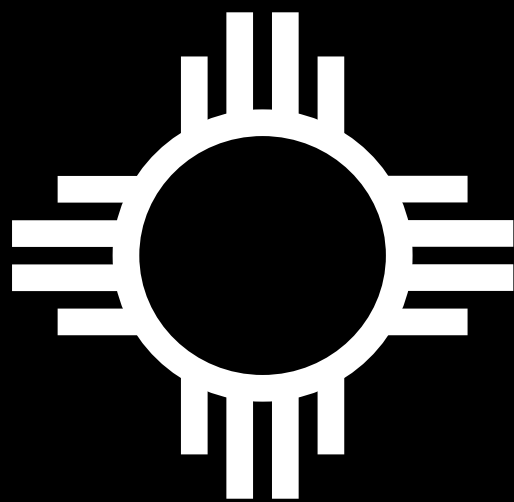


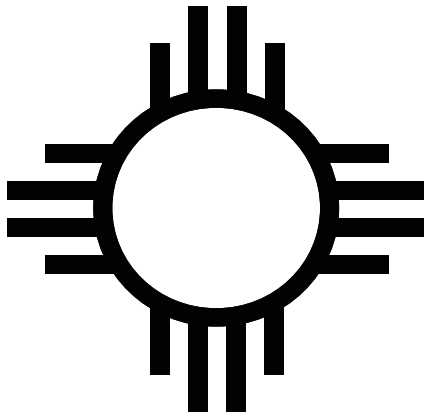
**NEW
MEXICO
REGISTER**



Volume XXII
Issue Number 20
October 31, 2011

New Mexico Register

Volume XXII, Issue Number 20
October 31, 2011



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

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Administrative Law Division
Santa Fe, New Mexico
2011

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New Mexico Register

Volume XXII, Number 20

October 31, 2011

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Notices of Rulemaking and Proposed Rules

**NEW MEXICO
ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
OIL CONSERVATION DIVISION**

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL
RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION
SANTA FE, NEW MEXICO**

The State of New Mexico, through its Oil Conservation Commission hereby gives notice pursuant to law and Commission rules of the following meeting and public hearing to be held at 9:00 A.M. on **November 17, 2011**, in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, before the Oil Conservation Commission. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing please contact Commission Clerk Florene Davidson at (505) 476-3458 or through the New Mexico Relay Network (1-800-659-1779) by **November 7, 2011**. Public documents can be provided in various accessible forms. Please contact Ms. Davidson if a summary or other type of accessible form is needed. A preliminary agenda will be available to the public no later than two weeks prior to the meeting. A final agenda will be available no later than 24 hours preceding the meeting. Members of the public may obtain copies of the agenda by contacting Ms. Davidson at the phone number indicated above. Also, the agenda will be posted on the Oil Conservation Division website at www.emnrd.state.nm.us.

STATE OF NEW MEXICO TO:

All named parties and persons having any right, title, interest or claim in the following cases and notice to the public.

CASE 14753: Application of the New Mexico Oil and Gas Association for amendment of certain provisions of Title 19, Chapter 15, Part 16 of the New Mexico Administrative Code concerning log, completion, hydraulic fracturing, and workover reports, Statewide. Applicant seeks an order amending provisions of the New Mexico Administrative Code ("NMAC") concerning log, completion, hydraulic fracturing and workover reports, codified as Part 16 of the Rules of the Oil Conservation Division [19.15.16.18 NMAC], to (1) require the disclosure of the composition of fluids used to stimulate new and recompleted wells in hydraulic

fracturing stimulation operations, (2) assure transparency that will demonstrate the safety of this process to all concerned persons thereby facilitating production in a manner that prevents waste of oil and gas, protects correlative rights of the owners of these minerals as defined by the Oil and Gas Act, (3) assure that New Mexico's oil and gas resources are developed in a manner that protects ground water, human health and the environment; and (4) certify the amended rule for publication in the New Mexico Register as required by statute. Copies of the text of the proposed amendments are available from Division Administrator Florene Davidson at (505) 476-3458 or from the Division's web site at <http://www.emnrd.state.nm.us/ocd>. Written comments on the proposed amendments and pre-hearing statements must be received no later than 5:00 p.m. on Wednesday, November 9, 2011. Any person may present non-technical testimony or make an un-sworn statement at the hearing. Any person who intends to present technical testimony or cross-examine witnesses at the hearing shall, no later than 5:00 p.m. on Wednesday, November 9, 2011, file six sets of a pre-hearing statement with Ms. Davidson. The pre-hearing statement shall include the person's name and the name of the person's attorney; the names of all witnesses the person will call to testify at the hearing; a concise statement of each witnesses' testimony; all technical witnesses' qualifications including a description of the witnesses' education and experience; and the approximate time needed to present the testimony. The person shall attach to the pre-hearing statement any exhibits he or she plans to offer as evidence at the hearing. Any person recommending modifications to a proposed rule change shall, no later than Wednesday, November 2, 2011, file a notice of recommended modifications with Ms. Davidson including the text of the recommended modifications, an explanation of the modifications' impact, and the reasons for adopting the modifications. Written comments, pre-hearing statements and notices of recommended modifications may be hand-delivered or mailed to Ms. Davidson at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at (505) 476-3462. Faxed documents must be entirely received prior to 5:00 p.m., Mountain Time, on the due date. If additional time is needed, the hearing may continue at a later date announced by the Commission.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 6th day of October, 2011.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**

**Jami Bailey
Director, Oil Conservation Division
S E A L**

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD**

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

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on January 3, 2012 at 9:00 am in Room 307 of the New Mexico State Capitol Bldg, 490 Old Santa Fe Trail, Santa Fe 87501. The purpose of the hearing is to consider the matter of EIB No. 11-18(R), revisions to the New Mexico Drinking Water Regulations.

The Safe Drinking Water Act section 300(g) (2)(a)(1) requires states with primary enforcement responsibility for public water systems to adopt regulations that are no less stringent than the national primary drinking water regulations. The proposed revision would update New Mexico's incorporation by reference of the National Primary Drinking Water Regulations, 40 CFR Part 141, so that future changes to those regulations will be automatically incorporated into New Mexico law. Other revisions to the regulations are also proposed to reflect existing implementation in New Mexico where federal regulations allow state discretion or require state interpretation. The overarching goal of the proposed changes is to increase the consistency of implementation among the regional offices in the bureau and to provide more transparency and predictability to the regulated water systems.

The proponent of this regulatory revision is the New Mexico Environment Department ("NMED"). At <http://www.nmenv.state.nm.us/dwb/index.htm>, the proposed drinking water regulation revision may be downloaded using the "Laws & Regulations" or the "WHAT'S NEW" links. During regular business hours the proposed drinking water regulation revisions can be reviewed at the NMED Drinking Water Bureau office, 1052 Main Street NE, Los Lunas, New Mexico or by contacting Angela Faye Cross at (505) 841-5376 or angela.faye.cross@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC - Rulemaking Procedures - Environmental Improvement Board as amended on October 3, 2011; the Environmental Improvement Act, Section 74-1-9 NMSA 1978; and other applicable procedures. Copies of 20.1.1 NMAC as amended October 3, 2011 may be obtained from the Board Administrator at the address below.

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

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

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on December 14, 2011, and should reference the docket number, EIB No. 11-18 (R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

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

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

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

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by December 14, 2011 at the NMED, Personnel Services Bureau, P.O. Drawer 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

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

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The New Mexico Human Services Department (HSD) is scheduling a public hearing on December 2, 2011, at 9:00 a.m. in the South Park Conference Room, 2055 S. Pacheco, Ste. 500-590 in Santa Fe, NM concerning the renumbering and reformatting of Medical Assistance Division rules from the previous style and format to comply with the current NMAC style and format requirements. No content changes have been made. Public testimony and written comments of this action will only be accepted. Each rule will stand as is until such time as each is promulgated with proposed content changes.

Interested persons may submit written comments no later than 5:00 p.m., December 2, 2011, to Sidonie Squier, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

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

Copies of the Human Services Register and their proposed rules are available for review on our Website at www.hsd.state.nm.us/mad/registers/2011 or by sending a self-addressed stamped envelope to Medical Assistance Division, Benefits Services Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

Case No. 11-00298-PL

**IN THE MATTER OF THE ADOPTION
OF PROPOSED AMENDMENTS TO
THE RULES GOVERNING PIPELINE
SAFETY GENERAL PROVISIONS,
18.60.2 NMAC, AND PIPELINE
SAFETY EXCAVATION DAMAGE
PREVENTION, 18.60.5 NMAC.**

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 Pipeline Safety General Provisions and Pipeline Safety Excavation Damage Prevention rules that are currently codified in the New Mexico Administrative Code ("NMAC") at 18.60.2 NMAC and 18.60.5 NMAC, respectively. This matter comes before the Commission upon the Staff Motion to Initiate Rulemaking that was filed on August 3, 2011; whereupon, being duly advised,

THE COMMISSION FINDS AND CONCLUDES:

1. On August 3, 2011, the Commission's Pipeline Safety Bureau Staff ("Staff" or "Bureau") filed the Staff Motion to Initiate Rulemaking. In that Motion, Staff asserted that:

2. Staff requested that the Commission issue a notice of proposed rulemaking to consider the amendment of Commission Rules 18.60.2 and 18.60.5 NMAC with Staff's proposed amendments.

3. The Commission's Pipeline Safety Bureau enforces federal and state pipeline safety regulations, investigates intrastate pipeline accidents, enforces the New Mexico Excavation Damage Prevention Act, and it is responsible for licensing crude oil, natural gas, and oil and gas product pipelines. In particular, through an agreement with the US Department of Transportation (USDOT), the Bureau is responsible for safety compliance inspections

of intrastate facilities that include private and municipal gas distribution systems, master meter gas systems, liquefied petroleum gas (LPG) systems, transmission systems, and jurisdictional gathering lines. In addition, the Bureau conducts safety compliance inspections of intrastate hazardous liquid and carbon dioxide (CO₂) pipelines.

4. The Commission adopted its current Pipeline Safety General Provisions (18.60.2 NMAC) and Pipeline Safety Excavation Damage Prevention rules (18.60.5 NMAC) with effective dates in July 2006.

5. The stated purpose of the current Pipeline Safety General Provisions is to implement Chapter 62, Article 14 NMSA 1978, and the Pipeline Safety Act, NMSA 1978, Sections 70-3-11 to 70-3-20. The stated purpose of the Excavation Damage Prevention rules is to implement Chapter 62, Article 14 NMSA 1978 by providing procedures for preventing excavation damage and for dealing with damage when it occurs.

6. Staff's motion was filed on August 3, 2011. It asks the Commission to issue an order to initiate a proceeding to adopt amendments to its existing rules regarding general pipeline safety and excavation damage prevention. Staff has submitted nine (9) proposed changes to 18.60.2 NMAC and nineteen (19) proposed changes to 18.60.5 NMAC, with a rationale indicated for each change. Staff has also formatted the proposed rules and amendments consistent with the requirements for compilation into the New Mexico Administrative Code.

7. A rulemaking should be commenced concerning whether and how the Commission's rules, as currently codified at 18.60.2 and 18.60.5 NMAC, should be amended. The rulemaking should be conducted, and any rule amendments adopted, under the authority granted the Commission by the New Mexico Constitution, Art. XI, Section 2, the Public Regulation Commission Act (*see* NMSA 1978, Sub-sections 8-8-4 and 8-8-15), and applicable portions of NMSA 1978, Ch. 62, Art. 14 and NMSA 1978, Ch. 70, Art. 3, Section 11, *et seq.*

8. This Notice of Proposed Rulemaking should constitute due and lawful notice to all potentially interested parties.

9. The Commission's proposed rule should consist of Staff's proposed draft rule amendments. A copy of the proposed rule amendments to be considered for promulgation is attached hereto as "Exhibits A and B" The proposed rule has been formatted for inclusion in the New Mexico Administrative Code ("NMAC") pursuant to NMSA 1978, Section 14-4-3. Additional copies of the proposed rule can be obtained from:

Mr. Nick Guillen
NMPRC Records Management Bureau
1120 Paseo de Peralta
P.O. Box 1269
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 pipeline safety and excavation damage prevention, as currently codified in the New Mexico Administrative Code ("NMAC") at 18.60.2 and 18.60.5, 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 18.60.2 and 18.60.5 NMAC may do so by submitting written comments no later than **December 9, 2011**. Any person wishing to respond to comments may do so by submitting written response comments no later than **January 5, 2012**. 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 9 hereof.

E. A public hearing on the proposed rule amendments, to be presided over by Commission Chairman Patrick Lyons or his designee, shall be held beginning at **1:00 PM on January 10, 2012** at the offices of the Commission, at the following location:

4th Floor Hearing Room
1120 Paseo de Peralta
Santa Fe, New Mexico 87501
Tel. (505) 827-6947

F. Persons providing public comment and/or participating in any of these public hearings 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 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, Section 8-8-15(B), this *Notice of Proposed Rulemaking*, including Exhibits A and B, 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 Exhibits A and B, 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.

J. This *Notice of Proposed Rulemaking*, without Exhibits A and B, 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 Website.

L. Copies of any forthcoming final order adopting rule amendments shall be mailed, along with copies of the particular rules amended, to all persons appearing on the Certificate of Service as it exists at the time of issuance of the final order in this Docket, to all commenters in this case, and to all individuals requesting such copies.

M. This *Notice of Proposed Rulemaking* is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 13th day of October, 2011.

NEW MEXICO PUBLIC REGULATION COMMISSION

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

JASON A. MARKS, COMMISSIONER
BEN L. HALL, COMMISSIONER

**NEW MEXICO
DEPARTMENT OF
WORKFORCE SOLUTIONS**

**NEW MEXICO DEPARTMENT OF
WORKFORCE SOLUTIONS**

The New Mexico Department of Workforce Solutions ("Department") hereby gives notice that the Department will conduct a public hearing in the auditorium of the State Personnel Office located at 2600 Cerrillos Road, Santa Fe, New Mexico on **Friday**, December 8, 2011 from 1:00 P.M. until 3:00 P.M. The purpose of the public hearing will be to obtain input on the repeal of the following obsolete rules:

JNMD No. 5-95, JNMD No. 11-93, JNMD No. 12-95, JNMD No. 14-93, JNMD No. 27-94, JNMD No. 33-89, JNMD No. 44-88, JNMD No. 45-90, JNMD No. 48-93, JNMD No. 50-95, JNMD No. 63-92, JBD No. 15-84, JBD No. 30-84, JBD No. 31-84, JBD No. 34-84, JBD No. 38-86, JBD No. 39-86, JGI No. 6-84, JGI No. 8-86, JGI No. 10-87, JGI No. 15-84, JGI No. 32-84, JGI No. 33-86, JGI No. 34-84, JGI No. 35-84, JGI No. 37-84, JGI No. 38-85, JGI No. 40-84, JGI No. 43-85, JGI No. 44-85, JGI No. 48-85, JGI No. 49-85, JGI No. 53-86, JGI No. 54-86, JGI No. 55-87, JGI No. 63-87, JGI No. 64-87, JGI No. 68-86, JGI No. 69-86, JGI No. 73-87, JGI No. 74-87, JGI No. 75-87, JGI No. 76-87, JGI No. 77-87, JGI No. 78-87, JGI No. 80-87, JGI No. 84-87, JGI No. 85-87, JGI No. 87-87, JGI No. 88-87, JGI No. 91-88, JGI No. 92-88, JSI No. 3-89, JSI No. 4-88, JSI No. 19-94, JSI No. 31-91, JSI No. 36-95, JSI No. 39-89, JSI No. 41-88, JSI No. 43-95, JSI No. 47-93, JSI No. 51-95, JSI No. 70-90, JSI No. 72-88, JSI No. 82-88, JSI No. 94-88, JSI No. 95-95, JSI No. 96-94, JSI No. 97-89, JSI No. 98-89, JSI No. 100-89, JSI No. 101-89, JSI No. 102-89, JSI No. 103-89, JSI No. 104-90, JSI No. 105-90, JSI No. 106-90, JSI No. 109-94, JSI No. 110-93, 11 NMAC 2. A. 1-97, 11 NMAC 2.C. 1-95, 11 NMAC 2. A. 2-97, 11 NMAC 2. A. 5-98, 11 NMAC 2. A. 9-98, 11 NMAC 2. A. 11-97, 11 NMAC 2. A. 13-99, 11 NMAC 2. A. 14-97, 11 NMAC 2. A. 17-98, 11 NMAC 2. A. 20-97, 11 NMAC 2. A. 28-97, 11 NMAC 2. A. 30-98, 11 NMAC 2. A. 50-98, 11 NMAC 2. A. 56-98, 11 NMAC 2. A. 57-99 and 11.2.97 NMAC

Interested individuals may testify at the public hearing or submit written comments to State of New Mexico Department of Workforce Solutions, 401 Broadway NE, P.O. Box 1928, Albuquerque, N.M., 87103, Attention Dolores Haley. Written comments must be received no later than 5 p.m. on December 7, 2011. However, the submission

of written comments as soon as possible is encouraged.

Copies of the repealed rules may be accessed at [www.nmcpr.state.nm.us/nmac/ title11/T11C002.htm](http://www.nmcpr.state.nm.us/nmac/title11/T11C002.htm). or obtained from Dolores Haley Tel.: (505) 841-8429 dolores.haley@state.nm.us. The repealed rules will be made available at least thirty days prior to the hearings.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Dolores Haley as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**End of Notices and Proposed
Rules Section**

Adopted Rules

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.1 NMAC, Section 12, effective 11/13/2011.

16.4.1.12 ADVERTISING:

A. Statement of policy: It is the policy of the board that advertising by licensed practitioners of chiropractic should be regulated in order to fulfill the duty of the state of New Mexico to protect the health, safety and welfare of its residents, while not abridging any rights guaranteed to the practitioners or to the public by the Constitution of the United States and the Constitution of the state of New Mexico as construed by the United States supreme court and the New Mexico supreme court. To that end, the board permits the dissemination of legitimate information to the public concerning the science of chiropractic and individual practitioners thereof. Such dissemination of information must be done in accordance with this rule which is designed to reasonably facilitate the flow of accurate information and prevent fraudulent, false, deceptive, misleading or confusing advertising. Advertising not contrary to the prohibitions in this rule shall be deemed an appropriate means of informing the public of the availability of professional services.

B. Certain advertising prohibited:

(1) Any chiropractor who disseminates or causes to be disseminated or allows to be disseminated any advertising which is in any way fraudulent, false, deceptive, misleading or confusing, shall be deemed to be in violation of the Chiropractic Physician Practice Act.

(2) Fraudulent, false, deceptive, misleading or confusing advertising includes, but is not limited, to:

(a) advertising which contains a misrepresentation of any fact or facts;

(b) advertising which, because of its contents or the context in which it is presented, fails to disclose relevant or material facts or makes only partial disclosure of relevant or material facts;

(c) advertising which makes claims of, or conveys the impression of superior professional qualifications which cannot be substantiated by the chiropractor;

(d) advertising which contains distorted claims or statements about any individual chiropractor, chiropractic group or chiropractic office, clinic or center;

(e) advertising which creates unjustified expectations of beneficial treatment or successful cures;

(f) advertising which guarantees the results of any service, painless treatment, or which promises to perform any procedure painlessly;

(g) advertising which in any way appeals to fears, ignorance or anxieties regarding a persons state of health or physical or mental well-being;

(h) advertising which in any way intimidates or exerts undue pressure on the recipient;

(i) advertising which fails to conspicuously identify the chiropractor or chiropractors referred to in the advertising as practitioners of chiropractic by use of the term "chiropractor", "chiropractors", "chiropractic", "chiropractic physician", "chiropractic physicians", "doctor of chiropractic", or "doctors of chiropractic";

(j) advertising which fails to be conspicuously identified as "chiropractic" advertising;

(k) advertising which fails to conspicuously identify the chiropractic practice, office, clinic or center being advertised by a name which includes the term "chiropractor", "chiropractors", "chiropractic", "chiropractic physician", "chiropractic physicians", "doctor of chiropractic" or "doctors of chiropractic";

(l) advertising which invades the field of practice of other healthcare practitioners when the chiropractor is not licensed to practice such profession;

(m) advertising which appears in a classified directory or listing, or otherwise under a heading which, when considered alone or together with the advertisement, does not accurately convey the professional status of the chiropractor or the professional services being advertised;

(n) advertising which concerns a transaction that is in itself illegal;

(o) advertising which employs testimonials which, by themselves or when taken together with the remainder of the advertisement intimidate, exert undue pressure on, or otherwise improperly influence the recipient.

C. Advertising which offers gratuitous services or discounts in connection with professional services; provided, however, that advertising may offer gratuitous services or discounts if:

(1) such advertising clearly and conspicuously states whether or not additional charges may be incurred for related services which may be needed ~~and~~ ~~or~~ appropriate in individual cases, and the possible range of such additional charges if such charges may be incurred;

(2) such advertising is not otherwise false, fraudulent, deceptive, misleading or confusing;

(3) such advertising offering

a "spinal examination" or "scoliosis examination" or using any other similar phrase includes, at a minimum, the following tests or procedures: blood pressure, weight, height, reflexes, pulse, range of motion and orthopedic tests appropriate to the history; and

(4) such advertising offering "an examination" or using any other similar phrase includes the taking of a history of the patient as it relates to the presenting complaints, and a comprehensive neurological, orthopedic, chiropractic and physical examination including, where necessary, the taking, developing and interpretation of x-rays and the performance and interpretation of laboratory or other specialized tests when necessary to establish a diagnosis; such x-rays and laboratory and other specialized tests must constitute a diagnostically complete study.

D. Advertisements may quote fixed prices for specific routine services if such advertising clearly and conspicuously states whether or not additional charges may be incurred for related services and the possible range of such additional charges if such charges may be incurred. A routine service is one which is not so unique that a fixed rate cannot meaningfully be established.

E. Chiropractors ~~or~~, their agents or any representatives who engage in telemarketing are required to inform the parties they call at the ~~start~~ beginning of the call:

(1) who they are (caller's name);

(2) who they represent (clinic/doctor); and

(3) chiropractors, their agents or representatives engaging in telemarketing, either directly or through others, shall keep a voice recorded log of all phone call conversations and a written log to include date, telephone number, and the name of every person called; all such chiropractors, their agents or representatives shall keep such logs for a period of ~~two (2)~~ three years from the date of the telemarketing.

F. No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall misrepresent to the person called any association with an insurance company or another chiropractor or group of chiropractors, nor shall such solicitor promise successful chiropractic treatment of injuries, or make any other misrepresentation of whatever kind for the purpose of selling chiropractic services.

G. No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall engage in such practices during hours prohibited by applicable municipal

ordinance or state law, or in the absence of either, then other than between the hours 9 a.m. and 8 p.m. local time.

H. No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall make more than one telephone call to any telephone number unless requested by the recipient to call again.

I. No chiropractor shall advertise directly or indirectly, through any device or artifice, that the advertising chiropractor will not collect from any prospective patient, that patient's insurance deductible or co-payment obligations arising by virtue of any medical insurance policy [~~providing~~ provided] for the payment, in whole or in part, of any chiropractor's charge. The words free initial consultation must be explicitly explained what a consultation consist of and at exactly what point charges begin to accrue with clear delineation between a free consultation and an exam with treatment for which services will be charged. At no time can any representation in regards to payment for services be misleading to the consumer or patient and it must be stated up front that if the patient decides to accept the care that they will be charged for all services and that payment will be expected whether it be from the patient, third-party payor, insurance, or medpay. The terms no cost to you, or no charge for services, or free treatment or any verbiage insinuating free care shall not be utilized in any form of marketing, from public record including but not limited to police reports.

J. No applicant for licensure to practice chiropractic, and no unlicensed practitioner, shall advertise chiropractic services in this state in any way.

K. All advertisements by a chiropractor must include the full name of the chiropractor as it appears on his or her chiropractic license followed by the letters D.C. or the designation "chiropractor", "chiropractic physician" or "doctor of chiropractic".

L. Any [~~written~~] form of solicitation [~~being distributed~~] offered to individuals whose identities are known through the use of any form of public record, including but not limited to police reports, shall be reviewed and approved by the board and re-approved annually. Unless specifically disapproved by the committee designated by the board the copy submitted may be used for patient solicitation. If approved or disapproved, that information shall be communicated to the submitting doctor within 30 days of submission. The submitting physician has the right to request a determination be made by the full board at its next scheduled meeting. The board holds the right during each renewal cycle to complete a random audit of all written materials, and mandatory voice recordings of all phone conversations for a period up to three years following any telemarketing procedures from public record.

M. Any direct, individual contact by a licensee or the agent of a licensee with prospective patients through the use of public records, including but not limited to police or accident reports is prohibited.

[3/1/72, 2/27/87, 9/18/80, 3/5/93, 10/31/93, 11/16/97, 10/31/98; 16.4.1.12 NMAC - Rn & A, 16 NMAC 4.1.12, 1/15/2005; A, 4/10/06; A, 11/13/2011]

[continued on page 691]

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.3 NMAC, Section 8, effective 11/13/2011.

16.4.3.8 APPLICATION FOR LICENSURE:

A. The board shall recognize successful completion of all parts of the examination conducted by the national board of chiropractic examiners. ~~[The board shall examine each applicant] If the applicant has not completed all IV parts and physiotherapy of the national board of examiner then the New Mexico chiropractic board shall examine each applicant~~ in the act of chiropractic adjusting, procedures and methods as shall reveal the applicants qualifications ~~[- provided that].~~ The board may waive the requirements for the board administered examination ~~[upon] and request proof of~~ satisfactory completion of ~~[the] any missing~~ exam conducted by the national board of chiropractic examiners at the time of the applicants graduation form chiropractic college. The applicant must also complete the state jurisprudence exam with a score of at least 75%. No application for licensure under the Chiropractic Physician Practice Act, Sections 61-4-1 through 61-4-17 NMSA 1978, shall be deemed complete until the board's administrator certifies that the application contains all of the following:

(1) a completed application form;
(2) a nonrefundable application fee ~~[as set forth in Subparagraph (a) of Paragraph (1) of Subsection A of 16.4.1.13 NMAC]~~ of \$350.00 payable by cashier's check or money order;

(3) letter size, ~~[notarized]~~ copy of original chiropractic diploma;

(4) 2" x 2" photograph attached to the application;

(5) ~~[transcript of credits of chiropractic college;]~~ transcript from the national board of chiropractic examiners (parts I, II, III, IV and physiotherapy exam), demonstration a passing score;

(6) ~~[transcripts documenting two years of pre-chiropractic, post-secondary education;]~~ all transcripts must be sent directly from each agency to the New Mexico board;

(7) ~~[transcript from the national board of chiropractic examiners (parts I, II, III, IV and physiotherapy exam), demonstrating a passing score;]~~ verification of licensure and good standing in any state where the applicant holds a current or inactive license must be sent directly from a state licensing agency to the New Mexico board;

(8) ~~[all transcripts must be sent directly from each agency to the New Mexico~~

~~board;]~~ the applicant has had no disciplinary action imposed, or criminal convictions, applicant agrees to a national practitioners databank, a federation of chiropractic licensing boards background check, and will sign a criminal record releases.

~~[(9) verification of licensure and good standing in any state where the applicant holds a current or inactive license must be sent directly from the state licensing agency to the New Mexico board;~~

~~(10) has had no disciplinary action imposed, nor criminal convictions, applicant agrees to a national practitioners databank and a federation of chiropractic licensing boards background check;~~

~~(11) complete the jurisprudence exam administered by the board with a score of at least 75 percent.]~~

B. All applications deemed completed by the board's administrator shall be referred to the board for final consideration.

C. No applicant shall be reviewed for approval until the application is complete.

D. If an applicant does not meet the minimal requirements as set forth above, applicant may, at the discretion of the board, be required to take and pass part I, II, III, IV, physiotherapy exam, other NBCE specialty examination or the special purpose examination (SPEC) of the national boards, or any combination thereof.

E. The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources.

~~[2/27/87, 5/26/89, 9/5/91, 2/12/93, 11/16/97, 10/31/98, 1/29/99; 16.4.3.8 NMAC - Rn & A, 16 NMAC 4.3.8, 1/15/2005; A, 3/15/06; A, 8/30/06; A, 08/9/08; A, 11/13/2011]~~

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.4 NMAC, Section 8, effective 11/13/2011.

16.4.4.8 LICENSURE:

A. In accordance with Section 61-4-8 NMSA 1978, of the New Mexico Chiropractic Physician Practice Act, the board may, at its discretion, issue licenses to practice chiropractic in New Mexico to doctors who provide evidence of meeting the following minimal requirements:

(1) is of good moral character and has maintained an active practice for at least seven of the last ten years prior to the filing of the application as a doctor of chiropractic in another state, territory, country or foreign jurisdiction whose licensure requirements

are equal to or exceed those of New Mexico; and

(a) ~~[is] has~~ a doctor of chiropractic diploma from a council on chiropractic education accredited or board accepted equivalent chiropractic college; ~~[and has served in the military services of the United States for two years or more within one year prior to application; and]~~

(b) ~~[is an applicant showing evidence of having passed all examinations conducted by the "NBCE";]~~ for those who have served in the military services of the United States for two years or more within one year prior to application, two of the seven out of 10 years of active practice required can be substituted for and;

~~(c) is an applicant showing evidence of having passed all examinations conducted by the NBCE that were in effect at the time of graduation from chiropractic college.~~

(2) has had no disciplinary action imposed, nor criminal convictions entered against any chiropractic license the applicant held or holds; applicant agrees to a national practitioners databank and a federation of chiropractic licensing boards background check;

(3) has never been found guilty of any action which, had it been committed in New Mexico, would be grounds for disciplinary action against the license;

(4) provides national board transcripts that have been sent directly from each agency to the board.

~~[(5) provides pre-chiropractic college transcripts]~~

B. Applicant must complete application for licensure without examination, pay nonrefundable application fee of \$350.00, pay a licensing fee of \$300.00 once applicant is accepted for licensure, and should meet all other applicable requirements of New Mexico statutes pertaining to the practice of chiropractic and all other applicable provisions of the board's rules. The applicant will be required to completed the jurisprudence exam with a score of at least 75 percent.

C. If an applicant does not meet the minimal requirements of 61-4-8.B NMSA 1978, applicant may at the discretion of the board, be required to take and pass part I, II, III or IV, and physiotherapy or the special purpose examination (SPEC) of the national boards.

D. Upon receipt of a completed application, including all required documentation as set forth in Subsection A of 16.4.3.8 NMAC and fees, as stated in Subsection B of 16.4.4.8 NMAC the secretary-treasurer or the delegate of the board will review and may approve the application. The results of the background check must either indicate no negative findings, or if there are negative findings,

those findings will be considered by the board. The board shall formally accept the approval of the application at the next scheduled meeting.

E. The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources.

[3/22/95, 11/16/97; 10/31/98; 16.4.4.8 NMAC - Rn & A, 16 NMAC 4.4.8, 1/15/2005; A, 3/15/06; A, 8/30/06; A, 8/9/08; A, 11/13/2011]

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.9 NMAC, Section 8, effective 11/13/11.

16.4.9.8 LICENSE RENEWAL PROCEDURES:

A. In accordance with Section 61-4-13 and Section 61-4-14 NMSA 1978, of the New Mexico Chiropractic Physician Practice Act, the board of chiropractic examiners establishes the following procedures for license renewal.

(1) Renewal notice. On or before June 1st of each year, the chiropractic board shall mail to the last address on file with the board a renewal notice to each person licensed to practice chiropractic in New Mexico.

(2) Renewal. The license shall expire at midnight on July 1st of each year. The board shall renew the license upon receipt from the licensee, the nonrefundable license renewal fee, along with a properly filled out original form with signature, and copies of continuing education certificate plus any applicable nonrefundable penalty fees.

(3) Renewal deadline. Each licensee shall submit the nonrefundable license renewal fee and properly completed application to the board postmarked no later than July 1st of the year for which the nonrefundable license renewal fee is requested.

(4) Penalty fees. A licensee shall submit to the board, in addition to the nonrefundable license renewal fee, a nonrefundable penalty fee as set forth in Paragraph (3) of Subsection A of 16.4.1.13 NMAC.

(5) Impairment fee. In addition to the license renewal fee, each chiropractor subject to renewal will be assessed an amount not to exceed \$60.00 per renewal period.

(6) [Failure to renew license. The procedures in Subsection B of 16.4.9.8 NMAC shall be followed by the board for all licensees who have failed to submit the

~~annual renewal application including, where applicable, required information about continuing education, applicable fees and properly executed forms. Any fee paid to renew the license is deemed nonrefundable.]~~
The board during each renewal cycle will complete a random audit of continuing education hours. The board may select by accepted RLD random computer process, up to 10% of the renewing applicants. Individuals selected must submit proof of all continuing education for that cycle. The records indicated in 16.4.10.8 NMAC are acceptable forms of documentation continuing education records must be maintained for one year following the renewal cycle and in which they are earned and they may be obtain by the board at any time.

B. Notice. By July 31st of each year, the board shall send, by certified mail, to the address on file with the board, a forfeiture notice to each licensee who has not made the application for license renewal. The notice shall state that:

(1) the licensee has failed to make application for renewal;

(2) the amount of renewal and late fees;

(3) the information required about continuing education hours which must be submitted to renew the license;

(4) the licensee may voluntarily retire the license or the licensee may apply for an inactive license, by notifying the board in writing;

(5) failure to respond to the notice by the date specified, which date must be at least 31 days after the forfeiture notice is sent by the board, either by submitting the renewal application and applicable fees, or the information required about continuing education hours, or by notifying the board that the licensee has voluntarily retired the license, or has applied for inactive status, shall result in forfeiture of the license to practice chiropractic in New Mexico;

(6) the board may select by accepted RLD random computer processes, up to 10% of the renewal applicants which shall be submitted for background findings review.

[3/22/95, 11/16/97, 10/31/98; 16.4.9.8 NMAC - Rn & A, 16 NMAC 4.9.8, 1/15/2005; A, 3/15/06; A, 11/13/2011]

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.10 NMAC, Section 8, effective 11/13/2011.

16.4.10.8 CONTINUING EDUCATION:

A. In accordance with Section 61-4-3 NMSA 1978, New Mexico Chiropractic Physician Practice Act, chiropractic physicians licensed in New Mexico are required to complete a minimum of sixteen (16) hours of board approved continuing education annually by the time of license renewal. Credit hours may be earned at any time during the annual reporting period, July 1 through June 30, immediately preceding annual renewal.

B. Each chiropractor renewing a license shall attest that they have obtained the required hours of continuing education on the renewal form. The board will select by random RLD computer processes, no less than 10% of renewal applications for audit to verify completion of acceptable continuing education. Audit requests will be included with the renewal notice and those selected chiropractors will be asked to submit proof of compliance with the continuing education requirements. The board may audit continuing education records at any time. Continuing education records must be maintained for three years following the renewal cycle in which they are earned.

C. The board will approve continuing education programs which in its determination, advance the professional skills, risk management understanding and knowledge of the licensee that is directly related to the practice of chiropractic art, science or philosophy. Practice building and self-motivational courses, and courses that are determined not to have significant or a direct relationship to the safe and effective practice of chiropractic; or such portions of those programs or courses, may not be approved. There will be no charge to a licensee for individual request for approval.

D. The board may determine that, in its opinion, a particular course or area of professional education is of such importance or addresses an area of special need as it pertains to public protection that all licensees shall be required to take the course of study as a part of or in addition to the CE requirements:

(1) the declaration of a mandatory course must be made by a majority vote of the board at a regular scheduled meeting;

(2) the course title, approved instructors (if appropriate), locations of course delivery or methods of securing approved print or electronic presentations

of the course must be communicated to all licensed New Mexico chiropractors on or before September 1st of the year that the course is made mandatory;

(3) the mandatory nature of courses so designated shall expire on June 30th of the current licensing year or the determination must be renewed by a majority vote of the board at a regular scheduled meeting and the extension of the mandatory nature communicated to all active licensees on or before September 1st.

E. The following seminars or continuing education programs meeting board criteria for license renewal credit by the following entities shall be automatically approved:

(1) American chiropractic association and international chiropractic association, or their successors;

(2) the annual convention of any state recognized chiropractic association; or

(3) chiropractic colleges having accreditation status with the chiropractic council on education (CCE);

(4) officiating during national board examinations shall be credited to the professional members of the NMBCE as approved hours of continuing education;

(5) those courses that have secured accreditation through the "NBCE" and carry the "PACE" designation;

(6) webinar, teleseminar, compact disc (CD), video taped or audio taped courses produced or endorsed by approved entities may be accepted for continuing education credit:

(a) the completion of such education shall be supported through record keeping with a letter, memo or on a form approved by the board, that includes the dates, times, vendors' or presenters' name/s, and total hours claimed for each course;

(b) the licensee's retained records must include the following statement, "I swear or affirm that I viewed or listened to these continuing education courses in their entirety on the dates and times specified in this document";

(c) a maximum of 8 hours may be obtained through these distance learning methods unless specific individual approval by the board is obtained.

F. A fee as set forth in Paragraph (4) of Subsection A of 16.4.1.13 NMAC will be assessed to all non approved entities, sponsoring institutions, or organizations requesting approval of any seminar or continuing education programs not noted is Subsection C of 16.4.10.8 NMAC.

G. All non approved entities, sponsoring institutions, or organizations requesting approval of seminars or continuing education programs must be submitted to the board office in writing by the licensee or sponsoring entity

at least forty-five (45) days prior to the first day of the seminar or continuing education program and must include:

(1) course title, objective and format;

(2) sponsoring entity;

(3) total class hours;

(4) method for certification of attendance; or documentation of completion of program;

(5) instructors credentials; and

(6) courses that in the boards opinion enhance the professional practice procedures, risk management, clinical skills or the doctor's ability to understand and operate within managed care guidelines and regulations [~~are not approved.~~] will be considered for approval or will be approved.

H. The board may waive or extend the time for completion of the annual continuing education requirement if the licensee has reached the age of 70 years or if the licensee files with the board the statement of a licensed physician certifying the physical inability of the licensee to attend a seminar.

I. Licensees serving in the United States military practicing or residing outside the United States shall not be required to fulfill the continuing education requirements for the period of the absence.

(1) The board must be notified prior to license expiration that the licensee will be outside the United States, including the period of the absence.

(2) Upon return to the United States, the licensee shall complete the continuing education required for the years of practice within the United States during the renewal cycle, or apply for an emergency deferral.

(3) All renewal fees shall be waived while the licensee is practicing or residing outside the country serving in the military or under armed services contract.

(4) The board may waive any and all deadlines by special request of licensee in active military service or under armed services or federal contract requiring absence from the jurisdiction.

J. The board may, under circumstances deemed appropriate by the board, waive the forty-five (45) day advance requirement set forth in Subsection F of 16.4.10.8 NMAC for request of approval by individual licensees.

K. All licensees shall comply with the requirements of this regulation on or before July 1st of each year.

L. This rule supersedes all prior continuing education rules.

M. The board may recognize, upon application, a chiropractic association for the purpose of this part if the association:

(1) has 100% voluntary membership as evidenced by a written

affirmative request for membership;

(2) has 100% of its membership which is licensed in New Mexico, in good standing as a chiropractic physician;

(3) submits a copy of the association charter, by-laws and any similar association documents;

(4) is organized for the express purpose of promoting good and ethical chiropractic practice.

N. The following seminars or continuing education programs meeting board criteria for advanced practice license renewal credit by the following entities shall be automatically approved:

(1) grossman wellness center

(2) heel, inc.

(3) guna

(4) American association of orthopedic medicine (AAOM)

(5) hackett hemwall foundation

(6) American academy of musculoskeletal medicine (AAMSM)

(7) American academy of anti-aging and regenerative medicine (A4M)

(8) apex energetics seminars

(9) MSKUS; all seminars or educational programs that are provided by the above list of organizations shall be submitted to the board at least 30 days in advance of the start of the program whenever possible and shall include a syllabus of the course that includes a description of the program, the days and hours of the course, and the teaching faculty.

