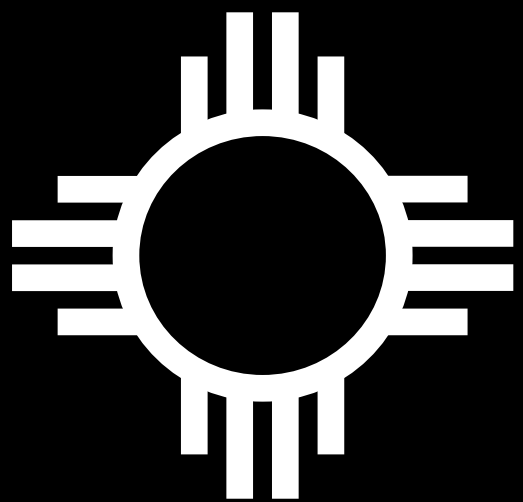


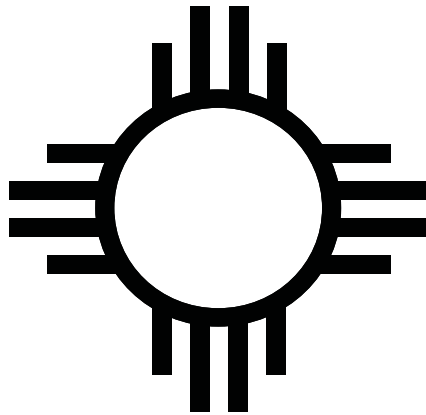
**NEW
MEXICO
REGISTER**



Volume XXIII
Issue Number 12
June 29, 2012

New Mexico Register

**Volume XXIII, Issue Number 12
June 29, 2012**



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

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New Mexico Register

Volume XXIII, Number 12

June 29, 2012

Table of Contents

Notices of Rulemaking and Proposed Rules

| | |
|---|-----|
| Environmental Improvement Board | |
| Notice of Public Meeting and Rulemaking Hearing | 379 |
| Health, Department of | |
| Notice of Public Hearing | 379 |
| Human Services Department | |
| Medical Assistance Division | |
| Notice of Public Hearings | 380 |
| Public Lands, Commissioner of | |
| Notice of Rule Making | 380 |
| Regulation and Licensing Department | |
| Construction Industries Division | |
| Notice of Public Hearings | 381 |

Adopted Rules

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A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

| | | | |
|--|--------|---|-----|
| Agriculture, Department of | | | |
| 19.15.110 NMAC | A | Biodiesel Fuel Specification, Dispensers, and Dispenser Labeling Requirements | 383 |
| Children, Youth and Families Department | | | |
| 8.15.2 NMAC | A | Requirements for Child Care Assistance Programs for Clients and Child Care Providers | 383 |
| Economic Development Department | | | |
| 5.5.50 NMAC | A | Industrial Development Training Program | 385 |
| 5.5.52 NMAC | A | Development Pre-Employment Training for Film and Multimedia Production Companies | 391 |
| Health, Department of | | | |
| 7.30.8 NMAC | R | Requirements for Family Infant Toddler Early Intervention Services | 394 |
| 7.30.8 NMAC | N | Requirements for Family Infant Toddler Early Intervention Services | 394 |
| Human Services Department | | | |
| Income Support Division | | | |
| 8.139.504 NMAC | A | New Mexico Extra Help SNAP | 409 |
| Medical Assistance Division | | | |
| 8.200.510 NMAC | A | Resource Standards | 410 |
| 8.300.22 NMAC | A | Electronic Health Records Incentive Program | 410 |
| 8.230.600 NMAC | Rn & A | Benefit Description | 411 |
| Nursing, Board of | | | |
| 16.12.6 NMAC | A | Nurse Licensure Compact | 412 |
| Optometry, Board of | | | |
| 16.16.1 NMAC | A | Optometric Practitioners: General Provisions | 413 |
| 16.16.2 NMAC | A | Fees | 413 |
| 16.16.3 NMAC | A | Requirements for Licensure by Examination | 414 |
| 16.16.4 NMAC | A | Requirements for Licensure by Endorsement | 415 |

| | | | |
|---|---|--|-----|
| 16.16.5 NMAC | A | Examination for Optometric Licensure | 416 |
| 16.16.6 NMAC | A | License Issuance to Practice Optometry | 416 |
| 16.16.7 NMAC | A | Pharmaceutical Certification | 416 |
| 16.16.8 NMAC | A | DEA Registration Requirements | 416 |
| 16.16.9 NMAC | A | Inactive Status | 416 |
| 16.16.10 NMAC | A | Renewal of New Mexico Optometry Licenses. | 417 |
| 16.16.11 NMAC | A | License Expiration Due to Non-Renewal; Reactivation | 418 |
| 16.16.12 NMAC | A | Retirement and Reinstatement of Optometry License | 418 |
| 16.16.13 NMAC | A | Continuing Education | 419 |
| 16.16.14 NMAC | A | Duplicate and Replacement Licenses | 420 |
| 16.16.16 NMAC | A | Practice Location; Ownership; Patient Medical Records Retention | 420 |
| 16.16.17 NMAC | A | Advertising | 420 |
| 16.16.18 NMAC | A | In-Office Minor Surgical Procedures | 420 |
| 16.16.19 NMAC | A | Contact Lenses | 420 |
| 16.16.20 NMAC | A | Ophthalmic Lenses | 422 |
| 16.16.21 NMAC | A | Unprofessional Conduct | 422 |
| 16.16.22 NMAC | A | Disciplinary Proceedings | 423 |
| 16.16.23 NMAC | A | Parental Responsibility Act Compliance | 423 |
| 16.16.24 NMAC | A | Disciplinary Guidelines for Impaired Practitioner | 423 |
| Public Lands, Commissioner of | | | |
| 19.2.21 NMAC | R | Land Exchanges | 423 |
| 19.2.21 NMAC | N | Land Exchanges | 423 |
| Water Quality Control Commission | | | |
| 20.6.4 NMAC | A | Standards for Interstate and Intrastate Surface Waters | 428 |

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Notices of Rulemaking and Proposed Rules

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 July 9, 2012 at 9:00 am in Room 307 of the New Mexico State Capitol Bldg, 490 Old Santa Fe Trail, Santa Fe 87501. This hearing is a continuation of the hearing commenced on January 3, 2012 and continued on May 7, 2012. 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 300g-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.

The proposed revision would also add new sections as listed below:

| | |
|-------------|--|
| 20.7.10.8 | DOCUMENTATION REQUIRED FOR POPULATION DETERMINATION |
| 20.7.10.104 | REFERENCES |
| 20.7.10.202 | APPLICATION FOR WATER HAULING OPERATIONS THAT ARE NOT OWNED OR OPERATED BY ANOTHER PUBLIC WATER SYSTEM |
| 20.7.10.401 | GENERAL OPERATING PROCEDURES FOR WATER HAULERS THAT ARE NOT OWNED OR OPERATED BY ANOTHER PUBLIC WATER SYSTEM |

In addition, revisions to the existing sections listed below are also proposed.

| | |
|-------------|--|
| 20.7.10.2 | SCOPE |
| 20.7.10.3 | STATUTORY AUTHORITY |
| 20.7.10.7 | DEFINITIONS |
| 20.7.10.100 | ADOPTION OF CFR PART 141 |
| 20.7.10.101 | ADOPTION OF CFR PART 143 |
| 20.7.10.102 | GUIDANCE DOCUMENTS |
| 20.7.10.200 | PUBLIC WATER SYSTEM PROJECTS |
| 20.7.10.201 | APPLICATION FOR PUBLIC WATER SYSTEM APPROVAL |
| 20.7.10.300 | COMPLIANCE; EMERGENCY POWERS |
| 20.7.10.400 | GENERAL OPERATING REQUIREMENTS |
| 20.7.10.500 | SAMPLING REQUIREMENTS |
| 20.7.10.501 | LABORATORIES [PROPOSED FOR DELETION] |
| 20.7.10.503 | DEPARTMENT MONITORING AND SAMPLING |
| 20.7.10.504 | INSPECTIONS, INVESTIGATIONS AND SANITARY SURVEYS |
| 20.7.10.505 | REPORTING |

Changes to other sections within 20.7.10 NMAC that are related to the changes in the above listed sections may also be proposed. The proponent of this regulatory revision is the New Mexico Environment Department ("NMED"). 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 angelafaye.cross@state.nm.us.

The hearing is being 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.

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 Connie Joseph by June 19, 2012 at the NMED, Human Resources Bureau, P.O. Drawer 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9769. 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 DEPARTMENT OF HEALTH

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.30.3& 7.30.6 NMAC "CHILDREN'S MEDICAL SERVICES & ADULT CYSTIC FIBROSIS" and "NEWBORN GENETIC SCREENING" "The Hearing will be held at 12:00 PM on August 16, 2012 in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

The public hearing will be conducted to add or remove certain rules and regulations regarding eligibility, revise definitions, including the expanded newborn genetic screening program, update or correct statutory or administrative code references, and make certain clarifications and modifications to the existing regulation.

A copy of the proposed regulation can be obtained from:

Susan Chacon
Children's Medical Services
New Mexico Department of Health
1190 St. Francis Drive
P.O. Box 26110
Santa Fe, New Mexico 87502-6110
505-476-8860

Please submit any written comments regarding the proposed regulation to the attention of Susan Chacon at the above address prior to the hearing. If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Susan Chacon by telephone at 505-476-8860. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

NOTICE

The New Mexico Human Services Department (HSD) is scheduling two public hearings on August 6, 2012.

The subject of the first hearing is: **Developmental Disabilities Home and Community Based Services Waiver** will be held at 10:00 a.m. in the Rio Grande Room of the Toney Anaya Building, 2550 Cerrillos Road, Santa Fe.

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing the following amendments to 8.314.5 NMAC, *Developmental Disabilities Home and Community-Based Services Waiver*; and to 8.290.400 NMAC, *Medicaid Eligibility for Home and Community-Based Services Waiver* (Categories 090, 091, 092, 093, 094, 095 and 096), *Recipient Policies*, and 8.290.600 NMAC, *Benefit Description*:

1. Update the mission statement of the NM Human Services Department.
2. Add updated language describing the resource allocation process; to conform to the Development Disabilities Waiver (DDW) renewal as approved by the Centers for Medicare and Medicaid Services (CMS), effective July 1, 2011.
3. Add updated language describing DDW services and the qualifications of providers for services; to conform to the DDW renewal as approved by CMS, effective July 1, 2011.
4. Replace definitions of mental retardation/intellectual disability, specific related condition with updated language which excludes Asperger Syndrome; to conform to the DDW renewal as approved by CMS, effective July 1, 2011.
5. Add language to include the supports intensity scale (SIS) assessment results into the individual service plan (ISP) process.
6. Add language to address eligible recipient's rights to a hearing and continuation of benefits.
7. Add language clarifying level of care requirements for Home and Community-Based Waiver services.
8. Replace the reference to the Disabled and Elderly (D&E) waiver with the current Coordination of Long-Term Services (CoLTS) waiver as approved by CMS August 1, 2008.
9. Add language to increase time for eligibility determination.
10. Add language clarifying non-provision of waiver services.

In keeping with the report and recommendations of the Small Business-Friendly Task Force published April 1, 2011, the proposed rules for the DDW program are not more stringent than federal regulations.

The subject of the second hearing is: **Medication Assisted Treatment for Opioid Addiction** to be held at 1:30 pm in the South Park Conference room, 2055 S. Pacheco, Ste. 500-590, Santa Fe.

The Human Services Department (The Department), Medical Assistance Division (MAD), is proposing a new rule for the coverage of medication assisted treatment for opioid addiction. The Department proposes this rule to govern provider participation, service coverage and limitations, and reimbursement.

Interested persons may submit written comments no later than 5:00 p.m., August 6, 2012, 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 <http://www.hsd.state.nm.us/mad/register/2012.html> 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
COMMISSIONER OF
PUBLIC LANDS**

NOTICE OF RULE MAKING

NOTICE IS HEREBY GIVEN that Ray Powell, M.S., D.V.M., New

Mexico Commissioner of Public Lands (Commissioner), and the New Mexico State Land Office (NMSLO) propose to repeal 19.2.22 NMAC "PLANNING AND DEVELOPMENT LEASES" in its entirety and replace it with 19.2.22 NMAC "PLANNING AND DEVELOPMENT LEASES", which incorporates various changes, amendments, additions to and deletions from the previous rule.

The proposed new rule provides new and/or amended guidelines and requirements that pertain to all planning and development leases on lands held in the Trust managed by the New Mexico Commissioner of Public Lands pursuant to the Act of June 20, 1910, 36 Stat. 557, Chapter 310; N.M. Const. Art. XIII; and NMSA 1978, Chapter 19.

The Commissioner will take written comments on the proposed rule from any interested person. Interested persons shall file their written comments no later than September 1, 2012. Comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes and shall include specific language proposed to effectuate the changes being suggested. Specific proposed language suggesting changes to the proposed new rule should, whenever possible, be in the same format as the proposed rule. An electronic copy of the proposed rule may be obtained from the Commissioner to facilitate this requirement. Any proposed changes to the proposed rule shall be submitted either in hard copy or by e-mail. The Commissioner strongly encourages all persons submitting comments in hard copy to file an additional copy in electronic format. The electronic medium shall clearly designate the name of the person submitting the proposed changes.

One formal public hearing to receive oral and written comments on proposed amendments to Rule 22 will be held in Santa Fe, New Mexico, at Morgan Hall, State Land Office, 310 Old Santa Fe Trail, from 10:00 a.m. to 12:00 p.m. on August 15, 2012. The Commissioner will also hold one or more public meetings and/or focus groups during the comment period at different locations around the State for the purpose of obtaining public comment on the proposed amendments. Information regarding these meetings may be obtained from the personnel listed below and will be published on the NMSLO website as soon as it becomes available.

Please submit any written comments regarding the proposed rule to the attention of Ley Schimoler at the address set forth below and/or by e-mail to Ley Schimoler at lschimoler@slo.state.nm.us. Comments received by e-mail will be printed by the

NMSLO and entered in the rule-making record. The Commissioner will review and take into consideration all timely submitted written comments.

A copy of the proposed rule may be obtained from:

Ley Schimoler
Office of the General Counsel
New Mexico State Land Office
PO Box 1148
Santa Fe, NM 87504-1148
Tel: 505/827-5713
Fax: 505/827-4262

Copies of the proposed rule may also be viewed at, or downloaded from the NMSLO website (www.nmstatelands.org). The documents may be made available in alternative formats upon request.

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

**STATE OF NEW MEXICO
CONSTRUCTION INDUSTRIES
DIVISION
Regulation and Licensing Department**

NOTICE OF PUBLIC HEARINGS

Public hearings on the proposed changes to the following CID Rules: 14.6.6.10 B NMAC, Electrical License Classifications; 14.9.2.11 B, NMAC 2009 Uniform Mechanical Code; 14.7.3.17 NMAC, 2009 International Residential Code; 14.7.2.26 NMAC, 2009 International Building Code:

July 24, 2012, 9:00 a.m. – 12:00 p.m.:
Santa Fe, NM – CID Conference Room,
2550 Cerrillos Road, Santa Fe, NM.

July 24, 2012, 9:00 a.m. – 12:00 p.m.: **Las Cruces, NM** – CID Conference Room, 505 South Main Street, Suite 150, Las Cruces, NM.

July 24, 2012, 9:00 a.m. – 12:00 p.m.:
Albuquerque, NM – CID Conference Room, 5200 Oakland Avenue NE, Albuquerque, NM.

Copies of the proposed rules are currently available on the Construction Industries Division's website: www.rld.state.nm.us/construction and at the CID office in Santa Fe. You are invited to attend and express your opinion on these proposed rule changes. If you cannot attend the meeting, you may send your written comments to the Construction Industries Division, 2550 Cerrillos Road, Santa Fe, New Mexico 87504, Attention: Public Comments –

Fermin Aragon. FAX (505) 476-4702. **All comments must be received no later than 5:00 p.m., on July 24, 2012. If you require special accommodations to attend the hearing,** please notify the Division by phone or fax, of such needs no later than **July 20, 2012**. Telephone: 505-476-4700. Fax No. 505-476-4702.

**End of Notices and Proposed
Rules Section**

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Adopted Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

This is an amendment to 19.15.110 NMAC, Section 10, effective 06/29/2012

**19.15.110.10 D I S P E N S E R
LABELING:**

A. "Biodiesel labeling specifics": There are three different labeling requirements for biodiesel at four different concentration levels.

(1) No label is required for blends B5 and lower. Retailers are not required to disclose the presence of biodiesel at these low concentrations, provided they meet the specifications in ASTM D975.

(2) For fuel containing more than five percent biodiesel, up to B20, the text within the heading (black band) should display either:

(a) the capital letter **B** followed by a numeric representation of the percentage of biodiesel and then the term "**biodiesel blend**"; or

(b) the term "**biodiesel blend**;" retailers can provide the exact percentage of biodiesel in this range (B10, B15), but are not required to: directly underneath the black band is the text "**contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent.**"

(3) For fuel concentrations higher than B20 and less than B100, a specific blend designation (e.g., **B25, B50, B99**, etc.) is required in the heading, followed by the term "**biodiesel blend.**" Directly underneath the black band is the text "**contains more than 20 percent biomass-based diesel or biodiesel.**"

(4) For neat biodiesel (B100), the heading must display "**B100 biodiesel,**" and below the black band is the text "**contains 100 percent biodiesel.**"

(5) The provisions for biomass-based diesel fuel are similar to those of biodiesel, with the exception that no letter number designation is used in the black heading. Fuels that contain more than five percent biodiesel and more than five percent biomass-based diesel fuel must have a label for both biodiesel and biomass-based diesel fuel of the appropriate type for the level of inclusion of biodiesel and biomass-based diesel.

B. Label size, font, and format requirements: The labeling requirements are consistent with those in place of other alternative fuels with exception of color. Biodiesel labels require a blue background (PMS 277 or its equivalent). The type within the black band is also blue

(PMS 277 or its equivalent). The label is 3 inches (7.62 cm) wide x [22] 2 ½ inches (6.35 cm) long. "Helvetica black" type is used and centered throughout. The black band at the top should measure 1 inch (2.54 cm) deep. Spacing of text in the band is 3 inch (.64 cm) from the top of the label and 3/16 inch (.48 cm) from the bottom of the black band, centered horizontally within the black band. The script underneath the black band must be centered horizontally, with 1/8 inch (.32 cm) between each line. The bottom line of type is 3 inch (.64 cm) from the bottom of the label. All type should fall no closer than 3/16 in (.48 cm) from the side edges of the label.

[19.15.110.10 NMAC - N, 08/16/10; A, 06/29/12]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

This is an amendment to 8.15.2 NMAC, Section 17, effective 7/1/12.

8.15.2.17 PAYMENT FOR SERVICES: The department pays child care providers on a monthly basis, according to standard practice for the child care industry. Payment is based upon the child's enrollment with the provider as reflected in the child care placement agreement, rather than daily attendance. As a result, most placements reflect a month of service provision and are paid on this basis. However, placements may be closed at any time during the month. The following describes circumstances when placements may be closed and payment discontinued at a time other than the end of the month:

A. When the eligibility period as indicated by the child care placement agreement expires during the month, including the end of a school semester; or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.

B. When the client requests a change of provider, regardless of the reason, payment will be made through the final day of the expiration of the 14 calendar day notice issued to the provider. Payment to the new provider begins on the day care begins.

C. The amount of the payment is based upon the average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the parent at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care agreement covering the certification period.

D. The department pays for care based upon the following units of service:

| Full time | Part time 1 | Part time 2 | Part time 3 |
|---|--|--|--|
| Care provided for an average of 30 or more hours per week per month | Care provided for an average of 20-29 hours per week per month | Care provided for an average of 6 -19 hours per week per month | Care provider for an average of 5 or less hours per week per month |
| Pay at 100% of full time rate | Pay at 75 % of full time rate | Pay at 50 % of full time rate | Pay at 25% of full time rate |

E. Out of school time care provided by licensed child care providers who provide care for 6-19 hours per week are paid at the 75% rate (part time 1).

F. Out of school time care provided by licensed child care providers who provide care for 20 or more hours per week are paid at the 100% rate (full time).

G. Out of school time care provided for 5 hours or less per week are paid at the 25% rate (part time 3) regardless of provider type.

H. Monthly reimbursement rates:

[Continued on page 384]

| | | | | | | | |
|----------|-----------|----------|-----------|----------|-----------|----------|-----------|
| Metro | Non-Metro | Metro | Non-Metro | Metro | Non-Metro | Metro | Non-Metro |
| \$278.74 | \$258.00 | \$264.00 | \$217.69 | \$242.00 | \$220.00 | \$242.00 | \$198.00 |

I. The department pays a differential rate according to the location of the provider, license or registration status of the provider, national accreditation status of the provider if applicable, Star level status of the provider if applicable, and in accordance with the rate established for metro or ~~[rural]~~ non-metro location of the provider. Providers located in the metropolitan statistical areas of the state as determined by the U.S. census bureau receive the metropolitan rate. These include Bernalillo, Sandoval, Valencia, Santa Fe, Los Alamos, Dona Ana, and San Juan counties. All other providers receive the ~~[rural]~~ non-metro rate.

J. Providers holding national accreditation status receive an additional \$132.00 per child per month for full time care above the metro rate for type of child care (licensed center, group home or family home) and age of child. All licensed nationally accredited providers will be paid at the metro rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement. The provider is required to notify the department immediately when a change in accreditation status occurs.

K. The department pays a differential rate to providers achieving higher Star levels as follows: ~~[2-Star at \$45.00 per month per child for full time care above the base reimbursement rate;]~~ 3-Star at \$70.00 per month per child for full time care above the base reimbursement rate; 4-Star at \$104.50 per month per child for full time care above the base reimbursement rate, and 5-Star at \$132.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must maintain and meet most recent star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the level demonstrated.

L. The department pays a differential rate equivalent to 5, 10, or 15% of the applicable full-time/part-time rate to providers who provide care during non-traditional hours. Non-traditional care will be paid according to the following charts:

| | | | |
|---------------|-------------|--------------|-------------------|
| | 1-10 hrs/wk | 11-20 hrs/wk | 21 or more hrs/wk |
| After hours | 5% | 10% | 15% |
| | 1-10 hrs/wk | 11-20 hrs/wk | 21 or more hrs/wk |
| Weekend hours | 5% | 10% | 15% |

M. If a significant change occurs in the client’s circumstances, (see Subsection G of 8.15.2.13 NMAC) the child care placement agreement is modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

N. The department may conduct provider or parent audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the department are sanctioned. Providers must provide all relevant information requested by the department during an audit.

O. Payments are made to the provider for the period covered in the placement agreement or based on the availability of funds, which may be shorter than the usual six to 12 month certification period. The client’s certification period may be established for a period less than six months, if applicable to their need for care.

[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 02/14/05; A, 08/31/06; A/E, 08/15/07; A, 06/30/10; A/E, 11/01/10; Re-pr, 12/30/10; A/E, 12/01/11; Re-pr, 12/30/11; A, 7/1/12]

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

This is an amendment to 5.5.50 NMAC, sections 6, 8, 10, and 15, effective June 30, 2012

5.5.50.6 OBJECTIVE: The Job Training Incentive Program (JTIP) supports economic development in New Mexico by reimbursing qualified companies for a significant portion of training costs associated with newly created jobs. The JTIP program, also known as the Industrial Training Development Program or “in plant training,” strengthens New Mexico’s economy by providing financial incentives to companies that create new economic-based jobs in New Mexico. Training funded by JTIP also elevates the skill level of the New Mexico residents who fill funded positions. Since the program’s inception in 1972, more

than 1,000 companies and over 50,000 New Mexico workers have benefited from the program. Eligibility for JTIP funds depends on the company’s business, the role of the newly created positions in that business, and the trainees themselves. Eligibility requirements, which are highlighted below, are explained in more detail in the body of this manual. Reference can also be made to the enabling legislation (Section 21-19-7, NMSA 1978 and subsequent amendments).

A. Company eligibility: ~~[Three]~~ Several categories of companies are eligible to be considered for JTIP funds. The first category is companies which manufacture a product in New Mexico. Renewable power generators, film digital production, and post-production companies are eligible under the manufacturing category. The second category is companies which provide a non-retail service to customers, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico; unless the company is considered

~~[a-green industry]~~ green, headquarter or research and development. To be considered for JTIP, non-retail service companies must export a service remotely rather than ~~[import a customer]~~ deliver service via face to face interaction. The third category -film production companies - are regulated elsewhere. The company must be creating new jobs as a result of expansion, startup, or relocation to the state of New Mexico. Companies that have been funded previously by JTIP must have at least as many total employees as when they last expanded under JTIP. For a more complete explanation of expansion requirements, refer to “company qualifications and requirements” in 5.5.50.8 NMAC. Financial strength is also a consideration in funding decisions. The company should be financially stable to ensure long-term employment for JTIP participants.

B. Job eligibility: Jobs eligible for funding through JTIP must be newly created jobs, full-time (minimum of 32

hours/week), and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of the training program. Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. In addition, other newly created jobs not directly related to production may be eligible. The number of these jobs is limited to 10% of the total number of jobs applied for in the proposal. Jobs must also meet a wage requirement to be eligible for funding. For contract-based call centers, the position must meet or exceed at least 90% of the county median wage to qualify in urban locations and \$10.00 per hour in rural locations. The entry level wage requirements for JTIP eligibility are specified in the chart on Paragraph (2) of Subsection D of 5.5.50.10 NMAC. To attract the best candidates and reduce turnover, companies are encouraged to set wages at levels eligible for the high wage job tax credit. An additional incentive may be offered for these jobs. In urban areas, companies which apply for more than 20 positions must offer health insurance coverage to employees and their dependents and pay at least 50% of the premium for employees who elect coverage.

C. Trainee eligibility:

To be eligible for JTIP, trainees must be new hires to the company, must have been residents of the state of New Mexico for at least one continuous year at any time prior to employment in an eligible position, must be domiciled in New Mexico (domicile is your permanent home; it is a place to which a person returns after a temporary absence) during employment, and must be of legal status for employment. Trainees must not have left a public school program in the three months prior to employment, unless they graduated or completed a GED.

D. Reimbursable training costs:

Training funded through JTIP can be custom classroom training at a New Mexico post-secondary public educational institution, structured on-the-job training at the company (OJT), or a combination of the two. Training should be customized to the specific needs of the company and provide "quick response" training for employees.

(1) The following expenses are eligible for reimbursement through JTIP:

(a) A portion of trainee wages up to 75% for up to six months of initial training.

(b) A portion of the cost of providing customized classroom training at a New Mexico post-secondary public educational institution.

(c) A portion of approved travel expenses up to 75% with a cap of 5% of total funding for wages may be available.

(2) Positions which meet the JTIP requirements and meet the criteria of the high wage job tax credit may be eligible for an additional 5% wage reimbursement above

the standard rates.

(3) If a company is participating in other job reimbursement training programs, the combined reimbursement to the company may not exceed 100%.

E. Program management

and administration: General management of the Job Training Incentive Program is the responsibility of the job training incentive program board as prescribed by governing legislation (Section 21-19-7, NMSA 1978 and subsequent amendments). The board is responsible for establishing policies and guidelines related to the program's management and operation. The board shall provide review and oversight to assure that funds expended will generate business activity and give measurable growth to the economic base of New Mexico throughout the year. The board has the authority to make funding decisions based on the availability of funds, sufficient appropriations, and the board's determination of the qualifications of the business. The board has adopted this policy manual to ensure the program supports the development of New Mexico's economy as intended by the governing legislation. Policies and procedures for the New Mexico enhanced skilled training program, STEP UP, are outlined in a separate document. The JTIP board meets the second Friday of every month to consider proposals for funding. The third Friday of the month serves as an alternate date when required. Administration of the Job Training Incentive Program is the responsibility of the JTIP staff in the New Mexico economic development department. One copy of a proposal for funding is due to the JTIP staff one month before the board meeting at which the proposal will be considered. Once staff has reviewed the proposal for accuracy and completeness, ten copies will be requested for distribution to the board approximately two weeks prior to the meeting.

[5.5.50.6 NMAC - Rp, 5.5.50.6 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2010; A, 06-30-2011; A, 06-30-2012]

5.5.50.8 QUALIFICATIONS AND REQUIREMENTS:

A. Company qualifications and requirements:

The following requirements have been instituted to ensure that companies applying for JTIP funds meet the qualifications established by legislation.

(1) Two categories of companies are eligible to be considered for JTIP funds: companies which manufacture a product in New Mexico and certain non-retail service providers. The first category is companies which manufacture a product in New Mexico. Manufacturing includes all intermediate processes required for the production and integration of a product's

components. Industrial production, in which raw materials are transformed into finished goods on a large scale, is one example. Manufacturers which perform research and development and engineering functions for their own products in New Mexico but manufacture elsewhere are eligible. Start-ups and early stage manufacturing companies may be eligible. The company must be adequately capitalized to reach first production and/or able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board. Assembly and installation on the customer premises is excluded, unless the company and jobs exist for the sole purpose of producing or installing environmentally sustainable products (see green industries definition). Manufacturing businesses are typically included in Sectors 31-33 of the North American industry classification system (NAICS). Renewable power generators, film digital production companies such as animation and video game production, and film post production companies are eligible under the manufacturing category. A company whose employees are compensated solely on piecework is also not eligible. The second category is companies which provide a non-retail service to customers, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. Non-retail service businesses are only eligible when they export a product or service remotely rather than [import] provide the service directly to a customer via face to face interaction. Companies that derive their revenues from within New Mexico or via face-to-face customer interaction at the company site or customer site are only eligible if they exist for the sole purpose of producing, installing or integrating environmentally sustainable products. Corporate, international, national, regional and divisional headquarters located in New Mexico may qualify for JTIP provided at least 50% of the company's revenues are derived from operations outside New Mexico. Service companies which contract with government agencies outside the state may be considered provided they can demonstrate that they are bringing new revenues and new jobs into the state through contracts which support national or multi-state entities. Major United States research labs or companies which operate major United States research and development national laboratories are not eligible. JTIP will not consider contractors which rely on income that is already in the state of New Mexico eg., through national laboratories already existing in New Mexico. One category of non-retail service providers is customer support centers. To be eligible for JTIP funding, the customer support center must service a customer who is not physically present at the facility, with a

minimum of 50% of revenue coming from a customer base outside the state of New Mexico. The customer support center must have a facility separate from other business operations (for example, a retail store). Positions which require outbound sales, solicitation, collections or telemarketing are not eligible for JTIP funds. Contract-based call centers have special wage requirements. Contract-based call centers are outsourcing vendors which provide information to customers of their clients on behalf of those clients. Contract-based call centers do not have a core expertise; rather they communicate information provided to them by their clients. For contract-based call centers, the positions must meet or exceed at least 90% of the county median to qualify in urban locations and pay at least \$10.00 per hour in rural areas. Another category of non-retail business service providers is shared services centers that solely serve regional or national divisions. Distribution is another category of non-retail business service providers. A distributor is the middleman between the manufacturer and the retailers. After a product is manufactured, it may be warehoused or shipped to the next echelon in the supply chain, typically either a distributor, retailer, or customer. Distributors qualify for JTIP as service providers if at least 50% of the customer base is located outside of New Mexico. Businesses which are not eligible include but are not limited to retail, construction, mining, health care, casinos, and tourism-based businesses (hotels, restaurants, etc.). The board uses the north American industry classification system (NAICS) as a general guideline to establish industry classification.

(2) The company must be creating new jobs, whether due to expansion in New Mexico or relocation to the state of New Mexico. ~~[Start-up companies are also eligible, provided they are producing a saleable product and are beyond the initial research and development or prototype phase.]~~ Manufacturers which perform research and development and engineering functions for their own products in New Mexico but manufacture elsewhere are eligible. Start-ups and early stage manufacturing companies may be eligible. The company must be adequately capitalized to reach first production and/or able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board. An expanding company is defined as an existing business which requires additional employees or workforce due to a market or product expansion. For first-time applicants, eligibility as an expanding company is determined by peak employment over the two prior years. The company must meet or exceed the average employment level for the past two years in order to be considered an expanding company and

eligible for JTIP. For companies which have been funded by the program within the past two years, the number of employees at the time of previous funding application and the number funded by JTIP are also taken into consideration. The company must be expanding beyond the peak employment count achieved with previous JTIP funds. New Mexico unemployment insurance (UI) reports are used to determine employment levels.

(3) If a company hires twenty or more trainees in a municipality with a population of more than forty thousand according to the most recent decennial census or in a class A county (Los Alamos), the company must offer its employees and their dependents health insurance coverage that is in compliance with the NM Insurance Code (Chapter 59 A). In addition, the company must contribute at least fifty percent of the premium for health insurance for those employees who choose to enroll. The fifty percent employer contribution is not a requirement for dependent coverage.

(4) Companies are required to submit three years of financial statements (profit and loss and balance sheets) as part of the application process. Year-to-date financials may also be requested. Start-up companies which do not have three years of financials must submit financials for the period for which they are available, evidence of operating capital and investment funding, a business plan, evidence of signed contracts, or pro forma financial statements which would substantiate their business expansion. ~~[Start-up companies must be producing a saleable product and may not be in the initial research and development or prototype phase.]~~ Start-ups and early stage manufacturing companies may be eligible. The company must be adequately capitalized to reach first production and/or able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board.

