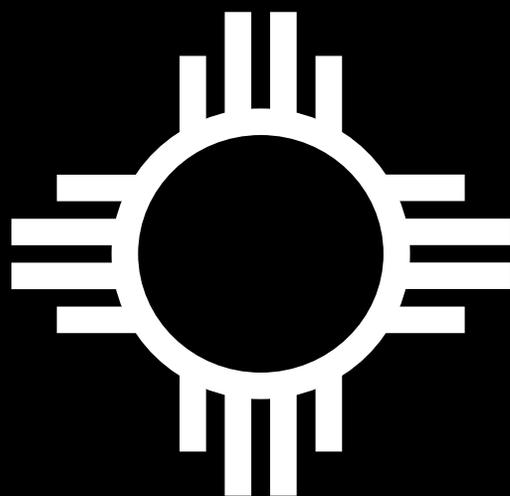


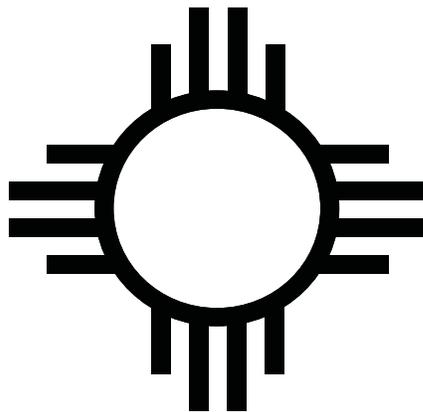
**NEW
MEXICO
REGISTER**



Volume XXIII
Issue Number 11
June 14, 2012

New Mexico Register

**Volume XXIII, Issue Number 11
June 14, 2012**



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
2012

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New Mexico Register

Volume XXIII, Number 11

June 14, 2012

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Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

NEW MEXICO
Chiropractic Board

PUBLIC RULE HEARING AND REGULAR BOARD MEETING NOTICE

Notice is hereby given that the New Mexico Chiropractic Board will convene a public rule hearing at 10:00 a.m. on Tuesday July 17, 2012. The hearing will be held at the Toney Anaya Building, Regulation and Licensing, 2550 Cerrillos Rd, Santa Fe, New Mexico.

The purpose of the rule hearing is to consider, for adoption, proposed amendments to the following Board Rules and Regulations in 16.4 NMAC:

- Part 1 – GENERAL PROVISIONS
- Part 2 – TEMPORARY LICENSURE
- Part 4 – LICENSURE WITHOUT EXAMINATION
- Part 5 – CRITERIA FOR DETERMINATION OF EQUIVALENCY TO C.C.E.
- Part 6 - EXAMINATIONS
- Part 8 – DISCIPLINARY PROCEEDINGS
- Part 9 – LICENSE RENEWAL PROCEDURES
- Part 10 – CONTINUING EDUCATION

And adoption of new rules:

- Part 20 – New - ADVERTISING
- Part 21 – New - NON-LICENSED OWNERSHIP
- Part 22 – New - FEES

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at 2550 Cerrillos Road, Santa Fe, New Mexico 87505; or call (505) 476-4622 or access them in the “Proposed Rules” section at www.rld.state.nm.us. A draft of the proposed changes will be available thirty days prior to the hearing. All written comments mailed to the Board office or e-mailed to Chiropractic.Board@state.nm.us or must be submitted no later than Monday, July 9, 2012, in order for the Board members to receive the comments in their packets for review before the rule hearing. Persons wishing to present their comments at the hearing will need eight (8) copies of any comments or proposed changes for distribution to the Commission and staff at the hearing.

A regular business meeting will follow the rule hearing during which action

will be taken on the proposed rules. During the regular meeting, the Board may enter into Executive Session to discuss licensing matters.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4622 at least two weeks prior to the meeting or as soon as possible.

NEW MEXICO CULTURAL PROPERTIES REVIEW COMMITTEE

NEW MEXICO CULTURAL AFFAIRS
DEPARTMENT
CULTURAL PROPERTIES REVIEW
COMMITTEE
STATE HISTORIC PRESERVATION
DIVISION
NOTICE OF PROPOSED RULEMAKING

The Cultural Properties Review Committee (CPRC) is proposing a new rule to set the procedures and requirements for listing properties of historical, archaeological, scientific, architectural or other cultural significance in the State Register of Cultural Properties. The hearing will be held on Friday, July 20, 2012 at 10:00 AM at Old Senate Chambers in the Bataan Memorial Building, 407 Galisteo Street, Santa Fe, New Mexico 87501. The rule is being promulgated by the authority vested in the CPRC pursuant to NMSA 1978, Section 18-6-5 of the New Mexico Cultural Properties Act.

The proposed rule is available at the Historic Preservation Division website: <http://www.nmhistoricpreservation.org> and at the Historic Preservation Division offices in the Bataan Memorial Building located at 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501. To request that a copy of the proposed rule be mailed to you, submit your request in writing to: Historic Preservation Division, 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501, by email tonm.shpo@state.nm.us, or via fax to (505) 827-6338.

Any person may appear, testify or submit written comments. Testimony and written comments may be submitted in person at the hearing set for the new rule. Written comments may be submitted by mail to: Historic Preservation Division, 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501. The Historic Preservation

Division will accept written comments for consideration as provided above no later than August 3, 2012.

If you are an individual who is 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 Dorothy Moore at 505-827-6320 or dorothy.moore@state.nm.us. The Historic Preservation Division requests advanced notice a minimum of five (5) business days prior to the hearing to provide reasonable accommodations.

NEW MEXICO DNA IDENTIFICATION SYSTEM OVERSIGHT COMMITTEE AND ADMINISTRATIVE CENTER

NEW MEXICO DNA IDENTIFICATION
SYSTEM OVERSIGHT COMMITTEE &
ADMINISTRATIVE CENTER

NOTICE OF MEETING AND PUBLIC
HEARING ON AMENDMENT OF RULES

Tuesday July 17, 2012, 11:00 AM,
Criminalistics Conference Room,
Metropolitan Forensic Science Center, 5350
2nd Street NW, Albuquerque, NM 87107

To comment on, or for additional information including a copy of the agenda and proposed amendments to 10.14.200 NMAC, or if you have a disability and you require special assistance to participate in this meeting contact John Krebsbach, Chairperson at (505) 823-4630 by Monday July 16, 2012.

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC
MEETING AND RULE MAKING
NOTICE

On **Thursday, June 21, 2012**, beginning at 9:00 a.m., at the **Inn of the Mountain Gods, 287 Carrizo Canyon Road, Mescalero, NM 88340**, the State Game Commission will meet in public session to hear and consider action as appropriate on the following: reservation of two elk licenses for non-profit wish-granting organizations; State Land Office easement for hunting, fishing, and trapping; commission consent for director to initiate investigation of peregrine falcon; FY 2014 budget request development; web-based license proposal for license year 2013-2014; proposed amendments to the following rules: Bear and Cougar, Open Gate, Antelope Private Land Use System (A-PLUS) and

Pronghorn Antelope, Migratory Game Bird, Upland Game, Bighorn Sheep, Revocation, Fisheries, Manner and Method; and general public comments (comments are limited to three minutes).

