positive behavior may include, but not limited to, such privileges as:
 - (a) special visits;
 - (b) extra phone calls;
 - (c) movies;
 - (d) music; and
 - (e) special events.
- (2) Incentives shall not include any program, service or physical amenity required by these standards or federal, state or local laws, rules, regulations or ordinances.

[8.14.14.19 NMAC - N, 7/31/01; A, 10/17/11]

8.14.14.20 A D M I S S I O N PROCEDURES:

- A. The facility shall have written policies and procedures governing the reception and orientation of newly admitted juveniles includes:
 - (1) notice to probation officer;
 - (2) verification of legal authority

to detain;

- (3) complete search of the juvenile and possessions;
- (4) disposition of clothing and personal possessions;
 - (5) medical screening;
- (6) shower and hair care, if necessary;
- (7) issue of clean, laundered clothing, as needed;
- (8) notification of family, custodian or guardian;
- (9) provision of written orientation materials;
- (10) recording of basic personal data and information to be used for mail and visiting lists;
- (11) assistance to juveniles in notifying their families of their admission and procedures for mail and visiting;
- $\ensuremath{\text{(12)}} \ assignment to a housing unit; \\ and the$
- (13) assignment of a registration number (booking number, file number).
- B. The facility shall provide an orientation handbook containing programs, services, rights and responsibilities to juveniles upon admission. The orientation handbook is translated into those languages or a translator translates the rules in the language spoken by the juveniles within the community.
- C. The facility will perform functions necessary to utilize SARA for recording the admission of any juveniles entering the detention center. When the juvenile is presented for detention the admission must be recorded in the format the detention center is trained on to input data into SARA. Once the admission is completed it is the responsibility of the detention center staff to continue to record any transfer into the facility or release of the juvenile out of the facility in the format the detention center is trained on.
- [B-] D. A written itemized list is made of all personal property in the possession of a newly admitted juvenile; a copy of this list, which notes all property that will be held until release, is given to the juvenile and maintained in facility admission file
- [C:] E. All juveniles may make at least three local or collect long distance telephone calls to family members, attorneys, or other approved individuals during the admissions process or at the first practical opportunity. Permission for telephone calls is documented.
- [Đ:] <u>F.</u> The probation officer is contacted and permitted access to the juvenile to secure information about the location of the p/s/c, and when conducting a preliminary inquiry.

[8.14.14.20 NMAC - N, 7/31/01; A, 10/17/11]

8.14.14.21 PROGRAMS:

- A. The facility shall have written policies and procedures which provide for the following minimum services and programs to adjudicated and pre-adjudicated juveniles is provided: (exception 6 hour facilities only)
 - (1) education;
- (2) visitation with parents/guardians;
- (3) private communication with visitors and staff;
 - (4) a counseling program;
- (5) medical services; access to mental health counseling and crisis intervention services in accordance with the needs of the juvenile, the facility, in cooperation with an appropriate medical and mental health care authority;
- (6) food services; recreation and leisure activities; and
 - (7) reading materials;
- (8) the facility shall develop and implement a daily activity schedule inclusive of meaningful leisure time activities to alleviate idleness and provide incentives for positive behavior.
- B. The facility shall have written policies and procedures for culturally appropriate services.
- C. The facility, cooperation with the local education agency, develop and implement a written policy and procedure which provides for the educational and instructional needs of its resident population, and which complies with applicable state and federal educational standards. The policy shall be reviewed by the promulgating entities at least annually. (exception 6 hour facilities) That policy includes the facility maintaining a current memorandum of understanding with the local education associate to provide educational services and testing for residents in detention. The memorandum of understanding contains mandatory attendance requirements, provision for special education testing and services, transfer of education records to the resident's school or to the children, youth and families department if the resident is committed:
- (1) the memorandum of understanding sets forth space allocation;
- (2) the timing and identification of service provision for each teacher;
- (3) educational assistant and special education staff and support staff;
 - (4) furniture;
 - (5) training schedule;
- (6) length of the school year, days education is provided and length of the school day;
- (7) supplies for consumables and texts; and
 - (8) security coverage.
- D. Technology available to provide education records and instruction:

- (1) office equipment such as telephone, faxes, and copiers; and
- (2) a system for evaluation of input and responsibility for each member of the education staff.
- E. A portfolio shall be developed for each student. The portfolio will be sent with the student when he/she returns to school or is committed to the custody of the children, youth and families department. Included in the portfolio are all relevant education records and transfer of records documentation form.
- F. Each facility establishes an education curriculum and a process for selecting the curriculum for each juvenile, including GED track, post secondary work and standard credits. Each facility documents how a resident receives an equal level of educational services compared with the student's regular school setting.
- G. Within twenty-four (24) hours of the first school day, the following information is retrieved:
 - (1) name;
 - (2) address;
 - (3) parent/guardian
 - (4) last two schools attended;
 - (5) dates attended.
 - (6) grade level;
 - (7) special education status;
 - (8) number of credits earned;
 - (9) home language;
 - (10) social security number;
- $(11)\,date\,of\,last\,IEP (individualized\,education\,plan);\,and$
 - (12) the date of the last evaluation.
- H. Within twenty-four (24) hours of the first school day, the local education association is contacted to confirm information provided by the juvenile, and the juvenile is placed in educational services based on the results of the interview. A test to determine current academic levels for approximate school placement is performed. All information is documented in the juvenile's portfolio.
- I. The IEP is put in place based on all information received from interviews, and the new IEP is developed and diagnostic evaluations are completed, as indicated.
- J. An individual curriculum based on the juvenile's identified needs is assigned and progress is recorded in the education portfolio.

[8.14.14.21 NMAC - N, 7/31/01; A, 10/17/11]

8.14.14.25 R E C O R D COMPLIANCE: Each facility shall maintain the records, policies and procedures required by these standards and shall make them available to the department. Records shall be maintained for a minimum [or-3] of three (3) years and can thereafter be destroyed upon permission of the department.

[8.14.14.25 NMAC - N, 7/31/01; A. 10/17/11]

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

BOARD OF FINANCE

This is an amendment to 1.10.21 NMAC, Sections 2, 3, 6, 7, 8 and 9, effective 10-17-2011. The part name is also amended.

PART 21 VOTING [MACHINE] SYSTEM ACQUISITION

1.10.21.2 SCOPE: All voting [machines] systems and necessary support equipment purchased for use in elections for public office in New Mexico.

[1.10.21.2 NMAC - N, 8-31-2000; A, 10-17-2011]

1.10.21.3 S T A T U T O R Y AUTHORITY:

[A. Section 1-9-5 (D) NMSA 1978 provides when authorized by the state board of finance, the board of county commissioners may acquire new or previously owned voting or electronic vote tabulating machines, as tested and approved by the secretary of state pursuant to the provisions of Section 1-9-14 NMSA 1978, which machines may be used in any election for public office. The acquisition of these machines may be in excess of the number provided in this section.]

A. Section 1-9-5 (B) NMSA 1978 provides that the secretary of state shall provide to the county clerk of each county at least one voting system for use in each polling location in the general and primary elections.

B. Section 1-9-7 NMSA 1978 provides:

- (1) The secretary of state shall provide to the county clerk of each county a sufficient number of voting systems as required by the Election Code for the conduct of primary and general elections.
- [(1)] (2) When authorized by the state board of finance, the board of county commissioners may acquire new or previously owned voting systems. No less than ninety days prior to each primary and general election, the board of county commissioners of each county [shall] may make application to the state board of finance for [those] any additional voting [machines] systems to be acquired by a county in excess of the number of voting systems required by the Election Code for the conduct of primary and general elections,

[(2)] (3) The additional voting [machines] systems shall be of a type [approved] certified by the secretary of state.

They shall be purchased by the state board of finance. The cost of the voting [machines] systems, including all transportation costs, shall be paid out of the voting [machine] system revolving fund. The state board of finance shall cause to be delivered to each county clerk the additional voting [machines] systems.

C. Section [1-9-8] <u>1-9-17</u> NMSA 1978 provides:

- (1) The state board of finance shall execute a lease-purchase contract with the county for purchase of additional voting [machines] systems and necessary support equipment upon receipt of the application of the board of county commissioners pursuant to Section 1-9-7 NMSA 1978.
- (2) The lease-purchase contract shall include, but not be limited to, the following terms:
- (a) The county agrees to purchase from the state board of finance the specified number of voting [machines] systems and necessary support equipment.
- (b) The county will pay [therefor] for the cost of [such machines] the systems and support equipment including reimbursement for costs of transportation.
- (c) The term of the lease-purchase contract shall not exceed [twenty] ten years.
- (d) The care, custody and [maintenance] proper storage of such [voting machines] systems and support equipment pursuant to the specifications issued by the secretary of state are the responsibility of the county clerk.
- (e) Upon good cause shown, the terms of the lease-purchase contract may, at any time, be renegotiated.
- [D: Section 1-9-17 NMSA 1978 provides:
- (1) The state board of finance shall execute a lease-purchase contract with the county for purchase of electronic voting machines and necessary support equipment upon receipt of the application of the board of county commissioners.
- (2) The lease-purchase contract shall include, but not be limited to, the following terms:
- (a) The county agrees to purchase from the state board of finance the specified number of electronic voting machines and necessary support equipment.
- (b) The county will pay for the cost of such machines and support equipment including reimbursement for costs of transportation.
- (c) The term of the lease-purchase contract shall not exceed twenty years.
- (d) The care, custody and maintenance of such machines and support equipment are the responsibility of the county clerk.
- (e) Upon good cause shown, the terms of the lease-purchase contract may, at anytime, be renegotiated.

E₇] <u>D</u>. Section 1-9-18 NMSA 1978 provides:

- (1) The department of finance and administration and the board of county commissioners shall budget annually for as many years as may be necessary from county funds in each county acquiring [electronic] voting [machines] systems and support equipment an amount sufficient to enable the county to pay to the state board of finance installment payments required to be paid under the terms of the lease-purchase contract.
- The board of county commissioners of each county having a lease-purchase contract with the state board of finance shall pay such payments, at the times and in the amounts as provided by the terms of the lease-purchase contract. The state board of finance shall deposit the payments into the severance tax bonding fund if the [electronic] voting [machines] systems and support equipment were originally purchased with severance tax bond proceeds. The state board of finance shall deposit the payments into the [electronic] voting [machine] system revolving fund if the [electronic] voting [machines] systems were originally purchased with money from the [electronic] voting [machine] system revolving fund.
- [F: Section 1-19-19 NMSA 1978 creates the electronic voting machine revolving fund. The electronic voting machine revolving fund may be used to finance, by contract, the purchase of electronic voting machines and necessary support equipment under the conditions stated in Section 1-9-17 NMSA 1978.]
- E. Section 1-9-19 NMSA 1978 creates the voting system revolving fund which may be used:
- (1) by the secretary of state to pay for hardware, software, firmware, maintenance and support of voting systems, whether state- or county-owned, certified for use in state elections; and
- (2) by the counties to finance, by contract, the purchase of voting systems and necessary support equipment under the conditions stated in Section 1-9-17 NMSA 1978; provided that no expenditure shall be made for this purpose if it would result in a fund balance of less than one million dollars. [1.10.21.3 NMAC N, 8-31-2000; A, 10-17-2011]
- 1.10.21.6 OBJECTIVE: This rule governs all acquisitions of voting [machines] systems that are in addition to the number of voting systems required by the Election Code for the conduct of primary and general elections by counties and sets forth the procedures that must be followed in such acquisitions.

[1.10.21.6 NMAC - N, 8-31-2000; A, 10-17-2011]

1.10.21.7 DEFINITIONS:

A. "Board" means state board of finance.

- **B.** "Clerk" means the clerk acting on behalf of a county acquiring or selling a voting [machine] system.
- [C: "Committee" means a committee consisting of the secretary of state, the director of the information systems division of the general services department, and a county clerk who is appointed by and serves at the pleasure of the governor and who is appointed with regard to political affiliation so that no more than two members of the committee are from one political party.]
- [D:]C. "Fund" means the [electronic] voting [machine] system revolving fund [that finances, by contract, the purchase of Voting Machines].
- [E-] D. "Lease-purchase contract" means the contract executed between the board and the county for the purchase of voting [machines] systems that are in addition to the number of voting systems required by the Election Code for the conduct of primary and general elections as further outlined in [1-10.21.3.C] Paragraph (2) of Subsection C of 1.10.21.3 NMAC.
- ["Voting machine" [G.] F. means equipment used by voters to record votes and its necessary support equipment. "Voting system" means a combination of mechanical, electromechanical or electronic equipment, including the software and firmware required to program and control the equipment, that is used to cast and count votes, and also including any type of system that is designed to print or to mark ballots at a polling location; equipment that is not an integral part of a voting system, but that can be used as an adjunct to it, is considered to be a component of the system.
- [1.10.21.7 NMAC N, 8-31-2000; A, 10-17-2011]

1.10.21.8 APPROVAL OF ADDITIONAL VOTING [MACHINE] SYSTEM PURCHASES:

The clerk must select voting [machines] systems to be acquired in addition to the number required by the Election Code for the conduct of primary and general elections from a list of [approved manufacturers and models approved by the committee] voting systems certified by the secretary for use in elections for public office in New Mexico. The county commissioners must adopt a resolution, passed by a majority of the commission, approving the purchase of additional voting [machines] systems and authorizing the county commission [chairman] chairperson to enter into a leasepurchase contract with the board for that purchase.

- **B.** The clerk must submit a letter of request to purchase <u>additional</u> voting [machines] <u>systems</u> to the secretary, along with the resolution adopted by the county commission. If the purchase is from another county, both the county selling and the county acquiring the [machines] <u>additional voting systems</u> are to submit a letter indicating the serial numbers and attaching the resolution or a copy of the signed minutes indicating approval of sale (seller) or purchase (acquirer). All letters of requests must include:
- (1) number of [machines] <u>voting</u> <u>systems</u> to be purchased <u>and the reason for</u> purchase;
- (2) manufacturer and model of [machines] <u>voting systems</u> to be purchased (indicate if new or previously owned);
- (3) price per [machine] voting system and total amount of purchase;
- (4) indication of desired term of the lease-purchase contract; counties with sufficient funds to acquire voting [machines may] systems must elect to have a thirty-day term for the lease-purchase contract; counties requiring financing may elect to have the term of the lease-purchase contract be up to [twenty] ten years;
- (5) total number of voting [machines] systems the county currently has;
- (6) the number of voting [machines] systems the county is required to have under New Mexico's Election [laws; (number of voting machines needed to meet these laws will receive priority)] Code[;
- (7) justification for additional voting machines requested but not required under New Mexico's Election laws;
- (8) type and number of equipment being purchased and reason for purchase].
- C. The secretary must submit a written recommendation to the board to be considered at the board's next regularly scheduled monthly meeting. In addition to items in [Part B] Subsection B of 1.10.21.8 NMAC as stated above, the recommendation must include:
- (1) verification [by the secretary] that vendors used for purchases are listed on the state procurement list;
- (2) verification that the manufacturer and the model of voting [machines] systems have been [approved by the committee] certified by the secretary for use in elections for public office in New Mexico;
- (3) verification that the voting systems will be acquired pursuant to a competitive bid process in accordance with the provisions of the New Mexico Procurement Code;
- (4) verification that the voting systems to be acquired are in addition to the number required by the Election Code for the conduct of primary and general elections.
 - **D.** Upon receiving

recommendations from the secretary, the board staff shall submit them for review to the local government division to ascertain ability to make the payments called for by the lease-purchase contract prior to submission to the board for action.

E. The board or its staff may request any other supplemental information to aid in its consideration of the request.

[1.10.21.8 NMAC - N, 8-31-2000; A, 10-17-2011]

1.10.21.9 ACQUISITION OF ADDITIONAL VOTING [MACHINES] SYSTEMS:

- A. Upon approval by the board[5] to acquire voting systems in addition to the number required by the Election Code for the conduct of primary and general elections, board staff will send the county a lease-purchase contract to be signed by the county commission [ehairman] chairperson. A lease-purchase contract must be entered into regardless of the term of the contract and shall include, but not be limited to, the following terms set out in [1.10.21.3 C or D] Paragraph (2) of Subsection C of 1.10.21.3 NMAC.
- **B.** Upon receipt of the signed lease-purchase contract, board staff will order the <u>additional</u> voting [machines or equipment] systems and send copies of the purchase order and the signed lease-purchase contract to the county.
- $\begin{array}{cccc} \textbf{C.} & \text{In no event shall} \\ \text{the county purchase } \underline{\text{additional}} & \text{voting} \\ \underline{\text{lmachines}} & \underline{\text{systems}} & \text{directly from vendors.} \end{array}$
- **D.** Once <u>additional</u> voting [machines] <u>systems</u> are delivered, the county [notifies] <u>shall promptly notify</u> the board staff and the secretary. The secretary will inspect the voting [machines] <u>systems</u> and notify board staff by way of the "delivery confirmation of voting [machines] <u>systems</u>" form.
- E. Board staff will then submit payment to the vendor and send a copy of the voucher to the county along with a payment schedule. Since voting [machines] systems are purchased by the fund, payments by the county must adhere to the conditions set out in the lease-purchase contract. Annual lease-purchase contract payments must be received by December 31 of each year [or] unless otherwise specified. Upon receipt of final payment, title to the voting [machines] systems is transferred from the board to the county.

[1.10.21.9 NMAC - N, 8-31-2000; A-10-17-2011]

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

LOCAL GOVERNMENT DIVISION

This is an amendment to 2.110.2 NMAC, Sections 11, 15, 17, 19, 21, 26 and the Attachment to 2.110.2.14, effective 10-17-11.