(5) Training programs for the production of Native American crafts or imitation Native American crafts are only eligible when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

(6) If a facility that received JTIP funds closes or if lay-offs of JTIP trainees occur within 1 year of the completion of training, the JTIP board will require the refund of the funds associated with any

JTIP trainee(s) which were claimed and subsequently laid-off. The board will require a refund of funds from companies whose JTIP lay-offs exceeds \$100,000 of reimbursement. The board will require a refund of funds within 90 days of notification.

(7) Layoff is defined as a separation of an employee from an establishment that is initiated by the employer as a result of market forces or other factors not related to employee performance.

(8) If a JTIP eligible trainee is laid-off during the training period and is subsequently rehired, within four months by the same employer, the trainee can be treated as a new hire and thus remains eligible for the remaining training hours.

B. Position qualifications and requirements: The following qualifications have been established to ensure that the positions for which funding is requested meet legislative requirements.

(1) Positions must be full-time (at least 32 hours/week) and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of training. Contract positions are not eligible for JTIP funds.

(2) Trainer wages are not eligible for JTIP funds.

(3) To attract the best candidates and reduce turnover, companies are encouraged to set wages at a level which qualifies for the high wage job tax credit. These levels are \$40,000 in a municipality with a population of 40,000 or more as of the last decennial census and \$28,000 in other locations. Communities defined as urban for JTIP include Albuquerque, Farmington, Las Cruces, Rio Rancho, Roswell, and Santa Fe. Los Alamos is also treated as an urban community.

(4) Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. Positions eligible under JTIP must directly support the primary mission of the business. In addition, other newly created positions may be funded up to a maximum of 10% of the total number of jobs for which funding is requested. For headquarter facilities as described under Paragraph (1) of Subsection A above, eligible positions may only include professional support, not executive positions.

C. Trainee qualifications and requirements: The company has the exclusive decision in the selection of trainees. Trainees are expected to meet company standards on attendance, performance, and other personnel policies. All trainees must be hired within six months of the contract start date. The following qualifications have been established to ensure that the trainees for which funding is requested meet legislative requirements.

(1) Trainees must be new hires.

No retraining of current company employees is allowed under the JTIP program. Individuals who have worked as contractors to the company are not eligible to be hired under JTIP in the same [ore] or similar position as the one contracted. Individuals who have been employed temporarily in a position classified as intern in order to gain practical training that connects an academic pathway into work based or relevant business experience may be eligible. Current company employees may be eligible for training under the New Mexico enhanced skills training program, STEP UP.

(2) Trainees must have resided in the state of New Mexico for a minimum of one continuous year at any time before beginning training.

(3) Trainees must be of legal status for employment.

(4) Trainees shall not have terminated a public school program except by graduation or GED certification within the three months prior to beginning training.

(5) Trainees who have participated in a previous JTIP or Industrial Development Training Program are not eligible to participate again with the same company.

(6) Trainees who are majority owners or relatives of majority owners of the company are not eligible to participate in JTIP.

(7) Trainee job classifications should remain fixed during the program. However, promotions may be allowed during the training period to another position in the contract as long as the pay remains at least equal to the previous job. JTIP staff should be notified within 15 days of the promotion if the company wishes to be reimbursed for the employee's training.

(8) Trainees' start dates must occur after the actual contract date.

(9) Employees hired through a temporary agency may be eligible for funding provided the following conditions are met.

(a) The trainee must be hired by the company as a [permanent] regular/permanent full-time employee before the end of the JTIP [approved training hours] contract period.

(b) The trainee must receive the same wages and major medical benefits while working as a temporary employee that permanent employees of the company receive.

(c) The staffing agency must disclose wages paid to the temporary employee to the company.

(d) The amount of reimbursement during the temporary period will be the actual wage paid to the employee and will not include extra fees paid to the staffing agency.

(e) Companies are reimbursed for wages as each trainee completes the approved training hours and after s/he has been converted to a regular/permanent full-time employee of the JTIP contracted company.

(10) Companies are reimbursed for wages as each trainee completes the approved training hours.

(11) If a trainee leaves the company before completing training, the company is not eligible for any reimbursement for that employee. If another trainee can be hired in that position within the six month hiring period and complete training before the contract end date, a claim can be submitted for the successful trainee.

[5.5.50.8 NMAC - Rp, 5.5.50.8 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2010; A, 06-30-2011; A, 06-30-2012]

5.5.50.10 REIMBURSABLE EXPENSES:

A. The following expenses may be eligible for reimbursement through JTIP

(1) A percentage of trainee wages for up to six months of initial training.

(2) A percentage of travel expenses associated with training.

(3) Cost of providing custom classroom training at a New Mexico post-secondary public educational institution at a maximum of \$35 per hour of training per trainee and a cap of \$1,000 per employee.

B. Standard reimbursement rates for wages and travel range up to 75%. Positions which meet the JTIP requirements and meet the criteria of the high wage job tax credit may be also eligible for an additional 5% wage reimbursement. If a company is participating in other job reimbursement training programs such as the Workforce Investment Act (WIA), the combined reimbursement to the company may not exceed 100%.

C. The Job Training Incentive Program allows for reimbursement only at the completion of training. If an employee does not complete the training period, no funds can be claimed for that employee. If another trainee can be hired in that position within the six month hiring period and complete training before the contract end date, a claim can be submitted for the successful trainee.

D. Wage reimbursement:

(1) Trainee wages are generally the largest expense associated with training. JTIP reimburses the company for a significant portion of trainee wages during the initial training period. The percentage of reimbursement ranges up to 75%, depending on the business location. An additional 5% may be awarded for jobs which also qualify for the high wage job tax credit.

(2) The number of hours eligible for reimbursement varies by position, up to 1040 hours (six months). The number of hours eligible for reimbursement for each position is based on the O*NET (occupational information network) job zone classification for the O*NET position which most closely matches the company's job description and the wage paid the trainee at the point of hire. The O*NET system, sponsored by the US department of labor, is available at <http://onetcenter.org>. Each job in the O*NET system is assigned to one of five job zones, with recommended training hours for each zone. The number of recommended hours is included in the table below.

| General Guideline for Duration of Reimbursable Training Time/Wages | | | | | | | |
|--|---------------------------------|---------------------------|-------|----------------------------------|----------------------------------|------|-------|
| Job Zone | Definitions | SVP Range/ Conversions | Hours | Min. Wage @ Hiring - Urban | Min. Wage @ Hiring - Rural | Days | Weeks |
| 1 | Little or no preparation needed | Below 4.0 | 160 | 9.00 | 8.00 | 20 | 4 |
| 1a | Little or no preparation needed | Below 4.0 | 320 | 10.00 | 8.50 | 40 | 8 |

| | | | | | | | |
|----|---------------------------------|---------------|------|-------|-------|-----|----|
| 2 | Some preparation needed | 4.0 to < 6.0 | 480 | 11.50 | 9.00 | 60 | 12 |
| 2a | Some preparation needed | 4.0 to < 6.0 | 640 | 13.00 | 9.50 | 80 | 16 |
| 3 | Medium preparation needed | 6.0 to < 7.0 | 800 | 14.50 | 11.00 | 100 | 20 |
| 3a | Medium preparation needed | 6.0 to < 7.0 | 960 | 16.00 | 12.00 | 120 | 24 |
| 4 | Considerable preparation needed | 7.0 to < 8.0 | 1040 | 19.00 | 13.00 | 130 | 26 |
| | Align with HWJTC | Additional 5% | 1040 | 19.25 | 13.50 | 130 | 26 |

(3) The JTIP staff will ensure that the O*NET occupations match the company job description for the requested position and that training hours requested do not exceed the O*NET guideline. The board will also review the company's educational and experience requirements of the applicants to determine the degree of match with the company's job descriptions. The JTIP board may award training hours based on the O*NET guideline unless the company clearly substantiates that additional hours are required. In determining the appropriate number of training hours, the board considers the training plan, the training objectives, and the hourly wage at point of hire associated with the position.

(4) The board has also adopted a wage requirement for JTIP participation. The wage requirement varies by job zone and company location (rural/urban). These requirements are listed in the table above. If a company establishes a wage range which includes wages below the minimum wage recommended for that position and job zone, the number of hours eligible for reimbursement may be reduced from the O*NET recommended hours. Generally, the hours are reduced to the hours allowed for the next lower job zone. The reimbursement percentages may be adjusted at the discretion of the board based on availability of funds or sufficient appropriations.

(5) The percentage of wages reimbursed depends primarily on the business location. The categories for location are urban, rural, frontier, economically distressed, and Native American land.

(a) Businesses in urban locations (cities with population above 40,000 in the most recent decennial census) and Class A counties (i.e., Los Alamos) are reimbursed at up to 50% for all eligible training hours. Urban communities are: Albuquerque (545,852), Farmington (45,877), Las Cruces (97,618), Rio Rancho (87,521), Roswell (48,366), and Santa Fe (67,947).

(b) Companies located in rural areas, outside those listed above are reimbursed at up to 65% for all eligible training hours.

(c) Companies located in frontier areas (communities with a population of 15,000 or fewer and outside an MSA) are reimbursed at up to 75% for all eligible training hours.

(d) Companies located in an economically distressed area in New Mexico are eligible for up to 75% reimbursement. To receive up to 75% reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

(e) Companies located on Native American reservations are eligible for up to 75% reimbursement.

(6) JTIP eligible positions which meet the requirements of the high wage job tax credit may be eligible for an additional 5% reimbursement. These requirements are a hiring salary of \$40,000 or higher in an urban or class A county and a hiring salary of \$28,000 or higher in a rural location or economically disadvantaged area. Trainee requirements (New Mexico residency for one year, new hire status, etc.) are still factors for JTIP eligibility.

(7) Additional guidelines for wage reimbursement:

(a) Eligible trainee hours shall not exceed one thousand and forty (1,040) hours per trainee (six months) based on the company's scheduled workweek, not to exceed forty (40) hours per week.

(b) Reimbursement is calculated on base pay only. Bonus pay, overtime, and stock options are not eligible for reimbursement.

(c) If the company compensates the trainee for annual, holiday or sick leave during the approved training period, those hours are included in the approved training hours at the base rate.

(d) Any training hours that exceed the contracted amount are the responsibility of the company.

(e) If a company is participating in other job reimbursement training programs such as WIA, the combined reimbursement to the company may not exceed 100%.

E. Reimbursement for custom classroom training: Payment for custom classroom training services provided by public post-secondary educational institutions is restricted to instructional costs. The rate of reimbursement to the institution is at a maximum of \$35 per hour per trainee with a cap of \$1,000 per trainee. Instructional costs for classroom training conducted by an educational institution may include course development, instructional salaries, fringe benefits, relevant supplies and materials, expendable tools, accounting services, and other costs associated with conducting the training program. *No training equipment may be purchased or rented using JTIP funds.*

F. Travel cost and [per diem] reimbursement for trainees and trainers: Trainee travel [and per diem] may be included in the proposal when trainees are required to travel to a different location for training. Travel expenses may also be included if a trainer is required to travel to New Mexico to conduct training. Reimbursement for travel deemed reasonable and necessary [and per diem] will be consistent with the rates as designated by location. [Travel and per diem must be pursuant to 2.42.2 NMAC of the department of finance and administration's regulations governing the Per Diem and Mileage Act.] Total travel cost is not to exceed five (5%) of the amount requested for wages.

[5.5.50.10 NMAC - Rp, 5.5.50.10 & 11 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2011; A, 06-30-2012]

5.5.50.15 GLOSSARY:

A. Agriculture/mining/extractive industries: Companies classified in agriculture, mining, and extractive by the North American industry classification system (NAICS) are not eligible for JTIP.

B. Company: A company is a corporation, or less commonly, an association partnership or union that carries on a commercial or industrial enterprise. Generally, a company may be a corporation, partnership, association, joint-stock company, or organized group of persons, whether incorporated or not, and (in an official capacity), legally recognized organizational entity designed to provide goods or services to consumers or corporate entities such as governments, charities, or other businesses.

C. Economically distressed areas: Companies located in an economically distressed area in New Mexico are eligible for 75% reimbursement. To receive a 75% reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

D. Expanding company: An expanding company is an existing business which requires additional employees or workforce due to a market or product expansion. A company which buys out an existing company is not considered a new company. Eligibility as an expanding company is determined by average employment over the two prior years. (Refer to "peak employment.")

E. Film and multimedia post production: Film digital production and post-production companies are considered manufacturing provided the company operates year round and is primarily engaged in any of the following: animation, editing, Foley recording, automatic dialogue replacement, sound editing, special effects (including computer generated imagery or other effects), scoring, and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling, or addition of sound or visual effects. Production jobs must be full-time and qualifying trainees must be employed year round. Position must not require trainee to complete product on filming location. Trainee may not be directly employed by the client company at any time.

F. Frontier: A frontier area is any community with a population of less than 15,000 based on the most recent decennial census and outside a designated MSA.

G. Green industries:

Those that exist for the sole purpose of contributing directly to preserving or enhancing environmental quality by reducing waste and pollution or by producing sustainable products using sustainable processes and materials. Green industries may include: energy system retrofits to increase energy efficiency and conservation; production and distribution of biofuels and vehicle retrofits for biofuels; building design and construction that meet the equivalent of best available technology in energy and environmental design standards; organic and community food production; manufacture of products from non-toxic, environmentally certified or recycled materials; manufacture and production of sustainable technologies, including solar panels, wind turbines and fuel cells; solar technology installation and maintenance; recycling, green composting and large-scale reuse of construction and demolition materials and debris; and water system retrofits to increase water efficiency and conservation.

H. High wage job tax credit: The high wage job tax credit provides a tax credit of 10% of the wages and benefits paid for each new economic-based job created on or after July 1, 2004 and before July 1, 2015, not to exceed \$12,000 per year per job. Qualified jobs must pay at least \$28,000/year in a community with a population of less than 40,000 and \$40,000/year in a community with a population of 40,000 or more. Eligible jobs must also be occupied for at least 48 weeks by the employee.

I. Manufacturing: Manufacturing includes all intermediate processes required for the production and integration of a product's components. Industrial production in which raw materials are transformed into finished goods on a large scale is one example. Assembly and installation on the premises of the customer is not included as manufacturing. Manufacturing businesses are typically included in Sectors 31-33 of NAICS. Manufacturing is defined at Section 7-4-10B NMSA 1978 as "combining or processing components or materials to increase their value for sale in the ordinary course of business but does not include: (1) construction; (2) farming; (3) power generation, except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act and the Electric Utility Industry Restructuring Act of 1999; or (4) processing natural resources, including hydrocarbons."

J. NAICS: North American industry classification system (NAICS) is an industry classification system that groups establishments into industries based on the activities in which they are primarily engaged. This comprehensive system covers the entire field of economic activities,

producing and non-producing. The NAICS system replaced the standard industrial classification (SIC) system. NAICS information is available at www.census.gov/epcd/naics02/naicod02.htm.

K. Native American crafts: Contracts may be awarded for training programs involved in the production of Native American crafts or imitation Native American crafts only when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

L. New company: A new company is defined as a company not currently in operation in the state which shows evidence of intent to establish operations in New Mexico. The company must have a New Mexico tax ID and a New Mexico unemployment insurance ID when applying for JTIP funds.

M. Non-retail service sector business: To be considered for JTIP funding, the company must provide services which are not retail in nature and must export 50% of the services outside of New Mexico. To be considered for JTIP participation, non-retail service companies must export a service rather than import a customer.

N. O*NET: The occupational information network - O*NET database takes the place of the dictionary of occupational titles (DOT) as the nation's primary source of occupational information. The number of training hours for which a position is eligible for reimbursement through JTIP is based on the number of hours recommended for the position in O*NET. The O*NET database is available at www.onet-center.org.

O. Peak employment: First time JTIP applicants: Peak employment will be based on the employment average from two previous years or the present employment level, whichever is higher. The board will utilize the state of New Mexico unemployment insurance (UI) reports to determine peak employment at the time of application to ensure an expansion is indeed occurring.

P. Peak employment: Previous JTIP participants: Peak employment for previous participants will be based on the employment level at the time of the award of the last JTIP contract plus the number of employees funded through that contract. In cases in which a number of years have passed since prior funding, the board may utilize the state of New Mexico unem-

ployment insurance (UI) report for the last two years to determine peak employment at the time of reapplication to ensure an expansion is indeed occurring.

Q. Retail trade: Retail establishments are those which are engaged in retailing merchandise and rendering services incidental to the sale of merchandise. Retailers operate fixed point-of-sale locations, located and designed to attract a high volume of walk-in customers.

R. Renewable energy: is a source of power generated from resources which are naturally replenished, including but not limited to electricity or heat derived from solar, wind, tidal power, hydropower, biomass, geothermal resources and biofuels or hydrogen produced from renewable resources.

S. Southwestern arts and crafts: Refer to department of interior Indian arts and crafts board; Indian arts and crafts association; council of better business bureau; federal trade commission.

T. Urban communities: An urban community is defined as a municipality with a population of forty thousand or more according to the most recent federal decennial census. Those communities are: Albuquerque (545,852), Farmington (45,877), Las Cruces (97,618), Rio Rancho (87,521), Roswell (48,366), and Santa Fe (67,947). Class A counties (i.e., Los Alamos) fall under the same guidelines for reimbursement as urban communities.

U. Metropolitan statistical area: An MSA is a statistical standard designated and defined by the U.S. department of commerce, office of federal statistical policy and standards (OFSPS). MSA's are designated so that governmental agencies will use a common geographical classification in the production of data on metropolitan areas in the nation. The general concept of an MSA is one of a large population nucleus, together with any adjacent communities which have a high degree of economic and social integration with that nucleus. In New Mexico there are four MSA's. Albuquerque MSA includes Bernalillo, Sandoval, Valencia, and Torrance counties. Santa Fe MSA includes Santa Fe county. Las Cruces MSA includes Dona Ana county and Farmington MSA includes San Juan county.

V. Rural: Any area located [~~10 miles or more~~] outside communities defined as urban in the JTIP policy. [5.5.50.15 NMAC - Rp, 5.5.50.13 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2010; A, 06-30-2011; A, 06-30-2012]

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

This is an amendment to 5.5.52 NMAC, Sections 6 through 11, effective June 29, 2012.

5.5.52.6 OBJECTIVE: The object of this rule is to establish standards for pre-employment development training for New Mexican residents through the job training incentive program (JTIP) for film and multimedia production companies. Pre-employment training program (PETP) is intended to furnish qualified manpower resources for the film and multimedia industry. The intention of PETP [~~class~~] workshop training is to assist the development of New Mexico's economy by providing reimbursement funds to contractors facilitating short-term intensive courses, workshops or lectures that primarily relate to below-the-line film and television job positions. The intention of PETP project training is to assist the development of New Mexico's economy by providing reimbursement funds to contractors directly related to a production company's project for training in and exposure to primarily above-the-line film and television job positions. The intention of PETP emerging media training is to assist the development of NM's economy by providing reimbursement funds to companies that give training opportunities, similar to internships, to residents currently enrolled in or upon immediate graduation from a higher education program in New Mexico that relates to digital to post production technology for the entertainment or entertainment-related industries. [~~This program~~] These programs shall increase the hirability of New Mexico crew on film and television projects, increase economic status upon employment, and increase [~~crew availability to~~] resident employee availability for productions. The PETP shall pertain to industry and production needs as determined by the New Mexico film division. [5.5.52.6 NMAC - Rp, 5.5.52.6 NMAC, 4-30-2009; A, 6-29-2012]

5.5.52.7 DEFINITIONS: For use in this part, the following definitions apply.

A. "Above-the-line" is a film and television industry term derived from where the money is budgeted for creative talent, writers, directors and producers. This term means job positions that are associated with the creative or financial control of a film or multimedia project, generally not the technical aspects.

B. "Below-the-line" is a film and television industry term derived from where the money is budgeted for

technical crew that shall work on a film or multimedia project as well as for costs related to the studio, equipment, travel, and location. In regards to job positions, this term means technical crew working in temporary positions and these individuals do not have creative or financial control of the project nor receive residuals.

C. "Craft" means the specialized area or department in which a film technician works.

D. "Credit" means the employee hired by a production company is officially acknowledged by name by the company either on a final list of employees (crew list) or on the actual screen as having worked in the hired position on their film or multimedia project.

E. "Emerging media" refers to digital technologies, interactive software, mobile applications, post production, video games and new technology intended for commercial usage and exploitation and is related to entertainment industries.

~~[E:]~~ **F. "Film technician"** means a crew member working in a below-the-line job position who often is a member of an international alliance of theater and stage employee (IATSE) film union or guild.

~~[F:]~~ **G. "Hands-on classes"** mean classes or workshops where materials, tools or chemicals are utilized by participants.

~~[G:]~~ **H. "JTIP"** means job training incentive program.

~~[H:]~~ **I. "PETP"** means pre-employment training program.

~~[I:]~~ **J. "Production company"** means the entity creating a film or television project, which includes film or multimedia project preparation, principal photography and set break down periods.

~~[J:]~~ **K. "Resident"** means an individual who is domiciled in New Mexico. This domicile is the individual's permanent home; it is a place to which the individual intends to return after any temporary absence. An individual shall have only one domicile. A change in domicile is established only by establishing a physical presence in a new location with intent to abandon the old domicile and make a home in the new location permanently or indefinitely.

~~[K:]~~ **L. "Trainee"** means the attendee participating in the class, course, workshop, lecture or project [~~attendee participating in~~] available through this program and who will be trained, learning a new skill set or graduating to a higher job classification.

~~[L:]~~ **M. "Turn-around-time"** means the time between leaving a project and returning to a project to continue training. [5.5.52.7 NMAC - Rp, 5.5.52.7 NMAC, 4-30-2009, A, 6-29-2012]

[CLASS] WORKSHOP TRAINING PROGRAM OUTLINE:

A. The New Mexico film division of the economic development department shall contract a qualified contractor to provide venues, staff, equipment and materials to conduct short-term, intensive training New Mexicans in primarily below-the-line film and television crafts and that shall increase the employment opportunities of New Mexican crew on film and television projects.

B. Mandatory or regulatory training is allowed if required for employment on a film and approved by the New Mexico film division of the economic development department.

C. Total course cost shall not exceed twenty thousand dollars (\$20,000.00) regardless of the number of contractors.

D. The potential contractor shall provide a proposal and application to the New Mexico film division and the documents noted within to be considered for the training reimbursement.

E. Approved contractor shall enter into an agreement as outlined by the New Mexico economic development department.

F. The approval from the New Mexico film division and the chairperson of the job training incentive program (JTIP) board shall grant funding to the contractor for the purpose of conducting this training.

G. The term of the contract shall be based on a time period, which shall allow the contractor to complete its obligation to facilitate and provide training classes or workshops for the qualified individuals and complete the paper-work involved.

H. Contractor shall ensure that all trainees are pursuing work in or are currently working in the film and television industry and shall either be training in a new classification or are in need of additional training in this classification.

I. Contractor shall ensure all trainees are New Mexico residents.

J. Contractor shall ensure all trainees are at least 18 years of age for all "hands-on" classes or workshops and must be accompanied by an adult if under the age of 18 years for lectures.

K. Contractor shall qualify registrants based on class pre-requisites and specific industry experience when applicable.

L. Contractors may require trainees to pay a nominal fee per the approval of the New Mexico film division.

M. All instructors and facilitators shall be certified as such by the New Mexico film division.

N. The contractor is subject

to compliance visits and program surveys at any time during the training class or workshop.

O. The contractors that fail to comply with all established operating requirements and closeout procedures are not eligible to apply for future participation.

P. Eligible costs for reimbursement per PETP [class] workshop application:

(1) tuition and registration fees; and

(2) certification and licensing fees for trainees when applicable; and

(3) instructional literature; and

(4) expendable supplies; and

(5) instructor and facilitator fees where these individuals are not employee of the contractor's business; and

(6) additional temporary insurance if required to conduct class or workshop; and

(7) facility rental; and

(8) equipment rental; and

(9) approved travel expenses which is based on department of finance administration rule 2.42.2 NMAC, Regulations Governing Per Diem and Mileage Act.

Q. Reimbursement of training costs: Reimbursement amount shall be made to the participating contractor in accordance with the terms of the training contract. Funds from the state shall be based on the negotiated contractual agreement as outlined in the contract.

R. Reporting: The following established documentation may be required by the New Mexico film division and is subject to review during compliance visits and program surveys:

(1) PETP [class] workshop film and multimedia pre-employment training application and documents noted within; and

(2) applicable insurance certificate(s); and

(3) New Mexico tax information form or current state vendor number; and

(4) PETP [class] workshop film and multimedia pre-employment agreement; and

(5) PETP trainee forms when applicable; and

(6) receipts per approved expenditures in application; and

(7) roster of trainees; and

(8) [class] evaluation forms when applicable; and

(9) invoice.

S. The mailing address to submit paperwork including the invoice is to the development training program administrator or manager, New Mexico film division of the economic development department, 1100 St. Francis Drive, Joseph Montoya Building, Santa Fe, New Mexico, 87505, 505-476-5600.

[5.5.52.8 NMAC - Rp, 5.5.52.8 NMAC,

4-30-2009, A, 6-30-2011, A, 6-29-2012]

5.5.52.9 PRE-EMPLOYMENT PROJECT TRAINING:

A. Project training shall assist the development of New Mexico's economy by providing reimbursement funds to contractors directly related to a production company's project for training in and exposure to primarily above-the-line film and television job positions. This program shall increase the hirability of New Mexico crew on film and television projects, increase economic status upon employment, and increase crew availability to productions. Pre-employment project training shall pertain to industry and production needs as determined by the New Mexico film division of the economic development department.

B. Production company qualifications and requirements:

(1) The production company shall provide an outline of each training concept with the NMFO proposal form to be considered for approval.

(2) The production company shall be required to provide qualifications of instructors and mentors, all relevant details, certificates and costs per the program application; and upon approval of the New Mexico film division shall enter into the film and multimedia pre-employment project training agreement as outlined by the New Mexico film division of the economic development department; and the approval from the New Mexico film division shall grant training funds to the production company for the purpose of conducting this training.

(3) The production company entering into a contractual agreement with New Mexico economic development department shall return the contractual agreement to the department within 15 business days from the issue date or commencement of project whichever date comes first.

(4) The production company shall interview and consider trainees endorsed by the New Mexico above-the-line mentorship panel (NM AMP) for this training.

(5) The production company ensures that all trainees are New Mexico residents.

(6) The production company ensures that all trainees shall receive specialized training to work in the film industry.

(7) The production company shall not have more than two trainees per mentor or instructor.

(8) The production company shall ensure each trainee completes project trainee certification form.

(9) The production company shall ensure the trainee shall be covered under their production insurance.

(10) The production company is subject to compliance visits and program surveys at any time during the training.

(11) Breaks and meals per film industry standards shall apply to participants training on production project.

(12) A minimum turn-around-time of eight hours shall apply to all training participants.

C. The production company that fail to comply with all established operating requirements and close-out procedures are not eligible to apply for future participation and may not receive the training reimbursement.

D. Instructors and mentor qualifications shall be certified as such by the New Mexico film division.

E. The New Mexico film division will determine the number of days per participant on a given production's project based on the number of approved trainees, length of production and available funding.

F. Total training cost shall equate to twenty-five percent (25%) for participating above-the-line mentors and for mentors working as department heads in specialized crafts as listed in the application.

G. Mandatory or regulatory training is allowed if required for employment on a film and approved by the New Mexico film division of economic development department.

H. The term of the contract shall be based on a time period, which shall allow the production company to complete its obligation to facilitate and provide training classes or workshops for the qualified individuals and complete the paper-work involved.

I. Reimbursement of training costs shall be made to the participating production company in accordance with the terms of the contract which is based upon the costs to facilitate training.

J. The rate established in the contract shall remain the same for the length of the agreement.

K. The invoice shall include all costs accepted and stated in the application and contract.

L. The mailing address to submit the invoice and all required information is development training program administrator of the New Mexico film division of the economic development department, 1100 St. Francis Drive, Joseph Montoya Building, Santa Fe, New Mexico, 87505, 505-476-5600.

M. Reporting: The following established documentation may be required by the New Mexico film division and is subject to review during compliance visits and program surveys:

(1) PETP project proposal; and

(2) New Mexico tax information form; and

(3) film and multimedia pre-employment project training application and supporting documents noted within; and

(4) film and multimedia pre-employment project agreement; and

(5) project trainee certification form for each trainee and supporting documentation noted within; and

(6) copy of production insurance; and

(7) final roster of trainees that have completed the training with individual's contact information; and

(8) call sheet or equivalent documentation as determined by the New Mexico film division for each day of training; and

(9) time cards or equivalent documentation as determined by the New Mexico film; and

(10) evaluation forms; and

(11) invoice.

N. All records shall be submitted to the New Mexico film division of the economic development department and they are subject to review during compliance visits and program surveys.

[5.5.52.9 NMAC - Rp, 5.5.52.9 NMAC, 4-30-2009, A, 6-30-2011, A, 6-29-2012]

5.5.52.10 PRE-EMPLOYMENT EMERGING MEDIA TRAINING PROGRAM OUTLINE:

A. The New Mexico film division of the economic development department shall contract qualified companies to provide internship opportunities to residents who are currently enrolled in a New Mexico higher-ed program or who have recently graduated from a New Mexico higher-ed program that relates to digital or post production technology (emerging media) for the multi-media and entertainment industry.

B. Total reimbursement cost shall not exceed thirteen thousand, two hundred dollars (\$13,200) per participating company per semester.

C. The company (potential contractor shall provide a proposal and application to the New Mexico film division and the documents noted within to be considered for the training reimbursement.

D. Approved contractor shall enter into an agreement as outlined by the New Mexico economic development department.

E. The approval from the New Mexico film division and the chairperson of the job training incentive program (JTIP) board shall grant funding to the contractor for the purpose of conducting this training.

F. The term of the contract shall be based on a time period, which

shall allow the contractor to complete its obligation to facilitate and provide training for the qualified individual and complete the paper-work involved.

G. Contractor shall ensure that all trainees are currently enrolled in a New Mexico higher education program based in New Mexico that relates to the training or is a qualifying resident that participates in the training immediately upon graduation from said program. Qualifying higher-ed programs shall be approved as such by the New Mexico film division.

H. Contractor shall ensure all trainees are New Mexico residents and qualified for in-state tuition by their educational institution during at least two of their most recent semesters in which they were enrolled in the emerging media-related program.

I. Contractor shall ensure all trainees are at least eighteen (18) years of age.

J. Contractor shall qualify trainees based on additional criteria required by the company.

K. Number of trainees permissible:

(1) contractors where company has fourteen (14) or fewer full-time employees may train two (2) part-time participants for up to twenty-five (25) hours each, a week, or one (1) full-time participant up to fifty (50) hours a week;

(2) contractors where company has fifteen (15) or more full-time employees, may train one (1) full-time participant for up to fifty (50) hours a week and one (1) part-time participant for up to twenty-five (25) hours a week or three (3) part-time participants for up to twenty-five (25) hours each a week;

L. Contactor shall not be reimbursed for more than eleven dollars (\$11.00) per hour per participant.

M. Training of each participant shall not exceed one (1) semester or sixteen weeks (16).

N. Contractor shall only allow trainee to participate one (1) time in the program. A trainee who has participate in the program previously for any company shall not be approved.

O. Contractors approved for reimbursement though this program shall not be approved for any other JTIP for film and multimedia programs; however, they may apply for JTIP for manufacturing if they meet that program's requirements.

P. Qualifying trainees under PETP for emerging media shall not be permitted to participate in the job training incentive program under manufacturing.

Q. Contractors that fail to comply with all established operating requirements and closeout procedures may not be reimbursed.

R. The contractor is subject to compliance visits and program surveys at any time during the training by a representative of the New Mexico film division

S. Reimbursement amount shall be made to the participating contactor in accordance with the terms of the training contract. Funds from the state shall be based on the negotiated contractual agreement as outlined in the contract.

T. The following established documentation may be required by the New Mexico film division and is subject to review during compliance visits and program surveys:

(1) PETP emerging media pre-employment training program application and documents noted within; and

(2) applicable insurance certificate (s); and

(3) New Mexico tax information form or current state vendor number; and

(4) PETP emerging media pre-employment agreement; and

(5) PETP emerging media trainee forms when applicable; and

(6) documentation of wages and training hours for each participant; and

(7) evaluation forms when applicable; and

(8) invoice based on template per New Mexico film division

U. The mailing address to submit paperwork including the invoice is to the development training program administrator or manager, New Mexico film division of the economic development department, 1100 St. Francis Drive, Suite 1213, Joseph Montoya Building, Santa Fe, New Mexico, 87505, 505-476-5600. [5.5.52.10 NMAC - Rp, 5.5.52.10 NMAC, 4-30-2009, A, 6-30-2011, 5.5.52.10 NMAC, N, 6-29-2012]

[5.5.52.10] 5.5.52.11 O T H E R PROGRAM INFORMATION:

A. The pre-employment training program through the job training incentive program for film and multimedia was created by the New Mexico film division of the economic development department of state of New Mexico.