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

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Sonya Quintana at (505) 476-8027. Please contact Ms. Quintana at least three working days before the meeting date. Public documents, including the Agenda and Minutes are provided in various accessible forms upon request.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Education Department ("NMPED") hereby gives notice that it will conduct a public hearing in Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on July 18, 2012, from 9:30 a.m. to 12:30 p.m. The purpose of the public hearing will be to obtain input on the proposed adoption of a new rule to be codified as 6.69.8 NMAC "Teacher and School Leader Effectiveness," which is intended to establish uniform procedures for conducting annual evaluations and effectiveness of licensed school teachers and administrators.

Interested individuals may provide comments at the public hearing and/or submit written comments to Ms. Mary H. Deets, Administrative Assistant, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (MaryH.Deets@state.nm.us) (505) 827-6641 fax (505) 827-6681. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (<http://ped.state.nm.us/>) under the "Public Notices" link, or obtained from Ms. Deets at the email address or phone number indicated.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in either of these meetings are asked to contact Ms Deets as soon as possible. The NMPED requires at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

Case No. 12-00144-UT

IN THE MATTER OF A DECOUPLING AMENDMENT TO THE COMMISSION'S ENERGY EFFICIENCY RULES

NOTICE OF PROPOSED RULEMAKING

1. **NOTICE IS HEREBY GIVEN** that the New Mexico Public Regulation Commission ("NMPRC" or the "Commission") is commencing a rulemaking proceeding for the purpose of amending rule 17.7.2.9 NMAC governing gas and electric public utilities to provide for a decoupling mechanism for implementation of the Efficient Use of Energy Act, Article 17 NMSA 1978 (Section 62-17-1 through 62-17-11) ("EUEA"). The proposed rule amendment would be promulgated under authority granted to the Commission by the New Mexico Constitution, Article XI, Section 2 (1996), and by the Legislature pursuant to NMSA 1978, Section 8-8-4(B)(10) (1998) and the Public Utility Act, NMSA 1978, Sections 62-3-1 *et. seq.*, ("PUA"). A copy of the Commission's Proposed Rule Amendment is attached hereto as Attachment A.

2. In addition to seeking comment on the specific rule amendment set forth in Attachment A, the Commission seeks comment on whether the proposed rule should apply equally to gas utilities, and on whether a general rate case is a prerequisite for putting a decoupling rider into effect.

3. Any person wishing to comment on the Commission's Proposed Rule Amendment may do so by submitting written comments no later than **June 29, 2012**. Any person wishing to respond to comments may do so by submitting written response comments no later than **July 27, 2012**. Comments suggesting changes to the Commission's Proposed Rule Amendment 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 draft rule shall be provided in legislative format.

4. A public hearing will begin at **1:00 P.M. on Tuesday, August 14, 2012** at the offices of the Commission, at the following location:

**4th Floor Hearing Room
1120 Paseo de Peralta
Santa Fe, NM 87501
Tel. 505-827-4366.**

5. The hearing will be held to receive oral comment and to clarify or supplement the written comments. Unless the Commission or presiding officer rules otherwise, the record in this rulemaking shall close thirty (30) days after the conclusion of the public hearing.

6. All persons providing public comment and/or participating in the public hearing are encouraged to provide specific comments on the Commission's Proposed Rule Amendments. Commenters are also encouraged to address any other topic that may be relevant to this rulemaking.

7. Interested persons should contact the Commission to confirm the date, time, and place of any public hearing, because hearings are occasionally rescheduled.

8. 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.

9. Pursuant to NMSA 1978, Section 8-8-15(B) (amended 2001), at least thirty days prior to the hearing date, this *Notice of Proposed Rulemaking*, including Attachment

A, shall be mailed to all persons who have made a written request for advance notice and shall be published without Attachment A in at least two newspapers of general circulation in 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.

10. Copies of this Notice of Proposed Rulemaking, including Attachment A, shall be e-mailed to all persons listed on the attached Certificate of Service if their email addresses are known, and otherwise shall be served via regular mail.

11. This Notice of Proposed Rulemaking shall be posted on the Commission’s official Web site.

12. Copies of any forthcoming final order in this rulemaking proceeding shall be mailed, along with copies of any resulting final rule, to all persons and entities 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.

13. This Notice of Proposed Rulemaking is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 15th day of May, 2012.

NEW MEXICO PUBLIC REGULATION COMMISSION
 PATRICK H. LYONS, CHAIRMAN
 THERESA BECENTI-AGUILAR, VICE CHAIR
 JASON A. MARKS, COMMISSIONER
 DOUGLAS J. HOWE, COMMISSIONER
 BEN L. HALL, COMMISSIONER

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

Notice

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY
NM LAW ENFORCEMENT ACADEMY
BOARD MEETING TO INCLUDE TWO PUBLIC HEARINGS

On Tuesday July 24, 2012 at 9:00 a.m., the New Mexico Law Enforcement Academy Board will hold a Regular Board Meeting to include two Public Hearings. The Public Hearings will include 10.29.6 Certification by Waiver and 10.29.7 In Service Training Requirements.

The NMLEA Board Meeting will be held at the Farmington Civic Center, 200 West Arrington, Farmington, NM 87401

Copies of the Regular Board Meeting Agenda and two Public Hearings may be obtained by accessing our website at www.dps.nm.org/training or by calling Monique Lopez at (505) 827-9255.

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

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

Tax Administration Act

3.1.10.7 NMAC Section 7-9-61 NMSA 1978
 (Definitions)

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

Tax Administration Act

3.1.10.16 NMAC Section 7-9-61 NMSA 1978
 (Liability of Successor in Business)

Gross Receipts and Compensating Tax Act

3.2.10.8 NMAC Section 7-9-7 NMSA 1978
 (Tangible Personal Property Acquired Outside New Mexico for Use in New Mexico)
 3.2.10.15 NMAC Section 7-9-7 NMSA 1978
 (Materials Used on Nontaxable Projects)

3.2.10.19 NMAC Section 7-9-7 NMSA 1978

(Tangible Personal Property Furnished to Dealers by Out-of-State Services Contract Administrators)

3.2.10.20 NMAC Section 7-9-7 NMSA 1978

(Telecommunications Service Used by Hotels and Motels)

These proposals were placed on file in the Office of the Secretary on June 15, 2012. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of these proposals, if filed, will be filed as required by law on or about August 15, 2012.

A public hearing will be held on these proposals on Tuesday, July 17, 2012, at 2:00 p.m. in the Secretary’s Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before July 17, 2012.