2.110.2.11 E L I G I B L E ACTIVITIES/CATEGORIES

- A. Applicants may apply for funding assistance under the following categories:
 - (1) community infrastructure;
 - (2) housing;
 - (3) public facility capital outlay;
 - (4) economic development;
 - (5) emergency;
 - (6) colonias;
 - (7) planning.
- B. Eligible activities under each of the categories are listed below.
- C. C o m m u n i t y infrastructure: Eligible activities may include, but are not limited to, the following:
 - (1) real property acquisition
- (2) construction or rehabilitation of the following:
 - (a) water systems;
 - (b) sewer systems;
 - (c) municipal utilities;
 - (d) roads;
 - (e) streets;
 - (f) highways;
 - (g) curbs;
 - (h) gutters;
 - (i) sidewalks;
 - (j) storm sewers;
 - (k) street lighting;
 - (I) traffic control devices;
 - (m) parking facilities;
 - (n) solid waste disposal facilities.
- **D. Housing:** Eligible activities may include, but are not limited to, the following:
 - (1) real property acquisition;
 - (2) rehabilitation:
 - (3) clearance;
- (4) demolition and removal of privately-owned or acquired property for use or resale in the provision of assisted housing;
- (5) provision of public facilities to increase housing opportunities;
- (6) financing the repair, rehabilitation and in some cases reconstruction of privately-owned residential or other properties through either loan or grant programs;
- (7) certain types of housing modernization;
- (8) temporary relocation assistance;
 - (9) code enforcement;

- (10) historic preservation activities;
- (11) not to exceed sixty five thousand dollars (\$65,000) in CDBG funds per home can be used on home rehabilitation/repair activities.
- **E.** Public facility capital outlay: Eligible activities may include, but are not limited to, such items as:
 - (1) real property acquisition;
- (2) construction or improvement of community centers;
 - (3) senior citizen centers;
- **(4)** nonresidential centers for the handicapped such as sheltered workshops;
- (5) other community facilities designed to provide health, social, recreational or similar community services for residents.
- F. E c o n o m i c development: The economic development category is established to assist communities in the promotion of economic development and is described in detail in Section 26.
- G. Emergency: The emergency fund provides funding for emergency projects which address life threatening situations resulting from disasters or imminent threats to health and safety.
- (1) Applications under this category will be accepted throughout the year.
- (2) Application shall include written verification and adequate documentation by a state agency and with the applicant's assessment of the life threatening situation and shall be submitted no later than 18 months from the certification by the applicant and documentation of the need for the emergency project.
- (3) An applicant for emergency funding must verify that it does not have sufficient local resources to address the life threatening condition; and that other federal or state resources have been explored and are unavailable to alleviate the emergency.
- H. Planning: In addition to municipalities and counties, water associations, including water and sanitation districts, and land grants as defined in Section 2.110.2.7, [Subsection M] Subsections M and N; are eligible to apply directly for planning grants only. Planning grant assistance from the CDBG program, which is available only to a municipality or county, must be used for a comprehensive plan if the applicant does not have a current comprehensive plan (not older than five years from the date of application). A comprehensive plan must be focused on a community's physical development, over the next (15-20 years), related to the goals and policies of the community, developed with input from all segments of the community, be adopted by resolution or ordinance, and it must include as a minimum the following

elements;

- (1) elements:
- (a) land use; including (i) an analysis and mapping of existing land patterns and an inventory of the amount, type and intensity of uses by land category, [as well as an analysis of effects of various land use patterns on greenhouse gas emissions; (ii) an analysis of trends in the supply and demand of land by land use category, including] (ii) a projection of the distribution, location and extent of future land uses by land use category over a twenty-year period; (iii) goals, objectives and policies that address maintaining a broad variety of land uses, including the range of uses existing when the plan is adopted or amended; and (iv) specific actions and incentives that the contracting agency may use to promote planned development, reduction in greenhouse gas emissions, or otherwise encourage certain identified development patterns and the locations where such development patterns should be encouraged;
- (b) housing; including (i) an analysis of existing housing supply and demand, [analysis of greenhouse gas emissions from the housing sector,] and forecasted housing needs; (ii) goals, objectives and policies for the improvement of housing quality, variety and affordability, for reduction of greenhouse gas emissions, and for provision of adequate sites for housing and housing opportunities for all segments of the community; and (iii) a description of the actions that [will] may be taken to implement housing goals, objectives and policies; and (iv) must comply with the affordable housing act.
- (c) transportation; including (i) description and assessment of the location, type, capacity and condition of existing transportation facilities, such as freeways, arterial and collector streets, mass transit or other modes of transportation as may be appropriate, [and analysis of greenhouse gas emissions from the transportation sector;] (ii) goals, objectives and policies for encouraging safe, convenient, efficient and economical transportation, including mass transit and facilities for bicyclists and pedestrians, for reduction of greenhouse gas emissions, [and a description of proposed levels of service] and potential funding mechanisms; and (iii) a description and assessment of proposed location, type and capacity of proposed transportation facilities designed to implement transportation goals, objectives and policies and a description of funding mechanisms that will be used to fund proposed transportation improvements;
- (d) infrastructure; including (i) a description and assessment of the location, type, capacity and condition of existing infrastructure, including emergency services, sewage, drainage, local utilities and other types of facilities; (ii) goals, objectives and

- policies for promoting the efficient provision of infrastructure, [including a description of proposed levels of service;] and (iii) a description and assessment of proposed facility expansion and improvements designed to support planned uses and implement infrastructure goals, objectives and policies;
- economic development; (e) including (i) a description of existing job composition and trends by industry and location characteristics, such as access to transportation or proximity to natural or human resources, that influence the economic development potential of the contracting agency[, and analysis of greenhouse gas emissions from the commercial and industrial sectors]; (ii) goals, objectives and policies for promoting economic development[, and for reduction of greenhouse gas emissions]; and (iii) a description of the actions that the contracting agency will take to implement economic development goals, objectives and policies;
- (f) water; including (i) description and assessment of the sources of water supply; (ii) the existing demand for water by residential, commercial, institutional, industrial and recreational sectors; (iii) assessment of the [water] unaccounted for water losses due to leaks, theft or other reasons; (iv) goals, objectives and policies for promoting the efficient use of water and for managing periods of drought; and (v) an analysis of the demand for water that will result from future growth projected in the plan, when added to existing uses, and how the demand for water that will result from future projected growth will be served by current water supplies, water conservation, water reuse or a plan to obtain additional water supplies or increase water use efficiencies;
- (g) hazards; [7] including (i) an analysis of the risks of hazards such as wildfire, floods, extreme weather conditions, accidents, and terrorism; (ii) goals, objectives and policies for hazard mitigation; and (iii) a description of the actions that will be taken to mitigate hazards;
- (h) implementation; a compilation of the plan's goals, objectives, policies, standards or guidelines, along with specific actions to be completed in a stated sequence, which start with adoption of the comprehensive plan by ordinance;
- (2) development of additional elements of a comprehensive plan may include, but are not limited to:
 - (a) drainage;
- **(b)** parks, recreation and open space;
 - (c) tourism;
 - (d) growth management;
 - (e) fiscal impact analysis;
 - (f) intergovernmental cooperation;
 - (g) social services;

- (h) historic preservation;
- (i) asset management plan;
- (3) if the entity has a current comprehensive plan (not older than five years from the date of application), it may apply for funding assistance for any of the following:
- (a) data gathering analysis and special studies;
- (b) base mapping, aerial photography, geographic information systems, or global positioning satellite studies;
- (c) improvement of infrastructure capital improvement plans and individual project plans;
- (d) development of codes and ordinances, that further refine the implementation of the comprehensive plan;
- (e) climate change mitigation and adaptation plan;
- **(f)** preliminary engineering report (according to USDA/RUS guidelines);
- (g) related citizen participation or strategic planning process; or
- (h) other functional or comprehensive planning activities;
 - (i) asset management plan;
- (j) regionalization of infrastructure and service delivery;
- (4) applicants may apply for funding assistance throughout the year as long as funds are available;
- phased project costs must be provided to local government division at time of application.

I. Colonias:

- (1) The colonias category is established in the amount of 10% of the annual CDBG allocation for specific activities including water, sewer and housing improvements, which are the three conditions which qualify communities for designation to be carried out in areas along the U.S. Mexican border.
- (2) Eligible applicants for the colonias set aside are municipalities and counties located within 150 miles of the U.S. Mexico border.
- (3) Colonias must be designated by the municipality or county in which it is located. The designation must be on the basis of objective criteria, including:
 - (a) lack of potable water supply;
- **(b)** lack of adequate sewage systems; or
- (c) lack of decent, safe and sanitary housing; and
- (d) must have been in existence as a colonia prior to November, 1990.
- (4) Appropriate documentation to substantiate these conditions must be provided along with the application for funding.
- [2.110.2.11 NMAC Rp 2 NMAC 110.2.11,

08-30-01; A, 08-13-04; A, 08-15-05; A, 12-14-06; A, 09-28-07; A, 10-15-09; A, 12-1-10; A, 10-17-11]

- 2.110.2.15 PROGRAM
 REQUIREMENTS SECTION A: Public participation requirements Applicants must provide opportunities for public participation in the development of community development goals, objectives, and applications for funding assistance by undertaking the following activities:
- **A.** provide for and encourage citizen participation within their areas of jurisdiction with particular emphasis on participation by persons of low and moderate income;
- **B.** provide citizens with reasonable and timely access to local meetings, information, and records relating to proposed and actual use of funds;
- **C.** provide for technical assistance to groups and representatives of low and moderate income persons that request assistance in developing proposals;
- **D.** {special note}: the level and type of assistance is to be determined by the applicant; and
- **E.** provide for public hearings to obtain citizen participation and respond to proposals and questions at all stages;
- F. prior to selecting a project and submitting an application for CDBG funding assistance, eligible applicants must conduct at least one public hearing for the following purposes:
- (1) to advise citizens of the amount of CDBG funds expected to be made available for the current fiscal year;
- (2) to advise citizens of the range of activities that may be undertaken with the CDBG funds;
- (3) to advise citizens of the estimated amount of CDBG funds proposed to be used for activities that will meet the national objective to benefit to low and moderate income persons;
- (4) to advise citizens of the proposed CDBG activities likely to result in displacement, and the unit of general local government's anti-displacement and relocation plans;
- (5) to obtain recommendations from citizens regarding the community development and housing needs of the community:
- (a) After considering all recommendations and input provided at the public hearing(s), the county commission or city/town/village council must select one project for which to submit an application for funding assistance at an official public meeting.
- **(b)** The applicant must conduct a second public hearing to review program performance, past use of funds and make

- available to the public its community development and housing needs including the needs of low and moderate income families and the activities to be undertaken to meet such needs.
- (c) [This public hearing may occur subsequent] The second public hearing shall occur prior to the submission of the application for funding assistance.
- (d) Public hearing notices must be published in the non-legal section of newspapers, or posted in a minimum of three prominent public places within the project area, with reasonable time and public access. All applicants must be in compliance with the Open Meetings Act (NMSA 1978, Section 10-15-1(D).
- (e) Evidence of compliance with these regulations must be provided with each application, i.e., hearing notice, minutes of public meetings, list of needs and activities to be undertaken, etc.
- **(f)** Amendments to goals, objectives, and applications are also subject to public participation.
- (6) provide for timely written answers to written complaints and grievances within 15 working days where practicable;
- (7) identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of residents can be reasonably expected to participate.
- [2.110.2.15 NMAC Rp 2 NMAC 110.2.15, 08-30-01; A, 12-1-10; A, 10-17-11]

2.110.2.17 A P P L I C A T I O N REQUIREMENTS

- A. Number of applications All eligible applicants may submit one application for CDBG funding assistance in the infrastructure, [housing,] public facility capital outlay, or colonias categories.
- (1) Planning applicants may submit at anytime an additional application for funding and shall not exceed fifty thousand dollars (\$50,000).
- (2) [Applicants in] Applications for the economic development, housing or emergency categories may be submitted at any time and shall not exceed five hundred thousand dollars (\$500,000), subject to funding availability.
- (3) Counties may submit multiple applications for planning grants for water associations.
- (4) Planning, economic development, housing and emergency applications may be submitted, at anytime, even if the applicant has not completed other CDBG projects.
- **B.** Single purpose application -An application for CDBG funding must be limited to a project specific activity or set of activities which address a particular need in a designated target area of a unit of local government. The target area

- may not be the entire municipality or county.
- C. Joint applications Joint applications will be allowed when two or more eligible applicants within reasonable proximity of each other wish to address a common problem.
- (1) One community will be designated to serve as the lead applicant and will be subject to administrative requirements and to the application limit requirements.
- (2) However, other parties to the joint application may submit another application.
- (3) Joint applications must satisfy certain federal criteria and must receive division approval prior to submitting an application for funding assistance.
- (4) It should be noted that satisfying the required criteria, which is available from the division upon request, may take a significant period of time.
- **D.** A p p l i c a t i o n requirements for the following minimum requirements apply to all applications for CDBG funding:
- (1) applications must involve a project that will be fully functional on a stand-alone basis once awarded CDBG and other committed funds have been expended and:
- (2) projects shall be completed within twenty-four (24) months (with the exception of planning grants which shall be completed within eighteen (18) months) of an executed grant agreement signed by both parties;
- (3) applications may not exceed \$500,000;
- (4) if the applicant, after conducting the required public hearing, determines that the previous year's CDBG unfunded application is still a priority, the applicant must submit the original along with a current year's resolution, updated project budget and schedule and any other information required by division staff;
- (5) application must be complete, with all documentation provided as listed on the submission and attachment checklist included in the application, otherwise application will be deemed ineligible; application will be returned to the applicant and will not be considered for funding.
- **E.** Threshold requirements To encourage timely completion of projects and to maximize participation the following threshold requirements shall be met by the threshold deadline which is prior to the application deadline.
- (1) All projects for the eligible activities in the categories listed in Subsections C, D, E, and I of 2.110.2.11 NMAC must be completed at the time of application. (certificate of occupancy or certification of operation must be in place).
 - (2) All CDBG program's

- monitoring findings and concerns, for CDBG projects, must be resolved. The applicants shall submit a letter attaching a copy of the monitoring findings/concerns and demonstration of clearance of the monitoring findings/concerns by the CDBG program.
- (3) The current fiscal operating budget for any local public body as defined in Section 6-6-1 NMSA 1978 (as amended) applying for CDBG funds must be approved.
- (4) The local government division financial management bureau will verify that financial quarterly/ monthly reports are current before CDBG applications deadline.
- (5) The local government division, budget and finance bureau, shall report the applicant's most current audit filing with the state auditor office for all applicants that are counties and municipalities. They determine compliance with the budget certification rule, 2.2.3 NMAC. The CDC will take into consideration whether the counties or municipalities are in compliance with the budget certification rule.
- (6) The set aside categories are exempt from threshold requirements set forth in Subsection E of 2.110.2.17 NMAC: planning, economic development, and emergency categories.
- F. Matching requirements
 In order to assist the council in making
 funding resources go further and to ensure
 there is a local investment in applications
 submitted to the council for funding
 consideration, the following will be required.
- (1) Rural applicants must provide, at a minimum, a 5% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.
- (2) Non-rural applicants must provide, at a minimum, a 10% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.
- (3) Consistent with 2.110.2 NMAC, all applications in the economic development category must provide at least one private dollar for each dollar of CDBG funds requested.
- (4) Local funds expended by eligible applicants for engineering, architectural design or environmental reviews prior to project approval can be applied towards the required match.
- (5) Applicants may request a waiver of the matching requirement from the council if documentation can be provided which demonstrates the absence of local resources to meet the required match. Criteria used to recommend approval/disapproval will be as follows:
- (a) the required match must exceed 5% of the applicant's general fund budget;
- (b) the required match must equal or exceed the non-earmarked balance of

- funds in the applicant's budget.
- G. Other funding commitments If other funding is necessary to make a proposed project feasible, funding commitments or commitments subject to CDBG approval, must be in place and letters of commitments from the funding agency must be submitted with the application.
- **H.** Water conservation and drought commitments In order to make the state's water supplies go further and to ensure proper levels of preparations are taken locally for periodic droughts, the following is encouraged.
- (1) Applicants develop, adopt and submit to the state engineer a comprehensive water conservation ordinance.
- (2) Applicants develop, adopt and submit to the state engineer a drought management plan.
- (3) The ordinance and plan shall be accompanied by a program for its implementation.
- (a) in developing a water conservation ordinance pursuant to this section: applicants shall adopt ordinances and codes to encourage water conservation measures; they shall identify and implement best management practices in their operations to improve conservation of the resources; and
- **(b)** applicants shall consider and incorporate into its plan if appropriate, at least the following:
- (i) water-efficient fixtures and appliances, including toilets, urinals, showerheads and faucets;
- (ii) low-water-use landscaping and efficient irrigation;
- (iii) water-efficient commercial and industrial water-use processes;
- (iv) water reuse systems for both potable and non-potable water;
 - (v) distribution system

leak repair;

- (vi) dissemination of information regarding water-use efficiency measures, including public education programs and demonstrations of water-saving techniques;
- (vii) water rate structures establishing rates or revenues that support the long term operation, maintenance, repair, and replacement of the system or facility and are designed to encourage water-use efficiency and reuse in a fiscally responsible manner and
- (viii) incentives to implement water-use efficiency techniques, including rebates to customers or others, to encourage the installation of water-use efficiency and reuse measures.
- (c) the council shall encourage the applicant to submit a copy of its water conservation plan with applications for construction of any facility.

- I. Asset management In order to support the long term operation, maintenance, repair and replacement of system facilities, infrastructure, public facilities, or other eligible activities the following will be required.
- (1) In order to ensure water and wastewater infrastructure is managed within a strategic framework driven by program and service delivery needs, communities that implement an asset management program and use that approach as the basis for their rate analysis will be credited in the application process for their achievement. The model for the asset management program is the international infrastructure asset management model, adopted by EPA. This approach includes five core components, which are as follows:
- (a) current state of the assets: an asset inventory that includes the following at a minimum: asset name, asset location, asset condition, useful life, and an estimate of replacement value;
- **(b)** level of service: a description of what the utility wishes to provide its customers:
- (c) criticality: an evaluation of which assets are critical to the sustained operation of the utility;
- (d) life cycle costing: at a minimum, a capital improvement plan that describes the replacement of assets and some consideration of operation and maintenance of the assets;
- (e) financing plan: a description of the funding sources that will be used to pay for the capital and operational needs of the utility
- (2) For community infrastructure and public facilities, or other eligible activities an asset management plan will be required to be submitted at the time of application. The approach will follow the same five components described in Subparagraphs (a) (e) of Paragraph (1) of Subsection I of 2.110.2.17 NMAC above. [2.110.2.17 NMAC Rp 2 NMAC 110.2.17, 08-30-01; A, 08-13-04; A, 08-15-05; A, 12-14-06; A, 09-28-07; A, 09-30-08; A, 10-15-09; A, 12-1-10; A, 10-17-11]

2.110.2.19 A P P L I C A T I O N REVIEW AND EVALUATION PROCESS

- A. Upon receipt of applications, division staff will review them for eligibility, completeness, feasibility, and compliance and to ensure that all other funding necessary to make the project functional is in place. Applications that are found to be incomplete, ineligible, or not feasible or do not have other funding necessary to make the project functional, will be returned to the applicant and will not be considered for funding.
 - **B.** Applications will be

forwarded to appropriate state agencies for technical review and comment. Review agencies may include, but are not limited to, the environment department, department of transportation, department of health, state engineer's office, state agency on aging, economic development department, state fire marshal and governor's commission on disability.