O. All approved and non approved entities, sponsoring institutions, or organizations that conform to the standards as set forth in Subsection C of 16.4.10.8 NMAC requesting approval of any seminar or continuing education program will be assessed a fee as set forth in Paragraph (4) of Subsection A of 16.4.1.13 NMAC.

[1/11/74; 10/23/86; 3/22/95; 11/16/97; 10/31/98; 1/29/99; 16.4.10.8 NMAC - Rn & A, 16 NMAC 4.10.8, 1/15/2005; A, 3/15/06; A, 11/19/07; A, 3/31/09; A, 11/13/2011]

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.15 NMAC, Sections 11 and 12, effective 11/13/2011.

16.4.15.11 CHIROPRACTIC FORMULARY:

- A. Hormones for topical, sublingual, oral use
- (1) estradiol
 - (2) progesterone
 - (3) testosterone
 - (4) desiccated thyroid
- B. Muscle relaxers; cyclobenzaprine
- C. NSAIDs - prescription strength
- (1) ibuprofen
 - (2) naproxen
- D. Prescription medications for topical use
- (1) NMDC Ca² dextromethorphan
 - (2) NSAIDs
 - (a) ketoprofen
 - (b) piroxicam
 - (c) naproxen
 - (d) ibuprofen
 - (e) diclofenac
 - (3) muscle relaxers; cyclobenzaprine
 - (4) sodium chanel antagonist; lidocaine
 - (5) minerals; magnesium
- E. Homeopathics requiring prescription
- F. Other substances by injection
- (1) sterile water
 - (2) sterile saline
 - (3) sarapin or its generic
 - (4) caffeine
 - (5) procaine HCL
 - (6) epinephrine
 - (7) homeopathic for injection
 - (8) lidocaine
 - (9) vitamins
 - (a) aqueous vitamin A (IM)
 - (b) ascorbic acid (vitamin C) (sub-Q or IM)
 - (c) cyanocobalamin (vitamin B12) (sub-Q or IM)
 - (d) folic acid (sun-Q IM)
 - (e) hydroxocobalamin (vitamin B12) (IM)
 - (f) methycobalamin (vitamin B12) (IM)
 - (g) thiamin (vitamin B1) (IM)
 - (10) dextrose (with additional chiropractic board approved education)
 - (11) phenol (with additional chiropractic board approved education)
 - (12) autologous blood (with additional medical board approved education)

- (13) collagenase (with additional medical board approved education)
 - (14) glucosamine (with additional medical board approved education)
 - (15) glycerin (with additional medical board approved education)
 - (16) platelet rich plasma (with additional chiropractic board approved education)
 - (17) sodium morrhuate (with addition medical board approved education)
 - (18) sodium hyaluronate (with addition medical board approved education)
- G. Glutathione for inhalation
[16.4.15.11 NMAC - N, 09/11/2009; A, 7/23/2010; A, 11/13/11]

16.4.15.12 CHIROPRACTIC FORMULARY ADDITIONAL EDUCATION REQUIRMENTS:

- A. A certified advanced practice chiropractic physician shall be required to furnish proof of board approved education upon request of the board for any item in the formulary that stipulates board approved education additional to the certified advanced practice chiropractic physician education requirements as listed in statute.
- B. A certified advanced practice chiropractic physician shall be authorized to administer vitamins and/or minerals by IV administration only upon proof of completion of a board approved program in IV therapy of not not less than 25 hours.
- C. A certified advanced practice chiropractic physician shall be authorized to administer dextrose, phenol, autologous blood, and platelet rich plasma via injection only upon proof of completion of a board approved program in prolotherapy or its equivalent of not less than 50 hours.
[16.4.15.12 NMAC - N, 11/13/11]

NEW MEXICO OFFICE OF THE STATE ENGINEER

This is an amendment to 19.27.5 NMAC, Sections 7, 9, 10, 11, 13, 14 and 15, effective 10/31/2011.

19.27.5.7 DEFINITIONS :

Unless defined below or in a specific section of these regulations, all other words used herein shall be given their customary and accepted meaning.

A. 72-12-1.1 domestic well permit: A permit issued for domestic use in accordance with Section 72-12-1.1 NMSA or its predecessor statutes. Included in this definition are 72-12-1.1 domestic well permits that have been adjudicated.

B. 72-12-1.1 domestic well: The point of diversion authorized under a 72-12-1.1 domestic well permit.

C. Administrative guidelines: A compilation of policies and procedures intended to provide guidance to office of the state engineer personnel for processing pending and future water rights applications in a specifically defined geographic area. The administrative guidelines shall not limit the state engineer's authority to take alternative or additional actions relating to the management of the water resources of the specifically defined geographic area as provided by New Mexico statutes, orders of the court, or the written rules and regulations of the state engineer.

D. Association: A water users association established under the Sanitary Projects Act (Section 3-29-2(B) NMSA).

[D:] E. Consumptive use: The quantity of water consumed during the application of water to beneficial use. The quantity of water beneficially consumed depends on the requirements of a particular enterprise and how it applies and consumes the water. The authorized diversion of water that is not beneficially consumed in the course of water use is not part of the allowable consumptive use allocation of the water right. The consumptive use of water by a crop (evapotranspiration) does not include depletions such as evaporation from canals, ditches or irrigated fields during surface application, transpiration by vegetation along ditches, evaporation or leakage from irrigation water pipes, evaporation of sprinkler spray and drift losses, and evaporation of runoff and seepage from irrigated fields.

[E:] F. Domestic use: The use of water for household purposes or for the irrigation of not to exceed one acre of noncommercial trees, lawn, garden, or landscaping. Drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility are included in this definition. This definition does not include the use of underground water from a well used primarily for livestock watering as provided for under Section 72-12-1.2 NMSA.

[F:] G. Domestic well management area: A bounded area overlying a stream-connected aquifer, specifically described by section, township and range, or by other land survey descriptions, that requires special water resource protection as determined by the state engineer.

[G:] H. Household: A single-family residence including outbuildings such as guesthouses, barns, and sheds.

[H:] I. Hydrologic unit: A physically definable, continuous and interconnected surface water [and/or]

or groundwater system. A hydrologic unit may consist of an aquifer, a group of interconnected aquifers, and any hydrologically connected springs, streams, rivers, lakes or other surface water bodies.

J. Infrastructure capacity area: An area defined by an association, based on factors determining the capacity to provide water, including, but not limited to, the location of existing lines, adequacy of existing infrastructure, the availability of water and water rights, and as reviewed by and then filed with the state engineer. [19.27.5.7 NMAC - N, 8-15-2006; A, 10-31-2011]

19.27.5.9 APPLICATION FOR A 72-12-1.1 DOMESTIC WELL PERMIT:

The following requirements apply to applications filed for 72-12-1.1 domestic well permits. In addition to the requirements listed in this section and part, the drilling of a 72-12-1.1 domestic well and the amount and uses of water permitted are subject to such additional or more restrictive limitations imposed by a court, or by lawful municipal or county ordinance~~[or by the state engineer, such as but not limited to by state engineer order or administrative guidelines]~~.

A. Form - content: An application for a 72-12-1.1 domestic well permit shall be prepared on a form prescribed by the state engineer. An application shall include the following information: the name and mailing address of the applicant, the type of domestic use being applied for, the number of households to be served, the location of the proposed well, the name of the owner of the land on which the well is to be drilled, the name and license number of the well driller (if known), the proposed depth of the well, the outside diameter of the well casing, and other information the state engineer deems necessary. The state engineer may require an application to be accompanied by a deed or purchase contract and plat of survey on file with the appropriate county.

B. Well location: The well location shall be described using universal transverse mercator (NAD 83), latitude and longitude, or the New Mexico state plane coordinate system. In addition, the well location shall be described by the lot and block number of the lot where the well is to be located (if applicable). An application to drill a well on land owned by another person, the state of New Mexico, the federal government, or another entity shall be accompanied by written consent of the landowner.

C. Multiple use well: A 72-12-1.1 domestic well permit may be conditioned to allow the diversion of water from an existing well previously

permitted for livestock, irrigation, or any other beneficial purpose of use other than domestic use. The diversion of water from a multiple use well made pursuant to a 72-12-1.1 domestic well permit shall be separately metered.

D. Amount of water: The drilling of a 72-12-1.1 domestic well and the amount and uses of water permitted are subject to such additional or more restrictive limitations imposed by a court, or by lawful municipal or county ordinance~~[or by the state engineer, such as but not limited to by state engineer order or administrative guidelines]~~. The maximum permitted diversion of water from a 72-12-1.1 domestic well that is not subject to additional or more restrictive limitations shall be as follows:

(1) Single household: The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted to serve one household shall ~~[not exceed 1.0 acre-foot per annum]~~ be 1.0 acre-foot per annum, except in hydrologic units where applicant can demonstrate to the satisfaction of the state engineer that the combined diversion from domestic wells will not impair existing water rights, then the maximum permitted diversion of water from a 72-12-1.1 domestic well permitted to serve one household shall be 3.0 acre-foot per annum.

(2) Multiple households: The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted to serve more than one household shall not exceed 1.0 acre-foot per annum per household served. The maximum combined diversion from a 72-12-1.1 domestic well serving three or more households shall not exceed 3.0 acre-feet per annum. For a 72-12-1.1 domestic well serving multiple households, the permit holder shall file documentation with the state engineer listing the number of households being served by the well, the owner's contact information for each household being served, and a description of the legal lot of record for each household being served. A copy of a well share agreement may be filed to support the claim that the 72-12-1.1 domestic well is serving more than one household.

(3) Drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility: The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted for drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility shall not exceed 1.0 acre-foot per annum. The state engineer shall not issue a permit for this use unless the applicant demonstrates that no alternative water supply is reasonably accessible or available. Water may not be used under this type of 72-12-1.1 domestic well permit for any commercial use such as the manufacture of a product, car wash, water bottling, concrete batching, or

the irrigation of crops grown for commercial sale.

(4) Transfer of a valid, existing water right into a 72-12-1.1 domestic well permit: The applicant for or the owner of a 72-12-1.1 domestic well permit may apply to transfer a valid, existing consumptive use water right into the 72-12-1.1 domestic well permit in accordance with ~~[19.27.5.10 NMAC]~~ Sections 72-5-23, 72-5-24, 72-12-3, and 72-12-7 NMSA, as applicable, for the purpose of increasing the permitted diversion from the 72-12-1.1 domestic well ~~[up to a maximum of three acre-feet per annum]~~.

E. Multiple 72-12-1.1 domestic well permits on a legal lot of record: An application for a new 72-12-1.1 domestic well permit where the proposed point of diversion is to be located on the same legal lot of record as an operational 72-12-1.1 domestic well shall be treated as an application for a supplemental well pursuant to Subsection B of 19.27.5.11 NMAC. A legal lot of record is a parcel of land that is created in a manner consistent with the zoning and planning laws in place at the time the parcel is created.

F. 72-12-1.1 domestic well permit to accompany a house or other dwelling constructed for sale: A person or other entity planning to construct and sell a house or other dwelling may apply for a 72-12-1.1 domestic well permit to provide water to the dwelling. The permit holder may use water under a 72-12-1.1 domestic well permit for activities directly related to the construction of the dwelling only if the 72-12-1.1 domestic well permit is specifically conditioned to allow such use of water from the well. Upon sale of the house or dwelling, the permit holder shall provide the new owner notice in writing of the requirement to file a change of ownership with the state engineer for the 72-12-1.1 domestic well permit. A copy of the notice shall be filed at the office of the state engineer along with a copy of the deed or other instrument of conveyance which conveyed the land upon which the 72-12-1.1 domestic well is located. At any one time, a person or other entity may not hold more than ten 72-12-1.1 domestic well permits for a well to accompany a house or other dwelling constructed for sale. If a person or other entity holds ten or more such 72-12-1.1 domestic well permits, additional 72-12-1.1 domestic well permits will be issued as written notices are filed on existing permits that reduce the number of such permits held by the person or entity to less than ten.

[19.27.5.9 NMAC - N, 8-15-2006; A, 10-31-2011]

19.27.5.10 [APPLICATION FOR PERMIT TO TRANSFER A VALID, EXISTING WATER RIGHT INTO A

~~72-12-1.1 DOMESTIC WELL PERMIT - MAXIMUM DIVERSION OF WATER FROM THE 72-12-1.1 DOMESTIC WELL NOT TO EXCEED THREE ACRE-FEET PER ANNUM:~~ The applicant for or the owner of a 72-12-1.1 domestic well permit may apply to transfer a valid, existing consumptive use water right into the 72-12-1.1 domestic well permit for the purpose of increasing the maximum diversion of underground water up to an amount of water not to exceed three acre-feet per annum. The water right to be transferred shall be from the same hydrologic unit that will be impacted by the diversion of water from the 72-12-1.1 domestic well. The determination of whether a proposed transfer of a water right is occurring within the same hydrologic unit shall be made by the office of the state engineer. For a 72-12-1.1 domestic well permit located within a domestic well management area or other geographic area specifically defined in a state engineer order or administrative guidelines, only a valid, existing consumptive use water right located within the domestic well management area or other specifically defined geographic area may be transferred.

~~A. Form - content:~~ Applications shall be prepared on a form prescribed by the state engineer. An application shall include the following information: the name and address of applicant, the pertinent state engineer file number(s), the source of water supply for the move from point of diversion, the source of water supply for the move to point of diversion, the priority date of the water right, the diversion amount to be retired, the consumptive use amount to be transferred, the move from purpose of use, the legal description of the move from place of use, the location of the move from point of diversion, the location of move to point of diversion, and other information the state engineer deems necessary. An application for a change in point of diversion or place or purpose of use of a water right into or out of an acequia or community ditch subject to Sections 73-2-1 through 73-2-68 NMSA or Sections 73-3-1 through 73-3-11 NMSA shall include the documentary evidence of the applicant's compliance with the requirements of Section 72-5-24.1 NMSA.

~~B. Well location:~~ The description of the well location shall be made in accordance with Subsection B of 19.27.5.9 NMAC.

~~C. Transfer process:~~ Consistent with the issuance of a 72-12-1.1 domestic well permit pursuant to Section 72-12-1.1 NMSA, public notice is not required nor protest allowed for an application for permit to transfer a valid, existing consumptive use water right into a 72-12-1.1 domestic well permit for the purpose of increasing the maximum diversion of

underground water up to an amount of water not to exceed three acre-feet per annum. In all other respects, the application for such a transfer shall be processed in a manner consistent with Section 72-12-3 NMSA and no change may be made to the point of diversion, place of use, or purpose of use authorized under such a permit except as provided for in Subsection E of 19.27.5.11 NMAC. [RESERVED] [19.27.5.10 NMAC - N, 8-15-2006; A, 10-31-2011]

19.27.5.11 OTHER 72-12-1.1 DOMESTIC WELL PERMIT APPLICATIONS: Other 72-12-1.1 domestic well permit applications may be made only as specifically provided for in this section. Permit applications made in accordance with this section require an existing 72-12-1.1 domestic well permit in good standing. Applications shall be prepared on a form prescribed by the state engineer and the applicant shall be the owner of record of the 72-12-1.1 domestic well permit. The description of the well location shall be made in accordance with Subsection B of 19.27.5.9 NMAC. The publication of a legal notice is not required for a permit application made in accordance with Subsection A, B, C, or D of this section. A permit issued pursuant to Subsections A, B, or C of this section for an existing 72-12-1.1 domestic well permit in good standing will not affect the maximum authorized diversion amount from the 72-12-1.1 domestic well. [Because 72-12-1.1 domestic well permits are issued without public notice and opportunity for protests, the rights developed there under are limited and no] No change may be made to the point of diversion, place of use, or purpose of use authorized under a 72-12-1.1 domestic well permit except as provided for in Subsection E of this section.

A. Application for permit to replace a 72-12-1.1 domestic well: A permit from the state engineer is required to drill a replacement 72-12-1.1 domestic well. The state engineer shall require the well being replaced to be plugged or capped in accordance with the regulations of the office of the state engineer. The replacement well shall be permitted by the state engineer to serve the same authorized legal lot(s) of record and to serve the same type of domestic use as the 72-12-1.1 domestic well being replaced. An application shall include the file number of the well to be replaced, the name and mailing address of the applicant, the type of domestic use, the location of the existing well, the proposed location of the replacement well, the name of the owner of the land on which the replacement well is to be drilled, the name and license number of the well driller (if known), the proposed depth of the replacement well, the outside

diameter of the replacement well casing, the reason for replacing the well, and other information the state engineer deems necessary. The state engineer may require a meter on a replacement 72-12-1.1 domestic well as a condition of the new permit.

B. Application for permit for supplemental 72-12-1.1 domestic well: A permit from the state engineer is required to drill a supplemental 72-12-1.1 domestic well. The total combined diversion from the 72-12-1.1 domestic well and the supplemental well shall not exceed the maximum diversion amount authorized under the 72-12-1.1 domestic well permit. An application shall include the name and mailing address of the applicant, the type of domestic use, the state engineer file number, the location of the existing well, the authorized maximum diversion amount of the domestic well to be supplemented, the existing capacity of the well to be supplemented, the proposed location of the supplemental well, the name of the owner of the land on which the supplemental well is to be drilled, the name and license number of the well driller (if known), the proposed depth of the supplemental well, the outside diameter of the supplemental well casing, and other information the state engineer deems necessary. The state engineer shall require the installation of a meter on both the supplemental well and the 72-12-1.1 domestic well being supplemented as a condition of the new permit.

C. Application for permit to repair or deepen a 72-12-1.1 domestic well: A permit from the state engineer is required to repair or deepen a 72-12-1.1 domestic well. A permit to repair a 72-12-1.1 domestic well is required for any type of repair work involving the use of a drill rig. A permit is not required for work on pumping equipment. An application shall include the state engineer file number of the 72-12-1.1 domestic well to be deepened or repaired, the name and mailing address of the permit holder, the location of the well, the name and license number of the well driller (if known), a description of the work to be performed, the proposed depth (if the application is for deepening the well), and other information the state engineer deems necessary. The state engineer may require a meter on a 72-12-1.1 domestic well to be repaired or deepened as a condition of the new permit.

D. Application for permit to amend the type of domestic use of a 72-12-1.1 domestic well permit: A permit from the state engineer is required to amend the type of domestic use between single household, multiple household, or drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility. An application shall include the state engineer file number of the 72-12-1.1 domestic well permit, the name

and mailing address of the applicant, the current authorized type of domestic use, the proposed type of domestic use, and other information deemed necessary by the state engineer. The state engineer may require a meter on a 72-12-1.1 domestic well as a condition of the new permit when the type of domestic use is changed.

~~E. [Change point of diversion and place and purpose of use: The point of diversion and place and purpose of use permitted under or adjudicated for a 72-12-1.1 domestic well permit may be changed only for those wells drilled prior to the date specified, and in a manner specifically authorized, in either:] Change in point of diversion or alternate point of diversion:~~ The point of diversion of a permitted, declared, or adjudicated 72-12-1.1 domestic well may be changed only:

(1) pursuant to a water rights settlement approved by the state engineer and a court, for those wells drilled prior to a date specified and in a manner specifically authorized by the settlement, where such settlement requires the plugging of each 72-12-1.1 domestic well for which the point of diversion is changed and prohibits the drilling of new 72-12-1.1 domestic wells within the specifically described exclusive service area; or

~~[(2) a state engineer order issued to a mutual domestic water consumers association for the purpose of promoting the development of a regional water supply system; the mutual domestic water consumers association shall demonstrate that it has complied with all applicable laws governing its reorganization as a regional water supply system; the state engineer order shall require the plugging of each 72-12-1.1 domestic well for which the point of diversion is changed and prohibit the drilling of new 72-12-1.1 domestic wells within the exclusive service area specifically described in said state engineer order.]~~

(2) pursuant to 72-12-7 NMSA by an owner of a 72-12-1.1 domestic well located within the infrastructure capacity area of an association, to change the point of diversion into a well owned and operated by an association in accordance with the following provisions:

(a) the change in point of diversion shall be made upon application to the state engineer and upon a showing that the change will not impair existing rights and will not be contrary to conservation of water within the state and will not be detrimental to the public welfare of the state; the application may be granted only after notice and opportunity for hearing are provided as prescribed by Subsection D of Section 72-12-3 NMSA;

(b) an association that allows the point of diversion of a domestic well to be changed to that of an association's well shall file with the state engineer at the time of

application a map depicting the boundaries of the association's infrastructure capacity area and updated maps of any expansion of the boundaries of the association's infrastructure capacity area, if not already on file;

(c) only domestic wells located within the boundaries of the infrastructure capacity area of the association that were permitted prior to the time the association files its infrastructure capacity area boundaries or an update of those boundaries with the state engineer may have their points of diversion changed to the association's point of diversion;

(d) once the association files its infrastructure capacity area map or updated map with the state engineer, the state engineer shall issue permits only for new domestic wells to be located on property from which no domestic well point of diversion has been previously changed; exceptions will be considered only if necessitated by public health, safety and welfare concerns;

(e) an association shall be listed as co-applicant on the application. [19.27.5.11 NMAC - N, 8-15-2006; A, 10-31-2011]

19.27.5.13 ACTION OF THE STATE ENGINEER: The state engineer shall act on all applications that are properly filed.

A. Rejection of application: The state engineer may reject an application for a 72-12-1.1 domestic well permit when the proposed 72-12-1.1 domestic well is to be located in an area where a restriction on the use of water or the drilling of new wells has been imposed by a court. The state engineer may reject an application for a 72-12-1.1 domestic well permit when the proposed 72-12-1.1 domestic well is to be located in an area of water quality concern where a prohibition on or a recommendation against the drilling of new wells has been established by a government entity.

B. Approval of application - conditions of approval: The state engineer may set forth conditions of approval for a 72-12-1.1 domestic well permit, which may include ~~[but shall not be limited to the following]~~ any of the following:

(1) The casing shall not exceed 7 inches outside diameter except under specific conditions in which reasons satisfactory to the state engineer are shown.

(2) The well shall be set back a minimum of 50 feet from any existing well of other ownership.

(3) If artesian water is encountered, all rules and regulations pertaining to the drilling and casing of artesian wells shall be complied with except under specific conditions in which reasons satisfactory to

the state engineer are shown.

(4) The well shall be constructed by a driller licensed in the state of New Mexico. A licensed driller shall not be required for the construction of a driven well when the outside diameter of the casing does not exceed two and three-eighths (2³/₈) inches.

(5) Pursuant to Section 72-8-1 NMSA, the permittee shall allow the state engineer and his representatives entry upon private property for the performance of their respective duties, including access to the well for meter reading and water level measurement.

(6) The drilling of the well and amount and uses of water permitted are subject to such limitations as may be imposed by the courts or by lawful municipal and county ordinances which are more restrictive than the conditions of this permit and applicable state engineer regulations.

(7) This permit authorizes the drilling of a well to accompany a house or other dwelling being constructed for sale. Water may only be diverted for activities directly related to the construction of the dwelling that the well will serve. Upon sale of the house or dwelling, the permit holder shall provide the new owner notice in writing of the requirement to file a change of ownership with the state engineer for the 72-12-1.1 domestic well permit. A copy of the notice shall be filed at the office of the state engineer along with a copy of the deed or other instrument of conveyance which conveyed the land upon which the 72-12-1.1 domestic well is located. This condition shall automatically expire when the office of the state engineer accepts a change of ownership for filing in the name of the new owner intending to divert water from the well. No water may be diverted from the 72-12-1.1 domestic well by the new owner until a change of ownership has been recorded at the office of the state engineer.

~~[(8) Use shall be limited strictly to household, drinking and sanitary purposes; water shall be conveyed from the well to the place of use in a closed conduit and the effluent returned to the underground so that it will not appear on the surface. No irrigation of lawns, gardens, trees or use in any type of pool or pond is authorized under this permit.]~~

~~[(9)]~~ (8) The permit holder shall ensure that a well record has been filed with the state engineer no later than twenty days after the completion of the well drilling.

~~[(10)]~~ (9) Any diversion of water made in excess of the authorized maximum diversion amount in any calendar year shall be repaid with twice the amount of the over-diversion during the following calendar year. Repayment shall be made by either: (a) reducing the diversion during the following calendar year from the 72-12-

1.1 domestic well that is the source of the over-diversion; or (b) acquiring or leasing a valid, existing consumptive use water right in an amount equal to the repayment amount and submitting to the state engineer for his approval a plan for the proposed repayment during the following calendar year. The plan for the proposed repayment shall be on a form prescribed by the state engineer.

~~[(11)]~~ **(10)** The permit is subject to cancellation for non-compliance with the conditions of approval or if otherwise not exercised in accordance with the terms of the permit.

~~[(12)]~~ **(11)** The right to divert water under this permit is subject to curtailment by priority administration as implemented by the state engineer or a court.

~~[(13)]~~ **(12)** A 72-12-1.1 domestic well permit shall automatically expire unless the well is completed and the well record is filed with the state engineer within one year of the date of issuance of the permit.

C. Metering requirements: When a metering device is required by the state engineer on a 72-12-1.1 domestic well, the totalizing meter shall be installed before the first branch of the discharge line from the well. The meter installation shall be in accordance with the specifications adopted by the state engineer. The holder of the 72-12-1.1 domestic well permit shall file a meter installation and inspection report with the office of the state engineer, documenting the make, model, serial number, date of installation, and initial reading of the meter prior to diversion of water. Pumping records for the 3 preceding calendar months shall be submitted to the appropriate state engineer district office on or before the 10th of January, April, July, and October of each year unless a different reporting period has been established in the conditions of approval of the permit.

(1) The state engineer shall require a meter on each new 72-12-1.1 domestic well permitted:

(a) within a domestic well management area;

(b) when a metering requirement is imposed by the courts;

(c) for drinking and sanitary domestic use that is incidental to the operations of a governmental, commercial, or non-profit facility;

(d) for multiple households domestic use;

(e) as a supplemental 72-12-1.1 well; the 72-12-1.1 domestic well being supplemented shall also require a meter; and

(f) as a multiple use well such that the diversion of water for domestic use is separately metered.

(2) The state engineer may require a meter on a new 72-12-1.1 domestic well:

(a) permitted for single household domestic use;

(b) permitted to accompany a residence or other dwelling constructed for sale;

(c) as a condition of a permit to repair or deepen a 72-12-1.1 domestic well;

(d) as a condition of a permit to amend the type of domestic use of a 72-12-1.1 domestic well permit; or

(e) as a condition of a permit to transfer a valid, existing water right to a 72-12-1.1 domestic well permit in accordance with ~~[19.27.5.10 NMAC]~~ subsection E of 19.27.5.14 NMAC.

D. Well setbacks: All new 72-12-1.1 domestic wells shall be set back a minimum of 50 feet from an existing well of other ownership unless a variance has been granted by the state engineer. The state engineer may grant a variance for a replacement well or to allow for maximum spacing of the well from a source of groundwater contamination. All 72-12-1.1 domestic wells shall be set back from potential sources of contamination in accordance with the rules and regulations of the New Mexico environment department.

E. Well identification tag: The state engineer may require that a 72-12-1.1 domestic well be tagged with a well identification tag. If a well tag is required, the tag shall be affixed in plain view and the permit holder shall be responsible for maintaining the well identification tag.

F. Permit expiration: Each 72-12-1.1 domestic well permit shall be conditioned by the state engineer to require the 72-12-1.1 domestic well be completed and a well record be filed with the state engineer within one year of the date of issuance of the permit. A 72-12-1.1 domestic well permit shall automatically expire unless the well is completed and the well record is filed with the state engineer within one year of the date of issuance of the permit. No extension of time shall be granted by the state engineer, and if a 72-12-1.1 domestic well permit expires, a new permit shall be obtained and the appropriate fee paid.

G. Well record: The well driller shall keep a record of each well drilled as the work progresses. The well driller shall file a complete well record with the state engineer and the permit holder no later than twenty (20) days after completion of the well drilling. A well log shall be filed for each hole drilled, including a drill hole that does not encounter water. It is the responsibility of the permit holder to ensure that the well record for the 72-12-1.1 domestic well has been properly filed with the state engineer.

[19.27.5.13 NMAC - N, 8-15-2006; A, 10-31-2011]

19.27.5.14 DOMESTIC WELL MANAGEMENT AREA: As hydrologic conditions require, the state engineer may declare all or part of a stream connected

aquifer as a domestic well management area to prevent impairment to valid, existing surface water rights. The additional protection of mined aquifers is managed by the state engineer through the declaration of a critical management area and the development of administrative guidelines for the critical management area.

A. Administrative guidelines: The state engineer shall develop administrative guidelines for each declared domestic well management area. The administrative guidelines will be based on the hydrologic conditions of the domestic well management area and the valid, existing water rights located therein. The administrative guidelines shall set forth the maximum diversion amounts and other additional restrictions; ~~including any requirement for the transfer of a valid, existing consumptive use water right;~~ that will be conditioned on new 72-12-1.1 domestic well permits issued within the management area. Administrative guidelines for a domestic well management area and accompanying maps shall be available at each district office of the state engineer. The administrative guidelines shall also be posted on the office of the state engineer web-site (www.ose.state.nm.us).

B. Declaration of domestic well management area: The state engineer shall hold a public meeting within the geographic area of a proposed domestic well management area before he declares the area and adopts the administrative guidelines. Notice of the public meeting and a copy of the draft administrative guidelines for the domestic well management area shall be posted at the appropriate district office a minimum of 30 days prior to the date of the meeting. Notice of the public meeting and of the draft administrative guidelines will be published in a newspaper of general circulation in the area being declared once a week for three consecutive weeks, with final publication occurring not less than 10 days before the date of the public meeting. Persons who are or may be affected by the proposed declaration of the domestic well management area may appear and comment. Written public comments on the proposed domestic well management area and the administrative guidelines shall be filed with the office of the state engineer on or before the date of the public meeting. The additional restrictions and maximum diversion amounts established for new 72-12-1.1 domestic well permits in the draft administrative guidelines shall be adopted by the state engineer on an interim basis. The interim period shall start on the day the draft administrative guidelines are posted for public inspection and shall end on the day the state engineer adopts the administrative guidelines or otherwise signs an order canceling the interim period. Any changes made to the administrative

guidelines during the interim period, including a change in the geographic area of a domestic well management area, shall be applied retroactively to each new 72-12-1.1 domestic well permit issued within the domestic well management area during the interim period.

C. Amount of water:

Except as otherwise provided or restricted in Paragraph (2) of Subsection C, and Subsections D and E of this section, the maximum diversion of water from a new 72-12-1.1 domestic well within a domestic well management area shall not exceed 0.25 acre-foot per annum. The state engineer may establish a maximum diversion amount for a new 72-12-1.1 domestic well in a domestic well management area that is less than 0.25 acre-foot per annum. ~~[As a condition of approval of a new 72-12-1.1 domestic well permit within a domestic well management area, the state engineer may require an applicant to transfer a valid, existing consumptive use water right to the proposed 72-12-1.1 domestic well in accordance with 19.27.5.10 NMAC.]~~

(1) Single household: The maximum permitted diversion of water from a new 72-12-1.1 domestic well permitted to serve one household shall not exceed 0.25 acre-foot per annum.

(2) Multiple household: The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted to serve more than one household shall not exceed 0.25 acre-foot per annum per household served. The maximum combined diversion from such a 72-12-1.1 domestic well shall not exceed 3.0 acre-feet per annum. For a 72-12-1.1 domestic well serving multiple households, the permit holder shall file documentation with the state engineer listing the number of households being served by the well, the owner's contact information for each household being served, and a description of the legal lot of record for each household being served. A copy of a well share agreement may be filed to support the claim that the 72-12-1.1 domestic well is serving more than one household.

(3) Drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility: The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted for drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility shall not exceed 0.25 acre-foot per annum. The state engineer shall not issue a permit for this use unless the applicant demonstrates that no alternative water supply is reasonably accessible or available. Water may not be used under this type of permit for any commercial use such as the manufacture of a product, car wash, water bottling, concrete batching, or irrigation of

crops grown for commercial sale.

D. Transfer of a valid, existing water right to a 72-12-1.1 domestic well permit: The applicant for a new 72-12-1.1 domestic well permit or the holder of an existing 72-12-1.1 domestic well permit may apply to transfer a valid, existing consumptive use water right into the 72-12-1.1 domestic well permit in accordance with ~~[19.27.5.10 NMAC]~~ Subsection E of 19.27.5.14 NMAC. Only a valid, existing, consumptive use water right located within the domestic well management area may be transferred.

~~**E. Requirement to transfer water right:** As a condition of approval of a new 72-12-1.1 domestic well permit within a domestic well management area, the state engineer may require an applicant to transfer a valid, existing consumptive use water right into the 72-12-1.1 domestic well permit in accordance with 19.27.5.10 NMAC. Only a valid, existing consumptive use water right located within the domestic well management area may be transferred. The consumptive use amount transferred shall be considered as the maximum diversion amount that may be permitted from the new 72-12-1.1 domestic well. In a domestic well management area where the state engineer has established a transfer requirement, the state engineer shall reject any application for a new 72-12-1.1 domestic well permit if such application is not accompanied by an application or permit to transfer a valid, existing consumptive use water right to the proposed 72-12-1.1 domestic well.]~~

E. Application for permit to transfer a valid, existing water right into a 72-12-1.1 domestic well permit - maximum diversion of water from the 72-12-1.1 domestic well not to exceed one acre-foot per annum: The applicant for or the owner of a 72-12-1.1 domestic well permit may apply to transfer a valid, existing consumptive use water right into the 72-12-1.1 domestic well permit for the purpose of increasing the maximum diversion of underground water up to an amount of water not to exceed one acre-foot per annum. The water right to be transferred shall be from the same hydrologic unit that will be impacted by the diversion of water from the 72-12-1.1 domestic well. The determination of whether a proposed transfer of a water right is occurring within the same hydrologic unit shall be made by the office of the state engineer. For a 72-12-1.1 domestic well permit located within a domestic well management area or other geographic area specifically defined in a state engineer order or administrative guidelines, only a valid, existing consumptive use water right located within the domestic well management area or other specifically defined geographic area may be transferred.

(1) Form - content: Applications shall be prepared on a form prescribed by the state engineer. An application shall include the following information: the name and address of applicant, the pertinent state engineer file number(s), the source of water supply for the move-from point of diversion, the source of water supply for the move-to point of diversion, the priority date of the water right, the diversion amount to be retired, the consumptive use amount to be transferred, the move-from purpose of use, the legal description of the move-from place of use, the location of the move-from point of diversion, the location of move-to point of diversion, and other information the state engineer deems necessary. An application for a change in point of diversion or place or purpose of use of a water right into or out of an acequia or community ditch subject to Sections 73-2-1 through 73-2-68 NMSA or Sections 73-3-1 through 73-3-11 NMSA shall include the documentary evidence of the applicant's compliance with the requirements of Section 72-5-24.1 NMSA.

(2) Well location: The description of the well location shall be made in accordance with Subsection B of 19.27.5.9 NMAC.

(3) Transfer process: Consistent with the issuance of a 72-12-1.1 domestic well permit pursuant to Section 72-12-1.1 NMSA, public notice is not required nor protest allowed for an application for permit to transfer a valid, existing consumptive use water right into a 72-12-1.1 domestic well permit for the purpose of increasing the maximum diversion of underground water up to an amount of water not to exceed one acre-foot per annum. However, with such transfer applications, documentation shall be provided by the applicant, pursuant to Section 72-5-24.1 NMSA. In all other respects, the application for such a transfer shall be processed in a manner consistent with Section 72-12-3 NMSA and no change may be made to the point of diversion, place of use, or purpose of use authorized under such a permit except as provided for in Subsection E of 19.27.5.11 NMAC.

[19.27.5.14 NMAC - N, 8-15-2006; A, 10-31-2011]

19.27.5.15 ENFORCEMENT: The holder of a 72-12-1.1 domestic well permit is subject to possible fines and remedial action including cancellation of the permit for any failure to comply with the terms and conditions of the 72-12-1.1 domestic well permit or any applicable provision of 19.27.5 NMAC or Chapter 72 NMSA.

A. Diversion of water in excess of the authorized maximum diversion amount: The holder of a 72-12-1.1 domestic well permit who diverts water in excess of the authorized maximum

diversion amount in any calendar year shall repay twice the amount of the over-diversion during the following calendar year. Repayment shall be made by either:

(1) reducing diversions during the following calendar year from the 72-12-1.1 domestic well that is the source of the over-diversion; or

(2) acquiring or leasing a valid, existing consumptive use water right in an amount equal to the repayment amount and submitting to the state engineer for his approval a plan for the proposed repayment during the following calendar year on a form prescribed by the state engineer; such repayment water shall be derived from either:

(a) reduction of the consumptive use associated with the actual average historic use of a valid, existing water right with an irrigation purpose of use, by fallowing of a specific tract of land that has been consistently historically irrigated; or

(b) reduction of the diversion and associated historical average consumptive use of a valid water right with a purpose of use other than irrigation.

B. Active water resource management: ~~[In any stream system where the state engineer has appointed a water master, the water master shall have authority to administer all 72-12-1.1 domestic well permits. All 72-12-1.1 domestic well permits shall be subject to all applicable provisions of district specific active water resource management regulations, including all enforcement provisions.]~~ In any water district or subdistrict declared by the state engineer in accordance with Section 72-3-2 NMSA, and for which district or subdistrict the state engineer has adopted final district specific regulations in accordance with 19.25.13.10 and 19.25.13.23 NMAC, the water master shall have authority to curtail out-of-priority outdoor domestic uses consistent with the district or subdistrict specific rules.

C. Cancellation of permit: The state engineer may cancel a 72-12-1.1 domestic well permit upon failure of a permit holder to comply with any permit condition of approval or any applicable provision of 19.27.5 NMAC or Chapter 72 NMSA. The state engineer may cancel a 72-12-1.1 domestic well permit and proceed with enforcement action if a permit holder diverts water in excess of the authorized maximum amount and fails to repay the over-diversion in a time and manner acceptable to the state engineer.

[19.27.5.15 NMAC - N, 8-15-2006; A, 10-31-2011]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.99 NMAC, Sections 7, 117, 128, 135, 137, 138, and 140 effective 11/07/11.

20.2.99.7 DEFINITIONS. Terms used but not defined in this part shall have the meaning given them by the CAA titles 23 and 49 U.S.C., US EPA regulations, US DOT regulations, and 20.2.2 NMAC (Definitions), in that order of priority.

~~[A.]~~ ~~“1-hour ozone NAAQS” means the 1-hour ozone national ambient air quality standard codified at 40 CFR 50.9.~~

~~[B.]~~ ~~“8-hour ozone NAAQS” means the 8-hour ozone national ambient air quality standard codified at 40 CFR 50.10.~~

~~[C.]~~ A. “Applicable implementation plan” is defined in Section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under Section 110 (of the CAA), promulgated under Section 110(c), or promulgated or approved pursuant to regulations promulgated under Section 301(d) and which implements the relevant requirements of the CAA.

~~[D.]~~ B. “CAA” means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

~~[E.]~~ C. “Cause or contribute to a new violation” for a project means:

(1) to cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented, or

(2) to contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

~~[F.]~~ D. “CFR” means the code of federal regulations.

~~[G.]~~ E. “Clean data” means air quality monitoring data determined by US EPA to meet the [e] requirements of 40 CFR Part 58 that indicate attainment of the national ambient air quality standard.

~~[H.]~~ F. “Conformity analyses” means regional or localized “hot-spot” computer modeling assessment or any other analyses which serve as the basis for the conformity determination.

~~[I.]~~ G. “Conformity determination” means the demonstration of consistency with motor vehicle emissions budgets for each pollutant and precursor identified in the applicable SIP. The

conformity determination is the affirmative written documentation declaring conformity with the applicable SIP which is submitted to FHWA and FTA for approval with EPA consultation. An affirmative conformity determination means conformity to the plans purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards; and that such activities will not:

(1) cause or contribute to any new violations of any standard in any area;

(2) increase the frequency or severity of any existing violation of any standard in any area; or

(3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

~~[J.]~~ H. “Consultation” means that one party confers with another identified party, provides or makes available all relevant information to that party, and, prior to taking any action, considers the views of that party and (except with respect to those actions for which only notification is required) responds to written comments in a timely, substantive written manner prior to any final decision on such action. Such views and written response shall be made part of the record of any decision or action. Specific procedures and processes are described in 20.2.99.116 through 20.2.99.124 NMAC.