3.1.10.7 **DEFINITIONS:** For the purposes of Sections 7-1-61 through 7-1-63 NMSA 1978 and 3.1.10.16 NMAC:

A. “assumed the liability” means either:

(1) the successor has explicitly agreed to assume responsibility for the payment of the tax liability of the transferor; or

(2) the successor has not explicitly disclaimed liability for the transferor’s tax liability and has formally or informally assumed responsibility for the transferor’s other non-tax liabilities;

B. “full value of the transferred tangible and intangible property” means the greater of:

(1) the value determined by the parties; or

(2) the fair market value of the property transferred on the date that the transfer occurs;

C. “property used in any business” means the materials, tools, supplies, equipment, facilities, merchandise, inventory, trade or service marks, or other tangible and intangible assets of a business enterprise or line of business;

D. “mere continuation” means that:

(1) the transferor and the transferee share common directors, officers, partners,

members, or shareholders;

(2) continued existence of only one entity after the sale of the assets; and

(3) inadequate consideration for the sale of the assets;

E. "successor in business" means a transferee who acquires, not in the ordinary course of business, property used in a business resulting in a transfer of the ownership of a business enterprise or line of business to a successor, except that a successor in business shall not include:

(1) secured creditors that have perfected security interests or other perfected liens in the property having priority over any lien held by the department; or

(2) any disinterested third party who purchases property at a commercially reasonable foreclosure sale; or

(3) a bank or other financial institution or government that acquires and operates a business for a limited period of time in order to protect its collateral for eventual resale in a commercially reasonable manner; or

(4) a franchisor that cancels a franchise agreement due to material default by the franchisee;

F. "transfer" means every means, direct or indirect, formal or informal, absolute or conditional, of assigning, selling, granting or disposing of the rights to, ownership in, or possession of property used in a business;

G. "transferred to evade or defeat any tax" means a transfer to a successor where:

(1) the transfer is between persons specified in 26 U.S.C. section 267(b); or

(2) the department has filed a notice of lien according to the provisions of Section 7-1-38 NMSA 1978 and:

(a) the successor makes payment of all or part of the purchase money to any party(s) other than the transferor; or

(b) the successor makes payment of all or part of the purchase money in cash or other means that prevents the department from asserting its lien interest in the proceeds.

[10/31/96; 3.1.10.7 NMAC - Rn, 3 NMAC 1.10.7, 1/15/01; A, XXX]

3.1.10.16 **[DETERMINATION OF SUCCESSOR IN BUSINESS:**

A. The following indicia are used by the secretary or secretary's delegate as factors in determining whether a business is a successor:

(1) Has a sale and purchase of a major part of the materials, supplies, equipment, merchandise or other inventory of a business enterprise occurred between a transferor and a transferee in a single or limited number of transactions?

(2) Was a transfer not in the ordinary course of the transferor's business?

(3) Was a substantial part of both equipment and inventories transferred?

(4) Was a substantial portion of the business enterprise that had been conducted by the transferor continued by the transferee?

(5) By express or implied agreement did the transferor's goodwill follow the transfer of the business properties?

(6) Were uncompleted sales, service or lease contracts of the transferor honored by the transferee?

(7) Was unpaid indebtedness to suppliers, utility companies, service contractors, landlords or employees of the transferor paid by the transferee?

(8) Was there an agreement precluding the transferor from engaging in a competing business to that which was transferred?

B. If one or more of the indicia mentioned above are present, the secretary or secretary's delegate may presume that ownership of a business enterprise has transferred to a successor in business:

C. Example 1: A father owning a business enterprise in sole proprietorship decided to retire. He transferred the substantial part of all tangible and intangible business property to his son. The father was liable for payment of state, municipal and county gross receipts taxes in the amount of \$10,000 on the date of transfer. The son continued the business enterprise, but changed the trade name, added some new product lines, sold off some obsolete equipment and rented new store, warehouse and office business locations. The son is a successor in business to his father and shall follow the provisions of Subsection 7161C NMSA 1978 by withholding or paying over the amount due.

D. Example 2: A person owning a road construction company sold one-half of the company's new and used heavy equipment to another person to reduce the company's inventory of construction equipment because the person planned to discontinue bidding on outofstate road projects. The person plans to continue road construction services in New Mexico using the remaining equipment. The purchaser of the heavy equipment is not a successor in business to the seller since few of the indicia are present for determination of a successor in business:

E. Example 3: A title and abstract company which had been inactive for several months sold its remaining assets to a purchaser who incorporated the tangible and intangible property into the purchaser's own business. The seller was liable for payment of gross receipts taxes on the date of the transfer of the business assets and the purchaser failed to withhold and place into a trust account a sufficient amount of the purchase price to cover the taxes owed

or to pay over to the department the seller's unpaid assessments of gross receipts taxes. The purchaser claimed to be unaware of the seller's tax liabilities. The department made a demand on the purchaser for payment and gave the amount and basis of the unpaid assessments of tax for which the seller was liable, in accordance with Subsection 7163A NMSA 1978. The New Mexico court of appeals upheld the department's determination that a business which changes hands need not be an active or solvent business to come under the provisions of Section 7161 NMSA 1978. Although not all the separate indicia listed in Section 3.1.10.16 NMAC were applicable to this illustration, the indicia of Paragraphs 3.1.10.16A(1) through (4) NMAC used by the department did apply and supported a presumption to meet the statutory requirements of Section 7161 NMSA 1978. (*Sterling Title Co. v. Commissioner of Revenue*, 85 N.M. 279)

F. For the purposes of Sections 7161 through 7163 NMSA 1978 and Section 3.1.10.16 NMAC:

(1) "mere continuation" is determined by the "substantial continuity test" used in other contexts where the government is seeking to impose successor liability and is determined by addressing whether the successor maintains the same business with the same employees doing the same jobs under the same supervisors, work conditions and production process and produces the same product for the same customers. See *B.F. Goodrich v. Betkoski*, 99 F.3d 505 (2nd Cir. 1996);

(2) "successor" means any transferee of a business or property of a business, except to the extent it would be materially inconsistent with the rights of secured creditors that have perfected security interests or other perfected liens on the business or property of the business. A "successor" may include a business that is a mere continuation of the predecessor after those connected with the business re-acquire at a foreclosure sale property used in the predecessor's business, a business that is acquired and run for indefinite period by a creditor of the predecessor and any business that assumes the liabilities of the predecessor. A "successor" does not include a disinterested third party who purchases property at a commercially reasonable foreclosure sale, a bank or other financial institution or government that acquires and operates a business for a limited period of time in order to protect its collateral for eventual resale in a commercially reasonable manner or a franchisor that cancels a franchise agreement due to material default by the franchisee;

(3) "transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with the property of a business; and

(4) “used in any business” means reasonably necessary for the business’s continued operations, whether or not the property is actually owned by the business.]

LIABILITY OF SUCCESSOR IN BUSINESS:

A. Transfers imposing liability on successor in business. A transfer of property used in any business resulting in a transfer of the ownership of a business enterprise or line of business subject to any lien created according to the provisions of Section 7-1-37 NMSA 1978 shall be treated as a transfer to a successor in business and the successor shall be subject to the liabilities imposed by Sections 7-1-61 and 7-1-63 NMSA 1978. A transfer of the ownership of a business enterprise or line of business has occurred where there has been a transfer not in the ordinary course of business of property used in a business. Factors supporting a determination that a transfer subject to the liabilities imposed by Sections 7-1-61 and 7-1-63 NMSA 1978 has occurred include, but are not limited to, the following:

(1) property used in the business or line of business of the transferor is in the possession or control of the successor;

(2) the successor utilizes the business location(s) or premises utilized by the transferor in the operation of the business enterprise or line of business;

(3) the successor utilizes the trademark(s), service mark(s), customer or client list(s) or other intangible property of the transferor;

(4) the successor provides or offers to provide services to the customers or clients of the transferor that are essentially similar to the services provided or offered during transferor’s operation of the business enterprise or line of business;

(5) the transferor and successor enter into an agreement prohibiting transferor from competing with the successor or otherwise requiring transferor to discontinue the operation of the business enterprise or line of business transferred; or

(6) key personnel of the transferor are employed or utilized by the successor in the operation of the business enterprise or line of business.