B. Public or private entities outside the state of New Mexico shall contact the New Mexico film division of the economic development department for consideration to obtain permission to use any part of this program content at 505-476-5600. [5.5.52.10 NMAC - Rp, 5.5.52.10 NMAC, 4-30-2009, 5.5.52.11 NMAC - Rn, 6-29-2012]

NEW MEXICO DEPARTMENT OF HEALTH

7.30.8 NMAC Requirements for Family Infant Toddler Early Intervention Services (filed 9/14/2001) repealed 6/29/12 and replaced by 7.30.8 NMAC, Requirements for Family Infant Toddler Early Intervention Services, effective 6/29/12.

NEW MEXICO DEPARTMENT OF HEALTH

TITLE 7 HEALTH CHAPTER 30 FAMILY & CHILDREN HEALTH CARE SERVICES PART 8 REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES

7.30.8.1 ISSUING AGENCY: Department of Health, Developmental Disabilities Supports Division [7.30.8.1 NMAC - Rp, 7.30.8.1 NMAC, 6/29/12]

7.30.8.2 SCOPE: These regulations apply to all entities in New Mexico providing early intervention services to eligible children birth to three years of age and their families. [7.30.8.2 NMAC - Rp, 7.30.8.2 NMAC, 6/29/12]

7.30.8.3 S T A T U T O R Y AUTHORITY: Section 9-7-6 NMSA 1978, and Section 28-18-1 NMSA 1978. [7.30.8.3 NMAC - Rp, 7.30.8.3 NMAC, 6/29/12]

7.30.8.4 D U R A T I O N : Permanent [7.30.8.4 NMAC - Rp, 7.30.8.4 NMAC, 6/29/12]

7.30.8.5 EFFECTIVE DATE: June 29, 2012, unless a later date is cited at the end of a section. [7.30.8.5 NMAC - Rp, 7.30.8.5 NMAC, 6/29/12]

7.30.8.6 OBJECTIVE: These regulations are being promulgated to govern the provision of early intervention services to eligible children and their families and to assure that such services meet the requirements of state and federal statutes, in accordance with the Individuals with Disabilities Education Act. [7.30.8.6 NMAC - Rp, 7.30.8.6 NMAC, 6/29/12]

7.30.8.7 DEFINITIONS:

A. " A d a p t i v e

development" means the development of self-help skills, such as eating, dressing, and toileting.

B. "Adjusted age (corrected age)" means adjusting / correcting the child's age for children born prematurely (i.e. born less than 37 weeks gestation). The adjusted age is calculated by subtracting the number of weeks the child was born before 40 weeks of gestation from their chronological age. Adjusted Age (Corrected Age) should be used until the child is 24 months of age.

C. "Ages and stages for kids (ASK)" is a program to track the development of children who are determined to not be eligible for the FIT program. Parents complete ages and stages questionnaires at 2-3 month intervals and they are scored by the FIT program to determine if the child is potentially showing developmental delays.

D. "Assessment" means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility to identify: the child's unique strengths and needs and developmental functioning of the child and the progress made by the child over time and the early intervention services appropriate to meet those needs.

E. "Biological/medical risk" means diagnosed medical conditions that increase the risk of developmental delays and disabilities in young children.

F. "Child find" means activities and procedures to locate, identify, screen and refer children from birth to three years of age with or at risk of having a developmental delay or developmental disabilities.

G. "Child record" means the early intervention records (including electronic records) maintained by the early intervention provider and are defined as educational records in accordance with the Family Educational Rights and Privacy Act (FERPA). Early intervention records include files, documents, and other materials that contain information directly related to a child and family, and are maintained by the early intervention provider agency. Early intervention records do not include records of instructional, supervisory, and administrative personnel, which are in the sole possession of the maker and which are not accessible or revealed to any other person except to substitute staff.

H. "C o g n i t i v e development" means the progressive changes in a child's thinking processes affecting perception, memory, judgment, understanding and reasoning.

I. "Communication development" means the progressive acquisition of communication skills, during pre-verbal and verbal phases of development; receptive and expressive

language, including spoken, non-spoken, sign language and assistive or augmentative communication devices as a means of expression; and speech production and perception. It also includes oral-motor development, speech sound production, and eating and swallowing processes. Related to hearing, communication development includes development of auditory awareness; auditory, visual, tactile, and kinesthetic skills; and auditory processing for speech or language development.

J. “Confidentiality” means protection of the family’s right to privacy of all personally identifiable information, in accordance with all applicable federal and state laws.

K. “Consent” means informed written prior authorization by the parent(s) to participate in the early intervention system. The parent has been fully informed of all information relevant to the activity for which consent is sought in the parent’s native language and mode(s) of communication and agrees to the activity for which consent is sought. The parent(s) shall be informed that the granting of consent is voluntary and can be revoked at any time. The revocation of consent is not retroactive.

L. “Days” means calendar days, unless otherwise indicated in these regulations.

M. “Developmental delay” means an evaluated discrepancy between chronological age and developmental age of 25%, after correction for prematurity, in one or more of the following areas of development: cognitive, communication, physical/motor, social or emotional, and adaptive.

N. “Developmental specialist” means an individual who meets the criteria established in these regulations and is certified to provide ‘developmental instruction’. A developmental specialist works directly with the child, family and other personnel to implement the IFSP. The role and scope of responsibility of the developmental specialist with the family and the team shall be dictated by the individual’s level of certification as defined in developmental disabilities supports division (DDSD) policy and service standards.

O. “Dispute resolution process” means the array of formal and informal options available to parents and providers for resolving disputes related to the provision of early intervention services and the system responsible for the delivery of those services.

P. “Due process hearing” means a forum in which all parties present their viewpoint and evidence in front of an impartial hearing officer in order to resolve a dispute.

Q. “Duration” means the length of time that services included in the

IFSP will be delivered.

R. “Early intervention services” means any or all services specified in the IFSP that are designed to meet the developmental needs of each eligible child and the needs of the family related to enhancing the child’s development, as identified by the IFSP team. (Early intervention services are described in detail in the service delivery provisions of this rule.)

S. “ECO (early childhood outcomes)” means the process of determining the child’s development compared to typically developing children of the same age. The information is used to measure the child’s developmental progress over time.

T. “Eligible children” means children birth to three years of age who reside in the state and who meet the eligibility criteria within this rule.

U. “Environmental risk” means the presence of adverse family factors in the child’s environment that increases the risk of developmental delays and disabilities in young children.

V. “Established condition” means a diagnosed physical, mental, or neurobiological condition that has a high probability of resulting in developmental delay or disability.

W. “Evaluation” means the process through which a child’s eligibility for early intervention services is determined. It involves a review of pertinent records related to the child’s current health status and medical history; parent report, and assessment of level of functioning of the child in each developmental area (cognitive, communication, physical/motor (including vision and hearing), social or emotional, and adaptive) using the FIT program approved tool(s); and an explanation of how the status in each of the developmental areas affects the child’s overall functioning.

X. “Family” means a basic unit of society typically composed of adults and children having as its nucleus one or more primary nurturing caregivers cooperating in the care and rearing of their children. Primary nurturing caregivers may include, but are not limited to, parents, guardians, siblings, extended family members, and others defined by the family.

Y. “FIT-KIDS (key information data system)” means the online data collection and billing system utilized by the FIT program.

Z. “Family infant toddler (FIT) program” means the program within state government that administers New Mexico’s early intervention system for children (from birth to age three) who have or are at risk for developmental delay or disability and their families. The FIT program is established in accordance with 28-

18-1 NMSA, Chapter 178, and administered in accordance with the Individuals with Disabilities Education Act (IDEA), Part C as amended, and other applicable state and federal statutes and regulations.

AA. “Family service coordinator” means the person responsible for coordination of all services and supports listed on the IFSP and ensuring that they are delivered in a timely manner. The initial family service coordinator assists the family with intake activities such as eligibility determination and development of an initial individualized family service plan (IFSP). The ongoing family service coordinator is selected at the initial IFSP meeting and designated on the IFSP form.

BB. “Frequency” means the number of times that a service is provided or an event occurs within a specified period.

CC. “Head start/early head start” means a comprehensive child development program for children of low income families established under the Head Start Act, as amended.

DD. “Homeless” means lacking a fixed, regular, and adequate nighttime residence.

EE. “IFSP team” means the persons responsible for developing, reviewing the IFSP. The team shall include the parent(s), the family service coordinator, person(s) directly involved in conducting evaluations and assessments, and, as appropriate, persons who will be providing services to the child or family, an advocate or other persons, including family members, as requested by the family.

FF. “Inclusive setting” means a setting where the child with a developmental delay or disability participates in a setting with typically developing children. A classroom in an early head start, childcare or preschool classroom must have at least 51% non disabled peers in order to be considered an inclusive setting.

GG. “Indian tribe” means any federal or state recognized Indian tribe.

HH. “Individuals with Disabilities Education Act (IDEA) – Part C” means the federal law that contains requirements for serving eligible children. Part C of IDEA refers to the section of the law entitled “The Early Intervention Program for Infants and Toddlers with Disabilities”.

II. “Individualized education program (IEP)” means a written plan developed with input from the parents that specifies goals for the child and the special education and related services and supplementary aids and services to be provided through the public school system under IDEA Part B.

JJ. “Individualized family service plan (IFSP)” means the written plan for providing early intervention services to an eligible child and the child’s family. The

plan is developed jointly with the family and appropriate qualified personnel involved. The plan is developed around outcomes and includes strategies to enhance the family's capacity to meet the developmental needs of the eligible child.

KK. "Individualized family service plan process (IFSP process)" means a process that occurs from the time of referral, development of the IFSP, implementation of early intervention services, review of the IFSP, through transition. The family service coordinator facilitates the IFSP process.

LL. "Informed clinical opinion" means the knowledgeable perceptions of the evaluation team who use qualitative and quantitative information regarding aspects of a child's development that are difficult to measure in order to make a decision about the child's eligibility for the FIT program.

MM. "Intensity" means the length of time the service is provided during each session.

NN. "Interim IFSP" means an IFSP that is developed only under extraordinary circumstances for a child and family within forty-five days of referral (before the completion of the evaluation and assessment), used to facilitate the immediate provision of services to a child and family. Use of an Interim IFSP does not extend the forty five day timeline for completion of the evaluation process.

OO. "Lead agency" means the agency responsible for administering early intervention services under the Individuals with Disabilities Education Act (IDEA) Part C. The Department of health (DOH), family infant toddler (FIT) program, is designated as the lead agency for IDEA Part C in New Mexico.

PP. "Local education agency (LEA)" means the local public school district.

QQ. "Location" means the places in which early intervention services are delivered.

RR. "Mediation" means a method of dispute resolution that is conducted by an impartial and neutral third party, who without decision-making authority will help parties to voluntarily reach an acceptable settlement on issues in dispute.

SS. "Medicaid" means the federal medical assistance program under Title XIX of the Social Security Act. This program provides reimbursement for some services delivered by early intervention provider agencies to medicaid-eligible children.

TT. "Method" means the way in which a specific early intervention service is delivered. Examples include group and individual services.

UU. "Multidisciplinary"

means personnel from more than one discipline who work with the child and family, and who coordinate with other members of the team.

VV. "Native language" means the language or mode of communication normally used by the parent(s) of an eligible child.

WW. "Natural environments" means places that are natural or normal for children of the same age who have no apparent developmental delay, including the home, community and inclusive early childhood settings. Early intervention services are provided in natural environments in a manner/method that promotes the use of naturally occurring learning opportunities and supports the integration of skills and knowledge into the family's typical daily routine and lifestyle.

XX. "Other services" means services that the child and family need, and that are not early intervention services, but should be included in the IFSP. Other services does not mean routine medical services unless a child needs those services and the services are not otherwise available or being provided. Examples include, but are not limited to, child care, play groups, home visiting, early head start, WIC, etc.

YY. "Outcome" means a written statement of changes that the family desires to achieve for their child and themselves as a result of early intervention services that are documented on the IFSP.

ZZ. "Participating agency" means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements of this rule with respect to a particular child.

AAA. "Parent(s)" means a natural or adoptive parent(s) of a child; a guardian; a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare); or a surrogate parent who has been assigned in accordance with these regulations. A foster parent may act as a parent under this program if the natural parents' authority to make the decisions required of parents has been removed under state law and the foster parent has an ongoing, long-term parental relationship with the child; is willing to make the decisions required of parents under the Federal Individual with Disabilities Education Act; and has no interest that would conflict with the interests of the child.

BBB. "Permission" means verbal authorization from the parents to carry out a function and shall be documented. Documentation of permission does not constitute written consent.

CCC. "Personally identifiable information" means that information in any form which includes the

names of the child or family members, the child's or family's address, any personal identifier of the child and family such as a social security number, or a list of personal characteristics or any other information that would make it possible to identify the child or the family.

DDD. "Personnel" means qualified staff and contractors who provide early intervention services, and who have met state approved or recognized certification or licensing requirements that apply to the area in which they are conducting evaluations, assessments or providing early intervention services.

EEE. "Physical/motor development" means the progressive changes to a child's vision, hearing, gross and fine motor development, quality of movement, and health status.

FFF. "Primary referral source" means parents, physicians, hospitals and public health facilities (including prenatal and postnatal care facilities), child care programs, home visiting providers, schools, local education agencies, public health care providers, children's medical services, public agencies and staff in the child welfare system (including child protective service and foster care), other public health or social services agencies, early head start, homeless family shelters, domestic violence shelters and agencies, and other qualified individuals or agencies which have identified a child as needing evaluation or early intervention services.

GGG. "Prior written notice" means written notice given to the parents a reasonable time before the early intervention provider agency, either proposes or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family. Prior notice must contain the action being proposed or refused, the reasons for taking the action and all procedural safeguards that are available.

HHH. "Procedural safeguards" means the requirements set forth by IDEA, as amended, which specify families' rights and protections relating to the provision of early intervention services and the process for resolving individual complaints related to services for a child and family.

III. "Provider agency" means an provider that meets the requirements established for early intervention services, and has been certified as a provider of early intervention services by the department of health and that provides services through a provider agreement with the department.

JJJ. "Public agency" means the lead agency and any other political subdivision of the state government that is responsible for providing early intervention

services to eligible children and their families.

KKK. "Referral" means the process of informing the FIT program regarding a child who may benefit from early intervention, and giving basic contact information regarding the family.

LLL. "Reflective supervision" means planned time to provide a respectful, understanding and thoughtful atmosphere where exchanges of information, thoughts, and feelings about the things that arise around the person's work in supporting healthy parent-child relationships can occur. The focus is on the families involved and on the experience of the supervisee.

MMM. "School year" means the period of time between the fall and spring dates established by each public school district which mark the first and last days of school for any given year for children ages three through twenty-one years. These dates are filed each year with the public education department.

NNN. "Scientifically based practices" means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs.

OOO. "Screening" means the use of a standardized instrument to determine if there is an increased concern regarding the child's development when compared to children of the same age, and whether a full evaluation would therefore be recommended.

PPP. "Significant atypical development" means the eligibility determination under developmental delay made using informed clinical opinion, when 25% delay cannot be documented through the state approved evaluation tool, but where there is significant concern regarding the child's development.

QQQ. "Social or emotional development" the developing capacity of the child to: experience, regulate, and express emotion; form close and secure interpersonal relationships; explore the environment and learn.

RRR. "State education agency" means the public education department responsible for administering special education and related serves under IDEA Part B.

SSS. "Strategies" means the section of the IFSP that describes how the team, including the parent(s), will address each outcome. Strategies shall include the times and locations where activities will occur, as well as accommodations to be made to the environment and assistive technology to be used. Strategies shall also include how members of the team will work together to meet the outcomes on the IFSP.

TTT. "Supervision"

means defining and communicating job requirements; counseling, mentoring and coaching for improved performance; providing job-related instruction; planning, organizing, and delegating work; evaluating performance; providing corrective and formative feedback; providing consequences for performance; and arranging the environment to support performance.

UUU. "Surrogate parent" means the person appointed in accordance with these regulations to represent the eligible child in the IFSP Process when no parent can be identified or located or the child is a ward of the state. A surrogate parent has all the rights and responsibilities afforded to a parent under Part C of IDEA.

VVV. "Transition" means the process for a family and eligible child of moving from services provided through the FIT program at age three. This process includes discussions with, and training of, parents regarding future placements and other matters related to the child's transition; procedures to prepare the child for changes in service delivery, including steps to help the child adjust to and function in a new setting; and with parental consent, the transmission of information about the child to a program into which the child might transition to ensure continuity of services, including evaluation and assessment information required and copies of IFSPs that have been developed and implemented.

WWW. "Transition plan" means a component of the IFSP that addresses the process of a family and eligible child of moving from one service location to another. The plan defines the roles, responsibilities, activities and timelines for ensuring a smooth and effective transition.

XXX. "Ward of the state" means a child who is a foster child or in the custody of the child welfare agency. [7.30.8.7 NMAC - Rp, 7.30.8.7 NMAC, 6/29/12]

7.30.8.8 ADMINISTRATION:

A. Supervisory authority.

(1) Any agency, organization, or individual that provides early intervention services to eligible children and families shall do so in accordance with these regulations and under the supervisory authority of the lead agency for Part C of IDEA, the New Mexico department of health.

(2) An agency that has entered into a contract or provider agreement or an inter-agency agreement with the New Mexico department of health to provide early intervention services shall be considered an "early intervention provider agency" under these regulations.

B. Provider requirements.

(1) All early intervention provider agencies shall comply with these regulations and all other applicable state and

federal regulations. All early intervention provider agencies that provide such services shall do so under the administrative oversight of the lead agency for IDEA, Part C, the New Mexico department of health through the family infant toddler (FIT) program.

(2) All early intervention provider agencies shall establish and maintain separate financial reporting and accounting procedures for the delivery of early intervention services and related activities. They shall generate and maintain documentation and reports required in accordance with these regulations, the provisions of the contract/provider agreement or an inter-agency agreement, medicaid rules and department of health service definitions and standards. This information shall be kept on file with the early intervention provider agencies and shall be available to the New Mexico department of health or its designee upon request.

(3) All early intervention provider agencies shall employ individuals who maintain current licenses or certifications required of all staff providing early intervention services. Documentation concerning the licenses and certifications shall be kept on file with the early intervention provider agency and shall be available to the New Mexico department of health or its designee upon request. The provider of early intervention services cannot employ an immediate family member of an eligible and enrolled child to work directly with that child. Exceptions can be made with prior approval by the New Mexico department of health.

(4) Early intervention provider agencies shall ensure that personnel receive adequate planned and ongoing supervision, in order to ensure that individuals have the information and support needed to perform their job duties. The early intervention provider agency shall maintain documentation of supervision activities. Supervision shall comply with requirements of appropriate licensing and regulatory agencies for each discipline.

(5) Early intervention provider agencies shall provide access to information necessary for the New Mexico department of health or its designee to monitor compliance with applicable state and federal regulations.

(6) Failing to comply with these regulations on the part of early intervention provider agencies will be addressed in accordance with provisions in the contract/provider agreement or interagency agreement and the requirements of state and federal statutes and regulations.

C. Financial matters.

(1) Reimbursement for early intervention services to eligible children and families by the family infant toddler program shall conform to the method established by the New Mexico department of health, as

delineated in the early intervention provider agency's provider agreement and in the service definitions and standards.

(2) Early intervention provider agencies shall only bill for early intervention services delivered by personnel who possess relevant, valid licenses or certification in accordance with personnel certification requirements of this rule.

(3) Early intervention provider agencies shall enter delivered services data into the FIT-KIDS (key information data system), which is generated into claims for medicaid, private insurance and invoices for the department of health.

(4) Early intervention provider agencies shall maintain documentation of all services provided in accordance with service definitions and standards and provider agreement / contact requirements.

(5) The FIT program and early intervention provider agencies shall not implement a system of payments or fees to parents.

(6) Public and private insurance.

(a) The parent(s) will not be charged any co-pay or deductible related to billing their public insurance (including medicaid) and private insurance.

(b) The parent(s) shall provide written consent before personally identifiable information is disclosed for billing purposes to public insurance (including medicaid) and private insurance.

(c) The parent(s) may withdraw consent at any time to disclose personally identifiable information to public insurance (including medicaid) and private insurance for billing purposes.

(d) The parent(s) shall provide written consent to use their private insurance to pay for FIT program services. Consent shall be obtained prior to initial billing of their private insurance for early intervention services and each time consent for services is required due to an increase (in frequency, length, duration, or intensity) in the provision of services on the IFSP.

[7.30.8.8 NMAC - Rp, 7.30.8.8 NMAC, 6/29/12]

7.30.8.9 PERSONNEL:

A. Personnel requirements.

(1) Early intervention services shall be delivered by qualified personnel. Personnel shall be deemed "qualified" based upon the standards of their discipline and in accordance with these regulations and shall be supervised in accordance with these regulations.

(2) Individuals who hold a professional license or certificate from an approved field as identified in this rule, and provide services in that discipline, do not require certification as a Developmental Specialist. However, individuals who

hold a professional license or certificate in one of these fields and who spend 60% or more of their time employed in the role of developmental specialist must obtain certification as a developmental specialist.

(3) Personnel may delegate and perform tasks within the specific scope of their discipline. The legal and ethical responsibilities of personnel within their discipline cannot be delegated.

B. Qualified personnel may include individuals from the following disciplines who meet the state's entry level requirements and possess a valid license or certification:

- (1) audiology;
- (2) developmental specialist;
- (3) early childhood development and education;
- (4) education of the deaf/hard of hearing;
- (5) education of the blind and visually impaired;
- (6) family therapy and counseling;
- (7) nutrition/dietetics;
- (8) occupational therapy (including certified occupational therapy assistants);
- (9) orientation and mobility specialist;
- (10) pediatric nursing;
- (11) physical therapy (including physical therapy assistants);
- (12) physician (pediatrics or other medical specialty);
- (13) psychology (psychologist or psychological associate);
- (14) social work;
- (15) special education; and
- (16) speech and language pathology.

C. Certification of developmental specialist.

(1) Certification is required for individuals providing early intervention services functioning in the position of developmental specialist.

(2) A developmental specialist must have the appropriate certificate issued by the department of health in accordance with the developmental specialist certification policy and procedures.

(3) The term of certification as a developmental specialist is a three year period granted from the date the application is approved.

D. Reciprocity of certification: An applicant for a developmental specialist certificate who possesses a comparable certificate from another state shall be eligible to receive a New Mexico developmental specialist certificate, at the discretion of the department of health.

E. Certification renewal: The individual seeking renewal

of a developmental specialist certificate shall provide the required application and documentation in accordance with policy and procedures established by the FIT program.

F. Agency exemptions from personnel certification requirements.

(1) At its discretion, the FIT program may issue to an early intervention provider agency an exemption from personnel qualifications for a particular developmental specialist position. The exemption shall be in effect only for one year from the date it is issued.

(2) An exemption from certification is for a specific position and is to be used in situations when the early intervention provider agency can demonstrate that it has attempted actively to recruit personnel who meet the certification requirements but is currently unable to locate qualified personnel.

(3) Early intervention provider agencies shall not bill for early intervention services delivered by a non-certified developmental specialist unless the FIT program has issued an exemption for that position.

(4) Documentation of efforts to hire personnel meeting the certification requirements shall be maintained.

G. Family service coordinators.

(1) Family service coordinators shall possess a bachelor's degree in health, education or social service field or a bachelor's degree in another field plus two years experience in community, health or social services.

(2) If an early intervention provider agency is unable to hire suitable candidates meeting the above requirements, a person can be hired as a family service coordinator with an associate of arts degree and at least three years experience in community, health or social services.

(3) Early intervention provider agencies may request a waiver from the FIT program, to hire family service coordinators who do not meet the qualifications listed above but do meet cultural, linguistic, or other specific needs of the population served and or an individual who is the parent of a child with a developmental delay or disability.

(4) All individuals must meet all training requirements for family service coordinators in accordance with FIT program standards within one-year of being hired.

H. Supervision of early intervention personnel.

(1) Early intervention provider agencies shall ensure that developmental specialists (employees and subcontractors) and family service coordinators receive monthly planned and ongoing reflective supervision.

(2) The early intervention provider agency shall maintain documentation of supervision activities conducted.

(3) Supervision of other early intervention personnel shall comply with the requirements of other appropriate licensing and regulatory agencies for each discipline. [7.30.8.9 NMAC - Rp, 7.30.8.9 NMAC, 6/29/12]

7.30.8.10 CHILD IDENTIFICATION:

A. Early intervention provider agencies shall collaborate with the New Mexico department of health and other state, federal and tribal government agencies in a coordinated child find effort to locate, identify and evaluate all children residing in the state who may be eligible for early intervention services. Child find efforts shall include families and children in rural and in Native American communities, children whose family is homeless, children in foster care and wards of the state, and children born prematurely.

B. Early intervention provider agencies shall collaborate with the New Mexico department of health and shall inform primary referral sources regarding how to make a referral when there are concerns about a child's development, including especially hospitals, including prenatal and postnatal care facilities; physicians; public health facilities; child care and early learning programs, school districts; home visiting programs; homeless family shelters; domestic violence shelters and agencies; child protective services, including foster care; other social service agencies; and other health care providers.

C. Early intervention provider agencies in collaboration with the New Mexico department of health shall inform parents, medical personnel, local education agencies and the general public of the availability and benefits of early intervention services. This collaboration shall include an ongoing public awareness campaign that is sensitive to issues related to accessibility, culture, language, and modes of communication.

D. Referral and intake:

(1) Primary referral sources shall inform parent(s) of their intent to refer and the purpose for the referral. Primary referral sources should refer the child as soon as possible, but in no case more than seven days after the child has been identified.

(2) Parents must give permission for a referral of their child to the FIT program.

(3) The child must be under three years of age at the time of the referral.

(4) If there are less than 45 days before the child turns three at the time of referral, the early intervention provider agency will not complete an evaluation

to determine eligibility and will assist the family with a referral to Part B preschool special education and other preschool programs, as appropriate and with consent of the parent(s).

(5) The early intervention provider agency receiving a referral shall promptly assign a family service coordinator to conduct an intake with the parent(s).

(6) The family service coordinator shall contact the parent(s) to arrange a meeting at the earliest possible time that is convenient for the parent(s) in order to:

(a) inform the parent(s) about early intervention services and the IFSP process;

(b) review the FIT family handbook;

(c) explain the family's rights and procedural safeguards;

(d) if in a county that is also served by other FIT provider, inform the parent(s) of their choice of provider agencies and have them sign a "freedom of choice form".

(e) provide information about evaluation options; and with the parent's consent, arrange the comprehensive multidisciplinary evaluation.

(7) The family service coordinator with parental consent shall schedule and facilitate the initial IFSP meeting to be completed within (45) days of referral to the FIT program for early intervention services.

(8) documented exceptional family circumstances to the 45 day timeline include:

(a) if the parent(s) or child are unavailable to complete the screening (if applicable), the initial evaluation; or the IFSP meeting; and

(b) if the parent(s) has not provided consent for the screening (if applicable) or the initial evaluation, despite repeated documented attempts to obtain parental consent.

E. Screening.

(1) A developmental screening for a child who has been referred may be conducted using a standardized instrument to determine if there is an indication that the child may have developmental delay and whether an evaluation to determine eligibility is recommended.

(2) A developmental screening should not be used if the child has a diagnosis that would qualify them under established condition or biological medical risk or where the referral indicates a strong likelihood that the child has delay in their development, including when a screening has already been conducted.

(3) If a developmental screening is conducted:

(a) the written consent of the

parent(s) must be obtained for the screening; and

(b) the parent must be provided written notice that they can request an evaluation at any point during the screening process.

(4) If the results of the screening:

(a) Do not indicate that the child is suspected of having a developmental delay, the parent must be provided written notice of this result and be informed that they can request an evaluation at the present time or any future date. The parent should also be informed of the ages and stages for kids (ASK) program and whether they would like to enroll in ASK in order to receive periodic developmental screenings.

(b) Do indicate that the child is suspected of having a developmental delay, an evaluation must be conducted, with the consent of the parent(s). The 45-day timeline from referral to the initial IFSP and all of the referral and intake requirements of this rule must still be met.

F. Evaluation.

(1) A child who is referred for early intervention services, and whose parent(s) has given prior informed consent, shall receive a comprehensive multidisciplinary evaluation to determine eligibility, unless the child receives a screening in accordance with the screening requirements of this rule and the results do not indicate that the child is suspected of having a developmental delay. Exception: If the parent of the child requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted even if the results do not indicate that the child is suspected of having a developmental delay.

(2) The evaluation shall be timely, non-discriminatory, comprehensive, multidisciplinary, and shall include information provided by the parent(s).

(3) If parental consent is not given, the family service coordinator shall make reasonable efforts to ensure that the parent(s) is fully aware of the nature of the evaluation or the services that would be available; and that the parent(s) understand that the child will not be able to receive the evaluation or services unless consent is given.

(4) A comprehensive multidisciplinary evaluation shall be conducted by a multidisciplinary team consisting of at least two professionals from different disciplines.

(5) The family service coordinator shall coordinate the evaluation and shall obtain pertinent records related to the child's health and medical history.

(6) The evaluation shall include information provided by the child's parents, a review of the child's records related to current health status and medical history and

observations of the child. The evaluation shall also include an assessment of the child's strengths and needs and a determination of the developmental status of the child in the following developmental areas:

- (a) physical/motor development (including vision and hearing);
 - (b) cognitive development;
 - (c) communication development;
 - (d) social or emotional development; and
 - (e) adaptive development.
- (7) If the child has a recent and complete evaluation current within the past six months, the results may be used, in lieu of conducting an additional evaluation, to determine eligibility.

(8) The evaluation team shall use the tool(s) approved by the FIT program. Other domain specific tools may be used in addition to the approved tool(s).

(9) The tool(s) used in the evaluation shall be administered by certified or licensed personnel who have received training in the use of the tool(s).

(10) The evaluation shall be conducted in the child and family's native language or other mode of communication, unless it is clearly not feasible to do so.

(11) The evaluation team will collect and discuss all of the information obtained during the evaluation process in order to make a determination of the child's eligibility for the FIT program.

(12) An evaluation report shall be generated that summarizes the findings of the multidisciplinary evaluation team. The report shall summarize the child's level of functioning in each developmental area based on assessments conducted and shall describe the child's overall functioning and ability to participate in family and community life. The report shall include recommendations regarding approaches and strategies to be considered when developing IFSP outcomes. The report shall also include a statement regarding the determination of the child's eligibility for the FIT program.

(13) Parents shall receive a copy of the evaluation report and shall have the results and recommendations of the evaluation report explained to them by a member of the evaluation team or the family service coordinator with prior consultation with the evaluation team.

(14) Information from the evaluation process and the report shall be used to assist in determining a rating for the initial ECO.

G. Eligibility determination.

(1) The child's eligibility for the FIT program shall be determined by the multidisciplinary evaluation team, the family service coordinator and the parent(s).

(2) The multidisciplinary team shall review and consider information,

including: medical records; observations; information gathered from the parent(s); information regarding the child's development from the use of the approved evaluation tool(s); and any other tools used, in order to provide their opinion regarding the determination of the child's eligibility.

(3) The child's age shall be adjusted (corrected) for prematurity for children born less than 37 weeks gestation. The adjusted age shall be until a child is 24 months of age for the purpose of eligibility determination.

(4) Informed clinical opinion may be used by the evaluation team to determine eligibility when the approved tool(s) or other domain-specific tool are not able to establish a developmental level due to the age of an infant or the child's level of arousal and ability to participate at the time of the assessment; or when there are inconsistencies in the child's performance or inconsistencies in the results of the evaluation; and the team determines that the child has significant atypical development.

(a) If informed clinical opinion is used to determine the child's eligibility, documentation must be provided to justify the child's eligibility.

(b) A second level review and sign off shall occur within the early intervention provider agency by someone of equal or higher certification or licensure that was not part of the evaluation team.

(c) Informed clinical opinion may only be used to qualify a child for more than one year with review and approval of the FIT program.

(5) A statement of the child's eligibility for the FIT program shall be documented in the evaluation report.

(6) The child must be determined eligible under one of the following categories.

(a) **Developmental delay:** a delay of 25% or more, after correction for prematurity, in one or more of the following areas of development: cognitive; communication; physical/motor; social or emotional; adaptive;

(i) 25% delay shall be documented utilizing the tool(s) approved by the FIT program;

(ii) if the FIT program approved tool does not indicate a 25% delay, a domain-specific tool may be used to establish eligibility if the score is 1.5 standard deviations below the mean or greater;

(iii) informed clinical opinion in accordance with this rule may be used if a clear developmental level cannot be gained through the use of the approved tool(s) or domain-specific tools; or when there are inconsistencies in the child's performance or inconsistencies in the results of the evaluation; and shall be documented

as "significant atypical development".