~~[K.]~~ I. “Control strategy implementation plan revision” is the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (including implementation plan revisions submitted to satisfy CAA Sections 172(c), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), 189(b)(1)(A) and 189(d); and Sections 192(a) and 192(b), for nitrogen dioxide; and any other applicable CAA provisions requiring a demonstration of reasonable further progress or attainment).

~~[L.]~~ J. “Department” means the New Mexico environment department.

~~[M.]~~ K. “Design concept” means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade separated highway, reserved right-of-way rail transit, mixed traffic rail transit, exclusive busway, etc.

~~[N.]~~ L. “Design scope” means the design aspects of a facility which will affect the proposed facility’s impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-

occupancy vehicles, etc.

~~[O:] M.~~ **“Donut areas”** are geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas.

~~[P:] N.~~ **“FHWA”** means the federal highway administration of US DOT.

~~[Q:] O.~~ **“FHWA/FTA project”**, for the purpose of this part, is any highway or transit project which is proposed to receive funding assistance and approval through the federal-aid highway program or the federal mass transit program, or requires federal highway administration (FHWA) or federal transit administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

~~[R:] P.~~ **“Forecast period”** with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR part 450.

~~[S:] Q.~~ **“FTA”** means the federal transit administration of US DOT.

~~[T:] R.~~ **“Highway project”** is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it shall be defined sufficiently to:

(1) connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

~~[U:] S.~~ **“Horizon year”** is a year for which the transportation plan describes the envisioned transportation system in accordance with 20.2.99.125 NMAC.

~~[V:] T.~~ **“Hot-spot analysis”** is an estimation of likely future localized CO, PM₁₀, and/or PM_{2.5} pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

~~[W:] U.~~ **“Increase the frequency or severity”** means to cause a location or region to exceed a standard more often or to cause a violation at a greater

concentration than previously existed and/ or would otherwise exist during the future period in question, if the project were not implemented.

~~[X:] V.~~ **“Isolated rural nonattainment and maintenance areas”** are areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have federally required metropolitan transportation plans or TIPs and do not have projects that are part of the emissions in such areas are instead included in statewide transportation improvement programs. These are not donut areas.

~~[Y:] W.~~ **“Lapse”** means that the conformity determination for a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan and TIP.

~~[Z:] X.~~ **“Limited maintenance plan”** is a maintenance plan that EPA has determined meets EPA's limited maintenance plan policy criteria for a given NAAQS and pollutant. To qualify for a limited maintenance plan, for example, an area must have a design value that is significantly below a given NAAQS, and it must be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle emissions growth.

~~[AA:] Y.~~ **“Maintenance area”** means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under Section 175A of the CAA, as amended.

~~[AB:] Z.~~ **“Maintenance plan”** means an implementation plan under Section 175A of the CAA, as amended.

~~[AC:] AA.~~ **“Metropolitan planning organization (MPO)”** means the policy board of an organization created as a result of the designation process in 23 U.S.C.134(d).

~~[AD:] AB.~~ **“Milestone”** has the meaning given in CAA Sections 182(g)(1) and 189(c) for serious and above ozone nonattainment areas and PM₁₀ nonattainment areas, respectively. For all other nonattainment areas, a milestone consists of an emissions level and the date on which that level is to be achieved as required by the applicable CAA provision for reasonable further progress towards attainment.

~~[AE:] AC.~~ **“Motor vehicle emissions budget”** is that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or

maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated by the SIP to highway and transit vehicle use and emissions.

~~[AF:] AD.~~ **“National ambient air quality standards (NAAQS)”** are those standards established pursuant to Section 109 of the CAA.

~~(1)~~ **“1-hour ozone NAAQS”** means the 1- hour ozone national ambient air quality standard codified at 40 CFR 50.9.

~~(2)~~ **“8-hour ozone NAAQS”** means the 8- hour ozone national ambient air quality standard codified at 40 CFR 50.10.

~~(3)~~ **“24-hour PM₁₀ NAAQS”** means the 24-hour PM₁₀ national ambient air quality standard codified at 40 CFR 50.6.

~~(4)~~ **“1997 PM_{2.5} NAAQS”** means the PM_{2.5} national ambient air quality standards codified at 40 CFR 50.7.

~~(5)~~ **“2006 PM_{2.5} NAAQS”** means the 24- hour PM_{2.5} national ambient air quality standard codified at 40 CFR 50.13.

~~(6)~~ **“Annual PM₁₀ NAAQS”** means the annual PM₁₀ national ambient air quality standard that EPA revoked on December 18, 2006.

~~[AG:] AE.~~ **“NEPA”** means the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321, et seq.

~~[AH:] AF.~~ **“NEPA process completion”**, for the purposes of this part, with respect to FHWA or FTA, means the point at which there is a specific action to make a determination that a project is categorically excluded, to make a finding of no significant impact, or to issue a record of decision on a final environmental impact statement under NEPA.

~~[AI:] AG.~~ **“NMDOT”** means the New Mexico department of transportation or its successor agency or authority, as represented by the department secretary or his or her designee.

~~[AJ:] AH.~~ **“Nonattainment area”** means any geographic region of the United States which has been designated as nonattainment under Section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

~~[AK:] AI.~~ **“Project”** means a highway project or transit project.

~~[AL:] AJ.~~ **“Protective finding”** means a determination by US EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

~~[AM:] AK.~~ **“Recipient of funds designated under title 23 U.S.C.**

or the federal transit laws” means any agency at any level of state, county, city, or regional government that routinely receives title 23 U.S.C. or federal transit law funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

[AN:] AL. “Regionally significant project” means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals, as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area’s transportation network, including at a minimum:

(1) all principal arterial highways; and

(2) all fixed guideway transit facilities that offer an alternative to regional highway travel.

[AO:] AM. “Safety margin” means the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance.

[AP:] AN. “Standard” means a national ambient air quality standard.

[AQ:] AO. “State implementation plan (SIP)” means an applicable implementation plan and the applicable portion (or portions) of the New Mexico state implementation plan, or most recent revision thereof, which has been approved under Section 110, or promulgated under Section 110(c), or promulgated or approved pursuant to regulations promulgated under Section 301(d) of the CAA and which implements the relevant requirements of the CAA (see the definition for “applicable implementation plan”).

[AR:] AP. “Title 23 U.S.C.” means title 23 of the United States Code.

[AS:] AQ. “Transit” is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

[AF:] AR. “Transit project” is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance

for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it shall be defined inclusively enough to:

(1) connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

[AU:] AS. “Transportation control measure (TCM)” is any measure that is specifically identified and committed to in the applicable implementation plan, including a substitute or additional TCM that is incorporated into the applicable SIP through the process established in CAA section 176(c)(8), that is either one of the types listed in Section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this part.

[AV:] AT. “Transportation improvement program (TIP)” means a transportation improvement program developed by a metropolitan planning organization under 23 U.S.C. 134(j).

[AW:] AU. “Transportation plan” means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

[AX:] AV. “Transportation project” is a highway project or a transit project.

[AY:] AW. “US EPA” means the United States environmental protection agency

[AZ:] AX. “US DOT” means the United States department of transportation.

[BA:] AY. “Written commitment” for the purposes of this part means a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment is an

enforceable obligation under the applicable implementation plan.

[12/14/94; 11/23/98; 20.2.99.7 NMAC - Rn, 20 NMAC 2.99.107, 10/31/02; A, 10/15/05; A, 9/1/07; A, 06/01/09; A, 11/07/11]

20.2.99.117 AGENCY ROLES IN CONSULTATION. Specific roles of the agencies participating in the interagency consultation process are listed below. Specific responsibilities of the agencies participating in the interagency consultation process are listed in 20.2.99.118 NMAC. For the purposes of this part, the lead agency for all conformity processes and procedures is that agency which is responsible for initiating the consultation process, preparing the initial and final drafts of the document or decision, and for assuring the adequacy of the interagency consultation process.

A. The department shall be the lead agency for the development of:

(1) applicable control strategy implementation plan revisions for the nonattainment or maintenance area;

(2) the list of TCMs to be submitted as part of the SIP; and

(3) any amendments or revisions thereto.

B. In the case of areas in which an MPO has been established, the designated MPO for the nonattainment or maintenance area shall be the lead agency for:

(1) the development of the unified planning work program under 23 CFR 450.314;

(2) development of the transportation plan for the nonattainment or maintenance area;

(3) development of the TIP for the nonattainment or maintenance area;

(4) any amendments or revisions thereto;

(5) any determinations of conformity under this part for which that MPO is responsible;

(6) choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas as required by Subparagraph (c) of Paragraph (2) of Subsection [E] N of 20.2.99.128 NMAC; and

(7) development of TCMs, in cooperation with the department.

C. In the case of areas in which an MPO has not been established, NMDOT shall be the lead agency for:

(1) the development of the transportation plan for the nonattainment or maintenance area;

(2) development of the TIP (transportation improvement program) for the nonattainment or maintenance area;

(3) any amendments or revisions thereto;

(4) any determinations of

conformity under this part for which an MPO would be otherwise responsible;

(5) choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas as required by Subparagraph (c) of Paragraph (2) of Subsection [E] N of 20.2.99.128 NMAC; and

(6) development of TCMs, in cooperation with the department.

[12/14/94; 11/23/98; 20.2.99.117 NMAC - Rn, 20 NMAC 2.99.117 10/31/02; A, 10/15/05; A, 11/07/11]

20.2.99.128 CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS - GENERAL.

A. In order for each transportation plan, program, and FHWA/FTA project to be found to conform the MPO and US DOT must demonstrate that the applicable criteria and procedures in this part are satisfied and the MPO and US DOT must comply with all applicable conformity requirements of implementation plans and of court orders for the area which pertain specifically to conformity. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects or state projects), the relevant pollutant(s), and the status of the implementation plan.

B. The following table (table 1) indicates the criteria and procedures in 20.2.99.129 NMAC through 20.2.99.138 NMAC which apply for transportation plans, TIPs, and FHWA/FTA projects. Subsections C through [H] K of this section (20.2.99.128 NMAC) explain when the budget, interim [emission] emissions, and hot spot tests are required for each pollutant and NAAQS. Subsection [J] L of this section (20.2.99.128 NMAC) addresses conformity requirements for areas with approved or adequate limited maintenance plans. Subsection [K] M of this section (20.2.99.128 NMAC) addresses nonattainment and maintenance areas which EPA has determined have insignificant motor vehicle emissions. Subsection [E] N of this section (20.2.99.128 NMAC) addresses isolated rural nonattainment and maintenance areas. Table 1 follows. Table 1. Conformity Criteria.

(1) All actions at all times

(a) 20.2.99.129 NMAC. Latest planning assumptions

(b) 20.2.99.130 NMAC. Latest emissions model

(c) 20.2.99.131 NMAC. Consultation

(2) Transportation Plan

(a) Subsection B of 20.2.99.132 NMAC. TCMs

(b) 20.2.99.137 NMAC and/or

20.2.99.138 NMAC. Emissions budget and/or interim emissions

(3) TIP

(a) Subsection C of 20.2.99.132 NMAC. TCMs

(b) 20.2.99.137 NMAC and/or 20.2.99.138 NMAC. Emissions budget and/or interim emissions

(4) Project (From a conforming plan and TIP)

(a) 20.2.99.133 NMAC. Currently conforming plan and TIP

(b) 20.2.99.134 NMAC. Project from a conforming plan and TIP

(c) 20.2.99.135 NMAC. CO, PM₁₀, and PM_{2.5} hot spots

(d) 20.2.99.136 NMAC. PM₁₀ and PM_{2.5} control measures

(5) Project (Not from a conforming plan and TIP)

(a) Subsection D of 20.2.99.132 NMAC. TCMs

(b) 20.2.99.133 NMAC. Currently conforming plan and TIP

(c) 20.2.99.135 NMAC. CO, PM₁₀, and PM_{2.5} hot spots

(d) 20.2.99.136 NMAC. PM₁₀ and PM_{2.5} control measures

(e) 20.2.99.137 NMAC and/or 20.2.99.138 NMAC. Emissions budget and/or interim emissions.

C. 1-hour ozone nonattainment and maintenance areas. This subsection (Subsection C of section 20.2.99.128 NMAC) applies when an area is nonattainment or maintenance for the 1-hour ozone NAAQS (i.e., until the effective date of any revocation of the 1-hour ozone NAAQS for an area). In addition to the criteria listed in table 1 in Subsection B of this section (20.2.99.128 NMAC) that are required to be satisfied at all times, in such ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emission tests are satisfied as described in the following.

(1) In all 1-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by 20.2.99.137 NMAC for conformity determinations made on or after:

(a) the effective data EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 1-hour ozone NAAQS is adequate for transportation conformity purposes;

(b) the publication data of EPA's approval of such a budget in the federal register; or

(c) the effective state of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(2) In ozone nonattainment areas that are required to submit a control strategy

implementation plan revision for the 1-hour ozone NAAQS (usually moderate and above areas), the interim emissions tests must be satisfied as required by 20.2.99.138 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget form an applicable implementation plan for the 1-hour ozone NAAQS and no adequate motor vehicle emissions budget form a submitted control strategy implementation plan revision or maintenance plan for the 1-hour ozone NAAQS.

(3) An ozone nonattainment area must satisfy the interim emissions test for NO_x, as required by 20.2.99.138 NMAC, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a fifteen percent (15%) plan or phase I attainment demonstration that does not include a motor vehicle emissions budget for NO_x. The implementation plan for the 1-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 1990.

(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision for the 1-hour NAAQS (usually marginal and below areas) must satisfy one of the following requirements:

(a) the interim emissions tests required by 20.2.99.138 NMAC; or

(b) the department shall submit to US EPA an implementation plan revision for the 1-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or an attainment demonstration, and the budget test required by 20.2.99.137 NMAC must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in Paragraph (1) of Subsection C of 20.2.99.128 NMAC).

(5) Notwithstanding Paragraphs (1) and (2) of Subsection C of 20.2.99.128 NMAC, moderate and above ozone nonattainment areas with three years of clean data for the 1-hour ozone NAAQS that have not submitted a maintenance plan and that US EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 1-hour NAAQS must satisfy one of the following requirements:

(a) the interim emissions tests as required by 20.2.99.138 NMAC;

(b) the budget test as required by 20.2.99.137 NMAC, using the adequate

or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 1-hour ozone NAAQS (subject to the timing requirements of Paragraph (1) of Subsection C of 20.2.99.128 NMAC); or

(c) the budget test as required by 20.2.99.137 NMAC, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the US EPA rulemaking that determines that the area has clean data.

D. 8-hour ozone NAAQS nonattainment and maintenance areas without motor vehicle emissions budgets for the 1-hour ozone NAAQS for any portion of the 8-hour nonattainment area. This subsection (Subsection D of section 20.2.99.128 NMAC) applies to areas that were never designated nonattainment for the 1-hour ozone NAAQS but that never submitted a control strategy SIP or maintenance plan with approved or adequate motor vehicle emissions budgets. This subsection (Subsection D of section 20.2.99.128 NMAC) applies one (1) year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according to Subsection D of 20.2.99.109 NMAC. In the addition to the criteria listed in table 1 in Subsection B of 20.2.99.128 NMAC that are required to be satisfied at all times, in such 8-hour ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following.

(1) In such 8-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by section 20.2.99.137 NMAC for conformity determinations made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the 8-hour ozone NAAQS (usually moderate and above and certain Clean Air Act, part D subpart 1 areas), the interim emissions tests must be satisfied as required by section 20.2.99.138 NMAC for conformity determinations made when there is no approved motor

vehicle emissions budget from an applicable implementation plan for 8-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 8-hour NAAQS.

(3) Such an 8-hour ozone nonattainment area must satisfy the interim emissions test for NOx, as required by section 20.2.99.138 NMAC, if the implementation plan or plan submission that is applicable for the purposes of conformity determination is a fifteen percent (15%) plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NOx. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NOx if the implementation plan or plan submission contains an explicit NOx motor vehicle emissions budget that is intended to act as a ceiling on future NOx emissions, and the NOx motor vehicle emissions budget is a net reduction from NOx emissions levels in 2002.

(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision for the 8-hour ozone NAAQS (usually marginal and certain Clean Air Act, part D, subpart 1 areas) must satisfy one of the following requirements:

(a) the interim emissions tests required by section 20.2.99.138 NMAC; or

(b) the department shall submit to EPA an implementation plan revision for the 8-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by section 20.2.99.137 NMAC must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in Paragraph (1) of Subsection D of 20.2.99.128 NMAC).

(5) Notwithstanding Paragraphs (1) and (2) of Subsection D of 20.2.99.128 NMAC, ozone nonattainment areas with three (3) years of clean data for the 8-hour ozone NAAQS that have not submitted maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 9-hour ozone NAAQS must satisfy one of the following requirements:

(a) the interim emissions tests as required by section 20.2.99.138 NMAC;

(b) the budget test as required by section 20.2.99.137 NMAC, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 8-hour ozone NAAQS (subject to the timing requirements of Paragraph (1)

of Subsection D of 20.2.99.128 NMAC; or

(c) the budget test as required by section 20.2.137 NMAC, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone NAAQS.

E. 8-hour ozone NAAQS nonattainment and maintenance areas with motor vehicle emissions budgets for the 1-hour ozone NAAQS that cover all or a portion of the 8-hour nonattainment area. This provision applies one (1) year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according to Subsection D of section 2.20.99.109 NMAC. In addition to the criteria listing in table 1 in Subsection B of this section (2.20.2.128 NMAC) that are required to be satisfied at all times, in such 8-hour ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following.

(1) In such 8-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by section 20.2.99.137 NMAC for conformity determinations made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(2) Prior to Paragraph (1) of Subsection E of 20.2.99.128 NMAC applying, the following test(s) must be satisfied.

(a) If the 8-hour ozone nonattainment area covers the same geographic area as the 1-hour ozone nonattainment or maintenance area(s), the budget test as required by section 20.2.99.137 NMAC using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission.

(b) If the 8-hour ozone nonattainment area covers a smaller geographic area within the 1-hour ozone nonattainment or maintenance area(s), the budget test as required by section 20.2.99.137 NMAC for either the 8-hour nonattainment area using corresponding portion(s) of the approved or adequate motor

vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where such portion(s) can reasonably be identified through the interagency consultation process required by section 20.2.99.116 NMAC ; or the 1-hour nonattainment area using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission. If additional emission reductions are necessary to meet the budget test for the 8-hour ozone NAAQS in such cases, these emissions reductions must come from within the 8-hour nonattainment area.

(c) If the 8-hour ozone nonattainment area covers a larger geographic area and encompasses the entire 1-hour ozone nonattainment or maintenance area(s) the budget test as required by section 20.2.99.137 NMAC for the portion of the 8-hour ozone nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission; and the interim emissions tests as required by section 20.2.99.138 NMAC for either: the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established for each state of a multi-state 1-hour nonattainment area partially covers a 1-hour ozone nonattainment or maintenance area(s).

(d) If the 8-hour ozone nonattainment area partially covers a 1-hour ozone nonattainment or maintenance area(s) the budget test as required by section 20.2.99.137 NMAC for the portion of the 8-hour ozone nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where they can be reasonably identified through the interagency consultation process required by section 20.2.99.116 NMAC ; and the interim emissions tests as required by section 20.2.99.138 NMAC, when applicable, for either: the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established for each state in a multi-state 1-hour nonattainment or maintenance area.

(3) Such an 8-hour ozone

nonattainment area must satisfy the interim emissions test for NO_x, as required by section 20.2.99.138 NMAC, if the only implementation plan or plan submission that is applicable for the purposes of conformity determinations is a fifteen percent (15%) plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO_x. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 2002. Prior to an adequate or approved NO_x motor vehicle emissions budget in the implementation plan submission for the 8-hour ozone NAAQS, the implementation plan for the 1-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emission budget is a net reduction from NO_x emissions levels in 1990.

(4) Notwithstanding Paragraphs (1) and (2) of Subsection E of this section (20.2.99.128 NMAC), ozone nonattainment areas with three years of clean data for the 8-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirement for the 8-hour ozone NAAQS must satisfy one of the following requirements:

(a) the budget test and/or interim emissions tests are required by sections 20.2.99.137 NMAC and 20.2.99.138 NMAC and as described in Paragraph (2) of Subsection E of this section (20.2.99.128 NMAC);

(b) the budget test as required by section 20.2.99.137 NMAC, using the adequate or approved motor vehicle emission budgets in the submitted or applicable control strategy implementation plan for the 8-hour ozone NAAQS (subject to the timing requirements of Paragraph (1) of Subsection E of 20.2.99.128 NMAC); or

(c) the budget test as required by section 20.2.99.137 NMAC, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone NAAQS.

F. CO nonattainment and maintenance areas. In addition to the criteria listed in table 1 in Subsection B of

20.2.99.128 NMAC that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or interim emissions tests are satisfied as described in the following.

(1) FHWA/FTA projects in CO nonattainment or maintenance areas must satisfy the hot spot test required by Subsection A of 20.2.99.135 NMAC at all times. Until a CO attainment demonstration or maintenance plan is approved by US EPA, FHWA/FTA projects must also satisfy the hot spot test required by Subsection B of 20.2.99.135 NMAC.

(2) In CO nonattainment and maintenance areas the budget test must be satisfied as required by 20.2.99.137 NMAC for conformity determinations made:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(3) Except as provided in Paragraph (4) of Subsection F of 20.2.99.128 NMAC, in CO nonattainment areas the interim emissions tests must be satisfied as required by 20.2.99.138 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

(4) CO nonattainment areas that have not submitted a maintenance plan and that are not required to submit an attainment demonstration (e.g., moderate CO areas with a design value of 12.7 ppm or less or not classified CO areas) must satisfy one of the following requirements:

(a) the interim emissions tests required by 20.2.99.138 NMAC; or

(b) the department shall submit to US EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by 20.2.99.137 NMAC must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in Paragraph (2) of Subsection F of 20.2.99.128 NMAC).

G. PM₁₀ nonattainment and maintenance areas. In addition to the criteria listed in table 1 in Subsection B of 20.2.99.128 NMAC that are required to be

satisfied at all times, in PM₁₀ nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or interim emissions tests are satisfied as described in the following.

(1) FHWA/FTA projects in PM₁₀ nonattainment or maintenance areas must satisfy the hot spot test required by 20.2.99.135 NMAC.

(2) In PM₁₀ nonattainment and maintenance areas where a budget is submitted for the 24-hour PM₁₀ NAAQS, the budget test must be satisfied as required by 20.2.99.137 NMAC for conformity determinations made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(3) Prior to Paragraph (2) of Subsection G of 20.2.99.128 NMAC applying, the budget test must be satisfied as required by 20.2.99.137 NMAC using the approved or adequate motor vehicle emissions budget established for the revoked annual PM₁₀ NAAQS, if such a budget exists.

~~(3)~~ (4) In PM₁₀ nonattainment areas the interim emissions tests must be satisfied as required by 20.2.99.138 NMAC for conformity determinations made:

(a) if there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan; or

(b) if the submitted implementation plan revision is a demonstration of impracticability under CAA Section 189(a)(1)(B)(ii) and does not demonstrate attainment.

H. NO₂ nonattainment and maintenance areas. In addition to the criteria listed in table 1 in Subsection B of 20.2.99.128 NMAC that are required to be satisfied at all times, in NO₂ nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following.

(1) In NO₂ nonattainment and maintenance areas the budget test must be satisfied as required by 20.2.99.137 NMAC for conformity determinations made:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy

implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective [data] date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(2) In NO₂ nonattainment areas the interim emissions tests must be satisfied as required by 20.2.99.138 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

I. 1997 PM_{2.5} NAAQS nonattainment and maintenance areas. In addition to the criteria listed in table 1 in Subsection B of section 20.2.99.128 NMAC that are required to be satisfied at all times, in such 1997 PM_{2.5} nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

(1) FHWA/FTA projects in such 1997 PM_{2.5} nonattainment or maintenance areas must satisfy the appropriate hot-spot test required by Subsection A of section 20.2.99.135 NMAC.

(2) in such 1997 PM_{2.5} nonattainment and maintenance areas the budget [in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;] test must be satisfied as required by 20.2.99.137 NMAC for conformity determinations made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective [data] date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking;

(3) in such 1997 PM_{2.5} nonattainment areas the interim emissions tests must be satisfied as required by section 20.2.99.138 NMAC for conformity determinations made if there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

J. 2006 PM_{2.5} NAAQS nonattainment and maintenance areas without 1997 PM_{2.5} NAAQS motor vehicle emissions budgets for any portion of the 2006 PM_{2.5} NAAQS area. In addition to the criteria listed in Table 1 of Subsection B of 20.2.99.128 NMAC that are required to be satisfied at all times, in such 2006 PM_{2.5} nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

(1) FHWA/FTA projects in such PM_{2.5} nonattainment and maintenance areas must satisfy the appropriate hot-spot test required by Subsection A of 20.2.99.135 NMAC.

(2) In such PM_{2.5} nonattainment and maintenance areas the budget test must be satisfied as required by 20.2.99.137 NMAC for conformity determinations made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 2006 PM_{2.5} NAAQS is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(3) In such PM_{2.5} nonattainment areas the interim emissions tests must be satisfied as required by 20.2.99.138 NMAC for conformity determinations made if there is no approved motor vehicle emissions budget from an applicable implementation plan for the 2006 PM_{2.5} NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 2006 PM_{2.5} NAAQS.

K. 2006 PM_{2.5} NAAQS nonattainment and maintenance areas with motor vehicle emissions budgets for the 1997 PM_{2.5} NAAQS that cover all or a portion of the 2006 PM_{2.5} nonattainment area. In addition to the criteria listed in Table 1 of Subsection B of 20.2.99.128 NMAC that are required to be satisfied at all times, in such 2006 PM_{2.5} nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

(1) FHWA/FTA projects in such PM_{2.5} nonattainment and maintenance areas must satisfy the appropriate hot-spot test required by Subsection A of 20.2.99.135.

(2) In such PM_{2.5} nonattainment and maintenance areas the budget test must be satisfied as required by 20.2.99.137

NMAC for conformity determinations made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 2006 PM_{2.5} NAAQS is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(3) Prior to Paragraph (2) of Subsection K of 20.2.99.128 NMAC applying, the following test(s) must be satisfied:

(a) if the 2006 PM_{2.5} nonattainment area covers the same geographic area as the 1997 PM_{2.5} nonattainment or maintenance area(s), the budget test as required by 20.2.99.137 NMAC using the approved or adequate motor vehicle emissions budgets in the 1997 PM_{2.5} applicable implementation plan or implementation plan submission;

(b) if the 2006 PM_{2.5} nonattainment area covers a smaller geographic area within the 1997 PM_{2.5} nonattainment or maintenance area(s), the budget test as required by 20.2.99.137 NMAC for either:

(i) the 2006 PM_{2.5} nonattainment area using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets in the 1997 PM_{2.5} applicable implementation plan or implementation plan submission where such portion(s) can reasonably be identified through the interagency consultation process required by 20.2.99.116 NMAC through 20.2.99.124 NMAC; or

(ii) the 1997 PM_{2.5} nonattainment area using the approved or adequate motor vehicle emissions budgets in the 1997 PM_{2.5} applicable implementation plan or implementation plan submission; if additional emissions reductions are necessary to meet the budget test for the 2006 PM_{2.5} NAAQS in such cases, these emissions reductions must come from within the 2006 nonattainment area;

(c) if the 2006 PM_{2.5} nonattainment area covers a larger geographic area and encompasses the entire 1997 PM_{2.5} nonattainment or maintenance area(s);

(i) the budget test as required by 20.2.99.137 NMAC for the portion of the 2006 PM_{2.5} nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the 1997 PM_{2.5} applicable implementation plan or implementation plan submission; and the interim emissions tests as required by 20.2.99.138 NMAC for either: the portion of the 2006 PM_{2.5} nonattainment area not covered by the approved or adequate

budgets in the 1997 PM_{2.5} implementation plan, the entire 2006 PM_{2.5} nonattainment area, or the entire portion of the 2006 PM_{2.5} nonattainment area within an individual state, in the case where separate 1997 PM_{2.5} SIP budgets are established for each state of a multi-state 1997 PM_{2.5} nonattainment or maintenance area; or

(ii) the budget test as required by 20.2.99.137 NMAC for the entire 2006 PM_{2.5} nonattainment area using the approved or adequate motor vehicle emissions budgets in the applicable 1997 PM_{2.5} implementation plan or implementation plan submission;

(d) if the 2006 PM_{2.5} nonattainment area partially covers a 1997 PM_{2.5} nonattainment or maintenance area(s);

(i) the budget test as required by 20.2.99.137 NMAC for the portion of the 2006 PM_{2.5} nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets in the 1997 PM_{2.5} applicable implementation plan or implementation plan submission where they can be reasonably identified through the interagency consultation process required by 20.2.99.116 NMAC through 20.2.99.124 NMAC; and

(ii) the interim emissions tests as required by 20.2.99.138 NMAC, when applicable, for either: the portion of the 2006 PM_{2.5} nonattainment area not covered by the approved or adequate budgets in the 1997 PM_{2.5} implementation plan, the entire 2006 PM_{2.5} nonattainment area, or the entire portion of the 2006 PM_{2.5} nonattainment area within an individual state, in the case where separate 1997 PM_{2.5} SIP budgets are established for each state in a multi-state 1997 PM_{2.5} nonattainment or maintenance area.

[F] L. Areas with limited maintenance plans. Notwithstanding the other paragraphs of this section, an area is not required to satisfy the regional emissions analysis for sections 20.2.99.137 NMAC and/or 20.2.99.138 NMAC for a given pollutant and NAAQS, if the area has an adequate or approved limited maintenance plan would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violations to occur. A conformity determination that meets other applicable criteria in table 1 or Subsection B of this section (20.2.99.128 NMAC) is still required, including the hot-spot requirements for projects in CO, PM₁₀, and PM_{2.5} areas.

[K] M. Areas with insignificant motor vehicle emissions. Notwithstanding the other subsections in this section (20.2.99.128 NMAC), and area is not required to satisfy a regional emissions analysis for sections 20.2.99.137 NMAC and/

or 20.2.99.138 NMAC for a given pollutant/precursor and NAAQS, if EPA finds through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor and NAAQS. The SIP would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth in that pollutant/precursor for a NAAQS violation to occur. Such a finding would be based on a number of factors, including the percentage of motor vehicle emissions in the context of the total SIP inventory, the current state of air quality as determined by monitoring data for that NAAQS, the absence of SIP motor vehicle control measures, and historical trends and future projections of the growth of motor vehicle emissions. A conformity determination that meets other applicable criteria in table 1 or Subsection B of this section (20.2.99.128 NMAC) is still required, including regional emissions analyses for sections 20.2.99.137 NMAC and/or 20.2.99.138 NMAC for other pollutants/precursors and NAAQS that apply. Hot-spot requirements for projects in CO, PM₁₀, and PM_{2.5} areas in section 20.2.99.135 NMAC must also be satisfied, unless EPA determined that the SIP also demonstrates that projects will not create new localized violations and/or increase the severity or number of existing violations of such NAAQS. If EPA subsequently finds that motor vehicle emissions of a given pollutant/precursor are significant, this subsection would no longer apply for future conformity determinations for that pollutant/precursor and NAAQS.

[E] N. Isolated rural nonattainment and maintenance areas. This subsection applies to any nonattainment or maintenance area (or portion thereof) which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. This subsection does not apply to "donut" areas which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

(1) FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of 20.2.99.129 NMAC through 20.2.99.131 NMAC, Subsection D of 20.2.99.132 NMAC, 20.2.99.135 NMAC, and 20.2.99.136 NMAC. Until US EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects must also satisfy the requirements of Subsection B of 20.2.99.135 NMAC ("Localized CO, PM₁₀, and PM_{2.5} violations (hot spots)").

(2) Isolated rural nonattainment

and maintenance areas are subject to the budget and/or interim emissions tests as described in Subsections C through [K] M of 20.2.99.128 NMAC, with the following modifications:

(a) when the requirements of Subsection D of 20.2.99.125 NMAC, 20.2.99.135 NMAC, 20.2.99.137 NMAC and 20.2.99.138 NMAC apply to isolated rural nonattainment and maintenance areas, references to "transportation plan" or "TIP" should be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the rural nonattainment or maintenance area; when the requirements of Subsection D of 20.2.99.125 NMAC apply to isolated rural nonattainment and maintenance areas, references to "MPO" should be taken to mean NMDOT;

(b) in isolated rural nonattainment and maintenance areas that are subject to 20.2.99.137 NMAC, FHWA/FTA projects must be consistent with motor vehicle emissions budget(s) for the years in the timeframe of the attainment demonstration or maintenance plan; for years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects must satisfy one of the following requirements:

(i) 20.2.99.137 NMAC;

(ii) 20.2.99.138 NMAC (including regional emissions analysis for NO_x in all ozone nonattainment and maintenance areas, notwithstanding Paragraph (2) of Subsection F of 20.2.99.138 NMAC; or

(iii) as demonstrated by the air quality dispersion model or other air quality modeling technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in combination with all other regionally significant projects expected in the area in the timeframe of the statewide transportation plan, must not cause or contribute to any new violation of any standard in any areas; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; control measures assumed in the analysis must be enforceable;

(c) the choice of requirements in Subparagraph (b) of Paragraph (2) of Subsection [G] N of 20.2.99.128 NMAC and the methodology used to meet the requirements of item (iii) of Subparagraph (b) of Paragraph (2) of Subsection [G] N of 20.2.99.128 NMAC must be determined through the interagency consultation process required in Paragraph (6) of Subsection B of 20.2.99.117 NMAC and Paragraph (5) of Subsection C of 20.2.99.117 NMAC through which the relevant recipients of title 23 U.S.C. or federal transit laws funds,

NMDOT, the department, or the local air quality agency should reach consensus about the option and methodology selected; US EPA and US DOT must be consulted through this process as well; in the event of unresolved disputes, conflicts may be escalated to the governor consistent with the procedure in 20.2.99.123 NMAC, which applies to department comments on a conformity determination.

[12/14/94; 11/23/98; 20.2.99.128 NMAC - Rn, 20 NMAC 2.99.128 10/31/02; A, 10/15/05; A, 9/1/07; A, 06/01/09; A, 11/07/11]

20.2.99.135 CRITERIA AND PROCEDURES - LOCALIZED CO, PM₁₀, AND PM_{2.5} VIOLATIONS (HOT SPOTS).

A. This subsection (Subsection A of 20.2.99.135 NMAC) applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO, PM₁₀, and/or PM_{2.5} violations, [or] increase the frequency or severity of any existing CO, PM₁₀, and/or PM_{2.5} violations, or delay timely attainment of any NAAQS or any required interim emission reductions or other milestones in CO, PM₁₀, and PM_{2.5} nonattainment and maintenance areas. This criterion is satisfied without a hotspot analysis in PM₁₀ and PM_{2.5} nonattainment and maintenance areas for FHWA/FTA projects that are not identified in Paragraph (1) of Subsection B of 20.2.99.148 NMAC. This criterion is satisfied for all other FHWA/FTA projects in CO, PM₁₀, and PM_{2.5} nonattainment and maintenance areas if it is demonstrated that during the time frame of the transportation plan no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project, and the project has been included in a regional emissions analysis that meets applicable 20.2.99.137 NMAC and/or 20.2.99.138 NMAC requirements. The demonstration shall be performed according to the consultation requirements of Subsection A of 20.2.99.120 NMAC and the methodology requirements of 20.2.99.148 NMAC.

B. This subsection (Subsection B of 20.2.99.135 NMAC) applies for CO nonattainment areas as described in Paragraph (1) of Subsection F of 20.2.99.128 NMAC. Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) existing localized CO violations will be eliminated or reduced in severity and number as a result of the project. The demonstration must be

performed according to the consultation requirements of Subsection A of 20.2.99.120 NMAC and the methodology requirements of 20.2.99.146 NMAC.

[12/14/94; 11/23/98; 20.2.99.135 NMAC - Rn, 20 NMAC 2.99.135 10/31/02; A, 10/15/05; A, 9/1/07; A, 06/01/09; A, 11/07/11]

20.2.99.137 CRITERIA AND PROCEDURES - MOTOR VEHICLE EMISSIONS BUDGET.

A. The transportation plan, TIP, and project not from a conforming transportation plan and TIP must be consistent with the motor vehicle emissions budget(s) in the applicable control strategy implementation plan (or implementation plan submission). This criterion applies as described in Subsections C through [L] N of 20.2.99.128 NMAC. This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in Subsection C of 20.2.99.137 NMAC are less than or equal to the motor vehicle emissions budget(s) established in the applicable implementation plan or implementation plan submission.

B. Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), for the attainment year (if it is within the time frame of the transportation plan and conformity determination), for the last year of the timeframe of the conformity determination (as described under Subsection D of 20.2.99.125 NMAC), and for any intermediate years within the timeframe of the conformity determination as necessary so that the years for which consistency is demonstrated are no more than ten years apart, as follows.

(1) Until a maintenance plan is submitted:

(a) emissions in each year (such as milestone years and the attainment year) for which the control strategy implementation plan revision establishes motor vehicle emissions budget(s) must be less than or equal to that year's motor vehicle emissions budget(s); and

(b) emissions in years for which no motor vehicle emissions budget(s) are specifically established must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year; for example, emissions in years after the attainment year for which the implementation plan does not establish a budget must be less than or equal to the motor vehicle emissions budget(s) for the attainment year.

(2) When a maintenance plan has been submitted:

(a) emissions must be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets; if the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emissions budget(s) must be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan; the interagency consultation process required by 20.2.99.116 NMAC through 20.2.99.124 NMAC shall determine what must be considered in order to make such a finding;

(b) for years after the last year of the maintenance plan, emissions must be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan;

(c) if an approved and/or submitted control strategy implementation plan has established motor vehicle emissions budgets for years in the timeframe of the transportation plan, emissions in these years must be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years: and

(d) for any analysis years before the last year of the maintenance plan, emissions must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year.

C. Consistency with the motor vehicle emissions budget(s) must be demonstrated for each pollutant or pollutant precursor in Subsection B of 20.2.99.109 NMAC (or 20.2.99.101 NMAC) for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle emissions budget.

D. Consistency with the motor vehicle emissions budget(s) must be demonstrated by including emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan.

(1) Consistency with the motor vehicle emissions budget(s) must be demonstrated with a regional emissions analysis that meets the requirements of 20.2.99.141 NMAC through 20.2.99.147 NMAC and 20.2.99.120 NMAC.

(2) The regional emissions analysis may be performed for any years in the

timeframe of the conformity determination (as described under Subsection D of 20.2.99.125 NMAC) provided they are not more than ten years apart and provided the analysis is performed for the attainment year (if it is in the timeframe of the transportation plan and conformity determination) and the last year of the timeframe for the conformity determination. Emissions in years for which consistency with motor vehicle emissions budgets must be demonstrated, as required in Subsection B of 20.2.99.137 NMAC, may be determined by interpolating between the years for which the regional emissions analysis is performed.

(3) When the timeframe of the conformity determination is shortened under Paragraph (2) of Subsection D of 20.2.99.125 NMAC, the conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan, and for any year shown to exceed motor vehicle emissions budgets in a prior regional emissions analysis (if such a year extends beyond the timeframe of the conformity determination).

E. Motor vehicle emissions budgets in submitted control strategy implementation plan revisions and submitted maintenance plans.

(1) Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance plans must be demonstrated if US EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes, and the adequacy finding is effective. However, motor vehicle emissions budgets in submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans for the same Clean Air Act requirement and the period of years addressed by the previously approved implementation plan, unless US EPA specifies otherwise in its approval of a SIP.