B. Liability of successor in business. A successor in business shall be subject to assessment of tax according to the provisions of Subsection A of Section 7-1-63 NMSA 1978 and shall be liable for the full value of the transferred tangible and intangible property. In addition to the liability for the full value of the transferred tangible and intangible property, a successor in business shall be liable for the full amount of tax assessed upon the transferor where:

(1) the tangible and intangible property was transferred to evade or defeat any tax;

(2) the transfer to the successor represents a de facto merger, consolidation or the mere continuation of the transferor; or

(3) the successor has assumed the liability of the transferor.

C. Examples.

(1) Company A was a corporation with contracts to provide services to large manufacturing companies. Company A incurred a substantial tax debt. Company B purchased the equipment and other assets of Company A and Company A ceased business. The purchase agreement provides that Company B assumes the liability for Company A’s debts and liabilities, and does not disclaim liability for Company A’s tax obligation. Company B began performing services under Company A’s contracts with the same manufacturing companies using the Company A’s equipment and former employees. Company B has assumed the tax liability of Company A and is liable to the full extent of Company A’s tax liability.

(2) Company A operated two franchise restaurants and incurred a tax liability. Company A leased all of its equipment from Company B. Company A lost its franchise and closed its restaurants. The corporate officers of Company A then started Company C, which opened a restaurant at a new location and leased all of its equipment for the operation of those stores from Company B. Company C is not a successor to Company A because there was no transfer of business assets from Company A to Company C.

(3) Company B purchased the assets of a line of business operated by Company A. In the purchase agreement, Company B explicitly disclaimed liability for Company A’s tax liability. The purchase price for the assets was \$50,000. The fair market value of the assets transferred was \$100,000. Company B is liable for Company A’s tax liability up to \$100,000, which represents the full value of the assets transferred from Company A.

(4) Company A, a proprietorship, ceased operations on April 1, 2009. On July 1, 2009, Company B began operations as a limited liability company. Both companies operated at the same location and used the same phone number. The proprietor of Company A is the sole member of Company B, and operates Company B. Company B entered into contractual services with some of the same clients serviced by Company A, and had additional client contracts. Company B is a mere continuation of Company A and is liable for the full tax liability of Company A.

(5) Company A, a proprietorship, with a substantial tax liability, transferred all of its assets to Company B, a proprietorship operated by the son of the owner of Company A. Company B opened with a different name and at a different location, but uses

the assets of Company A, and provides the same services as Company A. Company B is a successor to Company A and, because the transfer was made to evade or defeat tax liability, Company B is liable for the full tax liability of Company A.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 6/15/98; 3.1.10.16 NMAC - Rn & A, 3 NMAC 1.10.16, 1/15/01; A, XXX]

3.2.10.8 TANGIBLE PERSONAL PROPERTY ACQUIRED OUTSIDE NEW MEXICO FOR USE IN NEW MEXICO:

A. Tangible personal property acquired [as a result of a transaction] inside or outside New Mexico as a result of a transaction with a person located outside New Mexico which would have been subject to the gross receipts tax had [that transaction occurred in] the tangible personal property been acquired from a person with nexus with New Mexico is subject to the compensating tax if that tangible personal property is subsequently used in New Mexico. For compensating tax purposes, a transaction would have been “subject to the gross receipts tax” when the transaction would have been within New Mexico’s taxing jurisdiction, the receipts from the transaction would have been defined as gross receipts, the receipts would not have been deductible or exempt and taxation by New Mexico would not be pre-empted by federal law.

B. Example 1: X, a New Mexico [resident] business, purchases the furniture for a new [house] office from an El Paso, Texas, merchant. X brings this furniture into New Mexico in X’s truck and puts it in the [house] office. If X had purchased the furniture [in] from a New Mexico business, the transaction would have been subject to the gross receipts tax. Therefore, X is liable for compensating tax measured by the sale price of the furniture. However, X may take a credit of up to 5% of the sale price of the furniture against the compensating tax liability on this furniture for any sales tax which was paid in Texas on the purchase of the furniture. Also, X pays no separate tax if tax collected by the seller is shown on the invoice as the New Mexico compensating tax collected by the El Paso, Texas, merchant.

C. Example 2: G operates a carnival concession. G has purchased tangible personal property in Iowa, to be used as prizes for persons performing certain skills at the carnival concession. G is subject to the compensating tax on the value of the tangible personal property acquired in Iowa, which is used as prizes in New Mexico.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/28/94, 11/15/96, 3.2.10.8 NMAC - Rn, 3 NMAC 2.7.8, 4/30/01; A, 4/30/07; A, XXX]

3.2.10.15 MATERIALS USED ON NONTAXABLE PROJECTS.

A. Construction materials purchased with a nontaxable transaction certificate and subsequently used in a project, other than a project located on tribal territory the state taxation of which is pre-empted by federal law, which upon completion is not subject to gross receipts tax are subject to the compensating tax for the value of materials used in the project. [This version of Subsection A of Section 3.2.10.15 NMAC applies to transactions and uses occurring on or after July 1, 2000.]

B. Example: X construction company purchases a truckload of lumber from A lumber company with whom X has previously executed the appropriate nontaxable transaction certificate. X takes delivery of, and title to, the lumber at A's yard in New Mexico. X then transports the lumber by its own vehicle to a location outside New Mexico and incorporates the lumber into a construction project outside New Mexico. X is subject to the compensating tax on the value of the lumber purchased from A lumber company since the construction project outside New Mexico is not subject to gross receipts tax upon completion.

[1/26/86, 2/21/86, 4/2/86, 11/26/90, 11/15/96, 3.2.10.15 Rn & A, 3 NMAC 2.7.15, 10/31/00; A, XXX]

3.2.10.19 TANGIBLE PERSONAL PROPERTY FURNISHED TO DEALERS BY OUT-OF-STATE SERVICE CONTRACT ADMINISTRATORS:

Tangible personal property, such as contract forms and promotional and administrative materials, furnished to New Mexico dealers by out-of-state companies which undertake to administer automotive service contracts for a fee is property acquired as a result of a transaction with a person located outside New Mexico [in a transaction] that would have been subject to the gross receipts tax had the [transaction occurred in] the property been acquired from a person with nexus with New Mexico. The value of the tangible personal property is subject to compensating tax to be paid by the dealers when the property is stored, used or consumed in New Mexico.

[6/28/89, 11/26/90, 10/28/94, 11/15/96, 3.2.10.19 NMAC - Rn, 3 NMAC 2.7.19, 4/30/01; A, XXX]

3.2.10.2 TELECOMMUNICATIONS SERVICE USED BY HOTELS AND MOTELS:

[A.] If a hotel, motel or similar establishment has represented to a company engaged in the business of providing interstate telecommunications service that the hotel, motel or similar establishment is

purchasing interstate telecommunication service for use as a service to guests of the hotel, motel or similar establishment for an additional separately stated charge, it is liable for compensating tax on the value of any interstate telecommunications service purchased but not separately stated in its billings to its guests.

[B. Section 3.2.10.20 NMAC applies to receipts from transactions occurring on or after July 1, 1992.] [3/9/92, 11/15/96, 3.2.10.20 NMAC - Rn & A, 3 NMAC 2.7.20, 4/30/01; A, XXX]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

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

Gross Receipts and Compensating Tax Act

3.2.1.27 NMAC Section 7-9-3(J) NMSA 1978

(Property)

3.2.106.7 NMAC Section 7-9-18 NMSA 1978

(Definitions)

3.2.211.17 NMAC Section 7-9-53 NMSA 1978

(Receipts From License to Use Real Property)

These proposals were placed on file in the Office of the Secretary on June 15, 2012. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of these proposals, if filed, will be filed as required by law on or about August 15, 2012.