- C. Applicants will be allowed to make presentations to the council and division staff at an official council hearing. Testimony related to the application will be presented by an official or designee of the applying entity who may be assisted by technical staff.
- **D.** Division staff will receive comments from state agencies regarding specific projects.
- E. The council and division have developed the following rating criteria for evaluation of CDBG applications submitted for funding in the following categories: infrastructure, housing, public facility, capital outlay and colonias application categories. For infrastructure, housing, public facility, capital outlay and colonia application categories, the following nine (9) criteria are used to score the application. In addition, for colonias applications, the applicant needs to fulfill the four conditions in Subsection G of 2.110.2.19 NMAC.
- (1) **Description and need** (5 points) extent to which the project is needed. The more severe the need as documented in the application, the higher the score. It is only necessary to answer the questions on the application that pertain to the appropriate application category and do not answer questions on the application that pertain to other categories.
- (2) Benefit to low and moderate income beneficiaries and appropriateness (20 points) extent to which the CDBG application:
- (a) documents the number and percentage of low and moderate income beneficiaries, also include race and gender; or
- **(b)** addresses the prevention or removal of slum or blighting conditions; or
- (c) addresses conditions which pose a serious and immediate threat to the health and welfare of the community (for emergency applications only).
- (3) Leveraging (15 points) extent to which federal, state, and local resources, in addition to the required match, [are being] will be used by the applicant for the proposed project. The greater the leveraging, in addition to the required match, the higher the score.
- **(4) Citizen participation -** (10 points) extent to which the applicant:
- (a) has provided opportunities for public participation in the identification of

- community development needs;.
- (b) pledges opportunities for active citizen participation during the project, where applicable; and;
- (c) pledges opportunities for active citizen participation in the implementation of the project, where applicable.
- **(5) Planning** (10 points) extent to which the applicant:
- (a) (3) points: Applicant has adopted a local [{ICIP[})], which has qualified for publication in the most recent local (ICIP) published prior to the CDBG application deadline.
- (b) (3) points: The proposed project has qualified for publication in the most recent ICIP prior to the CDBG application deadline and applicant has selected CDBG as one of its possible funding sources.
- (c) 1 point: Degree to which applicant's proposed project shows consistency with applicant's comprehensive plan.
- (d) 1 point: Adopting a drought contingency plan, setting in place various drought management stages and accompanying restrictions on water use.
- (e) 1 point: Adopting a water conservation ordinance, setting in place various methods for conserving potable water.
- (f) 1 point: Implementing a water conservation ordinance, accompanied by evidence of exercising at least two various methods for conserving potable water.
- (6) Feasibility/readiness (20 points) extent to which the project is technically and economically feasible and ready to be implemented. Examples of actions that can be taken prior to submission of the application to receive maximum points are:
- (a) necessary real property or easements acquired; (5)
- **(b)** professional services contract executed; (5)
- (c) completed plans, specifications, bid documents, or preliminary engineering reports; (5)
- (d) complete the environmental review process (5).
- (7) Cost benefit (10 points) number of direct beneficiaries of the project compared to the amount of funds requested. The higher the number of beneficiaries compared to the amount of funds requested, the higher the score.
- (8) User fees and revenues (10 points)
- (a) attendance at an asset management training within the last three years that includes the five core components set forth in Subsection I of 2.110.2.17 NMAC (1 point)
- (b) development of an asset management plan that includes some, but not

- all, of the five core components (2 points)
- (c) development of a complete asset management plan with all five core components (5 points)
- (d) rates developed based on asset management, using the five core components (10 points)
- (e) rates developed by a rate analysis, excluding asset management or allowance for replacement of reserve funds (2 points)
- (f) rates developed by other. (1 point).
- **(9) Non-funded applicants** (10 points) Applicants that were not funded in the prior year.
- F. Planning criteria category
- [(1) Consistency (25 points): Document the degree to which the proposed planning project is consistent with the applicant's current version of its comprehensive plan, its infrastructure capital improvement plan, and its planning region's consolidated plan, or its planning documents or studies.
- (2) Appropriateness (25 points): Describe the impact the proposed project will have on at least one of the three national objectives of the CDBG program, i.e.,
- (a) documents the number and percentage of low and moderate income beneficiaries, also include race and gender; or
- (b) addresses the prevention or removal of slum or blighting conditions; or
- (c) addresses conditions which pose a serious and immediate threat to the health and welfare of the community (for emergency applications only).
- (3) Public involvement (25 points): Describe how the planning process will involve citizens in the preliminary identification of community needs, in the development and active participation in the planning process, and in the implementation of the plan, including a minimum of one public hearing with proper notice in accordance with law.
- (4) Implementation strategy (25 points): Describe the local commitment of resources to the planning process; commitment to adopt the plan, either by resolution, rule, policy or ordinance; and commitment to use the results of the planning process in the decision making process.]
- (1) Description and need (20 points) extent to which the project is needed. Describe the intent of the project in detail. Describe the local commitment of resources to the planning process; commitment to adopt the plan, either by resolution, rule, policy or ordinance; and commitment to use the results of the planning process in the decision making process.
- (2) Benefit to low and moderate income beneficiaries and appropriateness

- <u>– (20 points) extent to which the CDBG application:</u>
- (a) documents the number and percentage of low and moderate income beneficiaries, including race and gender; or
- (b) addresses the prevention or removal of slum or blighting conditions.
- (3) Leveraging (15 points) extent to which federal, state, and local resources in addition to the required match, are being used by the applicant for the proposed project. The greater the leveraging, in the addition to the required match the higher the score.
- (4) Citizen participation (10 points) extent to which the applicant:
- (a) has provided opportunities for public participation in the identification of community development needs;
- (b) pledges opportunities for active citizen participation during the project, where applicable; and;
- (c) pledges opportunities for active citizen participation in the implementation of the project where applicable.
- (5) Planning (20 points) extent to which:
- (a) (5 points): Applicant has adopted a local ICIP, which has qualified for publication in the most recent local ICIP published prior to the CDBG application.
- <u>(b)</u> (5 points): The proposed project has qualified for publication in the most recent ICIP prior to the CDBG application and applicant has selected CDBG as one of its possible funding sources.
- (c) (2.5 points): Degree to which applicant's proposed project shows consistency with applicant's comprehensive plan.
- (d) (2.5 points): Adopting a drought contingency plan, setting in place various drought management stages and accompanying restrictions on water use.
- (e) (2.5 points): Adopting a water conservation ordinance, setting in place various methods for conserving potable water.
- (f) (2.5 points): Implementing a water conservation ordinance, accompanied by evidence of exercising at least two various methods for conserving potable water.
- (6) Cost benefit (10 points) number of direct beneficiaries of the project compared to the amount of funds requested. The higher the number of beneficiaries compared to the amount of funds requested, the higher the score.
- (7) Comprehensive plan (5) points)- Does the community have an updated comprehensive plan that is not more than five (5) years old.
- G. Colonias criteria category When submitting a colonias category application, the applicant shall provide documentation to substantiate that a majority of the following conditions exist in

the project area:

- (1) lack of potable water; or
- (2) lack of an adequate sewage system; or
- (3) lack of safe, sanitary housing; and
- (4) source documentation must also be provided of colonias designation.
- **H.** Economic development rating criteria is included in Section 2.110.2.26.
- I. Site visits will be conducted as needed during the life time of the project to verify or review information presented.
- J. Division staff will present its recommendations in high, medium and low groupings to the council at least seven days prior to the allocation meeting.
- **K.** Because emergency, economic development, and rural planning projects are received throughout the year, formal staff rating may not be necessary if all other federal and state requirements are met and other applications are not competing for funding assistance.
- [2.110.2.19 NMAC Rp 2 NMAC 110.2.19, 08-30-01; A, 08-13-04; A, 12-14-06; A, 09-28-07; A, 09-30-08; A, 10-15-09; A, 10-17-11]

- A. The purpose of this section is to provide guidance to the council, division staff, applicants, and grantees in terms of the referenced situations.
- Decision by the council to revert funds - If, within twelve months of a CDBG award for a project by the council, the CDBG award has not resulted in a signed grant agreement between the division and the applicant or the applicant has not made adequate progress on the project or the council determines there was fraud or misrepresentation regarding the project by the applicant, the division may recommend to the council to revert all or part of the award and the council may vote to revert all or part of the award. The applicant shall receive written notice [of] from the division of the council's decision to revert all or part of award by certified mail. The applicant may appeal, in writing, the council's decision to revert all or part of the award within thirty days of receipt of the written notice of the council's decision. The appeal of the council's decision by the applicant shall be held at a council meeting no later than ninety days from the council's receipt of the written appeal. The council's decision on the appeal of the reversion shall be final. The council may grant the applicant a reasonable period of time to cure the particular default that was the basis of the reversion. At the end

- of the cure period, a quorum of the council shall vote again on the issue of the reversion, by telephonic conference call with the applicant, and this decision is final.
- C. Reversions and supplemental funding When funds are reverted from a previously approved project grant or additional funds are made available for any other reason, the council may decide that the funds will:
- $\hspace{1.5cm} \textbf{(1)} \hspace{0.2cm} \text{be} \hspace{0.2cm} \text{added} \hspace{0.2cm} \text{to} \hspace{0.2cm} \text{the} \hspace{0.2cm} \text{emergency} \\ \text{fund; or} \hspace{0.2cm}$
- (2) be returned to the category of the program from which it was awarded; or
 - (3) go into any other category; or
- (4) take other action as deemed appropriate.
- D. Underruns On occasion, upon completion of the approved activities, a balance of funds remains after all payments have been made. This balance of funds referred to as an underrun shall be handled as follows: if the grantee has not accomplished all work called for in the original application submitted for funding consideration, the grantee may request division staff to approve the expenditure of underrun funds for a portion or all of the remaining work.
- (1) if appropriate justification and sufficient funding exist, division staff may approve the request for use of underrun funds and amend the grant agreement accordingly;
- (2) a negative decision may be appealed to the council.
- E. If the grantee proposes to undertake activities not included in the approved application, the grantee may request council approval to expend underrun funds for other eligible activities. The council may approve the request if appropriate justification and sufficient funding exist.
- **F.** If the council disapproves a request for use of an underrun, associated funds shall revert to the council for disposition.
- G. The processes described above for handling underruns are intended to encourage the grantee to use the most cost efficient means possible to construct projects funded by the council. Grantees shall not take advantage of this process by inflating initial funding requests.

[2.110.2.21 NMAC - Rp 2 NMAC 110.2.21, 08-30-01; A, 09-28-07; A, 10-17-11]

2.110.2.26 E C O N O M I C DEVELOPMENT PROGRAM GUIDELINES: Within the context of the CDBG program and for purposes of meeting its goals and objectives, economic development can typically be defined as improving a community's economic base by using private and public investments that provide expanded business activity,

jobs, personal income and increased local

revenues in a defined geographic area.

- A. Goals and objectives: The state's CDBG economic development goals and objectives include:
- (1) creating or retaining jobs for low- and moderate-income persons;
- (2) preventing or eliminating slums and blight;
 - (3) meeting urgent needs;
- (4) creating or retaining businesses owned by community residents;
- (5) assisting businesses that provide goods or services needed by, and affordable to low and moderate-income residents;
- (6) providing technical assistance to promote any of the activities under Subsection A, Paragraphs (1) through (5) above.
- Eligible В. activities: CDBG eligible activities authorized under Sections 570.200, 570.201, 570.202, 570.203, 570.204, 570.482 and 570.483 of 24 CFR Part 570 of the federal rules and regulations governing the community development block grant program and directly affecting the creation or retention of employment opportunities, the majority of which are made available to low and moderate income persons, may include activities which are carried out by public, private nonprofit, or private for-profit entities when such activities are appropriate.
- (1) To meet the needs and objectives of the community economic development plan, a project may include; acquisition of real property, construction, reconstruction rehabilitation, or installation of public facilities, site improvements, and utilities, and commercial or industrial buildings or structures and other commercial or industrial real property improvements and planning.
- (2) Grantees and nonprofit subrecipients may carry out for the purpose of economic development, a wide range of activities such as those listed in Section 570.203.
- (3) The for-profit businesses, however, may carry out only the activities listed in that section and rehabilitation activities listed in Section 570.202.
- C. Financing policies and techniques: The New Mexico CDBG program, as a development tool, can provide flexibility and take greater risks in its lending policies and financing techniques. For example, the program may:
- (1) offer a negotiated period for repayment of principal and interest;
- (2) take greater risk than banks are traditionally prepared to take, provided substantial economic development benefits will result if the loan is granted;
- (3) leverage capital by reducing risk for commercial lenders and by taking a subordinate;

- (4) security/collateral position;
- (5) provide more favorable rates and terms than are generally available through conventional sources.
- **D. Project requirements:** Project requirements for eligible CDBG economic development assistance include, but are not limited to:
- (1) specific employment commitments for low and moderate income residents, generally with no more than [\$15,000] \$35,000 in CDBG funds being used for each job created or retained;
- (2) at least 51% of the jobs created/ retained must be held or made available to persons of low to moderate income persons;
- (3) within six (6) months of completion of the project, the grantee is required to report to LGD, documentation to reflect the total number of jobs created;
- (4) a firm commitment for private financial participation in carrying out the proposed project, contingent on award of CDBG funding only, must be included with the application;
- (5) a minimum leveraging ratio of 1 new private investment dollars to 1 CDBG dollar is required, {additional leveraging will enhance a project's competitiveness};
- (6) an "appropriate" determination that there is a well documented need for CDBG assistance to make the project financing feasible and that the level of assistance requested is commensurate with the public benefits expected to be derived from the economic development project;
- (7) evidence of project feasibility including a business plan which contains financial statements, project pro forma (cash flow projections) and specific source and intended use of all funds or assets used in the project;
- (8) generally, projects that directly assist in the relocation of a business or industry from one community to another, intrastate or interstate, will be disqualified;
- (9) prior to submission of an application, applicants should thoroughly review the credit worthiness of the proposed borrower and should obtain appropriate credit reports, audited financial statements, tax returns and verify collateral.
- E. **Program** income: The community development council has adopted a policy of strongly encouraging and, when possible, requiring applicants in the economic development category to return program income to the state for use in fostering critical economic development opportunities that occur throughout the state. By pooling program income at the state level more of an impact can be made on the overall economic conditions of the state. The Housing and Urban Rural Recovery Act which amended the Housing and Community Development Act of 1974, provides, relative to economic development, specifically the

following:

- (1) states may require program income to be returned to the state but local governments must be allowed to keep program income when used for the same activity which generated the income (104(i)2);
- (2) if the applicant intends to retain program income, a program income utilization plan must be submitted with the application for approval.
- F. Application cycle: Applications for economic development can be made at any time, and the division staff [have] has thirty days to review them.
- G. Pre-application It is recommended that a conference: preapplication conference be held prior to the submission of the final application to insure that all elements are adequately addressed. The preapplication conference will also provide an opportunity to review any new federal guidelines that may be issued which relate to economic development activities. Contact the LGD, economic development representative for information. More detailed and extensive financial and project data may be required depending on the specific project. In addition, meeting the national objective to benefit low and moderate income requires documentation certifying that the majority of the jobs go to low and moderate income persons or the majority of jobs are considered available to them. Please contact the local government division for a copy of the HUD guidelines.
- H. A P P L I C A T I O N REQUIREMENTS: (These must be included along with the regular CDBG application, and should be submitted in lieu of question #2 in the regular application.)
- (1) Economic development plan: The applicant must submit as an attachment to the application a short (5 page maximum) description of its plan for encouraging local economic development. The plan, incorporating references to the proposed project, should include a discussion of the following elements
- (a) Need - What are the community's underlying economic problems? Need might include recent major industry shutdowns or extended layoffs, substantial increases in population without a corresponding increase in job opportunities, substantial population decreases due to lack of available or appropriate job opportunities, a lack of industrial diversification, the existence of large numbers of workers in the area with obsolete skills or skills for which there is no current demand, or other problems unique to the applicant's community.
- (b) Goals What is the community attempting to accomplish through its overall economic development program (not just that activity for which CDBG funding is sought)? Goals might include trying to

preserve existing businesses or industries, attempting to encourage community growth, attempting to foster industrial diversification, revitalizing the central business district, or creating complementary industries which would provide jobs in the off-season for workers now only seasonally employed.

- (c) Resources What public private resources, both financial and and technical, does the community have available to it to help carry out its economic development program? Resources may be of a wide variety. For example, does the community have a local development corporation or similar body? Has any agency organization assigned staff member(s) to work on economic development activities for a major portion of their time? Has the financial community demonstrated its willingness to participate in development activities? Is there an adequate available labor force to meet the demands of new or expanding businesses and industries? Does the community have some unique development advantages, e.g., location, transportation facilities, industrial park or other plant sites, available raw materials, abundant power supplies, employee training capabilities, a locally-administered revolving loan fund to assist growing businesses or industries, technical assistance programs to help business [persons] people deal with marketing, management, or financial planning problems.
- (d) Strategy What strategy is the community using to pursue its economic development goals? Strategy might include a description of the specific activities that have been identified as components of the community's strategy for encouraging local economic development. For example, which has been assigned first, second, and third priority? How much will each cost? What funding sources have been identified for each? What can or will the local government do to support those activities?
- (e) Results What actions has the community already undertaken to implement its economic development plan? sources of funding were used? What were the results? Results might include a discussion of actions the community has taken to encourage development. For example, has it offered property tax reductions to new or expanding industries? Has it formed a local development corporation or prepared industrial or tourism promotion packages? What results have been achieved? How many new jobs have been created or existing jobs retained? How many new firms have begun operations in the community? How many existing firms have undertaken expansion activities?

(2) Hiring and training plan:

(a) Applicants must establish procedures for the project to ensure preferential recruitment, hiring, and training

of local workers, particularly those of low and moderate income.

(b) In the event of a grant award, the applicant's commitment to the hiring plan will be considered binding and will be incorporated by reference in the grant agreement between the local governing body and the local government division.

(3) Private sector commitments:

- (a) Applicants must provide evidence of firm commitments of financial resources from the private sector.
- **(b)** Such commitments should be binding, contingent only upon receipt of CDBG funds.
- (c) Investments made or costs incurred prior to the grant application are not eligible for use as matching funds or leverage but should be referenced as related to the total project, if applicable.

(4) Public sector commitments:

- (a) If public sector resources are to be involved in the proposed economic development project, applicants must demonstrate evidence of a firm commitment of public funds or other resources.
- **(b)** Such commitments should be binding, contingent only upon receipt of CDBG funds to the project.
- (c) Evidence may include resolutions or ordinances passed by the local governing body and other appropriate local groups.
- (5) Use of CDBG funds for economic development loans (if applicable):
- (a) Any project that includes a loan should provide an explanation of the proposed interest rate, terms and rationale for the proposed financing structure.
- (b) Any loan made by a local governing body with CDBG funds as a part of an approved CDBG economic development project must be adequately secured.
- (c) Subordinated loans may be made when justifiable and appropriate.
- (d) The applicant must include a detailed description of the proposed use of program income. (principal and interest). Applicants are encouraged to designate program income to be returned to the state for future economic development set-aside eligible activities.
- (6) Viability of assisted enterprises: Any for-profit entity to be assisted with CDBG funds must document that without participation of CDBG funds the proposed activity would not be feasible and that after receipt of CDBG assistance the enterprise will be viable and self-sustaining. All applicants proposing an economic development activity shall submit the following for any entity to be assisted with CDBG funds.
- (a) a business plan which consists of at least a description of the history of the firm, background, and experience of

the principals, organizational structure, a description of its major products or services, market area and market share, goals, and planned expansions or changes in operations; the plan should also describe the impact the CDBG project, if funded, would have on the firm's activities:

- (b) a three-year to five-year operating plan forecast (profit and loss projection); applicants may use U.S. small business administration (SBA) forms or equivalent;
- (c) a monthly cash flow analysis, SBA forms or equivalent.
- (d) for any existing business, the two most recent year-end financial statements, including an income statement and balance sheet.