(2) If US EPA has not declared an implementation plan submission's motor vehicle emissions budget(s) adequate for transportation conformity purposes, the budget(s) shall not be used to satisfy the requirements of this section. Consistency with the previously established motor vehicle emissions budget(s) must be demonstrated. If there are no previously approved implementation plans or implementation plan submissions with adequate motor vehicle emissions budgets, the interim emissions tests required by 20.2.99.138 NMAC must be satisfied.

(3) If US EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes and conformity of a transportation plan or

TIP has already been determined by US DOT using the budget(s), the conformity determination will remain valid. Projects included in that transportation plan or TIP could still satisfy 20.2.99.133 NMAC and 20.2.99.134 NMAC, which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.

(4) US EPA will not find a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan to be adequate for transportation conformity purposes unless the following minimum criteria are satisfied:

(a) the submitted control strategy implementation plan revision or maintenance plan was endorsed by the governor (or his or her designee) and was subject to a state public hearing;

(b) before the control strategy implementation plan or maintenance plan was submitted to US EPA, consultation among federal, state, and local agencies occurred; full implementation plan documentation was provided to US EPA; and US EPA's stated concerns, if any, were addressed;

(c) the motor vehicle emissions budget(s) is clearly identified and precisely quantified;

(d) the motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission);

(e) the motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan; and

(f) revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see Subsection [AØ] AM of 20.2.99.7 NMAC for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).

(5) Before determining the adequacy of a submitted motor vehicle emissions budget, US EPA will review the department's compilation of public comments and response to comments that are required to be submitted with any implementation plan. US EPA will document its consideration of such comments and

responses in a letter to the department indicating the adequacy of the submitted motor vehicle emissions budget.

(6) When the motor vehicle emissions budget(s) used to satisfy the requirements of this section are established by an implementation plan submittal that has not yet been approved or disapproved by US EPA, the MPO and US DOT's conformity determinations will be deemed to be a statement that the MPO and US DOT are not aware of any information that would indicate that emissions consistent with the motor vehicle emissions budget will cause or contribute to any new violation of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emission reductions or other milestones.

F. Adequacy review process for implementation plan submissions. US EPA will use the procedure listing in Paragraph (1) of Subsection F of this section (20.2.99.137 NMAC) to review the adequacy of an implementation plan.

(1) When US EPA reviews the adequacy of an implementation plan submission prior to EPA's final action on the implementation plan:

(a) US EPA will notify the public through US EPA's website when US EPA receives an implementation plan submission that will be reviewed for adequacy;

(b) the public will have a minimum of 30 days to comment on the adequacy of the implementation plan submission; if the complete implementation plan is not accessible electronically through the internet and a copy is requested within fifteen (15) days of the date of the website notice, the comment period will be extended 30 days from the date that a copy of the implementation plan is mailed;

(c) after the public comment period closes, US EPA will inform the department in writing whether US EPA has found the submission adequate or inadequate for use in transportation conformity, including response to any comments submitted directly and review of comments submitted through the department process, or US EPA will include the determination of adequacy or inadequacy in a proposed or final action approving or disapproving the implementation plan under Subparagraph (c) of Paragraph (2) of Subsection F of this section (20.2.99.137 NMAC);

(d) US EPA will publish a federal register notice to inform the public of US EPA's finding; if EPA finds the submission adequate, the effective date of this finding will be fifteen (15) days from the date the notice is published as established in the federal register notice, unless US EPA is taking a final approval action on the SIP as described in Subparagraph (c) of Paragraph

(2) for Subsection F for this section (20.2.99.137 NMAC);

(e) US EPA will announce whether the implementation plan submission is adequate or inadequate for use in transportation conformity on US EPA's website; the website will also include US EPA's response to comments of any comments were received during the public comments period;

(f) if after US EPA has found a submission adequate, US EPA has cause to reconsider this finding, US EPA will repeat actions described in Subparagraphs (a) through (e) of Paragraph (1) of Subsection F or Paragraph (2) of Subsection F of 20.2.99.137 NMAC unless US EPA determines that there is no need for additional public comment given the deficiencies of the implementation plan submission; in all cases where US EPA reverses its previous finding to a finding of inadequacy under Paragraph (1) of Subsection F of 20.2.99.137 NMAC, such a finding will become effective immediately upon the date of US EPA's letter to the department;

(g) if after EPA has found a submission inadequate, US EPA has cause to reconsider the adequacy of that budget, US EPA will repeat actions described in Subparagraphs (a) through (e) of Paragraph (1) of this section (20.2.99.137 NMAC).

(2) When US EPA reviews the adequacy of an implementation plan submission simultaneously with US EPA's approval or disapproval of the implementation plan:

(a) US EPA's federal register notice of proposed or direct final rulemaking will serve to notify the public that US EPA will be reviewing the implementation plan submission for adequacy;

(b) the publication of the notice of proposed rulemaking will start a public comment period of at least thirty (30) days;

(c) US EPA will indicate whether the implementation plan submission is adequate and thus can be used for conformity either in US EPA's final rulemaking or through the process described in Subparagraphs (c) through (e) of Paragraph (1) of Subsection F of this section (20.2.99.137 NMAC); if US EPA makes an adequacy finding through a final rulemaking that approves the implementation plan submission, such a finding will become effective upon the publication date of US EPA's approval in the federal register, or upon the effective date of US EPA's approval if such action is conducted through direct final rulemaking; US EPA will respond to comments received directly and review comments submitted through the department process and include the response to comments in the applicable docket.

[12/14/94; 11/23/98; 20.2.99.137 NMAC - Rn, 20 NMAC 2.99.137 10/31/02; A,

10/15/05; A, 06/01/09; A, 11/07/11]

20.2.99.138 CRITERIA AND PROCEDURES - INTERIM EMISSIONS IN AREAS WITHOUT MOTOR VEHICLE EMISSIONS BUDGETS.

A. The transportation plan, TIP, and project not from a conforming transportation plan and TIP must satisfy the interim emissions test(s) as described in Subsections C through [E]N of 20.2.99.128 NMAC. This criterion applies to the net effect of the action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system.

B. Ozone areas. The requirements of this subsection (Subsection B of 20.2.99.138 NMAC) apply to all 1-hour ozone and 8-hour ozone NAAQS areas, except for certain requirements as indicated. This criterion may be met.

(1) In moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA Section 182(b)(1) if a regional emissions analysis that satisfies the requirements of 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through L of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.2.99.138 NMAC:

(a) the emissions predicted in the "action" scenario are less than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(b) the emissions predicted in the "action" scenario are lower than 1990 emissions by any nonzero amount, in areas for the 1-hour ozone NAAQS as described in Subsection C of section 20.2.99.128 NMAC; or the 2002 emissions by any nonzero amount, in areas for the 8-hour ozone NAAQS as described in Subsections D and E of 20.2.99.128 NMAC.

(2) In marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of the Clean Air Act Section 182(b)(1) if a regional emissions analysis that satisfies the requirements of section 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsection G through J of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.2.99.138 NMAC:

(a) the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(b) the emissions predicted in the "action" scenario are not greater than

the 1990 emissions, in areas for the 1-hour NAAQS as described in Subsection C of 20.2.99.128 NMAC; or the 2002 emissions, in areas for the 8-hour ozone NAAQS as described in Subsections D and E for 20.2.99.128 NMAC.

C. CO areas. This criterion may be met:

(1) in moderate areas with design values greater than 12.7 ppm and serious CO nonattainment areas that are subject to Clean Air Act Section 187(a)(7) if a regional emissions analysis that satisfies their requirements of sections 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through J of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.2.99.138 NMAC:

(a) the emissions predicted in the "action" scenario are less than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(b) the emissions predicted in the "action" scenario are lower than 1990 emissions by any nonzero amount.

(2) in moderate areas with design values less than 12.7 ppm and not classified CO nonattainment areas if a regional emissions analysis that satisfies the requirements of sections 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through J of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.2.99.138 NMAC:

(a) the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(b) the emissions predicted in the "action" scenario are not greater than 1990 emissions.

D. PM₁₀ and NO₂ areas. This criterion may be met in PM₁₀ and NO₂ nonattainment areas if a regional emissions analysis that satisfies the requirements of 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through J of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.2.99.138 NMAC, one of the following requirements is met:

(1) the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(2) the emissions predicted in the "action" scenario are not greater than baseline emissions; baseline emissions are those estimated to have occurred during

calendar year 1990, unless the conformity implementation plan revision required by 40 CFR 51.390 defines the baseline emissions for a PM₁₀ area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

E. PM_{2.5} areas. This criterion may be met in PM_{2.5} nonattainment areas if a regional emissions analysis that satisfies the requirements of sections 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through J of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.2.99.138 NMAC, one of the following requirements is met:

(1) the emissions [predicated] predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(2) the emissions predicted in the "action" scenario are not greater than [2002 emissions.];

(a) 2002 emissions, in areas designated nonattainment for the 1997 PM_{2.5} NAAQS; or

(b) emissions in the most recent year for which EPA's air emissions reporting requirements (40 CFR Part 51, Subpart A) requires submission of on-road mobile source emissions inventories, as of the effective date of nonattainment designations for any PM_{2.5} NAAQS other than the 1997 PM_{2.5} NAAQS.

F. Pollutants. The regional emissions analysis must be performed for the following pollutants:

(1) VOC in ozone areas;

(2) NO_x in ozone areas, unless the US EPA administrator determines that additional reductions of NO_x would not contribute to attainment;

(3) CO in CO areas;

(4) PM₁₀ in PM₁₀ areas;

(5) VOC and/or NO_x in PM₁₀ areas if the US EPA regional administrator or the department has made a finding that such precursor emissions from within the area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and US DOT;

(6) NO_x in NO₂ areas;

(7) PM_{2.5} areas;

(8) re-entrained road dust in PM_{2.5} areas only if the US EPA regional administrator or the department has made a finding that emissions from re-entrained road dust within the area are a significant contributor to the PM_{2.5} nonattainment problem and has so notified the MPO and US DOT;

(9) nitrogen oxides in PM_{2.5} areas,

unless the EPA regional administrator and the department have made a finding that emissions of nitrogen oxides from within the area are not a significant contributor to the PM_{2.5} nonattainment problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and US DOT; and

(10) VOC, SO₂ and/or ammonia in PM_{2.5} areas if the EPA regional administrator or the department has made a finding that any of such precursor emissions from within the area are a significant contributor to the PM_{2.5} nonattainment problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and US DOT.

G. Analysis years.

(1) The regional emissions analysis must be performed for analysis years that are no more than ten (10) years apart. The first analysis year must be no more than five (5) years beyond the year in which the conformity determination is being made. The last year of the timeframe of the conformity determination (as described under Subsection D of 20.2.99.125 NMAC) must also be an analysis year.

(2) For areas using Subparagraph (a) of Paragraph (2) of Subsection B of section 20.2.99.138 NMAC, Subparagraph (a) of Paragraph (2) of Subsection C of section 20.2.99.138 NMAC, Paragraph (1) of Subsection D of section 20.2.99.138 NMAC, and Paragraph (1) of Subsection E of section 20.2.99.138 NMAC, a regional emissions analysis that satisfies the requirements of sections 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through J of section 20.2.99.138 would not be required for analysis years in which the transportation projects and planning assumptions in the "action" and "baseline" scenarios are exactly the same. In such a case, Subsection A of section 20.2.99.138 NMAC can be satisfied by documenting that the transportation projects and planning assumptions in both scenarios are exactly the same, and consequently, the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario for such analysis years.

(3) When the timeframe of the conformity determination is shortened under Paragraph (2) of Subsection D of 20.2.99.125 NMAC, the conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan.

H. "Baseline" scenario. The regional emissions analysis required by Subsections B and E of 20.2.99.138 NMAC must estimate the emissions that would result from the "baseline" scenario in each analysis year. The "baseline" scenario must be defined for each of the analysis years. The "baseline" scenario is the future transportation system that will result from current programs, including

the following (except that exempt projects listed in Subsection A of 20.2.99.149 NMAC and projects exempt from regional emissions analysis as listed in Subsection B of 20.2.99.149 NMAC need not be explicitly considered):

(1) all in-place regionally significant highway and transit facilities, services and activities;

(2) all ongoing travel demand management or transportation system management activities; and

(3) completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first year of the previously conforming transportation plan and/or TIP; or have completed the NEPA process.

I. "Action" scenario. The regional emissions analysis required by Subsections B and [E] C of 20.2.99.138 NMAC must estimate the emissions that would result from the "action" scenario in each analysis year. The "action" scenario must be defined for each of the analysis years. The "action" scenario is the transportation system that would result from the implementation of the proposed action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment area. The "action" scenario must include the following (except that exempt projects listed in Subsection A of 20.2.99.149 NMAC and projects exempt from regional emissions analysis as listed in Subsection B of 20.2.99.149 NMAC need not be explicitly considered):

(1) all facilities, services, and activities in the "baseline" scenario;

(2) completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

(3) all travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination;

(4) the incremental effects of any travel demand management programs and transportation system management activities

known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination, but which have been modified since then to be more stringent or effective;

(5) completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

J. Projects not from a conforming transportation plan and TIP. For the regional emissions analysis required by Subsections B and E of 20.2.99.138 NMAC, if the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the "baseline" scenario must include the project with its original design concept and scope, and the "action" scenario must include the project with its new design concept and scope.

[12/14/94; 11/23/98; 20.2.99.138 NMAC - Rn, 20 NMAC 2.99.138 10/31/02; A, 10/15/05; A, 9/1/07; A, 06/01/09; A, 11/07/11]

20.2.99.140 REQUIREMENTS FOR ADOPTION OR APPROVAL OF PROJECTS BY OTHER RECIPIENTS OF FUNDS DESIGNATED UNDER TITLE 23 U.S.C. OR THE FEDERAL TRANSIT LAWS

A. Except as provided in Subsection B of 20.2.99.140 NMAC, no recipient of federal funds designated under title 23 U.S.C. or the federal transit laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(1) the project comes from the currently conforming transportation plan and TIP (or meets the requirements of Subsection B of 20.2.99.111 NMAC during the 12-month lapse grace period), and the project's design concept and scope have not changed significantly from those that were included in the regional emissions analyses for that transportation plan and TIP; or

(2) the project is included in the regional emissions analysis for the currently conforming transportation plan and TIP conformity determination (or meets the requirements of Subsection B of 20.2.99.111 NMAC during the 12-month lapse grace period), even if the project is not strictly included in the transportation plan or TIP for the purpose of MPO project

selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis; or

(3) a new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of 20.2.99.137 NMAC and/or 20.2.99.138 NMAC for a project not from a conforming transportation plan and TIP).

B. In isolated rural nonattainment and maintenance areas subject to Subsection [G] N of 20.2.99.128 NMAC, no recipient of federal funds designated under title 23 U.S.C. or the federal transit laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(1) the project was included in the regional emissions analysis supporting the most recent conformity determination that reflects the portion of the statewide transportation plan and TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly; or

(2) a new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project were implemented (consistent with the requirements of 20.2.99.137 NMAC and/or 20.2.99.138 NMAC for projects not from a conforming transportation plan and TIP).

C. Notwithstanding Subsections A and B of section 20.2.99.140 NMAC, in nonattainment and maintenance areas subject to Subsections [J] L or [K] M of section 20.2.99.128 NMAC for a given pollutant/precursor and NAAQS, no recipient of federal funds designated under title [20] 23 U.S.C. or the federal transit laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source. Unless the recipient finds that the requirements of one of the following are met for that pollutant/precursor and NAAQS:

(1) the project was included in the most recent conformity determination for the transportation plan and TIP and the project's design concept and scope has not changed significantly; or

(2) the project as included in the most recent conformity determination that reflects the portions of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance

area, and the project's design concept and scope has not changed significantly. [12/14/94; 11/23/98; 20.2.99.140 NMAC - Rn, 20 NMAC 2.99.140 10/31/02; A, 10/15/05; A, 06/01/09; A, 11/07/11]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an emergency order to 19.31.4 NMAC, Section 21, effective October 7, 2011

19.31.4.21 EMERGENCY ORDER FOR FISH SALVAGE: Under authority of 19.31.10.14 promulgated by the state game commission on April 1, 2010, I, TOD W. STEVENSON, director of the department of game and fish, hereby declare that an emergency exists within Lake Sumner located near Fort Sumner, Guadalupe county, New Mexico. The extent to which, fish life will be destroyed by draining of the lake. Bag limits on sport fish will be unlimited. This relaxation will go into effect at 12:01 a.m., October 7, 2011, and will remain in effect until the earlier of the boat ramp at the lake being closed or 11:59 p.m., November 1, 2011. Requirements for fishing licenses for all individuals 12 years of age and older and method of take by angling only remain in effect. This order does not restrict or limit New Mexico state parks from preventing/limiting access by foot or other means of getting to the water due to safety issues or concerns.
[19.31.4.21 NMAC - N/E, 10-7-2011]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.400 NMAC Sections 10 and 14, effective November 1, 2011.

8.200.400.10 BASIS FOR DEFINING GROUP: Individuals are eligible for medicaid if they meet the specific criteria for one of the eligibility categories. In New Mexico, other medical assistance programs for individuals who do not qualify for medicaid are available, such as the children's medical services program (category 007) administered by the New Mexico department of health.

A. **Assistance groups:** The HSD income support division (ISD) determines eligibility for individuals applying for medicaid.

(1) Category 002 provides medicaid for families with dependent child(ren) for individuals who meet July 16, 1996 AFDC related eligibility criteria.

(2) Category 027 provides four months of medicaid if category 002 medicaid eligibility is lost due to increased child support.

(3) Transitional medicaid (category 028) extends medicaid benefits up to 12 months for families who lose category 002 medicaid eligibility due to increased earnings or loss of the earned income disregard.

(4) Category 033 provides medicaid for individuals who are ineligible for category 002 medicaid due to income or resources deemed from a stepparent, grandparent, or sibling.

B. **Medical assistance for women and children:** ISD caseworkers establish eligibility for medical assistance for women and children (MAWC) categories. For these categories, medicaid coverage does not depend on one or both parents being dead, absent, disabled, or unemployed. Children and pregnant women in intact families may be eligible for these medicaid categories.

(1) **Category 030:** This category provides the full range of medicaid coverage for pregnant women in families meeting AFDC income and resource standards.

(2) **Category 031:** This category provides 12 months of medicaid coverage for babies born to mothers who, at the time of the birth, were either eligible for or receiving New Mexico medicaid or were deemed to have been eligible for and receiving New Mexico medicaid. To receive the full 12 months of coverage, all of the following criteria must be met:

(a) [~~The~~] the mother remains eligible for New Mexico medicaid (or would be eligible if she were still pregnant);

(b) [~~The baby remains with the mother~~] the mother was approved for emergency medical services for aliens for the birth and delivery of the infant; and

(c) [~~Both mother and baby continue~~] the infant continues to reside in New Mexico.

(3) **Category 032:** This category provides medicaid coverage to children who are under 19 years of age in families with incomes under 235 percent of federal income poverty guidelines. Uninsured children in families with income between 185-235 percent of FPL are eligible for the [state] children's health insurance program [SCHHP] CHIP. Certain additional eligibility criteria are applicable under [SCHHP] CHIP, as well as co-payment requirements. Native American children are exempt from co-payments.

(4) **Category 035:** This category provides medicaid coverage for pregnancy-related services for pregnant women and family planning and related services for men and women in families whose income is below 185 percent of the federal income

poverty level. There is no resource test for this category.

C. **Supplemental security income:** Eligibility for supplemental security income (SSI) is determined by the social security administration. This program provides cash assistance and medicaid for eligible aged (category 001), blind (category 003) or disabled (category 004) recipients. ISD [offices] caseworkers determine medicaid eligibility for individuals who are ineligible for SSI due to income or resources deemed from stepparents (category 034).

D. **Medicaid extension:** Medicaid extension provides medicaid coverage for individuals who lose eligibility for SSI due to a cost of living increase in social security benefits and to individuals who lose SSI for other specific reasons. Under the "Pickle Amendment" to the Social Security Act, medicaid coverage is extended to individuals who lose SSI for any reason which no longer exists and who meet SSI eligibility criteria when social security cost-of-living increases are disregarded.

(1) Individuals who meet the following requirements may also be eligible for medicaid extension:

(a) widow(er)s between 60 and 64 years of age who lose SSI eligibility due to receipt of or increase in early widow(er)s' Title II benefits; eligibility ends when an individual becomes eligible for part A medicare or reaches age 65;

(b) certain disabled adult children (DACs) who lose SSI eligibility due to receipt of or increase in Title II DAC benefits;

(c) certain disabled widow(er)s and disabled surviving divorced spouses who lose SSI eligibility due to receipt of or increase in disabled widow(er)s or disabled surviving divorced spouse's Title II benefit; medicaid eligibility ends when individuals become eligible for part A medicare;

(d) non-institutionalized individuals who lose SSI eligibility because the amount of their initial Title II benefits exactly equals the income ceiling for the SSI program; and

(e) certain individuals who become ineligible for SSI cash benefits and, therefore, medicaid as well, may receive up to two months of extended medicaid benefits while they apply for another category of medicaid.

(2) Medicaid extension categories include individuals who are 65 years and older (category 001), individuals who are less than 65 years of age and blind (category 003) and individuals who are less than 65 years of age and disabled (category 004).

E. **Institutional care medicaid:** ISD [offices] caseworkers establish eligibility for institutional care medicaid. Individuals who are aged (category 081), blind (category 083) or

disabled (category 084) must require institutional care in nursing facilities (NFs), intermediate care facilities for the mentally retarded (ICF-MRs), or acute care hospitals and meet all SSI eligibility criteria, except income, to be eligible for these medicaid categories.

F. Home and community-based waiver services: ISD [offices] caseworkers establish the financial eligibility for individuals who apply for medicaid under one of the home and community-based waiver programs. Individuals must meet the resource, income, and level of care standards for institutional care; however, these individuals receive services at home. Mi via is a self-directed waiver encompassing the five waiver categories. It is available as a possible option to the traditional case management services provided in the five waiver programs. The waiver programs are listed below:

- (1) acquired immunodeficiency syndrome (AIDS) and AIDS-related condition (ARC) waiver. (category 090);
- (2) disabled and elderly waiver - aged (category 091), blind (category 093), disabled (category 094);
- (3) medically fragile waiver (category 095); and
- (4) developmental disabilities waiver (category 096); and
- (5) brain injury (category 092) under the mi via waiver.

G. Qualified medicare beneficiaries: Medicaid covers the payment of medicare premiums as well as deductible and coinsurance amounts for medicare-covered services under the qualified medicare beneficiaries (QMB) program for individuals who meet certain income and resource standards (category 040). To be eligible, an individual must have or be conditionally eligible for medicare hospital insurance (medicare part A).

H. Qualified disabled working individuals: Medicaid covers the payment of part A medicare premiums under the qualified disabled working individuals (QDs) program for individuals who lose entitlement to free part A medicare due to gainful employment (category 042). To be eligible, individuals must meet the social security administration's definition of disability and be enrolled for premium part A. These individuals must also meet certain income and resource standards. They are not entitled to additional medicaid benefits and do not receive medicaid cards.

I. Specified low-income medicare beneficiaries: Medicaid covers the payment of medicare part B premiums under the specified low-income medicare beneficiaries (SLIMB) program for individuals who meet certain income and resource standards (category 945). To be eligible, individuals must already have

medicare part A. They are not entitled to additional medicaid benefits and do not receive medicaid cards.

J. Medical assistance for refugees: Low-income refugees may be eligible for medical and cash assistance. Eligibility for refugee assistance programs is determined by the ISD [offices] caseworker. To be eligible for cash assistance and medical coverage (category 019) or medical coverage only (category 049), a refugee must meet the income criteria for AFDC programs. Refugee medical assistance is limited to an eight-month period starting with the month a refugee enters the United States. Refugee medical assistance is approved only in the following instances:

- (1) refugees meet the AFDC standard of need when the earned income disregard is applied;
- (2) refugees meet all criteria for refugee cash assistance but wish to receive only refugee medical assistance;
- (3) refugees receive a four month refugee medical assistance extension when eligibility for refugee cash assistance is lost due to earned income; or
- (4) refugee spends-down to the AFDC standard of need (category 059).

K. Emergency medical services for aliens: Medicaid covers emergency services for certain noncitizens who are undocumented or who do not meet the qualifying immigration criteria specified in 8.200.410.11 NMAC, *citizenship*, but who meet all eligibility criteria for one of the categories noted in 8.285.400 NMAC, *Recipient Policies*, except for citizenship or legal alien status. These individuals must receive emergency services from a medicaid provider and then go to an ISD office for an evaluation of medicaid eligibility. Once an eligibility determination is made, the individual must notify the servicing provider so that the claim can be submitted to MAD's designee for the emergency services evaluation and claim payment.

L. Children, youth, and families medicaid: Medicaid covers children in state foster care programs (category 006, category 046, category 066, category 086) and in adoption subsidy situations (category 017, category 037, and category 047) when the child's income is below the AFDC need standard for one person. Medicaid also covers children who are the full or partial responsibility of the children, youth, and families department (CYFD) such as category 060 and category 061. The eligibility determination for these categories is made by CYFD.

M. Working disabled individuals: The working disabled individuals (WDI) program (category 043) covers disabled individuals who are either employed, or who lost eligibility for supplemental security income (SSI) and

medicaid due to the initial receipt of social security disability insurance (SSDI) and who do not yet qualify for medicare.

N. Breast and cervical cancer: The breast and cervical cancer (BCC) program (category 052) covers uninsured women, under the age of 65 who have been screened and diagnosed as having breast or cervical cancer, including pre-cancerous conditions by a contracted provider for the centers for disease control and prevention's national breast and cervical cancer early detection program (NBCCEDP).

O. State coverage insurance: The state coverage insurance (SCI) program (category 062) covers uninsured adults ages 19-64 who: have no other health insurance and are not eligible for other government insurance programs; have income levels up to 200 percent of the federal poverty limit (FPL); comply with income and eligibility requirements as specified in 8.262.400 NMAC, *Recipient Policies*, 8.262.500 NMAC, *Income and Resource Standards*, and 8.262.600 NMAC; *Benefit Description*, are employed by an employer who purchases an SCI employer group policy or who participate in an individual policy.

P. Medicare part D - low income subsidy: The subsidy program (category 048) available to individuals enrolled in part D of medicare and whose gross income is less than 150 percent of the federal poverty level (FPL). This subsidy helps pay the cost of premiums, deductibles, and co-payments.

Q. Program of all-inclusive care for the elderly: The program of all-inclusive care for the elderly (PACE), (categories 081, 083, and 084) covers all acute and long-term care needs of adults age 55 years or older who meet level of care requirements for medicaid nursing facility care.

R. Mi via waiver: The waiver provides self-directed services to waiver recipients who are disabled or elderly (D&E), developmentally disabled (DD), medically fragile (MF), those diagnosed with acquired immunodeficiency syndrome (AIDS), and those diagnosed with certain brain injuries (BI).

[2-1-95; 1-1-97; 4-1-98; 6-30-98; 3-1-99; 8.200.400.10 NMAC - Rn, 8 NMAC 4.MAD.402 & A, 7-1-01; A, 7-1-02; A, 10-1-02; A, 7-1-05; A, 2-1-06; A, 12-1-06; A/E, 12-1-06; A, 12-1-08; A, 7-1-11; A, 11-1-11]

8.200.400.14 12 MONTHS CONTINUOUS ELIGIBILITY FOR CHILDREN: Children eligible for medicaid under category of eligibility: 032, 072, HCBS waivers, IV-E, and SSI-004, and 003 will remain eligible for a period of 12 months, regardless of changes in

income. This provision applies even if it is reported that the family income exceeds the applicable federal income poverty guidelines. The 12 months of continuous medicaid starts with the month of approval or redetermination and is separate from any months of presumptive or retroactive eligibility. This provision does not apply ~~to children who move out of state during the 12-month period or who turn 19 years of age during the 12-month period~~ when there is a death of a household member, the member or the family moves out of state, or the child turns 19 years of age.

[8.200.400.14 NMAC - N/E, 10-1-09; A, 10-30-09; A, 11-1-11]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.232.600 NMAC, Section 14, effective November 1, 2011.

8.232.600.14 CHANGES IN ELIGIBILITY:

A. **Eligibility termination when age limit reached:** If a recipient's eligibility ends because he/she turns 19 years of age and the recipient is receiving inpatient services in an acute care hospital on the date he/she turns 19 years of age, the recipient's eligibility continues until the end of that admission. If the recipient is an inpatient in a free-standing psychiatric facility or other residential facility, the recipient's eligibility continues until the end of the month in which the recipient turns 19 years of age. The income support division worker verifies that the closure is caused by the recipient's turning 19 years of age and terminates medicaid eligibility at the end of the applicable time period.

B. **Ongoing eligibility:** A redetermination of eligibility is made every 12 months. Changes in eligibility status will be effective the first day of the following month.

C. **Continuous eligibility:** Eligibility will continue for the 12-month certification period, regardless of changes in income, ~~as long as the recipient retains New Mexico residency and is less than 19 years of age.~~ This provision applies even if it is reported that the family income exceeds the applicable federal income poverty guidelines. The 12 months of continuous medicaid starts with the month of approval or redetermination and is separate from any months of presumptive or retroactive eligibility. This provision does not apply when there is a death of a household member, the member or the family moves out of state or the child turns 19 years of age.

[2/1/95; 4/1/95; 6/30/98; 8.232.600.14 NMAC - Rn, 8 NMAC 4.KID.630 & A,

7/1/04; A, 7/1/06; A/E, 10/1/09; A, 10/30/09; A, 11/1/11]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.235.600 NMAC, Section 12, effective November 1, 2011.

8.235.600.12 ONGOING BENEFITS:

A. **Pregnancy-related services:** A woman eligible for pregnancy-related services remains eligible throughout her pregnancy and for two months after the month of delivery or after the month in which the pregnancy terminates. Changes in household income do not affect her eligibility during this period. No periodic reviews are required during this period. After the two-month post partum period, the woman will automatically be converted to family planning services ~~[if she meets the age requirement and has no other creditable health insurance].~~

B. **Family planning services:** A woman who is eligible for family planning and related services or who is automatically converted to family planning and related services after her pregnancy-related services end remains eligible for 12 months. No periodic reviews are required during this period. Changes in household income do not affect her eligibility during this period. If the woman should become pregnant during this period, she should contact her income support division caseworker to explore eligibility for other medicaid categories. A man who is eligible for family planning and related services remains eligible for 12 months. If the recipient moves out of state or requests case closure, he/she loses eligibility.

[2/1/95; 6/30/98; 8.235.600.12 NMAC - Rn, 8 NMAC 4.PSO.624 & A, 6/1/04; A, 5/1/08; A, 7/1/11; A, 11/1/11]

NEW MEXICO BOARD OF NURSING

This is an amendment to 16.12.1 NMAC, Section 10, effective 11/17/11.

16.12.1.10 **EXCEPTIONS:** Nursing Practice Act, Section 61-3-2, NMSA, 1978. The Nursing Practice Act does not apply to or affect caring for the sick provided in accordance with a religious practice so long as the caregiver does not claim to be a licensed practical nurse or a registered nurse or advanced practice nurse, or use of their authorized abbreviations or any title that could lead a person to believe the individual is a licensed nurse. [1-1-98; 16.12.1.10 NMAC - Rn & A, 16 NMAC 12.1.10, 7-30-01; A, 11-17-11]

NEW MEXICO BOARD OF NURSING

This is an amendment to 16.12.4 NMAC, Sections 8, 9 and 10, effective 11/17/11.

16.12.4.8 FEES:

~~[A.]~~ Payment of fees will be accepted in the form as specified by the board. Fees are not refundable.

[(+)] A.	Initial certification by examination CHT I	\$ 45.00
[(2)] B.	Re-examination	\$ 30.00
[(3)] C.	Renewal of certificate	\$ 45.00
[(4)] D.	Reactivation from lapsed or inactive status	\$ 60.00
[(5)] E.	Reinstatement of certificate following board action	\$ 60.00
[(6)]	Duplicate license (written request required)	\$ 20.00]
[(7)] E.	Initial program review for approval	\$ 250.00
[(8)] G.	Biennial program evaluation and visit per agency	\$ 200.00
H.	Biennial program evaluation per satellite	\$ 100.00
[(9)] I.	Certification by exam CHT II	\$ 60.00

~~[B.]~~ Annual agency participation fees are determined by a three-step process:
~~(1) Each agency plus its satellites is assigned a unit value based on the total number of sites where CHTs are utilized;~~

~~(2) The total board of nursing administrative cost is divided by the total number of units assigned to all agencies to determine the cost per unit. (Cost per unit = total board administrative costs (by total number of units).~~

~~(3) The cost per agency is then determined by multiplying the cost per unit by the unit value assigned to that agency. (Cost per agency = number of assigned unit per one agency x cost per unit);~~

[16.12.4.8 NMAC - Rp, 16.12.4.8 NMAC, 02-17-06; A, 6-17-08; A, 11-17-11]

16.12.4.9

CERTIFICATION REQUIREMENTS FOR HEMODIALYSIS

TECHNICIANS: New Mexico certification of hemodialysis technicians is mandatory.

A. Prerequisites.

(1) Be a high school graduate or complete the general education development course.

(2) Successfully complete a board-approved hemodialysis technician program.

(3) Complete the required application form in the specified deadline and remit the required fee.

B. Applications and fees for the hemodialysis technician certification examination must be submitted to the board office at least thirty (30) days prior to the date of the examination.

(1) Applications containing fraudulent or misrepresented information could be the basis for denial of certification.

(2) Incomplete applications for certification become null and void one (1) year after date of last noted activity.

(3) Written verification of successful completion according to the minimum standards for approval of hemodialysis technician programs indicating the date of completion must be received, directly from the hemodialysis technician program, and signed by the nurse educator in the board office at least thirty (30) days prior to the examination date.

(4) An admission letter, which includes the time, date and place of examination, shall be issued to all eligible applicants.

(5) A reexamination fee will be charged for all reexaminations and non-excused absences.

(6) Results of the examination shall be reported, by mail or on the board website to the applicants no later than four (4) weeks following the examination date.

C. Hemodialysis technician initial certification examination.

(1) The board shall develop and maintain the board-approved certification examination for hemodialysis technicians.

(2) Board approved examination centers shall comply with the security procedures developed by the board for distribution and administration of the examination.

(3) The examination shall be administered six (6) times each year and as needed.

(4) The hemodialysis technician advisory committee shall set the examination dates.

(5) Applicants for certification as a hemodialysis technician shall be required to pass the hemodialysis technician certification examination with a minimum score of 80%.

(6) Applicants who fail the examination may repeat the examination one (1) time within a ~~six (6)~~ two (2) month period without repeating an approved training program.

~~(a) [Applicants who fail the examination may not function as hemodialysis technicians.] Applicants must take the national certification examination or the New Mexico board of nursing examination within six (6) months of hire at a board approved agency.~~

(b) Applicants must remain under the direct supervision of a board-approved clinical preceptor until such time as they successfully pass the hemodialysis technician certification examination.

(7) Applicants observed giving or receiving unauthorized assistance during the writing of the examination shall be physically removed from the examination center and the individual(s) shall be referred to the board by a sworn complaint filed by the examiner.

D. Certification by examination for CHT II.

(1) CHT II shall be required to pass a certification examination with a minimum score of 80% that is specific to their expanded scope of practice as defined in the core curriculum (16.12.4.16 NMAC).

(2) CHT II applicants who fail the exam may repeat the examination one (1) time within a six month period without repeating an approved training program. If the CHT II does not pass the second examination they must take a refresher course specific to the expanded scope of practice and wait one year from first test date to retake the examination.

(3) Written verification of successful completion according to the minimum standards for approval of the CHTII programs indicating the date of completion must be received, directly from the hemodialysis technician program, and signed by the nurse educator in the board office at least thirty (30) days prior to the examination date.

(4) Complete the required application form in the specified deadline and remit the required fee.

(5) An admission letter, which includes the time, date and place of examination, shall be issued to all eligible applicants.

(6) A reexamination fee will be charged for all reexaminations and non-excused absences.

(7) Results of the examination shall be reported, by mail or on the board website to the applicants no later than four (4) weeks following the examination date.

E. Requirements for hemodialysis technicians' recertification.

(1) Applicants for recertification shall be required to complete the process by the end of their renewal month, every two years and must meet the continuing education and work requirements as stated in these rules.

(2) Renewal applications and

continuing education verification forms shall be mailed to CHTs at least six (6) weeks prior to the end of the renewal month.

(a) Failure to receive the application for renewal shall not relieve the CHT of the responsibility of renewing the certificate by the expiration date.

(b) If the certificate is not renewed by the end of the renewal month, the CHT does not hold a valid certificate and shall not function as a CHT in New Mexico until the lapsed certificate has been reactivated.

(3) Continuing education requirements.

(a) Sixteen (16) contact hours of continuing education must be accrued within the 24 months immediately preceding recertification.

(b) Acceptable courses shall be those with topics related to care and safety of the patient undergoing dialysis treatment.

(c) Continuing education records are subject to audit by the board. Certificate holders may be subject to disciplinary action by the board if non compliant within sixty (60) days of the first notification of the audit.

(d) CHT II shall accrue four (4) additional contact hours of continuing education within the 24 months preceding recertification. These additional contact hours must be specific to their expanded scope of function.

(4) Work requirement. Applicant must provide evidence of a minimum of 1,000 hours work as a CHT during the 24 month period immediately preceding certification renewal.

(a) Work requirement records are subject to audit by the board.

(b) Certificate holders may be subject to disciplinary action by the board if noncompliant within sixty (60) days of the first notification of the audit.

(5) Remit the required fee.

(6) Failure to meet the continuing education or employment requirements for recertification shall result in denial of recertification until completion of a refresher course with the appropriate application and fee have been submitted to the board.

F. Refresher course requirements.

(1) Completion of a minimum of eighty (80) hours of supervised clinical practice in a board approved hemodialysis technician program under the supervision of an approved clinical preceptor.

(2) Completion of the hemodialysis technician program's skills list identified in the core curriculum (16.12.5.16 NMAC).

(3) Completion of the hemodialysis technician program final examination with a minimum score of ~~[75%]~~ 80%.

(4) Written verification, on agency letterhead, of successful completion of supervised clinical practice, skills list, and the final examination results shall be

provided to the board by the program's board-approved nurse educator.

(5) Completion of a refresher course shall meet both the employment and continuing education requirements for the two (2) year renewal period.

(6) Remit the required application and fee.

G. Individuals who have practiced as uncertified hemodialysis technicians in other states or who have been certified in another state may apply for certification in the state of New Mexico.

(1) Provide written verification of the completion of a hemodialysis technician program in another state.

(2) Submit written verification of 1000 hours working as a hemodialysis technician during the 24 month period immediately preceding their request to become certified in New Mexico.

(3) Complete a minimum of eighty (80) hours of supervised clinical practice in a board approved hemodialysis technician program under the supervision of a board approved nurse educator.

(4) Complete the hemodialysis technician program's skills list identified in the core curriculum (16.12.5.16 NMAC).

(5) Successfully pass the program's final examination with a minimum score of 80% or better.

(6) Provide written verification, on agency letterhead by the nurse educator, of successful completion of supervised clinical practice, skills list, the final examination and that the candidate has met the work requirement.

(7) Pass the board's hemodialysis certification examination with a minimum score of 80% or better.

(8) Certificates are issued by mail or verification can be obtained on the board website.

(9) Submit the required application and fee.

H. Individuals who have practiced as hemodialysis technicians and have a current national hemodialysis technician certification may apply for certification as a hemodialysis technician in New Mexico.

~~[(1) Provide written verification of the completion of a hemodialysis technician program in another state.]~~

~~[(2)]~~ (1) Submit written verification of 1000 hours working as a hemodialysis technician during the 24 month period immediately preceding their request to become certified in New Mexico.

~~[(3)]~~ (2) Complete a minimum of ~~[eighty (80)]~~ forty (40) hours of supervised clinical practice in a board approved hemodialysis technician program under the supervision of an approved nurse educator.