A public hearing will be held on these proposals on Thursday, July 19, 2012, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before July 19, 2012.

3.2.1.27

PROPERTY.

A. Bills, notes, etc.: Tangible personal property does not include bills, notes, checks, drafts, bills of exchange, certificates of deposit, letters of credit, or any negotiable instrument. Coins, stamps, and documents which have a historic value or market value in excess of their face value are tangible personal property.

B. Sale of license to use software is sale of property:

(1) The definition of property includes licenses. The sale of a license to use software constitutes a sale of property and comes within the definition of gross receipts.

(2) The transaction constitutes a sale of a license to use the software program when a computer software company sells an already-developed software program where:

(a) no extraordinary services are performed in order to furnish the program;

(b) the buyer pays a fixed amount for the license to use the program and use is generally limited to a specific computer; and

(c) the buyer may not resell to any other person a license to use the program and may not transfer the software package itself to any other person.

C. Granting the right to hunt is the sale of a license to use.

For purposes of this section, granting by a landowner to another, a right to access and hunt within the boundaries of the landowner's real property is a license to use the real property. A license is a form of property as defined in Subsection J of Section 7-9-3 NMSA 1978 and the receipts from the sale of a license are subject to the gross receipts tax. The following are four types of hunting-related transactions, that when sold, may include the sale of a license:

(1) the sale of a hunting package that includes permission to hunt on private land;

(2) the sale of an authorization to hunt on private land granted by the New Mexico department of game and fish;

(3) the granting of permission or access to enter onto the private land to hunt;

or

(4) the sale of a license/permit issued by the state to hunt on public land.

D. Receipts from selling a hunting package are subject to gross receipts tax to the extent that the individual components of the package are not deductible or exempt from the gross receipts tax pursuant to the Gross Receipts and Compensating Tax Act. A person that sells a hunting package that consists of taxable and nontaxable components must reasonably allocate the receipts based on the value of the individual components. For purposes of this section, a "hunting package" may include the following components:

(1) lodging;

(2) meals;

(3) delivery and transportation services;

(4) guide services;

(5) license to use the property;

(6) carcass of the hunted animal;

or

(7) other services or tangible personal property included in the package.

E. Example: X owns a ranch in New Mexico and sells guided hunting packages. Included in the price for the hunt X guarantees that the hunter will retrieve an animal, lodging at the ranch, meals, experienced hunting guide, retrieval, caping, delivery to local meat processor and taxidermist. Not included in the price are expenses associated with alcohol consumption, meat processing, taxidermy services or gratuities for guides. X receipts from the sale of this type of hunting package includes receipts from providing services, the sale of tangible personal property (meals), the sale of the carcass (possibly livestock) and from granting a license to use the land within the ranch boundaries. X must determine a reasonable method of allocating their receipts between components that are subject to gross receipts tax and those that are exempt from gross receipts tax (sale of livestock).

[12/5/69, 3/9/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 9/17/91, 11/15/96; 3.2.1.27 NMAC - Rn, 3 NMAC 2.1.27, 4/30/01; A, XXX]

3.2.106.7 DEFINITIONS

A. **AGRICULTURAL PRODUCTS:** Agricultural products are those products and the intermediate stages thereof which are normally raised or grown primarily for use as fiber or food for human or animal consumption.

[B. **LIVESTOCK:**

(1) The term "livestock" means:

(a) horses, including racehorses and pet horses; and

(b) those other domestic animals which are neither fish nor fowl and which are raised or used principally for one or more of the following purposes in the ordinary course of business:

(i) as food for human consumption, such as beef cattle;

(ii) for production of food for human consumption, such as dairy cattle for milk and related products;

(iii) for fiber, hides or pelts, such as sheep for wool; or

(iv) as breeding stock for animals raised or used principally for the purposes enumerated in Items (i) through (iii) of this subparagraph;

(2) The term "livestock" excludes animals, other than horses, not used as food for human consumption, for production of food for human consumption, for fiber, hides or pelts or as breeding stock for one of the

foregoing purposes, fish and fowl.

(3) The following examples illustrate the provisions of Subsection B of Section 3.2.106.7 NMAC:

(a) Example 1: X owns a kennel. X breeds and sells dogs as part of the business. X must report the gross receipts derived from the sale of dogs. Dogs are not livestock.

(b) Example 2: Animals raised and used as laboratory animals, such as rats, mice, hamsters, guinea pigs, rabbits and primates, are not livestock.

C.] **B. POULTRY:** The term "poultry" means domestic fowl raised for sale or use in the ordinary course of business or for the production of meat, eggs, hides or feathers for sale or use in the ordinary course of business.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 12/23/92, 11/15/96; 3.2.106.7 NMAC - Rn, 3 NMAC 2.18.1.7, 5/15/01; A, XXX]

3.2.211.17 RECEIPTS FROM LICENSE TO USE REAL PROPERTY:

A. Receipts derived from a license to use real property may not be deducted from gross receipts under Section 7953 NMSA 1978, except that receipts derived from selling or leasing the entirety of the hunting rights with respect to a property for a period of one year or more will be considered the sale or lease of real property for the purposes of this deduction. Receipts from selling a hunting package are subject to gross receipts tax to the extent that the individual components of the package are not deductible or exempt from the gross receipts tax pursuant to the Gross Receipts and Compensating Tax Act. A person that sells a hunting package that consists of taxable and nontaxable components must reasonably allocate the receipts based on the value of the individual components. For purposes of this section, a "hunting package" may include the following components:

(1) lodging;

(2) meals;

(3) delivery and transportation services;

(4) guide services;

(5) license to use the property;

(6) carcass of the hunted animal;

or

(7) other services or tangible personal property included in the package.

B. Example 1: X owns a ranch in New Mexico and is engaged in the business of ranching. Incidental to X's main business, X permits members of the public to go on X's property to hunt and fish for specified periods. X collects a fee from each person who does so. X's receipts from these fees are subject to the gross receipts tax because X merely granted a license to use. No property is leased or sold. If X sells

or leases the entirety of the hunting rights on X's property for one year or more to a single individual or entity, as distinct from permitting several different individuals to hunt for various periods during a year, that constitutes the sale or lease of real property and receipts therefrom may be deducted under Section 7-9-53 NMSA 1978.

C. Example 2: X owns an unlighted dirt parking lot in Albuquerque. Y enters into an agreement with X whereby Y agrees to pay a monthly fee and X agrees to permit Y to park Y's car in an assigned space for a period of one month. Z brings an automobile to X's parking lot and parks it there for a daily fee. Z does so only once. X's receipts from providing the service of supplying parking spaces or selling a license to use parking spaces to Y and Z are not deductible from gross receipts as a lease of real property pursuant to Section 7-9-53 NMSA 1978.