I. RATING CRITERIA:

The selection criteria in the rating and ranking system will give priority to projects which firmly demonstrate the following: need, appropriateness, impact, and benefit to low and moderate income persons. These factors are discussed below and are intended to provide additional information. Since each application will be a unique response to particular community-specific needs, there are no "right" or "wrong" activities or solutions. The ranking of "appropriateness" (and later, of "impact") will necessarily be in part subjective, with the division taking into account not only how well each applicant addresses the problems it has defined, but also how its problems and responses compare with those of other applicants. Responses may vary considerably depending upon the size and location of the community and the type of project proposed.

- (1) **NEED** (200 points) In analyzing an applicant's need for a project, the division will use statistical information provided by the New Mexico department of labor and the U.S. bureau of the census which is uniformly available for all thirtythree (33) counties. Since similar data is not accumulated at the municipal level, cities and towns will be scored with the figures for the county in which they are located. The three factors which will be considered are: the average number of unemployed persons in the county during the last calendar year; the percent of unemployment (average) in the county during the last calendar year; long-term unemployment (measured by average unemployment rates in the county for the last five calendar years).
- (a) The data will be calculated and each applicant assigned a relative score.
- (b) The division will consider assigning a different score in exceptional cases, where an applicant can conclusively demonstrate that the first two factors used to measure economic need are not reflective of local economic conditions (such as major recent plant closings) and the situation is substantiated by the New Mexico department

of labor. A request for consideration of local economic data must be submitted with the CDBG application. The applicant should identify sources of data and define methodologies.

- (2) APPROPRIATENESS (200 points) Two major factors will be weighted in this ranking category: the soundness of the applicant's economic development plan and the related project for which CDBG funding is sought; the strength of the applicant's hiring and training plan for ensuring that local residents, particularly those of low and moderate income, will be hired to fill the stated number of jobs created or retained as a result of CDBG-funded activities. These two factors will be ranked as follows:
- (a) Plan and program (140 points) Some factors which might contribute to the achievement of an "outstanding" score are:
- (i) that the applicant has developed a complete, well reasoned, appropriate, and achievable plan for dealing with its total economic development needs, taking into consideration all available public and private resources and local capacity;
- (ii) that the local governing body has officially adopted the economic development plan as a matter of public policy;
- (iii) that the proposed project for which CDBG funding is sought is an integral part of that plan; (it need not be the first priority item identified in the overall plan if other, more appropriate, resources are available and already being used to meet higher priority items);
- (iv) that the applicant has made substantial local efforts to deal with its economic development problems;
- (v) that the proposed CDBG project is realistic and workable, and the job savings or creation expected to result from its implementation will occur within a reasonable time following the date of grant award:
- (vi) that if income is to be generated by CDBG-funded activities, and retained locally, a plan for the use of that money has been developed and submitted with the application; this plan must include mechanisms established for administration of the funds, (if a revolving loan fund is to be established with program income, procedures must be outlined covering local application processing, time frames, approval, negotiation, pricing, packaging, servicing, etc.);
- (vii) that there has been active citizen participation in the development of the economic development plan and in the selection of the CDBG project.
- **(b) Hiring and training plan** (60 points) Since a primary goal of CDBG-funded economic development grants is to

increase job opportunities for local residents, particularly persons of low and moderate income, it is essential that applicants take every measure to bring about that result. Each applicant must include in its application an employment and training plan to be used in filling jobs created or saved as a result of CDBG activities. Factors which would most likely contribute to the achievement of a high score are:

- (i) that the applicant's employment and training plan provides clear, complete procedures for outreach, recruitment, screening, selection, training, and placement of workers which will ensure maximum access of local residents, particularly persons of low and moderate income, to jobs created or saved by the project;
- (ii) that attention has been given to necessary supportive services for trainees needing them;
- (iii) that a complete training curriculum has been developed and all training resources identified;
- (iv) that responsibility has been assigned for all phases of the training program;
- (v) that a written agreement to follow the plan has been obtained from each firm expected to benefit directly from the program.
- (3) IMPACT (200 points) In weighing the anticipated impact of the applicant's proposed CDBG grant activities on the community's identified problems, the following four factors will be considered and evaluated:
- (a) Leverage (50 points) In preparing its proposed project budget, the applicant is required to identify all sources of funds to be used and the amounts to be contributed by each. To be eligible for consideration, an applicant must provide at least one private non-CDBG dollars for each dollar of CDBG funds requested (a 1:1 ratio). The non-CDBG funds may come from a variety of private sources, such as new investment by a firm to be assisted, bank loans, or local development corporation loans and debentures. Applicants will be ranked against each other. If, for instance, community A has the highest leverage ratio (\$3 of non-CDBG funds for each \$1 of CDBG funds, a 3:1 ratio) and community B has a 1:1 leverage, community A would receive the maximum score and community B and all other applicants would be relatively scored against community A.
- (b) CDBG dollars per job (50 points) The applicant is required to specify the number of permanent full-time jobs to be created or retained as a result of the requested CDBG program. In determining an applicant's score in this category, the total CDBG funds to be used (exclusive of administrative funds) will be divided

- by the total number of full-time jobs expected to result. NOTE: In evaluating an applicant's job creation projections, the local government division will consider the historical relationships of sales, space, and machines to jobs. It will also look at typical ratios for the industry of which the firm to be assisted is a part. Applicants should be prepared to justify job creation claims which substantially exceed industry norms or [\$15,000] \$35,000 per job created or retained.
- (c) Type of jobs (50 points) -Although all new or retained jobs provide some measure of economic benefit to the community, full-time, skilled or semiskilled positions are more desirable for most workers than part-time jobs or those requiring unskilled labor. One objective of CDBG economic development activities is to foster the creation and retention of permanent, full-time employment with growth potential for persons of low and moderate income, which offers those workers an opportunity for advancement in a firm or industry. Applicants are required to indicate the percentage of jobs to be created or retained which are full-time or part-time, skilled, semi skilled, or unskilled.
- (d) Overall economic impact (50 points) The applicant must discuss both the direct and indirect effects the CDBG program is expected to have on the community's economy. Some of the factors which will be considered in evaluating impact are:
- (i) the size of the additional payroll expected to be generated for the jobs created or retained by the program;
- (ii) the total number of jobs to be created or retained;
- (iii) whether the firm to be assisted is a primary industry (producing goods or services mainly to be sold outside the area or state, thereby importing dollars into the community and state);
- (iv) whether local property tax revenues will be significantly increased as a result of the proposed business start-up, expansion, retention, etc.;
- (v) the applicant demonstrating the greatest positive impact will be scored highest; all other applicants will be ranked correspondingly;
- (vi) when applications have been scored in all four categories (leverage, dollars per job, types of jobs, and overall economic impact), those scores will be totaled.
- (4) BENEFIT TO LOW AND MODERATE INCOME PERSONS (200 points)
- (a) This ranking criterion assesses the extent to which persons of low and moderate income will directly benefit from the expenditure of CDBG grant funds. To

determine this score, the number of jobs to be created or retained and made available to low and moderate income persons will be divided by the total number of jobs to be created or retained as a result of the CDBG program.

- (b) The highest score will receive up to a maximum of 200 points and all other applicants will be scored accordingly.
- (c) To be eligible for consideration a project must demonstrate that it will benefit principally persons of low and moderate income. [2.110.2.26 NMAC Rp 2 NMAC 110.2.26, 08-30-01; A, 12-14-06; A; 09-28-07; A, 10-15-09; A, 10-17-11]

Attachment to 2.110.2.14 NMAC

RURAL COUNTIES (EXHIBIT A) PER 2000 HUD APPROVED U.S. CENSUS DATA

COUNTY	[TOTAL PERSONS] LMI Potential Population
CATRON	3,533
CIBOLA	24,524
COLFAX	13,767
DE BACA	2,168
GUADALUPE	4,154
HARDING	810
HIDALGO	5,847
LINCOLN	19,192
LOS ALAMOS	18,251
LUNA	[24,746] <u>24,764</u>
MORA	5,122
QUAY	9,969
ROOSEVELT	17,249
SIERRA	13,005
SOCORRO	17,501
TORRANCE	16,377
UNION	4,158

URBAN COUNTIES PER 2000 HUD APPROVED U.S. CENSUS DATA

COUNTY	[TOTAL PERSONS] LMI Potential Population
BERNALILLO	[106,749] <u>106,157</u>
CHAVES	60,089
CURRY	43,855
DONA ANA	97,616
EDDY	50,905
GRANT	30,399
LEA	53,708
McKINLEY	73,940
OTERO	61,059
RIO ARRIBA	40,729
SANDOVAL	[37,912] <u>38,504</u>
SAN JUAN	[112,593] <u>75,489</u>
SAN MIGUEL	28,735
SANTA FE	66,588
TAOS	29,681
VALENCIA	64,781

RURAL MUNICIPALITIES PER 2000 HUD APPROVED U.S. CENSUS DATA

MUNICIPALITIES	[TOTAL PERSONS] LMI Potential Population
ANGEL FIRE	1,018
ARTESIA	10,860
AZTEC	6,078

BAYARD	2,553
BELEN	6,643
BERNALILLO	6,503
BLOOMFIELD	6,144
BOSQUE FARMS	3,781
CAPITAN	1,453
CARRIZOZO	988
CAUSEY	43
CHAMA	1,319
CIMARRON	927
CLAYTON	2,523
CLOUDCROFT	779
COLUMBUS	1,790
CORONA	253
CORRALES	7,430
CUBA	639
DEMING	13,986
DES MOINES	253
DEXTER	1,181
DORA	127
EAGLE NEST	298
EDGEWOOD	2,024
ELEPHANT BUTTE	[1,140] <u>1,440</u>
ELIDA	185
ENCINO	90
ESPANOLA	9,664
ESTANCIA	1,038
EUNICE	2,569

RURAL MUNICIPALITIES PER 2000 HUD APPROVED U.S. CENSUS DATA

MUNICIPALITIES	[TOTAL PERSONS] LMI Potential Population
FLOYD	79
FOLSOM	96
FORT SUMNER	1,160
GALLUP	19,504
GRADY	80
GRANTS	8,329
GRENVILLE	22
HAGERMAN	1,155
НАТСН	1,665
НОРЕ	[1,329] <u>114</u>
HOUSE	56
HURLEY	1,468
JAL	2,020
JEMEZ SPRINGS	429
LAKE ARTHUR	400
LAS VEGAS	13,874
LOGAN	1,065
LORDSBURG	3,296
LOS ALAMOS	[11,822] <u>11,902</u>

LOS LUNAS	9,994
LOS RANCHOS DE ALBUQUERQUE	4,951
LOVING	1,327
LOVINGTON	9,307
MAGDALENA	940
MAXWELL	<u>274</u>
MELROSE	<u>736</u>
MESILLA	2,266
MILAN	1,911
MORIARTY	1,738
MOSQUERO	148
MOUNTAINAIR	1,136

RURAL MUNICIPALITIES PER 2000 HUD APPROVED U.S. CENSUS DATA

MUNICIPALITIES	[TOTAL PERSONS] LMI Potential Population
PECOS	1,507
<u>PERALTA</u>	3,903
PORTALES	[10,143] <u>10,153</u>
QUESTA	1,880
RATON	7,061
RED RIVER	517
RESERVE	472
ROY	316
RUIDOSO	[7,581] <u>7,607</u>
RUIDOSO DOWNS	1,806
SAN JON	286
SAN YSIDRO	159
SANTA CLARA	1,927
SANTA ROSA	2,250
SILVER CITY	10,195
SOCORRO	8,445
SPRINGER	1,252
SUNLAND PARK	13,271
TAOS	4,621
TAOS SKI VALLEY	90
TATUM	717
TEXICO	1,059
TIJERAS	414
T OR C	7,029
TUCUMCARI	5,879
TULAROSA	2,828
VAUGHN	599
VIRDEN	135
WAGON MOUND	365
WILLARD	239
WILLIAMSBURG	490

URBAN MUNICIPALITIES PER 2000 HUD APPROVED U.S. CENSUS DATA

MUNICIPALITIES	[TOTAL PERSONS] LMI Potential Population
ALAMOGORDO	34,966
CARLSBAD	25,287
CLOVIS	31,940
FARMINGTON	37,104
HOBBS	27,522
ROSWELL	44,261

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.5 NMAC, Sections 7 and 9, effective October 17, 2011.

1.13.5.7 DEFINITIONS:

- A. "Access" means the availability of archives, records or manuscripts in terms of physical condition, legal permission, and intellectual entry.
- B. "Accession" means a term used as both a noun and a verb for the act and procedures involved in a transfer of legal title and the taking of records or papers into the physical custody of an archival agency, records center or manuscript repository and the materials involved in such a transfer.
- C. "Archives" means the non-current records of an organization or institution preserved because of their continuing value in meeting the needs of the creating organization.
- **D.** "Archivist" means an employee whose duty is to maintain the non-current records of an organization or agency in order to serve its needs. Evidence of advanced study in an applicable academic area is usually required.
- E. "Arrangement of collections" means the process and results of organizing records or manuscripts, particularly by function or activity of their creator.
- F. "Collection policy" means a statement adopted by an archival agency, records center or manuscript repository to guide its accessioning and deaccessioning decisions in order to carry out its formal mission.
- standard measure of the quantity of archival material; the term refers to the amount of space usually occupied by one standard records storage box (12 in. x 12 in. x 16 in.) on standard archival shelving. By conversion, 36 inches of letter-size papers, arranged lineally (three linear feet), would occupy approximately two cubic feet, if placed in storage boxes.

- **H.** "Curator" means an employee whose duty is to foster research by making accessible order of a repository's collections. Evidence of advanced study in an applicable academic area is usually required.
- I. "De-accession" means the act, or the materials involved in the act, of a transfer out of the custody of an archives and is the opposite of accession.
- J. "Documentary edition" means a published edition of documents derived directly from original records and often accompanied by editorial commentary and annotations.
- M. "DUNS number"
 means a unique, non-indicative, nine-digit
 identifier issued and maintained by Dun and
 Bradstreet that verifies the existence of a
 business entity globally. A DUNS number
 is required by the office of management and
 budget for all grants funded with federal
 funds.
- [K:] L. "Essential minimum" means, in the interests of efficiency and economy, the most succinct statements and the most definitive examples that meet the application requirements, thus keeping the proposal package simple, focused and relevant. For example, resumes, which provide the essential minimum, are more impressive by their relevance than by their length.
- [H-] M. "Evaluation" means a mechanism by which the effectiveness of the project can be measured by describing the extent to which a project's goals have been met. Narrative, graphic or statistical methods can be used to assess the product or to analyze the process. Participant or user assessments are also helpful in some cases.
- [M.] N. "Finding aid" means a descriptive device created by an archives, records center or repository to establish the size, condition, content or arrangement of a collection or record group.
- [N-] O. " Non-profit organization" means any organization, which by its articles of association and bylaws prohibits acts of private inurement, that is, transferring of the organization's earnings to persons in their private capacity; non-profit organizations are required to use

- their earnings for their program activities and these earnings are tax-exempt if the organization has met the approval of the internal revenue service as falling within a category such as 501(c) (3).
- [Θ :] P. "Original records" means archives or public records as created by a governmental or quasi-governmental body, and manuscripts such as letters, diaries, photographs or other first-hand reports.
- [P-] Q. "Political subdivisions" means any county; incorporated city; town or village; drainage, conservancy, irrigation, water and sanitation or other district; mutual domestic association; public water cooperative association; community ditch association; or community land grant organizes and governed pursuant to Chapter 49, Article 1 NMSA 1978.
- [Q:] R. "Preservation" means the provision of adequate facilities for the protection, care and maintenance of archives, records, and manuscripts, particularly to promote their future availability.
- [R:] S. "Provenance" means the source or the office of origin of the records and thus the principle of maintaining the integrity of the records' identity by their creator and, also, respect for their original order.
- [8-] T. "Records manager" means an employee whose duty is to manage the creation, use and disposition of an organization or agency's records. Evidence of advanced study in an applicable academic area is usually required.
- means a logical and succinct presentation of the argument for the necessity of a project; it should be factual, reasonable and persuasive.
- [U:] V. "Underserved community" means populations in which individuals lack access to programs due to geography, economics, ethnicity, disability, or age.

[1.13.5.7 NMAC - N, 11/30/00; A, 06/30/04; A, 06/30/05; A, 12/31/08; A, 10/17/11]

1.13.5.9 C O N D I T I O N S FOR RECEIVING A HISTORICAL RECORDS GRANT:

A. The applicant shall demonstrate financial and programmatic

need and the ability to carry out the objective of the proposal within the grant period.

- **B.** The applicant shall describe the records covered by the proposal and their importance in documenting New Mexico's history.
- C. The applicant shall have custody of, or consult with organizations that have custody of, historically significant original records.
- provide a DUNS number with the grant application.
- [P:] E. Records treated in the proposed project shall be made available for public research unless specific exemption is granted by the NMHRAB. Proposals submitted by tribal governments, for example, may be excluded from this criterion.
- [E-] E. An affected organization shall be committed to sound archival practices, as demonstrated through its collection policy or a statement from its governing body indicating its commitment to:
 - (1) support of the project; and
- (2) continuation of the project's purposes beyond the grant period.
- [F-] G. A person qualified by credentials or training to carry out the objectives of the proposed project shall supervise the project. If this requirement is not met at the time the proposal is submitted, the proposal shall include provisions for attending NMHRAB-sponsored or NMHRAB-approved training totaling at least 24 clock hours before the project's proposed start date, unless otherwise approved by the NMHRAB.
- [G:] H. Organizations shall have a mechanism for evaluating the impact of the project on their historical records' environments.

[1.13.5.9 NMAC - N, 11/30/00; A, 09/30/02; A, 07/15/03; A, 06/30/04; A, 06/29/07; A, 10/17/11]

NEW MEXICO RACING COMMISSION

Explanatory Paragraph: This is an amendment to 15.2.6 NMAC, Sections 9 and 12, effective 11/01/11. In 15.2.6.9 NMAC, Subsections A through C and Subsections F, G and H were not published as there were no changes.

15.2.6.9 M E D I C A T I O N S AND PROHIBITED SUBSTANCES:

The "uniform classification guidelines for foreign substances and recommended penalties and model rule", revised [January 2010] August 2011, version 2.01, as issued by the association of racing commissioners international, is incorporated by reference.

Upon a finding of a violation of these medication and prohibited substances rules, which includes the possession of contraband as listed in Subsection I of 15.2.6.9 NMAC, the stewards shall consider the classification level of the violation as listed at the time of the violation by the uniform classification guidelines of foreign substances as promulgated by the association of racing commissioners international and impose penalties and disciplinary measures as determined by the New Mexico racing commission. The commission only adopts the recommended [penalties] overages for permitted non-steroidal anti-inflammatory drugs (NSAIDs) and furosemide (in either serum or plasma) listed in this reference material should a violation occur in a [thoroughbred] graded [stake] thoroughbred stakes race. The guidelines and recommended [penalties shall be provided to all license holders by attachment overages for NSAIDs and furosemide are attached to this section and incorporated by reference. Provided, however, that in the event a majority of the stewards determine that mitigating circumstances require imposition of a lesser penalty they may impose the lesser penalty.