(b) **Established condition:** a diagnosed physical, mental, or neurobiological condition that has a high probability of resulting in developmental delay. The established condition shall be diagnosed by a health care provider and documentation shall be kept on file. Established conditions include the following:

(i) genetic disorders with a high probability of developmental delay, including chromosomal anomalies including Down syndrome and Fragile X syndrome (in boys); inborn errors of metabolism including Hurler syndrome; and other syndromes, including Prader-Willi and Williams;

(ii) perinatal factors, including toxoplasmosis, rubella, CMV, and herpes (TORCH); prenatal toxic exposures including fetal alcohol syndrome (FAS); and birth trauma, including neurologic sequelae from asphyxia;

(iii) neurologic conditions, including congenital anomalies of the brain including holoprosencephaly, lissencephaly, microcephaly, hydrocephalus; anomalies of spinal cord including meningomyelocele; degenerative or progressive disorders including muscular dystrophies, leukodystrophies, spinocerebellar disorders; cerebral palsy (all types), including generalized, hypotonic patterns; abnormal movement patterns including generalized hypotonia, ataxias, myoclonus, and dystonia; peripheral neuropathies; traumatic brain injury; and CNS trauma including shaken baby syndrome;

(iv) sensory abnormalities, including visual impairment or blindness; congenital impairments including cataracts; acquired impairments including retinopathy of prematurity; cortical visual impairment; and chronic hearing loss;

(v) physical impairment, including congenital impairments including arthrogyposis, osteogenesis imperfecta, and severe hand anomalies; and acquired impairments including amputations and severe burns;

(vi) mental/psychosocial disorders, including autism spectrum disorders; and

(vii) conditions recognized by the FIT program as established conditions for purposes of this rule; a genetic disorder, perinatal factor, neurologic condition, sensory abnormality, physical impairment or mental/psychosocial disorder that is not specified above must be recognized by the FIT program in order to qualify as an established condition for purposes of this rule; department of health physician, designated by the FIT program manager, shall make a determination of whether a proposed condition will be

recognized within seven days of the FIT program manager's receipt of the request for review.

(c) Biological or medical risk for developmental delay: a diagnosed physical, mental, or neurobiological condition. The biological or medical risk condition shall be diagnosed by a health care provider and documentation shall be kept on file. Biological and medical risk conditions include the following:

(i) genetic disorders with increased risk for developmental delay, including chromosomal anomalies including Turner syndrome, Fragile X syndrome (in girls), inborn errors of metabolism including Phenylketonuria (PKU), and other syndromes including Goldenhar neurofibromatosis and multiple congenital anomalies (no specific diagnosis);

(ii) perinatal factors, including prematurity (less than 32 weeks gestation) or small for gestational age (less than 1500 gms); prenatal toxic exposures including alcohol, polydrug exposure, and fetal hydantoin syndrome; and birth trauma including seizures, and intraventricular or periventricular hemorrhage;

(iii) neurologic conditions, including anomalies of the brain including the absence of the corpus callosum, and macrocephaly; anomalies of the spinal cord including spina bifida and tethered cord; abnormal movement patterns including severe tremor and gait problems; and other central nervous system (CNS) influences, including CNS or spinal cord tumors, CNS infections (e.g., meningitis), abscesses, acquired immunodeficiency syndrome (AIDS), and CNS toxins (e.g., lead poisoning);

(iv) sensory abnormalities, including neurological visual processing concerns that affect visual functioning in daily activities as a result of neurological conditions, including seizures, infections (e.g., meningitis), and injuries including traumatic brain injury (TBI); and mild or intermittent hearing loss;

(v) physical impairment, including congenital impairments including cleft lip or palate, torticollis, limb deformity, club feet; acquired impairments including severe arthritis, scoliosis, and brachial plexus injury;

(vi) mental/psychosocial disorders, including severe attachment disorder, severe behavior disorders, and severe socio-cultural deprivation;

(vii) other medical factors and symptoms, including growth problems, severe growth delay, failure to thrive, certain feeding disorders, and gastrostomy for feeding; and chronic illness/medically fragile conditions including severe cyanotic heart disease, cystic fibrosis,

complex chronic conditions, and technology-dependency; and

(viii) conditions recognized by the FIT program as biological or medical risk conditions for purposes of this rule; a genetic disorder, perinatal factor, neurologic condition, sensory abnormality, physical impairment, mental/psychosocial disorder, or other medical factor or symptom that is not specified above must be recognized by the FIT program in order to qualify as an medical or biological risk condition for purposes of this rule; department of health physician, designated by the FIT program manager, shall make a determination of whether a proposed condition will be recognized within seven days of the FIT program manager's receipt of the request for review.

(d) Environmental risk for developmental delay: a presence of adverse family factors in the child's environment that increases the risk for developmental delay in children. Eligibility determination shall be made using the tool approved by the FIT program.

(7) The families of children who are determined to be not eligible for the FIT program shall be provided with prior written notice and informed of their rights to dispute the eligibility determination and shall receive information on the ages and stages for kids (ASK) developmental screening and tracking program and other appropriate community resources. Families shall be informed about how to request re-evaluation at a later time should they suspect that their child's delay or risk for delay increases.

H. Redetermination of eligibility.

(1) The child's eligibility for the FIT program shall be re-determined annually in accordance with the eligibility determination requirements of this rule.

(2) The child's continued eligibility shall be documented on the IFSP.

(3) If the child no longer meets the requirements under the original eligibility category, the team will determine if the child meets the criteria for one of the other eligibility categories before exiting the child.

(4) If the child is determined to no longer be eligible for the FIT program the family shall be provided with prior written notice and informed of their rights to dispute the eligibility determination. The family service coordinator will assist the family, with their consent, with referrals to other agencies and shall inform them of the ages and stages for kids developmental tracking program.

I. Ongoing assessment.

(1) Each eligible child shall receive an initial and ongoing assessment to determine the child's unique strengths and needs and developmental functioning. The

ongoing assessment will utilize multiple procedures including the use of a tool that helps the team determine if the child is making progress in their development, to determine developmental levels for the IFSP and to modify outcomes and strategies, and to determine the resources, priorities, and concerns of the family.

(2) Assessment information shall be used by the team as part of the process of assisting to determine early childhood outcome (ECO) scores at the time of the initial and annual IFSP and prior to the child exiting the FIT program.

(3) An annual assessment of the resources, priorities, and concerns of the family shall be voluntary on the part of the family. The IFSP shall reflect those resources, priorities and concerns the family has identified related to supporting their child's development.

[7.30.8.10 NMAC - Rp, 7.30.8.10 NMAC, 6/29/12]

7.30.8.11 INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP):

A. IFSP development.

(1) A written IFSP shall be developed and implemented for each eligible child and family.

(2) The IFSP shall be developed at a meeting. The IFSP meeting shall:

(a) take place in a setting and at a time that is convenient to the family; and

(b) be conducted in the native language of the family, or other mode of communication used by the family, unless it is clearly not feasible to do so.

(3) Participants at the initial IFSP and annual IFSP meeting shall include:

(a) the parent(s);

(b) other family members, as requested by the parent(s) (if feasible);

(c) an advocate or person outside of the family, as requested by the parent(s);

(d) a person or persons directly involved in conducting evaluations and assessments of the child;

(e) a person or persons who are or will be providing early intervention services to the child and family; and

(f) the family service coordinator;

(g) other individual(s) as applicable, such as personnel from: child care; early head start; home visiting; medically fragile; children's medical services; child protective services; physician and other medical staff, and with permission of the parent(s).

(4) The IFSP team must include the parent(s) and two or more individuals from separate disciplines or professions, one of whom must be the family service coordinator.

(5) If a person or persons directly involved in conducting evaluations and assessments of the child is unable

to attend a meeting, the family service coordinator shall make arrangements for the person's participation through other means, including: participating by telephone; having a knowledgeable authorized representative attend; or submitting a report.

(6) The initial IFSP shall be developed within 45 days of the referral.

(7) Families shall receive prior written notice of the IFSP meeting.

(8) The family service coordinator shall assist the parent(s) in preparing for the IFSP meeting and shall ensure that the parent(s) have the information that they need in order to fully participate in the meeting.

B. Contents of the IFSP:

The IFSP shall include:

(1) the child's name, address, the name and address of the parent(s) or guardian, the child's birth date and, when applicable, the child's chronological age and adjusted age for prematurity (if applicable);

(2) the date of the IFSP meeting, as well as the names of all participants in the IFSP meeting;

(3) the dates of periodic and annual reviews;

(4) a summary of the child's health (including vision and hearing) and the child's present levels of development in all domains (cognitive, communication, physical/motor, social and emotional and adaptive);

(5) with the approval of the parent(s), a statement of the family's concerns, priorities and resources that relate to enhancing the development of the infant or toddler as identified through the family assessment;

(6) the desired child and family outcomes developed with the family (including but not limited to pre-literacy and numeracy, as developmentally appropriate to the child), as well as strategies to achieve those outcomes and timelines, and procedures and criteria to measure progress toward those outcomes;

(7) a statement of specific early intervention services that are based on scientifically based research to the extent practicable to be provided and the duration, frequency, intensity, location, and the method of delivering services in order to achieve the expected outcomes;

(8) a parental signature, which denotes prior consent to services identified by the team as specific to the child and family's need; if the parent(s) does not provide consent for a particular early intervention service, then the service(s) to which the parent(s) did consent shall be provided;

(9) specific information concerning payment sources and arrangements;

(10) the name of the ongoing family service coordinator;

(11) a statement of all other services including, medical services, child care and other early learning services being provided to the child and family that are not funded under this rule;

(12) an outcome, including strategies the family service coordinator shall take to assist the child and family to secure those other services;

(13) a statement about the natural environments in which early intervention services shall be provided; if the IFSP team determines that services cannot be satisfactorily provided or IFSP outcomes cannot be achieved in natural environments, then documentation for this determination and a statement of where services will be provided and what steps will be taken to enable early intervention services to be delivered in the natural environment must be included;

(14) the projected start dates for initiation of early intervention services and the anticipated duration of those services; and

(15) at the appropriate time, a plan including identified steps and services to be taken to ensure a smooth and effective transition from early intervention services to preschool services under IDEA Part B and other appropriate early learning services.

C. Interim IFSP.

(1) With parental consent an interim IFSP shall be developed and implemented, when an eligible child or family have an immediate need for early intervention services prior to the completion of the evaluation and assessment.

(2) The interim IFSP shall include the name of the family service coordinator, the needed early intervention services, the frequency, intensity, location and methods of delivery, and parental signature indicating consent.

(3) The use of an interim IFSP does not waive or constitute an extension of the evaluation requirements and timelines.

D. Family service coordination.

(1) Family service coordination shall be provided at no cost to the family.

(2) The parent may choose the early intervention agency that will provide ongoing family service coordination.

(3) The parent may request to change the family service coordinator, at any time.

(4) The family service coordinator shall be responsible for:

(a) informing the family about early intervention and their rights and procedural safeguards;

(b) gathering information from the family regarding their concerns, priorities and resources;

(c) coordinating the evaluation and assessment activities;

(d) facilitating the determination of the child's eligibility;

(e) referring the family to other resources and supports;

(f) helping families plan and prepare for their IFSP meeting;

(g) organizing and facilitating IFSP meetings;

(h) arranging for and coordinating all services listed on the IFSP;

(i) coordinating and monitoring the delivery of the services on the IFSP to ensure that they are provided in a timely manner;

(j) conducting follow-up activities to determine that appropriate services are being provided;

(k) assisting the family in identifying funding sources for IFSP services, including medicaid and private insurance;

(l) facilitating periodic reviews of the IFSP; and

(m) facilitating the development of the transition plan and coordinating the transition steps and activities.

(5) Family service coordination shall be available to families upon their referral to the FIT program.

(6) Family service coordination shall be listed on the IFSP for all families of eligible children.

(7) Families may direct the level of support and assistance that they need from their family service coordinator and may choose to perform some of the service coordination functions themselves.

E. Periodic review of the IFSP.

(1) A review of the IFSP shall occur at a minimum every six months and shall include a determination of progress towards outcomes and the need for modification of outcomes or services.

(2) The parent(s), the family service coordinator, and others as appropriate, shall participate in these reviews.

(3) A review can occur at any time at the request of the parent(s) or early intervention provider agency.

(4) Participants at a periodic review meeting shall include:

(a) the parent(s);

(b) other family members, as requested by the parent(s) (if feasible);

(c) an advocate or person outside of the family, as requested by the parent(s);

(d) the family service coordinator; and

(e) persons providing early intervention services, as appropriate.

F. Annual IFSP.

(1) At least annually, the family service coordinator shall convene the IFSP team, to review progress regarding outcomes on the IFSP and revise outcomes, strategies

or services, as appropriate.

(2) The team shall develop a new IFSP for the coming year; however, information may be carried forward from the previous IFSP if the information is current and accurate.

(3) Results of current evaluations and assessments and other input from professionals and parents shall be used in determining what outcomes will be addressed for the child and family and the services to be provided to meet these outcomes.

(4) The annual IFSP review shall include a determination of the child's continuing eligibility utilizing the tool(s) approved by the FIT program.

(5) At any time when monitoring of the IFSP by the family service coordinator or any member of the IFSP team, including the family, indicates that services are not leading to intended outcomes, the team shall be reconvened to consider revision of the IFSP. The IFSP team can also be reconvened if there are significant changes to the child's or family's situation, e.g., moving to a new community, starting child care or early head start, health or medical changes, etc.

(6) If there are significant changes to the IFSP, the revised IFSP can be considered a new annual IFSP with a new start and end date.

[7.30.8.11 NMAC - Rp, 7.30.8.11 NMAC, 6/29/12]

7.30.8.12 S E R V I C E DELIVERY:

A. Early intervention services.

(1) Early intervention services shall be:

(a) designed to address the outcomes identified by the IFSP team (including the family) for the eligible child and family;

(b) identified in collaboration with the parents and other team members through the IFSP process;

(c) listed on the IFSP if recommended by the team, including the family, even if a service provider is not available at that time;

(d) delivered to the maximum extent appropriate in the natural environment for the child and family in the context of the family's day to day life activities;

(e) designed to meet the developmental needs of the eligible child and the family's needs related to enhancing the child's development;

(f) delivered in accordance with the specific location, duration and method in the IFSP; and

(g) provided at no cost to the parent(s).

(2) Early intervention services (with the exception of consultation and

evaluation and assessments) must be provided within 30 days of the start date for those services, as listed on the IFSP and consented to by the parent(s).

(3) If an early intervention service cannot be achieved satisfactorily for the eligible child in a natural environment, the child's record shall contain justification for services provided in another setting or manner and a description of the process used to determine the most appropriate service delivery setting, methodology for service delivery, and steps to be taken to enable early intervention services to be delivered in the natural environment.

(4) Early intervention services shall be provided, by qualified personnel, in accordance with an IFSP, and meet the standards of the state. Early intervention services include:

(a) **Assistive technology services:** services which directly assist in the selection, acquisition, or use of assistive technology devices for eligible children. This includes the evaluation of the child's needs, including a functional evaluation in the child's natural environment; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for eligible children; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing developmental therapy, education and rehabilitation plans and programs; training or technical assistance for an eligible child and the child's family; and training or technical assistance for professionals that provide early intervention or other individuals who provide other services or who are substantially involved in the child's major life functions. Assistive technology devices are pieces of equipment, or product systems, that are used to increase, maintain, or improve the functional capabilities of eligible children. Assistive technology devices and services do not include medical devices that are implanted, including a cochlear implant, or the optimization, maintenance, or replacement of such a device.

(b) **Audiological services:** services that address the following: identification of auditory impairment in a child using at risk criteria and appropriate audiology screening techniques; determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures; referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment; provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training;

provision of services for the prevention of hearing loss; and determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(c) **Developmental instruction:** services that include working in a coaching role with the family or other caregiver, the design of learning environments and implementation of planned activities that promote the child's healthy development and acquisition of skills that lead to achieving outcomes in the child's IFSP. Developmental instruction provides families and/or other caregivers with the information, skills, and support to enhance the child's development. Developmental instruction addresses all developmental areas: cognitive, communication, physical/motor, vision, hearing), social or emotional and adaptive development. Developmental instruction services are provided in collaboration with the family and other personnel providing early intervention services in accordance with the IFSP.

(d) **Family therapy, counseling and training:** services provided, as appropriate, by licensed social workers, family therapists, counselors, psychologists, and other qualified personnel to assist the parent(s) in understanding the special needs of their child, supporting the parent-child relationship, and to assist with emotional, mental health and relationship issues of the parent(s) related to parenting and supporting their child's healthy development.

(e) **Family service coordination:** services and activities as designated in the IFSP and performed by a designated individual to assist and enable the families of children from birth through age three years of age to access and receive early intervention services. The responsibilities of the family service coordinator include acting as the single point of contact for: coordinating, facilitating and monitoring the delivery of services to ensure that services are provided in a timely manner; coordinating services across agency lines; assisting parents in gaining access to, and coordinating the provision of, early intervention services and other services as identified on the IFSP; explaining to families about the early intervention and their procedural safeguards; gathering information from the family regarding their concerns, priorities and resources; coordinating the evaluation and assessment activities; facilitating the determination of the child's eligibility; referring the family to providers for needed services and supports; scheduling appointments for IFSP services for the child and their family; helping families plan and prepare for their IFSP meeting; organizing, facilitating and participating in IFSP meetings; arranging for and coordinating

all services listed on the IFSP; conducting follow-up activities to determine that appropriate services are being provided; coordinating funding sources for services provided under the IFSP; monitoring the delivery of the services listed on the IFSP; facilitating periodic reviews of the IFSP; and ensuring that a transition plan is developed at the appropriate time.

(f) Health services: those health related services that enable an eligible child to benefit from the provision of other early intervention service during the time that the child is receiving the other early intervention services. These services include, but are not limited to, clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services. Health services do not include surgery or purely medical services; devices necessary to control or treat a medical condition; medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children; or services related to implementation, optimization, maintenance or replacement of a medical device that is surgically implanted.

(g) Medical services: those services provided for diagnostic or evaluation purposes by a licensed physician to determine a child's developmental status and other information related to the need for early intervention services.

(h) Nursing services: those services that enable an eligible child to benefit from early intervention services during the time that the child is receiving other early intervention services and include the assessment of health status for the purpose of providing nursing care; the identification of patterns of human response to actual or potential health problems; provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and administration of medication, treatments, and regimens prescribed by a licensed physician.

(i) Nutrition services: include conducting individual assessments in nutritional history and dietary intake; anthropometric biochemical and clinical variables; feeding skills and feeding problems; and food habits and food preferences. Nutrition services also include developing and monitoring appropriate plans to address the nutritional needs of eligible children; and making referrals to appropriate community resources to carry out nutrition goals.

(j) Occupational therapy

services: those services that address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in a home, school, and community setting. Occupational therapy includes identification, assessment, and intervention; adaptation of the environment and selection, design and fabrication of assistive and orthotic devices to facilitate the development and promote the acquisition of functional skills, and prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(k) Physical therapy services: those services that promote sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. Included are screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction; obtaining interpreting, and integrating information appropriate to program planning to prevent or alleviate movement dysfunction and related functional problems; and providing individual and group services to prevent or alleviate movement dysfunction and related functional problems.

(l) Psychological services: those services delivered as specified in the IFSP which include administering psychological and developmental tests and other assessment procedures; interpreting assessment results; obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and planning and management of a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(m) Sign language and cued language services: services that include teaching sign language, cued language, and auditory/oral language, providing oral transliteration services (such as amplification), and providing sign and cued language interpretation.

(n) Social work services: those activities as designated in the IFSP that include identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services; preparing a social or emotional developmental assessment of the child within the family context; making home visits to evaluate patterns of parent-child interaction and the child's living

conditions, providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents; and working with those problems in a child's and family's living situation that affect the child's maximum utilization of early intervention services.

(o) Speech and language pathology services: those services as designated in the IFSP which include identification of children with communicative or oral-motor disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills; provision of services for the habilitation or rehabilitation of children with communicative or oral-motor disorder and delays in development of communication skills; and provision of services for the habilitation, rehabilitation, or prevention of communicative or oral-motor disorders and delays in development of communication skills.

(p) Transportation services: supports that assist the family with the cost of travel and other related costs as designated in the IFSP that are necessary to enable an eligible child and family to receive early intervention services or providing other means of transporting the child and family.

(q) Vision services: services delineated in the IFSP that address visual functioning and ability of the child to most fully participate in family and community activities. These include evaluation and assessment of visual functioning including the diagnosis and appraisal of specific visual disorders, delays and abilities; referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorder; and communication skills training. Vision services also include orientation and mobility training addressing concurrent motor skills, sensation, environmental concepts, body image, space/time relationships, and gross motor skills. Orientation and mobility instruction is focused on travel and movement in current environments and next environments and the interweaving of skills into the overall latticework of development. Services include evaluation and assessment of infants and toddlers identified as blind/visually impaired to determine necessary interventions, vision equipment, and strategies to promote movement and independence.

B. All services delivered to an eligible child shall be documented in the child's record and reported to the FIT program in accordance with policy and procedure established by the FIT program.

C. The family service coordinator shall review and monitor delivery of services to ensure delivery in

accordance with the IFSP.

[7.30.8.12 NMAC - Rp, 7.30.8.12 NMAC, 6/29/12]

7.30.8.13 TRANSITION:

A. Transition planning shall occur with the parent(s) of all children to ensure a smooth transition from the FIT program to preschool or other setting.

B. Notifications to the public education department and local education agency (LEA):

(1) The FIT program shall provide notification to the public education department, special education bureau, of all potentially eligible children statewide who will be turning three years old in the following twelve month period.

(2) The early intervention provider agency shall notify the LEA of all potentially eligible children residing in their district who will turn three years old in the following twelve month period. This will allow the LEA to conduct effective program planning.

(3) The notification from the early intervention provider agency to the LEA shall:

(a) include children who are potentially eligible for preschool special education services under the Individuals with Disabilities Education Act (IDEA) Part B; potentially eligible children are those children who are eligible under the developmental delay or established condition categories;

(b) include the child's name, date of birth, and contact information for the parent(s);

(c) be provided at least quarterly in accordance with the process determined in the local transition agreement; and

(d) be provided not fewer than 90 days before the third birthday of each child who is potentially eligible for IDEA Part B.

C. Transition plan:

(1) A transition plan shall be developed with the parent(s) for each eligible child and family that addresses supports and services after the child leaves the FIT program.

(2) The transition plan shall be included as part of the child's IFSP and shall be updated, revised and added as needed.

(3) The following is the timeline for developing the transition plan:

(a) at the child's initial IFSP meeting the transition plan shall be initiated and shall include documentation that the family service coordinator has informed the parent(s) regarding the timelines for their child's transition;

(b) by the time child is 24 months old, the transition plan will be updated to include documentation that the family service coordinator has informed the

parent(s) of the early childhood transition options for their child and any plans to visit those settings; and

(c) at least 90 days and not more than nine months before the child's third birthday, the transition plan shall be finalized at an annual IFSP or transition conference meeting that meets the attendance requirements of this rule.

(4) The transition plan shall include:

(a) steps, activities and services to promote a smooth and effective transition for the child and family;

(b) a review of program and service options, including Part B preschool special education, head start, New Mexico school for the deaf, New Mexico school for the blind and visually impaired, private preschool, child care settings and available options for Native American tribal communities; or home if no other options are available;

(c) documentation of when the child will transition;

(d) the parent(s) needs for childcare if they are working or in school, in an effort to avoid the child having to move between preschool settings;

(e) how the child will participate in inclusive settings with typically developing peers;

(f) evidence that the parent(s) have been informed of the requirement to send notification to the LEA;

(g) discussions with and training of the parent(s) regarding future placements and other matters related the child's transition;

(h) procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in a new setting; and

(i) a confirmation that referral information has been transmitted, including the assessment summary form and most recent IFSP.

D. Referral to the LEA and other preschool programs:

(1) A transition referral shall be submitted by the family service coordinator, with parental consent, to the LEA at least 60 days prior to the transition conference. The transition referral shall include at a minimum the child's name, the child's date of birth, the child's address of residence, and the contact information for the parent(s), including name(s), address(es), and phone number(s).

(2) For children who enter the FIT program less than 90 days before their third birthday, the family service coordinator shall submit a referral, with parental consent, as soon as possible to the LEA. This referral shall serve as the notification for the child. No further notification to the LEA shall be required for the child.

(3) For children referred to

the FIT program less than 45 days before the child's third birthday, the family service coordinator shall submit a referral to the LEA, with parent consent, but the early intervention provider agency will not conduct an evaluation to determine eligibility in accordance with the referral and intake provisions of this rule.

E. Invitation to the transition conference: The family service coordinator shall submit an invitation to the transition conference to the LEA and other preschool programs at least 30 days prior to the transition conference.

F. Transition assessment summary:

(1) The family service coordinator shall submit a completed transition assessment summary form to the LEA at least 30 days prior to the transition conference.

(2) Assessment results, including present levels of development, must be current within six months of the transition conference.

G. Transition conference:

The transition conference shall:

(1) be held with the approval of the parent(s);

(2) be held at least 90 days and no more than nine months prior to the child's third birthday;

(3) meet the IFSP meeting attendance requirements of this rule;

(4) take place in a setting and at a time that is convenient to the family;

(5) be conducted in the native language of the family, or other mode of communication used by the family, unless it is clearly not feasible to do so;

(6) with permission of the parent(s), include other early childhood providers (early head start/head start, child care, private preschools, New Mexico school for the deaf, New Mexico school for the blind and visually impaired, etc.);

(7) be facilitated by the family service coordinator to include:

(a) a review of the parent(s)'s preschool and other service options for their child;

(b) a review of, and if needed, a finalization of the transition plan;

(c) a review of the current IFSP, the assessment summary; and any other relevant information;

(d) the transmittal of the IFSP, evaluation and assessments and other pertinent information with parent consent;

(e) an explanation by an LEA representative of the IDEA Part B procedural safeguards and the eligibility determination process, including consent for the evaluation;

(f) as appropriate, discussion of communication considerations (if the child is deaf or hard of hearing) and Braille determination (if the child has a diagnosis of

a visual impairment), autism considerations, and considerations for children for whom English is not their primary language.

(g) discussion of issues including enrollment of the child, transportation, dietary needs, medication needs, etc.

(h) documentation of the decisions made on the transition page and signatures on the transition conference signature page, which shall be included as part of the IFSP. Copies of the transition conference page and signature page shall be sent to all participants.

H. Transition date:

(1) The child shall transition from the FIT program when he or she turns three years old.

(2) For a child determined to be eligible by the LEA for preschool special education (IDEA Part B):

(a) if the child's third birthday occurs during the school year, transition shall occur by the first school day after the child turns three; or

(b) if the child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP (or IFSP-IEP) will begin.

I. The individualized education program (IEP):

(1) The family service coordinator and other early intervention personnel shall participate in a meeting to develop the IEP (or IFSP-IEP) with parent approval.

(2) The family service coordinator, with parent consent, shall provide any new or updated documents to the LEA in order to develop the IEP.

J. Follow-up family service coordination: At the request of the parents, and in accordance with New Mexico department of health policy, family service coordination shall be provided after the child exits from early intervention services for the purpose of facilitating a smooth and effective transition.

[7.30.8.13 NMAC - Rp, 7.30.8.13 NMAC, 6/29/12]

7.30.8.14 PROCEDURAL SAFEGUARDS:

A. Procedural safeguards are the requirements set forth by IDEA, as amended, and established and implemented by the New Mexico department of health that specify family's rights and protections relating to the provision of early intervention services and the process for resolving individual complaints related to services for a child and family. The family service coordinator at the first visit with the family shall provide the family with a written overview of these rights and shall also explain all the procedural safeguards.

B. The family service coordinator shall provide ongoing

information and assistance to families regarding their rights throughout the period of the child's eligibility for services. The family service coordinator shall explain dispute resolution options available to families and early intervention provider agencies. A family service coordinator shall not otherwise assist the parent(s) with the dispute resolution process.

C. Surrogate parent(s).

(1) A surrogate parent shall be assigned when:

(a) no parent can be identified;

(b) after reasonable efforts a parent cannot be located; and

(c) a child is a ward of the state or tribe and the foster parent is unable or unwilling to act as the parent in the IFSP process.

(2) The family service coordinator shall be responsible for determining the need for the assignment of a surrogate parent(s) and shall contact the FIT program if the need for a surrogate is determined.

(3) The continued need for a surrogate parent(s) shall be reviewed regularly throughout the IFSP process.

(4) The FIT program shall assign a surrogate parent within 30 days after it is determined that the child needs a surrogate parent. A surrogate may also be appointed by a judge in case of a child who is a ward of the court, as long as the surrogate meets the requirements of this rule.

(5) The person selected as a surrogate:

(a) must not be an employee of the lead agency, other public agency or early intervention provider agency or provider of other services to the child or family; the person is not considered an employee if they solely are employed to serve as a surrogate;

(b) must have no personal or professional interest that conflicts with the interests of the child; and

(c) must have knowledge and skills that ensure adequate representation of the child.

(6) A surrogate parent has all of the same rights as a parent for all purposes of this rule.

D. Consent.

(1) The family service coordinator shall obtain parental consent before:

(a) administering screening procedures under this rule that are used to determine whether a child is suspected of having a disability;

(b) an evaluation conducted to determine the child's eligibility for the FIT program;

(c) early intervention services are provided;

(d) public or private insurance is used, in accordance with this rule; and

(e) personally identifiable

information is disclosed, unless the disclosure is made to a participating agency.

(2) The family service coordinator shall ensure that the parent is fully aware of the nature of the evaluation and assessment or early intervention service that would be available and informed that without consent the child cannot receive an evaluation or early intervention services.

(3) The parent(s):

(a) may accept or decline any early intervention service at any time; and

(b) may decline a service after first accepting it, without jeopardizing other early intervention services.

(4) The FIT program may not use due process procedures of this rule to challenge a parent's refusal to provide any consent that is required by this rule.

E. Prior written notice and procedural safeguards notice.

(1) Prior written notice shall be provided at least five days before the early intervention provider agency proposes, or refuses, to initiate or change the identification, evaluation or placement of a child, including any changes to length, duration, frequency and method of delivering a service. Parent(s) may waive the five-day period in order for the change to be implemented sooner, if needed.

(2) The prior written notice must include sufficient detail to inform the parent(s) about:

(a) the action being proposed or refused;

(b) the reasons for taking the action; and

(c) all procedural safeguards available, including mediation, how to file a complaint and a request for a due process hearing, and any timelines for each.

(3) The procedural safeguards notice must be provided in the native language of the parent(s) or other mode of communication used by the parent, unless clearly not feasible to do so.

(4) If the native language of the parent(s) is not a written language, the early intervention provider agency shall translate the notice orally in their native language or other means of communication so that the parent understands the notice. The family service coordinator shall document that this requirement has been met.

F. No child or family shall be denied access to early intervention services on the basis of race, creed, color, sexual orientation, religion, gender, ancestry, or national origin.

G. Confidentiality and opportunity to examine records.

(1) **Notice:** Notice to the parent(s) shall be provided when a child is referred to the FIT program, and shall include:

(a) a description of the types of

children that information is maintained on, the types of information sought, and method used in gathering the information, and the uses of the information;

(b) a summary of the policies and procedures regarding storage, disclosure to third parties, retention and destruction of personally identifiable information;

(c) a list of the types and locations of early intervention records collected, maintained or used by the agency;

(d) a description of the rights of the parent(s) and children regarding this information, including their rights under IDEA, Part C ("Confidentiality"); and

(e) a description of the extent to which the notice is provided in the native languages of the various population groups in the state.

(2) Confidentiality.

(a) All personally identifiable data, information, and records shall be protected and confidentiality maintained in accordance with the Family Educational Rights and Privacy Act (FERPA).

(b) Personally identifiable data, information, and records shall be maintained as confidential from the time the child is referred to the FIT program until the point at which records are no longer required to be maintained in accordance with federal or state law.

(c) Prior consent from the parent(s) must be obtained before personally identifiable information is disclosed to anyone other than a participating agency or used for any purpose other than meeting a requirement of these regulations.

(d) The early intervention provider agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.

(e) One official at each early intervention provider agency must assume responsibility for ensuring the confidentiality of all personally identifiable information.

(f) The early intervention provider agency must maintain for public inspection a current listing of names and positions of personnel who may have access to personally identifiable information.

(g) All personnel collecting or using personally identifiable information must receive training or instructions on the confidentiality requirements of this rule.

(3) Access to records.

(a) The early intervention provider agency must permit the parent(s) to inspect and review any early intervention records related to their child without unnecessary delay and before any IFSP meeting or due process hearing, and in no cases more than 10 days after the request has been made.

(b) The early intervention

provider agency must respond to reasonable requests for explanations and interpretations of the early intervention records.

(c) The parent has the right to have a representative inspect and review the early intervention records.

(d) The early intervention provider agency must assume that the parent has the right to review the early intervention records unless they have been provided documentation that the parent does not have authority under state law governing such matters as custody, foster care, guardianship, separation and divorce.

(e) The early intervention provider agency must provide copies of evaluations and assessments, the IFSP as soon as possible after each meeting at no cost.

(f) The early intervention provider agency must provide one complete copy of the child's early intervention records at the request of the parent(s) at no cost.

(g) The early intervention provider agency may otherwise charge a fee for copies of records that are made for parents under this rule if the fee does not effectively prevent the parent(s) from exercising their right to inspect and review those records.

(h) The early intervention provider agency may not charge a fee to search for or to retrieve records to be copied.

(4) Record of access.

(a) The early intervention provider agency must keep a record of parties obtaining access to early intervention records (except access by the parent(s), authorized representatives of the lead agency and personnel of the FIT provider agency).

(b) The record must include the name of the party, the date access was given, and the purpose for which the party was authorized to access the record.

(c) If any early intervention record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(5) Amendment of records at parent request.