~~[(4)]~~ (3) Complete the hemodialysis technician program's skills list

identified in the core curriculum (16.12.5.16 NMAC).

~~[(5)]~~ (4) Successfully pass the program's final examination with a score of 80% or better.

~~[(6)]~~ (5) Provide written verification, on agency letterhead by the nurse educator, of successful completion of supervised clinical practice, skills list, the final examination and that the candidate has met the work requirement.

~~[(7)]~~ (6) Submit the required application and fee.

~~[(8)]~~ (7) Certificates are issued by mail or verification can be obtained on the board website.

[16.12.4.9 NMAC - Rp, 16.12.4.9 NMAC, 02-17-06; A, 6-17-08; A, 11-17-11]

16.12.4.10 STANDARDS OF FUNCTION FOR THE CERTIFIED HEMODIALYSIS TECHNICIAN:

A. Purpose.

(1) To establish standards for supervision and direction of the CHT.

(2) To identify basic functions for the CHT.

(3) To identify prohibited functions for the CHT.

(4) To identify the expanded role of the CHT II.

B. Authorized functions of the certified hemodialysis technician with supervision of a registered nurse:

(1) perform arteriovenous punctures for dialysis access;

(2) inject intradermal lidocaine in preparation for dialysis access;

(3) administer a heparin bolus;

(4) administer a fluid bolus of isotonic saline;

(5) connect a dialysis access to isotonic saline or heparinized isotonic saline;

(6) administer oxygen ~~[metered dose inhalants]~~;

(7) collect data for the nursing assessment;

(8) initiate and discontinue treatment via arterio-venous access;

(9) reinfusion of blood upon termination of treatment of central venous catheters.

C. Prohibited functions of the certified hemodialysis technician:

(1) shall not administer medications by oral, intramuscular, intravenous or subcutaneous routes except those agents addressed in authorized functions of these rules;

(2) shall not take orders for dialysis treatments;

(3) shall not alter dialysis orders as prescribed by a health care provider;

(4) shall not perform any function or service for consumer for which a nursing license is required under the Nursing Practice Act, 61-3-1 et seq NMSA, 1978;

(5) shall not initiate or discontinue via central lines.

D. Supervision or direction of the hemodialysis technician.

(1) A nurse educator shall periodically provide supervision or direction to the certified hemodialysis technician.

(2) The nurse educator may delegate to the licensed nurse the supervision or direction of the hemodialysis technician.

E. Certified hemodialysis technician II - expanded scope of function.

(1) The expanded role is a privilege and not a requirement for all CHT's to meet.

(2) The nurse educator shall approve the CHT assuring the CHT meets specific criteria.

~~[(a) CHT must be employed for 3 consecutive years in dialysis.]~~

~~[(b)]~~ (a) CHT must be working at least one year at the current board approved agency.

~~[(c)]~~ (b) Must fulfill all CHT requirements and be in good standing with the board.

(3) Authorized functions shall include performing hemodialysis treatment via central catheter lines.

~~(4) [Prohibited functions shall not perform catheter dressing changes.] CHT may remove catheter dressing, but may not redress the site.~~

(5) Must complete board approved curriculum and pass the board examination with 80% or better.

(6) Shall not initiate or discontinue a CVC that is not functioning as intended. Under no circumstance should there be any attempt to manipulate a malfunctioning catheter.

[16.12.4.10 NMAC - Rp, 16.12.4.10 NMAC, 02-17-06; A, 6-17-08; A, 11-17-11]

NEW MEXICO BOARD OF NURSING

This is an amendment to 16.12.5 NMAC, Sections 7 through 13, 15 through 18 and 21 effective 11-17-11.

16.12.5.7 DEFINITIONS:

A. "Administrator" means the operating officer of an agency. This includes, but is not limited to a licensed nursing facility or a school superintendent.

B. "Agency" means a board approved facility that utilized medication aides who serves consumers in various health care and community settings.

C. "Approval" means the review and acceptance of specific activity.

D. "Audit" means a verification of continuing education documents and work requirements.

E. "Board" means the NM board of nursing.

F. "Certificate" means a

document issued by the board identifying the legal privilege and authorization to perform specific nursing functions and procedures in the state of New Mexico.

G. "Certification examination" means a board-approved tool designed to evaluate an applicant's knowledge of a specific subject.

H. "Certified medication aide (CMA)" means a person who receives specialized training preparing for a role of medication administration under the supervision/direction of a registered nurse, is permitted to administer medications as outlined in these rules.

I. "Certified medication aide II (CMA II)" means a person who meets the requirements of a CMA as defined in these rules. The CMA II candidate is selected by the nurse educator, and receives additional training with an expanded scope of function upon successful completion of a board approved examination; additional certification is mandatory.

J. "Clinical experience" means the supervised ~~[teaching-learning]~~ clinical proficiency/quality assurance skills component of the certified medication aide program which takes place in ~~[the]~~ a board approved facility.

K. "Clinical preceptor" means a licensed nurse at each participating nursing facility that is physically present and providing one (1) clinical preceptor to two (2) students with direct supervision.

L. "Competency" means the demonstration of knowledge in a specific area and the ability to perform specific skills and tasks in a safe, efficient manner.

M. "Consumer" means any person domiciled, residing or receiving care or treatment from a certified medication aide in an agency. This includes but is not limited to residents, clients or students.

N. "Contact hour" means a sixty (60) minute clock hour.

O. "Continuing education (CE)" means a planned learning experience beyond a basic nursing or technician educational program. These experiences are designed to promote the development of knowledge, skills and attitudes for the enhancement of care to the consumer.

P. "Curriculum" means a detailed course outline, description, or syllabus, which includes objectives, content, teaching-learning activities and evaluation strategies.

Q. "Delegation" means transferring to a competent individual the authority to perform a delegated nursing task in a selected situation. The licensed nurse retains accountability for the delegation.

R. "Medication aide advisory committee (MAAC)" means a board appointed advisory committee.

S. "Medications" means

substances intended for use in diagnosis, care, mitigation, treatment or prevention of a disease.

T. "Medication aide program" means the formal program of study, certification, continuing education, standards of functions, disciplinary action, and minimum standards. A board approved nurse is required for the supervision and observation of the medication aide.

U. "Multiple certification" means certified medication aides who have a current certificate in good standing and take the additional required training to work with different population specific care groups.

V. "NPA" means the Nursing Practice Act.

W. "Nurse educator" means a registered nurse who is the program administrator for a specific agency that develops, coordinates or teaches the medication aide program or participant program. Retains ultimate responsibility for determining competency of medication aides.

X. "OTC medications" means medications can be purchased over-the-counter without a prescription. OTC medications must be stored in original manufacturer's packaging and affixed with the original manufacturer's labeling. Provider's orders with adequate instructions must be obtained prior to the administration of OTC medications by the certified medication aide.

Y. "Population specific care" means the standards of care regarding medication administration requirements for specific consumer care groups.

Z. "Prn" means ~~[instruction to give medication as needed and requires judgment]~~ administer medication on an as needed basis. Instruction to administer requires licensed nurse judgment and prior approval.

AA. "Program review" means the process whereby the program at the facility is evaluated to assure compliance with the rules and regulations governing the CMA program. This may include a site visit with or without official notification to an agency.

BB. "Properly labeled container" means a medication container which includes the name, address and telephone number of the pharmacy, the name of the prescriber, the full name of the resident, the date the order was filled, the brand and generic name of the drug, the dosage of the drug, strength of the drug, lot number, expiration date, adequate instructions for use and cautionary label as necessary.

CC. "Reactivation" means the process of making a certificate current which has been in abeyance as a result of failure to comply with the necessary renewal requirements; this action does not involve board action.

DD. "Reinstatement" means the process whereby a certificate, which has been subject to revocation or suspension, is returned to its former status by individual board action; this process always involves board action.

EE. "Routine medication" means a medication for which the frequency of administration, amount, strength, and method of administration are specifically fixed as determined by the health care provider authorized by the state to prescribe medications. Routine does not include medications for which the time of administration, the amount, the strength of dosage, the method of administration or the reason for administration is left to judgment or discretion.

FF. "Standards of function" means a range of tasks/activities performed by certified medication aides for consumers who are stable and predictable, supervised by a licensed nurse who may need to limit the range of tasks based on the consumer's need or add via delegation.

GG. "Supervision/direction" means initial verification of a person's knowledge and skills in the performance of a specific function or activity followed by periodic observation, direction and evaluation of that person's knowledge and skills as related to the specific function or activity.

HH. "ULA" means the Uniform Licensing Act.

[16.12.5.7 NMAC - Rp, 16.12.5.7 NMAC, 8-16-05; A, 6-17-08; A, 11-17-11]

16.12.5.8 FEES: Payment of fees will be accepted in the form specified by the board. Fees are not refundable.

A.	Initial certification by examination	\$ 45.00
B.	Certification by exam for CMA II	\$ 60.00
C.	Re-examination	\$ 30.00
D.	Renewal of medication aide certificate	\$ 45.00
E.	Reactivation of a lapsed certificate	\$ 50.00
F.	Each additional population specific certificate	\$ 15.00]
G. E.	Reactivation of a lapsed certificate following board action	\$ 60.00
H. G.	Initial training program review and approval	\$ 250.00
I. H.	Biennial training program evaluation	\$ 200.00

[16.12.5.8 NMAC - Rp, 16.12.5.8 NMAC, 8-16-05; A, 6-17-08; A, 11-17-11]

16.12.5.9 CERTIFICATION BY EXAMINATION REQUIREMENTS FOR MEDICATION AIDES:

A. Prerequisites:

(1) Be a minimum of eighteen (18) years of age.

(2) Be a high school graduate or complete the general education development course.

(3) Provide documentation of a minimum of 6 months health care experience working at [the] a board approved agency within the last year.

(4) Successfully complete a board-approved program for the preparation of medication aides.

(5) Complete the required application form within the specified deadline and according to all policies.

(6) Provide proof of current CPR certification.

(7) Remit the required fee.

B. Application and fee for the medication aide examination must be submitted to the board office at least thirty (30) days prior to the date of the examination.

(1) Any application containing fraudulent or misrepresented information could be the basis for denial of certification.

(2) Incomplete applications for certification become null and void one (1) year after date of last noted activity.

(3) Verification of successful completion of the medication aide program including date of completion must be received in the board office directly from the agency which provided the program, at least thirty (30) days prior to the exam date.

(4) An admission letter which includes the time, date and place of the examination will be issued to all eligible candidates.

(5) The reexamination fee will be charged for all failed examinations and non-excused applicants.

(6) If an applicant is scheduled to write the medication aide examination and is unable to attend, the applicant must notify the board no later than seven (7) days after the examination date. Lack of notification will result in a reexamination fee.

(7) Results of the examination shall be reported by mail only to the individual applicant no later than four (4) weeks following the examination date. Successful candidates shall be issued a certificate.

(8) Successful completion of the examination can be verified through the board's website.

C. Medication aide certification examination.

(1) The board shall develop and maintain the board-approved examination for medication aides.

(2) Board-approved examination centers shall comply with the security

procedures developed by the board for distribution and administration of the examination.

(3) The MAAC shall set the examination dates.

(4) Applicants for certification as a medication aide shall be required to pass the medication aide examination with a minimum of 80% of the items answered correctly.

(5) Failed examinations must be repeated in their entirety on all subsequent attempts.

(6) Unsuccessful candidates may not repeat the examination for two (2) months.

(7) The examination may be taken a maximum of three times. After the third failure, the applicant must provide verification of repeating and completing the training portion of a board-approved medication aide program to be eligible to sit for the exam.

(8) Applicants observed giving or receiving unauthorized assistance during the writing of the examination shall be physically removed from the examination center and the individual(s) shall be referred to the board by a sworn complaint(s) filed by the examiner.

D. Certification by examination for CMA-II.

(1) CMA-II shall be required to pass a certification examination with a minimum score of 80% that is specific to their expanded scope of function as defined in the core curriculum (16.12.5.16 NMAC).

(2) CMA-II applicants who fail the exam may repeat the examination one time within a six month period without repeating an approved training program. If the CMA-II does not pass the second examination they must take a refresher course specific to the expanded scope of function and wait one year from the first test date to retake the examination.

E. Requirements for medication aide recertification.

(1) Applicants for recertification as a medication aide must meet the continuing education and work requirements as stated in these rules.

(2) In order to meet the CE requirement for recertification as a medication aide, the applicant must provide evidence of having accrued sixteen (16) clock hours of CE within the two (2) years renewal period immediately preceding recertification.

(a) The agency shall grant opportunities for CE.

(b) Acceptable courses shall be those with topics related to medications and medication administration.

~~[(c) CMAs with multiple certificates must accrue an additional two (2) hours of CE for each additional population~~

~~specific consumer group certificate that they hold in order to recertify within the two (2) year renewal period.]~~

~~[(d) (c) CE requirement records are subject to audit by the board. Certificate holders may be subject to disciplinary action by the board if non compliant within sixty (60) days of the first notification of the audit.~~

~~[(e) (d) Failure to meet the CE requirements for recertification shall result in denial of recertification. Individuals who do not meet the continuing education requirement may not function as a medication aide until such time as the CE requirement has been met.~~

~~[(f) (e) CMA-II shall accrue four additional contact hours of continuing education within the 24 months preceding recertification. These additional contact hours must be specific to their expanded scope of function.~~

(3) In order to meet the work requirement for recertification as a medication aide, the applicant must administer medications a minimum of 100 hours during the two year period immediately preceding certification renewal.

(a) Work requirement records are subject to audit by the board. Certificate holders may be subject to disciplinary action by the board if non compliant within sixty (60) days of the first notification of the audit.

(b) Failure to meet the employment requirement shall result in denial of recertification.

(c) Individuals who have not met the employment requirement may not function as a medication aide, until a twenty-four (24) hour refresher course has been completed and a recertification application and fee have been submitted, processed, and accepted by the board. Completion of a refresher course shall meet both the employment and CE requirement for the renewal period.

(4) Refresher course.

(a) Completion of a minimum of twelve (12) hours of classroom studies and twelve (12) hours of supervised clinical practice in a board-approved medication aide program under the direction of the nurse educator to include authorized and prohibited functions of a medication aide.

(b) A passing score of 80% on the agency's final examination.

(c) Refresher course requirements are found in 16.12.5.20 NMAC.

(d) The nurse educator shall provide verification on agency letterhead to the board of nursing about the medication aide's completion of the refresher course before a new certificate is issued.

(e) Failure to meet any of the requirements for the refresher course shall require the individual to complete a board-approved training program curriculum in its entirety.

(5) Renewal applications may be mailed to the medication aide at least six (6) weeks prior to the end of the renewal month. Renewal applications are available on the board's website.

(a) Failure to receive the notification for renewal shall not relieve the medication aide of the responsibility of renewing the certificate by the expiration date.

(b) If the certificate is not renewed by the end of the renewal month, the medication aide does not hold a valid certificate and shall not function as a medication aide in NM until the lapsed certificate has been reactivated.

(c) Renewal application and fee must be submitted, processed, and accepted by the board.

(6) Medication aides shall be required to complete the renewal process by the end of their renewal month every two years.

(7) Initial certificates are issued by mail only.

(8) Medication aides with expired certificates of over two (2) years duration shall complete the refresher course in order to be recertified.

(9) Remit the required fee.

~~[F.] Requirement for multiple certifications (see 16.12.5.21 NMAC).~~

~~(1) A CMA may request additional certification upon completion of twenty (20) hours of population specific care training. Population specific care requirements are found in Subsections F, G and H of 16.12.5.19 NMAC.~~

~~(2) Each additional certificate will require the completion of twenty (20) hours population specific care training.~~

~~(3) A certificate indicating the new certifications shall be issued upon written verification from the nurse educator according to 16.12.5.21 NMAC and will expire on the date of the initial certification as a medication aide.~~

~~(4) Renewal of multiple certifications shall thereafter fall on the same date.~~

(5) Remit the required fee.]

~~[G.] E.~~ Individuals who have practiced as medication aides in other states or who have been certified in another state may apply for certification in the state of New Mexico if they:

(1) submit written verification of completion of medication aide training program in another state directly to the board by the training program;

(2) submit written verification of 100 hours as a medication aide during the 24 month period immediately preceding request to become certified in New Mexico directly to the board by their employer;

(3) complete the medication

aide training program's medication administration procedures/skills list;

(4) pass the training program's final examination with a score of 80% or better;

(5) provide written verification by the board approved agency, on agency letterhead, of successful completion of 20 hours of supervised clinical practice, skills list, and the final examination results;

(6) successfully complete the board's medication aide certification examination with a score of 80% or better;

(a) medication aides who have practiced in another state or are certified in another state may practice as medication aides with a temporary certificate once they have completed the requirements listed in Paragraphs (1) through (6) of Subsection F of 16.12.5.9 NMAC;

(b) upon completion of requirements identified in Paragraphs (1) through (6) of Subsection F of 16.12.5.9 NMAC the medication aide must apply to take the next immediately available board approved medication aide certification examination; an initial certification by examination application with fee must be submitted, processed and accepted by the board according to examination required deadline;

(c) upon successful completion of the examination with a score of 80% or higher a certificate will be mailed to the medication aide;

(d) failure to successfully pass the medication aide certification examination shall require the medication aide to complete a board approved training program curriculum in its entirety.

~~[H.] G.~~ Nursing students currently enrolled in a school of nursing may be certified as medication aides if they meet the following criteria.

(1) Students nurses who have successfully completed a nursing pharmacology course and two of the following may apply for medication aide certification:

(a) nursing courses to include: pathophysiology (I), anatomy (II) and physiology (III);

(b) completed a nursing fundamentals course; or

(c) certified nursing assistant course.

(2) Complete the required application form and remit the required fee.

(3) Written verification of successful completion of courses with a "C" or higher must be submitted by the nursing school on letterhead.

(4) If completed certified nursing assistant course, must provide verification of a current certificate in good standing with the state department of health.

(5) Provide proof of a current CPR

card.

[16.12.5.9 NMAC - Rp, 16.12.5.9 NMAC, 8-16-05; A, 6-17-08; A, 11-17-11]

16.12.5.10 STANDARDS OF FUNCTIONS FOR THE MEDICATION AIDE:

A. The purpose of this section is to establish standards for the supervision/direction of medication aides; to identify basic authorized functions for the medication aide and; to identify prohibited functions for the medication aide.

B. Authorized functions of the medication aide - medication aides who have been certified by the NM board of nursing may under the supervision/direction of a registered nurse administer routine medications.

(1) The medications must have been ordered by a person authorized in the state to prescribe medications.

(2) The medication must be prepared by the person who will administer it.

(a) **EXCEPTION:** School medication aides may administer auto injector epinephrine to school staff and students during school hours in an emergency life threatening situation.

(b) School medication aides must receive training in the administration of auto injector epinephrine by the nurse educator. The nurse educator must document the training.

(3) Medication administration errors must immediately be reported to the registered nurse by the medication aide.

(4) Adverse reactions must immediately be reported to the registered nurse by the medication aide.

(5) Administer PRN medications only after contacting and receiving authorization from licensed nurse to administer the PRN medication. Authorization is required for each individual instance of PRN administration of a medication.

C. Prohibited functions of the medication aide:

(1) shall not administer medication by intramuscular, intravenous, subcutaneous or nasogastric routes; **exception:** certified medication aides may administer insulin if they have successfully completed a current ~~[CHT-H]~~ CMA II board approved certification program;

(2) shall not take medication orders;

(3) shall not alter medication dosage as ordered by the prescriber;

(4) shall not perform any function or service for consumers for which a nursing license is required under the Nurse Practice Act;

(5) shall not administer medication without the supervision/direction of a

registered nurse;

(6) shall not administer medications in any agency other than a board approved agency.

D. Supervision/direction.

(1) A nurse educator shall periodically provide supervision/direction to the certified medication aide administering medication(s):

(a) a registered nurse shall be available 24 hours a day (on call) to supervise medication aides as determined by the agency work hours;

(b) develop and institute a yearly performance evaluation of each CMA; the performance evaluation shall be based upon the standards listed in these rules; the performance evaluation shall also include a review of the number of medication errors committed by the CMA.

(2) A nurse educator shall monitor an agency's medication aides as directed by the board to include the following:

(a) review all medication administration errors and incident reports filed since the nurse educator's last review;

(b) meet with each medication aide to review and discuss problems, difficulties, or irregularities in administering medications and to provide appropriate instruction;

(c) prepare and submit to the board of nursing a written, signed report of findings, observations, problems, irregularities, safety violations and recommendations in medication administration.

(3) The registered nurse may delegate to the licensed practical nurse the supervision/direction of the medication aide.

E. Certified medication aide II - expanded scope of function.

(1) The expanded role is a privilege and not a requirement for all CMA's to meet.

(2) The nurse educator shall approve the CMA assuring the CMA meets specific criteria.

(3) CMA must be employed full-time for one year in a board approved facility.

(4) Must have been a CMA for one year and have fulfilled all CMA requirements and be in good standing with the board.

(5) Authorized functions shall include subcutaneous injection of insulin.

(6) Must complete board approved curriculum and pass the board examination with 80% or better.

[16.12.5.10 NMAC - Rp, 16.12.5.10 NMAC, 8-16-05; A, 6-17-08; A, 11-17-11]

16.12.5.11 DISCIPLINARY ACTION:

A. The board shall conduct hearings upon charges relating to discipline of a CMA/CMA II or the denial, suspension or revocation of a medication aide certificate in accordance with the ULA (61-3-10, NMSA, 1978) for the purpose of protecting

the public.

B. Grounds for action.

(1) Incapable of functioning as a medication aide which is defined to include, but not limited to, the following:

(a) inability to function with reasonable skill and safety as a medication aide for any reason including, but not limited to, the use of drugs, alcohol or controlled substances which could impair judgment;

(b) performance of unsafe or unacceptable care of consumers in the administration of medications or failure to conform to the essential standards and prevailing standards of medication aides, in which actual injury need not be established;

(c) omitting deliberately and failing to record information regarding medications and medication administration which could be relevant to the consumer's care;

(d) demonstrating a lack of competence through repeated medication errors.

(2) Incapable of functioning as a responsible member of the health care team which is defined to include, but not limited to, the following:

(a) falsifying or altering consumer records or personnel records for the purpose of reflecting incorrect or incomplete information;

(b) misappropriation of money, drugs or property;

(c) obtaining or attempting to obtain any fee for consumer services for one's self or for another through fraud, misrepresentation or deceit;

(d) obtaining, possessing, administering or furnishing prescription drugs to any person, including, but not limited to one's self, except as directed by a person authorized by law to prescribe;

(e) failure to follow established procedures and documentation regarding controlled substances;

(f) obtaining or attempting to obtain a certificate to function as a medication aide for one's self or for another through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the certification by examination or recertification process;

(g) failure to report a medication aide, who is suspected of violating the NPA, administrative rules or 16.12.5 NMAC;

(h) exceeding the scope of functions of a medication aide;

(i) intentionally abusing, neglecting or exploiting a consumer;

(j) intentionally engaging in sexual contact toward or with a consumer in a manner that is commonly recognized as outside of the medication aide's scope of tasks;

(k) administering medications without the supervision/direction of a registered nurse;

(l) conviction of a felony;

(m) dissemination of a patient/client's health information or treatment plan acquired during the course of employment to individuals not entitled to such information and where such information is protected by law or hospital/agency policy from disclosure.

C. Disciplinary proceedings - disciplinary proceedings are conducted in accordance with the administrative rules of the New Mexico board of nursing and pursuant to the Uniform Licensing Act.

[16.12.5.11 NMAC - Rp, 16.12.5.11 NMAC, 8-16-05; A, 6-17-08; A, 11-17-11]

16.12.5.12 APPROVAL OF MEDICATION AIDE PROGRAMS:

A. The purpose of the rules is to set reasonable requirements that protect the health and well-being of the consumers that receive services from medication aides in board approved programs. NPA (Section 61-3-10.2). The objectives include promoting safe and effective care of consumers receiving medications from CMAs; establishing minimum standards for the evaluation and approval of medication aide programs; facilitating continued approval and improvement of the medication aide programs; granting recognition and approval that a medication aide program is meeting the required minimum standards; and establishing eligibility of graduates of the training portion of a medication aide program to apply for certification by examination.

B. ~~[All new medication aide training and medication aide participant program approved nurse educators shall participate in an orientation that will be presented by board staff.]~~ Board approved nurse educators of all new medication aide participant program's shall participate in an orientation that is presented by board staff.

[16.12.5.12 NMAC - Rp, 16.12.5.12 NMAC, 8-16-05; A, 6-17-08; A, 11-17-11]

16.12.5.13 TYPES OF APPROVAL:

A. Initial program approval - any agency wishing to obtain approval of a medication aide program shall submit, in writing, an application for approval to the board's MAAC. Incomplete applications will not be reviewed. The MAAC shall evaluate the application and make a recommendation to the board regarding the approval of the medication aide program. The board of nursing shall approve medication aide programs at regularly scheduled board meetings.

(1) The initial application for approval shall be consistent with the minimum standards for medication aide programs and shall contain the following:

(a) objectives of the medication aide program;

(b) organizational chart;

(c) name of the administrator and the director of nursing;

(d) name and resume of the nurse educator(s) and other faculty;

(e) program curriculum;

(f) number of hours to be spent on each topic;

(g) evaluation tools that demonstrate written and clinical proficiency to include a quality assurance program;

(h) policies and procedures that outline the scope of function of medication aide in the board approved agency;

(i) job description of medication aide and;

(j) required fee.

(2) Representatives of the medication aide program may be scheduled to meet with the MAAC to present the proposed program.

(a) Upon the MAAC's approval of the application, a recommendation for approval shall be made to the board.

(b) Applications not approved will be returned and may be resubmitted for approval when complete and deficiencies have been corrected.

(3) After receipt of the MAAC's report and recommendation(s), the board may:

(a) grant approval of a program;

(b) defer a decision regarding approval;

(c) deny approval;

(d) direct staff to make a pre-approval evaluation visit.

B. Full approval, for a period not to exceed two (2) years, shall be granted to medication aide programs if, in the opinion of the board, the program demonstrates compliance with 16.12.5.17 NMAC, minimum standards for medication aide programs.

(1) To ensure continued compliance with 16.12.5.17 NMAC, minimum standards for medication aide programs, medication aide programs shall be evaluated through a written report or as determined by the board or the advisory committee.

(a) During the period of full approval, the MAAC [with] may determine if annual medication aide program site visits are necessary to evaluate compliance with these rules.

(b) A representative of the medication aide program may request or be requested to meet with the MAAC to clarify and respond to questions regarding the evaluation.

(c) After the MAAC's review of the evaluation, a report shall be made to the board regarding continuation of the medication aide program's approval.

(d) The board is the final authority

regarding continued approval or probation.

(2) Prior to the expiration of full approval, a program review shall be conducted by a representative from the board of nursing to evaluate programmatic compliance. The report of the visit shall be submitted to the MAAC for review and recommendation to the board regarding approval.

C. Probationary approval.

(1) A medication aide program may be given probationary approval when there is evidence of:

(a) substantial non-compliance with the minimum standards for medication aide programs;

(b) continuous disruptions in retaining qualified nurse educators;

(c) noncompliance with the medication aide program's stated philosophy, objectives, policies, and curriculum resulting in unsatisfactory student achievement;

(d) failure to provide clinical experience or supervision necessary to meet the objectives of the medication aide program;

(e) substantial non-compliance with any portion of these rules.

(2) The medication aide program shall be advised, in writing, of the reason(s) for probationary approval.

(3) The board shall designate a reasonable time period, not to exceed one year, in which the medication aide program must correct deficiencies and meet the minimum standards for approval.

(4) The official of the medication aide program may request, in writing, a hearing before the board.

(a) The hearing may be requested at any time prior to the end of the probationary period.

(b) Hearings shall be scheduled in conjunction with a regularly scheduled meeting of the board.

(c) The information and data presented at the hearing shall be evaluated by the board. Resulting from the evaluation, the board may determine changes in the stipulations required during the period of probation.

(d) Prior to the end of the period of probationary approval, a program review shall be conducted.

(e) Progress reports shall be submitted to the MAAC as directed by the board.

(f) After review of any progress report, the board may request representatives of the medication aide program to meet with the MAAC for consultation and assistance in correcting the deficiencies.

(5) All decisions of the board and recommendations of the MAAC shall be communicated, in writing, to the medication aide program officials.

(6) Probationary approval is not

renewable. Failure to correct deficiencies will result in withdrawal of approval.

[16.12.5.13 NMAC - Rp, 16.12.5.13 NMAC, 8-16-05; A, 6-17-08; A, 11-17-11]

16.12.5.15 P R O G R A M REVIEWS:

A. Types:

(1) Approval assessment: made to a medication aide program by representatives of the board for the purpose of determining board approval.

(2) Evaluation review: made to medication aide program by board representatives at the request of the board for the purpose of evaluating a program's progress and approval status.

(3) Consultation assessment: made to the medication aide program by the board representatives at the request of the program officials.

(4) Course visit: visit which may be done at anytime to a participating medication aide program.

(5) Program review: conducted to assess compliance with programmatic requirements and to assess the status of the program at the facility.

B. The board reserves the right to make unannounced visits.

C. A report of the visit made by representative(s) of the board shall be provided to the medication aide program, MAAC, and the board for final disposition regarding approval status.

D. [The survey team for] Visits shall be conducted by a minimum of one professional board staff member.

[16.12.5.15 NMAC - Rp, 16.12.5.15 NMAC, 8-16-05; A, 6-17-08; A, 11-17-11]

16.12.5.16 C H A N G E S REQUIRING NOTIFICATION TO THE ADVISORY COMMITTEE OR THE BOARD FOR APPROVAL:

~~[A.]~~ Once a medication aide program has been granted approval by the board, reapproval shall not be required each time a course is offered so long as the course is not changed.]

~~[B.]~~ **A.** Program changes requiring notification to the advisory committee or board for approval.

(1) Major curriculum changes or reorganization of the curriculum.

(2) Major changes in the program's objectives or goals.

(3) Changes in the required didactic or clinical hours.

(4) Changes in the internal, administrative or organizational plan of the agency ~~[which affects the medication aide program].~~

(5) Changes in the licensure status of the agency.

(6) Changes in the medication aide program nurse educator.

~~(C)~~ **B.** Procedure for requesting board approval for program changes.

(1) The MAAC shall be notified, in writing, of changes in the program requiring board approval. The MAAC shall present the changes and recommendations to the board of nursing at a regularly scheduled meeting.

(2) The notification shall include:

(a) a proposed change(s);
(b) rationale for the proposed change(s);

(c) anticipated effect to the current program;

(d) timetable for implementation of the proposed change(s);

(e) presentation of the differences between the current system and proposed change(s);

(f) method of evaluation which will be used to determine the effect of the changes and;

(g) the required fee.

[16.12.5.16 NMAC - Rp, 16.12.5.16 NMAC, 8-16-05; A, 6-17-08; A, 11-17-11]

16.12.5.17 M I N I M U M STANDARDS FOR MEDICATION AIDE PROGRAMS:

A. Objectives - there shall be written objectives for the medication aide program which serve as the basis for the planning, implementation, and evaluation of the program.

(1) The objectives shall be developed by the medication aide program nurse educator and shall describe the competencies of the medication aide and shall include:

(a) principles of safety in the administration of medication;

(b) six (6) rights in preparing and administering drugs;

(c) methods commonly used to safeguard drugs;

(d) process of infection control;

(e) terms related to administration of medications;

(f) abbreviations commonly used when prescribing and administering drugs;

(g) uses, dosages, and necessary precautions in administering drugs;

(h) ability to correctly calculate dosages;

(i) appropriately reporting changes in a consumer's condition;

(j) importance of remaining with consumer while he/she ingest medication;

(k) accurate documentation of medication administration;

(l) legal parameters of the medication aide role;

(m) authorized and prohibited functions;

(n) responsibility for own actions;

(o) maintenance of confidential information;

(p) appropriate skills in medication administration;

(q) understanding of the consumer population and;

(r) confidentiality issues.

(2) The objectives shall be written clearly, and shall identify expected competencies of the beginning medication aide.

(3) The objectives shall be reviewed annually and revised as necessary by the nurse educator.

B. Curriculum.

(1) The curriculum shall be developed, implemented, evaluated by the medication aide program nurse educator within the framework of the objectives.

(2) The curriculum shall extend over a period of time sufficient to provide essential, sequenced learning experiences which enable a student to develop competence consistent with principles of learning and sound educational practice.

(a) There shall be a minimum of sixty (60) hours of classroom study of which forty (40) hours is the medication administration curriculum and twenty (20) hours of population specific care curriculum.

(b) There shall be a minimum of twenty (20) hours of supervised clinical experience. The nurse educator retains accountability and determines the need for additional clinical experience hours.

(c) Supervised clinical experience shall provide opportunities for the application of theory and for the achievement of stated objectives in a population specific care setting and shall include clinical learning experiences to develop the ~~[skills]~~ proficiency/quality assurance required by the individual to function safely as a medication aide. A nurse educator or clinical preceptor must be physically present and accessible to the student in the population specific care area.

(d) The CMA-II curriculum shall include a minimum of 16 additional hours of classroom study and a minimum of ~~[eighty (80)]~~ twenty (20) hours of supervised clinical experience. The CMA II student shall successfully administer insulin to one or more consumers a minimum of 20 times. The nurse educator must verify the successful completion of training with a written letter to the board with the application to test and receive certification as a CMA-II.

(3) The curriculum shall provide, at a minimum, instruction in the subject areas listed in 16.12.5.19 NMAC.

(4) The nurse educator shall develop a written systematic plan for curriculum and program evaluation.

C. Administration and organization.

(1) There shall be a current organizational chart showing the position of the medication aide program within

the overall structure of the agency, clearly indicating the lines of authority and responsibility and channels of communication.

(2) The agency administration shall provide support for the medication aide program to obtain the resources needed for the program to achieve its purpose.

(3) There shall be a nurse educator to administer the program that shall be responsible for:

(a) the development, implementation and evaluation of the medication aide program;

(b) creation and maintenance of an environment conducive to teaching and learning;

(c) liaison with other personnel;

(d) arrangement for direct supervision of the student's clinical experience by a licensed nurse;

(e) provision for a system of permanent records, and records and reports essential to the operation of the medication aide program;

(f) communication with the board of nursing.

(4) Should the nurse educator leave their position, the administrator shall notify the board. Failure to notify the board may result in a monetary penalty imposed by the board.

D. Faculty.

(1) Each program shall have a nurse educator that is a registered nurse and holds a current license to practice nursing in NM or a current compact state license.

(2) The nurse educator shall have at least two (2) years of recent, within the last five (5) years, nursing practice experience.

(3) The nurse educator shall select the clinical experience for students.

(4) The nurse educator or clinical preceptor must be physically present in the agency while students are engaged in clinical experience.

(5) The ratio of faculty to students, during supervised clinical experience shall not be more than one (1) faculty to two (2) students.

(6) The nurse educator shall be responsible for instruction and evaluation of student performance, termination, grading and progression.

(7) Other health care providers, in addition to the nurse educator, may be appropriate faculty for classroom instruction such as physicians, nurse practitioners and pharmacists.

(8) The nurse educator will have accountability/responsibility in the final selection/determination of any CMA candidate chosen for advancement to CMA II.

E. Records.

(1) The nurse educator's record shall include:

(a) verification of current licensure as a registered nurse in New Mexico or compact state;

- (b) continuing education record;
- (c) resume;
- (d) teaching experience;

(e) verification of board of nursing orientation for nurse educators;

(f) board of nursing appointment letter to position of nurse educator.

(2) The student's record shall include:

- (a) admission date;
- (b) testing and evaluation records;
- (c) classroom and clinical attendance;
- (d) final course grade;
- (e) certificate that documents

proof of attendance and successful program completion;

~~(e)~~ (f) copy of application for certification examination;

~~(f)~~ (g) continuing education attendance records;

~~(g)~~ (h) current CPR certification.

(3) The clinical preceptor's record shall include:

(a) verification of current licensure as a registered or licensed practical nurse in NM or compact state;

(b) clinical teaching experience;

(c) verification of orientation for clinical preceptors conducted by nurse educator.

[16.12.5.17 NMAC - Rp, 16.12.5.17 NMAC, 8-16-05; A, 6-17-08; A, 11-17-11]

16.12.5.18 MEDICATION AIDE PROGRAM ADVISORY COMMITTEE:

A. Composition and appointment of committee members - The board shall appoint a minimum of a five (5) member voluntary advisory committee which shall be composed of at least three (3) registered nurses and other representatives. The committee shall include one member not employed by a participating agency.

(1) Agencies shall be requested to submit nominations for committee appointments.

(2) There shall be no more than one representative from any one agency serving on the advisory committee at any one time.

(3) Members of the committee shall serve for staggered terms of two (2) years, and may be reappointed to the advisory committee.

B. Responsibility of advisory committee.

(1) The advisory committee shall review applications for initial approval, program evaluations, and changes in medication aide programs, and shall submit reports and recommendations to the board.

(2) The advisory committee shall provide consultation to medication aide

programs as requested or directed by the board.

(3) Members of the advisory committee ~~shall~~ may serve as survey visitors to medication aide programs for approval, consultation and evaluation visits. [16.12.5.18 NMAC - Rp, 16.12.5.18 NMAC, 8-16-05; A, 6-17-08; A, 11-17-11]

~~[16.12.5.21~~ **M U L T I P L E** ~~CERTIFICATION REQUIREMENTS:~~

~~A.~~ CMAs who have a current active certificate and are requesting to work with different population specific care groups shall:

~~(1)~~ obtain the required additional twenty (20) hours of population specific medication administration training as outlined in Subsections F, G and H of 16.12.5.19 NMAC;

~~(2)~~ training shall be from a board approved nurse educator;

~~(3)~~ the nurse educator will provide training in medication administration skills as written in Subsection F of 16.12.5.19 NMAC;

~~(4)~~ the nurse educator will ensure that the certified medication aide is trained in agency policy as related to medication administration;

~~(5)~~ medication classification review as determined by the agency nurse educator;

~~(6)~~ upon completion of training the nurse educator will notify the board on agency letterhead stating the individual had completed the additional training and meets the criteria for the additional certificate;

~~(7)~~ certificate will be mailed to the certified medication aide.

B. Renewal of certificates will fall on the expiration date of the initial certification date.

~~C.~~ Remit the required fee.] [Reserved]

[16.12.5.21 NMAC - N, 8-16-05; Repealed, 11-17-11]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY
PART 9 ELEMENTARY SCHOOL FREE BREAKFAST PROGRAM DURING INSTRUCTIONAL TIME**

6.12.9.1 ISSUING AGENCY: Public Education Department [6.12.9.1 NMAC - N, 10-31-11]

6.12.9.2 SCOPE: All public schools, including charter schools. [6.12.9.2 NMAC - N, 10-31-11]

6.12.9.3 STATUTORY AUTHORITY: This regulation is adopted pursuant to Sections 22-2-1 and 9-24-8 NMSA 1978.

[6.12.9.3 NMAC - N, 10-31-11]

6.12.9.4 DURATION: Permanent

[6.12.9.4 NMAC - N, 10-31-11]

6.12.9.5 EFFECTIVE DATE: October 31, 2011, unless a later date is cited in the history note at the end of a section.

[6.12.9.5 NMAC - N, 10-31-11]

6.12.9.6 OBJECTIVE: This rule establishes requirements for districts and charter schools to establish a school breakfast program providing free breakfast after the instructional day has begun, in all districts in which eighty-five percent or more of the enrolled students at the elementary school were eligible for free or reduced lunch during the prior school year.

[6.12.9.6 NMAC - N, 10-31-11]

6.12.9.7 DEFINITIONS:

A. "Breakfast after the bell program" means an elementary school breakfast program in which food shall be served or consumed, at no charge, after the instructional day has begun, provided that instruction occurs simultaneously, to all students attending that elementary school through a school breakfast program that meets the federal school breakfast program standards as authorized by Section 4 of the Child Nutrition Act of 1966 and operated in accordance with all applicable policies, guidance, and law, including the requirements listed in 7 CFR Part 220.