D. PENALTY RECOMMENDATIONS (in the absence of mitigating circumstances):

(1) A verbal warning to be issued for one positive test within a 12 month period in the following levels (the verbal warning will be recorded in writing):

(a) only in a thoroughbred graded stakes race – 2.1 micrograms per milliliter to 5.0 micrograms per milliliter in one drug of phenylbutazone or oxyphenbutazone; or

[(a)](b) .06 micrograms per milliliter to 1.0 micrograms per milliliter of flunixin; or

[(b)](c) [11.0] 10.1 to 30.0 nanograms per milliliter of ketoprofen.

E. MEDICAL LABELING:

(1) No person on association [ground] grounds where horses are lodged or kept, excluding licensed veterinarians, shall have [in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle] in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with this subsection. This restriction includes, but is not limited to, locations on the association grounds where that person occupies, in that person's

personal property, effects or vehicle.

(2) Any drug or medication which is used or kept on association grounds and which, by federal or state law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following: the name of the product; the name, address and telephone number of the veterinarian prescribing or dispensing the product; the name of each patient (horse) for whom the product is intended/prescribed; the dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; the name of the person (trainer) to whom the product was dispensed.

[(3) Any drug, medication or paraphernalia determined to be confiscated contraband that is found on association premises which a licensed trainer occupies or has the right to occupy, or in that trainer's personal property or effects or vehicle in that trainer's care, custody or control, and is required to be tested by the official laboratory, will require payment of all costs for testing to be borne by the trainer upon final decision.]

I. CONTRABAND:

(1) No person on association grounds where horses are lodged or kept, excluding licensed veterinarians, shall have in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with Subsection E of 15.2.6.9 NMAC. This restriction includes, but is not limited to, locations on the association grounds where that person occupies, in that person's personal property, effects or vehicle.

(2) The New Mexico racing commission may confiscate any contraband named in Paragraph (1) of Subsection H of 15.2.6.9 NMAC and any drug or illegal substance that is found on association premises which a licensed trainer occupies or has the right to occupy, or in that trainer's personal property, effects or vehicle in that trainer's care, custody or control.

(3) Upon finding a violation of this subsection the stewards shall consider the classification level of the violation as it is listed in the uniform classification guidelines and recommended penalties of foreign substances as promulgated by the association of racing commissioners international and impose penalties and disciplinary measures adopted by the New Mexico racing commission.

(4) If the contraband is required to

be tested by the official laboratory, payment of all costs for testing **shall** be borne by the licensee upon final decision by the stewards that the substance is prohibited pursuant to these rules.

[15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 04/13/2001; A, 08/30/2001; A, 07/15/2002; A, 08/15/2002; A, 09/29/2006; A, 10/31/2006; A, 08/30/2007; A, 01/31/2008; A, 03/01/2009; A, 06/15/2009; A, 06/30/2009; A, 09/15/2009; A, 12/15/2009; A, 03/16/2010; A, 07/05/2010; A, 09/01/2010; A, 12/01/2011]

15.2.6.12 P H Y S I C A L INSPECTION OF HORSES:

A. ASSESSMENT OF RACING CONDITION:

- (1) Every horse entered to participate in an official race may be subjected to a veterinary inspection prior to starting in a race for which it is entered.
- (2) The inspection shall be conducted by the official veterinarian or the racing veterinarian.
- (3) The agency or the association employing the examining veterinarian(s) should provide a staffing level of not less than two (2) veterinarians.
- (4) The trainer of each horse or a representative of the trainer must present the horse for inspection as required by the examining veterinarian. Horses presented for examination must have bandages removed and the legs must be clean. Prior to examination horses may not be placed in ice nor shall any device or substance be applied that impedes veterinary clinical assessment.
- (5) The assessment of a horse's racing condition shall be based on the recommendations of the American association of equine practitioners and shall include: proper identification of each horse in motion; manual palpation and passive flexion of both forelimbs; clinical observation in the paddock and saddling area, during the parade to post and at the starting gate; any other inspection deemed necessary by the official veterinarian [and/or] and the racing veterinarian or the stewards.
- **(6)** Every horse shall be observed by the racing veterinarian during and after the race.
- (7) The official veterinarian [and/or] or the racing veterinarian shall maintain a permanent continuing health and racing soundness record of each horse inspected.
- (8) The official veterinarian [and/or] or the racing veterinarian are authorized access to any and all horses housed on association grounds regardless of entry status.
- (9) If, prior to starting, a horse is determined to be unfit for competition,

- or if the veterinarian is unable to make a determination of racing soundness, the veterinarian will recommend to the stewards the horse be scratched.
- (10) Horses scratched upon the recommendation of the official veterinarian or the racing veterinarian, are to be placed on the veterinarian's list.
- (11) All pre-race examination reports [and the veterinarian reports, reference in Subsection C of 15.2.6.8 NMAC,] on each horse selected for a pre-race examination will be submitted to the commission on a monthly basis. In addition, these reports will be made available to the commission upon request within a 48-hour period. [Any such report is confidential and its content shall not be disclosed except in the course of an investigation of a possible violation of these rules or in a proceeding before the stewards or the commission, or to the trainer or owner of record at the time of report.]

B. VETERINARIAN'S LIST:

- (1) The racing veterinarian shall maintain a list of all horses which are determined to be unfit to compete in a race due to physical distress, unsoundness, infirmity or medical condition.
- (2) A horse may be removed from the veterinarian's list when, in the opinion of the racing veterinarian, the horse has satisfactorily recovered the capability of competing in a race.

$\begin{array}{cc} \textbf{C.} & \textbf{POSTMORTEM} \\ \textbf{EXAMINATION:} \end{array}$

- (1) The commission may require a postmortem examination of any horse that dies or is euthanized on association grounds.
- (2) The commission may require a postmortem examination of any horse that dies or is euthanized at recognized training facilities within this jurisdiction.
- (3) If a postmortem examination is to be conducted, the commission shall take possession of the horse upon death for a postmortem examination. All shoes and equipment on the horse's legs shall be left on the horse.
- (4) If a postmortem examination is to be conducted, the commission or its representative shall collect blood, urine, bodily fluids, or other biologic specimens immediately, if possible before euthanization. The commission may submit blood, urine, bodily fluid, or other biologic specimens collected during a postmortem examination for testing analysis. The presence of a prohibited substance in a specimen collected during the postmortem examination may constitute a violation.
- (5) Requests for each postmortem examination shall be filed with the official veterinarian by the owner's or trainer's veterinarian within one hour of the death and shall be submitted on a necropsy

- submission form entitled New Mexico racing commission necropsy submission form, hereby incorporated by reference and which is available at all official veterinarian offices and all stable gates. The trainer or their designee is responsible to supply all information to complete this form.
- (6) All licensees shall be required to comply with postmortem examination requirements as a condition of licensure. In proceeding with a postmortem examination the commission or its designee shall coordinate with the owner or the owner's authorized agent to determine and address any insurance requirements.
- (7) Postmortem examinations shall be conducted according to the most recent edition of the American association of equine practitioners' guidelines for the necropsy of racehorses.
- (8) Upon completion of the postmortem examination the diagnostic laboratory shall file a written report with the racing commission's agency director and official veterinarian.

[15.2.6.12 NMAC - Rp, 15 NMAC 2.6.12, 04/13/2001; A, 09/01/2010; A, 12/01/2010; A, 11/01/2011]

NEW MEXICO RACING COMMISSION

Explanatory paragraph: This is an amendment to 15.2.7 NMAC Section 12; adding new material to Subsection H which details the procedure for a new wager. The subsequent subsections were renumbered only to accommodate the new rule material being placed into Subsection H.

15.2.7.12 CALCULATION OF PAYOUTS AND DISTRIBUTION OF POOLS:

H. SOLO 6:

- (1) The solo 6 requires selection of the first place finisher in each of six designated contests. The entire net solo 6 pool and carryover, if any, shall be distributed to the holder of a unique wager selecting the first place finisher in each of the selected six contests. If there is no unique wager selecting the first place finisher in all six contests, the minor share of the solo 6 shall be distributed as a single price pool to those who selected the first place finisher in the greatest number of contests. The major share shall be added to the carryover. The designated percentage of minor and major pools must be approved by the New Mexico racing commission and posted in the official racing program.
- (2) Unique wager, as used in this subsection, shall be defined as having

occurred when the total amount wagered on a winning combination selecting the first place finisher in each of the six contests is equal to the minimum allowable wager.

(3) If there is a dead heat for first in any of the *solo* 6 contests involving:

- (a) contestants representing the same betting interest, the *solo* 6 pool shall be distributed as if no dead heat occurred;
- (b) contestants representing two or more betting interests, the *solo* 6 pool shall be distributed as a single price pool with each winning wager receiving an equal share of that day's pool if there is more than one winning ticket.
- (4) Should a betting interest in any of the *solo* 6 contests be scratched or determined to be a non-starter, the actual favorite, as evidenced by the total amounts wagered in the win pool at the close of wagering on that contest, shall be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number.
- (5) The solo 6 pool shall be cancelled and all solo 6 wagers for the individual performance shall be refunded if at least three contests included as part of the solo 6 are cancelled or declared a no contest.
- (6) If at least one contest of the solo 6 is cancelled or declared a no contest, but not more than three contests, the net pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of solo 6 contests for that performance. Such distribution shall include the portion ordinarily retained for the solo 6 carryover, but not the carryover from previous performances.
- (7) The solo 6 carryover may be capped at a designated level approved by the New Mexico racing commission so that if, at the close of any performance, the amount in the carryover equals or exceeds the designated cap, the solo 6 carryover will be frozen until it is won or distributed under other provisions of this rule. After the solo 6 carryover is frozen, one hundred per cent of the net pool, part of which ordinarily would be added to the solo 6 carryover, shall be distributed to those whose selections finished first in the greatest number of solo 6 contests for that performance.
- (8) A written request for permission to distribute the solo 6 carryover on a specific date shall be submitted to the New Mexico racing commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date of the distribution.
- (9) Should the *solo* 6 be designated for distribution on a specific date, the unique wager provision of this subsection shall

be suspended, and the entire pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of *solo* 6 contests. The *solo* 6 carryover shall be designated for distribution on a specific date and performance only under the following circumstances:

(a) upon written approval from the New Mexico racing commission as provided in Paragraph (8) of Subsection H of 15.2.7.12 NMAC;

(b) when the solo 6 is discontinued;

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(c) on the closing day of the meet.

(10) If for any reason the solo
6 carryover must be held over to the
corresponding solo 6 pool or subsequent
meet, the carryover shall be deposited into
an interest bearing account approved by the
New Mexico racing commission. The solo 6
carryover, plus accrued interest, shall then be
added to the net solo 6 pool of the following
meet. Following meet would be defined as
next racing season of the racetrack where the
carryover occurred.

previously approved solo 6 wagering with the prior approval of the New Mexico racing commission. Any carryover shall be held until the suspended solo 6 wagering is reinstated. solo 6, as used in this rule, shall mean the selection of winners in six contests during the course of an official racing program.

[15.2.7.12 NMAC - Rp, 15 NMAC 2.7.12, 03/15/2001; A, 03/31/2003; A, 09/15/2003; A, 04/14/2005; A, 07/15/2005; A, 11/30/2005; A, 03/30/2007; A, 06/15/2009; A, 12/01/2010; A, 11/01/2011]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

CONSTRUCTION INDUSTRIES DIVISION

14.8.3 NMAC, 2006 New Mexico Swimming Pool, Spa, and Hot Tub Code (filed 10-27-2008), repealed and replaced by 14.8.3 NMAC, 2009 New Mexico Swimming Pool, Spa, and Hot Tub Code, effective 11-01-2011.

14.9.6 NMAC, 2006 New Mexico Solar Energy Code (filed 01-24-2008), repealed and replaced by 14.9.6 NMAC, 2009 New Mexico Solar Energy Code, effective 11-01-2011.

14.10.4 NMAC, 2008 New Mexico Electrical Code (filed 06-15-2011), repealed and replaced by 14.10.4 NMAC, 2011 New Mexico Electrical Code, effective 11-01-2011.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

CONSTRUCTION INDUSTRIES DIVISION

TITLE 14 HOUSING AND CONSTRUCTION
CHAPTER 8 PLUMBING CODES PART 3 2009 NEW MEXICO SWIMMING POOL, SPA AND HOT TUB CODE

14.8.3.1 ISSUING AGENCY: Construction Industries Division (CID) of the Regulation and Licensing Department. [14.8.3.1 NMAC - Rp, 14.8.3.1 NMAC, 11-1-11]

14.8.3.2 SCOPE: This rule applies to all contracting work performed on swimming pools, spas, and hot tubs in New Mexico on or after November 1, 2011, that is subject to the jurisdiction of CID, unless performed pursuant to a permit for which an application was received by CID before that date.

[14.8.3.2 NMAC - Rp, 14.8.3.2 NMAC, 11-1-11]

14.8.3.3 S T A T U T O R Y AUTHORITY: NMSA 1978 Section 60-13-9.

[14.8.3.3 NMAC - Rp, 14.8.3.3 NMAC, 11-1-11]

14.8.3.4 D U R A T I O N : Permanent.

[14.8.3.4 NMAC - Rp, 14.8.3.4 NMAC, 11-1-11]

14.8.3.5 EFFECTIVE DATE: November 1, 2011, unless a later date is cited at the end of a section.

[14.8.3.5 NMAC - Rp, 14.8.3.5 NMAC, 11-1-11]

14.8.3.6 OBJECTIVE: The purpose of this rule is to establish minimum standards for the construction of swimming pools, spas and hot tubs in New Mexico. [14.8.3.6 NMAC - Rp, 14.8.3.6 NMAC, 11-1-11]

14.8.3.7 DEFINITIONS: See 14.5.1 NMAC, General Provisions and chapter 2 of the 2009 uniform swimming pool, spa, and hot tub code (USPSHTC) as amended by this part.

[14.8.3.7 NMAC - Rp, 14.8.3.7 NMAC, 11-1-11]

14.8.3.8 ADOPTION OF THE 2009 UNIFORM SWIMMING POOL, SPA, AND HOT TUB CODE:

A. This rule adopts, by

reference, the 2009 uniform swimming pool, spa, and hot tub code, as amended by this rule.

B. In this rule, each provision is numbered to correspond with the numbering of the USPSHTC.

[14.8.3.8 NMAC - Rp, 14.8.3.8 NMAC, 11-1-11]

14.8.3.9 CHAPTER 1 ADMINISTRATION:

- A. 101.0 Title, purpose and scope.
- (1) 101.1 Title. Delete this section of the USPC and substitute: This code shall be known as the 2009 New Mexico swimming pool, spa, and hot tub code (NMSPSHTC).
- (2) 101.2 Purpose. Delete this section of the USPSHTC and substitute: The purpose of this code is to establish minimum standards for all swimming pools, spas and hot tub construction in New Mexico.
- (3) 101.3 Plans required. Delete this section of the USPSHTCC and see 14.5.2 NMAC, Permits.
 - (4) 101.4 Scope.
- (a) 101.4.1 See this section of the USPSHTC, except as provided below.
- $\begin{array}{ccc} & \text{(i)} & 101.4.1.1 & Repairs \\ \text{and alterations.} & \text{See this section of the} \\ \text{USPSHTC.} \end{array}$
- (ii) 101.4.1.2 Maintenance. Delete this section of the USPSHTC.
- (iii) 101.4.1.3 Existing construction. Delete this section of the USPSHTC.
- (iv) 101.4.1.4 Conflicts between codes. Delete this section of the USPSHTC and see 14.5.1 NMAC General Provisions.
- (b) 101.4.2 Additions, alterations, repairs and replacement. See this section of the USPSHTC.
- (5) 101.5 Application to existing swimming pool, spa, or hot tub plumbing system. See this section of the USPSHTC, except delete subsection 101.5.5 Maintenance without replacement.
- $\begin{array}{ccc} B. & 102.0 & Organization \\ and enforcement. & \end{array}$
- (1) 102.1 Authority having jurisdiction. Delete this section of the USPSHTC.
- (2) 102.2 Duties and powers of the authority having jurisdiction.
- (a) 102.2.1 Delete this section of the USPSHTC and see Section CILA 60-13-8
- (b) 102.2.2 Right of entry. Delete this section of the USPSHTC and see CILA Section 60-13-42.
- (c) 102.2.3 Stop orders. Delete this section of the USPSHTC and see 14.5.2 NMAC, Permits.
 - (d) 102.2.4 Authority to

- **disconnect utilities in emergencies.** Delete this section of the USPSHTC and see CILA Section 60-13-42.
- (e) 102.2.5 Authority to condemn. Delete this section of the USPSHTC and see 14.5.1, General Provisions.
- **(f) 102.2.6 Liability.** Delete this section of the USPSHTC and see CILA Section 60-13-26.
- (3) 102.3 Violations and penalties. Delete this section of the USPSHTC and see CILA Section 60-13-1 et seq., and 14.5.3 NMAC, Inspections.
- C. 103.0 Permits and inspections.
 - (1) 103.1 Permits.
- (a) 103.1.1 Permits required. Delete this section of the USPSHTC and see 14.5.2 NMAC, Permits.
- **(b) 103.1.2 Exempt work.** Delete this section of the USPSHTC and see 14.5.2 NMAC, Permits.
- (c) 103.1.3 Licensing. Delete this section of the USPSHTC and see 14.6.2 NMAC Licensing.
- (2) 103.2 Application of permit. Delete this section of the USPSHTC and see 14.5.2.NMAC, Permits.
- (3) 103.3. Permit issuance. Delete this section of the USPSHTC and see 14.5.2 NMAC, Permits.
- **(4) 103.4 Fees.** Delete this section of the USPSHTC and see 14.5.5 NMAC, Fees.
- (5) 103.5 Inspections. Delete this section of the USPSHTC and see 14.5.3 NMAC, Inspections, except for subsection 103.5.6 Reinspections see 14.5.5 NMAC,
- (6) 103.6 Connection approval. Delete this section of the USPSHTC and see 14.5.3 NMAC, Inspections.
- (7) 103.7 Unconstitutionality. Delete this section of the USPSHTC and see 14.5.1 NMAC, General Provisions.
- (8) 103.8 Validity. Delete this section of the USPSHTC and see 14.5.1 NMAC, General Provisions.
- (9) Table 1-1 Swimming pool, spa, and hot tub permit fees. Delete this section of the USPSHTC and see 14.5.5 NMAC, Fees

[14.8.3.9 NMAC - Rp, 14.8.3.9 NMAC, 11-1-11]

- **14.8.3.10 CHAPTER 2 DEFINITIONS:** See this chapter of the USPSHTC, except as provided below.
- A. 203.0 Authority having jurisdiction Delete the text of this definition and substitute: The authority having jurisdiction is the construction industries division (CID) and the bureau chief of the mechanical and plumbing bureau of CID.
- B. 204.0 Beginner's area
 Delete the text of this definition without

replacement.