D. Example 3:

(1) S owns a flying service and related facilities. S enters into several types of agreements with its customers:

(a) an agreement with A on a month-to-month basis, permitting A to store an aircraft in an assigned "stall" in one of several hangars each containing eight to twelve such "stalls", in return for a monthly fee. S specifically limits A's use of the premises to storage of the aircraft in the conduct of A's business in an adjacent airport;

(b) an agreement with B, on a month-to-month basis, permitting B to store an aircraft in an assigned "tie-down" space in a large open-span hangar containing spaces for eight such aircraft, in return for a monthly fee;

(c) an agreement with C, a transient customer, on an overnight or day-to-day basis, permitting C to store an aircraft in a specified "tie-down" space in the open-span hangar described above, in return for a daily fee.

(2) S's receipts from providing the service of supplying hangar space and open storage space for aircraft, or of granting a license to use such space, to A, B and C are subject to the gross receipts tax. S's receipts are not deductible from gross receipts as a lease of real property pursuant to Section 7-9-53 NMSA 1978.

E. Example 4: X owns a ranch in New Mexico and sells guided hunting packages. Included in the price for the hunt X guarantees that the hunter will retrieve an animal, lodging at the ranch, meals, experienced hunting guide, retrieval, caping, delivery to local meat processor and taxidermist. Not included in the price are expenses associated with alcohol consumption, meat processing, taxidermy services or gratuities for guides. X receipts from the sale of this type of hunting package

includes receipts from providing services, the sale of tangible personal property (meals), the sale of the carcass (possibly livestock) and from granting a license to use the land within the ranch boundaries. X must determine a reasonable method of allocating their receipts between components that are subject to gross receipts tax and those that are exempt from gross receipts tax (sale of livestock).

[1/30/78, 6/17/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 7/15/96; 3.2.211.17 NMAC - Rn, 3 NMAC 2.53.17 & A, 5/31/01; A, XXX]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

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

Gross Receipts and Compensating Tax Act

3.2.229.7 NMAC Section 7-9-69 NMSA 1978
(Definitions)

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

Gross Receipts and Compensating Tax Act

3.2.229.8 NMAC Section 7-9-69 NMSA 1978
(General Examples)

Other Tax Credits Act

3.13.8.12 NMAC Section 7-9G-2 NMSA 1978
(Using the Credit)

These proposals were placed on file in the Office of the Secretary on June 29, 2012. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of these proposals, if filed, will be filed as required by law on or about August 30, 2012.

A public hearing will be held on these proposals on Wednesday, July 25, 2012, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible

copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before July 25, 2012.

3.2.229.7 **DEFINITIONS:** As used in Section 7-9-69 NMSA and in this part, "administrative services" is support that is given at the administrative side of a business. This includes such areas as accounting, office management, and data collection.

[3/15/96; 3.2.229.7 NMAC - Rn, 3 NMAC 2.69.7, 6/14/01; A, XXX]

3.2.229.8 G E N E R A L EXAMPLES:

A. The deduction provided by this section contains several restrictions, among them are these:

(1) receipts must be from activities specified in Subsection A of Section 7-9-69 NMSA 1978 and performed on a nonprofit or cost basis;

(2) excluded are receipts from sharing equipment or facilities other than office equipment or offices; and

(3) excluded are receipts from transactions with entities other than [affiliated corporations as defined in this section] an affiliate as defined in Paragraph (1) of Subsection B of Section 7-9-69 NMSA 1978.

B. Example 1: D is a wholly owned subsidiary of C. C does the [machine] accounting for D for the actual cost of the accounting work plus ten percent. C may not deduct the receipts which it receives from D. The deduction is only for receipts from accounting services rendered on a nonprofit or cost basis.

C. Example 2: D, a wholly owned subsidiary of C, leases construction equipment to C on a cost basis. D cannot deduct the gross receipts which it received from this transaction. This transaction does not involve the performance of accounting, managerial or administrative services or the joint use or sharing of office machines and facilities upon a nonprofit or cost basis.

D. Example 3: B and C are subsidiaries of A. A owns 80% of the voting stock of B and 40% of the voting stock of C. B performs administrative and accounting services for A and C on a cost basis. B may deduct the receipts derived from performing the administrative and accounting services for A. B may not deduct the gross receipts which it receives from C because C is not an [affiliated corporation as defined by this section] an affiliate as defined in Paragraph (1) of Subsection B of Section 7-9-69 NMSA

1978.

[E. — This version of Section 3.2.229.8 NMAC is retroactively applicable to taxable events occurring on or after July 1, 1993.]

[12/5/69...3/15/96; 3.2.229.8 NMAC - Rn, 3 NMAC 2.69.8 & A, 6/14/01; A, XXX]

3.13.8.12 USING THE CREDIT:

A. Any amount of advanced energy tax credit claimed and approved may be applied by the approved claimant against any combination of the personal or corporate income tax, or the gross receipts, compensating and withholding tax owed by the claimant.

B. Once the qualified generating facility or the interest owner in the qualified generating facility [is approved] receives a certificate of eligibility for the qualified generating facility, the credit amount may not be subsequently transferred to any other person, including an affiliate, unless that person holds an interest in the qualified generating facility.

C. An entity that is a pass-through entity pursuant to Section 7-3A-2 NMSA 1978, must pass the credit to its owners, members, partners or beneficiaries.

[E.] D. Examples:

(1) Corporation T sets up a qualified generating facility in New Mexico. T subsequently qualifies for \$50,000 in advanced energy tax credit. After applying \$13,000 to its own gross receipts, compensating and withholding tax liabilities, T creates a subsidiary corporation, S, to own and operate all of T's New Mexico business, including the qualified generating facility. T may not transfer the \$37,000 remaining authorized advanced energy tax credit to S nor may S apply any of the remaining tax credit to S's corporate income tax liability, or gross receipts, compensating and withholding tax liability. T, to the extent T still has corporate income tax, or gross receipts, compensating and withholding tax obligations, may apply the \$37,000 balance against those obligations.

(2) When two or more corporations merge, the resultant corporation is a continuation of any predecessor corporation. When a business organization changes its form, as for example from a sole proprietorship to a corporation or from a corporation to [a limited liability company] an S corporation, so that the resultant entity is a successor in business to the predecessor, the resultant entity shall be deemed a continuation of the predecessor for advanced energy tax credit purposes. In both cases, since there is no transfer, the resultant entity may claim any amount of approved but unclaimed advanced energy tax credit held by a predecessor.

[3.13.8.12 NMAC - N, 12/31/08; A, 3/15/10; A, XXX]

**NEW MEXICO
DEPARTMENT OF
TRANSPORTATION**

**THE NEW MEXICO DEPARTMENT
OF TRANSPORTATION**

NOTICE OF PUBLIC HEARING

The New Mexico Department of Transportation (NMDOT) will hold a public hearing for the purpose of receiving oral and written public comments on Rule Number 18.27.2 NMAC, Division 100 - General Provisions Standard Specifications for Highway and Bridge Construction. The purpose of the proposed rule is to replace the current rule established January 31, 2008.