B. "Elementary school" means a public school providing instruction for grades kindergarten through eight, unless there is a junior high school program approved by the department, in which case it means a public school providing instruction for grades kindergarten through six (22-1-3, NMSA 1978).

C. "Federal reimbursement rate" means an amount prescribed annually by the United States secretary of agriculture for federal payments towards each meal served; this rate differs for free, reduced price and paid meals and depending upon whether the school is in "severe need," as defined in 7 CFR Part 220.2 and according to the criteria in 7 CFR 220.9.

D. "Financial hardship" means that if the school food services were to serve breakfast after the bell, it would operate at a loss such that cost would exceed revenue and funds from the school districts or charter schools state equalization guarantee would be required to cover the cost of serving breakfast after the bell.

E. "Local school board"

means the governing body of a school district or charter school.

F. "School district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes.
[6.12.9.7 NMAC - N, 10-31-11]

6.12.9.8 REQUIREMENTS:

A. This section applies to local school boards, local school districts, and charter schools.

B. An elementary school in which eighty-five percent or more of the enrolled students at the school are eligible for free or reduced-price lunch under the National School Lunch Act of 1946 during the prior school year shall establish a breakfast after the bell program unless the school is granted a waiver by the department as per 6.12.9 NMAC.

C. An elementary school in which fewer than eighty-five percent or more of the enrolled students at the school are eligible for free or reduced-price lunch under the National School Lunch Act of 1946 during the prior school year and accepts state funding for the breakfast after the bell program shall establish a breakfast after the bell program.

D. Each school district and charter school that implements a breakfast after the bell program shall be reimbursed for students eligible for free or reduced price lunch under the National School Lunch Act of 1946 on a per-meal basis as set forth by the federal Child Nutrition Act of 1966.

E. Each school district and charter school that implements a breakfast after the bell program and accepts a department award for state funds for the breakfast after the bell program shall be reimbursed by the department for students not eligible for free price or reduced priced lunch under the National School Lunch Act of 1946 on a per-meal basis as set forth by the federal Child Nutrition Act of 1966 and shall be reimbursed by the department for students eligible for reduced priced lunch at a rate that reflects the difference between the federal established reduced meal rate and the free price meal rate under the National School Lunch Act of 1946.

F. Each school district and charter school that implements a breakfast after the bell program shall ensure that instruction occurs simultaneously when breakfast is served or consumed.
[6.12.9.8 NMAC - N, 10-31-11]

6.12.9.9 BREAKFAST AFTER THE BELL PROGRAM WAIVER:

A. A school district or charter school may apply to the department for a waiver of the breakfast after the bell

program requirements if the school district or charter school can demonstrate that the providing program will result in financial hardship for the school district or charter school.

B. Request for a breakfast after the bell program waiver shall be submitted using the department's breakfast after the bell program waiver request form. This form shall include:

(1) name of superintendent or director of charter;
(2) district/school;
(3) mailing address;
(4) phone;
(5) fax;
(6) email;
(7) name of secondary contact person including the same information as identified in Paragraphs (1) through (6) of Subsection B;

(8) date of submission;
(9) statement district or charter school rationale for request; and
(10) the statement shall outline the financial hardship identifying how the breakfast after the bell program would operate at a loss such that cost would exceed revenue and funds from the school districts or charter schools state equalization guarantee would be required to cover the cost of serving breakfast after the bell.
[6.12.9.9 NMAC - N, 10-31-11]

History of 6.12.9 NMAC: [Reserved]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.11.2 NMAC, Section 10, effective October 31, 2011.

6.11.2.10 ENFORCING RULES OF CONDUCT:

A. Enforcing attendance requirements. Formal enforcement action under the Compulsory School Attendance Law, supra, and the Family Services Act, Section 32A-3A-1 et seq. NMSA 1978 shall be initiated whenever a student's absences indicate that the law is being violated. An administrative authority who has reason to believe a student is violating local school board attendance policies may take whatever further disciplinary action is deemed appropriate under local policies.

B. Search and seizure: School property assigned to a student and a student's person or property while under the authority of the public schools are subject to search, and items found are subject to seizure, in accordance with the requirements below.

(1) Notice of search policy. Students shall be given reasonable notice, through distribution of written policies

or otherwise, of each school's policy on searches at the beginning of each school year or upon admission for students entering during the school year.

(2) Who may search. Certified school personnel, school security personnel and school bus drivers are "authorized persons" to conduct searches when a search is permissible as set forth below. An authorized person who is conducting a search may request the assistance of some other person(s), who upon consent become(s) an authorized person for the purpose of that search only.

(3) When search permissible. Unless local school board policy provides otherwise, an authorized person may conduct a search when (s)he has a reasonable suspicion that a crime or other breach of disciplinary rules is occurring or has occurred. An administrative authority may direct or conduct a search under the same conditions and also when (s)he has reasonable cause to believe that a search is necessary to help maintain school discipline.

(4) Conduct of searches; witnesses. The following requirements govern the conduct of permissible searches by authorized persons:

(a) School property, including lockers and school buses, may be searched with or without students present unless a local school board or administrative authority provides otherwise. When students are not present for locker searches, another authorized person shall serve as a witness whenever possible. Locks furnished by students should not be destroyed unless a student refuses to open one or circumstances otherwise render such action necessary in the judgment of the administrative authority.

(b) Student vehicles when on campus or otherwise under school control and students' personal effects which are not within their immediate physical possession may be searched in accordance with the requirements for locker searches.

(c) Physical searches of a student's person may be conducted only by an authorized person who is of the same sex as the student, and except when circumstances render it impossible may be conducted only in the presence of another authorized person of the same sex. The extent of the search must be reasonably related to the infraction, and the search must not be excessively intrusive in light of the student's age and sex, and the nature of the infraction.

(5) Seizure of items: Illegal items, legal items which threaten the safety or security of others and items which are used to disrupt or interfere with the educational process may be seized by authorized persons. Seized items shall be released to appropriate authorities or a student's parent or returned to the student when and if the administrative authority deems appropriate.

(6) Notification of law enforcement authorities: Unless a local school board policy provides otherwise, an administrative authority shall have discretion to notify the local children's court attorney, district attorney or other law enforcement officers when a search discloses illegally possessed contraband material or evidence of some other crime or delinquent act.

C. Basis for disciplinary action: A student may appropriately be disciplined by administrative authorities in the following circumstances:

(1) for committing any act which endangers the health or safety of students, school personnel or others for whose safety the public school is responsible, or for conduct which reasonably appears to threaten such dangers if not restrained, regardless of whether an established rule of conduct has been violated;

(2) for violating valid rules of student conduct established by the local school board or by an administrative authority to whom the board has delegated rulemaking authority, when the student knew or should have known of the rule in question or that the conduct was prohibited; or

(3) for committing acts prohibited by this rule, when the student knew or should have known that the conduct was prohibited.

D. Selection of disciplinary sanctions: Within legal limits as defined in Subsection L. of 6.11.2.7 NMAC above, local school boards have discretion to determine the appropriate sanction(s) to be imposed for violations of rules of student conduct, or to authorize appropriate administrative authorities to make such determinations.

(1) School discipline and criminal charges: Appropriate disciplinary actions may be taken against students regardless of whether criminal charges are also filed in connection with an incident.

(2) Nondiscriminatory enforcement: Local school boards and administrative authorities shall not enforce school rules or impose disciplinary punishments in a manner which discriminates against any student on the basis of race, religion, color, national origin, ancestry, sex or disability, except to the extent otherwise permitted or required by law or regulation. This statement shall not be construed as requiring identical treatment of students for violation of the same rule; it shall be read as prohibiting differential treatment which is based on race, religion, color, national origin, ancestry, sex or disability rather than on other differences in individual cases or students.

E. Corporal punishment: ~~Each local school board with community input shall determine whether to permit the use of corporal punishment and shall publish and distribute a written policy either~~

~~authorizing or prohibiting its use. Where corporal punishment is authorized, the written policy shall specify the allowable forms of punishment, the conditions under which it may be used and the procedures to be followed in administering it. A school board policy authorizing corporal punishment will override any parents objection to its use unless the local board also authorizes individual parents to veto corporal punishment of their children. Where a local board has not authorized a parental veto, an administrative authority may in any event decline to apply corporal punishment if (s)he has reason to believe that an individual student is physically or emotionally unable to withstand reasonable corporal punishment or if (s)he believes that corporal punishment would be ineffective or inappropriate.] Corporal punishment shall not be utilized as a means of enforcing rules of conduct in public schools.~~

F. Detention, suspension and expulsion: Where detention, suspension or expulsion is determined to be the appropriate penalty, it may be imposed only in accordance with procedures that provide at least the minimum safeguards prescribed in Section 6.11.2.12 NMAC, below. Suspensions or expulsions of students with disabilities shall be subject to the further requirements of Subsection G of Section 6.11.2.10 NMAC and Section 6.11.2.11 NMAC below.

G. Discipline of students with disabilities: Students with disabilities are not immune from school disciplinary processes, nor are they entitled to remain in a particular educational program when their behavior substantially impairs the education of other children in the program. However, the public schools are required by state law and regulations to meet the individual educational needs of students with disabilities to the extent that current educational expertise permits. Public school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, consistent with the other requirements of 6.11.2.11 NMAC, is appropriate for a student with a disability who violates a code of conduct as provided in 34 CFR Sec. 300.530.

(1) Long-term suspensions or expulsions of students with disabilities shall be governed by the procedures set forth in Section 6.11.2.11 NMAC below.

(2) Temporary suspensions of students with disabilities may be imposed in accordance with the normal procedures prescribed in Subsection D of Section 6.11.2.12 NMAC below, provided that the student is returned to the same educational placement after the temporary suspension and unless a temporary suspension is prohibited under the provisions of Subsection

G, Paragraph (3) of 6.11.2.10 NMAC below.

(3) Program prescriptions. A student with a disability's individualized education program (IEP), under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), need not affirmatively authorize disciplinary actions which are not otherwise in conflict with this rule. However, the IEP team may prescribe or prohibit specified disciplinary measures for an individual student with a disability by including appropriate provisions in the student's IEP. Administrative authorities shall adhere to any such provisions contained in a student with a disability's IEP, except that an IEP team may not prohibit the initiation of proceedings for long-term suspension or expulsion which are conducted in accordance with this rule.

(4) Immediate removal. Immediate removal of students with disabilities may be done in accordance with the procedures of Subsection C of Section 6.11.2.12 NMAC below.

(5) A student who has not been determined to be eligible for special education and related services under 6.31.2 NMAC and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in this subsection if the conditions set forth in 34 CFR Sec. 300.534 have been met.

(6) Referral to and action by law enforcement and judicial authorities.

(a) Nothing in these rules of conduct prohibits an administrative authority from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

(b) Transmittal of records.

(i) An administrative authority reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted, for consideration by the appropriate authorities, to whom the administrative authority reports the crime.

(ii) An administrative authority reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

[08-15-97; 6.11.2.10 NMAC - Rn, 6 NMAC 1.4.10, 11-30-00; A, 6-29-07; A, 11-13-09; A, 10-31-11]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.12.2 NMAC, Section 8, effective October 31, 2011.

6.12.2.8 REQUIREMENTS FOR IMMUNIZATION OF CHILDREN ATTENDING PUBLIC, NONPUBLIC, OR HOME SCHOOLS:

A. The following definitions apply to this section.

(1) “Active duty” means full-time duty status in the active uniformed service of the United States, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. Sections 1209 and 1211.

(2) “Administrative authority” means the superintendent, principal or the designee of such person.

(3) “Children of military families” means children enrolled in kindergarten through twelfth grade in the household of an active duty member.

(4) “Public health division regulations” means those regulations adopted by the public health division of the department of health pursuant to the authority granted in Sections 24-5-1 to 24-5-6, NMSA 1978 and including the immunization schedule.

(5) “Licensed physician” means a physician licensed to practice medicine or osteopathic medicine in New Mexico, another state or territory.

(6) “Certified nurse practitioner” means an individual licensed as a certified nurse practitioner with prescriptive authority by the New Mexico board of nursing, another state or territory.

(7) “Required immunizations” means those immunizations against diseases deemed to be dangerous to the public health by the public health division and set forth in its immunization schedule effective at date of enrollment.

(8) “Satisfactory evidence of commencement and completion of immunization” means satisfactory evidence of a person having begun the process of immunizations in a statement, certificate or record signed by a duly licensed physician, certified nurse practitioner, or other recognized public or private health facility stating that the person has received at least the first in the series of required immunizations and is proceeding with the immunizations according to the prescribed schedule. Persons enrolling in schools who have begun the process of immunization shall have one month following the date of enrollment to complete the required immunizations and submit satisfactory evidence of completing the required immunizations or having continued the process of the required series.

(9) “Satisfactory evidence of immunization” means a statement, certificate or record signed by a duly licensed physician, certified nurse practitioner, or other recognized, licensed health facility stating that the required immunizations have been administered to the person.

B. No student shall be enrolled in the public, nonpublic, or home schools in the state unless the student can present satisfactory evidence of commencement or completion of immunization in accordance with the immunization schedule and rules and regulations of the public health division.

C. Exemptions from immunization:

(1) The student is exempt from immunization as required by Subsection B of this rule upon filing with the governing authority:

(a) a statement or certificate signed by a licensed physician or certified nurse practitioner stating that the physical condition of the person seeking enrollment is such that immunization would seriously endanger the life or health of the person; or

(b) an exemption granted by the public health division on the basis of:

(i) notarized affidavits or written affirmation from an officer of a recognized religious denomination that such child’s parents or guardians are bona fide members of a denomination whose religious teaching requires reliance upon prayer or spiritual means alone for healing; or

(ii) notarized affidavits or written affirmation from his parent or legal guardian that his religious beliefs, held either individually or jointly with others, do not permit the administration of vaccine or other immunizing agent.

(2) [Exemption] Exemptions from obtaining the required immunizations [is], as listed under Subsection C of 6.12.2.8 NMAC are valid for a period not to exceed nine (9) months and will not extend beyond the end of the school year in which the child is currently enrolled.

D. Children of military families: Children of military families shall be enrolled and conditionally placed in any public, nonpublic or home school to which they are eligible for thirty (30) days while the student obtains the required immunizations. For a series of required immunizations, students of active military families must obtain at least the first in the series of required immunizations within thirty (30) days of the date of enrollment.

E. Disenrollment: If satisfactory evidence of commencement or completion of immunization or an exemption from immunization in accordance with [Subsection C] Subsections C and D of 6.12.2.8 NMAC is subsequently determined to be invalid for any reasons and the student

is unable to provide either valid satisfactory evidence of commencement or completion of immunization or a valid exemption from immunization in accordance with ~~[Subsection C]~~ Subsections C and D of 6.12.2.8 NMAC, the administrative authority shall commence disenrollment proceedings.

~~E.] E.~~ Administrative duty to report:

(1) It is the duty of each school superintendent, whether of a public or nonpublic school, to cause to be prepared a record showing the required immunization status of every child enrolled in or attending a school under his (her) jurisdiction.

(2) These records must be kept current and available to public health authorities.

(3) The name of any parent or guardian who neglects or refuses to permit his (her) child to be immunized against diseases as required by rules and regulations promulgated by the public health division shall be reported by the school superintendent to the director of the public health division within a reasonable time after such facts become known to the superintendent.

[6.12.2.8 NMAC - Rp, 6.12.2.7, 8, 9, 10 & 11 NMAC, 11-15-05; A, 10-31-11]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.19.6, Section 6, Section 7, Section 8, Section 9, and Section 10, effective October 31, 2011.

6.19.6.6 OBJECTIVE: This rule establishes requirements for:

A. ~~s u p p l e m e n t a l~~ educational services providers who seek to use incentives as a method of promoting selection of their services by parents of eligible children;

B. allowable rewards to students to reward attendance, continued participation and achievement related to the supplemental educational services;

C. ~~[establishing a timeline to be followed by supplemental educational services providers and all school districts and public schools, including charter schools for commencing and ending supplemental educational services during the school year;]~~ establishing a range of hourly per student rates a provider may charge a school district;

D. establishing a sliding hourly fee schedule a provider may charge a school district based on the education level of the tutors being used by the supplemental educational services provider;

~~[E. establishing the priority of students for whom supplemental educational services shall be provided;~~

~~F.] E.~~ implementation of

basic program parameters and required assessments;

~~[G.] E.~~ provision of on-site audits conducted by ~~[supplemental educational services providers;]~~ eligible school districts and the department;

~~[H.] G.~~ establishing that all supplemental educational services providers and eligible school districts will submit all relevant student data; and

~~[H.] H.~~ removal of providers from approved list.
[6.19.6.6 NMAC - N, 08/15/05; A, 08/31/06; A, 10/31/11]

6.19.6.7 DEFINITIONS:

A. "Department" means the public education department.

B. "Eligible child or eligible children" means a child or children from low income families as determined by a school district, public school, or charter school for the purposes of allocating federal funds made available under Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) as amended.

C. "Incentives" means any goods, facilities, services, gifts, coupons, discounts, rebates, or cash offered or given to anyone by or on behalf of a supplemental educational services provider to promote selection of their services by parents or guardians of eligible children.

D. "Removal" means deleting the provider from the list of state-approved supplemental educational services providers.

E. "Rewards" means an acceptable classroom incentive with no redeemable monetary value to an eligible child or that child's parent or guardian and that is offered to an eligible child only as a reward for attendance, continued participation, or achievement related to a provider's services.

F. "Supplemental educational services" means tutoring and other supplemental academic enrichment services that are in addition to instruction provided during the school day and are of high quality, research-based, and specifically designed to increase the academic achievement of eligible children on required academic assessments and attain proficiency in meeting the state's academic achievement standards.

~~[G.]~~ "Timeline" means a schedule established by the department that delineates when parental notifications are to be issued, when parent notifications are to be returned, when supplemental educational services may commence, and approximately how much supplemental educational service shall be completed prior to the state-mandated criterion referenced testing.

~~[H.] G.~~ "Tutor to student ratio" means the established number of students a

tutor may provide supplemental educational services to at one time.

[6.19.6.7 NMAC - N, 08/15/05; A, 08/31/06; A, 10/31/11]

6.19.6.8 REQUIREMENTS:

A. All school districts, public schools, including charter schools and all state-approved supplemental educational services providers who offer or plan to offer supplemental educational services in New Mexico, shall ~~[adhere to timelines as follows]~~ offer an initial enrollment period of at least ten (10) working days.

~~[(1)]~~ Parental notification shall occur two weeks after school has started.

~~[(2)]~~ The enrollment period for supplemental educational services is at a minimum the four week period subsequent to the beginning of a school year after the issuance of notification to parents of the availability of supplemental educational services:

~~[(3)]~~ Supplemental educational services shall begin no later than four weeks after the later of the following dates:

~~[(a)]~~ the minimum enrollment period for supplemental educational services has ended; or

~~[(b)]~~ the date the child has enrolled for supplemental educational services.

~~[(4)]~~ Each supplemental educational services provider must complete at least seventy-five percent of services to eligible children for whom the parent/guardian has selected the supplemental educational service provider prior to the administration of the state-mandated criterion referenced testing. ~~If an individual supplemental educational services provider, due to their own actions, does not complete seventy-five percent of services to all eligible children who are enrolled in supplemental educational services prior to the administration of the state-mandated criterion referenced testing, the local education agency administering supplemental educational services may take the following actions:~~

~~[(a)]~~ immediately cancel existing contracts with each supplemental education services provider that has not met the requirement of this deadline;

~~[(b)]~~ continue the existing contracts to ensure that all students enrolled in supplemental educational services continue to receive services; or

~~[(c)]~~ renegotiate the existing contracts to ensure that all students enrolled in supplemental educational services continue to receive services.

~~[(5)]~~ During the enrollment period the eligible school district must release names of students enrolled in supplemental educational services in a timely manner, at minimum a list of student names and contact information will be released to the providers on no less than a weekly basis:

~~B.~~ With written approval from district superintendent, a school district, public school, including a charter school may enter into agreements or otherwise permit supplemental educational services providers to operate during the mandatory state-mandated criterion referenced testing.

~~C.~~ Beginning with the 2005-2006 school year and continuing in every school year thereafter;]

~~B.~~ Supplemental educational services providers shall not directly or indirectly use incentives as a method of promoting selection of their services by parents or guardians of eligible children. Provided, however, that rewards may be offered to eligible children:

(1) to reward attendance, continued participation, or achievement related to a provider's services;

(2) if the reward has no redeemable monetary value to the eligible child or his parent/guardian and is otherwise consistent with accepted classroom incentives, such as pizza parties, ice cream parties, school supplies having nominal value, or the opportunity to order discounted instructional material for the eligible child's personal use; and

(3) parents or guardians of an eligible child or children consent to the offering of such incentives.

~~C.~~ Beginning school year 2011-2012, all providers of supplemental educational services shall charge an hourly per pupil rate between \$25.00 per hour and \$65.00 per hour. Beginning in school year 2012-2013 all providers of supplemental educational services shall charge an hourly per pupil rate between \$25.00 per hour and \$45.00 per hour.

D. All school districts, public schools, including charter schools and all state-approved supplemental educational services providers who offer or plan to offer supplemental educational services in New Mexico, shall adhere to the following requirements:

(1) Each supplemental educational services provider must use a sliding hourly fee schedule when invoicing eligible school districts for services rendered. The sliding hourly fee schedule shall comport as follows:

(a) A supplemental educational services provider may charge the eligible school district its full hourly amount if the tutor has a valid teaching license or a four year degree or greater from an accredited university or college, and the per pupil cap will not be ratably reduced based on the education level of the tutor providing supplemental educational services.

(b) A supplemental educational services provider may charge the eligible school district eighty-five percent of its hourly amount if the tutor has less than a four year degree, but more than an associates

of arts degree, or its equivalent of forty-eight (48) credit hours, from an accredited post secondary institution, and the per pupil cap will be ratably reduced by fifteen percent based on the education level of the tutor providing supplemental educational services.

(c) A supplemental educational services provider may charge the eligible school district seventy-five percent of its hourly amount if the tutor has less than an associates of arts degree, or its equivalent of forty-eight (48) credit hours, from an accredited post secondary institution but more than a high school diploma, and the per pupil cap will be ratably reduced by twenty-five percent based on the education level of the tutor providing supplemental educational services.

~~(2) Eligible students are students from low-income families who attend Title I schools that are in their second year of school improvement, in corrective action, or in restructuring. Eligibility is not dependent on whether the student is a member of a subgroup that caused the school to not make AYP or whether the student is in a grade that takes the statewide assessments. If the funds available are insufficient to provide supplemental educational services to each eligible student whose parent requests those services, the LEA must give priority to providing services to the lowest-achieving eligible students. In this situation, the LEA shall use objective criteria to determine the lowest-achieving students.~~

~~(3) Supplemental educational services providers must use a department-approved pre- and post-assessment instrument to measure the gains that students achieve through supplemental educational services.~~

~~(4) Only Title I schools that have received a school designation of school improvement year 2, corrective action or restructuring are required to offer supplemental educational services.~~

~~E. Supplemental education services providers must adhere to the following program parameters:~~

~~(1) Supplemental educational services providers must demonstrate the capacity to provide an adequate number of contact hours to contribute to student achievement within fair market value for the state approved providers.]~~

(2) Invoices submitted by supplemental educational services providers must accurately reflect the tutor to student ratio of the tutoring session and the qualifications of the tutor providing services. The invoiceable tutor to student ratios shall compare as follows:

(a) A supplemental educational services provider that maintains a tutor: student ratio of one tutor to three students or less may charge the eligible school

district the full hourly amount based on tutor qualifications.

(b) A supplemental educational services provider that maintains a tutor to student ratio of one tutor to four students, one tutor to five students, or one tutor to six students may charge the eligible school district eighty-five percent of its hourly amount based on tutor qualifications.

(c) A supplemental educational services provider that maintains a tutor to student ratio of one tutor to seven students or greater may only charge the eligible school district fifty percent of its hourly amount based on tutor qualifications.

~~(3) The length of any supplemental educational services session must be developmentally appropriate considering the age of the student participating in supplemental educational services.~~

~~(4) Each supplemental educational services provider must ensure that the academic services provided to each student are consistent with the individual school district curriculum and state performance standards.]~~

E. In its application, each provider of supplemental educational services shall include documentation, as prescribed by the department, that the tutoring services to be offered are consistent with instructional program by the school district or charter school whose students the provider intends to serve. The department may consult with the school district or charter school to determine whether an applicant has met this requirement.

E. A district may, prior to entering into agreement with approved supplemental educational service providers, require providers to participate in training designed to assist providers in providing services consistent with the district's instructional program.

~~(5) G. Each student who is enrolled in supplemental educational services must have a student improvement plan, with goals relating to academic improvement based on state standards and consistent with the local district instructional program in place and approved by parents or guardians, appropriate school personnel and chosen supplemental educational services provider before any invoice for services rendered may be paid.~~

~~(6) H. Each student who is enrolled with an approved supplemental educational services provider must be pre- and post-tested, with [a department-approved] an instrument approved in the supplemental educational services provider application to the department. Students must be pre-tested in order to determine student achievement goals. Students must be post-tested when they have completed the program to document progress.~~

~~(7) I. Parents or guardians,~~

and appropriate school personnel must be notified of student progress in a format that is easily understandable.

~~F. Supplemental educational services providers must conduct on-site audits of their services.]~~

~~G. J. Eligible school districts must conduct on-site audits of supplemental educational services providers.~~

~~H. K. The department will conduct on-site audits of supplemental educational services providers and eligible school districts.~~

~~I. L. Each eligible school district and supplemental educational services provider will collect and submit all relevant student data to the department or its authorized contractor upon request.~~

~~J. Each eligible school district and supplemental educational services provider will attend all department sponsored meetings regarding the implementation and success of supplemental educational services.]~~

~~K. M. For the 2012-13 school year, all existing and interested supplemental educational services providers must submit an application to become a supplemental educational services provider [for the 2006-07 school year. All successful applicants will apply every four years to continue to provide supplemental educational services. The application process will be held annually].~~

~~L. N. If a supplemental educational services provider is removed from the approved list, the supplemental educational services provider must wait a minimum of two years before they may reapply to become a supplemental educational services provider in the state of New Mexico.~~

[6.19.6.8 NMAC - N, 08/15/05; A, 08/31/06; A, 10/31/11]

6.19.6.9 U N F A I R PRACTICES: Supplemental educational services funds are funds that have been provided by grant to the department. The department disburses these funds to school districts and charter schools for purposes of reimbursing providers for services performed pursuant to professional services contracts entered into [with] between districts and providers. The department is not a party to contracts between districts and providers. For purposes of performing supplemental educational services and as a condition of receipt of these public funds, it shall constitute an unfair practice for providers to offer or provide any incentive other than those allowed by this rule[, to have school or school district administrators or charter school administrators work for or act on the behalf of any supplemental educational services provider;] or to recruit in a way that is not in accordance with established guidelines and the policies of this rule.

A. School districts or charter school employees who learn that a supplemental educational services provider has offered to or actually provided an incentive other than those allowed by this rule, shall:

(1) promptly notify the provider in writing to cease and desist this practice immediately,

(2) promptly notify any parent or guardian that any incentive other than those allowed by this rule may not be offered by a provider and may not be accepted by the parent or guardian, and

(3) notify the department in writing if a provider fails or refuses to cease or desist in offering or providing non-allowed incentives.

B. The department upon receiving a written notification under this section or upon receiving a complaint from any other sources, may, after verifying such offering:

(1) notify the provider in writing to cease and desist this practice immediately because any incentive other than those allowed by this rule may not be offered by a provider nor accepted by the parent or guardian;

(2) notify parents or guardians that any incentive other than those allowed by this rule may not be offered by a provider and may not be accepted by the parent or guardian;

(3) notify appropriate authorities of suspected conduct that may constitute soliciting or receiving illegal kickbacks in whole or in part with public money.

C. ~~[Beginning with the 2006-2007 school year,]~~ School district administrators or charter school administrators may not ~~[, under any circumstances,]~~ hold a position or work on behalf of any supplemental educational services provider unless the school district, school or charter school is an approved supplemental educational services provider.

D. ~~[Beginning with the 2006-2007 school year]~~ If a school district or charter school employee learns that a supplemental educational services provider is recruiting in a way that is not in accordance with established district guidelines and the policies of this rule, that person shall:

(1) promptly notify the provider in writing to cease and desist this practice immediately; and

(2) notify the department in writing if a provider fails or refuses to cease or desist in recruiting ~~[non-eligible students for their program]~~ in a manner not allowable.

E. Eligible school district personnel may not show favoritism to any supplemental educational services provider ~~[and must provide parents with information about all state approved supplemental educational services providers serving the~~

school district].

[6.19.6.9 NMAC - N, 08/15/05; A, 08/31/06; A, 10/31/11]

6.19.6.10 REMOVAL OF PROVIDERS:

Supplemental educational services providers must strictly adhere to their approved application and the policies of this rule. If any provider demonstrates a pervasive pattern of violating any aspect of their application or any part of this rule they will be removed from the state approved list of supplemental education services providers. Providers will be removed from the state approved list of supplemental educational services providers if there are any violations of test security of the New Mexico standards based assessment. In addition, providers will be removed for failing to contribute to the academic improvement of students as determined by the state evaluation. Each supplemental educational services provider that is to be removed may ask for an opportunity to clarify reasons for dismissal and request an appeal. A district or charter school has the option not to enter into a contract with a supplemental educational services provider who fails to meet the terms of the contract in the preceding year or does not provide services to eligible students who have requested their services in the preceding year.

[6.19.6.10 NMAC - N, 08/31/06; A, 10/31/11]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.29.1 NMAC, Section 7, Section 8, Section 9, and Section 13, effective October 31, 2011.

6.29.1.7 DEFINITIONS:

A. "Ability program of study" means an alternative graduation option for students with disabilities. This option is based upon the student's meeting or exceeding IEP goals and objectives, with or without reasonable accommodations of delivery and assessment methods, referencing skill attainment at a student's ability level which provides a clear and coordinated transition to meaningful employment or other appropriate day habilitation or community membership and independent living, as appropriate to meet anticipated functional needs.

B. "Academic achievement" means the relative success of students in learning and mastering the school subjects that they study as measured by tests of the knowledge and skills that were taught.

C. "Academic choices" means required courses, elective courses, co-curricular activities and extra-curricular activities available to students.

D. "Accountability" means

that individuals or organizations should be held responsible for improving student achievement and should be either rewarded for their success or sanctioned for their lack of success. In education, accountability requires measurable proof that teachers, schools, districts and states are teaching students efficiently and well.

E. "Accreditation" means the official recognition that a school or district meets required standards. Schools are accredited in two ways: by voluntary regional accrediting associations or by state government. Accreditation also refers to the process of certifying that institutions of higher education meet certain standards in relation to such matters as the qualifications of their faculty, the condition of their facilities and the appropriateness of their curriculum.

F. "Achievement" means demonstrated accomplishment and the mastery of a clearly identified essential skill or of knowledge as a consequence of the individual's effort, learning and practice.

G. "Achievement gap" means the persistent differences in achievement among different groups of students as indicated by scores on standardized tests, grades, levels of educational attainment, graduation rates and other data.

H. "Adequate yearly progress (AYP)" means the state's measure of yearly progress toward achieving state academic standards, as described in the No Child Left Behind Act of 2001 (NCLB). Adequate yearly progress is the minimum level of improvement that states, school districts and schools shall achieve each year. This progress is determined by a collection of performance measures that a state, its school districts and sub-populations of students within its schools are expected to meet if the state receives Title I, Part A federal funding.

I. "Advanced placement (AP)" means a course taught by high school teachers trained in advanced placement course delivery provided through the college board. These courses are more difficult and involve more work than a standard class. AP courses are considered college-level courses and may allow a student to earn college credit, depending upon college and university policies at an institution the student may later attend.

J. "Advisor" means a student's guidance counselor or other designated school official, which may include teachers assisting students and their parents with course work planning.

K. "Aligned professional development" means professional development that is aligned to the instructional or organizational needs of the school or district, and to the district's EPSS.

Professional development is tied directly to the student achievement data of the school and district.

L. “Annual measurable objective (AMO)” means the target used to determine student performance for NCLB. This law requires states to develop target annual measurable objectives that will determine whether a school, a district or the state as a whole is making adequate yearly progress toward the goals of having all students performing academically at an acceptable rate by the year 2014.

M. “Applied technology education” means using technology in a course.

N. “Articulation” means planning a comprehensive and logical sequence of a program of studies.

O. “Assessment” means measurement. An assessment may be part of a system for testing and evaluating individual students, groups of students, schools or districts. Different types of assessment instruments include: achievement tests, minimum competency tests, developmental screening tests, aptitude tests, observation instruments, performance tasks, portfolio and authentic assessments. Assessments may contain questions in any of a number of formats. Common formats for standardized tests include: multiple-choice, short response and open-ended response.

P. “Benchmark” means a specific, measurable goal or objective for students to meet at various points during the school year. Benchmarks describe what all students shall know and be able to do in a content area by the end of designated grades or levels.

Q. “Bilingual multicultural education” means an instructional program that uses two languages (English and the home language of students) as mediums of instruction in the teaching-learning process.

R. “Career and technical education” means organized programs offering a sequence of courses, (including technical education and applied technology education) which are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations requiring an industry-recognized credential, certificate or degree. This phrase is also referred to as “vocational education” at 22-14-1 NMSA 1978.

S. “Career and technical education course” means a course with content that provides technical knowledge, skills and competency-based applied learning, and that aligns with the regulations for educational standards and expectations for all New Mexico students who attend schools as defined in the scope of 6.29.1.2 NMAC.

T. “Career cluster” means a grouping of occupations in industry

sectors based on recognized commonalities. Career clusters provide an organizing tool for developing instruction within the educational system.

U. “Career pathways” means a sub-grouping used as an organizing tool for curriculum design and instruction of occupations/career specialties that share a set of common knowledge and skills for career success.

V. “Career readiness program of study” means an alternative graduation option for students with disabilities. This option is based upon meeting the department’s employability and career education standards with benchmarks and performance standards as identified in the student’s IEP.

W. “Caseload” means the total number of students receiving special education and speech-only services as special education, for whom a special education teacher or speech language pathologist has responsibility for developing and monitoring the students’ IEPs. “Caseload” may also mean the number of students for which individual support services staff members are responsible.

X. “Charter school” means a school authorized by a chartering authority to operate as a public school. Sections 22-2-1, 22-8-1 through 22-8-47, and 22-8B-1 through 22-8B-17, NMSA, 1978.

Y. “Chartering agency” means a school district or agency that approves and oversees a charter school.

Z. “Commission” means the public education commission.

AA. “Competency-based applied learning” means ensuring that applied learning courses are aligned with the appropriate content standards, benchmarks and performance standards.

AB. “Class load” means the number of students for whom a teacher structures activities at a given time.

AC. “Content standard” is a statement about performance that describes what students should know and be able to do in content areas at each grade level.

AD. “Core academics” are the required subjects in middle and high schools.

AE. “Core curriculum” means the body of knowledge that all students are expected to learn.

AF. “Correspondence course” means a form of distance learning that is conducted via traditional mail. A correspondence course is used to teach non-resident students by mailing them lessons and exercises, which upon completion, are returned to the correspondence school for grading.

AG. “Culturally and linguistically different” means a student who is of a different cultural background than

“mainstream United States culture,” and whose home or heritage language, inherited from the student’s family, tribe or country of origin, is a language other than English.

AH. “Data-based decision making” means the process of making decisions about curriculum and instruction on the basis of statistical analysis of student performance data and schoolwide performance data.

AI. “Department” means the New Mexico public education department (PED), which is the state educational agency (SEA) for New Mexico.

AJ. “Diagnostic tools” means the category of measurement tools informing the effectiveness of instruction, materials or techniques that address the academic needs of students in their performance of expected levels of achievement of learning targets.

AK. “Distance learning” means the technology and the educational process used to provide instruction for credit or for a grade when the course provider and the distance-learning student are not necessarily physically present at the same time or place. Distance learning does not include educational software that utilizes only on-site teaching.

AL. “District” means the geographic boundary in which a K-12 set of public schools resides, under the supervision of a locally-elected board of education (22-4-1 and 22-4-2, NMSA 1978).

AM. “Dual credit program” means a program that allows high school students to enroll in college-level courses offered by public post-secondary educational institutions that may be academic or career-technical in nature, but may not be remedial or developmental, and through which students can simultaneously earn credit toward high school graduation and a post-secondary degree or certificate. (Refer to 6.30.7.6 NMAC.)

AN. “Educational plan for student success (EPSS)” is the strategic plan written by all districts and schools to improve student performance.

AO. “Elective unit” means a unit (“credit”) that is not specified as a graduation requirement, but that can be taken to complete the number of units required for graduation.

AP. “Emergency drills” means the requirement that a total of twelve drills be conducted in each public and private school. These emergency drills shall consist of nine fire drills, two shelter-in-place drills and one evacuation drill at the intervals set forth in Paragraph (1) of Subsection N of 6.29.1.9 NMAC.

AQ. “English language learner” means a student whose first or heritage language is not English and who is unable to read, write, speak or understand

English at a level comparable to grade-level English proficient peers and native English speakers.

AR. "Formative assessment" means measures of academic achievement during the learning process.

AS. "Free appropriate public education (FAPE)" means special education and related services that are provided at public expense, under public supervision and direction without charge, which meet the standards of the department in providing appropriate preschool, elementary or secondary education in New Mexico; and which are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR, Sections 300.320 through 300.324.

AT. "Family Educational Rights and Privacy Act (FERPA)" means rights, pursuant to 20 U.S. Code 1232(g) and 34 CFR Part 99, afforded to parents and students over 18 years of age with respect to the student's education records, that include: the right to inspect and review the student's education records within 45 days, the right to request amendment to the student's education records for various reasons, the right to consent or refuse to consent to disclosures of personally identifiable information in the student's records (except for those records that FERPA authorizes for disclosure without consent) and the right to file a complaint with the U. S. department of education concerning non-compliance with FERPA.

AU. "Fidelity" means the implementation of a program, strategy or intervention exactly as it was developed by the vendor, researcher or author. The commitment to fidelity is essential to determine if the change in instruction is based on a program, strategy, or intervention.

AV. "Final next-step plan" means a next-step plan that shows that the student has committed or intends to commit in the near future to a four-year college or university, a two-year college, a trade or vocational program, an internship or apprenticeship, military service or a job, as stated at 22-13-1.1(M)(1) NMSA 1978.

AW. "Gifted child" means a school-age person, as defined in Section 22-13-6 (D) NMSA 1978, whose intellectual ability paired with subject matter, aptitude/achievement, creativity/divergent thinking or problem-solving/critical thinking meets the eligibility criteria in 6.31.2.12 NMAC, and for whom a properly constituted IEP team determines that special education services are required to meet the child's educational needs.

AX. "Grade configuration" means the grade band(s) in which schools are organized in a district, such as: K-5, K-6, K-8, 6-8, 7-8.

AY. "Heritage language"

means a language other than English that is inherited from a family, tribe, community or country of origin.

AZ. "Home language" means a language other than English that is the primary or heritage language spoken at home or in the community.

BA. "Honors course" means a course developed locally to meet the needs of accelerated students. Honors courses offer the same curriculum that standard courses offer, but are more challenging. Honors courses are generally faster-paced and cover topics in more depth; however, these courses are not generally considered equivalent to college-level work.

BB. "Individuals With Disabilities Education Improvement Act of 2004 (IDEA)" addresses special needs of individual students with disabilities.

BC. "Individualized education program (IEP)" means a written statement for a student (with a disability) that is developed, reviewed and revised in accordance with 34 CFR, Sections 300.320 through 300.324.

BD. "Interim next-step plan" means an annual next-step plan in which the student specifies post-high-school goals and sets forth the course work that will allow the student to achieve those goals, as stated at 22-13-1.1(M)(2) NMSA 1978. The "interim next step plan" includes all next-step plans in grades 9 through 11.