(a) If the parent(s) believes that information in the child's records is inaccurate, misleading, or violates the privacy or other rights of the child or parent(s), they may request that the early intervention provider agency amend the information.

(b) The early intervention provider agency must decide whether to amend the information in accordance with the request within 14 days of receipt of the request.

(c) If the early intervention provider agency refuses to amend the information in accordance with the request, it must inform the parent(s) of the refusal

and advise the parent(s) of their right to a hearing.

(6) Records hearing.

(a) The early intervention provider agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's record to ensure that it is not inaccurate, misleading, or violates the privacy or other rights of the child or parent(s).

(b) A parent may request a due process hearing under this rule to address amendment of records.

(c) If as a result of a hearing it is determined that information in the records is inaccurate, misleading, or violates the privacy or other rights of the child or parent(s), the early intervention provider agency must amend the information accordingly and inform the parents in writing.

(d) If as a result of a hearing it is determined that information in the records is not inaccurate, misleading, or violates the privacy or other rights of the child or parent(s), the early intervention provider agency must inform the parents of the right to place in the child's records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(e) Any explanation placed in the child's records must be maintained by the early intervention provider agency as long as the record is contested or as long as the contested portion is maintained and if the contested portion is released to any party, the explanation must also be disclosed to the party.

(7) Destruction of records.

(a) Records shall be maintained for a minimum of six years following the child's exit from the early intervention services system before being destroyed. At the conclusion of the six year period, records shall be destroyed upon the request of the parent(s), or may be destroyed at the discretion of the early intervention provider agency.

(b) The early intervention provider agency must attempt to inform the parent(s) when personally identifiable information collected, maintained or used is no longer needed to provide services under state and federal regulations.

(c) Notwithstanding the foregoing, a permanent record of a child's name, date of birth, parent contact information, name of the family service coordinator, names of early intervention personnel, and exit data (year and age upon exit, and any programs entered into upon exit) may be maintained without time limitation.

H. Dispute resolution options.

(1) Parents and providers shall have access to an array of options for

resolving disputes, as described herein.

(2) The family service coordinator shall inform the family about all options for resolving disputes. The family shall also be informed of the policies and procedures of the early intervention provider agency for resolving disputes at the local level.

I. Mediation.

(1) The mediation process shall be made available to parties to disputes, including matters arising prior to filing a complaint or request for due process hearing. The mediation:

(a) shall be voluntary on the part of the parties;

(b) shall not be used to deny or delay the parent(s)'s right to a due process hearing or to deny any other rights of the parent(s);

(c) shall be conducted by a qualified and impartial mediator who is trained in mediation techniques and who is knowledgeable in the laws and regulations related to the provision of early intervention services;

(d) shall be selected by the FIT program from a list of qualified, impartial mediators who are selected based on a random, rotational or other impartial basis; the selected mediator may not be an employee of the lead agency or the early intervention provider agency and they must not have a personal or professional interest that conflicts with the person's objectivity; and

(e) shall be funded by the FIT program.

(2) Sessions in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties.

(3) If the parties resolve the dispute, they must execute a legally binding agreement that:

(a) states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(b) is signed by both parties.

(4) The mediation agreement shall be enforceable in a state or federal district court of competent jurisdiction.

J. Complaints.

(1) An individual or organization may file a complaint with the state director of the FIT program regarding a proposal, or refusal, to initiate or change the identification, evaluation, or placement of a child; or regarding the provision of early intervention services to a child and the child's family. The party submitting the complaint shall also forward a copy of the complaint to the FIT provider agency(ies) serving the child.

(2) The written complaint shall

be signed by the complaining party and shall include:

(a) a statement that the FIT program or FIT provider agency(ies) serving the child have violated a requirement of this rule or Part C of the IDEA, and a statement of the facts on which that allegation is based;

(b) the signature and contact information of the complainant;

(c) if the complaint concerns a specific child:

(i) the name and address of the residence of the child, or if the child is homeless, the contact information for the child;

(ii) the name of the FIT provider agency(ies) serving the child;

(iii) a description of the nature of the dispute related to the proposed or refused initiation or change, including facts related to the dispute; and

(d) a proposed resolution of the dispute to the extent known and available to the party at the time.

(3) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received by the FIT program.

(4) Upon receipt of a complaint, the department of health shall determine if an investigation is necessary, and if an investigation is deemed necessary, within 60 calendar days after the complaint is received it shall:

(a) carry out an independent on-site investigation;

(b) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(c) provide an opportunity for the lead agency, public agency or early intervention provider agency to respond to the complaint, including at a minimum:

(i) at the discretion of the FIT program, a proposal to resolve the complaint; and

(ii) an opportunity for a parent who has filed a complaint and the FIT program or the FIT provider agency(ies) serving the child to voluntarily engage in mediation, consistent with this rule;

(d) give the parties the opportunity to voluntarily engage in mediation;

(e) review all relevant information and make an independent determination as to whether any law or regulation has been violated; and

(f) issue a written decision to the complainant and involved parties that addresses each allegation and details the findings of fact and conclusions and the reason for the complaint investigator's final decision. The written decision may include recommendations that include technical assistance activities, negotiations and

corrective actions to be achieved.

(5) An extension of the 60 day investigation timeline will only be granted if exceptional circumstances exist with respect to a particular complaint or if the parties agree to extend the timeline to engage in mediation.

(6) If the complaint received is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing, the complaint investigator shall set aside any part of the complaint that is being addressed in a due process hearing until the conclusion of that hearing. Any issue in the complaint that is not part of the due process hearing must be resolved within the sixty calendar day timeline.

(7) If an issue raised in a complaint is or was previously decided in a due process hearing involving the same parties, the decision from that hearing is binding on that issue, and the FIT program shall inform the complainant to that effect.

(8) A complaint alleging a failure to implement a due process hearing decision shall be resolved by the department.

(9) Except as otherwise provided by law, there shall be no right to judicial review of a decision on a complaint.

K. Request for a due process hearing.

(1) In addition to the complaint procedure described above, a parent, a participating FIT provider, or the FIT program may file a request for a hearing regarding a proposal, or refusal, to initiate or change the identification, evaluation, or placement of a child; or regarding the provision of early intervention services to a child and the child's family.

(2) A parent or participating FIT provider may request a hearing to contest a decision made by the FIT program pursuant to the complaints provisions above.

(3) A request for a hearing shall contain the same minimum information required for a complaint under this rule.

L. Appointment of hearing officer.

(1) When a request for a hearing is received, the FIT program shall assign an impartial hearing officer from a list of hearing officers maintained by the FIT program who:

(a) has knowledge about IDEA Part C and early intervention;

(b) is not an employee of any agency or entity involved in the provision of early intervention; and

(c) does not have a personal or professional interest that would conflict with their objectivity in implementing the process.

(2) The hearing officer shall:

(a) listen to the presentation of relevant viewpoints about the due process

issue;

(b) examine all information relevant to the issues;

(c) seek to reach timely resolution of the issues; and

(d) provide a record of the proceedings, including a written decision.

M. Due process hearings.

(1) When a request for a hearing is received, a due process hearing shall be conducted.

(2) The due process hearing shall be carried out at a time and place that is reasonably convenient to the parents and child involved.

(3) The due process hearing shall be conducted and completed and a written decision shall be mailed to each party no later than 30 days after receipt of a parent's complaint. However, the hearing officer may grant specific extensions of this time limit at the request of either party.

(4) A parent shall have the right in the due process hearing proceedings:

(a) to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children and others, at the party's discretion;

(b) to present evidence and confront, cross examine, and compel the attendance of witnesses;

(c) to prohibit the introduction of any evidence at the hearing that has not been disclosed to the party at least five days before the hearing;

(d) to obtain a written or electronic verbatim record of the hearing, at no cost to the parent; and

(e) to obtain a written copy of the findings of fact and decisions, at no cost to the parent.

(5) Any party aggrieved by the findings and decision of the hearing officer after a hearing has the right to bring a civil action in a state or federal court of competent jurisdiction, within 30 days of the date of the decision.

N. Abuse, neglect, and exploitation.

(1) All instances of suspected abuse, neglect, and exploitation shall be reported in accordance with law and policies established through the New Mexico department of health and the children, youth and families department.

(2) A parent's decision to decline early intervention services does not constitute abuse, neglect or exploitation.

[7.30.8.14 NMAC - Rp, 7.30.8.14 NMAC & 7.30.8.15 NMAC, 6/29/12]

HISTORY of 7.30.8 NMAC

Pre-NMAC History:

None

History of the Repealed Material:

7 NMAC 30.8 Requirements For Family Infant Toddler Early Intervention Services, filed 09-16-97 - Repealed, effective 10/01/2001.

7.30.8 NMAC, Requirements For Family Infant Toddler Early Intervention Services, filed 09-14-01 - Repealed, effective 6-29-12.

**NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.139.504 NMAC, Section 11, effective 07/01/2012.

8.139.504.11 BENEFIT DELIVERY

A. Benefit issuance: NM Extra Help SNAP benefits shall be issued through a direct deposit into a household's electronic benefit transfer (EBT) food stamp account. EBT cards are issued and EBT accounts maintained as defined at 8.139.610 NMAC. A participating household has a definite issuance date so that food stamp benefits are received on or about the same time each month. The issuance date is based on the last two digits of the social security number of the individual to whom the food stamps are issued. Benefits for the month of application shall not be prorated.

B. [Benefit calculation: Benefits are issued based on countable gross income and total combined shelter costs. Benefit amounts shall be subject to review and adjustment in coordination with the regular food stamp program and cost neutrality and may be adjusted each January. Monthly NM Extra Help SNAP benefit amounts are based on the following:

~~(1) Benefits for a two person household:~~

~~(a) The monthly benefit amount for a two person household with any amount of monthly shelter expense and a gross monthly income of less than \$800.00 is \$300.00.~~

~~(b) The monthly benefit amount for a two person household with any amount of income and a monthly shelter expense of \$800.00 or more is \$300.00~~

~~(c) The monthly benefit amount for a two person household with a gross monthly income of \$800.00 or more and monthly shelter expenses between \$700.00 and \$799.00 is \$180.00.~~

~~(d) The monthly benefit amount for a two person household with a gross monthly income of \$800.00 or more and a monthly shelter expense between \$600.00 and \$699.00 is \$96.00.~~

~~(e) The monthly benefit amount for a two person household with a gross monthly income of \$800.00 or more and monthly shelter expenses less than \$600.00 is \$46.00.~~

~~(2) Benefits for a one person household:~~

~~(a) The monthly benefit amount for a one person household with any amount of monthly shelter expense and a gross monthly income of less than \$500.00 is \$180.00.~~

~~(b) The monthly benefit amount for a one person household with any amount of income and a monthly shelter expense of \$700.00 or more is \$180.00.~~

~~(c) The monthly benefit amount for a one person household with a gross monthly income of \$500.00 or more and monthly shelter expenses between \$600.00 and \$699.00 is \$96.00.~~

~~(d) The monthly benefit amount for a one person household with a gross monthly income of \$500.00 or more and monthly shelter expenses less than \$600.00 is \$46.00.~~

Eligibility Determination: Eligibility is based on adjusted net income (ANI) which equals the countable gross income minus the appropriate standard deduction, minus the total combined shelter cost, and minus the medical deduction. To be eligible for NM Extra Help SNAP, the applicant household's ANI must be below the appropriate net income level in accordance with 8.139.500 NMAC.

C. Benefit Calculation:

Benefits are issued based on adjusted income (AI) and the shelter to income ratio (STIR). AI is equal to the gross countable income minus medical expenses. The STIR is equal to the total shelter costs divided by the AI. Benefit amounts shall be subject to review and adjustment in coordination with the regular food stamp program and cost neutrality and may be adjusted each January.

(1) Benefits for a two person household:

(a) The monthly benefit amount for a two person household with a monthly AI of less than \$900.00 is \$240.00.

(b) The monthly benefit amount for a two person household with a monthly STIR equal to or greater than 0.9 is \$240.00.

(c) The monthly benefit amount for a two person household with a monthly AI equal to or greater than \$900.00 but less than \$1,500.00 and a STIR equal to or greater than 0.8 and less than 0.9 is \$180.00.

(d) The monthly benefit amount for a two person household with a monthly AI equal to or greater than \$900.00 but less than \$1,500.00 and a STIR equal to or greater than 0.25 but less than 0.8 is \$75.00.

(e) The monthly benefit amount for a two person household with a monthly AI equal to or greater than \$1,500 but less than \$1,800.00 and a STIR equal to or greater than 0.25 is \$75.00.

(f) The monthly benefit amount for a two person household with a monthly AI equal to or greater than \$900.00 but less than \$1,500.00 and a STIR less than 0.25 is \$16.00.

(g) The monthly benefit amount

for a two person household with a monthly AI equal to or greater than \$1,800.00 and a STIR less than 0.25 is \$16.00.

(2) Benefits for a one person household:

(a) The monthly benefit amount for a one person household with an AI less than \$500.00 is \$180.00.

(b) The monthly benefit amount for a one person household with a STIR equal to or greater than 0.85 is \$180.00.

(c) The monthly benefit amount for a one person household with an AI equal to or greater than \$500.00 and a STIR equal to or greater than 0.65 but less than .085 is \$75.00.

(d) The monthly benefit amount for a one person household with an AI equal to or greater than \$500.00 and a STIR less than 0.65 is \$16.00.

[E] D. Benefit correction: Benefit corrections shall be determined and adjusted as defined at 8.139.640 NMAC.

[8.139.504.11 NMAC - N, 08/01/2011; A, 07/01/2012]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.510 NMAC, Sections 1, 3 and 12, effective July 1, 2012.

8.200.510.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).

[2-1-95; 8.200.510.1 NMAC - Rn, 8 NMAC 4.MAD.000.1, 1-1-01; A, 7-1-12]

8.200.510.3 STATUTORY

AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended [and by the state human services department pursuant to state statute. See NMSA 1978 Section 27-2-12 et. seq. (Repl. Pamp. 1991)] or by state statute. See NMSA 1978, Chapter 27, Public Assistance.

[2-1-95; 8.200.510.3 NMAC - Rn, 8 NMAC 4.MAD.000.3, 1-1-01; A, 7-1-12]

8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT):

Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

DEDUCTION AMOUNT

A. Personal needs allowance for institutionalized spouse
[\$63] \$66

B. Minimum monthly maintenance needs allowance (MMMNA)

[\$1,839] \$1,892

C. The community spouse monthly income allowance (CSMIA) is calculated by subtracting the community spouse's gross income from the MMMNA:

(1) If allowable shelter expenses of the community spouse exceed [\$552] \$568 deduct an excess shelter allowance from community spouse's income that includes: expenses for rent; mortgage (including interest and principal); taxes and insurance; any maintenance charge for a condominium or cooperative; and an amount for utilities (if not part of maintenance charge above); use the standard utility allowance (SUA) deduction used in the food stamp program for the utility allowance.

(2) Excess shelter allowance may not exceed a maximum of [\$1,002] \$949.

D. Any extra maintenance allowance ordered by a court of jurisdiction or a state administrative hearing officer.

E. Dependent family member income allowance (if applicable) calculated as follows: 1/3 X MMMNA - dependent member's income)

F. Non-covered medical expenses

G. The maximum total of the community spouse monthly income allowance and excess shelter deduction may not exceed \$2,841.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.12 NMAC - Rn, 8 NMAC 4.MAD.510.2 & A, 1-1-01, 7-1-01; A, 1-1-02; A, 7-1-02; A, 1-1-03; A, 7-1-03; A, 1-1-04; A, 7-1-04; A, 1-1-05; A, 7-1-05; A, 1-1-06; A, 7-1-06; A, 1-1-07; A, 7-1-07; A, 1-1-08; A, 7-1-08, A, 1-1-09, A, 4-1-09; A, 7-1-09; A, 7-1-11; A, 1-1-12; A, 7-1-12]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.300.22 NMAC, Sections 8 and 11, effective July 1, 2012.

8.300.22.8 MISSION

STATEMENT: [To reduce the impact of poverty on people living in New Mexico and to assure low income and individuals with disabilities in New Mexico equal participation in the life of their communities:]

To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.

[8.300.22.8 NMAC - N, 8-1-11; A, 7-1-12]

8.300.22.11 ELIGIBLE RECIPIENT VOLUME:

An eligible professional provider and an eligible hospital must meet eligible recipient volume criteria

to qualify for incentive payments. Eligible recipient volume criteria compliance will be verified by MAD through claims and encounter data and audits. Eligible recipient volume requirements represent Title XIX (medicaid) eligible recipients as a percent of total eligible recipients, except for an eligible professional provider practicing predominately in a FQHC or RHC, who may use "needy individuals" as defined below in calculating eligible recipient volume.

A. The CMS final rule provides two options for determining patient volume percentages. New Mexico MAD will allow both options, as described below:

(1) eligible recipient encounter method: medicaid eligible recipient encounters in any 90-day reporting period in the preceding calendar year divided by total eligible recipient encounters in same 90-day period; or

(2) unduplicated eligible recipient method: see formula below.

(total medicaid eligible recipients assigned to the provider in any representative continuous 90-day period in the preceding calendar year with at least one encounter in the year preceding the start of the 90-day period) + (unduplicated medicaid encounters in that same 90-day period) *100 divided by (total eligible recipients assigned to the provider in the same 90 days with at least one encounter in the year preceding the start of the 90-day period) + (all unduplicated encounters in that same 90-day period).

B. Eligible recipient volume thresholds vary by type of provider and practice location.

(1) An eligible professional provider must meet a 30 percent medicaid eligible recipient volume threshold over a continuous 90-day period in the preceding calendar year. The only exception is for pediatricians, as discussed in 8.300.22.16 NMAC, below.

(2) With the exception of a children's hospital, which have no eligible recipient volume requirement, an eligible hospital must meet a 10 percent medicaid eligible recipient volume threshold over a continuous 90-day period in the preceding calendar year.

(3) An eligible professional provider practicing predominantly in an FQHC or RHC must meet 30 percent "needy individual" eligible recipient volume. To qualify as a "needy individual," patients must meet one of the following criteria:

(a) receives medicaid under an appropriate category of eligibility; or

(b) were furnished services at either no cost or reduced cost based on a sliding scale determined by the individual's ability to pay, or were furnished uncompensated care by the provider.

(4) A clinic or group practice may calculate eligible recipient volume using the

clinic's or group's entire eligible recipient volume under the following conditions:

(a) the clinic or group practice's eligible recipient volume is appropriate as a eligible recipient volume methodology calculation for the eligible professional provider; and

(b) there is an auditable data source to support the eligible recipient volume determination; and

(c) all eligible professional providers in the clinic or group practice use the same methodology for the payment year; and

(d) the clinic or group practice does not limit eligible recipient volume in any way; and

(e) if an eligible professional provider works inside and outside of the clinic or practice, the eligible recipient volume calculation includes only those encounters associated with the clinic or group practice, and not the eligible professional provider's outside encounters.

(5) A pediatrician may qualify for a two-thirds incentive payment if their medicaid eligible recipient volume is 20-29 percent. To qualify as a pediatrician for the purpose of receiving a two-thirds payment under the medicaid EHR incentive program, the pediatrician must be enrolled as a pediatrician provider with MAD.

~~[(6) An eligible professional provider and an eligible hospital may not include out-of-state medicaid recipients for eligible recipient volume requirement purposes.]~~

[8.300.22.11 NMAC - N, 8-1-11; A, 7-1-12]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.230.600 NMAC, Sections 1, 3, 5, 6 and 10 -14, effective July 1, 2012. This rule was also renumbered and reformatted from 8 NMAC 4.PWN.000 and 8 NMAC 4.PWN.600 to comply with NMAC requirements.

8.230.600.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).

[2/1/95; 8.230.600.1 NMAC - Rn, 8 NMAC 4.PWN.000.1 & A, 7/1/12]

8.230.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 et seq. NMSA 1978 [(Repl-

Pamp. 1991)].

[2/1/95; 8.230.600.3 NMAC - Rn, 8 NMAC 4.PWN.000.3 & A, 7/1/12]

8.230.600.5 EFFECTIVE DATE: February 1, 1995 unless a later date is cited at the end of a section.

[2/1/95; 8.230.600.5 NMAC - Rn, 8 NMAC 4.PWN.000.5 & A, 7/1/12]

8.230.600.6 OBJECTIVE: The objective of [~~these regulations~~] this rule is to provide eligibility policy and procedures for the medicaid program.

[2/1/95; 8.230.600.6 NMAC - Rn, 8 NMAC 4.PWN.000.6 & A, 7/1/12]

8.230.600.10 BENEFIT DETERMINATION: Eligibility for the application month and for each month between the application month and the month of approval must be determined in its own right. A signed application must be submitted to the income support [~~specialist (ISS)]~~ division (ISD) office before eligibility can be determined.

A. Processing time limit: All applications must be processed within [~~forty-five (45)]~~ 45 days from the date of application. The time limit begins on the day the signed application is received.

B. Approvals must be acted upon and notice of approval, denial or delay sent out within the required time limit: [~~The ISS explains the time limit and that~~] the applicant will be explained the time limit and may request an administrative hearing if the application pends longer than the time limit allows.

[2/1/95; 8.230.600.10 NMAC - Rn, 8 NMAC 4.PWN.620 & A, 7/1/12]

8.230.600.11 INITIAL BENEFITS: Notices of eligibility determinations are automatically generated and mailed to [~~applicants/recipients~~] applicants.

A. Move during eligibility determination: If an applicant moves to another county while the eligibility determination is pending, the county [~~income support division (ISD)]~~ ISD office in which the application was originally registered transfers the case to the new responsible ISD office.

B. Delays in eligibility determination: If an eligibility determination is not made within the time limit, the applicant is notified in writing of the reason for the delay. This notice also informs the [~~applicant/recipient~~] applicant of the right to request an administrative hearing.

[2/1/95; 8.230.600.11 NMAC - Rn, 8 NMAC 4.PWN.623 & A, 7/1/12]

8.230.600.12 [~~O N G O I N G~~ BENEFITS: ~~Periodic reviews are~~

conducted on a yearly basis.] [~~RESERVED~~] [2/1/95; 8.230.600.12 NMAC - Rn, 8 NMAC 4.PWN.624 - Repealed, 7/1/12]

8.230.600.13 RETROACTIVE BENEFIT COVERAGE: Up to three [(3)] months of retroactive medicaid coverage can be [~~furnished~~] provided to applicants who have received medicaid-covered services during the retroactive period and would have met applicable eligibility criteria had they applied during the three [(3)] months prior to the month of application [42 CFR Section 435.914].

A. Application for retroactive benefit coverage: Applications for retroactive coverage can be submitted even after a pregnancy ends. If the mother was not eligible for and receiving medicaid at the time of delivery or when the pregnancy terminated, retroactive coverage for category 030 can only be extended through the month the pregnancy ended. Application for retroactive medicaid can be made by [~~checking "yes" in the "application for retroactive medicaid payments" box on the application/redetermination of eligibility for medicaid assistance (MAD 381) form or by checking "yes" to the question "does anyone in your household have unpaid medical expenses in the last three (3) months?" on the application for assistance ISD 100-S form]~~] indicating the existence of unpaid medical expenses in the three months prior to the month of application on the application form. Applications for retroactive medicaid benefits must be made by 180 days from the date of application for assistance. [~~Medicaid-covered services which were furnished more than two (2) years prior to application are not covered.]~~

B. Approval requirements: [~~To establish retroactive eligibility, the ISS must verify that all conditions of eligibility were met for each of the three (3) retroactive months and that the applicant received medicaid-covered services. Each month must be approved or denied on its own merits. Retroactive eligibility can be approved on either the ISD2 system (for categories programmed on that system) or on the retroactive medicaid eligibility authorization (ISD 333) form.]~~] To establish retroactive eligibility, the caseworker must verify that all conditions of eligibility were met for each of the three retroactive months in which the applicant received medicaid-covered services. Each month must be approved or denied on its own merit. Retroactive eligibility can be approved on either the ISD eligibility system (for categories programmed on that system) or on the retroactive medicaid eligibility authorization MAD 333 form.

C. Notice:

(1) **Notice to applicant:** The applicant must be informed if any of the

retroactive months are denied.

(2) **Recipient responsibility to notify provider:** After the retroactive eligibility has been established, the [HSS] caseworker must notify the recipient that he/she is responsible for informing all providers with outstanding bills of the retroactive eligibility determination. If the recipient does not inform all providers and furnish verification of eligibility which can be used for billing and the provider consequently does not submit the billing within [±20 days from the date of approval of retroactive coverage,] the timeframes referenced in 8.302.2.11 NMAC, billing and claims filing limitations, the recipient is responsible for payment of the bill.

[2/1/95; 8.230.600.13 NMAC - Rn, 8 NMAC 4.PWN.625 & A, 7/1/12]

8.230.600.14 CHANGES IN ELIGIBILITY:

If a pregnant woman who is eligible for medicaid under category 030 loses eligibility because of a change in family income, she automatically remains eligible for medicaid under category 035, pregnancy related services [and/or] or family planning services, without a new application. The pregnancy related services only remain effective for the two (2) months following the month in which the child is born or the pregnancy ends. Coverage is limited to pregnancy related services only. The family planning services for [24] 12 months remain effective subsequent to the two month post-partum period.

[2/1/95, 6/30/98; 8.230.600.14 NMAC - Rn, 8 NMAC 4.PWN.630 & A, 7/1/12]

NEW MEXICO BOARD OF NURSING

This is an amendment to 16.12.6 NMAC, Sections 8, 9 and 11, effective 7-16-12.

16.12.6.8 ISSUANCE OF A LICENSE BY A COMPACT PARTY STATE:

~~A.~~ As of July 1, 2006, no applicant for initial licensure will be issued a compact license granting a multi-state privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX examination or its predecessor examination used for licensure.

~~[A.]~~ **B.** A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include but is not limited to:

- (1) driver's license with a home address;
- (2) voter registration card

displaying a home address; [or]

(3) federal income tax return declaring the primary state of residence;

~~(4) military form no. 2058 - state of legal residence certificate; or~~

~~(5) W2 from US government or any bureau, division or agency thereof indicating the declared state of residence (statutory basis: Articles 2E, 4C, and 4D).~~

~~C.~~ A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as a primary state of residence. If the foreign country is declared the primary state of residence, a single state license will be issued by the party state (statutory basis: Article 3E).

~~D.~~ A license issued by a party state is valid for practice in all other party state unless clearly designated as valid only in the state which issued the license (statutory basis: Article 3A and 3B).

~~E.~~ When a party state issued a license authorizing practice only in that state and not authorizing practice in other party states (i.e. a single state license), the license shall be clearly marked with words indicating that it is valid only in the state of issuance (statutory basis: Article 3A, 3B, and 3E).

~~[B.]~~ **E.** A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multi-state licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed thirty (30) days.

~~[C.]~~ **G.** The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the thirty (30) day period in paragraph (2) shall be stayed until resolution of the pending investigation.

~~[D.]~~ **H.** The former home state license shall no longer be valid upon the issuance of a new home state license.

~~[E.]~~ **I.** If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days and the former home state may take action in accordance with that state's law and rules.

~~[F.]~~ Licensee's who have been denied multistate privilege or have had their license denied or revoked in a compact state may not practice in that compact state with a NM compact license.]

[16.12.6.8 NMAC - N, 1-2-04; A, 2-17-06; A, 7-16-12]

16.12.6.9 LIMITATIONS ON ~~[MULTI]~~ MULTI-STATE LICENSURE PRIVILEGE:

A. Home state boards shall include in all licensure disciplinary

orders [and/or] and agreements that limit practice [and/or] and require monitoring the requirement that the licensee subject to said order [and/or] and agreement will agree to limit the licensee's practice to the home state during the pendency of the disciplinary order [and/or] and agreement. This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and such other party state boards.

B. An individual who had a license which was surrendered, revoked, suspended, or an application denied for cause in a prior state of primary residence, may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) of adverse action. Once eligible for licensure in the prior state(s), a multistate license may be issued.

[16.12.6.9 NMAC - N, 1-2-04; A, 7-16-12]

16.12.6.11 [MULTI-STATE LICENSURE] PRIVILEGE-REGISTRATION:

A. A nurse not licensed in New Mexico, who wishes to practice in this state pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact should provide to the New Mexico board of nursing a completed registration form within thirty (30) days after beginning to practice, that contains:

- ~~(1) the nurse's full name;~~
- ~~(2) home state residence address;~~
- ~~(3) temporary residence address in New Mexico;~~
- ~~(4) phone number or e-mail address;~~
- ~~(5) the identity of the nurse's home state;~~
- ~~(6) the type of nursing license the nurse holds;~~
- ~~(7) a declaration that the license is current and in good standing; and~~
- ~~(8) name, address and phone number of the employing agency.~~

~~B.~~ The nurse who has practiced nursing in New Mexico pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact who wishes to cease practicing in the state shall notify the board in writing of the date upon which the nurse will no longer practice.] [Reserved] [16.12.6.11 NMAC - N, 1-2-04; A, 2-17-06; Repealed, 7-16-12]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.1 NMAC, Sections 1, 5, 6, 7 and 8, effective 07/06/2012.

16.16.1.1 ISSUING AGENCY: New Mexico Board of ~~[Examiners in]~~ Optometry. [10-14-95; A, 6-26-00; 16.16.1.1 NMAC - Rn, 16 NMAC 16.1.1, 03-15-2001; A, 07-06-2012]

16.16.1.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section. [8-21-92...10-14-95; 16.16.1.5 NMAC - Rn, 16 NMAC 16.1.5, 03-15-2001; A, 07-06-2012]

16.16.1.6 OBJECTIVE: The objective of Part 1 of Chapter 16 is to establish regulations for the general provisions which apply to all of the board of ~~[Examiners in]~~ optometry's rules, policies, and procedures. [10-14-95; 16.16.1.6 NMAC - Rn, 16 NMAC 16.1.6, 03-15-2001; A, 07-06-2012]

16.16.1.7 DEFINITIONS:
A. "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, a patient to seek the services of an optometrist.

B. "Advertisement of Health Care Services Act" means NMSA 1978, Sections 57-21-1 to 57-21-3, and herein referred to as the Advertisement of Health Care Services Act.

C. [RESERVED]

D. "Board" means the New Mexico board of ~~[examiners in]~~ optometry, herein referred to as the board.

E. "Controlled substance" means any drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act.

F. "Controlled Substances Act" means NMSA 1978 Sections 30-31-1 to 30-31-41 and herein referred to as the Controlled Substances Act.

G. [RESERVED]

H. "Inspection of Public Records Act" refers to NMSA 1978 Sections 14-2-1 through 14-2-10 (1993 Repl. Pamp.), herein referred to as the Inspection of Public Records Act.

I. "New Mexico Drug, Device and Cosmetic Act" means Sections 26-1-1 to 26-1-26 NMSA 1978 (1987 Repl. Pamp.), herein referred to as the Drug, Device and Cosmetic Act.

J. "Optometric physician" means an optometrist who has been certified by the board to administer and prescribe oral and topical pharmaceutical medication in the treatment and management of ocular diseases.

K. "Open Meetings Act" means NMSA 1978 Sections 10-15-1 to 10-15-4 (1993 Repl. Pamp.), herein referred to as the Open Meetings Act.

L. "Optometry Act" means NMSA 1978 Sections 61-2-1 through 61-2-18 (1995 Repl. Pamp.), herein referred to as the Optometry Act or Section 61-2-1 et seq.

M. [RESERVED]

N. "Parental Responsibility Act" refers to Chapter 25 Laws of 1995, herein referred to as the Parental Responsibility Act or PRA.

O. "Prescription" as defined in Section 26-1-2.I of the Drug, Device and Cosmetic Act means an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, and bearing the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue.

P. "Public Records Act" refers to NMSA 1978 Sections 14-3-2 through 14-3-25 (1995 Repl. Pamp.) herein referred to as the Public Records Act.

Q. [RESERVED]

R. "State Rules Act" means NMSA 1978 Sections 14-4-1 to 14-4-9 (1995 Repl. Pamp.), herein referred to as the State Rules Act.

S. "Uniform Licensing Act" means NMSA 1978 Sections 61-1-1 to 61-1-33 (1993 Repl. Pamp.), herein referred to as the Uniform Licensing Act or ULA. [10-14-95; 16.16.1.7 NMAC - Rn, 16 NMAC 16.1.7, 03-15-2001; A, 03-22-2008; A, 07-06-2012]

16.16.1.8 INSPECTION OF BOARD RECORDS:

A. Except as otherwise provided by law, all applications, pleadings, petitions, motions, exhibits, decisions and orders entered following formal disciplinary proceedings conducted pursuant to the Uniform Licensing Act are matters of public record as of the time of filing with or by the board.

B. [RESERVED]

C. Any ~~[citizen of the State of New Mexico]~~ person may examine all public records in the board's custody. The following procedure shall be followed by persons requesting inspection of public records.

(1) ~~[Reasonable notice shall be~~

~~given to the Board by the person seeking access to public records.]~~ The [written] request shall identify the records sought with reasonable particularity. ~~[The requestor shall allow fifteen calendar days for the production of the requested records.]~~ The board will produce public records as required under the Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to -12.

(2) Upon request, the board may provide copies of public records, lists, labels, and verifications and may charge a reasonable fee to defray copying and mailing charges. The board is not obligated to create lists, labels, or materials which are not already in existence.