- C. 204.0 Break in grade Delete the test of this definition and substitute with the following: A place in the pool floor where the slope changes.
- **D.** 204.0 —Add the following definition: **Bromine feeder** a device used to deliver bromine sanitizer at a controlled rate.
- E. 214.0 Listing agency See this definition in the UPC and Section 60-13-44 of the CILA.
- **F.** 215.0 Add the following definition: Main drain see main outlet.
- G. 215.0 Main outlet. Change the definition in the USPSHTC to read as follows: The outlet fittings at bottom of a swimming pool, spa or hot tub to transfer water to the recirculating pump (often referred to as the "main drain").
- **H.** 221.0 Shall Delete this text of this definition and see Section 221.0 of the UPC.

[14.8.3.10 NMAC - Rp, 14.8.3.10 NMAC, 11-1-11]

- **14.8.3.11 CHAPTER 3 GENERAL REQUIREMENTS:** See this chapter of the USPSHTC except as provided below.
- A. 302.2 Alternate materials and methods equivalency. Delete this section and see 14.8.2.11, NMAC, New Mexico Plumbing Code, and 14.5.1.11, NMAC, General Provisions.
- B. 303.0 Turnover time. See this section of the USPSHTC except as provided below.
- (1) Delete the text of item (3) and replace with the following: **Public wading pools** one (1) hour or less.
- (2) Add item (4) as follows: Private wading pools two (2) hours or less.
- (3) Change the number of item (4) to read (5) and change the number of item (5) to read (6).
- C. 304.0 Pumps. See this section of the USPSHTC except as follows: 304.2 Pumps shall be mounted on a substantial rigid baseplate securely attached to a concrete floor, housekeeping pad, or per manufacturer's recommendations in a manner that will eliminate strain on the piping.
- **D.** 309.0 Pool, spa and hot tub fittings. See this section of the USPSHTC except as provided below.
- (1) 309.2 Surface skimmers. Delete the text of this section of the USPSHTC and replace with the following: Listed surface skimmers, where used in lieu of perimeter overflow system, shall be installed in strict accordance with the manufacturer's installation instructions. For public pools, there shall be not less than one (1) surface skimmer for each five-hundred

- (500) square feet (46.45m2) of surface area with a minimum of two (2) surface skimmers. For public spas and hot tubs, there shall be a minimum of one (1) skimmer for each one hundred fifty (150) square feet of surface area, or fraction thereof. For private pools, spas and hot tubs, there shall be not less than one (1) skimmer for each nine-hundred (900) square feet (84m2) of surface area or fraction thereof. In public pools, spas and hot tubs, not less than eighty (80) percent of the turnover rate through the surface skimmers shall be provided.
- (2) 309.4 Pool, spa and hot tub outlets. Delete the text of this section of the USPSHTC and replace with the following: Pool, spa or hot tub outlets and their covers shall be listed to the entrapment protection of the ASME/ANSI A112.19.8 performance standard.
- (a) 309.4.2 See this section of the USPSHTC and add the following subsections:
- (i) 309.4.2.1 Public pools shall have, for each pump suction line, a minimum of two (2) hydraulically balanced, fully submerged suction outlets located at the lowest point of the floor and separated by a minimum of three (3) feet measured from center to center of the suction pipes.
- (ii) 309.4.2.2 Public spas and hot tubs shall have a minimum of two (2) fully submerged suction outlets. The outlets shall be separated by a minimum of three (3) feet measured from center to center of the suction pipes or located on two (2) separate planes; i.e., one (1) on the floor and one (1) on a vertical wall. The outlet located on the vertical wall shall be located below the seating bench of the spa or hot tub.
- **(b) 309.4.3** Delete the text of this section of the USPSHTC and replace with the following: Suction cleaner device outlets shall be of a self-closing type and remain covered when not in use so as not to pose an entrapment hazard.
- (c) 309.4.4 Safety vacuum release systems. See this section of the USPSHTC except add the following text to the beginning of the sentence: "Manufactured safety vacuum release systems for"
- (3) 309.6 Add this new section and sub-sections to the USPSHTC. Inlets. Public pool, spa and hot tub inlets. Pool, spa or hot tub inlets shall be sized, arranged, and be of an adjustable type to provide uniform circulation of water and effective distribution of disinfectant residual.
- (a) 309.6.1 Inlets shall not protrude from the wall in a manner that poses a hazard.
- **(b) 309.6.2** At a minimum, there shall be one (1) inlet per five-hundred (500) hundred square feet of surface area or per fifteen thousand (15,000) gallons of water, whichever results in a greater number of

- inlets.
- (c) 309.6.3 For pools, spas or hot tubs wider than thirty (30) feet, multiple inlets shall be provided on opposite ends.
- E. 310.0 Materials. See this section of the USPSHTC except as follows: 310.8 See this section of the USPSHTC except delete the following text from the exception: "Plastic materials for water service piping outside underground shall have a blue insulated copper tracer wire or other approved conductor installed adjacent to the piping. Access shall be provided to the tracer wire or the tracer wire shall terminate above ground at each end of the nonmetallic piping. The tracer wire shall be not less than 18 AWG and the insulation type shall be suitable for direct burial".
- F. 312.0 Wastewater disposal. See this section and add the following new section: 313.8 Sand interceptors may be omitted as in sections 1009.1 and 1016.0 UPC 2006, if the disposal of waste water from a pool is filtered or reclaimed and it can be proven to the authority having jurisdiction that it will not introduce levels of sand or solids, or other ingredients that may be harmful to the building drainage system, the public or private sewer, or to public or private sewage disposal.
- **G.** 317.0 Electrical systems. See this section of the USPSHTC and add the following text to the end of this section: "and the New Mexico electrical code (NMEC)".
- H. 320.0 Protection of piping, materials and structures. See this section of the USPSHTC except as follows:
- (1) 320.9.3 See this section of the USPSHTC except change the first sentence to read as follows: In exterior walls and where piping passes through concrete floors in interior spaces, the annular space between sleeves and pipes shall be sealed and made watertight, as approved by the authority having jurisdiction.
- (2) Add the following new section: 320.12 Protection against damage. Plastic materials for water service piping outside underground shall have a blue insulated copper tracer wire or other approved conductor installed adjacent to the piping. Access shall be provided to the tracer wire or the tracer wire shall terminate above ground at each end of the nonmetallic piping. The tracer wire shall be not less than 18 AWG and the insulation type shall be suitable for direct burial.
- [14.8.3.11 NMAC Rp, 14.8.3.11 NMAC, 11-1-11]
- **14.8.3.12 CHAPTER 4 WATER HEATERS AND VENTS.** See this section of the USPSHTC except as provided below.
- A. 410.9 Installation in residential garages.

- (1) 410.9(1) See this section of the USPSHTC except delete the words "unless listed as flammable vapor ignition resistant" at the end of the section.
- (2) 410.9(2) See this section of the USPSHTC.
- (3) 410.9(3) See this section of the USPSHTC.
- B. 411.3 Access to equipment on roofs.
- (1) 411.3.1 See this section of the USPSHTC.
- (2) 411.3.2 See this section of the USPSHTC except after the words in "in height" add the following: except those designated as R-3 occupancies.
- (3) 411.3.3 See this section of the USPSHTC.
- **(4) 411.3.4** See this section of the USPSHTC.
- [14.8.3.12 NMAC Rp, 14.8.3.12 NMAC, 11-1-11]
- **14.8.3.13 CHAPTER 5 FUEL GAS PIPING.** See this section of the USPSHTC except as provided below.
- A. 503.0 Plans required. Delete this section of the USPSHTC except as provided in 14.5.2, NMAC, Permits.
- B. 510.5.2.3 Copper and brass. Delete this section of the USPSHTC and substitute: Copper and brass pipe shall not be used.
- C. 510.5.3.2 Copper and brass. Delete the text of this section of the USPSHTC and substitute with the following: Copper and brass pipe shall not be used.
- D. 511.1.2 Protection against damage.
- requirements. Delete this section and substitute: Underground piping systems shall be installed with a minimum of 18 inches (460 mm) of cover. Where a minimum of 18 inches (460 mm) cannot be provided, the pipe shall be installed in conduit or bridged (shielded).
- (2) 511.1.2.2 Trenches. See this section of the USPSHTC.
- (3) **511.1.2.3 Backfilling.** See this section of the USPSHTC.
- E. 511.12 Electrical bonding and grounding. Delete this section of the USPSHTC and see 14.10.4 NMAC, New Mexico Electrical Code (NMEC).
- F. 511.13 Electrical circuits. Delete this section of the USPSHTC and see 14.10.4, NMAC, New Mexico Electrical Code (NMEC).
- G. 511.14 Electrical connections. Delete this section of the USPSHTC and 14.10.4, NMAC, New Mexico Electrical Code (NMEC).
- H. 512.5 Sediment trap. See this section of the USPSHTC except delete the first sentence and substitute: If a sediment trap, which is not incorporated

as part of the gas utilization equipment, is installed, it shall be installed at the time the equipment is installed and as close to the inlet of the equipment as is practical.

I. 513.0 Liquefied petroleum gas facilities and piping. Delete this section of the USPSHTC and substitute the following: Liquefied Petroleum gas facilities shall comply with Section 19.15.40, NMAC, Liquefied Petroleum Gas Standards, and NMSA 1978, 70-5-1 et seq., liquefied and compressed gases.

[14.8.3.13 NMAC - Rp, 14.8.3.13 NMAC, 11-1-11]

14.8.3.14 CHAPTER 6
PRODUCT AND MATERIALS
STANDARDS. See this section of the
USPSHTC.

[14.8.3.14 NMAC - Rp, 14.8.3.14 NMAC, 11-1-11]

14.8.3.15 APPENDICES. See this chapter of the USPSHTC.

[14.8.3.15 NMAC - Rp, 14.8.3.15 NMAC, 11-1-11]

HISTORY OF 14.8.3 NMAC: History of Repealed Material:

14.8.3 NMAC, 2006 New Mexico Swimming Pool, Spa and Hot Tub Code (filed 10-27-08), repealed 11-1-2011.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

CONSTRUCTION INDUSTRIES DIVISION

TITLE 14 HOUSING AND CONSTRUCTION
CHAPTER 9 M E C H A N I C A L

CODES
PART 6 2000 NEW MEXICO

PART 6 2009 NEW MEXICO SOLAR ENERGY CODE

14.9.6.1 ISSUING AGENCY: Construction Industries Division (CID) of the Regulation and Licensing Department. [14.9.6.1 NMAC - Rp, 14.9.6.1 NMAC, 11-1-11]

14.9.6.2 SCOPE: This rule applies to all contracting work performed in New Mexico on or after November 1, 2011, that is subject to the jurisdiction of CID, unless performed pursuant to a permit for which an application was received by CID before that date.

[14.9.6.2 NMAC - Rp, 14.9.6.2 NMAC, 11-1-11]

14.9.6.3 S T A T U T O R Y AUTHORITY: NMSA 1978 Section 60-13-9 and 60-13-44.

[14.9.6.3 NMAC - Rp, 14.9.6.3 NMAC, 11-1-11]

14.9.6.4 D U R A T I O N : Permanent.

[14.9.6.4 NMAC - Rp, 14.9.6.4 NMAC, 11-1-11]

14.9.6.5 EFFECTIVE DATE: November 1, 2011, unless a later date is cited at the end of a section.

[14.9.6.5 NMAC - Rp, 14.9.6.5 NMAC, 11-1-11]

14.9.6.6 OBJECTIVE: The purpose of this rule is to establish minimum standards for the construction of all solar energy systems in New Mexico.

[14.9.6.6 NMAC - Rp, 14.9.6.6 NMAC, 11-1-11]

14.9.6.7 DEFINITIONS: See 14.5.1 NMAC, General Provisions and chapter 2 of the 2006 uniform solar energy code as amended in 14.9.6.10 NMAC.

[14.9.6.7 NMAC - Rp, 14.9.6.7 NMAC, 11-1-11]

14.9.6.8 ADOPTION OF THE 2009 UNIFORM SOLAR ENERGY CODE:

- A. This rule adopts by reference the 2009 uniform solar energy code (USEC) and all appendices, as amended by this rule.
- **B.** In this rule, the internal numbering of each provision corresponds with the numbering of the 2009 USEC.
- C. This rule is to be applied in conjunction with all the other 2009 New Mexico building codes, including the NMPC, the NMMC the NMCBC, the NMRBC, and the 2008 NMEC.

[14.9.6.8 NMAC - Rp, 14.9.6.8 NMAC, 11-1-11]

14.9.6.9 CHAPTER 1 ADMINISTRATION:

A. 101.0 - Title, purpose, and scope.

- (1) 101.1 Title. Delete this section of the USEC and substitute: This code shall be known as the 2009 New Mexico solar energy code (NMSEC).
- (2) 101.2 Purpose. Delete this section of the USEC and substitute: The purpose of this code is to establish minimum standards for all solar energy systems construction in New Mexico.
- (3) 101.3 Plans required. Delete this section of the USEC and see 14.5.2 NMAC, Permits.
 - (4) 101.4 Scope.

 $\mbox{(a) 101.4.1 See this section of the USEC.}$

(i) 101.4.1.1 Repairs and alterations. See this section of the

USEC.

USEC.

(ii) 101.4.1.2 Maintenance. Delete this section of the

(iii) 101.4.1.3 Existing construction. Delete this section of the USEC.

(iv) 101.4.1.4 Conflicts

between codes. Delete this section of the USEC and see 14.5.1 General Provisions.

- (b) 101.4.2 Additions, alterations, repairs, and replacement. See this section of the USEC.
- (c) 101.4.3 Appendices. All appendices in the USEC are specifically adopted except delete sections D2.2 and D2.3 from appendix D.
- (5) 101.5. Application to existing solar system. See this section of the USEC except delete subsection 101.5.5 Maintenance.
- $\begin{tabular}{lll} B. & 102.0 & & Organization \\ and enforcement. & \\ \end{tabular}$
- (1) 102.1 Authority having jurisdiction. Delete this section of the USEC.
- (2) 102.2 Duties and powers of the authority having jurisdiction.
- (a) 102.2.1 Delete this section of the USEC and see CILA 60-13-8.
- **(b) 102.2.2 Right of entry.** Delete this section of the USEC and see CILA Section 60-13-42.
- (c) 102.2.3 Stop orders. Delete this section of the USEC and see 14.5.2 NMAC, Permits.
- (d) 102.2.4 Authority to disconnect utilities in emergencies. Delete this section of the UPC and see CILA Section 60-13-42.
- (e) 102.2.5 Authority to condemn. Delete this section of the USEC and see 14.5.1 NMAC, General Provisions.
- **(f) 102.2.6 Liability.** Delete this section of the USEC and see CILA Section 60-13-26.
- **(3) 102.3 Violations and penalties.** Delete this section of the USEC and see CILA Section 60-13-1 et seq., and 14.5.3 NMAC, Inspections.
- C. 103.0 Permits and inspections.
 - (1) 103.1 Permits.
- (a) 103.1.1 Permits required. Delete this section of the USEC and see 14.5.2 NMAC, Permits.
- **(b) 103.1.2 Exempt work.** Delete this section of the USEC and see 14.5.2 NMAC, Permits.
- (2) 103.2 Application for permit. Delete this section of the USEC and see 14.5.2 NMAC, Permits.
- (3) 103.3 Permit issuance. Delete this section of the USEC and see 14.5.2 NMAC, Permits.
- **(4) 103.4 Fees.** Delete this section of the USEC and see 14.5.5 NMAC, Fees.

- (5) 103.5 Inspections. Delete this section and table 1-1 of the USEC and see 14.5.3 NMAC, Inspections, except for subsection 103.5.6 Reinspections. See 14.5.5 NMAC, Fees.
- **(6) 103.6 Connection approval.** Delete this section of the USEC and see 14.5.3 NMAC, Inspections.
- (7) 103.7 Unconstitutionality. Delete this section of the USEC and see 14.5.1 NMAC, General Provisions.
- **(8) 103.8 Validity.** Delete this section of the USEC and see 14.5.1 NMAC, General Provisions.
- **(9) Table 1-1 Scheduled of fees.** Delete this section of the USEC and see 14.5.5. NMAC, Fees.

[14.9.6.9 NMAC - Rp, 14.9.6.9 NMAC, 11-1-11]

- **14.9.6.10 CHAPTER 2 DEFINITIONS:** See this chapter of the USEC, except as provided below.
- A. 203.0 "A" Air handling unit Delete this definition from the USEC and see this definition in the UPC.
 - B. 205.0 "C"
- (1) Condenser. Delete the text of this definition and see the definition for this term in the UPC.
- **(2) Condensing unit.** Delete the text of this definition and see the definition for this term in the UPC.
- C. 207.0 "E" Existing work. Delete the text of definition and see section 104.2 of the UMC.
- **D.** 215.0 "M" Mechanical code. Delete the text of this definition and see section 14.5.1 NMAC, General Provisions.

E. 218.0 "P"

- (1) **Plenum.** Delete the text of this definition and see the definition of this term in the UPC.
- **(2) Plumbing code.** Delete the text of this definition and see section 14.5.1 NMAC, General Provisions.
- F 220.0 "R" Roughing In. See this definition in the USEC except add "electrical control wiring" after "piping" in the definition.
- **G.** 221.0 "S" Swimming pool code. Delete the text of this definition and see section 14.5.1 NMAC, General Provisions.

[14.9.6.10 NMAC - Rp, 14.9.6.10 NMAC, 11-1-11]

14.9.6.11 CHAPTER 3
GENERAL REGULATIONS: See this chapter of the USEC except delete subsection 301.2, Alternate Materials and Methods Equivalency, and see 14.8.2.11, NMAC, New Mexico plumbing code and 14.5.1.11, NMAC, General Provisions.
[14.9.6.11 NMAC - Rp, 14.9.6.11 NMAC, 11-1-11]

14.9.6.12 CHAPTER

PIPING: See this chapter of the USEC except in section 404.3 Testing delete the text of this section of the USEC and substitute with the following: the premise owner or responsible person shall have the backflow prevention assembly tested by a certified backflow assembly tester at the time of installation, repair, or relocation and thereafter when required by the *authority having jurisdiction*.

[14.9.6.12 NMAC - Rp, 14.9.6.12 NMAC, 11-1-11]

14.9.6.13 CHAPTER 5 JOINTS AND CONNECTIONS: See this chapter of the USEC.

[14.9.6.13 NMAC - Rp, 14.9.6.13 NMAC, 11-1-11]

14.9.6.14 CHAPTER

THERMAL STORAGE: See this chapter of the USEC except delete **Section 602.3** and see section 1006.3 of the UMC.

[14.9.6.14 NMAC - Rp, 14.9.6.14 NMAC, 11-1-11]

14.9.6.15 CHAPTER

COLLECTORS: See this chapter of the USEC except in **section 701.5 Glass** delete the text of this section of the USEC and substitute with the following: glass used in collector panel construction shall be tempered.