The hearing is scheduled on Tuesday, July 17, 2012, from 1:30 p.m. to 4:00 p.m. at the New Mexico Department of Transportation, General Office, Training Rooms 1 and 2, located at 1120 Cerrillos Road, Santa Fe, New Mexico. A copy of the proposed rule can be obtained by visiting <http://www.dot.state.nm.us/Construction.html> or by contacting David E. Trujillo P.E., telephone (505) 660-3751, e-mail david.trujillo2@state.nm.us, or Armando M. Armendariz P.E., telephone (505) 490-2740, e-mail armando.armendariz@state.nm.us to request a copy of the proposed rule or provide written correspondence to:

New Mexico Department of
Transportation
C/O State Construction Bureau,
Attention: Division 100
P.O. Box 1149, SB 4
Santa Fe, New Mexico 87504-
1149

The hearing will be held before David E. Trujillo P.E., NMDOT State Construction Engineer. Interested persons may also present their views by written statements submitted on or before Friday, August 17, 2012, to:

New Mexico Department of
Transportation
C/O State Construction Bureau,
Attention: Division 100
P.O. Box 1149, SB 4
Santa Fe, New Mexico 87504-
1149

Telephone (505) 490-2740.
E-mail armando.armendariz@state.nm.us

Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule in

an accessible form may contact David E. Trujillo P.E., or Armando M. Armendariz P.E., at (505) 660-3751 or (505) 490-2740 respectively, at least ten (10) days before the hearing.

**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 July 23, 2012 from 1:00 P.M. until 3:00 P.M. The purpose of the public hearing will be to obtain input on amendments to parts: 11.3.100, 11.3.200, 11.3.300, 11.3.400 and 11.3.500 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 Rudolph Arnold. Written comments must be received no later than 5 p.m. July 20, 2012. However, the submission of written comments as soon as possible is encouraged.

Copies of the amended rules may be accessed at <http://www.dws.state.nm.us/> or obtained from Rudolph Arnold Tel.: (505) 841-8672 rudolph.arnold@state.nm.us. The amended 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 Mr. Rudolph Arnold 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**

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Adopted Rules

NEW MEXICO OFFICE OF THE ATTORNEY GENERAL CONSUMER PROTECTION DIVISION

The New Mexico Attorney General repeals its rule entitled REQUIREMENTS FOR SPOT DELIVERY OF MOTOR VEHICLES 12.2.13 NMAC (filed 04/16/12) and replaces it with 12.2.13 NMAC entitled REQUIREMENTS FOR SPOT DELIVERY OF MOTOR VEHICLES, effective 08/01/12.

NEW MEXICO OFFICE OF THE ATTORNEY GENERAL CONSUMER PROTECTION DIVISION

**TITLE 12 T R A D E ,
COMMERCE AND BANKING
CHAPTER 2 C O N S U M E R
PROTECTION
PART 13 REQUIREMENTS
FOR SPOT DELIVERY OF MOTOR
VEHICLES**

12.2.13.1 ISSUING AGENCY: Office of the New Mexico Attorney General. [12.2.13.1 NMAC - Rp/E, 12.2.13.1 NMAC, 8/1/2012]

12.2.13.2 SCOPE: Motor vehicle dealers. [12.2.13.2 NMAC - Rp/E, 12.2.13.2 NMAC, 8/1/2012]

12.2.13.3 STATUTORY AUTHORITY: New Mexico Unfair Practices Act, Section 57-12-1 NMSA 1978 et seq. [12.2.13.3 NMAC - Rp/E, 12.2.13.3 NMAC, 8/1/2012]

12.2.13.4 DURATION: Permanent. [12.2.13.4 NMAC - Rp/E, 12.2.13.4 NMAC, 8/1/2012]

12.2.13.5 EFFECTIVE DATE: August 1, 2012, unless a later date is cited at the end of a section. [12.2.13.5 NMAC - Rp/E, 12.2.13.5 NMAC, 8/1/2012]

12.2.13.6 OBJECTIVE:

A. The purpose of this rule is to accomplish two principal objectives:

(1) deter unfair business practices in the sale of motor vehicles that result in economic harm, and

(2) provide clear legal standards for the sale of motor vehicles where the sale of the vehicle is contingent upon approval of financing of the vehicle.

B. The attorney general's office has received numerous complaints from consumers where the motor vehicle dealer asserts that the transaction is contingent upon financing of the vehicle or approval of financing, but where adequate disclosure of this contingency is not made in a timely manner, where the dealer asserts the right to cancel the contract based on a failure of this contingency or right to unilaterally renegotiate the terms of the sale, or where the dealer sells the consumer's trade-in vehicle prior to confirmation of financing and finalization of the transaction thus converting the use and possession of the consumer's trade-in vehicle.

[12.2.13.6 NMAC - Rp/E, 12.2.13.6 NMAC, 8/1/2012]

12.2.13.7 DEFINITIONS: The following terms have the meanings set forth herein.

A. "Motor vehicle dealer" means:

(1) any person who sells or solicits or advertises the sale of new, demonstration or used motor vehicles and who is licensed pursuant to the motor vehicle code; or

(2) any person who sells four or more motor vehicles in a calendar year whether licensed or not.

B. "Motor vehicle" means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from batteries. This includes but is not limited to automobiles, trucks of all varieties, motor cycles, recreational vehicles, reconstructed motor vehicles, specialty constructed motor vehicles, road tractors, all of which may be for personal, household, or commercial use.

C. "Purchase price" means the actual price before the deduction of the value of any trade-in and shall not include such charges as taxes, registration fees, extended warranties, service contracts, credit disability insurance, or any other charges incidental to the purchase.

D. "Revocation" means the cancellation, voiding or annulment of the contract or withdrawing of acceptance to purchase the motor vehicle.

E. "Spot delivery" means a contingent motor vehicle sale transaction by which the buyer is allowed to take possession of the motor vehicle pending the finalization of financing.

[12.2.13.7 NMAC - Rp/E, 12.2.13.7 NMAC, 8/1/2012]

12.2.13.8 SPOT DELIVERY GENERALLY: In a sale conditioned on financing, it is an unfair trade practice for a motor vehicle dealer who delivers a new,

demonstration or used motor vehicle to a buyer to.

A. Orally or in writing represent to the buyer at the time of signing the purchase order agreement or sales transaction document that the sale is final and complete if the financing contingency is unmet.

B. Refuse to void and nullify the contract if financing is not finalized within 20 calendar days from the date of delivery of the motor vehicle.

C. Fail to return to the buyer, within a reasonable time, all sums of money paid or collateral including a trade-in provided by the buyer and held by the motor vehicle dealer.

D. Accept a trade-in and then sell or remove the trade-in from the lot where the transaction occurred before the financing of the purchased motor vehicle has been finalized and the sale completed.

E. Fail to pay the retail value of the trade-in vehicle or the assigned value of the trade-in itself, as well as all other monies or things due the buyer should the motor vehicle dealer sell or remove the trade-in from the lot before the financing has been finalized. The risk of loss during the period shall be assessed against the motor vehicle dealer.

F. Fail to timely pay the lender the monthly scheduled payment, should a payment become due before the sale is final. The buyer will reimburse the dealer for such a payment if the contract is rightfully revoked in accordance with this rule.

G. Charge the buyer for any costs associated with the refurbishing, repair or maintenance of the trade-in or for any sums paid by the motor vehicle dealer to pay off the outstanding debt owed on the trade-in. However, should the buyer rightfully revoke the contract, buyer will reimburse the motor vehicle dealer for payments made on the outstanding balance of the trade in.

H. Fail to include the following statement in no less than bold 12 point type, conspicuously placed on the purchase order agreement or sales transaction document and signed **ONLY** by the buyer subject to the financing contingency: **SPOT DELIVERY:** Buyer has the right to void this purchase if financing is not approved within 20 calendar days after delivery of vehicle. Buyer has the right to the return of any trade-in and all money paid by buyer, if buyer voids this contract under this paragraph. To exercise this right, buyer must return the vehicle to the dealer in the same condition as received (normal wear and tear excepted), within 48 hours of receipt of notice that financing was not approved.