(3) No person shall be permitted to remove documents from the board's office. [8-21-92; 10-14-95; 16.16.1.8 NMAC - Rn, 16 NMAC 16.1.8, 03-15-2001; A, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.2 NMAC, Sections 1, 8, 10 through 14, and 16 through 23, effective 07/06/2012.

16.16.2.1 ISSUING AGENCY: New Mexico Board of ~~[Examiners in]~~ Optometry. [10-14-95; 2-15-99; A, 6-26-00; 16.16.2.1 NMAC - Rn, 16 NMAC 16.2.1, 03-15-2001; A, 07-06-2012]

16.16.2.8 APPLICATION PROCESSING FEE: ~~[\$125.00]~~ \$175.00

A. The application fee must accompany the letter of intent to sit for a scheduled exam 16.16.3.9 and 16.16.4.8 NMAC.

B. The application-processing fee is required each time the candidate is scheduled for the board exam. [6-24-94; 10-14-95; 5-31-96; 16.16.2.8 NMAC - Rn, 16 NMAC 16.2.8, 03-15-2001; A, 07-06-2012]

16.16.2.10 LICENSE FEE FOR EXAM CANDIDATES: ~~[\$175.00]~~ \$200.00 [6-24-94; 10-14-95; 5-31-96; A, 6-26-00; 16.16.2.10 NMAC - Rn, 16 NMAC 16.2.10, 03-15-2001; A, 07-06-2012]

16.16.2.11 LICENSE FEE FOR ENDORSEMENT CANDIDATES: ~~[\$200.00]~~ \$250.00 [6-24-94; 10-14-95; 5-31-96; A, 6-26-00; 16.16.2.11 NMAC - Rn, 16 NMAC 16.2.11, 03-15-2001; A, 07-06-2012]

16.16.2.12 [PHARMACEUTICAL CERTIFICATE FEE: ~~—————~~ \$35.00] **[RESERVED]**

[10-14-95; 5-31-96; 16.16.2.12 NMAC - Rn,

16 NMAC 16.2.12, 03-15-2001; Repealed, 07-06-2012]

16.16.2.13 RENEWAL FEE: [~~\$225.00~~] \$300.00
[6-24-94; 10-14-95; 5-31-96; 2-15-99; 16.16.2.13 NMAC - Rn, 16 NMAC 16.2.13, 03-15-2001; A, 07-06-2012]

16.16.2.14 LATE PENALTY FEE: [~~\$300.00~~] \$325.00
[6-24-94; 10-14-95; 5-31-96; 16.16.2.14 NMAC - Rn, 16 NMAC 16.2.14, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

16.16.2.16 DUPLICATE WALL CERTIFICATE FEE: [~~\$35.00~~] \$50.00
[6-24-94; 10-14-95; 5-31-96; 16.16.2.16 NMAC - Rn, 16 NMAC 16.2.16, 03-15-2001; A, 07-06-2012]

16.16.2.17 VERIFICATION OF LICENSURE FEE: [~~\$10.00~~] \$25.00
[6-24-94; 10-14-95; 16.16.2.17 NMAC - Rn, 16 NMAC 16.2.17, 03-15-2001; A, 07-06-2012]

16.16.2.18 INACTIVE STATUS FEE: [~~\$225.00~~] \$300.00
[16.16.2.18 NMAC - N, 03-15-2004; A, 07-06-2012]

16.16.2.19 I N A C T I V E RENEWAL FEE: \$200.00
[10-14-95; 16.16.2.19 NMAC - Rn, 16 NMAC 16.2.19, 03-15-2001; 16.16.2.19 NMAC - N, 07-06-2012]

16.16.2.20 REACTIVATION FEE: \$300.00
[2-15-99; 16.16.2.20 NMAC - Rn, 16 NMAC 16.2.20, 03-15-2001; 16.16.2.20 NMAC - N, 07-06-2012]

~~[16.16.2.19]~~ **16.16.2.21 LICENSEE LISTINGS AND MAILING LABELS FEE:** [~~Address labels of optometrists licensed by the Board: \$35.00~~] \$100.00
[N, 6-26-00; 16.16.2.21 NMAC - Rn, 16 NMAC 16.2.21, 03-15-2001; 16.16.2.21 NMAC - Rn & A, 16.16.2.19 NMAC, 07-06-2012]

~~[16.16.2.20]~~ **16.16.2.22 ALL FEES ARE NON-REFUNDABLE:**
[16.16.2.22 NMAC - Rn, 16.16.2.20 NMAC, 07-06-2012]

~~[16.16.2.21]~~ **16.16.2.23 O T H E R ADMINISTRATIVE FEES:**

A. Application packet: \$10.00. The license application packet is also downloadable at no cost from the board's internet website at www.rld.state.nm.us.

B. Hard copy of board's rules and regulations and statute:

\$15.00. These documents are available and downloadable at no cost from the board's internet website at www.rld.state.nm.us.

C. Request for CE review for approval for licensees as provided in 16.16.13.10 NMAC: \$35.00
[16.16.2.23 NMAC - Rn, 16.16.2.21 NMAC, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.3 NMAC, Sections 1 and 9, effective 07/06/2012.

16.16.3.1 ISSUING AGENCY: New Mexico Board of ~~[Examiners in]~~ Optometry.
[10-14-95; 2-15-99; A, 6-26-00; 16.16.3.1 NMAC - Rn, 16 NMAC 16.3.1, 03-15-2001; A, 07-06-2012]

16.16.3.9 APPLICATION REQUIREMENTS: In accordance with Section 61-2-8 NMSA 1978, and those qualifications set forth therein, candidates for examination must submit to the board office, at least sixty-five (65) days prior to the announced examination date, a letter of intent applying for the next regularly scheduled board examination accompanied by the required application processing fee. In addition to a completed, board-approved application form, the following documents must be received by the board office no later than forty (40) days prior to the requested examination.

A. A copy of the applicant's birth certificate certified ~~[by a notary public]~~ to be a true and correct copy of the original.

B. Letters of reference from two currently licensed optometrists actively engaged in the practice of optometry, and not related to the applicant, written on their letterhead stationery.

C. Official pre-optometry transcript(s) sent directly to the board office by each college or university attended by the applicant.

D. A complete official optometry transcript showing the applicant's graduation sent directly to the board by a college of optometry as approved by the American optometric association's council of optometric education.

(1) An applicant expecting to graduate in the spring or summer prior to the board's examination who does not expect completed transcripts to be available before the documentation deadline, must make arrangements for the school to send a letter directly to the board regarding the applicant's expected graduation.

(2) The letter must be postmarked before the forty-day documentation deadline.

(3) The completed, official transcript must be received by the board before the scheduled examination date or the application will be considered incomplete, and the applicant will be denied entrance into the examination.

E. A statement and copy of other state license(s) held by the applicant.

F. A recent, passport-type photograph of the applicant. The applicant must sign the back of the photograph in the presence of the notary who is also witnessing the applicant's signature on the board-approved exam application form.

G. An affidavit from the applicant that the applicant has not engaged in any optometry practice of an illegal or unethical nature as defined in the New Mexico Optometry Act, NMSA 1978, Sections 61-2-1 to 61-21-18 (1995 Repl. Pamp.).

H. Copy of current certification attesting to completion of a CPR course offered by the American red cross, the American heart association, or the American safety and health institute (ASHI). The course cannot be self study.

~~[I.]~~ A complete professional resume² or curriculum vitae.

~~[J.]~~ **L.** A verification from an accredited optometry school of successful completion of one hundred (100) or more post-graduate clock hours of ocular therapeutics pharmacology, as provided in Subsection A of 16.16.7.10 NMAC, and a minimum of twenty (20) post-graduate clock hours in clinical pharmacology as provided in Subsection B of 16.16.7.11 NMAC.

~~[K.]~~ **L.** Verification directly from the national board of examiners in optometry (NBEO) that the applicant has successfully passed part I, part II, part III, and the TMOD of the NBEO as provided in Subsection B of 16.16.3.8 NMAC.

(1) If NBEO examination results will not be released by the NBEO prior to the documentation deadline, the applicant must submit to the board a copy of the NBEO letter scheduling the applicant for the NBEO exam(s).

(2) Upon receipt of verification of successful completion of the required NBEO exam(s), and upon having met all other requirements stipulated in this regulation, the approved candidate will be scheduled for the next regularly scheduled board examination.

~~[E.]~~ **K.** A list of the names of any New Mexico licensed optometrist(s) with whom the applicant is acquainted; with whom the applicant has a professional or personal affiliation; or that the applicant would feel uncomfortable being examined by, in the event that one of those optometrists is a board member or a clinical examiner for the board. Failure to provide this information prior to the examination deadline may disqualify the candidate from the exam.

[M.] L. Each approved exam candidate will be required to bring his/her copy of the board's exam policy and procedures document to the clinical exam and to sign it in the presence of the board's representative in attestation that the candidate has read the document; and a copy of the document will become a part of the candidate's examination records.

M. Nationwide criminal history screening. All applicants for initial licensure in New Mexico are subject to a state and national criminal history screening at their expense. All applicants must submit two (2) full sets of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee at the time of application.

(1) Applications for licensure will not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.

(2) Applications will be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

(3) If the criminal background screening reveals a felony or a violation of the Optometric Practice Act the applicant will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure.

[11-17-73; 3-8-86; 3-31-91; 8-21-92; 6-24-94; 9-30-95; 10-14-95; 5-31-96; 2-15-99; 16.16.3.9 NMAC - Rn, 16 NMAC 16.3.9, 03-15-2001; A, 03-15-2004; A, 03-22-2008; A, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.4 NMAC, Sections 1 and 9, effective 07/06/2012.

16.16.4.1 ISSUING AGENCY: New Mexico Board of [Examiners—in] Optometry.

[10-14-95; 2-15-99; A, 6-26-00; 16.16.4.1 NMAC - Rn, 16 NMAC 16.4.1, 03-15-2001; A, 07-06-2012]

16.16.4.9 APPLICATION REQUIREMENTS: At least sixty-five (65) days prior to the next scheduled examination every applicant for licensure by endorsement must submit to the board office the required application-processing fee with a letter of intent stating the date of examination for which he/she wishes to be scheduled. The following items must be received by the board office at least forty (40) days prior to the regularly scheduled board examination for which the applicant wishes to be scheduled.

A. A copy of the applicant's birth certificate certified [by a notary public] to be a true and correct copy of the original.

B. An affidavit that the applicant has not at any time preceding application been engaged in any optometric practice of an illegal or unethical nature as defined in the Optometry Act.

C. Copy(ies) of any other state license(s) held by the applicant.

D. Official pre-optometry transcript(s) sent directly to the board office by each college or university attended by the applicant.

E. A complete, official optometry transcript showing the applicant's graduation sent directly to the board office by a college of optometry as approved by the American optometric association's council on optometric education.

F. Letters of reference from two currently licensed optometrists in the endorsing state of licensure.

G. Verification of successful completion of one hundred (100) or more post-graduate clock hours of ocular therapeutics pharmacology from an accredited institution.

H. A complete professional resume or curriculum vitae' to date.

I. Copy of current certification attesting to completion of a CPR course offered by the American red cross, the American heart association, or the American safety and health institute (ASHI). The course cannot be self study.

J. A completed, signed, and notarized board-approved exam application form.

K. The required application and examination fees (16.16.2.8 NMAC and 16.16.2.9 NMAC).

L. A recent, passport-type photograph of the applicant which the applicant has signed on the back in the presence of the notary public who is also witnessing the applicant's signature on the application form.

M. Verifications of licensure status sent directly to the board from all state licensing boards where the applicant is or has ever been licensed. Endorsement candidates will require the following information:

(1) verification that the applicant has been actively engaged in the practice of optometry in the state of licensure or in federal service for seven consecutive years immediately prior to the year in which application is made to the board office;

(2) verification that the applicant has completed fourteen (14) days, or one hundred twelve (112) hours of continuing education during the immediate seven years prior to the application, providing that at least twenty-two (22) of those hours were completed within the immediate prior year; and

(3) verification of examination requirements which the applicant met to be licensed to practice in that state (see 16.16.4.8 NMAC).

N. Verification must be provided for pre-1994-1995 academic year optometry school graduates of successful completion of a minimum twenty (20) hour course in clinical pharmacology as set forth in Subsection B of 16.16.7.11 NMAC.

O. A list of the names of any New Mexico licensed optometrist(s) with whom the applicant is acquainted; with whom the applicant has a professional or personal affiliation; or that the applicant would feel uncomfortable being examined by, in the event that one of those optometrists is a board member or a clinical examiner for the board. Failure to provide this information prior to the examination may disqualify the candidate from the exam.

P. Each approved exam candidate will be required to bring his/her copy of the board's exam policy and procedures document to the clinical exam and to sign it in the presence of the board's representative in attestation that the candidate has read the document; and a copy of the document will become a part of the candidate's examination records.

Q. Nationwide criminal history screening. All applicants for initial licensure in New Mexico are subject to a state and national criminal history screening at their expense. All applicants must submit two (2) full sets of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee at the time of application.

(1) Applications for licensure will not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.

(2) Applications will be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

(3) If the criminal background screening reveals a felony or a violation of the Optometric Practice Act the applicant will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure.

[11-17-73; 12-6-87; 3-31-91; 8-21-92; 6-24-94; 10-18-94; 10-14-95; 5-31-96; 2-15-99; 16.16.4.9 NMAC - Rn, 16 NMAC 16.4.9, 03-15-2001; A, 03-15-2004; A, 03-22-2008; A, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.5 NMAC, Sections 1 and 9, effective 07/06/2012.

16.16.5.1 ISSUING AGENCY:

New Mexico Board of ~~[Examiners in]~~ Optometry. [10-14-95; 2-15-99; A, 6-26-00; 16.16.5.1 NMAC - Rn, 16 NMAC 16.5.1, 03-15-2001; A, 07-06-2012]

16.16.5.9 NEW MEXICO LICENSING EXAMINATION:

A. As of January 15, 1995, all candidates for licensure shall be required to take the board's licensing examination, consisting of a jurisprudence exam and a clinical practicum exam.

B. The board examination shall only be seen by board members, individuals preparing and administering the examination and by examination candidates while sitting for the examination.

C. As soon as ~~[practicable]~~ practical after the board examination is scored, each examination candidate will be notified in writing by certified mail, return receipt requested, of his or her individual scores and pass/fail status.

(1) Successful exam candidates will have ninety (90) days from the date of receipt of the exam results notification to complete the licensure process as provided in 16.16.2.10 or 16.16.2.11 NMAC and 16.16.2.12 NMAC ~~[and 16.16.6.8 NMAC]~~.

(2) Candidates who do not complete the licensure process within the time provided in Subsection C, Paragraph (1) of 16.16.5.9 NMAC must reapply for licensure and meet all the requirements of application and examination as set forth in ~~[16 NMAC 16]~~ 16.16.3 NMAC.

D. ~~[A score of seventy-five percent (75%) or better is required on each section of the board's examination.]~~ A grade of seventy-five percent (75%) or better in the clinical and in the jurisprudence subjects is required for passing the licensure examination.

E. Candidates failing to pass the board's examination may re-take a regularly scheduled examination upon approved re-application.

(1) Failed candidates must repeat all portions of the board's examination.

(2) The applicant must complete a new exam application form and submit an updated resume', provide updated license verifications directly from other licensing jurisdictions, and pay the required application processing and examination fees (16.16.2.8 and 16.16.2.9 NMAC).

F. Any candidate detected cheating in any manner during the course

of any examination shall automatically fail the entire examination. Cheating on an examination shall be deemed unprofessional conduct, and shall demonstrate that the applicant is not of good moral character. Individuals detected cheating shall be afforded notice and the opportunity for a hearing under Section 61-1-4 of the Uniform Licensing Act.

G. The deadline for challenging the examination is three (3) months from the date the exam scores are mailed to the candidate by certified mail. [11-17-73; 12-6-87; 10-14-95; 5-31-96; 2-15-99; A, 6-26-00; 16.16.5.9 NMAC - Rn, 16 NMAC 16.5.9, 03-15-2001; A, 03-10-2005; A, 03-22-2008; A, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.6 NMAC, Sections 1 and 5, effective 07/06/2012.

16.16.6.1 ISSUING AGENCY: New Mexico Board of ~~[Examiners in]~~ Optometry [725 St. Michael's Drive Santa Fe, New Mexico 87501 (505) 827-7170]. [10-14-95; 16.16.6.1 NMAC - Rn, 16 NMAC 16.6.1, 03-15-2001; A, 07-06-2012]

16.16.6.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section ~~[or Paragraph]~~. [10-14-95; 10-15-97; 16.16.6.5 NMAC - Rn, 16.16.6.5, 03-15-2001; A, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.7 NMAC, Sections 1, 12 and 13, effective 07/06/2012.

16.16.7.1 ISSUING AGENCY: New Mexico Board of ~~[Examiners in]~~ Optometry. [10-14-95; A, 6-26-00; 16.16.7.1 NMAC - Rn, 16 NMAC 16.7.1, 03-15-2001; A, 07-06-2012]

16.16.7.12 DEA REGISTRATION REQUIRED: Before a ~~[Board-certified optometrist]~~ New Mexico optometric physician may~~[- in the treatment and management of ocular disease;]~~ administer, dispense, or prescribe any of the controlled substances which are allowed by the Optometry Act (Section 61-2-10.2) and for which a DEA registration is required, he/she must be registered by the New Mexico board of pharmacy and by the United States drug enforcement administration as provided in 16.16.8 NMAC. [10-14-95; 16.16.7.12 NMAC - Rn, 16 NMAC 16.7.12, 03-15-2001; A, 07-06-

2012]

16.16.7.13 "OPTOMETRIC PHYSICIAN" TITLE USE: Only those optometrists who have been certified ~~[by the board to administer and prescribe oral and topical pharmaceutical medications in the treatment and management of ocular disease;]~~ as provided in 16.16.7.11 NMAC may use the title of "optometric physician" ~~[in connection with their name].~~

[10-15-97; 16.16.7.13 NMAC - Rn, 16 NMAC 16.7.13, 03-15-2001; A, 03-22-2008; A, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.8 NMAC, Sections 1 and 9, effective 07/06/2012.

16.16.8.1 ISSUING AGENCY: New Mexico Board of ~~[Examiners in]~~ Optometry [2550 Cerrillos Road, Santa Fe, New Mexico 87505 (505) 476-4945]. [10-14-95; 16.16.8.1 NMAC - Rn, 16 NMAC 16.8.1, 03-15-2001; A, 03-22-2008; A, 07-06-2012]

16.16.8.9 DEA REGISTRATION REQUIREMENTS FOR CERTIFIED OPTOMETRISTS:

A. Upon completion of the board of pharmacy's requirements, and upon receipt of a New Mexico registration for controlled substances from the board of pharmacy, the qualified optometrist ~~[may]~~ shall apply for a DEA registration number from the DEA.

B. The DEA will issue a qualified, certified New Mexico licensed optometrist a DEA registration number only after the optometrist has been issued a New Mexico controlled substance registration by the board of pharmacy.

C. Upon receipt of a DEA registration number, the optometrist may administer, dispense, ~~[and/or]~~ or prescribe dangerous controlled substances as provided in 16.16.7 NMAC for the treatment and management of ocular disease. [10-14-95; 10-15-97; 16.16.8.9 NMAC - Rn, 16 NMAC 16.8.9, 03-15-2001; A, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.9 NMAC, Sections 1, 7, 9, 11, 12 and 13, effective 07/06/2012.

16.16.9.1 ISSUING AGENCY: New Mexico Board of ~~[Examiners in]~~ Optometry.

[16.16.9.1 NMAC - N, 03-15-2004; A, 07-06-2012]

16.16.9.7 DEFINITIONS:

A. "Valid license" means a license that is subject to regulation by, and statutory authority of, the board.

B. "Active status" means the license is valid and current and that the licensee is authorized by the board to practice optometry in New Mexico.

C. "Expired status" means the license has not been renewed by the license expiration date in accordance with 16.16.11.8 NMAC, but is still under the statutory authority of the board for the period specified in 16.16.11.16 NMAC.

D. "Inactive status" means a New Mexico license that has been placed on non-working status in accordance with board rule 16.16.9 NMAC, [because] provided the licensee is [in active and current practice in another state] practicing in another state and is currently in good standing with that state.

E. "Null and void status" means an expired, retired, or inactive status license that has passed the time limitation set forth in 16.16.11.16 NMAC or 16.16.12.15 NMAC, or 16.16.9.16 NMAC, and is thus lapsed and cannot be reactivated.

F. "Lapsed license" means a license that is null and void.
[16.16.9.7 NMAC - N, 03-15-2004; A, 07-06-2012]

16.16.9.9 INACTIVE STATUS

NOTIFICATION: Upon receipt of a duly and properly made application for inactive status, the board or its designee will review and approve the application and send the licensee written verification that the license has been placed on inactive status. A licensee with an inactive license will be required to renew it every year as defined in 16.16.10 NMAC.

[16.16.9.9 NMAC - N, 03-15-2004; A, 07-06-2012]

16.16.9.11 [NOTIFICATION OF INTENT TO REACTIVATE LICENSE:

Any optometrist who has placed his/her license on inactive status as provided in 16.16.9.8 NMAC may, within five years from the official date his/her license was placed on inactive status, notify the board in writing of his/her desire to practice in New Mexico. The applicant shall provide the following information:

A. The New Mexico license number.

B. The applicant's full name.

C. The applicant's home address and phone number.

D. The date the applicant's license was originally issued.

E. The date the applicant's

license was placed on inactive status.

F. Proof that the licensee was in active practice in another licensing jurisdiction during the period of inactive status in New Mexico.

G. Licensure status verification(s) sent directly to the board by the licensee's other licensing jurisdiction(s).
[RESERVED]

[16.16.9.11 NMAC - N, 03-15-2004; Repealed, 07-06-2012]

16.16.9.12 REACTIVATION [PROCESS] FROM INACTIVE

STATUS: Upon receipt of the written request [required in 16.16.9.12 NMAC,] the board shall provide the applicant with a reactivation [from inactive status form stipulating the fees and the number of board-approved continuing education hours required for reactivation of his or her license] application.

A. [The reactivation fee shall be the total of the renewal fees for each year the license was in inactive status.] The completed application and the required reactivation fee as defined in 16.16.2.19 NMAC shall be delivered to the board's consideration.

B. Continuing education shall be at the current requirement of board-approved continuing education taken [for each year during the inactive status period, and the provisions] during the previous 12 months prior to reactivation as set forth in Subsection A of 16.16.13.8 NMAC [related to optometrists holding certification in ocular therapeutics will apply for each year in retired status].

[C.] One year's continuing education requirement shall be taken during the year immediately preceding reactivation of the license.

D. No late renewal penalty fees will be assessed for the years the license was on inactive status.]

[16.16.9.12 NMAC - N, 03-15-2004; A, 07-06-2012]

16.16.9.13 [REACTIVATION APPLICATION REVIEW:

The optometrist shall return the completed, signed, and notarized reactivation from inactive status form, the required fee(s), and copies of the continuing education proofs of attendance certificates to the board office.]

[RESERVED]

[16.16.9.13 NMAC - N, 03-15-2004; Repealed, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.10 NMAC, Sections 1, 8, 10, 11 and 12, effective 07/06/2012.

16.16.10.1 ISSUING AGENCY: New Mexico Board of [Examiners in] Optometry.

[10-14-95; 16.16.10.1 NMAC - Rn, 16 NMAC 16.10.1, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

16.16.10.8 LICENSE EXPIRATION DATE: All current New Mexico optometry licenses [expire on] not renewed by July 1 of every year shall be considered expired.

[10-14-95; 16.16.10.8 NMAC - Rn, 16 NMAC 16.10.8, 03-15-2001; A, 03-22-2008; A, 07-06-2012]

16.16.10.10 LICENSE RENEWAL [NOTICES] NOTIFICATION:

[Renewal application notices shall be mailed to each current licensee] License renewal notification will be mailed at least forty-five (45) days prior to the expiration date of the license.

[10-14-95; 16.16.10.10 NMAC - Rn, 16 NMAC 16.10.10, 03-15-2001; A, 07-06-2012]

16.16.10.11 CURRENT ADDRESS NOTIFICATION:

A. [Renewal Application Notices: Renewal application notices] License renewal notification will be mailed to the last address on file with the board. It is the responsibility of the licensee to keep the board informed of any changes in home or employment addresses and phone numbers.

B. [Licensee's Responsibility:] It is a licensee's responsibility to renew a license. Failure to receive the renewal [application] notification shall not relieve the licensee of the responsibility of renewing the license by the expiration date.

[10-14-95; 16.16.10.11 NMAC - Rn, 16 NMAC 16.10.11, 03-15-2001; A, 07-06-2012]

16.16.10.12 RENEWAL APPLICATION:

[The required renewal fee and the completed and signed renewal application must be returned to the board accompanied by copies of continuing education attendance certificates as required in 16.16.13.8 NMAC, and beginning July 1, 2009 a copy of current CPR certificate.]

A. A completed license renewal application, verification of continuing education, a current CPR certification and applicable renewal fee must

be received in the board office on or before July 1 of every year.

B. The board may audit any licensee's continuing education documentation for the current licensing year and the two (2) previous years.

[10-14-95; 16.16.10.12 NMAC - Rn, 16 NMAC 16.10.12, 03-15-2001; A, 03-22-2008; A, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.11 NMAC, Sections 1, 7, 8, 9, 11, 12 and 13, effective 07/06/2012.

16.16.11.1 ISSUING AGENCY: New Mexico Board of [Examiners—in] Optometry.

[10-14-95; 2-15-99; 16.16.11.1 NMAC - Rn, 16 NMAC 16.11.1, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

16.16.11.7 DEFINITIONS:

A. "Valid license" means a license that is subject to regulation by, and statutory authority of, the board.

B. "Active status" means the license is valid and current and that the licensee is authorized by the board to practice optometry in New Mexico.

C. "Expired status" means the license has not been renewed by the license expiration date in accordance with 16.16.11.8 NMAC, but is still under the statutory authority of the board for the period specified in 16.16.11.16 NMAC. [Practice under an expired status license is not allowed after the thirty-day grace period following the expiration date]

D. "Inactive status" means a New Mexico license that has been placed on non-working status in accordance with board rule 16.16.9 NMAC, [because] provided the licensee is [in active and current practice in another state] practicing in another state and is currently in good standing with that state.

E. "Null and void status" means an expired, retired, or inactive status license that has passed the time limitation set forth in 16.16.11.16 NMAC or 16.16.12.15 NMAC, or 16.16.9.16 NMAC, and is thus lapsed and cannot be reactivated.

F. "Lapsed status" means a license that is null and void.

G. "Retired status" means a license that has been withdrawn from active status at the request of the licensee because the licensee has retired from business and is no longer practicing optometry in any licensing jurisdiction, but which is still subject to the authority of the board for a period of five years after the license was placed on retired status as

specified in 16.16.12.15 NMAC.

[10-14-95; 16.16.11.7 NMAC - Rn, 16 NMAC 16.6.11.7, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

16.16.11.8 LICENSE EXPIRATION DUE TO NON-RENEWAL: Licenses not renewed [with a postmark date on or before the expiration date of] on or before July 1, as set forth in 16.16.10.8 NMAC, shall be expired [on the basis that the renewal application was not duly and properly made as required by board regulations].

[10-14-95; 16.16.11.8 NMAC - Rn, 16 NMAC 16.11.8, 03-15-2001; A, 03-15-2004; A, 03-22-2008; A, 07-06-2012]

16.16.11.9 LATE PENALTY FEE: [Expired licenses not renewed with a postmark date on or before the license expiration date of] Licenses not renewed on or before July 1, as set forth in 16.16.10.8 NMAC, shall be subject to the required late penalty fee, as provided in 16.16.2.14 NMAC, in addition to the renewal fee, as provided in 16.16.2.13 NMAC.

[10-14-95; 16.16.11.9 NMAC - Rn, 16 NMAC 16.11.9, 03-15-2001; A, 03-15-2004; A, 03-22-2008; A, 07-06-2012]

16.16.11.11 LICENSE STATUS REPORTED: Licenses that expire [and are not renewed during the grace period,] or that are inactive, retired, revoked or suspended for any other reason, shall be reported by the board to the New Mexico board of pharmacy, as required by the Optometry Act; to other state or federal agencies as required; and to any other inquirer as requested.

[10-14-95; 10-15-97; 16.16.11.11 NMAC - Rn, 16 NMAC 16.11.11, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

16.16.11.12 PRACTICE PROHIBITED:

A. An optometrist shall not practice optometry in the state of New Mexico while his or her license is expired [following the grace period]; or while it is inactive, retired, revoked, suspended, or is otherwise invalid as provided in Section 61-2-14 (A), NMSA 1978.

B. Any person who practices optometry in New Mexico without an active, current, and valid license is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions in Section 61-31-18-15.A (6), which states, "If a person is convicted of a non-capital felony, the basic sentence of imprisonment is as follows: for a fourth degree felony, eighteen months imprisonment."

C. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed five thousand dollars (\$5,000).

[10-14-95; 10-15-97; 16.16.11.12 NMAC - 16 NMAC 16.11.12, 03-15-2001; A, 03-15-2004; A, 03-22-2008; A, 07-06-2012]

16.16.11.13 APPLICATION FOR REACTIVATION OF LICENSE: The licensee whose license is expired due to non-renewal, and who wishes to reactivate the license to active and current status, must apply for, and receive, approval by the board for reactivation of the license. The application for reactivation must be made on a reactivation form received from the board office, and must be accompanied by the following items:

A. proof of completion of a minimum of twenty-two (22) hours of board-approved continuing education (see 16.16.13 NMAC) taken for each year the license was expired due to non-renewal, twenty-two (22) of which must have been taken in the immediate preceding year;

B. verification directly from at least one of the applicant's other licensing jurisdiction(s) certifying that the licensee has been in active practice there during the time the license was in [revoked] expired status due to non-renewal in New Mexico, unless the New Mexico license has only been in expired status for less than a year, in which case verification of licensure from another licensing jurisdiction is not necessary;

C. verification directly from the applicant's other licensing jurisdiction(s), as to the status of the license with respect to disciplinary actions if the New Mexico license is in expired status for more than a year, and provided that the licensee is licensed in other jurisdiction(s);

D. a reactivation fee in an amount totaling the renewal fees for each year the license was in expired status due to non-renewal; and

E. a penalty fee in an amount totaling the penalty fees for each year the license was in expired status due to non-renewal.

[10-14-95, 10-15-97; 16.16.11.13 NMAC - Rn, 16 NMAC 16.11.13, 03-15-2001; A, 03-15-2004; A, 03-22-2008; A, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.12 NMAC, Sections 1, 8 and 11, effective 07/06/2012.

16.16.12.1 ISSUING AGENCY: New Mexico Board of [Examiners—in] Optometry.

[10-14-95; 16.16.12.1 NMAC - Rn, 16 NMAC 16.12.1, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

16.16.12.8 RETIREMENT OF

LICENSE: Any optometrist who wishes to retire from practice shall notify the board, **in writing, prior to** the expiration date of his or her license ~~and provide proof of completion of continuing education renewal requirement as provided in 16.16.13 NMAC.~~

A. If the licensee meets the time frame and continuing education requirements set forth in 16.16.12.8 NMAC, the license will be retired. The licensee's date of retirement will be recorded as the expiration date of that year in the minutes of the next regularly scheduled board meeting.

B. The optometrist shall be exempt from payment of the yearly renewal fees during the period of retirement. [8-21-92; 6-24-94; 10-14-95; 10-15-97; 16.16.12.8 NMAC - Rn, 16 NMAC 16.12.8, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

16.16.12.11 REINSTATEMENT PROCESS: Upon receipt of the written request required in 16.16.12.10 NMAC, the board shall mail the applicant a reinstatement form stipulating the fees and the number of board-approved continuing education hours required for reactivation of his or her license.

A. The reactivation fee shall be the total of the renewal fees for each year the license was in retired status.

B. Continuing education shall be at the current requirement of board approved continuing education taken for each year during the retirement period, and the provisions set forth in Subsection A of 16.16.13.8 NMAC related to optometrists holding certification in ocular therapeutics will apply for each year in retired status.

C. Twenty-two (22) of those hours shall be taken during the year immediately preceding reactivation of the license. At least ten (10) of the twenty-two (22) hours must be in a board approved program in ocular therapeutic pharmacology. [8-21-92; 6-24-94; 10-14-95; 10-15-97; 16.16.12.11 NMAC - Rn, 16 NMAC 16.12.11, 03-15-2001; A, 03-22-2008; A, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.13 NMAC, Sections 1, 8, 9, and 11, effective 07/06/2012.

16.16.13.1 ISSUING AGENCY: New Mexico Board of ~~[Examiners in]~~ Optometry. [10-14-95; 2-15-99; 16.16.13.1 NMAC - Rn, 16 NMAC 16.13.1, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

16.16.13.8 CONTINUING EDUCATION REQUIREMENTS: A minimum of twenty-two (22) clock hours of optometry related, board approved

continuing education or postgraduate programs are required for license renewal each year beginning July 1 ~~[, 2009].~~

A. [~~Ocular therapeutics requirement.~~ For ~~optometrists holding certificates in ocular therapeutics.]~~ At least ten (10) of the twenty-two (22) hours of continuing education must be in a board approved program in ocular therapeutic pharmacology.