[14.9.6.15 NMAC - Rp, 14.9.6.15 NMAC, 11-1-11]

14.9.6.16 CHAPTER 8
THERMAL INSULATION: See this chapter of the USEC except as provided below.

- A. Section 801General requirements 801.1 Delete the first sentence of this section and substitute the following: "All piping and storage tanks in solar heating systems shall be insulated according to this chapter to minimize heat loss. All duct work in solar heating systems shall be insulated in accordance with Subsection B of 14.9.2.14 NMAC, New Mexico Mechanical Code (NMMC).
- B. Section 803 Ducts. Delete the text of this section and substitute the following: "All duct work in solar heating systems shall be insulated in accordance with Subsection B of 14.9.2.14 NMAC, New Mexico Mechanical Code (NMMC).
- **C. Table 8-5. Insulation of ducts.** Delete this table and notes and see Subsection B of 14.9.2.14 NMAC, New Mexico Mechanical Code (NMMC). [14.9.6.16 NMAC Rp, 14.9.6.16 NMAC,

[14.9.6.16 NMAC - Rp, 14.9.6.16 NMAC 11-1-11]

14.9.6.17 CHAPTER 9 DUCT WORK: See this chapter of the UMC. [14.9.6.17 NMAC - Rp, 14.9.6.17 NMAC,

11-1-11]

11-1-111

14.9.6.18 CHAPTER 10 ELECTRICAL: Delete this chapter of the USEC and see 14.10.4 NMAC, New Mexico Electrical Code.

[14.9.6.18 NMAC - Rp, 14.9.6.18 NMAC, 11-1-11]

14.9.6.19 CHAPTER 11 MATERIAL STANDARDS. See this chapter of the USEC.

[14.9.6.19 NMAC - Rp, 14.9.6.19 NMAC, 11-1-11]

14.9.6.20 APPENDICIES. See this chapter of the USEC. [14.9.6.20 NMAC - Rp, 14.9.6.20 NMAC,

HISTORY OF 14.9.6 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with state records center and archives under: CIC 77-3, 1976 New Mexico Uniform Solar Energy Code, 2/26/77.

CID MB-80-6, 1979 Uniform Solar Energy Code, 4/24/80.

MB-USEC-82-1, 1982 Uniform Solar Energy Code, filed 11/4/82.

MB-USEC-85-1, 1985 Uniform Solar Energy Code, 12/23/85.

MB-USEC-88-1, 1988 Uniform Solar Energy Code, 12/15/88.

MB-USEC-91-1, 1991 Uniform Solar Energy Code, 7/28/92.

History of Repealed Material:

14.9.6 NMAC, Housing and Construction, Mechanical Codes, 2006 New Mexico Solar Energy Code (filed 01-24-2008) repealed 11-1-11.

Other History:

MB-USEC-91-1, 1991 Uniform Solar Energy Code (filed 7/28/92) replaced by 14 NMAC 9.2, 1997 New Mexico Plumbing and Mechanical Code, effective 12/31/98. 14 NMAC 9.2, 1997 New Mexico Plumbing and Mechanical Code (filed 10/30/98) replaced by 14.9.2 NMAC, 2003 New Mexico Mechanical Code, effective 7/1/04. That applicable portion of 14.9.2 NMAC, 2003 New Mexico Mechanical Code (filed 5/27/04) replaced by 14.9.6 NMAC, 2006 New Mexico Solar Energy Code, effective 2/24/08.

14.9.6 NMAC, Housing and Construction, Mechanical Codes, 2006 New Mexico Solar Energy Code (filed 1-24-2008) was replaced by 14.9.6 NMAC, Housing and Construction, Mechanical Codes, 2009 New Mexico Solar Energy Code, effective 11-1-11

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

CONSTRUCTION INDUSTRIES DIVISION

TITLE 14 HOUSING AND CONSTRUCTION

CHAPTER 10 E L E C T R I C A L CODES

PART 4 2011 NEW MEXICO ELECTRICAL CODE

14.10.4.1 ISSUING AGENCY:

The Construction Industries Division of the Regulation and Licensing Department. [14.10.4.1 NMAC - Rp, 14.10.4.1 NMAC, 11-1-11]

14.10.4.2 SCOPE: This rule applies to all contracting work performed in New Mexico on or after November 1, 2011, that is subject to the jurisdiction of CID, unless performed pursuant to a permit for which an application was received by CID before that date.

[14.10.4.2 NMAC - Rp, 14.10.4.2 NMAC, 11-1-11]

14.10.4.3 S T A T U T O R Y AUTHORITY: NMSA 1978 Section 60-13-9

[14.10.4.3 NMAC - Rp, 14.10.4.3 NMAC, 11-1-11]

14.10.4.4 D U R A T I O N : Permanent.

[14.10.4.4 NMAC - Rp, 14.10.4.4 NMAC, 11-1-11]

14.10.4.5 EFFECTIVE DATE:

November 1, 2011, unless a later date is cited at the end of a section.

[14.10.4.5 NMAC - Rp, 14.10.4.5 NMAC, 11-1-11]

14.10.4.6 OBJECTIVE: The purpose of this rule is to establish minimum standards for electrical wiring, as defined in CILA Section 60-13-32, in New Mexico. [14.10.4.6 NMAC - Rp, 14.10.4.6 NMAC, 11-1-11]

14.10.4.7 DEFINITIONS: [Reserved]

14.10.4.8 ADOPTION OF THE 2011 NATIONAL ELECTRICAL CODE:

A. This rule adopts by reference the 2011 national electrical code (NEC), as amended by this rule.

B. In this rule, each provision is numbered to correspond with the numbering of the 2011 national electrical code.

C. This rule is to be applied in conjunction with 14.7.6 NMAC, the 2009 New Mexico Energy Conservation Code. [14.10.4.8 NMAC - Rp, 14.10.3.8 NMAC, 11-1-11]

14.10.4.9 ADMINISTRATION AND ENFORCEMENT:

A. Inspectors. See 14.6.5 NMAC, Inspectors.

B. Disconnect orders. See CILA Section 60-13-42.

C. Stop orders. See 14.5.3 NMAC, Inspections.

D. Unsafe wiring. See 14.5.1 NMAC, General Provisions.

E. Electrical plan review. See 14.5.2 NMAC, Permits.

F. Electrical permit. See 14.5.2 NMAC, Permits.

G. Electrical inspections.

(1) **Inspections required:** See 14.5.3 NMAC, Inspections.

(2) Electrical customer-owned distribution system requirements. See 14.5.3 NMAC, Inspections.

[14.10.4.9 NMAC - Rp, 14.10.4.9 NMAC, 11-1-11]

14.10.4.10 ARTICLE 90 INTRODUCTION. See this article of the NEC.

[14.10.4.10 NMAC - Rp, 14.10.4.10 NMAC, 11-1-11]

14.10.4.11 CHAPTER 1 General.

A. Article 100

Definitions. See this article of the NEC

Definitions. See this article of the NEC **B. Article** 110

Requirements for electrical installations. See this article of the NEC except as provided below.

- (1) Section 110.2 Approval. See this section of the NEC and add the following:
- (a) product listing and labeling electrical wiring, equipment or material approval shall be based on listing and labeling by a nationally recognized testing laboratory recognized by the federal occupational safety and health administration;
- (b) field evaluation electrical wiring, equipment or material that is not listed and labeled, but for which a (UL) safety standard exists may be approved upon certification by a nationally recognized testing laboratory recognized by the federal occupational safety and health administration or by a field evaluation body accredited by the international accreditation service, inc.;
- (c) engineer certification electrical wiring, equipment or material for which a (UL) safety standard does not exist may be approved upon certification by an electrical engineer licensed to practice in New Mexico; such a certification will not be valid unless based on a verification of the

manufacturer's safety and performance test data for the product.

- (2) Section 110.21. Marking. See this section of the NEC and add: all equipment used on circuits over 300 volts between conductors shall have a warning sign either on or adjacent to the equipment. Warning signs shall be made in accordance with ANSI Z535 environmental and safety signs. The language shall read:
- (a) for voltages over 300 volts but less than 600 volts: "480 VOLTS". (Label dimensions shall be 1" x 4"); and
- (b) for voltages over 600 volts and there are exposed parts: "DANGER HIGH VOLTAGE KEEP OUT".
- (3) Section 110.26 Spaces about electrical equipment.
- (a) 110.26 (A) Working space. See this section of the NEC and add the following exception: Disconnects that do not provide over-current, overload, short circuit, or ground fault protection are not required to maintain the dimensions of 110.26(A) (1), (A)(2) and (A)(3) where adequate space is not readily available and the disconnect is permanently labeled "INADEQUATE WORKING SPACE-DO NOT WORK ON WHILE ENERGIZED". The label shall be readily visible on the exterior of the disconnect.
- (b) 110.26 (A) (3) Height of working space. See this section of the NEC and add: Exception No. 3: In underground water well pump enclosures, service equipment or panel boards that do not exceed 200 amperes, operating at 250 volts or less and only feeding equipment associated with the water well enclosure, shall be permitted in spaces where the headroom is less than six and one half feet (6 1/2 ft.) but greater than five feet (5 ft.) provided the enclosure is supplied with a removable lid, that when removed would allow a minimum of six and one half feet (6 1/2 ft.) headroom.
- C. Article 210. Branch circuits. See this article of the NEC except as provided below.
- (1) Section 210.11 Branch circuits required.
- (a) 210.11 (A) Number of branch circuits. See this section of the NEC and add: In dwelling units, branch circuits for 125-volt, 15- and 20- ampere general purpose lighting and receptacles outlets shall be limited to a maximum of ten (10) lighting and/or receptacle outlets per branch circuit. Single and duplex receptacle outlets are considered to be one receptacle outlet. Exception: Branch circuits serving only lighting loads may be calculated per article 220 of the national electrical code.

(i) (1) Small appliance branch circuits. See this section of the

NEC and add: not more than four (4) 20 ampere 125 volt receptacle outlets shall be connected to these circuits. Single and duplex receptacle outlets are considered to be one receptacle outlet. Exception: small appliance circuits that supply only dining area receptacles may serve not more than six (6) receptacle outlets.

(ii) (2) Laundry branch

circuits. Delete the text of this section of the NEC and substitute: in addition to the number of branch circuits required by other parts of this section, at least one additional 20-ampere branch circuit shall be provided to supply the laundry receptacle outlet. Such circuits shall have no other outlets.

- (2) Section 210.19 Conductors minimum ampacity and size. See this section of the NEC and add the following to subsection (A) Branch circuits not more than 600 volts: (1) General: add: conductors for branch circuits shall be sized to prevent excessive voltage drop. (2) General purpose branch circuits with more than one receptacle. Conductors of general purpose branch circuits supplying more than one receptacle outlet for cord-and-plug connected portable loads shall have an ampacity of not less than the rating of the branch circuit and shall be not less than 12 AWG.
- (3) Section 210.52 Dwelling unit receptacle outlets.
- (a) 210.52 (A) General provisions. (2) Wall space. See this section of the NEC and add: exception: free-standing cabinets designed to be used as an eating or drinking bar where stools or chairs are pulled up to a counter top which extends at least one (1) foot from the front of the cabinet, shall not be considered as wall space.
- (b) 210.52 (G) Basement, garages and accessory buildings. See this section of the NEC and add: receptacle outlets must be installed a minimum of eighteen (18) inches above finished floor, in attached or detached garages.
- $\begin{array}{ccc} & (4) & Section & 210.70 & Lighting \\ outlets \ required. & \end{array}$
- (a) 210.70 (A) (2) Dwelling units-additional locations. See this section of the NEC and add a new subsection as follows: (d) on single family dwellings at least one wall switch, located within five (5) feet from each entrance or exit or automatic lighting control such as a motion detector shall be installed to control exterior illumination.
- (b) 210.70 (A) (3) Dwelling units storage or equipment spaces. See this section of the NEC and add: at least one (1) switched lighting outlet shall be installed in all accessible attics and crawl spaces adjacent to the usual point of entry.
- (c) 210.70 (C) Other than dwelling units. See this section of the NEC and add: at least one (1) switched lighting outlet shall be installed in all accessible

attics and crawl spaces adjacent to the usual point of entry.

- Article 215. Feeders. D. **Section 215.1. Scope.** See this section of the NEC and add: approved wiring methods for feeders: nonmetallic-sheathed cable types NM, NMC and NMS (Article 334), and service entrance cable type SER (Article 338), shall be permitted to be used for feeders in dwelling units providing that the cables shall not pass through or under any other dwelling unit(s). Underground feeder and branch circuit cable type UF cable (Article 340) shall be permitted to be used underground for any occupancy, and indoors only in accordance with nonmetallicsheathed cable (Article 334) providing that the cable shall not pass through or under any other dwelling unit(s).
- **E.** Article 225. Outside branch circuits and feeders. See this article of the NEC except as follows.
- (1) Section 225.19 Clearance from buildings for conductors of not over 600 volts nominal-above roofs. (A) Above roofs. See this section of the NEC but delete exception no. 2 in its entirety.
- (2) Section 225.32 Location. See this section of the NEC except as follows.
- (a) Add the following provision: the disconnecting means shall be installed at a readily accessible location. Where the disconnecting means is located outside the building or structure served, the disconnecting means enclosure shall be installed within ten (10) feet from the building or structure and visible, or on the exterior wall of the building or structure served. Where the disconnecting means is installed inside the building or structure served, the disconnecting means enclosure shall be located within forty eight (48) inches from where the feeder conductor raceway enters the building or structure.
- (b) Delete the text of exception no. 1 and substitute: for industrial installations under single management, where documented safe switching procedures are established and maintained for disconnection, the disconnecting means shall be permitted to be located elsewhere on the premises.
- F. Article 230. Services. See this article of the NEC except as provided below.
- (1) Section 230.24 Clearances. (A) Above roofs. Delete exception no. 2 in its entirety.
- (2) Section 230.28. Service masts as supports. See this section of the NEC and add: where a service mast is used for the support of service drop conductors, it shall be a minimum two inch (2") rigid metal conduit, intermediate metal conduit or comply with local utility requirements.
- (3) Section 230.31 Size and rating. (A) General. See this section of

the NEC and add: where the underground service lateral is customer owned, the service lateral conductors shall be sized to prevent excessive voltage drop. The maximum voltage drop on the service lateral conductors shall not exceed five percent (5%). For the purpose of this calculation, the ampacity shall be based on the calculated demand load of the building or structure served. Customer owned includes all non-utility owned or operated service lateral conductors.

- (4) Section 230.43. Wiring methods for 600 volts, nominal, or less. See this section of the NEC but delete subsection (1) open wiring on insulators, and subsection (6), Electrical nonmetallic tubing (ENT).
- (5) Section 230.54 Overhead service locations. See this section of the NEC and add a new section as follows: (H) overhead service support shall comply with the serving utility requirements or be at least six inch by six inch (6" x 6") pressure-treated timber or equivalent round poles (minimum 6"diameter crown) installed to a depth not less than four (4) feet below finish grade.
- (6) Section 230.70 Service equipment disconnecting means.
- (a) 230.70 General. (A) Location. See this section of the NEC and add: the disconnecting means for each occupant of a multiple occupancy building shall be grouped at a common location.
- (b) 230.70 General. **(A)** Location. (1) Readily accessible location. Delete the text of this section of the NEC and substitute: (1) service disconnects located outside the building or structure. Where the service disconnect is located outside of the building or structure it shall be located in a readily accessible location within 48 inches of the metering equipment. Remote service disconnects that are located not more than 10 feet from the building or structure shall be considered to be located on the building or structure. Exception: Where metering equipment is installed at the utility transformer, the disconnecting means on the outside of the building shall be installed within 48 inches from where the service conductors emerge from the earth. (2) Service disconnects located inside the building or structure. Where the service disconnect is located inside of a building or structure it shall be located in a readily accessible location within 48 inches from the metering equipment or the service equipment enclosure shall be installed within 48 inches of where the service conductors penetrate the building or structure.
- (7) Section 230.72 Grouping of service disconnects. (A) General. See this section of the NEC and add: all building or structure disconnects of each service shall be grouped at one location and shall be separated by the least practical distance, not

to exceed an overall distance of twenty (20) feet

- **G.** Article 250 Grounding and bonding. See this article of the NEC except as provided below.
- (1) Section 250.50 Grounding electrode system. See this section of the NEC and add: on new construction, a concrete encased electrode shall be considered available and installed in compliance with NEC 250.52(A) (3). If a concrete encased electrode is not present, then at least 20 feet of 2 AWG bare copper in direct contact with the earth at a depth below the earth's surface of not less than thirty (30) inches shall be installed in a continuous trench that is at least twenty (20) feet in length, augmented with a minimum of two (2), eight (8) foot grounds rods one at each end of the 2 AWG conductor.
- (2) Section 250.52 (A) Grounding electrodes. (5) Rod and pipe electrodes. See this section of the NEC but delete subsection (a) in its entirety.
- (3) Section 250.52 Grounding electrodes. (B) (1) Not permitted for use as grounding electrodes. Delete the text of this section of the NEC and substitute: Gas piping shall not be used as a grounding conductor or electrode. This does not preclude the bonding of metallic piping to a grounding system.
- (4) Section 250.53 Grounding electrode system installation. (C) Bonding jumper. See this section of the NEC and add: Grounding electrode bonding jumpers shall be protected from physical damage. When a bonding jumper conductor is buried to provide physical protection, a minimum cover of 24 inches shall be provided in accordance with NEC Table 300.5 column 1 all locations not specified below.
- (5) Section 250.56 Resistance of rod, pipe and plate electrodes. Delete the text of this section of the NEC and substitute: a single electrode consisting of a rod or plate shall be augmented by one additional electrode of any of the types specified by 250.52 (A) (2) through (A) (7). Where multiple rod or plate electrodes are installed to meet the requirements of this section, they shall be not less than six (6) feet apart. Exception: A single electrode consisting of a rod or plate may be used on temporary construction services rated 200 amperes or less.
- (6) Section 250.66 Size of alternating-current grounding electrode conductor. (B) Connections to concrete-encased electrodes. See this section of the NEC and add: the grounding electrode conductor shall not be smaller than 4 AWG copper.
- (7) Section 250.104. Bonding of piping systems and exposed structural steel. (B) Other metal piping. See this section of the NEC and add: CSST gas piping

- systems shall be bonded to the electrical service grounding electrode system at the point where the gas service enters the building. The bonding jumper shall not be smaller than (6) AWG copper wire.
- (8) Section 250.106. Lightning protection systems. See this section of the NEC and add: Where a lightning protection system is installed, the bonding of the gas piping system shall be in accordance with NFPA 780, standard for installation of lightning protection systems.
- (9) Section 250.118. Types of equipment grounding conductors. See this section of the NEC and add the following new subsection: (15) an equipment grounding conductor shall be installed in all branch circuit and feeder raceways on or above a roof. The equipment grounding conductor shall be sized in accordance with table 250.122.
- **H. Article 300. Wiring methods.** See this article of the NEC except as provided below.
- (1) Section 300.11 Securing and supporting. See this section of the NEC except as provided below.
- (a) 300.11(A) Secured in place. See this section of the NEC and add: independent support wires shall be limited to support of flexible wiring methods from the last means of support or junction box for connections within an accessible ceiling to luminaire(s) or equipment served.
- (b) 300.11 (A) (1). Fire rated assemblies. Delete the text of this section of the NEC and substitute: the ceiling support system shall be permitted to support listed junction boxes and/or support brackets that have been tested as part of a fire-rated assembly.
- (c) 300.11 (A) (2). Non-fire rated assemblies. Delete the text of the exception and substitute: the ceiling support system shall be permitted to support listed junction boxes and/or support brackets where installed in accordance with the ceiling system manufacturer's instructions.
- (2) Section 300.14. Length of free conductors at outlets, junctions, and switch points. Delete the text of this section of the NEC and substitute: at least six (6) inches of free conductor, measured from the point in the box where it emerges from its raceway or cable sheath, shall be left at each outlet, junction, and switch point for splices or the connection of luminaire (fixtures) or devices. Where the opening of an outlet, junction, or switch point is less than eight (8) inches in any dimension, each conductor shall be long enough to extend at least six (6) inches outside of the opening.
- I. Article 310. Conductors for general wiring. See this article of the NEC and add the following new subsection 310.10 (J) Conductor material. The use of aluminum current carrying