BE. "Laboratory component" means an experience in the laboratory, classroom or the field that provides students with opportunities to interact directly with natural phenomena or with data collected by others using tools, materials, data collection techniques and models. Throughout the process, students should have opportunities to design investigations, engage in scientific reasoning, manipulate equipment, record data, analyze results and discuss their findings.

BF. "Local educational agency (LEA)" means a local educational agency as defined in 34 CFR Sec. 300.28. The LEA may be a public school district, a state-chartered charter school or a state educational institution.

BG. "Locally chartered charter school" means a charter school authorized by a local school board.

BH. "National standards" means an agreement at the national level about what students are supposed to learn in a given subject area at each grade level.

BI. "Next-step plan" means an annual personal written plan of studies developed by a student in a public school or other state-supported school or institution, in consultation with the student's parent and school counselor or other school official charged with course work planning for the student (22-13-1.1(M)(3) NMSA 1978).

BJ. "New Mexico school boards association (NMSBA)" means the organization made up of the local public school boards and the governing bodies of charter schools in New Mexico.

BK. "New Mexico standards-based assessment (SBA)" means the collection of instruments that assess student academic performance annually and the students' progress toward meeting the New Mexico content standards with benchmarks and performance standards.

BL. "No Child Left Behind Act (NCLB)" refers to the reauthorization of the federal Elementary and Secondary Education Act, which was originally passed in 1965. NCLB was passed in fall 2001 and signed into law in early 2002.

BM. "Occupational safety and health administration (OSHA)" means a division of the U.S. department of labor.

BN. "Online" means utilizing the internet.

BO. "Pathway" means the academic plan of study for a student to achieve graduation, including courses to take in Grades 9-12.

BP. "Performance standard" means the statement of a standard that describes the specific level of mastery expected in achieving the New Mexico content standards with benchmarks and performance standards.

BQ. "Positive behavior support (PBS)" means implementing individualized, classroom and school-wide behavior interventions and strategies to decrease inappropriate and disruptive behaviors.

BR. "Primary language" means the first language a child learns, also called the "native language."

BS. "Prior written notice (PWN)" means the written notice that goes to parents from the school district, informing them that the district proposes or refuses to initiate or change the identification, evaluation or educational placement of their child, or the provision of FAPE to the child, and which meets the requirements of 34 CFR, Sections 300.503 and 300.504.

BT. "Professional development" means the continuing education process for teachers and administrators to provide them with the knowledge and skills needed to perform their jobs well.

BU. "Proficiency" means the mastery of skills and knowledge for a specific grade or subject.

BV. "Proficient" means one of four classifications of achievement levels of districts, schools and students based on the SBA and schools on the *national assessment of educational progress* (NAEP).

BW. "Program of study" is a progressive continuum of courses that may

be offered across grades 9-14. A program of study is a means to provide technical training, training to prepare for employment and training to prepare for entry into post-secondary education.

BX. "Response to intervention (RTI)" means ~~[a multi-tiered intervention model that uses a set of increasingly intensive academic or behavioral supports, matched to student need, as a framework for making educational programming and eligibility decisions. The model includes primary, secondary and tertiary levels of intervention based on progress monitoring to determine the student's response or lack of response to the instruction/intervention.] a multi-tiered organizational framework that uses a set of increasingly intensive academic or behavioral supports, matched to student need, as a system for making educational programming and eligibility decisions. It is a continuum of school-wide support that contributes to overall comprehensive school improvement efforts. In New Mexico, the RTI framework is called the "the three-tier model of student intervention."~~

BY. "School improvement framework" means a document written by the department that is used by public schools and districts to develop and monitor their school improvement plans. The school improvement framework shall align with the district's EPSS.

BZ. "Schoolwide" means a Title I program model implemented at a school where all students could potentially benefit from Title I funding.

CA. "Scientifically-based research" means research that involves the application of rigorous, systematic and objective procedures to obtain reliable and valid knowledge relevant to educational activities and programs.

CB. "Secretary" means the secretary of the New Mexico public education department.

CC. "Short-cycle assessment" is a formative measure that is regularly used to assess student performance over a short time period.

CD. "Skills" are competencies or abilities, mental or physical, which may be improved by practice.

CE. "Socioeconomic status" means the stratification of groups of people by status ascribed through social constructs such as race, gender, ethnicity, educational attainment, economic resources, language and national origin.

CF. "Standard program of study" means a program of study that is based upon the student's meeting or exceeding all requirements for graduation as specified in Section 22-13-1.1 NMSA 1978.

CG. "Standardized grading system" means that all schools and districts

are required by SY 2009-2010 to implement a standardized grading system for grades 5 through 12 (Section 22-2-8.13, NMSA 1978).

CH. "State-chartered charter school" means a charter school authorized by the public education commission.

CI. "State education agency (SEA)" is the agency primarily responsible for supervising a state's public schools.

CJ. "State educational institution" means a school that is under the direction of a state agency other than the department or a separate board of regents.

CK. "Strategy" means a plan or tactic to solve a problem or carry out a decision. In education, a strategy refers to almost every action that a teacher or a student does in a classroom, such as asking a question, reading a story, figuring out the meaning of a word, planning the next day's lesson.

CL. "Student and teacher accountability reporting system (STARS)" means the data reporting system directed by the department.

CM. "Student assistance team (SAT)" is a school-based group of people whose purpose is to provide additional tier II support (consistent with requirements of the three-tier model of student intervention provided in Subsection D of 6.29.1.9 NMAC) to students who are experiencing academic or behavioral difficulties that are preventing them from benefiting from general education, because they are either performing below or above expectations. (Public agencies may have similar names used for this team, such as "student success team" or "student support team.")

CN. "Targeted assistance" means a Title I program model where Title I services are provided to a small number or a particular group of students.

CO. "Technical assistance" means support and guidance provided to states, districts, schools and classrooms.

CP. "Transition" means the goal of creating a seamless transition from one part of the educational system to the next.

CQ. "Transition plan" means a coordinated set of activities for a student with a disability, which specifies special education and related services designed to meet a student's unique needs and to prepare the student for future education, employment and independent living. The use of individualized educational program (IEP) transition planning, graduation planning and post-secondary transitions is described in Subparagraph (a) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC.

[6.29.1.7 NMAC - Rp, 6.30.2.7 NMAC, 6-30-2009; A, 10-31-2011]

6.29.1.8

IMPLEMENTATION:

This regulation shall assist in the implementation of standards for excellence through the use of the *educational plan for student success (EPSS)*, content standards with benchmarks and performance standards, and additional program and procedural requirements specified in this regulation. The primary mechanism for planning and implementation is the *educational plan for student success (EPSS)*.

A. District responsibilities for the EPSS. The EPSS is a strategic improvement plan that is written or revised based on trend data and the academic achievement of the school and district. Each district is required to develop, implement, monitor and evaluate the plan on an annual basis. Additionally, the district shall ensure that a site-level EPSS is developed by each school within the district and by each charter school for which the district is the chartering agency. State-chartered charter schools shall develop a site-level EPSS. Districts with fewer than 600 students may write only one EPSS for the entire district; however, a district with a school in or receiving a school improvement status classification is not eligible for this option. The EPSS shall be guided by the following four questions:

(1) What is the current level of performance compared with the annual measurable objectives (AMOs)? This requires a review of student performance data using SBA trends, available short-cycle assessments and other assessments used at local sites.

(2) Where does the district or charter school need to be, compared with the AMOs? This requires a review of overall goals/target areas (performance indicators).

(3) How will the district or charter school achieve its stated goals/target areas? This requires development of strategies and activities for improvement.

(4) How does the district or charter school know it is meeting short-term and annual goals? This requires a review of available short-cycle and SBA data.

B. *The school improvement framework.* *The school improvement framework* is the document that is used by public schools and districts to develop, implement, monitor and evaluate schools in the school improvement process. The department shall develop the framework in alignment with applicable state and federal laws. It shall be revised annually or as necessary, and approved by the secretary. [6.29.1.8 NMAC - Rp, 6.30.2.9 NMAC, 6-30-2009; A, 10-31-11]

6.29.1.9 PROCEDURAL REQUIREMENTS:

A. Duties and powers of the local board of education or governing body of a charter school. In addition to the powers and duties set out in Section 22-5-4 NMSA

1978 and Section 22-1-1 et seq. NMSA 1978 of the Public School Code, the local board of education (or governing body of a charter school, where indicated) shall:

(1) review, approve and support the district's EPSS and each school site-level EPSS, or the charter school's EPSS;

(2) employ and evaluate the local superintendent or charter school administrator;

(3) develop a planned program of training annually, in which each member of the board participates, to assist in the performance of specified duties; this planned program shall align with the district's EPSS; training shall include the following requirements and procedures.

(a) All local school board members shall receive a total of five hours of annual training.

(b) Newly elected or appointed local school board members, who are in office for less than a year, shall receive three of the five hours from attending a training course developed by the department and sponsored by the New Mexico school boards association (NMSBA). The additional two hours of annual training for new board members shall consist of sessions sponsored by the NMSBA and approved by the department.

(c) All board members who have been in office for one or more years shall attend five hours of annual training sponsored by the NMSBA and approved by the department.

(d) In order to be credited with attendance at these courses, each attendee shall comply with written attendance procedures established by the department. Prior to September 1 of each year, the NMSBA shall provide each local superintendent with a list of training hours earned annually by each local school board member. The school district's accountability report shall include the names of those local school board members who failed to attend annual mandatory training (see Section 22-2C-11(G) NMSA 1978);

(4) delegate administrative and supervisory functions to the local superintendent or charter school administrator;

(5) refrain from involvement in delegated administrative functions;

(6) review district or charter school policies on an annual basis and revise as needed;

(7) award high school graduation diplomas to students who have successfully completed graduation requirements;

(8) ensure the alignment of district or charter school curricula with New Mexico content standards with benchmarks and performance standards;

(9) ensure that district or charter school funds are appropriately managed

and disbursed in accordance with laws, regulations and terms of grants;

(10) approve the annual district or charter school budget;

(11) be responsible for oversight of revenue and expenditures within the district or charter school budget; and

(12) coordinate with the district's superintendent to establish the procedures for discharging and terminating school employees pursuant to Section 22-5-4 NMSA 1978 and the School Personnel Act (Chapter 22, Article 10-A NMSA 1978).

B. Duties and powers of the district superintendent or the administrator of a charter school. In addition to the powers and duties set out in Section 22-5-14 NMSA 1978 of the Public School Code, the local superintendent (or charter school administrator, where relevant) shall:

(1) administer local board's (or governing body of a charter school's) policies, state and federal requirements and applicable laws, including the Public School Code;

(2) be accountable for student achievement; budget management; expenditure of funds; dissemination of information; district or charter school communications; development, implementation and evaluation of the EPSS and all other district or charter school business;

(3) review, approve and support the district EPSS and each school site-level EPSS or the charter school's EPSS;

(4) attend all local board or governing body of a charter school's meetings or, when necessary, designate a licensed administrator to attend;

(5) ensure that school patrons and the public are informed and involved in the acquisition, planning and development of school facilities and that students are provided with adequate facilities which conform to state and federal mandates;

(6) be accountable for student safety (see 6.12.6 NMAC - *School District Wellness Policy*);

(a) ensure that all students are supervised while on school property and while attending or traveling to school events or activities on school-provided transportation;

(b) ensure that all buildings, grounds and facilities provide a safe and orderly environment for public use (see Subsection O of 6.29.1.9 NMAC - *School Facilities and Grounds*; Paragraph (8) of Subsection D of 6.12.6.8 NMAC - *School District Wellness Policy* and 6.19.3 NMAC - *Unsafe School Choice Option*);

(7) administer and implement the district's or charter school's approved staff accountability plan and procedures;

(8) ensure that a process is in place to identify, train, assign and support

the use of unlicensed content-area experts as resources in classrooms, team teaching, online instruction, curriculum development and other purposes as determined by the superintendent, which shall include, but not be limited to, the following:

(a) establish the specific expertise of the person;

(b) obtain a background check and fingerprint records;

(c) provide the person with a three-hour training, prior to entering a classroom, about how the school operates, appropriate teaching methods and expectations of principal and assigned teacher;

(d) establish a start date and ending date for the person;

(e) ensure that the person is under the direct supervision of the teacher assigned when students are present; and

(f) provide for an evaluation of services upon completion of the assignment;

(9) shall issue the following notifications in accordance with Section 22-10A-16 NMSA 1978, in addition to any other parental notification requirements contained in the No Child Left Behind Act of 2001 (PL 107-110, 20 US Code Section 6301 et seq.); a school district or charter school shall issue these notifications in English and, to the extent possible, in the language of the parent or guardian (if it is known that the parent or guardian's primary language is not English); the district or charter school shall retain a copy of all notifications and shall ensure that information required under this paragraph is available to the public upon request.

(a) Within sixty calendar days from the beginning of each school year, a school district or charter school shall issue a notice to parents informing them that they may obtain written information regarding:

(i) the professional qualifications of their child's teachers, instructional support providers and school principals or charter school administrators;

(ii) other descriptive information, such as whether their teacher has met all qualifications for licensure for the grade level and subjects being taught;

(iii) whether their child's teacher is teaching under a teaching or assignment waiver;

(iv) the teacher's degree major and any other license or graduate degree held by the teacher;

(v) the qualifications of any instructional support providers that serve their child.

(b) When, by the end of a consecutive four-week period, a child is still being taught by a substitute teacher or a teacher not holding the requisite licensure or licensure endorsement, the school district or charter school shall provide written notice to the parent or guardian that the child is being taught by a substitute teacher or a teacher not

holding the requisite licensure or licensure endorsement.

(c) No class may be taught by a substitute teacher, in lieu of a licensed teacher under contract, for more than forty-five (45) school days during a school year.

(d) The secretary shall consider deviations from the requirements of Subparagraph (c) of Paragraph (9) of Subsection B of 6.29.1.9 NMAC when a written request by a local superintendent or charter school administrator is submitted. The request shall include:

(i) the size of the school district;

(ii) the geographic location of the district;

(iii) demonstrated efforts to employ an appropriately-licensed person in the area(s) of need;

(iv) the historical use of substitutes in the district; and

(v) an estimation of the number of days that a substitute will be utilized that exceed the forty-five (45) day limit.

C. Licensed staff and administrators.

(1) The licensed staff shall exercise duties specified in law and those assigned by the local district or charter school.

(2) As required by state and federal law, all licensed staff and administrators shall be evaluated on an annual basis.

(3) The detection and reporting of child abuse or neglect is required by both the Children's Code (32A-4-3 NMSA 1978) and the Public School Code (22-5-4.2 NMSA 1978). Abuse of a child under the Children's Code refers to the physical, sexual, emotional or psychological abuse of a child by a parent, guardian or custodian. According to the Children's Code, failure to report abuse or neglect of a child is a misdemeanor. The terms "abuse" and "neglect" are defined in detail in Section 32A-4-2 NMSA 1978 of the Children's Code. There is also the crime of child abuse, which consists of anyone who knowingly, intentionally, negligently or without cause, causes or permits a child to be placed in a situation of endangerment to the child's life or health, torturing or cruelly confining a child, or exposing a child to the inclemency of weather. To address the detection and reporting of child abuse or neglect in public schools:

(a) school districts and charter schools shall adopt written policies that establish a process for the coordination and internal tracking of child abuse or neglect reports made by district personnel;

(b) school districts and charter schools shall include in their policies a requirement that all personnel shall immediately report suspected child abuse or neglect to either a law enforcement agency, the New Mexico children, youth and families

department, or a tribal law enforcement or social services agency for any Indian child residing on tribal land;

(c) school districts and charter schools shall not require their personnel to first report to or notify designated school personnel or go through their chain of command before making the mandatory report described in Subparagraph (a) of Paragraph (3) of Subsection C of 6.29.1.9 NMAC;

(d) no school district or charter school shall adopt a policy that relieves any personnel of their duty to report suspected child abuse or neglect;

(e) school personnel detecting suspected child abuse or neglect, including the suspected crime of child abuse, shall immediately - i.e., the same day - report their observations to one of the offices designated in Subparagraph (b) of Paragraph (3) of Subsection C of 6.29.1.9 NMAC;

(f) all licensed school personnel, including substitute teachers, educational assistants, school nurses, school counselors, school psychologists and other instructional service providers shall complete training **provided by the department in the detection and reporting of child abuse or neglect, within their first year of employment by, or providing services to, a school district or charter school;**

(g) all persons who have never received training required under Subparagraph (f) of Paragraph (3) of Subsection C of 6.29.1.9 NMAC shall make arrangements to receive training before the end of their current school year;

(h) the department shall develop a training program to detect child abuse or neglect, in coordination with the New Mexico human services department and the New Mexico department of health. This program shall be made available to all colleges, school districts and charter schools in the state offering teacher preparation courses;

(i) nothing in Paragraph (3) of Subsection C of 6.29.1.9 NMAC shall be interpreted as preventing a school district or charter school from developing and providing its own training for all staff to detect and report suspected child abuse or neglect, in addition to the training offered by the department.

D. Student intervention system [(e.g., SAT, RH, PBS)]. The school and district shall follow a three-tier model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning or behavior.

(1) In tier 1, the school and district shall ensure that adequate universal screening in the areas of general health and well-being, language proficiency status and academic levels of proficiency has been

completed for each student enrolled. If [through] data from universal screening, a referral from a parent, a school staff member or other information available to a school or district suggests that a particular student needs educational support for learning or behavior, then the student shall be referred to the SAT for consideration of interventions at the tier 2 level.

(2) In tier 2, a properly-constituted SAT at each school, which includes the student's parents and the student (as appropriate), shall conduct the student study process and consider, implement and document the effectiveness of appropriate research-based interventions utilizing curriculum-based measures. [~~In addition~~] As part of the child study process, the SAT shall address culture and acculturation, socioeconomic status, possible lack of appropriate instruction in reading or math, teaching and learning styles and instructional delivery mechanisms in order to rule out other possible causes of the student's educational difficulties. When it is determined that a student has an obvious disability or a serious and urgent problem, the SAT shall address the student's needs promptly on an individualized basis, which may include a referral for a [~~multi-disciplinary~~] full, initial evaluation to determine possible eligibility for special education and related services consistent with the requirements of Subsections D-F of 6.31.2.10 NMAC and federal regulations at 34 CFR Sec. 300.300.

(3) In tier 3, a student has been identified as a student with disability [~~and~~] or gifted under the state criteria for giftedness deemed eligible for special education and related services, and an IEP is developed by a properly-constituted IEP team, pursuant to Subsection B of 6.31.2.11 NMAC and federal regulations at 34 CFR Sec. 300.321.

(4) The department's manual, *the student assistance team and the three-tier model of student intervention*, shall be the guiding document for schools and districts to use in implementing the student intervention system.

E. Records and reports.

(1) Each district and charter school shall maintain and treat all personally identifiable educational records in accordance with the Family Educational Rights and Privacy Act (FERPA), the implementing regulations set forth at 34 Code of Federal Regulations, Part 99 and Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978.

(2) All records shall be safe from fire and theft and stored in a retrievable manner. All student records, including disciplinary and grading records, shall be retained and disposed of pursuant to 1.20.2 NMAC.

(3) Transcripts and copies of pertinent records of students transferring from

one school to another, including disciplinary records with respect to suspension and expulsion, shall be forwarded promptly upon written request by the receiving school.

(4) Local school boards and governing bodies of charter schools shall establish policies providing for inspection of education records by students and parents.

(5) Effective July 1, 2009, after the administration of the eleventh grade SBA, school districts and charter schools are required to record test results on each student's official transcript. The information recorded shall include the following:

(a) district and high school administering the examination;

(b) date of examination administration;

(c) results of the examination for each subject area tested; and

(d) reports of the results in a format and language that is understandable to parents.

F. Organization of grade levels and establishing/closing schools. Any change in a school district or charter school's organizational pattern, including the establishment or closing of a school, shall have the secretary's approval prior to implementation. Requests for change shall be submitted using the department's *organization of grade levels and establishing/closing school waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request. The waiver request shall outline the expected educational benefits.

G. Class loads. Class loads shall be in compliance with the most current class load requirements in Section 22-10A-20 NMSA 1978 and Section 22-5-15 NMSA 1978.

(1) The individual class load for elementary school teachers shall not exceed 20 students for kindergarten, provided that any teacher in kindergarten with a class load of 15 to 20 students shall be entitled to the assistance of an educational assistant.

(2) The average class load for elementary school teachers at an individual school shall not exceed 22 students when averaged among grades one, two and three, provided that any teacher in grade one with a class load of 21 or more shall be entitled to the full-time assistance of an educational assistant.

(3) The average class load for an elementary school teacher at an individual school shall not exceed 24 students when averaged among grades four, five and six.

(4) The daily teaching load per

teacher for grades seven through twelve shall not exceed 160 students, except the daily teaching load for teachers of required English courses in grades seven and eight shall not exceed 135, with a maximum of 27 students per class; and the daily teaching load for teachers of required English courses in grades nine through twelve shall not exceed 150 students, with a maximum of 30 students per class. The teaching load for teachers assigned to laboratories and shops shall adhere to the current workplace safety codes of the industry.

(5) Students receiving special education services integrated into a regular classroom for any part of the day shall be counted in the calculation of class load averages. Students receiving special education services not integrated into the regular classroom shall not be counted in the calculation of class load averages. Only classroom teachers charged with responsibility for the regular classroom instructional program shall be counted in determining average class loads. In elementary schools offering only one grade level, average class loads may be calculated by averaging appropriate grade levels between schools in the school district.

(6) The secretary may waive the individual school class load requirements established in this section. Waivers shall be applied for annually, and a waiver shall not be granted for more than two consecutive years. Requests for class load waivers shall be submitted using the department's *class size waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request. Waivers may only be granted if a school district or charter school demonstrates:

(a) no portable classrooms are available;

(b) no other available sources of funding exist to meet the need for additional classrooms;

(c) the district or charter school is planning alternatives to increase building capacity for implementation within one year; and

(d) the parents of all children affected by the waiver have been notified in writing of the statutory class load requirements; that the school district or charter school has made a decision to deviate from these class load requirements; and of the school district's or charter school's plan to achieve compliance with the class load requirements.

(7) If a waiver is granted pursuant

to Paragraph (6) of Subsection G of 6.29.1.9 NMAC to an individual school, the average class load for elementary school teachers at that school shall not exceed 20 students in kindergarten and grade one, and shall not exceed 25 students when averaged among grades two, three, four, five and six.

(8) Each school district or charter school shall report to the department the size and composition of classes subsequent to the 40th day report and the December 1 count. Failure to meet class load requirements within two years shall be justification for the disapproval of the school district's or charter school's budget by the secretary.

(9) The department shall report to the legislative education study committee by November 30 of each year regarding each school district's or charter school's ability to meet class load requirements imposed by law.

(10) Notwithstanding the provisions of Paragraph (6) of Subsection G of 6.29.1.9 NMAC, the secretary may waive the individual class load and teaching load requirements established in this section upon demonstration of a viable alternative curricular plan and a finding by the department that the plan is in the best interest of the school district or charter school; and that, on an annual basis, the plan has been presented to and is supported by the affected teaching staff. The department shall evaluate the impact of each alternative curricular plan annually. Annual reports shall be made to the legislative education study committee. Requests for alternative curricular plans shall be submitted using the department's *collaborative school improvement programs waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request.

H. Student/staff caseloads in gifted and special education.

(1) The student/staff caseload shall not exceed 35:1 for a special education teacher and 60:1 for a speech-language pathologist for special education services or speech-only services, in which properly licensed special education teachers or speech-language pathologists travel from class to class or school to school, providing services to students with disabilities whose individualized education programs (IEPs) require a minimal amount of special education. (A minimal amount of special education services shall not exceed 10 per cent of the school day/week.)

(2) The student/staff caseload shall not exceed 24:1 for a special education

teacher and 35:1 for a speech-language pathologist for special education services or speech-only services which properly-licensed special education teachers or speech-language pathologists provide to students with disabilities whose IEPs require a moderate amount of special education. (A moderate amount of special education services shall be less than 50 per cent of the school day.)

(3) The student/staff caseload shall not exceed 15:1 for special education services in which properly licensed special education teachers provide services to students with disabilities whose IEPs require an extensive amount of special education for a portion of the school day as appropriate to implement the plan. (An extensive amount of special education services shall be provided 50 per cent or more of the school day.)

(4) The student/staff caseload shall not exceed 8:1 for special education services in which a properly licensed professional provides services to students with disabilities whose IEPs require a maximum amount of special education. (A maximum amount of special education services shall be provided in an amount approaching a full school day.)

(5) The student/adult caseload shall not exceed 4:1 for center-based special education services in which one of the adults in the program is a properly licensed professional providing three- and four-year old children with the amount of special education needed to implement each child's IEP. This includes a child who will turn three at any time during the school year, and who is determined to be eligible for Part B services. The child may be enrolled in a Part B preschool program at the beginning of the school year if the parent so chooses, whether or not the child has previously been receiving Part C services.

(6) The student/adult caseload shall not exceed 2:1 for center-based special education services in which three- and four-year old children have profound educational needs. This includes children who will turn three at any time during the school year, and who are determined to be eligible. The child may be enrolled in a Part B preschool program at the beginning of the school year if the parent so chooses, whether or not the child has previously been receiving Part C services.

(7) Adequate student/staff caseloads shall be provided to appropriately address needs identified in the IEPs. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to students with disabilities under Part B of IDEA.

(8) If the student/staff caseload

ratio exceeds the standards provided above, a request for waiver shall be submitted to the department for review and approval by the secretary.

I. Length of school day and year.

(1) The district or charter school shall be in compliance with length of school day and year requirements as defined in Section 22-2-8.1 NMSA 1978. Within statutory requirements, the local board or governing body of a charter school determines the length of the school year, which includes equivalent hours. The local board or governing body of a charter school may delegate this authority to the superintendent or charter school administrator who, in turn, may delegate to others.

(2) Time for home visits/parent-teacher conferences. The local board or governing body of a charter school may designate a prescribed number of hours within the school year for home visits, to develop next-step plans for students or parent-teacher conferences up to the following maximum hours: kindergarten: 33 hours; grades 1 through [5] 6: 22 hours; and grades 7 through 12: 12 hours. [~~When grade 6 is in an elementary school, the hours for grades 1 through 5 apply; when grade 6 is in a middle/junior high school, the hours for grades 7 through 12 apply.~~]

(3) All students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:

(a) kindergarten, for half-day programs: two and one-half (2 and 1/2) hours per day or 450 hours per year; or, for full-day programs: five and one-half (5 and 1/2) hours per day or 990 hours per year;

(b) grades one through six: five and one-half (5 and 1/2) hours per day or 990 hours per year; and

(c) grades seven through twelve: six (6) hours per day or 1,080 hours per year.

(4) Testing and assessments are considered part of instructional hours. One group of students cannot be dismissed while another group of students is testing, unless the students being dismissed already have approved extended-day plans in place for participating in the minimum instructional hours required.

(5) Dismissing students or closing school for staff development and participation in other non-instructional activities does not count toward the minimum instructional hours required. This time is to be built into a district and school schedule as an add-on. Early-release days may be built into a district or charter school calendar when the minimum instructional hours' requirement is otherwise being met.

(6) The student lunch period each day shall be at least thirty (30) minutes. Lunch recess shall not be counted as part of

the instructional day.

(7) Districts or charter schools may request a waiver from the secretary if the minimum length of school day requirement creates an undue hardship. Such requests shall be submitted using the department's *instructional hours waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request. Requests shall provide documentation that the following conditions exist:

(a) the educational, societal or fiscal consequences of operating the minimum length of a school day/year significantly impede the district's ability to provide a quality educational program; and

(b) the district or charter school has thoroughly investigated alternatives other than shortening the length of a school day/year in order to address the identified concerns.

(8) When an emergency arises and the emergency affects the required hours, the local superintendent or charter school administrator shall request in writing approval from the secretary regarding the manner in which the lost instructional hours will be made up, or requesting an exemption from the required instructional hours.

J. Graduation requirements.

(1) The New Mexico eleventh grade SBA. The district or charter school shall be in compliance with requirements as specified in Section 22-13-1.1 NMSA 1978 and Subsection L of Section 66-7-506 NMSA 1978 (offering driver education, service learning and financial literacy as electives). The department specifies that students shall meet all graduation requirements in order to be eligible to receive a diploma. This includes the requirement of passing the eleventh grade SBA.

(2) The next step plan. Each student shall complete a next step plan for each high school year. For students with individualized education programs (IEPs), the transition plan substitutes for the next step plan. The next step plan requires that:

(a) each grade-level next step plan shall be completed within the last 60 school days of the preceding school year (for example, the 9th grade interim next step plan shall be made before the end of the 8th grade year);

(b) only one grade-level next step plan shall be completed for a student each year;

(c) the development of the next step plan shall include the student, the

student's parent or guardian and the advisor, but may include additional relevant parties;

(d) to write the next step plan, the advisor shall consult with the student and the student's parent or guardian on academic choices that target the student's interests and meet graduation requirements;

(e) the next step plan shall address career clusters in career and technical education, academic support and study skills, extracurricular experiences and out-of-school activities, exposure to post-secondary education and career options, family and social supports, assessments, credentials and any other relevant information; as part of the next step plan, the advisor shall disseminate and share information concerning advanced placement, honors, dual-credit and distance learning programs;

(f) the next step plan determines whether or not the student is on track with graduation requirements; the plan ensures that gaps in courses and test-taking are filled;

(g) the next step plan may be made in large-group, small-group or individual student settings;

(h) the advisor has the responsibility to see that the student is reasonably informed about curricular and course options, opportunities available that lead to broader post-high school options, and alternative opportunities available if the student does not finish a planned curriculum;

(i) the next step plan shall be signed by the student, the student's parent or guardian and the advisor;

(j) the completed next step plan shall be filed with the school principal or charter school administrator and only the final next step plan shall be filed in the student's cumulative file upon graduation;

(k) during the development of the student's next step plan for the eleventh grade and no later than the spring of the tenth grade, a plan allowing the student to complete a fourth mathematics course other than algebra 2 may be developed using data from the student's high school short-cycle assessments, the student's most recent SBA score in mathematics, other relevant assessment scores and coursework grades and educational career plans recorded in the student's next step plan;

(l) for the student to take four mathematics courses that contain a lesser content than that recommended for inclusion in algebra 2 or its equivalent, the student's parent shall provide written, signed permission on the student's next step plan; parental signature on the next step plan for the eleventh grade indicating the mathematics courses the student will take shall serve as the required signed permission.

(3) Transfer of credits. For students enrolling or re-enrolling in public schools, local school boards or governing bodies of charter schools will establish

policies as follows.

(a) Credits shall be transferable with no loss of value between schools that are accredited by a state board of education in the United States, United States territories, Puerto Rico, the freely-associated states and outlying areas of the United States, department of defense schools or other authorized body.

(b) Policies of the local school board or the governing body of a charter school, for students transferring from home schools, private schools or foreign schools to the public schools, will be in accordance with Subsection D of Section 22-1-4 NMSA 1978.

(c) Acceptance of credits earned through correspondence extension study, foreign study, home study courses or non-department accredited, non-public schools is determined by the policy of the local school board or the governing body of a charter school.

(4) Correspondence courses. For students currently enrolled in public schools, local school boards or governing bodies of charter schools will establish policies addressing the use of correspondence courses to meet graduation requirements.

(a) Policies should be based on the following circumstances:

(i) when road conditions or distance from access to school transportation prohibit regular daily attendance;

(ii) when a student cannot attend school due to prolonged illness or recovery from injury, as part of the individual plan to address the student's educational needs developed in accordance with applicable state and federal regulations governing the education of students with disabilities;

(iii) when the occupation of the parent or student requires prolonged periods of time away from the school district;

(iv) when a student is housed in a long-term residential facility; or

(v) to enhance or supplement graduation requirements based on a student's individual need(s).

(b) Schools counting credit for correspondence courses for enrolled students shall ensure that such courses are part of the student's individual plan for graduation. If applicable, such courses are part of the IEP developed in accordance with applicable state and federal regulations governing the education of students with disabilities, and schools shall ensure that assistance is available to students as needed to complete the correspondence courses.

(c) Correspondence courses used to provide graduation credit to currently enrolled students shall be provided by:

(i) a school accredited by the state board of education of the state in

which the school is located, or

(ii) a college or university with regional accreditation to perform such function.

(5) Dual credit program. "Dual credit program" means a program that allows high school students to enroll in college-level courses offered by public post-secondary educational institutions that may be academic or career-technical in nature, but may not be remedial or developmental, and through which students can simultaneously earn credit toward high school graduation and a post-secondary degree or certificate. (Refer to 6.30.7.6 NMAC.)

(6) Distance learning courses. "Distance learning" means the technology and the educational process used to provide instruction for credit or for a grade, when the course provider and the distance-learning student are not necessarily physically present at the same time or place. Distance learning does not include educational software that utilizes only on-site teaching. Any program involving distance learning shall be governed by the department's distance learning rule, found at 6.30.8 NMAC.

(7) Standardized grading system. [Beginning with the 2009-2010 school year,] A standardized grading system is required to be implemented by each district and charter school. The system shall include the following components:

(a) a written report to parents regarding the performance of their children tested with the New Mexico standards-based assessments;

(b) for grades [5] 3-12, a standardized alphabetic grading system, based on the 4.0 scale (i.e., a minimum of 4.0 or higher=A, 3.0=B, 2.0=C, 1.0=D); certain courses may be assigned a weighted score according to local policy;

(c) alignment of all district and school curriculum to the New Mexico content standards with benchmarks and performance standards; and

(d) all school report ~~cards shall reflect standards-based academic performance~~ cards shall include the results of standards-based assessments and may augment the standardized grading system with a narrative or other method that measures a student's academic, social, behavioral or other skills.

(8) Final examination. A final examination shall be administered to all students in all courses offered for credit.

(9) Credit. Credit cannot be earned twice for the same course.

(10) Other elective credit. Elective credit courses shall meet all New Mexico content standards with benchmarks and performance standards, and shall:

(a) include a written, sequential curriculum;

(b) be taught by an instructor who

is appropriately licensed and endorsed to teach the course;

(c) include a final examination; and

(d) be reviewed and approved by the local board of education or governing body of a charter school.

(11) Alternative credit. Local districts, charter schools or state educational institutions may design elective courses, known as alternative credit courses, to satisfy any of the specified credits required for graduation.

(a) The process includes:

(i) review of the licensure and endorsements of affected staff;

(ii) review of required course content standards with benchmarks and performance standards with the proposed elective course, and summary of alignment between the two courses;

(iii) determination of the amount of credit that will be generated;

(iv) publication of information regarding what course is available for alternative credit and identification of STARS course number;

(v) inclusion of the availability of alternative credit in all next-step plans;

(vi) note on the student transcript that the graduation requirement course was completed using the named alternative credit course;

(vii) review and preliminary approval by the local board of education or governing body of a charter school.

(b) Once the process has been completed, the district superintendent or administrator of a charter school or state educational institution shall submit a written request, with appropriate documentation, to the secretary for approval.

(12) Excuses from physical education. The physical education graduation requirement may be waived by the secretary, based upon a request by the local superintendent or charter school administrator with documentation from a licensed medical doctor, osteopath, certified nurse practitioner with prescriptive authority or chiropractor, that the student has a permanent or chronic condition that does not permit physical activity. Such requests shall be submitted using the department's *physical education waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and, for each student for whom the waiver is requested: name, school and year of student graduation,

district affirmation that it possesses required medical documentation, name and email address of school principal and rationale for the request. A student receiving special education supports and services pursuant to the IDEA or Section 504 of the federal Rehabilitation Act may also be eligible to request this waiver, when appropriate medical documentation is provided in the IEP.

(13) Graduation requirements for issuance of a conditional certificate of transition for students with an IEP. The development of a program of study and the granting of a diploma, or use of a conditional certificate of transition in the form of a continuing or transition individualized educational program (IEP) for students receiving special education services, includes the following governing principles:

(a) The IEP team is responsible for determining whether the student has completed a planned program of study based on the student's strengths, interests, preferences, identified educational and functional needs and long-term educational or occupational goals, making the student eligible to receive either a diploma or a conditional certificate of transition. A conditional certificate of transition allows the student to participate in graduation activities. If a student receives a conditional certificate of transition, the student shall then return to the program specified in the IEP to complete the student's secondary program and meet the requirements for a diploma. In addition, all IEPs shall provide a description of how the student's progress toward meeting annual goals and graduation requirements will be measured, and at what intervals progress will be reported to parents or guardians. A student shall be awarded a diploma upon completion of a planned program of study that meets the requirements of paragraph (b).

(b) A student may be awarded a diploma (Section 22-13-1.1 NMSA 1978) using any of the following programs of study described in (i) through (iii). All IEP team discussion points and decisions identified herein, including the identification of the student's program of study and any student or parent proposals accepted or rejected by the IEP team (if the student has not reached the age of majority), shall be documented on the student's IEP and in the prior written notice (PWN) of proposed action.

(i) A standard program of study is based upon meeting or exceeding all requirements for graduation based on the New Mexico standards for excellence (Subsection J of 6.29.1.9 NMAC) with or without reasonable accommodations of delivery and assessment methods. In addition, a student shall pass all sections of the current state graduation examination(s) administered pursuant to Section 22-

13-1.1(I) NMSA 1978 under standard administration or with state-approved accommodations, and shall meet all other standard graduation requirements of the district.

(ii) A career readiness alternative program of study is developed to provide relevance and is based on a student's career interest as it relates to one of the career clusters, with or without reasonable accommodations of delivery and assessment methods. In addition, a student shall take the current state graduation examination(s) administered pursuant to Section 22-13-1.1(K) NMSA 1978, under standard administration or with state-approved accommodations, and achieve a level of competency pre-determined by the student's IEP team; the student shall earn at least the minimum number of credits required by the district or charter school for graduation through standard or alternative courses that address the employability and career development standards with benchmarks and performance standards, as determined by the IEP team. Course work shall include a minimum of four units of career development opportunities and learning experiences that may include any of the following: career readiness and vocational course work, work experience, community-based instruction, student service learning, job shadowing, mentoring or entrepreneurship related to the student's occupational choices. Credits for work experience shall be related to the program of study that the school offers and specific to the district's ability to offer work experience or community-based instruction credits. The student shall achieve competency in all areas of the employability and career development standards with benchmarks and performance standards, as determined by the IEP team and the student's interest as it relates to the career clusters. The program of study shall address the New Mexico content standards with benchmarks and performance standards in other subject areas as appropriate.

(iii) An ability program of study was developed for students who have a significant cognitive disability or severe mental health issues. The IEP goals and functional curriculum course work shall be based on the New Mexico standards with benchmarks and performance standards and employability and career development standards with benchmarks and performance standards. Students in this program of study shall earn the minimum number of credits or be provided equivalent educational opportunities required by the district or charter school, with course work individualized to meet the unique needs of the student through support of the IEP. In addition, a student shall take either the current state graduation examination(s) administered pursuant to Section 22-13-1.1(K) NMSA

1978, under standard administration or with state-approved accommodations, or the state-approved alternate assessment. The student shall achieve a level of competency pre-determined by the student's IEP team on the current graduation examination or the state-approved alternate assessment, and meet all other graduation requirements established by the IEP team.

(c) The new requirements for the career readiness and ability pathways become effective beginning with students graduating in 2009.

(d) By the end of the eighth grade, each student's IEP shall contain a proposed individual program of study for grades nine through twelve. The program of study shall identify by name all course options the student may take and shall align with the student's long-range measurable post-secondary goals and transition services to facilitate a smooth transition to high school and beyond. This program of study shall be reviewed on an annual basis and adjusted to address the student's strengths, interests, preferences and areas of identified educational and functional needs. The IEP team shall document on the IEP the student's progress toward earning required graduation credits and passing the current graduation examination.

(e) A district or charter school shall provide each student, who has an IEP and who graduates or reaches the maximum age for special education services, a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting post-secondary goals.

(f) Students graduating on the standard program of study shall meet the state's minimum requirements on all sections of the graduation examination. IEP teams shall document a plan of action on the IEP and the PWN to be carried out by both the student and the district or charter school, to ensure that the student will pass all sections of the graduation examination.