B. For optometrists on inactive status holding ocular therapeutics certification, a minimum of ten (10) hours of continuing education in a board approved program in ocular therapeutic pharmacology is required.

[~~B.] C. [~~Time requirements within renewal period.~~~~ The continuing education must have been taken within the preceding renewal period (i.e. July 2 of one year through June 30 of the next).

[~~C.] D. [~~Certificates of attendance.~~~~ Licensees are required to submit copies of certificates of attendance for the required continuing education.] The board may audit any licensee's continuing education documentation for the current licensing year and the two (2) previous years.

[~~D.] E. [~~Certificate submission with renewal.~~~~ The copies of the certificates of attendance must accompany the completed and signed renewal application form and renewal fee.] A licensee who receives a notice of audit shall submit to the board office on or before July 1, unless otherwise specified, evidence of continuing education hours for the requested period.

[~~E.] E. [~~License expiration due to non-renewal for failure to meet the continuing education requirement.~~~~ Failure of the licensee to meet the continuing education requirements for renewal the expiration date shall be grounds for expiration of the license on the grounds that the renewal application was not duly and properly made as required by board regulations.] A license will be placed on expired status if the licensee fails to meet the continuing education requirements for renewal by the expiration date stated in this rule.

[~~F.] G. Reactivation of license expired due to non-renewal for failure to meet the continuing education requirement.~~ The licensee may apply for license reactivation in the same manner as provided in Part 11 of 16.16 NMAC. The continuing education and fees will be calculated based on the number of years the license was expired due to non-renewal for failure to meet the continuing education requirement.

[~~G.] H.~~ Newly licensed optometrists who graduated from optometry school within the same year of licensure may submit the completed curriculum of their

last year of optometry school to meet their continuing education requirement the first year of renewal.

[11-17-73; 2-6-87; 10-14-95; 10-15-97; 2-15-99; 16.16.13.8 NMAC - Rn, 16 NMAC 16.13.8, 03-15-2001; A, 03-15-2004; A 03-22-2008; A, 07-06-2012]

16.16.13.9 A P P R O V E D CONTINUING EDUCATION: All subjects of education must be directly related to optometry. The New Mexico board of ~~[examiners in]~~ optometry approves the following programs for continuing education credit.

A. Any convention of the American optometric association (AOA).

B. Any meeting of an American optometric association affiliated state or regional association meeting, or meeting of the armed forces optometric society (AFOS).

C. Any session of the optometric extension program congress (OEPC).

D. Any state seminar of the graduate clinic foundation of the optometric extension program.

E. Courses sponsored by or given by accredited optometry schools.

F. Courses sponsored by the following organizations.

(1) Optometric councils: mid-west, mountain west, southern, New England, southwest (SWCO).

(2) Optometric contact lens societies: southwest, southern, heart of America.

(3) Optometric congresses: southern, mountain states.

(4) Courses sponsored by the American academy of optometry ~~[and]~~.

(5) Courses approved by the council on optometric practice education (COPE) or courses approved by the New Mexico optometric association (NMOA).

G. The certificates of attendance required by Subsection C of 16.16.13.8 NMAC shall be signed by the presiding officer or designee of the organization conducting or sponsoring the program and shall identify the therapeutic pharmaceutical agent (TPA) courses.

H. Certificates of attendance for courses approved by COPE must have the COPE trademark and approval number.

I. A maximum of two (2) hours of internet-type course offerings, approved by COPE or any other board-approved sponsor, will be allowed for each annual renewal.

[11-17-73; 2-6-87; 8-21-92; 10-14-95; 10-15-97; 16.16.13.9 NMAC - Rn, 16 NMAC 16.13.9, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

16.16.13.11 EXTENUATING CIRCUMSTANCES - DEFERRAL OR WAIVER CONTINUING EDUCATION [REQUIREMENT] REQUIREMENTS:

~~[A.]~~ A licensee has twelve (12) months to complete the twenty-two (22) hours of continuing education required to renew a license.]

~~[B.]~~ A. A licensee may request a deferral or waiver of continuing education or CPR certification requirements in writing, at least thirty (30) days prior to the licensee's expiration, [an emergency deferral or waiver of the continuing education requirement] should any of the following occur:

(1) licensee experiences prolonged debilitating illness; or

(2) one of licensee's immediate family members suffers prolonged debilitating illness; or

(3) licensee is called to active duty by the national guard, any branch of the United States armed forces, or other recognized public service.

~~[C.]~~ B. The written request for deferral or waiver shall contain an explanation of the underlying circumstance and shall include documentation in support of the request. At its discretion, the board may grant the request or variance.

[16.16.13.11 NMAC - N, 03-10-2005; A, 03-22-2008; A, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.14 NMAC, Sections 1 and 5, effective 07/06/2012.

16.16.14.1 ISSUING AGENCY:
New Mexico Board of [Examiners—in] Optometry [725 St. Michael's Drive Santa Fe, New Mexico 87501 (505) 827-7170.]
[10-14-95; 16.16.14.1 NMAC - Rn, 16 NMAC 16.14.1, 03-15-2001; A, 07-06-2012]

16.16.14.5 EFFECTIVE DATE:
October 14, 1995, unless a later date is cited at the end of a section.
[8-21-92...10-14-95; 16.16.14.5 NMAC - Rn, 16 NMAC 16.14.5, 03-15-2001; A, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.16 NMAC, Section 1, added new Section 11, this also amends the part name, effective 07/06/2012.

PART 16 PRACTICE LOCATION; OWNERSHIP; PATIENT MEDICAL RECORDS RETENTION

16.16.16.1 ISSUING AGENCY:
New Mexico Board of [Examiners—in] Optometry.
[10-14-95; 2-15-99; A, 6-26-00; 16.16.16.1 NMAC - Rn, 16 NMAC 16.16.1, 03-15-2001; A, 07-06-2012]

16.16.16.11 PATIENT RECORDS MANAGEMENT:

A. Optometrists shall retain medical records they own for a period of at least five (5) years from the date of last treatment.

B. Thirty (30) days before the closing, selling, relocation or leaving of a practice an optometrist shall notify the board office and patients seen within the last five (5) years. Notices will be given pursuant to Subsection C of this section.

C. Notification shall be satisfied using any of the following methods:

(1) publication of at least one notice in a local newspaper, twice a month for a period of three months; notice should indicate how to obtain patient records and contact information for the individual with access to the patient records;

(2) written or electronic mail; or
(3) individual correspondence to the patient's last known physical or electronic mailing address.

[16.16.16.11 NMAC - N, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.17 NMAC, Sections 1 and 5, effective 07/06/2012.

16.16.17.1 ISSUING AGENCY:
New Mexico Board of [Examiners—in] Optometry.
[10-14-95; A, 6-26-00; 16.16.17.1 NMAC - Rn, 16 NMAC 16.17.1, 03-15-2001; A, 07-06-2012]

16.16.17.5 EFFECTIVE DATE:
October 14, 1995, unless a later date is cited at the end of a section [or Paragraph].
[11-17-73...10-14-95; 10-15-97; 16.16.17.5 NMAC - Rn, 16 NMAC 16.17.5, 03-15-2001; A, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.18 NMAC, Sections 1 and 7, effective 07/06/2012.

16.16.18.1 ISSUING AGENCY:
New Mexico Board of [Examiners—in] Optometry.
[16.16.18.1 NMAC - N, 03-22-2008; A, 07-

06-2012]

16.16.18.7 DEFINITIONS:
A. "Board" means the New Mexico board of [examiners—in] optometry herein referred to as the board.

B. "Optometric physician" means an optometrist who has been certified by the board to administer and prescribe oral or topical pharmaceutical medications in the treatment and management of ocular diseases as provided in 16.16.7.11 NMAC.

[16.16.18.7 NMAC - N, 03-22-2008; A, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.19 NMAC, Sections 1, 5, 15, 17, 18, 19 and 20, effective 07/06/2012

16.16.19.1 ISSUING AGENCY:
New Mexico Board of [Examiners—in] Optometry.
[10-14-95; A, 6-26-00; 16.16.19.1 NMAC - Rn, 16 NMAC 16.19.1, 03-15-2001; A, 07-06-2012]

16.16.19.5 EFFECTIVE DATE:
October 14, 1995, unless a later date is cited at the end of a section.
[6-24-94...10-14-95; 16.16.19.5 NMAC - Rn, 16 NMAC 16.19.5, 03-15-2001; A, 07-06-2012]

16.16.19.15 RELEASE OF REPLACEMENT CONTACT LENS PRESCRIPTION; TIMING:

A. An optometrist who performs an eye examination and fits a patient for contact lenses shall prepare and provide the patient or anyone who is designated to act on behalf of the patient, with a replacement contact lens prescription when the [optometrist completes the patient's contact lens fitting] patient's contact lens fitting has been completed.

~~[B.]~~ Repealed.]

~~[C.]~~ B. Optometrists shall display, in a prominent location in their office(s), a sign to inform their patients that they have a right to a copy of their replacement contact lens prescription.

~~[D.]~~ C. The optometrist shall provide the patient with a copy of the replacement contact lens prescription as long as the prescription is valid. The replacement copy will still show the original expiration date.

E.] D. A licensed optometrist who releases a replacement contact lens prescription to a patient may provide the patient with a written statement that wearing improperly fitted contact lenses may cause

harm to the patient's eyes and that the patient should have an eye examination if there are any changes in the patient's vision, including pain or vision loss.

[16.16.19.15 NMAC - N, 6-08-01; A, 03-15-2004; A, 03-10-2005; A, 07-06-2012]

16.16.19.17 COMPLIANCE REQUIRED; VIOLATION PENALTIES:

A. [~~Selling of contact lenses or prescription eyeglasses, frames, or mountings for lenses in an establishment in which the majority of the establishment's income is not derived from being engaged in that endeavor, is prohibited; with the exception that a pharmacist licensed and regulated by the New Mexico board of pharmacy is not prohibited by these regulations from selling contact lenses.~~] A person or entity who is not a licensed optometrist or a licensed physician cannot sell or dispense replacement contact lenses unless registered with the New Mexico board of pharmacy. Pharmacies, hospitals and clinics licensed by the board of pharmacy are exempt from this rule.

B. Failure of an optometrist to comply with the provisions of this rule, 16.16.19 NMAC, shall be considered unprofessional and unethical conduct, and shall be dealt with in accordance with the appropriate provisions of Part 21 and Part 22 of 16.16.19 NMAC.

~~**C.** It is a violation of this rule for any person to dispense contact lenses to a patient in this state by mail or otherwise without having a valid prescription verified by a licensed prescribing optometrist or physician.~~

~~**D.** Violation of Subsection B and C of this rule is a misdemeanor violation punishable by a fine of \$1,000 for each lens dispensed, and the fine is in addition to any other penalty imposed for violations of this rule.~~

~~**E.** C.~~ Adapting, substituting, or changing the contact lens prescription, including [~~brand name or specific~~] specified material types, without prior authorization from the prescribing doctor, constitutes the practice of optometry.

~~**F.** D.~~ Practicing optometry without a license is a fourth degree felony violation punishable upon conviction as provided in the Criminal Code.

~~**G.** E.~~ The board of optometry may impose a civil fine or no more than one thousand (\$1,000) on a licensed optometrist who fails to provide a requested replacement contact lens prescription; or who knowingly dispenses contact lenses without a valid replacement contact lens prescription; or who otherwise fails to comply with the provisions of this rule, 16.16.19 NMAC.

~~**H.**~~ A person or entity who is not a licensed optometrist or a licensed physician, but is a registered New Mexico

contact lens dispenser or seller shall not sell or dispense a contact lens to a resident of this state unless the patient has, at the time of sale or dispensing, a copy of a valid replacement contact lens prescription or the contact lens dispenser or seller has obtained verification of valid replacement contact lens prescription in accordance with Subsection I of this section:

~~**I.**~~ A contact lens may not be sold, dispensed or distributed to a patient in this state by a registered New Mexico contact lens dispenser or seller unless one of the following has occurred:

~~(1) the patient has given or mailed to the seller an original valid written replacement contact lens prescription;~~

~~(2) the prescribing licensed optometrist has given, mailed or transmitted by facsimile a copy of a valid written replacement contact lens prescription to a seller designated in writing by the patient to act on the patient's behalf; or~~

~~(3) the prescribing licensed optometrist has orally or in writing verified the valid replacement contact lens prescription to a seller designated by the patient to act on his/her behalf.~~

~~**J.**~~ A verification shall not be provided pursuant to Paragraph (3) of Subsection I of this section unless the patient has designated the contact lens seller to act on the patient's behalf. Verification by the prescribing licensed optometrist shall take place pursuant to the following procedure:

~~(1) a request for a verification shall be made by the seller to the prescribing licensed optometrist by facsimile, mail or telephone;~~

~~(2) if the request is received between 9:00 a.m. and 5:00 p.m. on a working day, the prescribing licensed optometrist shall provide verification to the seller within eight (8) hours of receipt;~~

~~(3) if the request is not received between 9:00 a.m. and 5:00 p.m. on a working day, the prescribing licensed optometrist shall provide verification to the seller within eight (8) hours as of 9:00 a.m. of the next working day following receipt;~~

~~(4) in any case where the existence of a valid designation by the patient of a seller to act on the patient's behalf is in question, the prescribing optometrist shall promptly contact the patient to determine if a designation is in effect; and~~

~~(5) as used in this subsection, "working day" means any Saturday or Sunday that the office of the prescribing licensed optometrist is open and Monday through Friday, but does not include a holiday.~~

~~**K.**~~ A person other than a licensed optometrist or physician who fills a contact lens prescription shall maintain a record of that prescription for five (5) years.

~~**L.**~~ A person who violates

the provisions of Subsection H of this section is guilty of a fourth degree felony and shall be sentenced pursuant to Section 31-18-15 NMSA 1978:]

[16.16.19.17 NMAC - N, 6-08-01; A, 03-15-2004; A, 03-10-2005; A, 07-06-2012]

16.16.19.18 SALE OR DISPENSING OF REPLACEMENT CONTACT LENSES:

The sale of all replacement contact lenses is regulated by the federal trade commission's *Contact Lens Rule* which became effective in July 2004. Please see "a guide for prescribers and sellers" of contact lenses at <http://www.ftc.gov/bcp/edu/pubs/business/health/bus62.shtm>.

[16.16.19.18 NMAC - N, 6-08-01; A, 03-15-2004; 16.16.19.18 NMAC - N, 07-06-2012]

~~[16.16.19.18]~~ **16.16.19.19 LIABILITY FOR USE OF PRESCRIPTION:**

When a patient's replacement contact lens prescription is dispensed by a person other than that licensed optometrist or a person associated directly or indirectly with the licensed optometrist, the licensed optometrist is not liable for any injury to or condition of a patient caused solely by the negligence of the dispenser. Furthermore, an optometrist or therapeutic optometrist is not liable for a patient's subsequent use of a contact lens prescription if

~~**A.**~~ the contact lenses have been purchased elsewhere and the patient does not return to the optometrist or therapeutic optometrist for re-examination or a follow-up examination after the contact lenses have been purchased; or

~~**B.**~~ the patient's condition, age, general health, and susceptibility to an adverse reaction caused by or related to the use of contact lenses or other factors result in the patient no longer being a proper candidate for the contact lenses prescribed.

[16.16.19.19 NMAC - N, 03-15-2004; 16.16.19.19 NMAC - Rn & A, 16.16.19.18 NMAC, 07-06-2012]

~~[16.16.19.19]~~ **16.16.19.20 REGISTRATION REQUIRED FOR NON-LICENSEES TO SELL CONTACT LENSES:**

A. A person who is not a licensed optometrist or a licensed physician shall not sell or dispense a contact lens to a resident of this state unless he/she is registered with the New Mexico board of pharmacy as a seller or dispenser of contact lenses; provided that pharmacies, clinics and hospitals licensed by the board of pharmacy shall be exempt from this requirement.

B. The board of pharmacy shall promulgate rules to establish the application procedures for obtaining registration and may include a requirement for payment of a fee by the applicant, but

the amount of the fee shall not exceed the costs of implementing the registration requirement.

C. The board of pharmacy shall maintain a current list of all registered seller and dispensers of contact lenses.

D. A person, company, or entity that is not registered pursuant to this subsection and knowingly sells or dispenses contact lenses to a New Mexico resident is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

[16.16.19.20 NMAC - Rn, 16.16.19.19 NMAC, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.20 NMAC, Section 1, effective 07/06/2012.

16.16.20.1 ISSUING AGENCY: New Mexico Board of [Examiners—in] Optometry.

[16.16.20.1 NMAC - N, 03-15-2004; A, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.21 NMAC, Sections 1, 5, 7, 9 and 10, effective 07/06/2012.

16.16.21.1 ISSUING AGENCY: New Mexico Board of [Examiners—in] Optometry.

[10-14-95; A, 6-26-00; 16.16.21.1 NMAC - Rn, 16 NMAC 16.21.1, 03-15-2001; A, 07-06-2012]

16.16.21.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.

[11-17-73...10-14-95; 16.16.21.5 NMAC - Rn, 16 NMAC 16.21.5, 03-15-2001; A, 07-06-2012]

16.16.21.7 DEFINITIONS:

A. “Splitting or dividing of fees” means offering, delivering, receiving, or accepting any unearned rebate, refund, commission, preference, patronage, dividend, discount, or other unearned consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, customers to any person, irrespective of any membership, proprietary interest, or co-ownership in or with any person to whom the patients, clients, or customers are referred.

B. “Professional superiority” means claiming, implying,

guaranteeing, or representing that one has superior professional qualities, skills, abilities, credentials, training, [and/or] and professional service outcomes beyond those of similarly licensed optometrists.

[N, 6-26-00; 16.16.21.7 NMAC - Rn, 16 NMAC 16.21.7, 03-15-2001; A, 07-06-2012]

16.16.21.9 ACTS OF UNPROFESSIONAL CONDUCT: The following exemplify the types of conduct or acts of omission that shall subject the licensee or applicant to disciplinary action by the board.

A. Any conduct whether an act or the omission of an act, which deceives or defrauds or tends to deceive or defraud the public.

B. Obtaining or attempting to obtain any fee by fraud, misrepresentation, deceit or any other deceptive or dishonest course of conduct.

C. Charging or attempting to charge any unusual, unreasonable, or exorbitant fee.

D. [RESERVED]

E. Splitting or dividing of fees with any person, as defined by this rule.

F. Advertising professional superiority, or advertising ophthalmic materials or services in violation of the rules of this board.

G. Breach of the confidentiality of information or knowledge about a patient obtained by the optometrist while acting in his or her professional capacity.

H. Seeing patients while under the influence of alcohol or controlled substances not prescribed for him or her by an individual authorized by law to prescribe controlled substances. For purposes of this regulation, the term “controlled substances” shall be defined as the term is defined by the New Mexico Controlled Substance Act.

I. Sexual misconduct with a patient, including but not limited to the making of unsolicited sexual advances to a patient.

J. Violation of any order or judgment of the board.

K. Impersonating another who is licensed to practice optometry, or permitting or allowing any person to use [his/her] such license.

L. Employing or inducing an unlicensed person to perform any procedure that is considered the practice of optometry as defined in NMSA Sections 61-2-1 through 61-2-18 (1995 Repl. Pamp.).

M. Practicing beyond the scope of his/her optometry license as defined by state law [and/or] and regulations.

N. Advertising in any manner that violates board regulations and state statutes on advertising.

O. Making false statements in any application for licensure or renewal of licensure.

P. Failing to report to the board the surrender of an optometric license or any formal disciplinary action, in another state or jurisdiction, in which there has been an adverse finding for acts or conduct which would constitute grounds for actions as defined in these rules.

Q. Failing to report to the board any criminal conviction of a felony.

R. Refusing to provide the patient with [his/her] their eyeglass prescription if the prescription is under a year old.

S. Duplicating or replacing eyeglasses when the prescription is more than two years old without written authorization from the patient.

T. Failing to disclose and release patient information when requested by a patient or a health care provider upon a patient’s authorization, or upon request from a health care provider when relating to the treatment of a patient, in accordance with the 1996 Health Insurance Portability and Accountability Act (HIPAA).

[11-17-73; 9-20-80; 8-21-92; 6-24-94; 10-14-95; 16.16.21.9 NMAC - Rn, 16 NMAC 16.21.9, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

16.16.21.10 UNPROFESSIONAL CONDUCT RELATED TO PHARMACEUTICALS:

The following unprofessional conduct related to pharmaceutical [and/or] and controlled dangerous pharmaceutical agents shall be grounds for disciplinary action by the board. Violations of Subsections of this Section may also constitute fourth degree felony violations and may be subject to conviction, imprisonment, and fines pursuant to the provisions of Section 31-18-15 NMSA 1978 (see Subsections B and C of 16.16.11.12 NMAC).

A. Practicing optometry, including the use of pharmaceutical agents without a valid, current license.

B. Administering, dispensing [and/or] and prescribing diagnostic, topical, or oral pharmaceutical agents without the proper certification by the board as set forth in Part 7 of 16.16 NMAC.

C. Administering, dispensing, [and/or] and prescribing controlled dangerous drugs without proper certification by the board and the required controlled substances registration with the State of New Mexico and proper DEA registration with the drug enforcement administration as set forth in Part 8 of 16.16 NMAC.

D. Administering, dispensing [and/or] and prescribing dangerous drugs for purposes other than

generally accepted treatment for the relief of ocular abnormalities.

E. Indiscriminately or excessively administering, dispensing, or prescribing controlled dangerous substances.

F. Administering, dispensing [and/or] and prescribing controlled dangerous substances to immediate family members for purposes other than as applied in the treatment and management of ocular disease.

G. [RESERVED]

H. Administering, dispensing, [and/or] and prescribing controlled dangerous substances in excess of the amount considered good optometric practice.

I. Administering, dispensing, [and/or] and prescribing controlled dangerous substances without medical need in accordance with published standards.

J. Disbursing or prescribing any controlled dangerous substance for the optometrist's personal use for any other use than as applied in the treatment and management of ocular disease.

K. Delegating prescriptive signing authority for either prescriptive medications or controlled dangerous substances to another person.

[10-14-95; 16.16.21.10 NMAC - Rn, 16 NMAC 16.21.10, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.22 NMAC, Section 1, effective 07/06/2012.

16.16.22.1 ISSUING AGENCY: New Mexico Board of [Examiners—in] Optometry.

[10-14-95; 16.16.22.1 NMAC - Rn, 16 NMAC 16.22.1, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.23 NMAC, Sections 1 and 5, effective 07/06/2012.

16.16.23.1 ISSUING AGENCY: New Mexico Board of [Examiners—in] Optometry [725 St. Michael's Drive Santa Fe, New Mexico 87501 (505) 827-7170].

[10-14-95; 16.16.23.1 NMAC - Rn, 16 NMAC 16.23.1, 03-15-2001; A, 07-06-2012]

16.16.23.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.

[10-14-95; 16.16.23.5 NMAC -Rn, 16

NMAC 16.23.5, 03-15-2001; A, 07-06-2012]

NEW MEXICO BOARD OF OPTOMETRY

This is an amendment to 16.16.24 NMAC, Section 1, effective 07/06/2012.

16.16.24.1 ISSUING AGENCY: New Mexico Board of [Examiners—in] Optometry.

[2-15-99; 16.16.24.1 NMAC - Rn, 16 NMAC 16.24.1, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

NEW MEXICO COMMISSIONER OF PUBLIC LANDS

New Mexico State Land Office

Notice of Repealed Rule

Ray Powell, M.S., D.V.M., New Mexico Commissioner of Public Lands, hereby gives notice to repeal State Land Office Rule: Title 19 - Natural Resources and Wildlife, Chapter 2 - State Trust Lands, Part 21 – Land Exchanges (19.2.21 NMAC), effective June 29, 2012, and that it is hereby replaced with Title 19 - Natural Resources and Wildlife, Chapter 2 - State Trust Lands, Part 21 – Land Exchanges (19.2.21 NMAC) effective June 29, 2012.

NEW MEXICO COMMISSIONER OF PUBLIC LANDS

TITLE 19 N A T U R A L RESOURCES AND WILDLIFE CHAPTER 2 STATE TRUST LANDS PART 21 LAND EXCHANGES

19.2.21.1 ISSUING AGENCY: Commissioner of Public Lands - New Mexico State Land Office.

[19.2.21.1 NMAC - Rp, 19.2.21.1 NMAC, 06/29/12]

19.2.21.2 SCOPE: This part pertains to all exchanges of lands held in trust by the commissioner of public lands under the terms of the Enabling Act and subsequent legislation. This rule does not apply to exchanges with the United States department of the interior or to governmental entities except to the extent that the commissioner decides to apply any portion of this rule to a specific exchange to ensure substantial conformity with the requirements

of the Enabling Act.

[19.2.21.2 NMAC - Rp, 19.2.21.2 NMAC, 06/29/12]

19.2.21.3 STATUTORY AUTHORITY:

The commissioner's authority to manage and dispose of trust lands is found in N.M. Const. Art. XIII, Section 2, and in Section 19-1-1 NMSA 1978. The authority to promulgate this part is found in Section 19-1-2 NMSA 1978.

[19.2.21.3 NMAC - Rp, 19.2.21.3 NMAC, 06/29/12]

19.2.21.4 DURATION: Permanent.

[19.2.21.4 NMAC - Rp, 19.2.21.4 NMAC, 06/29/12]

19.2.21.5 EFFECTIVE DATE: June 29, 2012, unless a later date is cited at the end of a section.

[19.2.21.5 NMAC - Rp, 19.2.21.5 NMAC, 06/29/12]

19.2.21.6 OBJECTIVE: The objective of this part is to provide for the orderly and lawful exchange of trust lands when such exchanges will result in a financial benefit to the trust, and when the exchange of such trust lands would benefit the trust more than their retention.

[19.2.21.6 NMAC - Rp, 19.2.21.6 NMAC, 06/29/12]

19.2.21.7 DEFINITIONS: The following terms are used in this part as defined below:

A. "beneficiary institutions" means those institutions or other entities specified in Section 19-1-17 NMSA 1978, as amended, or other provisions of statute for whose benefit trust lands are held;

B. "commissioner" means the New Mexico commissioner of public lands or the commissioner's agents or employees who are authorized to act in the commissioner's stead in a particular transaction;

C. "cultural property" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance and included on or eligible for inclusion on either the New Mexico register of cultural properties pursuant to the New Mexico Cultural Properties Act, NMSA 1978, Sections 18-6-1 through 18-6-17, or listed on or eligible for listing on the national register of historic places pursuant to the National Historic Preservation Act, 16 U.S.C. Section 470;

D. "description" when used in connection with describing lands, means a description given in meets and bounds when appropriate, or in aliquot parts

in such a way as to delineate each full or partial quarter quarter section and each full or partial lot and the acreage of each, or a description in some other form approved by the commissioner; a description shall include a description of all encumbrances and of all easements or other servitudes burdening or benefiting the property except to the extent that this requirement is waived by the commissioner;

E. "exchange" means a sale of trust lands wherein payment will be accepted by in-kind payment in the form of a conveyance of certain non-trust lands in exchange for a conveyance of certain trust lands, by monetary payment or by any combination thereof;

F. "exchange agreement" means a formal, written agreement entered into between the commissioner and an exchange party for an exchange of trust lands for non-trust lands plus any monetary payment;

G. "exchange applicant" means a governmental entity, or a private entity, that has filed an exchange application or who has qualified to bid on an exchange, under this rule;

H. "exchange party" means an exchange applicant whose exchange proposal has been accepted by the commissioner and who has entered into an exchange agreement with the commissioner;

I. "exchange proposal" means a proposal for an exchange submitted to the commissioner by an exchange applicant in conformance with the requirements of this rule and the provisions of any published request for exchange proposals;

J. "governmental entity" means the state of New Mexico, its agencies or political subdivisions, Indian tribes and pueblos, or federal government agencies other than the department of interior;

K. "hazardous materials" means any substance or material that is governed or regulated by any statute, regulation, rule, order, finding or directive promulgated, issued or enacted by a federal, state or local governmental entity and that relates to industrial hygiene or environmental protection, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Sections 9601-9675 and any successor provisions, and the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sections 6901-6992 and any successor provisions;

L. "improvements" means any of the following:

(1) any item of tangible property developed, placed, created or constructed on the lands involved including, but not limited to, buildings, equipment and fixtures;

(2) water rights appurtenant to the lands involved, including without limitation

any water rights developed or used on the land involved for the benefit of that land; and

(3) any tangible or intangible property, rights, approvals or privileges obtained or developed for the benefit of, or made appurtenant to, the lands involved that are designated as improvements by the commissioner;

M. "improvement value" means the value of improvements placed on trust lands, which value is finally determined or accepted by the commissioner;

N. "non-trust lands" means lands other than trust lands, located in New Mexico;

O. "qualified appraiser" means a state licensed or certified real estate appraiser as set forth in Section 61-30-3, 61-30-11 and 61-30-12 NMSA 1978 or any successor provisions of law;

P. "raw land value" means the value of land that may be accepted by the commissioner for purposes of in-kind payment after the value of depreciable improvements (if any) have been excluded or reduced from the full appraised value;

Q. "schedule of fees" means a written schedule of administrative fees established by the commissioner and available to the public, which the commissioner in his discretion may change from time-to-time;

R. "state" means the state of New Mexico;

S. "state land office" means the New Mexico state land office;

T. "true value" means fair market value as determined by any objective, reliable and commercially acceptable method including but not necessarily limited to appraisal by an appraiser;

U. "trust" means the trust established by the Enabling Act (Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310), and that trust's assets, which are administered through the state land office by the commissioner;

V. "trust lands" means all lands with all appurtenant rights and privileges, owned by the trust as shown in the state land office master title tract books or other records of the state land office; and

W. "working day" means any day other than a Saturday, a Sunday or a day on which the state land office is required to be closed.

[19.2.21.7 NMAC - Rp, 19.2.21.7 NMAC, 06/29/12]

19.2.21.8 EXCHANGE STANDARDS:

A. The commissioner may enter into an exchange when the commissioner determines that the exchange will result in a financial benefit to the trust.

B. When lands are placed for public auction under this rule, the

commissioner will accept payment for such lands in the form of in-kind payment through an exchange of non-trust lands for trust lands, monetary payment, or any combination thereof that results in the greatest financial benefit to the trust.

C. Trust lands may be exchanged for non-trust lands owned in fee simple absolute by a governmental entity or by a private entity or entities. The commissioner cannot accept in an exchange any lands subject to a mortgage, lien or other encumbrance.

D. In any exchange, the trust must receive at least true value for the trust lands that are conveyed to an exchange party. To meet this requirement, the commissioner shall require appraisals of the trust lands and the non-trust lands proposed to be exchanged at their true value and can only proceed with an exchange after first determining that the value of the non-trust lands to be received by the state, plus any monetary payment offered, are of equal or greater financial value to the trust. Each appraisal must: (1) be conducted, by a qualified appraiser (the commissioner may require that the appraisals be performed by the land office staff appraiser, or that the appraiser be selected and approved in advance); (2) conform to the uniform standards of professional appraisal practice and any other reasonable standards set by the commissioner; (3) be reviewed by a state land office staff qualified appraiser or a different qualified appraiser and approved by the commissioner, and (4) whenever possible, utilize an appraisal approach that allows the commissioner to identify raw land value as separate from the value of any improvements. This provision shall not be construed as prohibiting the use of a running exchange account as provided in Subsection G of this section. Appraisals conducted or received by the commissioner in connection with an exchange or proposed exchange under this rule, as well as the commissioner's review of any such appraisal, shall be considered confidential information and not public information until the commissioner has selected an exchange proposal as provided in 19.2.21.12 NMAC. The commissioner may waive confidentiality in the case of any appraisal or any review of an appraisal if he determines that it is in the best interest of the trust to do so.

E. The non-trust lands, monetary payment or any combination thereof received by the commissioner in an exchange, and any proceeds therefrom, shall be applied to and become a part of the trust for which the trust lands exchanged by the commissioner were originally granted.

F. A single exchange transaction may involve more than one exchange party and may involve trust lands held in trust for the benefit of more

than one beneficiary institution. When the exchange involves the commissioner conveying lands held in trust for more than one beneficiary institution, the non-trust lands and any monetary payment received by the commissioner in the exchange shall be apportioned to the different beneficiary institutions in such a way that the value of each beneficiary institution's interest in the newly acquired land and any monetary payment is proportional to its interest in the trust lands conveyed.

G. When the commissioner determines that the best interests of the trust will be promoted thereby, he may, in his discretion, enter into an agreement with a governmental entity, to engage in a series of exchanges over a period of time. Such an agreement will provide for a running exchange account in which both agencies will, among other things:

(1) account for the value of all properties exchanged;

(2) make provision for differences in the property values of one exchange to be offset against property values in subsequent exchanges;

(3) provide for methods of discharge and reduction of account balances;

(4) may, subject to agreement by the parties, provide for interest on account exchange balances which remain undischarged for over one year;

(5) provide for interagency annual reconciliation of account balance figures; and

(6) provide for termination of the agreement and a method for final resolution of outstanding account balances.

H. The commissioner shall convey the trust lands being exchanged using such instruments of conveyance that are in the best interest of trust, which instruments shall contain such reservations to the trust as are required by law and as are deemed appropriate by the commissioner. Conveyances of trust lands shall be subject to all valid existing rights at the date of conveyance.