Dealer shall not charge any fees as long as the vehicle is returned as provided in this paragraph.

I. Charge any usage fee or any other type of surcharge to the buyer in association with the rightful revocation of the purchase order agreement or sales transaction document as provided by this rule.

J. Fail to maintain for a period of three years in the dealer file jacket the following documents regardless of whether the sales transaction is finalized:

(1) copies of all credit applications, transmittals sent to or received from any lender, or any documents related to the approval or denial of financing, offers or counteroffers of financing, or requests for additional information related to a request for financing;

(2) copies of every signed purchase agreement or sales transaction document; and

(3) a log recording the date the dealership notified the buyer of the changes to the contract, with a detailed description of the changes to the terms and conditions of the sale of the vehicle, and the date upon which the purchaser agreed to each of the changes.

K. Fail to provide a copy of every signed purchase order agreement or sales transaction document to the buyer at the time of signing.

L. Make any statement or representation to the buyer, orally or in writing, either before or after the purchase order agreement or sales transaction document is signed, that misleads the buyer as to his rights of revocation under this rule, including but not limited to, misrepresenting to the buyer his right to revoke acceptance of the contract and "walk away" without incurring any legal obligation should the motor vehicle dealer fail to meet the contingency financing agreement.

[12.2.13.8 NMAC - Rp/E, 12.2.13.8 NMAC, 8/1/2012]

12.2.13.9 SEVERABILITY: If any portion of this rule is held invalid, the remainder of the rule and application thereof shall remain unaffected.

[12.2.13.9 NMAC - Rp/E, 12.2.13.9 NMAC, 8/1/2012]

HISTORY OF 12.2.13 NMAC:

History of Repealed Material:

12.2.13 NMAC, Requirements for Spot Delivery of Motor Vehicles, filed 4/16/2012 - Repealed effective 6/1/2012.

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

This is an amendment to 3.2.250 NMAC, Section 9, effective 7/1/2012.

3.2.250.9 REPORTING:

A. Every taxpayer that claims a deduction under Section 7-9-110.1 NMSA 1978 shall report to the economic development department, on forms provided by the department, the following information no later than ~~[30 days after reporting the deduction to the taxation and revenue department]~~ August 1 for the full year ending on the previous June 30:

(1) the amount of the deduction claimed;

(2) the number of permanent jobs created by the taxpayer as a result of the deductions claimed;

(3) the number of temporary jobs created by the taxpayer as a result of the deductions claimed; and

(4) an estimate of the net revenue to the state as a result of the deductions claimed.

B. Every taxpayer that claims a deduction under Section 7-9-110.2 NMSA 1978 shall report to the economic development department, on forms provided by the department, the amount of the deduction claimed, no later than 30 days after reporting the deduction to the taxation and revenue department.

C. If any deduction amount reported in Subsections A and B above is subsequently denied by the taxation and revenue department, the taxpayer must report the amount of the denial to the economic development department no later than 30 days after receiving notice of the denial or after the resolution of all administrative proceedings, whichever is later.

[3.2.250.9 NMAC - N, 7/1/2012; A, 7/1/2012]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.10 NMAC, Sections 9 and 13, effective July 2, 2012.

16.10.10.9 REPORTING OF ADVERSE ACTIONS ON CLINICAL PRIVILEGES.

A. Actions that must be reported by the health care entity:

(1) any professional review action that adversely affects the clinical privileges of a physician or physician assistant except as provided in Subsection C of this section;

(2) acceptance of the surrender of clinical privileges or any restriction

of such privileges while the physician or physician assistant is under investigation by the entity relating to possible incompetency or improper professional conduct; or, in return for not conducting an investigation or proceeding;

(3) in the case of a professional society, when it takes professional review action which adversely affects the membership of a physician or physician assistant in the society;

(4) failure to complete medical records if the failure is related to the physician's professional competence or conduct and adversely affects or could adversely affect a patient's health or welfare;

(5) a positive drug test for illegal substances, alcohol or unapproved medication and prescription medication not supported by appropriate diagnosis (if physician has voluntarily self reported to the New Mexico monitored treatment program (MTP), the board will not require name of physician, as it will be in a blind report from MTP).

B. Report contents. All adverse actions must:

(1) be reported to the board within thirty days of ~~[final]~~ adverse action taken pursuant to Paragraphs (1) through (5) of Subsection A of this section;

(2) include at a minimum the name, license number, and social security number of the physician or physician assistant; a description of the act(s) or omission(s) or other reasons for the action or for the surrender of privileges; action taken, date of the action and effective date of action; and,

(3) any physician or physician assistant's official addendum to the data bank report shall be reported.

C. The following actions do not require reporting to the board:

(1) actions based on the physician or physician assistant's association, or lack of association, with a professional society or association;

(2) actions based on fees, advertising, or other competitive acts intended to solicit or retain business;

(3) actions based on the physician or physician assistant's participation in prepaid group health plans;

(4) actions based on the physician or physician assistant's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice; or

(5) any other matter that does not relate to the competence or professional conduct of a physician or physician assistant;

(6) failure to complete charts (except to the extent reportable under Paragraph (4) of Subsection A of this part), maintain insurance or perform other administrative obligations that results in a suspension of clinical privileges.

[16.10.10.9 NMAC - Rp 16 NMAC 10.10.8.3, 7/15/01; A, 4/18/02; A, 1/6/12; A, 7/2/12]

**16.10.10.13 L I C E N S E E
REPORTING REQUIREMENTS.**

A. Consistent with Section 61-6-15(D)(21) NMSA 1978, in addition to the reporting requirements in Sections 8, 9 and 10 of this part, a licensee is required to report to the board any adverse action taken by: another licensing jurisdiction; a peer review body; a health care entity; a professional or medical society or association; a governmental agency; a law enforcement agency, including arrests; and any court for acts or conduct similar to acts or conduct that would constitute grounds for action under the Medical Practice Act. Reports shall be received by the board within 45 days from the date the action occurs. For the purpose of this section, the "action occurs" on the date when the ~~[decision-making body has made a final decision]~~ entities described in this subsection have taken adverse action. Any appeal of the ~~[final decision]~~ adverse action does not alter ~~[or add to the time of]~~ the requirement ~~[that the action be reported]~~ to report within 45 days ~~[from the date the decision-making body makes the decision]~~. In the case of an arrest, the arrest shall be reported within 45 days of occurrence. In the case of adverse action taken by a peer review body, health care entity, or professional or medical society or association, refer to Section 9 of this part to determine what action must be reported.

B. Failure to report any adverse action shall constitute unprofessional or dishonorable conduct pursuant to Subsection D of Section 61-6-15 NMSA 1978 of the Medical Practice Act and shall be subject to any penalty that may be imposed pursuant to Section 61-6-15 NMSA 1978.

[16.10.10.13 NMAC - N, 8/6/04; A, 1/6/12; A, 7/2/12]

End of Adopted Rules Section

Submittal Deadlines and Publication Dates 2012

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Issue Number 1	January 3	January 17
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Issue Number 3	February 1	February 15
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Issue Number 5	March 1	March 15
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Issue Number 9	May 1	May 15
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