- conductors shall be of the AA-8000 series or equivalent and shall be limited to size 8 AWG or larger. Exception: the equipment-grounding conductor shall be limited to size 10 AWG or larger if in a listed cable assembly.
- J. Article 314. Outlet, device, pull, and junction boxes; conduit bodies; fittings; and handhole enclosures. See this article of the NEC except delete the exception from subsection 314.27(A) (1) wall outlets- boxes at luminaire (lighting fixture) outlets.
- K. Article 334. Nonmetallic-sheathed cable: Types NM, NMC and NMS.
- (1) Section 334.10 Uses permitted. See this section of the NEC but delete subsection (4) and (5) in its entirety.
- (2) Section 334.12 Uses not permitted. (A)Types NM, NMC, and NMS. See this section of the NEC and add the following subsection: (11) type NM, NMC, or NMS shall not be installed in buildings, or structures such as stores, professional offices, motels, hotels, and other occupancies classified as R-1, R-4, commercial or industrial.
- L. Article 340. Underground feeder and branch circuit cable: type UF. See this article of the NEC except as provided below.
- (1) Section 340.10 Installation uses permitted. See this section of the NEC and add the following new subsections:
- (a) (8) type UF cable shall be permitted to be imbedded in adobe construction;
- **(b)** (9) type UF cable, or an approved electrical raceway shall be installed on straw bale residential construction.
- (2) Section 340.12 Installation uses not permitted. See this section of the NEC and add the following new subsection: (12) Type UF cable shall not be installed in buildings or structures such as stores, professional offices, motels, hotels, or other occupancies classified as commercial or industrial.
- M. Article 352 Rigid polyvinyle chloride conduit: Type PVC. See this article of the NEC and add the following to section 352.10 uses permitted. (F) Exposed: PVC conduit, type schedule 40 shall not be used where the raceway is exposed and under eight (8) feet from finished floor or grade.
- N. Article 358 Electrical metallic tubing: Type EMT. See this article of the NEC and add the following section to 358.12 uses not permitted: (7) electrical metallic tubing shall not be permitted to be installed underground or in concrete slabs or walls which are in contact with the earth.
- O. Article 394 Concealed knob and tube wiring. See this article of the NEC and add the following to section 394.12

uses not permitted: concealed knob and tube wiring shall not be permitted to be installed except by special written permission from the electrical bureau.

P. Article 422. Appliances. See this article of the NEC and add the following to section 422.19. evaporative cooling units: where an evaporative cooler is installed, a listed raceway shall be installed during rough-in from the control point to the evaporative cooler location. The raceway shall contain an equipment-grounding conductor from the control point outlet box to the junction box at the unit. The equipment grounding conductor shall be sized in accordance with table 250.122.

- Q. Article 550. Mobile homes, manufactured homes and mobile home parks. See this article of the NEC except as provided below.
- (1) Section 550.32 Service equipment. (A) Mobile home service equipment. Delete the text of this section of the NEC and substitute the following: the mobile home service equipment shall be located adjacent to the mobile home and not mounted in or on the mobile home. The service equipment shall be located in sight from and not more than one hundred (100) feet from the exterior wall of the mobile home it serves. The service equipment shall be permitted to be located elsewhere on the premises, provided that a disconnecting means marked "suitable for use as service equipment" is located in sight from and not more than thirty (30) feet from the exterior wall of the mobile home it serves. Grounding at the disconnecting means shall be in accordance with 250.32.
- (2) Section 550.32 Service equipment. See this section of the NEC and add the following new subsections.
- (a) (H) Required receptacle. A 125 volt 15 or 20 amp receptacle outlet shall be installed with ground fault circuit interruption protection at each remote mobile home or manufactured home service equipment, or the local external disconnecting means permitted in 550.32 (A).
- **(b) (I) Overhead services.** Overhead service support shall comply with the serving utility requirements or be at least six inch by six inch (6" x 6") pressure-treated timber or equivalent round poles (minimum 6"diameter crown) installed to a depth not less than four (4) feet below finish grade.
- R. Article 800. Communications circuits. See this article of the NEC and add the following to Section 800.156: Any exterior wall penetration shall be installed in a listed raceway.

[14.10.4.11 NMAC - Rp, 14.10.4.11 NMAC, 11-1-11]

14.10.4.12 S M O K E

DETECTORS. For smoke detectors, refer to the latest adopted edition of the building code. Smoke detectors installed in new single family dwellings shall be served by a single source. When two (2) or more smoke detectors are required in a dwelling unit, they shall be interconnected with a multi-conductor cable assembly. Location and power back-up requirement shall be in accordance with the latest adopted edition of the building code.

[14.10.4.12 NMAC - Rp, 14.10.4.12 NMAC, 11-1-11]

14.10.4.13 A C C E S S I B I L I T Y REQUIREMENTS FOR PERSONS WITH DISABILITIES. Add: Electrical device installation shall comply with accessibility codes adopted for New Mexico. [14.10.4.13 NMAC - Rp, 14.10.4.13 NMAC, 11-1-11]

14.10.4.14 NIGHT SKY PROTECTION ACT. Outdoor lighting shall comply with the Night Sky Protection Act

[14.10.4.14 NMAC – Rp, 14.10.4.14 NMAC, 11-1-11]

14.10.4.15 RESIDENTIAL ENERGY EFFICIENCY. See 14.7.6
NMAC, the 2009 New Mexico Energy
Conservation Code.

[14.10.4.15 NMAC - Rp, 14.10.4.15, 11-1-11]

14.10.4.16 COMMERCIAL ENERGY EFFICIENCY. See 14.7.6 NMAC, the 2009 New Mexico Energy Conservation Code.

[14.10.4.16 NMAC - Rp, 14.10.4.16 NMAC, 11-1-11]

HISTORY OF 14.10.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records, state records center and archives under:

CIC 71-1, 1971 National Electrical Code, filed 12-01-71

CIC71-2, 1972 New Mexico Electrical Code, filed 12-1-71

CID 78-1, 1978 New Mexico Electrical Code, filed 01-31-78

CID EB 81-3, State of New Mexico Electrical Code Revised to July 24, 1981, Technical Provision based on the 1981 National Electrical Code and Related Codes and Standards, filed 11-24-81

CID EB 84-1, State of New Mexico Electrical Code, filed 05-11-84

CID NMEB 93-1, State of New Mexico Electrical Code 1993, filed 02-25-93.

History of Repealed Material:

14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico

Electric Code (filed 01-15-97), repealed 07-01-99.

14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 06-01-99), repealed 12-01-00.

14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 10-16-2000), repealed 7-30-02.

14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 7-30-02) repealed 7-1-04

14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 05-27-04) - part name later changed to 2002 State of New Mexico Electrical Code (filed 10-18-04) both repealed 07-01-05.

14.10.4 NMAC, Housing and Construction, Electrical Codes, 2005 New Mexico Electrical Code (filed 05-04-2005) repealed 7-1-08.

14.10.4 NMAC, Housing and Construction, Electrical Codes, 2008 New Mexico Electrical Code (filed 1-24-2008) repealed 8-1-11.

14.10.4 NMAC, Housing and Construction, Electrical Codes, 2008 New Mexico Electrical Code (filed 06-15-2011) repealed 11-1-11.

Other History:

CID NMEB, State of New Mexico Electric Code (filed 2-25-93) replaced by 14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electric Code, effective 01-31-97.

14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electric Code (filed 01-15-97) replaced by 14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code, effective 07-01-99.

14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 06-01-99) replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code, effective 12-01-00.

14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 10-16-2000) replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code, effective 07-30-02. 14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Codes, State of New Mexico Electrical Code (filed 07-01-02) replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Codes, State of New Mexico Electrical Code, effective 07-01-04.

14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 05-27-04) and part name later changed to "2002 State of New

Mexico Electrical Code" (filed 10-18-04) replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2005 New Mexico Electrical Code, effective 07-01-05. 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2005 New Mexico Electrical Code (filed 05-04-2005) was replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2008 New Mexico Electrical Code, effective 7-1-08. 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2008 New Mexico Electrical Code (filed 1-24-2008) was replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2008 New Mexico Electrical Code, effective 8-1-11. 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2008 New Mexico Electrical Code (filed 6-15-2011) was replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2011 New Mexico Electrical Code, effective 11-1-11.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

CONSTRUCTION INDUSTRIES DIVISION

This is an amendment to 14.6.6 NMAC, Section 10, effective 11-01-11.

14.6.6.10 E L E C T R I C A L CLASSIFICATIONS.

A. General information.

- (1) A journeyman certificate of competence in the appropriate trade classification for the work to be performed is required of all individuals performing electrical wiring; provided however, that an apprentice, as defined in Section 60-13-2 of the act, may work under the direct supervision of a validly certified journeyman, as defined in Section 60-13-2 of the act, who is employed by a validly licensed person, as defined in Section 60-13-2 of the act, or a holder of a valid annual permit. Journeyman certifications shall be issued such that the certificates parallel the electrical license classification numbers and scopes. Ratio of unregistered apprentices. The ratio of certified journeyman to unregistered apprentices must not exceed:
- (a) one journeyman to two unregistered apprentices on commercial or industrial work;
- (b) one journeyman to two unregistered apprentices on commercial or industrial special systems low-voltage work:
- $\begin{tabular}{ll} \textbf{(c)} & \mbox{one journeyman to three} \\ \mbox{unregistered apprentices on residential work.} \end{tabular}$
- (2) Conduit installation: All conduit installations within, or on, buildings shall be performed by a contractor holding a EE-98 license, except where ER-1 licensees

- and journeymen are installing conduit that is incidental to residential wiring. Specialty electrical license holders (ES-1, 2, 3, and 7) shall not install conduit within, or on, buildings.
- (3) Electrical contracting defined: The definition of contracting is set forth in Section 60-13-3 of the act, and nothing in this rule shall be construed to conflict with that definition. However, for the purposes of clarity in this rule, contracting is understood to include installations, alterations, repairs, servicing and maintenance involving electrical work.
- (4) Electrical customer-owned distribution systems are subject to all adopted codes, standards, and regulations. Customer-owned distribution systems include all (non-utility owned or operated) overhead or underground primary or secondary voltage electrical power line construction, installation, alteration, repairs, and maintenance.
 - B. License classifications.
 - (1) Residential and commercial.
- (a) **EE-98.** Residential and commercial electrical wiring 5000 volts, nominal or less. Requires four years experience. [Covers all electrical work, including work identified in less comprehensive electrical classifications, premises wiring systems 600 volts, nominal, or less, underground distribution raceway systems regardless of voltage, and wiring systems and terminations 600 volts, nominal, or less, with the exception of additional work identified under the EL-1 classification.] Includes all electrical wiring operating at 5000 volts, nominal, or less, electrical wiring identified in electrical specialty classifications ES-1, ES-2, ES-3 and ES-7, residential electrical wiring identified in classification ER-1, and only trenching and ductwork associated with classification EL-1. Does not include electrical wiring defined in the EL-1 classification other than trenching and duct work as specified above. May bid and contract as the prime contractor of an entire project provided the electrical contractor's portion of the contract, based on dollar amount, is the major portion of the contract.
- (b) ER-1. Residential electrical wiring. Requires two years experience. Includes one- and two-family dwelling units and multi-family dwellings when all such units are all on the ground floor with no occupancies above or below, as set forth in 14.10.4 NMAC. May not install wiring for commercial use, such as motels, hotels and similar occupancies. May not contract for more than four (4) dwelling units in any single building or structure.
- (c) EL-1. Electrical distribution [systems, including] and transmission [lines] systems over 5000 volts, nominal. Requires four years experience. Includes all

electrical wiring operating at over 5000 volts, nominal, including overhead or underground electrical distribution and transmission [Hines and] circuits, equipment, associated towers, tower foundations and other supporting structures, trenching and ductwork and substations and terminal facilities. [Interior wiring of buildings housing any of the above equipment requires an EE-98 license.] Does not include any electrical wiring specified on other electrical classifications EE-98, ER-1, ES-1, ES-2, ES-3 or ES-7.

(2) Specialty licenses.

- (a) ES-1. Electrical signs and outline lighting. Requires two years experience. Electrical signs and outline lighting, including electrical wiring to connect signs installed where a "sign circuit" has been provided within ten (10) feet, and concrete for the foundation of poles, and build structures for the support of such signs. Outline lighting is an arrangement of incandescent lamps or gaseous tubes to outline and call attention to certain features such as the shape of a building or the decoration of a window and may or may not contribute to the general illumination of an area.
- (b) ES-2. Cathodic protection and lightening protection systems. Requires two years experience. Electrically activated systems to prevent galvanic damage to metallic pipelines or structures, usually underground and electrical work involved in the equipment for connection rectifier systems. Also includes lightning protection systems. May not install the service riser, main service or service grounding.
- (c) ES-3. Low voltage special systems (under 50 volts). Requires two years experience. Public address or other sound, voice communication systems normally involving low energy signal circuits. Also, electrical burglar and fire alarm systems, computer data systems, one and two family and multifamily dwelling telephone systems and cable TV systems normally involving coaxial cable for the purpose of transmitting R.F. signals and other intelligence by wire and cable. Includes other low voltage specialty systems such as, but not limited to, door and gate operated control circuits, and temperature control circuits. An installer of TVROs (dishes) is not required to have a contractor's license when the installation is in a single-family dwelling and does not require the use of 120 volts for tracking.
- (d) ES-7. Telephone communication systems. Requires two years experience. In-plant and outplant telephone systems, telephone interconnections in public or privately owned buildings, computer data systems and underground cables or aerial supporting structures, trenching, duct work, terminal facilities, repeaters, including the installation of instruments at their terminating locations.

Interior wiring of a building housing any of the above equipment requires an EE-98 classification. **Note**: Refer to GF-9 classification for additional underground telephone cable installations. The GF-9 classification does not include electrical raceway installation.

- C. Journeyman classifications.
- (1) **EE-98J. Journeyman** residential and commercial electrical. Requires four years experience.
- (2) ER-1J. Journeyman residential wiring. Requires two years experience.
- (3) EL-1J. Journeyman electrical distribution systems, including transmission lines. Requires four years experience.
- (4) ES-1J. Journeyman electrical signs and outline lighting. Requires two years experience.
- (5) ES-2J. Journeyman cathodic protection and lightening protection systems. Requires two years experience.
- (6) ES-3J. Journeyman sound, intercommunication, electrical alarm systems, and systems 50 volts and under. Requires two years experience.
- (7) ES-7J. Journeyman telephone communication systems and telephone interconnect systems. Requires two years experience.

[14.6.6.10 NMAC - Rp, 14.6.6.12 NMAC, 2-1-06; A, 05-01-10; A, 11-01-11]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

CONSTRUCTION INDUSTRIES DIVISION

This is an amendment to 14.9.2 NMAC, Section 14, effective 11-01-11.

14.9.2.14 CHAPTER 6 DUCT SYSTEMS: See this chapter of the UMC except as follows.

- A. Section 604.7. Location of ducts. Duct work shall not be installed in exterior walls or exterior to the thermal envelope unless the insulation of the duct work meets or exceeds the insulation requirement applicable to the exterior walls of the building.
- B. Section 604.3 Factory-made air ducts. See this section of the UMC [and add the following text to the end of the third paragraph: The use of flexible duct shall be limited to supply- and return-air run-outs of not more than 12 feet in length. Flexible duct shall not be used for the main supply or return-air plenum].
 - **C.** Section 605.0

Insulation of ducts. See this section of the UMC except as follows: Delete **Tables 6**, **6A**, **and 6B**. **Minimum duct insulation R values**, and replace with the following:

- (1) Residential duct:
- (a) Supply ducts in attics shall be insulated to a minimum of R-8.
- **(b)** All other ducts shall be insulated to a minimum R-6.

(2) Commercial duct:

- (a) All supply and return air ducts and plenums located in unconditioned spaces shall be insulated to a minimum of R-5.
- **(b)** All supply and return air ducts and plenums located outside the building shall be insulated to a minimum of R-8.
- (c) All supply and return air ducts and plenums located within a building envelope assembly shall be separated from the building exterior or unconditioned or exempt spaces by a minimum of R-8 insulation.

(3) Exceptions:

- (a) Buried ducts for combination systems will be required to be insulated to a minimum of R-3.5.
- **(b)** On commercial ducts: when located within the equipment
- (c) On commercial ducts: when the design temperature difference between the interior and exterior of the duct or plenum does not exceed 15 degrees F (8C).
- **D.** Section 604.2. Metal ducts. See this section of the UMC and add the following to the last sentence of the second paragraph, "and be installed so as to support the weight of the concrete during encasement."
- E. Section 609.0 Automatic shutoffs: See this section of the UMC and add the following to the exception: (6) Automatic shutoffs are not required on evaporative coolers that derive all of their air from outside the building.

[14.9.2.14 NMAC - Rp, 14.9.2.14 NMAC, 8-1-11; A, 11-1-11]

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 4, 2011. 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.

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department will receive public comment for the New Mexico State plan for administration of the Temporary Assistance for Needy Families (TANF) and file the plan with the Federal Department of Health and Human Services, Administration for Children and Families (ACF). The hearing will be held at 11:00 am on November 30, 2011. The hearing will be held at the Income Support Division conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 120 on the lower level.

The Department proposes the New Mexico TANF State plan covering the period of January 1, 2012 to December 31, 2014. The 45-day comment period will begin October 17, 2011 and end at 5:00 P.M. on November 30, 2011. All comments received during the comment period will receive consideration for the New Mexico TANF State plan.

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

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

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 pm on November 30, 2011. Please send comments to:

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

Interested persons may also address comments via electronic mail to: Vida.Tapia-Sanchez@state.nm.us

End of Other Related Material Section

Submittal Deadlines and Publication Dates 2011

Volume XXII	Submittal Deadline	Publication Date
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

Submittal Deadlines and Publication Dates 2012

Volume XXIII	Submittal Deadline	Publication Date
Issue Number 1	January 3	January 17
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 15
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Issue Number 6	March 16	March 30
Issue Number 7	April 2	April 16
Issue Number 8	April 17	April 30
Issue Number 9	May 1	May 15
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Issue Number 20	October 16	October 30
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 3	December 14
Issue Number 24	December 17	December 31

The *New Mexico Register* is the official publication for all notices of rule making, proposed rules, adopted rules, emergency rules, and other material related to administrative law. 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.

The New Mexico Register is available free online at **http://www.nmcpr.state.nm.us/nmregister.**For further information, call 505-476-7907.