(1) A conveyance document by which the commissioner conveys trust lands shall be similar in content to a state land office patent and may be entitled "exchange patent."

(2) A conveyance document by which the commissioner conveys trust land shall reflect any existing oil, gas, mineral or geothermal leases on the property being conveyed by the commissioner.

I. In any exchange, the commissioner shall receive conveyances of non-trust lands by instruments containing acceptable guarantees of title such as patent, government deed or warranty deed, accompanied by such other documents evidencing marketable and unencumbered title as are deemed appropriate by the

commissioner, including, if not waived by the commissioner, policies of title insurance.

(1) Such instruments shall contain language stating that the conveyance is made for and in consideration of the exchange of trust lands.

(2) An instrument of conveyance executed by individual exchange parties shall disclose the marital status of the exchange party and shall also be executed by the spouse of a married exchange party.

(3) Instruments of conveyance received by the commissioner in exchanges shall be executed, acknowledged and filed of record with the state land office and, if appropriate, with the counties in which the non-trust lands conveyed by such instruments are located, and the exchange party shall pay all costs and fees associated with such filing.

J. Exchange parties shall deposit with the commissioner, for the benefit of the owner of improvements located on the trust lands proposed for exchange, the improvement value as determined by an appraisal made or approved by the commissioner. This requirement does not apply where the exchange party is the owner of the improvements. The provisions of this subsection also shall not apply to improvements placed on trust lands for the exploration, development or production of oil and gas, geothermal resources, sand, gravel, coal, shale, clay, building stone or materials, potassium, sodium, phosphorus, salt or any other minerals or natural deposits of whatsoever kind located in, under or upon the trust lands proposed for exchange where only the surface of the trust lands is proposed for exchange.

(1) In lieu of payment of improvement value, an exchange party may file with the commissioner a bill of sale from, or a waiver of payment signed by, the owner of the improvements.

(2) The commissioner may require the costs of improvement appraisal to be paid by the exchange applicant or exchange party.

(3) For purposes of compensation, improvements shall include:

(a) those placed, created, developed or moved upon the trust lands that were approved by the commissioner or otherwise in compliance with Section 19-7-51 NMSA 1978;

(b) those placed, created, developed or moved upon the trust lands prior to March 1, 1955, whether or not their values exceed the amounts prescribed by Section 19-7-51 NMSA 1978; and

(c) those placed, created, developed or moved upon the trust lands on or after March 1, 1955, but prior to March 1, 1975, and subsequently approved in writing by the commissioner.

(4) Property placed, created,

developed or moved upon leased trust lands on or after March 1, 1955, by a lessee in violation of Section 19-7-51 NMSA 1978 and not subsequently approved by the commissioner, may be approved as an improvement by the commissioner if the commissioner determines it benefits the trust lands on which it is located for purposes of a proposed exchange. For purposes of compensation paid to the owner of such improvements, however, an undivided twenty-five percent of the value of all such permanent improvements that are valued in excess of the amounts specified in Section 19-7-51 NMSA 1978 shall be and remain a part of the trust lands offered for exchange.

(5) Property placed, created, developed or moved on trust lands by mistake on or after March 1, 1975, by one not acting in the capacity of a lessee shall not be recognized as an improvement by the commissioner for purposes of compensation paid to the owner of the property unless:

(a) the commissioner determines the property was placed on the trust land in the good faith, non-negligent belief it was being located on adjacent non-trust land; and

(b) the property enhances the value of the trust land for purposes of the proposed exchange.

K. Exchange applicants or exchange parties shall pay all costs of exchanges, including but not necessarily limited to costs of publication, land appraisal, appraisal of improvements, surveying and recording, unless such requirement is waived by the commissioner. The commissioner may require an exchange applicant or exchange party either to pay such costs to the commissioner for payment to service providers or to pay such costs directly to the providers.

[19.2.21.8 NMAC - Rp, 19.2.21.8 NMAC, 06/29/12]

19.2.21.9 EXCHANGE PROPOSALS AND PROCEDURES:

A. A proposed exchange may be initiated either by an applicant or by the commissioner.

B. Exchange procedure initiated by applicant:

(1) A party interested in exchanging non-trust land may initiate an exchange procedure by filing with the commissioner an initial application to exchange land on a form prescribed by the commissioner, accompanied by a non-refundable application and advertising fee set by the commissioner in a schedule of fees. The initial application shall include the identity and address of the applicant; a legal description of the non-trust lands proposed to be exchanged; the estimated market value of the non-trust lands; the current uses of the non-trust lands; ownership of the non-trust lands; a description of any

known environmental or cultural properties issues related to the non-trust lands; a legal description of the trust lands that the applicant seeks to acquire; an estimate of the value of such trust lands; a deposit in an amount determined by the commissioner as sufficient to pay the costs of appraisal of the trust lands and non-trust lands (unless the commissioner has agreed to accept an appraisal or appraisals previously performed or to be performed at the applicant's expense); and such other information as the commissioner may request in writing. The commissioner shall advise the relevant beneficiary institution(s) through written correspondence that an exchange application was received.

(2) Following submission of an initial application, the commissioner will make a determination as to whether further investigation of the suggested exchange is warranted and shall so inform the exchange applicant. If the commissioner determines that the suggested exchange does not offer sufficient potential benefit to the trust, the application will be rejected and the exchange process will terminate.

C. Exchange procedure initiated by the commissioner. The commissioner may make his own preliminary determination that an exchange of certain trust lands would result in a financial benefit to the trust. In that case, the commissioner may initiate an exchange process by publishing a request for exchange proposals in accordance with 19.2.21.10 NMAC, below.

[19.2.21.9 NMAC - Rp, 19.2.21.9 NMAC, 06/29/12]

19.2.21.10 PUBLIC NOTICE OF A PROPOSED EXCHANGE:

A. Notice of a proposed exchange shall be published once each week for not less than ten (10) consecutive weeks in a newspaper of general circulation published locally at the state capital, and a newspaper of like circulation which shall be locally published nearest the lands so offered for exchange. Said notice will also be posted on the state land office website. Said notice shall set forth the nature, time and specific place of the auction, which place shall be at the county seat wherein the lands or the major portion thereof are located. Said notice shall also state that the commissioner will accept bids offering in-kind payment in the form of non-trust lands to be exchanged for trust lands, monetary payment or any combination thereof.

B. The notice shall include a description or a statement of the location of the trust lands offered for exchange and their total acreage; a description of leases, rights of way, easements or other uses, if any, to which the trust lands are subject as indicated by the records of the state land office; a

general description of reservations to be included in the conveying instrument; the types of improvements located on the trust lands to be exchanged and their estimated values; the estimated publication and other costs to be deposited by each prospective bidder and paid by the successful bidder; the address and telephone number from which any interested person may obtain additional information, the form of conveyance instrument required to be used for in-kind payment, the deadline, form, and substantive requirements that must be satisfied in order to qualify to bid, the location where exchange proposals must be submitted; and any other information the commissioner deems pertinent.

C. In each case of a proposed exchange with another governmental entity, the commissioner shall determine what notice, if any, is required.

D. The form of instrument to be used in an exchange to convey the trust lands involved shall be available for inspection by prospective exchange applicants.

E. Non-trust lands proposed for exchange shall be open to the commissioner for inspection and appraisal. Trust lands for which the commissioner has published a request for exchange proposals shall be open to prospective exchange applicants for inspection and appraisal by obtaining permission from the state land office.

[19.2.21.10 NMAC - Rp, 19.2.21.9 NMAC, 06/29/12]

19.2.21.11 QUALIFICATION OF BIDDERS:

In order to qualify to bid, each prospective bidder in an exchange must submit a bid qualification packet satisfying the following criteria the qualification deadline set forth in the public notice:

A. Each prospective bidder must deposit with the commissioner a non-refundable application fee, the publication costs described in the public notice, and cost of appraisal(s) as described in the public notice. Publication and appraisal cost deposits may be refunded to all prospective bidders except for the successful bidder.

B. Each prospective bidder must deposit with the commissioner the appraised value of the improvements on the trust land as determined by the commissioner, a waiver of payment of such amount signed by the owner of the improvements, or a bond sufficient to cover the appraised value if an appeal is to be taken, unless the prospective bidder is the owner of the improvements. Improvement value deposits will be refunded to all prospective bidders except for the successful bidder.

C. Prospective bidders proposing to offer in-kind payment for all or part of the bid must submit the following

for the land or lands so offered subject to approval by the commissioner:

(1) a survey plat and legal description of the non-trust lands performed by a licensed professional surveyor in the state of New Mexico;

(2) an appraisal performed by a qualified appraiser conforming to the uniform standards of professional appraisal practice; the commissioner may require specific appraisal instructions and require that the appraiser be approved in advance; whenever possible, the appraiser must utilize an appraisal approach that allows the commissioner to identify raw land value as separate from the value of any improvements; the commissioner may exclude the value of improvements in order to determine the value of the land that may be used as in-kind payment; to the extent the commissioner considers the value of improvements for purposes of in-kind payment, their value will be separately evaluated by land office staff; the commissioner reserves the right to reject any appraisal;

(3) a title commitment for the non-trust with common details and any additional specific details as required by the commissioner in the public notice;

(4) a description of any water rights on the non-trust lands including documentation of the declaration or adjudication of such rights;

(5) a complete listing of cultural properties located on the non-trust lands and documentation thereof;

(6) a complete listing of hazardous materials or threatened or endangered species located on or in close proximity to the non-trust lands and documentation thereof; and

(7) a list of existing leases or other encumbrances on the land, if any, not shown in the title commitment.

D. Prospective bidders proposing to offer monetary payment for all or part of the bid must deposit with the commissioner a cash deposit or letter of credit, subject to review and approval by the commissioner, in an amount at least equivalent to either: 1) if no land is offered as partial in-kind payment, the full appraised value of the trust lands offered for exchange, or 2) if land is offered as partial in-kind payment, the difference between full appraised value of the trust lands and full appraised raw land value of the non-trust lands proposed as partial in-kind payment.

E. Prospective bidders may deposit in-kind or monetary payment, or any combination thereof, in excess of the full appraised value of the trust lands and any such amount deposited will set the minimum opening bid at the live public auction. Prospective bidders making deposits in excess of the full appraised value of the trust lands must clearly identify the full amount

of their bid as distinguishable from all other required costs and fees.

[19.2.21.11 NMAC - Rp, 19.2.21.9 NMAC, 06/29/12]

19.2.21.12 PUBLIC AUCTION:

A. Except as provided in Subsection C of 19.2.21.10 NMAC above, if the commissioner determines that an exchange of the trust lands may be in the best interest of the trust, the commissioner will offer the trust lands for exchange by public auction.

B. After the commissioner has reviewed the bid qualifications of all prospective bidders as described in 19.2.21.11 NMAC above and the public notice, the commissioner will send written notice to each indicating at a minimum: 1) whether or not they have qualified to bid at the public auction, 2) the time, date and location of the auction, and 3) the minimum opening bid at the auction. Only qualified bidders may bid at the public auction.

C. No trust lands will be exchanged except to the highest bidder at a live public auction held at the county seat of the county wherein the lands to be exchanged, or a major portion thereof, lie, and only after public notice has been given by advertisement in accordance with this rule and applicable law.

D. The minimum opening bid at auction will be the greater of either: 1) the true value of the subject trust land as determined by appraisal and as described in the public notice; or 2) the highest deposit (excluding required costs and fees) submitted by a prospective bidder during bidder qualification; bids at the auction in excess of the minimum must be in the form of cash bids only and the winning bidder must deposit such with the commissioner in a form acceptable to the commissioner within five (5) days of the auction.

[19.2.21.12 NMAC - N, 06/29/12]

19.2.21.13 S E L E C T I O N ; REJECTION:

A. Within a reasonable time after the published closing date for submission of exchange proposals including any period of time required for requesting, receiving and analyzing any supplemental information or documentation requested by the commissioner, the commissioner may reject all exchange proposals submitted or select the proposal or proposals he determines to provide the greatest financial benefit to the trust. The commissioner shall notify each exchange applicant whose exchange proposal is rejected. If the commissioner selects more than one proposal, he shall conduct further review of the proposals so selected, may request supplemental information from the respective applicants, and may conduct a supplemental competitive

process among those applicants before making a final selection.

B. The commissioner reserves the right to reject any and all bids, or to cancel an auction, sale, or exchange at any time before closing, and to reinstate the process of offering the trust lands for long-term lease, sale or exchange on the same or different terms.

[19.2.21.13 NMAC - Rp, 19.2.21.10 NMAC, 06/29/12]

19.2.21.14 CLOSING AN EXCHANGE:

A. Closing of the exchange must occur within ninety (90) days of the auction, except that this period may be extended as necessary in the commissioner's sole discretion.

B. On the date of closing, the successful bidder, if any, shall be required to convey the non-trust lands to be used as in-kind payment to commissioner and to otherwise pay the full amount bid through such conveyance, monetary payment or any combination thereof. The exchange of trust lands for non-trust lands shall be consummated in accordance with the exchange agreement by a simultaneous exchange of conveyancing documents and monetary payment, if any, between the commissioner and the exchange party or parties unless the exchange is part of a series of exchanges covered by a running exchange account agreement as provided in Subsection G of 19.2.21.8 NMAC.

C. If the commissioner accepts in-kind payment for all or part of the payment the commissioner and the applicant shall enter into a written exchange agreement. The exchange agreement may include, but shall not necessarily be limited to, legal descriptions of the trust land and non-trust land to be exchanged; an ALTA survey of the non-trust land unless waived by the commissioner; a statement of the comparative value of the tracts to be exchanged; a closing date; a description of the conveyance documents to be exchanged (which may be accomplished by attaching forms of such documents as exhibits); a listing of all documents to be exchanged at the closing, including conveyance documents and any title insurance policy documents; a statement that the exchange party has complied with applicable legal obligations and requirements with respect to the non-trust lands such as the payment of property taxes, and compliance with environmental, zoning, cultural properties or other applicable laws, as may be appropriate; any applicable escrow provisions; a statement as to when the parties shall be entitled to take possession of the lands being exchanged; a statement regarding notification of the exchange to the beneficiary institutions; a statement regarding the payment of exchange

costs and improvement value; a provision for termination of the exchange agreement; standard contractual provisions (such as amendments, entire agreement, governing law); and any other terms or conditions the parties find appropriate.

[19.2.21.14 NMAC - Rp, 19.2.21.12 NMAC, 06/29/12]

19.2.21.15 NOTICE TO BENEFICIARY INSTITUTIONS:

A. Upon causing a request for exchange proposals to be published as required by 19.2.21.10 NMAC above, the commissioner in his discretion may submit to the beneficiary institutions for whose benefit the trust lands proposed to be exchanged are held in trust a copy of the request for exchange proposals and any statement of the commissioner's reasons for believing that such an exchange will be beneficial to the trust and to the beneficiary institutions. Upon entering into an exchange agreement as required by 19.2.21.14 NMAC above, the commissioner in his discretion may submit to the beneficiary institutions a copy of the exchange agreement and any explanatory materials he finds appropriate.

B. Upon consummation of an exchange, the commissioner shall submit a written report to all beneficiary institutions involved setting forth a description of the trust lands and the non-trust lands involved, their appraised values, his reason for believing that the exchange will benefit the trust, and any other information he deems desirable.

[19.2.21.15 NMAC - Rp, 19.2.21.13 NMAC, 06/29/12]

19.2.21.16 RECORDING: The commissioner will cause the conveyancing documents to be recorded and filed with the records division of the state land office. The exchange party will cause the conveyancing documents to be recorded with the appropriate county clerks and will thereafter deliver to the commissioner copies thereof showing such recordation.

[19.2.21.16 NMAC - Rp, 19.2.21.15 NMAC, 06/29/12]

HISTORY of 19.2.21 NMAC:

Pre-NMAC History: Material in this part was derived from that previously filed with the State Records Center and Archives: SLO Rule 21, Relating to Land Exchanges, filed 08/5/92.

History of Repealed Material:

SLO Rule 21, Relating to Land Exchanges, 05/31/2000.
19.2.21 NMAC, Land Exchanges repealed effective 06/15/04 and replaced with 19.2.21 NMAC, Land Exchanges effective 06/15/04.
19.2.21 NMAC, Land Exchanges filed 05/26/04 repealed effective 06/29/12

and replaced with 19.2.21 NMAC, Land Exchanges effective 06/29/12.

Other History:

19.2.10 NMAC, Land Exchanges, Renumbered to 19.2.21 NMAC, 02/28/02.

NEW MEXICO WATER QUALITY CONTROL COMMISSION

This is an amendment to 20.6.4 NMAC, Sections 108, 109, 115, 119, 133-135, 209, 211, 217, 222-229, 307, 309, 313-317, 410, 453, 505 and 702, effective July 10, 2012.

20.6.4.108 RIO GRANDE BASIN

- Perennial reaches of the Jemez river and all its tributaries above Soda dam near the town of Jemez Springs, except San Gregorio lake and Sulphur creek above its confluence with Redondo creek, and perennial reaches of the Guadalupe river and all its tributaries.

A. Designated Uses: domestic water supply, fish culture, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 400 $\mu\text{S}/\text{cm}$ or less (800 $\mu\text{S}/\text{cm}$ or less on Sulphur creek); the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less; and pH within the range of 2.0 to 8.8 on Sulphur creek.

[20.6.4.108 NMAC - Rp 20 NMAC 6.1.2106, 10-12-00; A, 05-23-05; A, 12-01-10; A, 07-10-12]

[NOTE: The segment covered by this section was divided effective 05-23-05. The standards for the additional segment are under 20.6.4.124 NMAC. The standards for San Gregorio lake are in 20.6.4.134 NMAC, effective 07-10-12]

20.6.4.109 RIO GRANDE BASIN

- Perennial reaches of Bluewater creek excluding Bluewater lake and waters on tribal lands, Rio Moquino upstream of Laguna pueblo, Seboyeta creek, Rio Paguate upstream of Laguna pueblo, the Rio Puerco upstream of the northern boundary of Cuba, and all other perennial reaches of tributaries to the Rio Puerco, including the Rio San Jose in Cibola county from the USGS gaging station at Correo upstream to Horace springs excluding waters on tribal lands.

A. Designated Uses: coldwater aquatic life, domestic water supply, fish culture, irrigation, livestock

watering, wildlife habitat and primary contact; and public water supply on La Jara creek.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: phosphorus (unfiltered sample) 0.1 mg/L or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.109 NMAC - Rp 20 NMAC 6.1.2107, 10-12-00; A, 05-23-05; A, 12-01-10; A, 07-10-12]

[NOTE: The standards for Bluewater lake are in 20.6.4.135 NMAC, effective 07-10-12]

20.6.4.115 RIO GRANDE BASIN

- The perennial reaches of Rio Vallecitos and its tributaries except Hopewell lake, and perennial reaches of Rio del Oso and perennial reaches of El Rito creek above the town of El Rito.

A. Designated Uses: domestic water supply, irrigation, high quality coldwater aquatic life, livestock watering, wildlife habitat and primary contact; public water supply on the Rio Vallecitos and El Rito creek.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300 $\mu\text{S}/\text{cm}$ or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.115 NMAC - Rp 20 NMAC 6.1.2112, 10-12-00; A, 05-23-05; A, 12-01-10; A, 07-10-12]

[NOTE: The standards for Hopewell lake are in 20.6.4.134 NMAC, effective 07-10-12]

20.6.4.119 RIO GRANDE BASIN

- All perennial reaches of tributaries to the Rio Chama above Abiquiu dam, except Canjilon lakes a, c, e and f and the Rio Gallina and Rio Puerco de Chama north of state highway 96 and excluding waters on Jicarilla Apache reservation, and the main stem of the Rio Chama from the headwaters of El Vado reservoir upstream to the New Mexico-Colorado line. Some Cañones creek and Rio Chama waters in this segment are under the joint jurisdiction of the state and the Jicarilla Apache tribe.

A. Designated Uses: domestic water supply, fish culture, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact; and public water supply on the Rio Brazos and Rio Chama.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 500 $\mu\text{S}/\text{cm}$ or less (1,000 μS or less for Coyote creek); the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.119 NMAC - Rp 20 NMAC 6.1.2116, 10-12-00; A, 05-23-05; A, 12-01-10; A, 07-10-12]

[NOTE: The standards for Canjilon lakes a, c, e and f are in 20.6.4.134 NMAC, effective 07-10-12]

20.6.4.133 RIO GRANDE BASIN

- Bull Creek lake, Cow lake, Elk lake, Goose lake, Heart lake, Hidden lake (Lake Hazel), Horseshoe lake, Horseshoe (Alamitos) lake, Jose Vigil lake, Lost lake, Middle Fork lake, Nambe lake, Nat II lake, Nat IV lake, No Fish lake, Pioneer lake, San Leonardo lake, Santa Fe lake, Serpent lake, South Fork lake, Trampas lakes (east and west) and Williams lake.

A. Designated Uses: high quality coldwater aquatic life, irrigation, domestic water supply, primary contact, livestock watering and wildlife habitat.

B. Criteria: The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300 $\mu\text{S}/\text{cm}$ or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.133 NMAC - N, 07-10-12]

20.6.4.134 RIO GRANDE BASIN

- Cabresto lake, Canjilon lakes a, c, e and f, Fawn lakes (east and west), Hopewell lake and San Gregorio lake.

A. Designated Uses: high quality coldwater aquatic life, irrigation, domestic water supply, primary contact, livestock watering and wildlife habitat.

B. Criteria: The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300 $\mu\text{S}/\text{cm}$ or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.134 NMAC - N, 07-10-12]

20.6.4.135 RIO GRANDE BASIN

- Bluewater lake.

A. Designated Uses: coldwater aquatic life, irrigation, domestic water supply, primary contact, livestock watering and wildlife habitat.

B. Criteria: The use-

specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses except that the following segment-specific criteria apply: phosphorus (unfiltered sample) 0.1 mg/L or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.
[20.6.4.135 NMAC - N, 07-10-12]

[20.6.4.133] 20.6.4.136 - 20.6.4.200: [RESERVED]

20.6.4.209 PECOS RIVER BASIN - Perennial reaches of Eagle creek upstream of Alto dam to the Mescalero Apache boundary, perennial reaches of the Rio Bonito and its tributaries upstream of state highway 48 (near Angus) excluding Bonito lake, and perennial reaches of the Rio Ruidoso and its tributaries upstream of the U.S. highway 70 bridge near Seeping Springs lakes, above and below the Mescalero Apache boundary.

A. Designated Uses: domestic water supply, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat, public water supply and primary contact.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 600 μ S/cm or less in Eagle creek, 1,100 μ S/cm or less in Bonito creek and 1,500 μ S/cm or less in the Rio Ruidoso; phosphorus (unfiltered sample) less than 0.1 mg/L; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.209 NMAC - Rp 20 NMAC 6.1.2209, 10-12-00; A, 05-23-05; A, 12-01-10; A, 07-10-12]

[NOTE: The standards for Bonito lake are in 20.6.4.223 NMAC, effective 07-10-12]

20.6.4.211 PECOS RIVER BASIN - The main stem of the Pecos river from the headwaters of Sumner reservoir upstream to Tecolote creek excluding Santa Rosa reservoir.

A. Designated Uses: fish culture, irrigation, marginal warmwater aquatic life, livestock watering, wildlife habitat and primary contact.

B. Criteria:

(1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

(2) At all flows above 50 cfs: TDS 3,000 mg/L or less, sulfate 2,000 mg/L or less and chloride 400 mg/L or less.

[20.6.4.211 NMAC - Rp 20 NMAC 6.1.2211, 10-12-00; A, 05-23-05; A, 12-01-10; A, 07-10-12]

[NOTE: The standards for Santa Rosa

reservoir are in 20.6.4.225 NMAC, effective 07-10-12]

20.6.4.217 PECOS RIVER BASIN - Perennial reaches of Cow creek and all perennial reaches of its tributaries and the main stem of the Pecos river from Cañon de Manzanita upstream to its headwaters, including perennial reaches of all tributaries thereto except lakes identified in 20.6.4.222 NMAC.

A. Designated Uses: domestic water supply, fish culture, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact; and public water supply on the main stem of the Pecos river.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300 μ S/cm or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.217 NMAC - Rp 20 NMAC 6.1.2214, 10-12-00; A, 05-23-05; A, 12-01-10; A, 07-10-12]

[NOTE: The segment covered by this section was divided effective 05-23-05. The standards for the additional segments are under 20.6.4.220 and 20.6.4.221 NMAC.]

20.6.4.222 PECOS RIVER BASIN - Johnson lake, Katherine lake, Lost Bear lake, Pecos Baldy lake, Spirit lake, Stewart lake and Truchas lakes (north and south).

A. Designated Uses: high quality coldwater aquatic life, irrigation, domestic water supply, primary contact, livestock watering and wildlife habitat.

B. Criteria: The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300 μ S/cm or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.222 NMAC - N, 07-10-12]

20.6.4.223 PECOS RIVER BASIN - Bonito lake.

A. Designated Uses: high quality coldwater aquatic life, irrigation, domestic water supply, primary contact, livestock watering, wildlife habitat and public water supply.

B. Criteria: The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses except that the following segment-specific criteria apply: specific conductance 1100 μ S/cm or less; phosphorus

(unfiltered sample) less than 0.1 mg/L; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.223 NMAC - N, 07-10-12]

20.6.4.224 PECOS RIVER BASIN - Monastery lake.

A. Designated Uses: coolwater aquatic life, primary contact, livestock watering and wildlife habitat.

B. Criteria: The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of *E. coli* bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less.

[20.6.4.224 NMAC - N, 07-10-12]

20.6.4.225 PECOS RIVER BASIN - Santa Rosa reservoir.

A. Designated Uses: coolwater aquatic life, irrigation, primary contact, livestock watering and wildlife habitat.

B. Criteria: The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.225 NMAC - N, 07-10-12]

20.6.4.226 PECOS RIVER BASIN - Perch lake.

A. Designated Uses: coolwater aquatic life, primary contact, livestock watering and wildlife habitat.

B. Criteria: The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses except that the following segment-specific criteria apply: the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.226 NMAC - N, 07-10-12]

20.6.4.227 PECOS RIVER BASIN - Lea lake.

A. Designated Uses: warmwater aquatic life, primary contact and wildlife habitat.

B. Criteria: The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses except that the following segment-specific criteria apply: the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.227 NMAC - N, 07-10-12]

20.6.4.228 PECOS RIVER BASIN - Cottonwood lake and Devil's Inkwell.

A. Designated Uses:

coolwater aquatic life, primary contact and wildlife habitat.

B. Criteria: The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of *E. coli* bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less.

[20.6.4.228 NMAC - N, 07-10-12]

20.6.4.229 PECOS RIVER BASIN - Mirror lake.

A. Designated Uses: warmwater aquatic life, primary contact and wildlife habitat.

B. Criteria: The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of *E. coli* bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less.

[20.6.4.229 NMAC - N, 07-10-12]

~~[20.6.4.222]~~ **20.6.4.230 - 20.6.4.300:**
[RESERVED]

20.6.4.307 CANADIAN RIVER BASIN - Perennial reaches of the Mora river from the USGS gaging station near Shoemaker upstream to the state highway 434 bridge in Mora, all perennial reaches of tributaries to the Mora river downstream from the USGS gaging station at La Cueva in San Miguel and Mora counties except lakes identified in 20.6.4.313 NMAC, perennial reaches of Ocate creek and its tributaries downstream of Ocate, and perennial reaches of Rayado creek downstream of Miami lake diversion in Colfax county.

A. Designated Uses: marginal coldwater aquatic life, warmwater aquatic life, primary contact, irrigation, livestock watering and wildlife habitat.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.307 NMAC - Rp 20 NMAC 6.1.2305.3, 10-12-00; A, 05-23-05; A, 12-01-10; A, 07-10-12]

20.6.4.309 CANADIAN RIVER BASIN - The Mora river and perennial reaches of its tributaries upstream from the state highway 434 bridge in Mora except lakes identified in 20.6.4.313 NMAC, all perennial reaches of tributaries to the Mora river upstream from the USGS gaging station at La Cueva, perennial reaches of Coyote creek and its tributaries, the Cimarron river and its perennial tributaries above state highway

21 in Cimarron except Eagle Nest lake, all perennial reaches of tributaries to the Cimarron river north and northwest of highway 64 except north and south Shuree ponds, perennial reaches of Rayado creek and its tributaries above Miami lake diversion, Ocate creek and perennial reaches of its tributaries upstream of Ocate, perennial reaches of the Vermejo river upstream from Rail canyon and all other perennial reaches of tributaries to the Canadian river northwest and north of U.S. highway 64 in Colfax county unless included in other segments.

A. Designated Uses: domestic water supply, irrigation, high quality coldwater aquatic life, livestock watering, wildlife habitat, and primary contact; and public water supply on the Cimarron river upstream from Cimarron[-; on Eagle Nest lake] and on perennial reaches of Rayado creek and its tributaries.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 500 μ S/cm or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.309 NMAC - Rp 20 NMAC 6.1.2306, 10-12-00; A, 7-19-01; A, 05-23-05; A, 12-01-10; A, 07-10-12]

[NOTE: The segment covered by this section was divided effective 05-23-05. The standards for the additional segment are under 20.6.4.310 NMAC. The standards for Shuree ponds are in 20.6.4.314 NMAC and the standards for Eagle Nest lake are in 20.6.4.315 NMAC, effective 07-10-12]

20.6.4.313 CANADIAN RIVER BASIN - Encantada lake, Maestas lake, Middle Fork lake of Rio de la Casa, North Fork lake of Rio de la Casa and Pacheco lake.

A. Designated Uses: high quality coldwater aquatic life, irrigation, domestic water supply, primary contact, livestock watering and wildlife habitat.

B. Criteria: The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300 μ S/cm or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.313 NMAC - N, 07-10-12]

20.6.4.314 CANADIAN RIVER BASIN - Shuree ponds (north and south).

A. Designated Uses: high quality coldwater aquatic life, irrigation, domestic water supply, primary contact,

livestock watering and wildlife habitat.

B. Criteria: The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses except that the following segment-specific criteria apply: specific conductance 500 μ S/cm or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.314 NMAC - N, 07-10-12]

20.6.4.315 CANADIAN RIVER BASIN - Eagle Nest lake.

A. Designated Uses: high quality coldwater aquatic life, irrigation, domestic water supply, primary contact, livestock watering, wildlife habitat and public water supply.

B. Criteria: The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses except that the following segment-specific criteria apply: specific conductance 500 μ S/cm or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.315 NMAC - N, 07-10-12]

20.6.4.316 CANADIAN RIVER BASIN - Clayton lake.

A. Designated Uses: coolwater aquatic life, primary contact, livestock watering and wildlife habitat.

B. Criteria: The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of *E. coli* bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less.

[20.6.4.316 NMAC - N, 07-10-12]

20.6.4.317 CANADIAN RIVER BASIN - Springer lake.

A. Designated Uses: coolwater aquatic life, irrigation, primary contact, livestock watering and wildlife habitat.

B. Criteria: The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.317 NMAC - N, 07-10-12]

~~[20.6.4.313]~~ **20.6.4.318 - 20.6.4.400:**
[RESERVED]

20.6.4.410 SAN JUAN RIVER BASIN - Jackson lake.

A. Designated Uses: coolwater aquatic life, irrigation, primary contact, livestock watering and wildlife habitat.

B. Criteria: The use-

specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of *E. coli* bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less.

[20.6.4.410 NMAC - N, 07-10-12]

~~[20.6.4.410 - 20.6.4.450]~~ **20.6.4.411 - 20.6.4.450:** [RESERVED]

20.6.4.453 LITTLE COLORADO RIVER BASIN - Quemado lake.

A. Designated Uses: coolwater aquatic life, primary contact, livestock watering and wildlife habitat.

B. Criteria: The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.453 NMAC - N, 07-10-12]

~~[20.6.4.453]~~ **20.6.4.454 - 20.6.4.500:** [RESERVED]

20.6.4.505 GILA RIVER BASIN - Bill Evans lake.

A. Designated Uses: coolwater aquatic life, primary contact, livestock watering and wildlife habitat.

B. Criteria: The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.505 NMAC - N, 07-10-12]

~~[20.6.4.505]~~ **20.6.4.506 - 20.6.4.600:** [RESERVED]

20.6.4.702 DRY CIMARRON RIVER - Perennial portions of the Dry Cimarron river below Oak creek, and perennial portions of Long canyon and Carrizozo creeks.

A. Designated Uses: [coldwater] coolwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

B. Criteria:

(1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: [temperature 25°C (77°F) or less;] the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

(2) TDS 1,200 mg/L or less, sulfate 600 mg/L or less and chloride 40 mg/L or less.

[20.6.4.702 NMAC - N, 05-23-05; A, 12-01-10; A, 07-10-12]

End of Adopted Rules Section

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| Issue Number 14 | July 17 | July 31 |
| Issue Number 15 | August 1 | August 15 |
| Issue Number 16 | August 16 | August 30 |
| Issue Number 17 | August 31 | September 14 |
| Issue Number 18 | September 17 | September 28 |
| Issue Number 19 | October 1 | October 15 |
| Issue Number 20 | October 16 | October 30 |
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| Issue Number 22 | November 16 | November 30 |
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