(g) To establish a level of proficiency on the current graduation examination or the state-approved alternate assessment for students on a career readiness program of study or ability program of study, IEP teams shall review the student's performance on the first attempt, and establish a targeted proficiency on all sections that are below the state's minimum requirement. For those students who meet participation criteria for the New Mexico alternate assessment, IEP teams shall set targeted levels of proficiency based upon previous performance on the test. If the student has previously been administered the New Mexico alternate assessment and has achieved an advanced level of overall performance, the IEP team shall arrange for the student to participate in the general

graduation examination, and shall identify appropriate accommodations that the student may require. IEP teams shall document the targeted levels of proficiency on the IEP and the PWN, outlining the plan of action to be taken by both the student and the district or charter school to ensure that the student will meet the targeted levels of proficiency. Districts or charter schools may submit a written request for a waiver to the secretary in cases where a student has medical or mental health issues that may result in regression or that negatively influence the student's ability to achieve targeted levels of proficiency. The written request shall be signed by the superintendent or charter school administrator and shall include documentation of the medical or mental health issues.

(h) Changes in programs of study.

(i) Departures from the standard program of study for students receiving special education services and supports shall be considered in the order of the options listed in Subparagraph (b) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC. Any modified program of study may depart from a standard program of study only so far as is necessary to meet an individual student's educational needs as determined by the IEP team. Districts and charter schools are obligated to meet the requirements of IDEA to provide students with IEPs on any one of the three programs of study, and access to the general curriculum in the least restrictive environment. When an alternative program of study is developed, a building administrator or designee who has knowledge about the student shall be a member of the IEP team

(ii) Districts and charter schools shall document changes from the standard program of study on the PWN. IEP teams shall identify the reasons for changing the student's program of study, shall provide parents with clear concise explanations of the career readiness or ability programs of study, shall notify parents and students of the potential consequences that may limit the student's post-secondary options, and shall make required changes to the IEP and course of study, to ensure that the student meets the requirements of that program of study.

(iii) The IEP team shall not change the program of study for a student entering the final year of high school from the standard program of study to the career readiness program of study, nor from the career readiness program of study to the ability program of study, after the 20th school day of the final year of high school. IEP teams may change a student's program of study from the ability program of study to the career readiness program of study, or from the career readiness program of study to the standard program of study, if the student meets the graduation requirements of that

program of study and if the change is made and documented appropriately in a revised IEP and PWN by a properly constituted IEP team in a properly convened meeting.

(iv) Beginning with students entering the 10th grade, districts and charter schools shall maintain an accurate accounting of graduation programs of study for students with IEPs. Districts and charter schools shall ensure that 80% or more of students with IEPs are in the standard program of study, no more than 10 - 15% of students with IEPs shall graduate in the career readiness program of study, and no more than 1 - 3% of students with IEPs shall graduate in the ability program of study. Districts or charter schools exceeding the above maximum percentages shall submit a request for a waiver regarding each student affected. The request for waiver shall include the district name, the high school name, a list of all students on the alternate program of study exceeding the maximum percentage (including student demographics, unique student identifiers and the justification for changing each student's program of study). The waiver request shall be signed and submitted by the superintendent or charter school administrator to the secretary.

(i) A student who receives special education services may be granted a conditional certificate of transition in the form of a continuing or transition IEP when:

(i) the IEP team provides sufficient documentation and justification that the issuance of a conditional certificate of transition for an individual student is warranted;

(ii) prior to the student's projected graduation date, the IEP team provides a PWN stating that the student will receive a conditional certificate of transition;

(iii) the district or charter school ensures that a conditional certificate of transition is not a program of study and does not end the student's right to a FAPE;

(iv) the district or charter school ensures that a conditional certificate of transition entitles a student who has attended four years or more of high school to participate in graduation activities, and requires that the student continue receiving special education supports and services needed to obtain the high school diploma;

(v) the district or charter school ensures that, prior to receiving a conditional certificate of transition, the student has a continuing or transition IEP;

(vi) the student's continuing or transition IEP outlines measures, resources and specific responsibilities for both the student and the district or charter school to ensure that the student receives a diploma.

(j) A student who does not return to complete the program of study as outlined

in the continuing or transition IEP will be considered as a dropout.

(k) A student who receives a conditional certificate of transition is eligible to continue receiving special education services until receipt of a diploma or until the end of the academic year in which the student becomes 22 years of age.

(l) Graduation plans shall be a part of all IEPs:

(i) by the end of eighth grade, or by the time the student turns 14 years of age, and concurrent with the development of the student's transition plan in accordance with federal regulations at 34 CFR 300.320;

(ii) when a student returns to a school after an extended absence, and if an IEP program of study may have been developed but needs to be reviewed; or

(iii) when evaluations warrant the need for a modified program of study at any time after development of an initial graduation plan.

(m) Graduation plans shall be a part of all of all IEPs and annual reviews, and shall follow the student in all educational settings. Receiving institutions that fall under the department's jurisdiction will recognize these graduation plans, subject to revision by new IEP teams, if appropriate to meet a student's changing needs.

(n) At the exit IEP meeting, the team shall review the student's transition plan, and shall confirm and document that all state and district requirements for graduation under the final IEP have been satisfied. A building administrator who has knowledge about the student shall be a member of this team, and shall sign specifically to verify and accept completed graduation plans, goals and objectives pursuant to (i) - (iii) of Subparagraph (b) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC, or plans for a conditional certificate of transition with a continuing or transition IEP, pursuant to Subparagraph (i) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC. The IEP team shall ensure that the student has current and relevant evaluations, reports or other documentation necessary to support a smooth and effective transition to post-secondary services for a student who will graduate on one of the three programs of study. The school shall arrange for any necessary information to be provided at no cost to the students or parents. The school shall submit a list of students who will receive the diploma through a career readiness or ability program of study to the local superintendent or charter school administrator, using the students' identification numbers. This list shall be totalled and submitted to the local school board or governing body of a charter school. This information shall be treated as confidential in accordance with the FERPA.

(o) Students eligible for special

education services are entitled to a FAPE through age 21. If a student turns 22 during the school year, the student shall be allowed to complete the school year. If a student becomes 22 prior to the first day of the school year, the student is no longer eligible to receive special education services.

(p) The receipt of a diploma terminates the service eligibility of students with special education needs.

(q) All diplomas awarded by a school district or charter school shall be identical in appearance, content and effect, except that symbols or notations may be added to individual students' diplomas to reflect official school honors or awards earned by students.

(14) Future changes in graduation requirements. Refer to 6.29.1.13 NMAC.

K. Statewide accountability program.

(1) Educational accountability. The local board of education or charter school governing body and the district superintendent or charter school administrator are responsible for providing educational services that support student learning. Educational accountability has two mechanisms and three indicators which impact the approval of the district's budget and accreditation status. The accountability mechanisms are accreditation and the program/budget review process. These two mechanisms shall align directly with the district or charter school's EPSS. The indicators are community representation, local accountability indicators and statewide accountability indicators.

(2) Accountability mechanisms.

(a) Accreditation. Accreditation will be conducted in accordance with Subsection F of Section 22-2-2 NMSA 1978. Verification of the district or charter school's EPSS and student progress will occur on a regular basis. State and federal regulations which fall within the scope of accreditation will also be monitored.

(b) Program/budget review and approval. The program/budget review and approval process, including assessment and evaluation, occurs annually. Its purpose is to link the district or charter school's program needs directly with budgetary resources. In order for a district or charter school to obtain an approved budget, the district shall:

(i) document the local board or charter school governing body's determination of needs as defined in its EPSS (Section 22-8-18 NMSA 1978);

(ii) document minimum budget requirements (Section 22-8-9 NMSA 1978);

(iii) document parent involvement in budget preparation (Section 22-8-11 NMSA 1978);

(iv) complete the annual program/budget questionnaire; and

(v) comply with requirements specified in Section 22-8-5 NMSA 1978.

(3) Accountability indicators.

(a) Community representation. Community representatives shall be involved in the budget preparation process, the EPSS process, the EPSS evaluation (including the establishment of local student performance indicators) and the accreditation process. Community representatives include parents, students and other community members who reflect the composition of the student population. Evidence shall be provided to verify different forms of representation.

(b) Local student performance indicators. Local student performance indicators shall:

(i) be identified by the local school district or charter school in conjunction with students, parents, community members and businesses;

(ii) be part of the local EPSS evaluation;

(iii) measure and demonstrate student progress toward the New Mexico content standards with benchmarks and performance standards;

(iv) demonstrate student progress toward identified EPSS goals/focus areas (performance indicators);

(v) be included as an integral part of the accreditation and program/budget review processes; and

(vi) use any other indicators the district or charter school shall choose for its students.

(c) Statewide student performance indicators. Statewide student performance indicators shall:

(i) be included as an integral part of the accreditation and program/budget review processes;

(ii) be part of the local EPSS evaluation;

(iii) measure and demonstrate student progress toward the New Mexico content standards with benchmarks and performance standards;

(iv) communicate clearly to parents and the general public the students' progress toward meeting the goals established by the district and school, or charter school; and

(v) describe performance levels across the grade levels and across the curriculum.

L. Statewide student assessment system. As stated in 22-2-8.13 NMSA 1978, students' knowledge and skills are assessed and evaluated through the New Mexico content standards with benchmarks and performance standards, the New Mexico standards-based assessments (SBA) and local measures. All public schools, state educational institutions and educational programs conducted in state institutions other

than New Mexico military institute, as noted in the scope of this rule, shall participate in the statewide student assessment system.

(1) The statewide student assessment system. All public school students, with the exceptions indicated below, shall participate in the SBA, which includes standards-based assessments in grades 3 through 8 and grade 11 and other tests, including short-cycle assessments in grades 9 and 10.

(2) Exceptions. Exceptions include special provisions and requirements for the assessment of English language learners and students with IEPs.

(a) English language learners. Students who have limited English language skills [i.e., students who are "English language learners" as determined by the department's language assessment instrument (the New Mexico English language proficiency assessment - NMELPA)] shall participate in the statewide testing program. The following considerations specify how assessment shall be conducted.

(i) Length of enrollment in U.S. schools. The options for participation of English language learners in the New Mexico standards-based assessment program depend on the length of time that the student has been enrolled in U. S. public schools. For students who are new to U.S. schools, the following applies: If the student has not been in the school for a full academic year at the time of testing, the student's test results will not be included in the performance data used to determine the AYP of the school. Students who are enrolled for the first year in a U.S. school may receive a language exemption from the SBA for the reading subtest only. In this situation, the student's score on the NMELPA, if available, will be substituted for the reading subtest and will count toward the district or school's required 95% participation rate. If this option is chosen for a student, the language exemption for reading only indicator shall be completed on the SBA's student biogrid sheet. In all other content areas of the SBA, the student shall participate in the Spanish-language version of the assessment (if available and appropriate) or in the English-language version with accommodations provided, if they are determined to be appropriate by the local school's team, as described in (iii) of Subparagraph (a) of Paragraph (2) of Subsection L of 6.29.1.9 NMAC. For the subtests other than reading, the test completion status shall be student tested all sessions, and the types of accommodations that are provided, if any, shall be indicated on the student biogrid sheet. Students who have been in U.S. schools for less than three consecutive years shall participate in the statewide assessment program in one of three ways: the student may participate in the standard administration of the

English-language version of the assessment without accommodations; the student may participate in the English-language version of the assessment with appropriate accommodations; or the student may participate in the standard administration of the Spanish-language version of the assessment, where available and appropriate. Locally developed portfolio assessments are not permitted, under the terms of federal law.

(ii) Waivers for home language assessment. Students who have been in U.S. schools for three or more consecutive years shall participate in the English-language version of the assessment with or without allowable accommodations, unless a waiver request to continue the testing of the student in the home language of Spanish is approved by the secretary. If, after three consecutive years in U.S. schools, the district or charter school determines (on a case-by-case basis) that academic assessments in the student's home language of Spanish would yield more accurate and reliable information about the student's knowledge of a subject, the district or charter school may request a waiver from the secretary to continue to assess the student in the home language of Spanish. Approved waivers are effective for the current year only; annual waiver requests may be approved for a maximum of two years. The waiver request shall be submitted to the secretary for approval at least three months before the assessment, by the district's superintendent or the charter school administrator. The request shall take the form of a memorandum that includes: student name, student state identification number, school in which the student is currently enrolled, student's grade level, student's English language proficiency scores (from the NMELPA) and date(s) of most recent NMELPA administration, an indication of whether this is the first or second waiver request for the student, the reason or justification for the waiver request, and names of the school team members involved in the decision to request the waiver.

(iii) Accommodations. Districts and charter schools shall provide accommodations to English language learners after consideration of their appropriateness for the individual student. To determine the appropriateness of allowing accommodations, the district or charter school shall consider the student's level of proficiency in all domains of language (listening, speaking, reading, writing and comprehension) and the nature of the school's instructional program. The district or charter school shall ensure that students do not receive accommodations without current justification supported by data. District and school staff may obtain the technical assistance on procedures for accommodations from the department's

district test coordinator's manual or from the department. Each school shall utilize a team to review individual student progress in order to determine accommodations. For students being served on an individualized education program (IEP) or Section 504 Plan, those teams (IEP or Section 504) will respectively determine appropriate test accommodations. For all other students, the school may use its student assistance team (SAT) or form another school-based team for this purpose, but the team shall be comprised of at least three school staff, including staff who are familiar with the student's abilities and language needs, standardized test procedures and valid ELL test accommodations. Team members may include: the student's bilingual multicultural education- or TESOL-endorsed teacher, the bilingual multicultural education program coordinator, the student's other teacher(s), administrators or school test coordinators, or the school counselor. The student's parent or guardian, the student and other staff members may be also included, as appropriate. The team shall base its decisions about appropriate accommodations on the following: annual review of the student's progress in attaining English proficiency, student's current English language proficiency, including the student's experience and time in U. S. schools, student's expected date for exiting English language learner accommodations, student's familiarity with the accommodation under consideration, the primary language of instruction used in the content area to be assessed and the length of time that the student has received instruction in that language, and the student's grade level. Written documentation of accommodation decisions made by the team shall be stored in the student's cumulative file and shall be reported to the department's bureau of assessment and evaluation.

(b) Students with IEPs. Students with IEPs who receive special education and related services shall participate in all statewide and district-wide assessments of student achievement or in state-approved alternate assessments. Pursuant to Subsection E of 6.31.2.11 NMAC, 34 CFR 300.320 (a)(2)(ii) and 34 CFR 300.320(a)(6), the IEPs for such students shall specify which assessments each student will participate in and what, if any, accommodations or modifications in administration are needed to enable the student to participate. The IEPs for students who will not participate in a particular statewide or district-wide assessment shall meet state-approved criteria, methods and instruments.

(c) Waiver of the eleventh grade SBA (graduation requirement assessment).

(i) With the approval of the local board of education or charter school governing body, the local superintendent or charter school administrator may request

written approval from the secretary to award a diploma to a student who has not passed the eleventh grade SBA. The district or charter school shall document student attainment of required competencies through an alternative assessment procedure and shall submit such a request using the department's *eleventh grade SBA waiver request* form. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; statement of applicable district or charter school policy, list of students for whom the waiver request is being made including: student name, school, date of board approval, and statement of whether or not competencies are documented through an alternative assessment; and rationale for request.

(ii) With appropriate documentation, a passing score on another state's graduation requirement assessment shall substitute for the eleventh grade SBA.

M. Indigent identification and guidelines.

(1) A student who has been deemed eligible for free or reduced-price school meals, or a student who has been identified by the children, youth and families department as being in the custody of the state, shall be deemed indigent for the purposes of remediation programs and damage of instructional materials, as discussed in Sections 22-2C-6 and 22-15-10 NMSA 1978.

(2) A parent or guardian of a student who has not applied for free or reduced-price school meals shall be notified in writing by the local school board or governing body of a charter school of the availability of remediation at no charge upon an eligibility determination for free or reduced-price school meals.

N. Emergency drills and practiced evacuations.

(1) Emergency drills shall be conducted in each public school and private school in the state, as follows:

(a) at least once per week during the first four weeks of the school year, and at least once per month during the remainder of the school year;

(b) two of these drills shall be shelter-in-place drills;

(c) one of these drills shall be an evacuation drill;

(d) nine of these drills shall be fire drills, with one fire drill required each week during the first four weeks of school;

(e) in locations where a fire department is maintained, a member of the fire department shall be requested to be in attendance during the emergency drills for the purpose of giving instruction and constructive criticism;

(f) it shall be the responsibility of

the person in charge of a school to carry out the provisions related to emergency drills.

(2) Requirements to comply and penalties for non-compliance:

(a) It shall be the responsibility of the superintendent of a school district, a charter school administrator or private school counterpart(s) to ensure that each school under the person's authority follows the requirements set forth in Subsection N of 6.29.1.9 NMAC.

(b) In the event that the person responsible for complying with Subsection N of 6.29.1.9 NMAC fails or refuses to comply with this subsection, the department may, in the case of a public school, take any action designed to ensure prompt corrective action or future compliance, including reporting the non-compliance to either the state fire marshal or to a local fire department. In the case of a private school, the department will report the non-compliance to either the state fire marshal or to a local fire department and may consider adverse licensure action.

(c) Failure or refusal to comply with the requirements in Subsection N of 6.29.1.9 NMAC for holding emergency drills shall constitute grounds to suspend or revoke the license of the person responsible for compliance. The due process procedures under the Uniform Licensing Act (Sections 61-1-1 through 61-1-31 NMSA 1978) shall apply.

O. School facilities and grounds. Pursuant to Subsection B of 6.29.1.9 NMAC (*Duties of the Superintendent*); Subsection D of 6.12.6.8 NMAC (*School District Wellness Policy*); and 6.19.3 NMAC (*Unsafe School Choice Option*), each school district or charter school shall ensure that all buildings, facilities and grounds provide a safe and orderly environment for public use; i.e., that they shall be:

(1) safe, healthy, orderly, clean and in good repair;

(2) in compliance with the Americans with Disabilities Act-Part III and state fire marshal regulations, Sections 59A-52-1 through 59A-52-25 NMSA 1978;

(3) safe for conducting experiments and school projects in all school laboratories and shops, as established in written school safety procedures which are reviewed annually; these procedures include, but are not limited to:

(a) personal protective equipment;

(b) adequate ventilation and electrical circuitry;

(c) material safety data sheets;

(d) body and eye washes; and

(e) training appropriate for each teaching situation;

(4) the maximum number of occupants in a laboratory or shop teaching space shall be based on the following:

(a) the number of work stations;

(b) the building and fire safety

codes;

(c) the design of the laboratory or shop teaching facility;

(d) appropriate supervision and the special needs of students; and

(e) all applicable OSHA regulations;

(5) appropriate procedures for the storing, handling and removal of toxic or dangerous substances shall be established and implemented; all school programs (including those areas noted above and custodial areas, art room, library and cafeteria) shall comply with standard safety practices and all applicable state and federal regulations;

(6) use of pesticides by districts and charter schools will be governed by the following standards:

(a) Definitions as used in this section:

(i) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

(ii) "Pest" means any living organism injurious to other living organisms, except humans, viruses, bacteria or other microorganisms in or on other living organisms other than plants, which is declared to be a pest pursuant to the Pesticide Control Act, Sections 76-4-1 through 76-4-39 NMSA 1978.

(b) Districts and charter schools will develop procedures for the implementation of pest management with consideration for reducing the possible impact of pesticide use on human health and the environment, including people with special sensitivities to pesticides. Procedures will include, but are not limited to, the following:

(i) No pesticide may be applied to public school property and no pest control device, as defined in the New Mexico Pesticide Control Act, may be used on public school property except those pesticides and devices currently registered for legal use in the state by the New Mexico department of agriculture.

(ii) No pesticide may be applied to public school property except by those persons certified in the applicable category and currently licensed by the New Mexico department of agriculture or by employees under their direct supervision.

(iii) Pesticides will only be applied in or on the outside of school buildings when a pest is present, and will not be applied on a regular or calendar basis unless it is to treat an infestation and is a part of a pest management system being implemented to address a particular target pest. A pest is considered to be present when it is observed directly or can reasonably be expected to be present based on finding evidence, such as droppings, body parts, or

damage that is typically done by the pest. This section of the regulation does not apply to pre-construction termite treatments or the use of outdoor herbicides.

(iv) Pesticides that are applied in a liquid, aerosolized or gaseous form through spraying, aerosol cans, bombs, fumigation or injections into the ground, foundation or plants will not be applied on public school property when students, staff or visitors are present, or may reasonably be expected to be present within 6 hours of the application. In emergency cases, where a pest infestation threatens the health or safety of the occupants of public school property, and which requires the immediate application of a pesticide to remediate, students, staff and other school occupants will be removed from the treatment area prior to the application. Small amounts of gel or liquid pesticides applied to cracks and crevices or baits used to treat pest infestation are exempt from this section.

(v) At the beginning of each year, and when new students register, schools will develop a list of parents and guardians who wish to be notified prior to pesticide application during the school year. These parents/guardians will be notified in writing prior to pesticide application. General notification of anticipated pesticide applications will occur by posting or dissemination of notices, by oral communication or other means of communication. In emergency cases where a pest infestation threatens the health or safety of the occupants of public school property, no pre-notification is required. Immediately following the application of a pesticide in emergency cases, signs will be posted indicating an application was made.

(vi) Written records of pesticide applications will be kept for three years at each school site and be available upon request to parents, guardians, students, teachers and staff.

(vii) If any part of Paragraph (6) of Subsection O of 6.29.1.9 NMAC is found to be in conflict with the provisions of the Pesticide Control Act, the remainder of the regulation will remain in full force and effect.

P. School district budgeting. Section 22-8-4 NMSA 1978 requires the department to prescribe forms for, supervise and control the preparation of all budgets of all public schools and school districts, and to compile accurate information concerning public school finance and administration. Sections 22-8-5 through 22-8-12.1 NMSA 1978 set out specific budget preparation and submission requirements for the department, public schools and public school districts. Regulations governing budgeting and accounting for New Mexico public schools and school districts are set out in 6.20.2 NMAC.

Q. Final course and other student grade changes. Any changes to students' course or other grades shall be governed by the state rule, "*Final Course and Other Student Grade Changes*" (6.30.10 NMAC).

[6.29.1.9 NMAC - Rp, 6.30.2.10 NMAC, 6-30-2009; A, 02-12-2010; A, 10-31-2011]

6.29.1.13 FUTURE CHANGES IN LAW THAT AFFECT THIS RULE:

[A.] This rule will be periodically amended to reflect changes in law or laws that were enacted with delayed effect provisions.

[B.] Most noteworthy as of the initial insertion of this section are the changes to graduation requirements that were included by the Laws of 2007, Chapter 308, Section 8, Senate Bill 211 of the 48th legislature, first session, amending Section 22-13-1.1 NMSA 1978. Those changes include:

(1) a requirement that each school district shall align its curricula to meet the state standards for each grade level and subject area; each school district's aligned grade level and subject area curricula shall be in place for language arts and science by the 2009-2010 school year (Section 22-13-1.6 NMSA 1978);

(2) a requirement that, in order to graduate, students entering ninth grade beginning in the 2009-2010 school year shall earn at least one unit in either an advanced college placement or honors course, a dual credit course offered by a college, or a distance learning course;

(3) a requirement that, for students entering ninth grade beginning in the 2009-2010 school year, the number of science courses that must have a lab component is increased from one to two (Section 22-13-1.1 Section 1, Paragraph 3 NMSA);

(4) a requirement that, after July 1, 2010, the currently-issued high school diploma will be replaced by the New Mexico diploma of excellence;

(5) a requirement that, in order to receive the New Mexico diploma of excellence to graduate (unless a student has a parent-signed permission exempting the student from this requirement), students entering ninth grade beginning in the 2009-2010 school year shall successfully complete a minimum of twenty-four (24) credits aligned to the state academic content standards with benchmarks and performance standards;

(6) a requirement that, in order to graduate, beginning in the 2010-2011 school year, a student shall not receive a high school diploma if the student has not demonstrated competence in the subject areas of mathematics, reading and language arts, writing, science and social studies, including a section on the constitutions of

the United States and New Mexico;

(7) a provision that those students who exit a public school after the twelfth grade without having satisfied these requirements may receive an appropriate state certificate that indicates the number of credits the student earned and grade completed, with the added provision that a student who, within five (5) years after exiting school, satisfies these requirements may receive a high school diploma.];

[6.29.1.13 NMAC - N, 6-30-2009; A, 10-31-2011]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 18.3.2 NMAC Sections 16, 17, and 18, effective October 31, 2011.

18.3.2.16 REVIEW OF APPLICATIONS FOR CERTIFICATES OR PERMITS:

A. **Pre-filing review.** An applicant shall present a single copy of its proposed application for a certificate or permit to the director for pre-filing review. Within seven (7) days of receipt of such application, the director will review the application to determine if it is complete.

B. **Complete applications.** If the application contains all of the information and documents required by the section specified below for each particular type of application, and is in compliance with all other statutory requirements and these rules, the director shall certify in writing that the application satisfies the sixty (60) day completeness requirement of Subsection E of NMSA 1978 Section 65-2A-36 and notify the applicant that the application is complete. The director's determination of completeness shall not constitute approval of the application. Upon receipt of notice that the application is complete, the applicant shall file its application in accordance with Subsection D of this section:

(1) for an original certificate or permit, 18.3.2.15 NMAC;

(2) for a change in a tariff, 18.3.6.14 NMAC;

(3) for amendment of a certificate or permit, 18.3.8.9 NMAC;

(4) for lease of a certificate or permit, 18.3.8.10 NMAC;

(5) for voluntary transfer of a certificate or permit, 18.3.8.11 NMAC;

(6) for transfer by operation of law of a certificate or permit, 18.3.8.12 NMAC;

(7) for reinstatement of a certificate or permit following involuntary suspension,

18.3.8.13 NMAC;

(8) for a change in the form of ownership of a certificate or permit, 18.3.8.14 NMAC;

(9) for transfer of control of a motor carrier, 18.3.8.15 NMAC;

(10) for cancellation of a certificate or permit, 18.3.8.16 NMAC;

(11) for voluntary suspension of a certificate or permit, 18.3.8.17 NMAC;

(12) for reinstatement of a certificate or permit following voluntary suspension, 18.3.8.18 NMAC;

(13) for leasing equipment, Subsection A of 18.3.9.8 NMAC.

C. Incomplete applications.

(1) If the application is incomplete, the director will, within three (3) days of determining the application is incomplete, return the application to the applicant along with an initial letter outlining the deficiencies in the application. The applicant will have twenty (20) days from the date of the initial letter to cure the deficiencies and return the completed application to the applications bureau. To expedite the process, the director may contact the applicant by telephone, electronic mail, or facsimile to obtain the missing information or documents.

(2) If the applicant returns the application to the commission but the application is still deficient, the director will, within ten (10) days, return the application to the applicant along with a second letter outlining the deficiencies in the application. The applicant will have twenty (20) days from the date of the second letter to cure the deficiencies and return the completed application to the applications bureau.

(3) If the returned application cures the deficiencies, the director will certify the application as complete pursuant to Subsection B of this section.

(4) If the applicant fails to return the application to the commission within sixty (60) days from the date the application was pre-filed, or the director determines the application is still incomplete, the application shall be deemed abandoned. The director will send a letter notifying the applicant that the application has been deemed abandoned and the file has been closed.

D. Filing requirements.

(1) **Application required.** Applications must be typed or completed in ink on forms prescribed by the director.

(2) **Number of copies.** Applicants must file an original and three (3) copies of the application form and every required document as provided in Subsection A or B of 18.3.2.10 NMAC. If the applicant wishes to have a file-stamped copy of the complete application returned to it, it must submit an additional copy of each application form and document.

(3) **Filing fee.** Applicants shall

submit the appropriate application fee with the application in the form of a check or money order made payable to the New Mexico public regulation commission.

E. Docketing. The applications bureau shall issue a docket number upon receipt of the complete application, all required documents, and the filing fee and shall file the application with the docket filing unit of the commission.

F. Procedure. Except as provided in the following Subsection G of 18.3.2.16 NMAC, the commission shall review complete applications for a certificate or permit in accordance with 18.3.2.17 through 18.3.2.20 NMAC.

G. Certain permits processed without the requirement of notice or hearing. The commission shall review complete applications for permits for contractual carriage with departments, divisions or agencies of the state of New Mexico or with medicaid SALUD providers or facilities for non-emergency medical carriage in accordance with 18.3.2.19 and 18.3.2.20 NMAC. Such permits may be processed or granted by the commission without notice or hearing. The director may request a hearing on such application, if the director finds that there is an issue with any matter required by 18.3.2.19 and 18.3.2.20 NMAC. In the event that the director requests such a hearing, the commission shall review the application in the same manner as any application for a permit, in accordance with 18.3.2.18 through 18.3.2.20 NMAC.

[18.3.2.16 NMAC - Rp, 18.3.2.16 NMAC, 1-1-05; A, 10-31-11]

18.3.2.17 NOTICE:

A. The director shall prepare a notice of application within five (5) business days of the date the director certifies that an application is complete. If the application is accompanied by an application for temporary authority, the notice shall so state and shall indicate whether the application for temporary authority is pending or has been granted.

B. An applicant shall, at its own expense, publish the notice of application and, if applicable, grant of temporary authority once in a newspaper of general circulation in the area to be served within five (5) business days of receipt of the notice prepared by the director.

C. ~~[An applicant shall request from the director]~~ The director shall provide an applicant for an original certificate, amendment, endorsement or transfer of a certificate, tariff change, or a grant of temporary authority with a list of all motor carriers holding the kind of operating authority the applicant has or is seeking and all other interested parties. An applicant shall mail a copy of the notice of application and,

if applicable, grant of temporary authority to all persons on the list within five (5) business days of receipt of the notice prepared by the director. Mailing of such notice by first class U.S. mail to the last known business address of a motor carrier shall constitute service under this rule.

D. An applicant shall file an affidavit of publication and a certificate of mailing with the docket filing unit. Instead of the affidavit of publication, an applicant may file the page from the newspaper showing the notice of application and, if applicable, grant of temporary authority, the name of the newspaper, and the date of its publication. The commission will not act on an application, except to dismiss it for good cause, until it has received the affidavit of publication or newspaper page and the certificate of mailing.

E. There shall be a minimum twenty (20) calendar day notice period before the commission may act on an application; the notice period shall start on the later of the date of publication of the notice in a newspaper of general circulation or three (3) days after the date notice was mailed to the persons on the list supplied by the director.

[18.3.2.17 NMAC - Rp, 18.3.2.17 NMAC; 1-1-05; A, 10-31-11]

18.3.2.18 C O N T E S T E D APPLICATIONS:

A. If the director requests a hearing, or a member of the public or industry files a motion to intervene in an application for ~~[operating authority]~~ an original certificate, amendment, endorsement, transfer or reinstatement of a certificate, a tariff change, or a grant of temporary authority for a certificate at any time during the notice period, the commission shall appoint a hearing examiner. The motion to intervene shall state the movant's interest in the proceeding, specifically allege that the applicant for operating authority or grantee of temporary authority does not meet one or more of the criteria for issuance of the operating authority or temporary authority, and describe in sufficient detail the facts known to the movant supporting the allegation.

B. If the director requests a hearing, or a member of the public or a certificated motor carrier files a motion to intervene in an application for an original permit, amendment or transfer of a permit, or a grant of temporary authority for a permit at any time during the notice period, the commission shall appoint a hearing examiner. The motion request of a member of the public or industry to intervene shall specifically state the movant's interest and the public interest in intervention in the proceeding, and why that interest is so substantial that the commission should

allow the movant to intervene, as well as specifically alleging that the applicant for operating authority or grantee of temporary authority does not meet one or more of the criteria for issuance of the operating authority or temporary authority, and shall describe the facts known to the movant supporting the movant's allegations. The hearing examiner shall review each motion request to intervene by a member of the public or industry, regardless of whether the applicant files any written opposition to the motion, in order to determine whether the motion request is substantial and in accordance with this rule. The hearing examiner shall grant only those motion requests by members of the public or industry that raise due process rights under law, allege the invalidity or invalid application of the contract at issue, allege a substantial issue of public interest, or are otherwise determined by the hearing examiner to have raised issues for which a hearing is appropriate.

~~[B-] C.~~ The hearing examiner shall, within ten (10) days of appointment, issue a notice of hearing setting a hearing to be held within sixty (60) days from the date of appointment. The hearing examiner may for good cause extend the time within which a hearing must be held.

~~[C-] D.~~ If the commission or hearing examiner denies all motions to intervene or all intervenors withdraw at any time, and staff and the commission or hearing examiner do not object, the commission or hearing examiner shall recommend to the commission that the application be reassigned to staff and processed as an uncontested application.

~~[D-] E.~~ The applicant has the burden of proof and shall present testimony and evidence justifying: issuance of an original certificate or permit and the justness and reasonableness of the accompanying proposed tariff; approval of the proposed change in tariff; approval of the proposed amendment, lease, transfer, or reinstatement following involuntary suspension of an existing certificate or permit; or approval of a proposed equipment lease; as appropriate. Contesting parties shall be allowed an opportunity to present evidence regarding the application. The hearing examiner may require pre-filed testimony.

~~[E-] E.~~ The hearing examiner shall issue a recommended decision within forty-five (45) days of receipt of the transcript of hearing, or completion of the briefing schedule, whichever is later. The hearing examiner may for good cause extend the time within which a recommended decision must be issued.
[18.3.2.18 NMAC - Rp, 18.3.2.1 NMAC 1-1-05, A, 10-31-11]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 18.3.8 NMAC Sections 16, 17, and 18, effective October 31, 2011.

18.3.8.16 CANCELLATION OF A CERTIFICATE OR PERMIT:

A. Application. An applicant for cancellation of all or part of its certificate or permit shall file:

- (1) an application on the form prescribed by the director;
- (2) copies of its current certificate or permit and all endorsements it seeks to cancel in whole or in part; and
- (3) the date on which the applicant proposes to terminate all or part of its service.

B. Procedure for commission review. The commission shall review an application for cancellation of an existing certificate or permit in accordance with 18.3.2.16 ~~[and 18.3.2.17 NMAC, except that the applicant shall not be required to mail notice pursuant to Subsection C of 18.3.2.17] NMAC.~~

C. Issuance. The commission may issue an order approving an application for cancellation of a certificate or permit if the commission finds that cancellation of the certificate or permit would not be adverse to the public interest.

D. Disputed application. If the need for cancellation is disputed, the commission shall give the applicant an opportunity to request a hearing.
[18.3.8.16 NMAC - Rp, 18.3.8.15 NMAC, 1-1-05; A, 9-1-08; A, 10-31-11]

18.3.8.17 VOLUNTARY SUSPENSION OF A CERTIFICATE OR PERMIT:

A. Application. An applicant for voluntary suspension shall file:

- (1) an application on the form prescribed by the director;
- (2) copies of its current certificate or permit and all endorsements it seeks to suspend;
- (3) a statement explaining:
 - (a) why such voluntary suspension is not adverse to the public interest, including whether any other motor carrier is capable of providing the service; and
 - (b) if applicable, why the applicant is not fit, willing, and able to render reasonably continuous and adequate service for the period of time for which voluntary suspension is requested;
- (4) the period of time for which the applicant seeks to suspend service; and
- (5) the fee required by NMSA

1978 Section 65-2A-36.

B. Procedure for review by the director. The director shall review an application for voluntary suspension of an existing certificate or permit in accordance with 18.3.2.16 ~~[and 18.3.2.17 NMAC, except that the applicant shall not be required to mail notice pursuant to Subsection C of 18.3.2.17] NMAC.~~

C. Approval. The director may approve an application for voluntary suspension of a certificate or permit if the director finds that the applicant meets the requirements of Section 65-2A-14 NMSA 1978.

D. Disputed application. If the director finds that voluntary suspension of a certificate or permit is adverse to the public interest, the director shall give the applicant an opportunity to request a hearing.
[18.3.8.17 NMAC - Rp, 18.3.8.16 NMAC, 1-1-05; A, 10-31-11]

18.3.8.18 REINSTATEMENT OF A CERTIFICATE OR PERMIT FOLLOWING VOLUNTARY SUSPENSION:

A. Application. An applicant for reinstatement following voluntary suspension shall file:

- (1) an application on the form prescribed by the director;
- (2) a copy of the application for voluntary suspension approved by the director; and
- (3) a statement of the changes in circumstances and evidence that the applicant is fit, willing, and able to render reasonably continuous and adequate service if the reinstatement is approved; and
- (4) the fee required by NMSA 1978 Section 65-2A-36.

B. Procedure for review by the director. The director shall review an application for reinstatement of an existing certificate or permit following voluntary suspension in accordance with 18.3.2.16 and 18.3.2.17 ~~[NMAC, except that the applicant shall not be required to mail notice pursuant to Subsection C of 18.3.2.17] NMAC.~~

C. Approval. The director may approve an application for reinstatement of a certificate or permit following voluntary suspension if the director finds that it is not adverse to the public interest.

D. Disputed application. If the director finds that reinstatement following voluntary suspension is adverse to the public interest, the director shall give the applicant an opportunity to request a hearing.
[18.3.8.18 NMAC - Rp, 18.3.8.17 NMAC, 1-1-05; A, 10-31-11]

**NEW MEXICO
PUBLIC REGULATION
COMMISSION**

This is an amendment to 18.3.12 NMAC Section 24, effective October 31, 2011.

18.3.12.24 INSPECTION AND RELEASE OF TOWED MOTOR VEHICLES:

A. **Motor vehicles held for lack of financial responsibility.** If a law enforcement agency orders a towing service to hold a motor vehicle for lack of proof of financial responsibility, the towing service shall not release the motor vehicle without a release from the jurisdiction that created the hold.

~~A.~~ B. **Motor vehicles ordered held for investigation.** If a law enforcement agency orders a towing service to hold a motor vehicle for investigation, the towing service shall not, without specific written authorization of the law enforcement agency:

(1) allow the owner of the motor vehicle, the owner's agent, or a lienholder to inspect the motor vehicle or remove proof of ownership or personal property from the motor vehicle; or

(2) release the motor vehicle to any person, including the owner, the owner's agent, or a lienholder.

~~B.~~ C. **Motor vehicles not held for investigation.**

(1) If a law enforcement agency does not order a motor vehicle to be held for investigation, the towing service shall allow the owner, the owner's agent, or the lienholder of the motor vehicle without charge, during normal business hours, to:

(a) inspect the motor vehicle;

(b) remove proof of ownership from the motor vehicle; or

(c) remove personal property from the motor vehicle if he or she presents proof of ownership.

(2) The owner, the owner's agent, or the lienholder of a stored motor vehicle that has not been ordered held for investigation may obtain possession of the motor vehicle by paying all just and reasonable charges and providing proof of ownership:

(a) as a matter of right, during normal or extended business hours; or

(b) at the option of the towing service, during non-business hours; if a towing service elects to deliver a motor vehicle during non-business hours, it must assess the tariffed administrative charge for such delivery.

~~C.~~ D. If the owner, the owner's agent, or the lienholder of a motor vehicle disputes any of the charges for towing or storage, or feels the motor vehicle was illegally towed, the towing service shall

furnish to the disputant a written statement containing the name, address, and telephone number of the consumer relations division of the commission and advising the disputant that he or she may file a complaint with the commission as provided by applicable commission rules. The written statement shall be in substantially the following form: "If you have a dispute with the towing service regarding charges for towing or storage, and are not satisfied with the solution offered by the towing service, you may file a complaint with the Consumer Relations Division of the Public Regulation Commission in writing at P.O. Box 1269, Santa Fe, New Mexico, 87504-1269 or by calling the commission's toll-free number 1-800-947-4722."

[18.3.12.24 NMAC - Rp, SCC Rule 267.23, 12-30-02; A, 1-1-05; A, 10-31-11]

End of Adopted Rules Section

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Issue Number 8	April 17	April 30
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Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 14
Issue Number 12	June 15	June 29
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Issue Number 15	August 1	August 15
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